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ADVANCED COMPANY LAW AND PRACTICE

This study material has been published to aid the students in preparing for the Advance Company Law and Practice paper of the CS Professional Programme. Company Law has undergone radical changes over the past few years, so is the procedural requirements relating to compliance under various provisions of the Company Law. As the Company Secretary plays an important role in ensuring compliance of various provisions of the company law thereby avoiding penal consequences, this study material has been prepared with a view to provide an expert knowledge and understanding of the various procedural requirements of Company Law. With this objective in mind, a number of specimen notices, minutes, resolutions and forms have been included at relevant places. However, the students are advised to study the various procedures relevant for the purpose of this paper, in the light of the provisions of the Company Law and Rules made thereunder.

Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case laws, for which sole reliance on the contents of the study material may not be enough. Besides, Company Secretaries Regulations, 1982 requires the students to be conversant with the amendments to the laws made upto six months preceding the date of examination. This study material may therefore be regarded as basic material and must be read alongwith the Bare Act, Rules, Regulations, Case Law, as well as suggested readings.

The study material is based on those sections of the Companies Act, 2013 and the rule made there under which have been notified by the Government of India and came into force w.e.f. April 01, 2014 (including Amendments/clarifications/circulars issued there under upto June, 2014). In respect of sections of The Companies Act, 2013 which have not been notified, applicable sections of Companies Act, 1956 have been dealt with in the study.

The amendments made upto June 2014 have been incorporated in this study material. However, it may happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore advised to refer to the e- bulletin ‘Student Company Secretary’ and ICSI Journal Chartered Secretary and other publications for updation of study material. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same are brought to its notice for issue of corrigendum in the e-bulletin’ and Student Company Secretary’.

Although due care has been taken in publishing this study material, yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omission and/or discrepancies or any action taken in that behalf.
MODULE 1-PAPER 1: ADVANCED COMPANY LAW AND PRACTICE (100 Marks)

Level of Knowledge: Expert Knowledge

Objective: To acquire expert knowledge of the practical and procedural aspects of the Companies Act.

Detailed Contents:

1. Company Formation and Conversion
   - Choice of Form of Business Entity; Conversion/ Re-conversion of One Form of Business Entity into Another
   - Incorporation of Private Companies, Public Companies, Companies Limited by Guarantee and Unlimited Companies and their Conversions/ Re-conversion/Re-registration
   - Formation of Nidhi Companies, Producer Companies and Mutual Benefit Funds
   - Commencement of Business and New Business; Pre Incorporation Agreements and Contracts
   - Formation of Non Profit Companies
   - Procedure Relating to Foreign Companies Carrying on Business in India

2. Procedure for Alteration of Memorandum and Articles
   - Alteration of Various Clauses of Memorandum: Name Clause, Situation of Registered Office Clause, Objects Clause, Capital Clause and Liability Clause
   - Effects of Alteration of Articles

3. Procedure for Issue of Securities
   Part A: Shares
   - Public Issue, Rights Issue and Bonus Shares, Issue of Shares at Par/Premium/Discount; Issue of Shares on Preferential/Private Placement Basis
   - Allotment, Calls on Shares and Issue of Certificates
   - Issue of Sweat Equity Shares, Employees Stock Option Scheme (ESOPs), Employees Stock Purchase Scheme (ESPS), Shares with Differential Voting Rights
   - Issue and Redemption of Preference Shares
   - Alteration of Share Capital - Forfeiture of Shares and Reissue of Forfeited Shares; Increase, Consolidation, Conversion and Re-conversion into Stock, Subdivision and Cancellation and Surrender of Shares
   - Buy Back of Shares
   - Reduction of Share Capital

   Part B: Debt Instruments
   - Issue of Debentures and Bonds, Creation of Security and Debenture Redemption Reserve, Drafting of Debenture Trust Deed, Redemption of Debentures, Conversion of Debentures into Shares
4. **Procedure relating to Membership, Transfer and Transmission**

- Induction of Members, Nomination of Shares, Variation of Shareholders’ Rights, Cessation of Membership including Dispute Resolution
- Transfer/Transmission/Transposition
- Admission of Securities in Electronic Mode
- Dematerialization/Rematerialisation of Securities
- Compliances relating to Insider Trading and Takeovers

5. **Directors and Managerial Personnel**

- Obtaining DIN
- **Directors and Managerial Personnel** - Appointment, Reappointment, Resignation, Removal and Varying Terms of Appointment/Re-appointment
- Payment of Remuneration to Directors and Managerial Personnel and Disclosures thereof; Compensation for Loss of Office
- Waiver of Recovery of Remuneration
- Making Loans to Directors, Disclosure of Interest by a Director, Holding of Office or Place of Profit by a Director/Relative
- **Company Secretary** - Appointment, Resignation and Removal
- **Company Secretary in Practice** - Appointment, Resignation and Removal

6. **Meetings**

- **Collective Decision Making Forums** - Authority, Accountability, Delegation and Responsibility
- **Board Meetings** - Convening and Management of Meetings of Board and Committees; Preparation of Notices and Agenda Papers
- **General Meetings** - Convening and Management of Statutory Meeting, Annual and Extra-Ordinary General Meetings, Class Meetings; Creditors’ Meetings; Preparation of Notices and Agenda Papers; Procedure for Passing of Resolutions by Postal Ballot; Voting through Electronic Means; Conducting a Poll and Adjournment of a Meeting
- **Post-Meeting Formalities** - Preparation of Minutes and Dissemination of Information and Decisions

7. **Auditors**

- **Auditors** - Procedure for Appointment/Re-appointment, Resignation and Removal of Statutory Auditors and Branch Auditors; Appointment of Cost Auditors
- Special Auditors; CAG audit

8. **Distribution of Profit**

- Ascertainment of Distributable Profits and Declaration of Dividend; Payment of Dividend
- Claiming of Unclaimed/Unpaid Dividend; Transfer of Unpaid/Unclaimed Dividend to Investor Education and Protection Fund

9. **Procedure relating to Charges**
– Creation and Registration, Modification, Satisfaction of Charges
– Inspection of charges

10. **Procedure relating to Inter-Corporate Loans, Investments, Guarantees and Security**
– Making Inter-Corporate Loans, Investments, Giving of Guarantee and Security

11. **Preparation & Presentation of Reports**

12. **E- Filing**
– Filling and Filing of Returns and Documents
  (a) Annual Filing, i.e., Annual Accounts; XBRL Filing, Compliance Certificate, Annual Return
  (b) Event Based Filing

13. **Striking off Names of Companies**
– Law and Procedure

14. **Recent Trends and Developments in Company Law**

15. **Trusts and Non Profit Organisation**
# LIST OF RECOMMENDED BOOKS

## MODULE 1

### PAPER 1 : ADVANCED COMPANY LAW AND PRACTICE

The students may refer to the given books and websites for further knowledge and study of the subject:

**Readings:**

1. A. Ramaiya : Guide to the Companies Act, Wadhwa & Company, Nagpur
2. D.K. Jain : E-filing of Forms & Returns, Bharat Law House
3. Taxmann : Guide to E-Company forms
5. Taxmann : Company Rules & Forms
6. Companies Act, 2013 and Rules made these under.

**Journals:**

1. Chartered Secretary : ICSI Publication
2. Student Company Secretary : ICSI Publication

Website : [www.mca.gov.in](http://www.mca.gov.in)

**Note:**

The latest edition of all the books referred to above should be read.
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Starting a company requires a lot of planning and activities and more than that there are a number of formalities which need to be complied with. Detailed procedures and paper works are involved in order to start or to register a company in India. Registrar of Companies appointed by the Ministry of Corporate Affairs, is vested with the primary duty of registering companies.

Ministry of Corporate Affairs (MCA) has started the process of filing or uploading of forms completely online together with the attachment of required documents to the Registrar of Companies for initiating the Incorporation Process as a part of its ‘MCA21 e-Governance Project.’

After completion of this lesson, students will be well-acquainted with practical and procedural aspects of company formation and conversion which include pre-registration requirements, name approval, acquiring digital signatures, preparation and submission of various e-forms and documents, stamping of memorandum and articles of association, payment of stamp duty, payment of registration fees, obtaining certificate of incorporation, compliance requirements relating to conversion of companies, conversion of other entities into companies etc. Students will also be able to understand the procedural aspects relating to commencement of business and ratification of pre-incorporation contracts.
CHOICE OF FORM OF BUSINESS ENTITY

Selection of the form of business entity is one of the most important decisions before starting a business. This decision is required to be revisited periodically as the business develops. A business entity may exercise the options for conversion and re-conversion, as and when it seems appropriate. The choice amongst the various forms of business entities depends upon many aspects such as objects of the proposed business, likely number of members, amount to be invested, scale of operations, state control, legal requirements, tax implications, advantages of one form of business over another, etc.

Nature, Form and Types of Business Enterprises

Business enterprises can be broadly divided into two broad categories, namely, one which is non-corporate in form and the other which has a corporate character. Enterprises which fall in the former category are sole proprietorship, partnership and Hindu Undivided Family. Business organisation which comprises the latter category, are companies and co-operative undertakings. The basic difference between the corporate and the non-corporate form of organisation is that while a non-corporate form of business may be started without registration, corporate bodies cannot be set up without registration under the laws which govern their functioning.

Non-Corporate Form of Business Enterprises

(1) Sole proprietorship: In this form of business organisation, an individual normally uses his own capital, skill and intelligence to carry out some business activity. He is entitled to receive all the profits and gains of his business and also assumes all the risk of ownership. The sole proprietor exercises full control over the affairs of his business. As there is no legal obligation to supply any information regarding his business to anyone, he can maintain maximum secrecy in conducting his business affairs. This type of organisation is particularly suitable for businesses which are small in size and where risk and capital involved are not very large.

(2) Joint Hindu Family/Hindu Undivided Family: In this form of business ownership, the business is generally managed by the father or some other senior member of the family called the Karta or the manager. ‘Karta’ is basically the senior most male member of the family. The joint Hindu family firm comes into existence by the operation of Hindu Law and not by any contract.

(3) Partnership: In this form of organisation, few like-minded persons pool up their resources to form a partnership firm. Section 4 of the Partnership Act, 1932, defines partnership as “The relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”. This definition chiefly brings out the following features of partnership:

  (i) Contractual Relationship:- Since partnership arises out of agreement between persons, only those persons who are competent to contract can be partners.

  (ii) Existence of business:- There can be no partnership without business. The persons who have agreed to become partners must carry out some business activity.

  (iii) Sharing of profits:- The agreement to carry on business must be entered into, with the object of making a profit and sharing it among all the partners.

  (iv) Mutual agency:- The business must be carried on by all the partners or by any one or more of them acting for all the partners. Thus each partner is both an agent and a principal for all other partners.

Partnership is an ideal form of organisation for medium scale business operations which require greater amount of capital and risks than sole proprietorship or Hindu Undivided Family.
Corporate Form of Business Enterprises

(1) The Co-operative Organisation: Co-operative organisation is a voluntary association with unrestricted membership and collectively owned funds, organised on democratic principle of equality by persons of moderate means and incomes, who join together to supply their needs and wants through mutual action, in which the motive of production and distribution is service rather than profit. Besides being a form of ownership co-operative organisations are a means of protecting the interests of the relatively weaker sections of society against exploitation by big businesses operating for the maximisation of profits. The basic feature which differentiates the co-operative organisation from other form of business enterprises is that its primary motive is service to the members rather than making profits. A co-operative society is required to be registered under the Co-operative Societies Act, 1912. The co-operative societies receive a number of special concessions from the law and the Government, in order to encourage healthy development of Co-operatives.

(2) Company: This type of organisation is characterised by the fact that ownership and management are separate. The capital of the company is provided by a group of people called shareholders who entrust the management of the company in the hands of persons known as the Board of directors. A company is an artificial legal person created by process of law which makes it an entity separate and distinct from its members who constitute it. As a natural consequence of incorporation and transferability of shares, the company has perpetual succession. Thus, it can be said that this form of organisation is suitable when the capital requirements of a business are large, the liability of members is expected to be limited and the risks need to be spread among a larger number of persons.

Limited Liability Partnership (LLP)

LLP is an alternative business vehicle that gives the benefits of limited liability company and flexibility of a partnership firm. Since, LLP contains elements of both ‘a corporate structure’ as well as ‘partnership firm structure’; it is many a times termed as a hybrid of a company and a partnership. LLP is a separate legal entity which can continue its existence irrespective of changes in its partners. LLP is an incorporated partnership formed and registered under the Limited Liability Partnership Act, 2008.

Owing to flexibility in its structure and operation, LLP is useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. LLP is also very suitable for professionals like company secretaries, chartered accountants, cost accountants, advocates etc. as it helps them to form multi disciplinary limited liability partnership firms.

Forming a choice

Though there are some similarities between a limited company and other forms of associations, there are a great number of dissimilarities as well. In both the cases individuals are the subjects, and pursuit of business activity is generally the object. Distinction between a limited company and a partnership firm, limited liability partnership, a Hindu Joint family business and a registered society has been discussed in detail in the study of Company Law of Module I of Executive Programme. Taking into account the requirement in each case and all the aspects of the various forms of business entities, the decision on the right type of business entity should be taken.

INCORPORATION OF COMPANIES

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” [Section 2(20)].

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.
A company may be formed for any lawful purpose by –

(a) seven or more persons, where the company to be formed is to be a public company;
(b) two or more persons, where the company to be formed is to be a private company; or
(c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration. [Section 3(1)]

Thus, Section 3 (1) stipulates the existence of the following ingredients for the incorporation of a company:

(i) Lawful purpose for which they should associate themselves;
(ii) Promoters of the company – at least seven in the case of a public company, at least two in the case of a private company and one in case of one person company;
(iii) Promoters must subscribe their names to the memorandum of association of the company;
(iv) Promoters must comply with the requirements of the Companies Act, 2013 in respect of registration of the company.

The minimum paid-up capital must be rupees one lakh in case of a private company and rupees five lakh in case of a public company. [Section 11(1)(a)]

Registrar of Companies (ROC) appointed under Section 396 of the Companies Act, 2013 by the Ministry of Corporate Affairs (MCA), is vested with the primary duty of registering companies and of ensuring that such companies comply with the statutory requirements of the Act. A company shall be registered with the ROC of the state under whose jurisdiction the proposed company’s registered office will be situated.

Promoters to take steps for formation of the Company

Promoters are the persons, who conceive the idea or visualise a project and then take steps to transform the idea into a reality. They convey their idea to friends, relatives or business associates, make arrangements for collecting equity and loan capital for the company, prepare a team of persons who would act as its directors and take all other steps for compliance with the requirements of the Companies Act, 2013 in respect of registration of the company.

Promotion is a term of wide import denoting the preliminary steps taken for the purpose of registration and floatation of the company. The persons who assume the task of promotion are called promoters. A promoter may be an individual, association, partner or company.

According to Section 2 (69) of the Companies Act, 2013 “promoter” means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

According to the proviso to this definition, a person who is acting to advice, direct or instruct merely in a professional capacity is not a promoter.
The following procedural steps are required to be taken by the promoters for the incorporation of a public limited company:

1. **Obtain Director Identification Number (DIN)**

   It is important to note that every person who is to be appointed as a director must have “Director’s Identification Number (DIN)” [Section 152(3)]. If the proposed director does not already have a DIN, he/she must obtain the same before incorporation of the company. This can be obtained by making an application on the MCA portal in Form DIR - 3.

2. **Acquire Digital Signature Certificate (DSC)**

   The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents.

   - **Acquire DSC** - A licensed Certifying Authority (CA) issues the digital signature. Certifying Authority (CA) means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian Information Technology Act, 2000.

   - **Register DSC** - Role check for Indian companies is to be implemented in the MCA application. Role check can be performed only after the signatories have registered their Digital signature certificates (DSC) with MCA.

3. **Proposing the name of the Company and ascertaining its availability from the ROC**

   Promoters may to propose up to six names in order of procedure for the proposed company and secure the name availability by making an application to the Registrar of Companies of the State in which they want to have the proposed company incorporated. The application is required to be made in Form INC - 1.

   While applying for a name in the Form INC -1, using Digital Signature Certificate (DSC), the applicant shall be required to verify that:

   - (i) he is a promoter (proposed first subscriber to the MoA) and is authorised by the other proposed first subscribers to sign and submit the application.

   - (ii) He has gone through the provisions of Companies Act, 2013, the Rules there under and prescribed guidelines framed there under in respect of reservation of name, understood the meaning thereof.

   - (iii) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved. He has also used the search facility for checking the resemblances of the proposed names with registered or applied trademarks.

   - (iv) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

   - (v) the proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity.
(vi) the proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.

(vii) he has complied with all the mandated requirements of the respective Act/regulator, such as IRDA, RBI, SEBI, MCA etc. (applicable only in case proposed name includes words like Insurance, Bank, Stock Exchange, Venture Capital, Asset Management, Nidhi, Mutual Fund, Finance, Investment, Leasing, Hire purchase etc. or any combination thereof)

(viii) to the best of his knowledge and belief, the information given in the application and its attachments is correct and complete, and noting relevant to this form has been suppressed.

(ix) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of Section 4 of the Act, rules made there under and the prescribed guidelines.

Following documents have to be attached to INC - 1:

(i) Copy of Board resolution of the existing company or foreign holding company as a proof of no objection

(ii) Copy of direction from Central Government, if name is changed due to direction received from the Central Government

(iii) Trademark or authorisation to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.

(iv) In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government’s approval.

(v) Proof of relation.

(vi) In principal approval from the concerned regulator wherever is applicable.

(vii) NOC from sole proprietor/ partners/ other associates.

(viii) NOC from existing company ,

(ix) Copy of affidavit in case of proposed name includes phrase ‘Electoral Trust’

(x) Resolution of unregistered companies in case of Chapter XXI (Part I) companies,

(xi) Order of competent authority.

(xii) NOC as required in Rule 8(4)

The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then, –

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to one lakh rupees;

(b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard –

(i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies; or

(iii) make a petition for winding up of the company. [Section 4(5)]
Rule 8 of The Companies (Incorporation) Rules 2014 contain provisions relating to undesirable names and Rules 9 has provisions relating to reservation of name.

(4) Drafting and Printing of Memorandum and Articles of Association

After ascertaining name availability from the Registrar of Companies steps should be taken to get the memorandum and articles of association for the proposed company drafted and printed. The memorandum of a company limited by shares shall be in Tables – A in Schedule – I of the Companies Act, 2013.

A public company limited by shares may adopt all or any of the regulations contained in model articles of association registered along with its memorandum of association.

The model articles of a company shall be in Tables – F in Schedule – I of the Companies Act, 2013 as may be applicable to the company. A company may adopt all or any of the regulations contained in the model articles applicable to such company.

The memorandum and articles shall be in conformity with the provisions of Section 4 and 5 of the Companies Act 2013.

If the promoters plan to get the securities of the proposed company listed with one or more designated stock exchanges, it is advisable to send the draft of the memorandum and articles of association to those stock exchanges for their scrutiny and suggestion to the effect whether they would like to have certain articles incorporated therein in compliance with the provisions of the Listing Agreements of the stock exchanges.

(5) Stamping and Signing of Memorandum and Articles

The memorandum and articles should be printed and signed by subscribers. Thereafter, the memorandum and the articles should be stamped by the appropriate State Authority (Collector of Stamps) under the Indian Stamp Act, 1899. However, presently there is a facility for online payment of stamp duty along with filing fees.

It is pertinent to note the Stamping is a subject matter of “State Revenue” and not a matter of the Central Government. Hence the Stamp Duty payable on the Memorandum and/or the Articles of Association shall be determined according to the place of incorporation of the company.

Memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any. The witness shall state that “I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given). Further I have verified his/their ID for their identification and satisfied myself of his/her/their identification particulars as filled in.”

(6) Dating of Memorandum and Articles of Association

The memorandum and articles are then dated, but the date must be the date of stamping or later than the date of their stamping and not, in any event, a date prior to the date of their stamping.

(7) Filing of Documents and Forms for Registration

According to Section 7 of the Companies Act, 2013 all document related to incorporation shall be filed before the registrar, in whose jurisdiction registered office of a company is proposed to be situated. A Registrar may have jurisdiction over several states or only a part of a state. Following documents are to be submitted:

(a) The Memorandum and Articles of the company duly signed by all subscribers;

(b) A declaration by –
a. an advocate or Practicing professional (CA, CS, CA) who is engaged in incorporation, and
b. a person named in director as Director, Manager or Secretary,

That all requirements related to incorporation has been complied with;

c. an affidavit from each subscriber and from each person named as first director in the articles that;

a. he is not convicted if any offence in connection with promotion, formation or management of any
   company,

b. he is not been found guilty of any fraud or misfeasance or of any breach of duty to any company during
   preceding five years, and

c. all the documents filed with the Registrar contain correct, complete and true information to the best of
   his knowledge and belief;

(d) the address for correspondence till its registered office is established;

e. the particulars of every subscribers along with proof of identity;

(f) the Particulars of first directors along with proof of identity; and

the particulars of interests of first directors in other firms or bodies corporate along with their consent to act as
directors.

Forms

(i) Form INC - 7 Application for incorporation of a company pursuant to Section 7(1) of the Companies Act, 2013
    and Rule 12 of the companies (Incorporation) Rules 2014 containing the (1) Service Request Number of
    Form INC – 1, (2) Name of the company, (3) Type of the company, (4) Status of company, (5) Catatory of
    company, (6) License number in case of section 8 company, (7) Share capital of company, (8) Name of State
    in the company is to registered, (9) Name of office of the Registrar in which the company is to be registered,
    (10) Provisional address for correspondence, (11) Share capital, (12) Maximum number of members (13)
    Main division of Industrial Activity, (14) Approval from sector regulator, if any, (15) Details of promoters, (16)
    Entrenchment, if any, (17) Details of subscribers, and (19) Particulars of Stamp duty, along with a declaration
    by a promoter and certificate by practicing professional.

Documents

Following documents are required to be filled along with these forms:

i. Memorandum of Association,

ii. Articles of Association,

iii. Declaration in Form INC - 8 by an advocate or Practising CA/CS/CWA

iv. Affidavit in Form INC - 9 from the subscribers to the memorandum and from persons named as first
    directors if any.

v. Proof of residential address

vi. Specimen Signature in Form INC – 10

vii. Proof of identity

viii. Entrenched Articles of association

ix. Copy of In-principle approval granted by sectorial regulator if already taken

x. NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
xi. Proof of nationality (in case the subscriber is a foreign national)  

xii. PAN card (in case of Indian national)  

xiii. Copy of certificate of incorporation of the foreign body corporate and registered office address  

xiv. Copy of resolution/consent by all the partners or board resolution authorizing to subscribe to MOA

(8) Registration and Filing Fee

Promoters must make sure to remit to the Registrar, along with the above forms/ documents, the prescribed registration fee and fee for filing of forms as per the rates contained in the Rules.

The fee payable for the purpose can be remitted either electronically (by using a Credit Card or by electronic Bank transfer) or by cash/draft through challan generated electronically on submission of the e-form.

(9) Minimum Paid-up Capital

Ensure that for a public limited company, the minimum paid-up capital is 5 lakh rupees or such higher paid-up capital as may be prescribed.

(10) Scrutiny of Documents and Forms by Registrar

On receipt of the aforementioned documents, the office of the Registrar of Companies will scrutinise them and if they are found complete in all respects, the Registrar will register the company and generate a CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, the Registrar will send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.

(11) Issue of Certificate of Incorporation by Registrar

After the registration of the company, the Registrar will issue under his hand and seal of his office, the Certificate of Incorporation in the name of the company and send it electronically. One may also take printout of the Certificate of Incorporation generated online. The date mentioned by the Registrar in the Certificate of Incorporation shall be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity separate from its subscribers.

The Certificate of Incorporation shall be in Form INC - 11 of the Companies (Incorporation) Rules, 2014.

(12) Certificate of Commencement of Business

On registration, a company cannot commence business or exercise any borrowing powers until it files a declaration by directors in Form INC - 21 to the effect that every subscriber to the memorandum has paid the value of the shares agreed to be taken by them as specified in section 11(1)(a). This form has to be verified by Practising CA/CS/CWA. In the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required.

Verification of Registered office

The company has filed with the Registrar a verification of its registered office within a period of 30 days of its incorporation in Form INC 22.

Let us Remember:

If the company fails to furnish such declaration of commencement of business within a period of 180 days from the date of Incorporation, then the registrar can strike off the name from the Register of Companies.
PROCEDURE FOR INCORPORATION OF PRIVATE LIMITED COMPANY HAVING SHARE CAPITAL

The procedure for the incorporation of a private limited company is similar to that of a public limited company (as discussed above) with the following exceptions:

(i) The company must have a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed.

(ii) There must be at least two subscribers in place of seven, however in case of one person company there will be only one subscriber.

(iii) Prohibit any invitation to the public to subscribe for any security of the company in its Article of Association of the company.

(iv) There must be at least two directors in place of three.

(v) Registration of the articles of association is compulsory.

PROCEDURE FOR INCORPORATION OF COMPANY LIMITED BY GUARANTEE

“Company Limited by Guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up [Section 2(21)].

Key ingredients are:

– Liability of its members limited
– By the memorandum
– To such amount
– As members respectively undertake to contribute
– To the assets of the company
– In event of its being wound up.
– The contribution from members are postponed to the event called winding up.

The procedure for incorporation of a company limited by guarantee is similar to the one required to be followed for getting a public or a private limited company incorporated. However, the following distinctive features in the case of a company limited by guarantee must be noted:

(i) A company limited by guarantee may or may not have a share capital.

(ii) A company limited by guarantee may be a public company or a private company.

In the case of a company limited by guarantee, the Memorandum shall state the amount up to which each member undertakes to contribute –

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves. [Section 4(1)(d)(ii)]

Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a
share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. [Section 4(7)] and [Section 13(11)]

The following procedural steps are required to be taken for getting a company limited by guarantee registered:

1. **Paid-up Capital:** In case company to be formed is a private company it must have a paid up capital of one lakh rupees and in case the company to be formed is a public company it must have a paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed. However, if the company does not propose to have a share capital then this requirement is not required to be complied with.

2. **Selection of Name of the Company and Ascertaining its Availability from ROC:** This is same as in case of public company limited by share.

3. **Drafting and Printing of Memorandum and Articles of Association:** On receipt of name availability from the Registrar of Companies, get the memorandum and articles of association of the proposed company drafted by a competent professional. The Memorandum of association of a company limited by Guarantee and not having a share capital shall be in accordance with Table – B of Schedule – I. The Memorandum of association of a company limited by Guarantee and having a share capital shall be in accordance with Table – C of Schedule – I.

   The Articles of association of a company limited by guarantee and having share capital shall be in accordance with Table – G of Schedule – I. The Articles of association of a company limited by guarantee and not having share capital shall be in accordance with Table – H of Schedule – I.

4. **Stamping and Signing of Memorandum and Articles:** This is same as in case of public company limited by share.

5. **Dating of Memorandum and Articles:** Thereafter the memorandum and articles will be dated. This date must be the date of stamping or later than the date of the stamping and not, in any event, a date prior to the date of the stamping.

6. **Filing of Forms and Documents with Registrar:** This is same as in case of public company limited by share.

7. **Registration and Filing Fee:** This is same as in case of public company limited by share.

8. **Scrutiny of Forms and Documents by Registrar:** On receipt of the aforementioned documents and forms, the office of the Registrar of Companies will scrutinise them and if they are found complete in all respects, the Registrar will register the company and allot CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, he shall send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.

9. **Issue of Certificate of Incorporation by Registrar:** A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically. One may take printout of Certificate of Incorporation which is generated online.

   The date mentioned by the Registrar in the Certificate of Incorporation shall be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity independent of its members.

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**ONE PERSON COMPANY**

Section 2(62) of the Companies Act, 2013 define “one person company” as a company which has only one person as member. OPC is a sub-domain of Private Company as per Section 2(68).

Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:-
(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

A person can incorporate only one “One Person Company.

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of that One Person Company. The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form INC – 2 along with consent of such nominee obtained in Form INC – 3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Form INC – 2 is form for incorporation of one person company. The form is similar to Form INC – 7 except this form contain Nomination details and particulars of nominee.

**Attachments:**

i. Memorandum of Association

ii. Articles of Association

iii. Proof of identity of the member and the nominee

iv. Residential proof of the member and the nominee

v. Copy of PAN card of member and nominee

vi. Consent of Nominee in Form INC – 3

vii. Affidavit from the subscriber and first Director to the memorandum in Form INC – 9

viii. List of all the companies (specifying their CIN) having the same registered office address, if any;

ix. Specimen Signature in Form INC – 10

x. Entrenched Articles of Association

xi. Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement etc. along with rent receipts)

xii. Copies of the utility bills (not older than two months)

xiii. Proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/Person (not taken on lease by company)

xiv. Consent from Director

xv. Optional Attachments.

**PROCEDURE FOR INCORPORATION OF COMPANY FOR CHARITABLE AND OTHER PUBLIC UTILITY PURPOSES WITHOUT ADDITION OF THE WORDS “LIMITED” OR “PRIVATE LIMITED” TO ITS NAME**

The issue of licence and incorporation of companies to pursue charitable and other prescribed objects, with limited liability without the addition to its name of the word “Limited” or the words “Private Limited” are regulated by Section 8 of the Companies Act, 2013.

An association, desirous of being incorporated as a company with limited liability without the addition to its name of the word “Limited” or the words “Private Limited” shall take the following procedural steps for securing a Licence under Section 8 of the Companies Act, 2013 and for getting itself registered under the Act:
Lesson 1  ■  Company Formation and Conversion 13

1. To select not more than six names in the order of their preference, for obtaining availability of one of those names for adoption by the proposed company.

2. To make an application to the Registrar of Companies of the State in which the registered office of the proposed company is to be situated for seeking name availability. The application for reservation of name shall be in Form INC – 1 of the Companies (Incorporation) Rules, 2014. The procedure of making this application is same mentioned as discussed earlier.

3. The Registrar of Companies to furnish the required information to the applicants, ordinarily within three days of the receipt of the application.

4. A person or an association of persons (hereinafter referred to in this rule as “the proposed company”), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, shall make an application in Form INC – 12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8. [Rule 19 of the Companies (Incorporation) Rules, 2014]

5. The memorandum of association of the proposed company shall be in Form INC – 13.

6. The application for grant of licence in form INC – 12 shall be accompanied by the following documents, namely: –

(a) the draft memorandum and articles of association of the proposed company;

(b) the declaration in Form INC – 14, by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(d) the declaration by each of the persons making the application in Form INC - 15.

7. The licence shall be in Form INC – 16 and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

8. After obtaining the licence, to get the memorandum and articles, as approved by the Registrar of Companies, printed and to ensure that the conditions of the licence as directed by the Registrar of Companies are incorporated therein.

9. **Filing of Forms and Documents with Registrar**: This is same as in case of public company limited by share.

10. **Registration and Filing Fee**: This is same as in case of public company limited by share.

11. **Scrutiny of Forms and Documents by Registrar**: On receipt of the aforementioned documents and forms, the office of the Registrar of Companies will scrutinise them and if they are found complete in all respects, the Registrar will register the company and allot CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, he shall send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.

12. **Issue of Certificate of Incorporation by Registrar**: A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically. One may take printout of Certificate of Incorporation which is generated online.
A limited company registered under Companies Act 2013 or under any previous company law may convert itself into a company licensed under Section 8 of the Companies Act, 2013.

1. The company shall make an application in Form INC – 12 along with the fee as provided to the Registrar for a licence under sub-section (5) of section 8.

2. According to Section 8 of the Act, the applicants have to prove to the satisfaction of the Registrar of Companies that an association is already in existence as a limited company for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and that the association intends to apply its profits, if any, or other income, for promoting its objects and that it prohibits the distribution of any dividend to its members.

3. Along with Form INC - 12, in case of new association, for issue of licence u/s 8, the following documents are also required to be attached:

   (i) The memorandum and articles of association of the company;

   (ii) The declaration as given in Form INC – 14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

   (iii) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board’s reports, and (iii) the audit reports, relating to existing companies

   (iv) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;

   (v) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

   (vi) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and

   (vii) a declaration by each of the persons making the application in Form INC – 15.

4. The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in Form INC – 26 and shall be published-

   (i) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and

   (ii) on the websites as may be notified by the Central Government.

5. The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).

6. The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.
7. The licence shall be in Form INC – 16 or Form INC – 17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

8. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

**PROCEDURE FOR INCORPORATION OF A COMPANY AS SUBSIDIARY OF AN EXISTING COMPANY**

As per provisions of Section 2(87) of the Companies Act, 2013, “Subsidiary Company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. (Proviso is yet to be enforced)

**Explanation.** – For the purposes of this clause, –

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

As per provisions of the Act, in order to make the proposed company, CD Ltd., a subsidiary of the existing company, AB Ltd., AB Ltd. must control the composition of the Board of Directors of CD Ltd. or it must exercise or control more than half of the total Share Capital in CD Ltd.

Keeping the above provisions in view, CD Limited shall become a subsidiary of AB Ltd. by a legal fiction and no separate application for registration of the subsidiary is required.

Section 186(1) prohibits a company to make investment through more than two layers of investment companies.

**UNLIMITED COMPANIES**

By virtue of Section 2(92) of the Act, an unlimited company is a company not having any limit on the liability of its members. Thus, the maximum liability of the members of such a company, in the event of its being wound up, could extend to their entire personal property to meet the debts and obligations of the company by contributing to its assets. However, the liability of the members is only towards the company and not towards company’s creditors directly and hence, only the liquidators of the company can ask the members to contribute to its assets which will be used in the discharge of the company’s debts and the cost of winding up.

Section 4 of the Act, provide that an Unlimited company must state in its memorandum that liability of its members is unlimited.

The Memorandum of an unlimited company shall be in the form in the Table – D (where not having share capital) or in Table – E (where having share capital) of Schedule I of the Act. The Articles of an unlimited company shall be in the Form in Table – I (where having share capital) or in Table – J (where not having share capital) of Schedule I to the Act.

As per the provisions of Section 65, an unlimited company may convert itself into a limited company. The procedure for incorporation of such companies is similar to that of companies with limited liability.
PROCEDURE TO FORM A NIDHI COMPANY

“Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.[Section 406]

According to Rule 4 of Nidhi Rules, 2014; a Nidhi Company shall be a public company and must have a minimum paid up equity share capital of five lakh rupees. The Nidhi Company shall have only one object in its memorandum that is of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit. Every Company incorporated as a “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.

Rule 5 say, every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has:

(a) Not less than two hundred members.
(b) Net Owned Funds of ten lakh rupees or more.
(c) Unencumbered Term Deposits of not less than ten per cent of the outstanding deposits.
(d) Ratio of Net Owned Funds to deposits of not more than 1:20.

The process of incorporation of a nidhi company is same as of incorporation of a public company limited by share.

PROCEDURE TO REGISTER A FOREIGN COMPANY IN INDIA

As per Section 2 (42) “foreign company” means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration –

(a) a certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company with particulars;

(d) the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in Indian on earlier occasions;

(g) declaration that none of the directors of the company or authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; or

(h) other prescribed particulars.
The Foreign Company shall, within a period of thirty day of establishment of its place of business in India, file Form FC – 1 of the Companies (Registration of Foreign Companies) Rules 2014. Along with the Companies Act, 2013 provision of Foreign Exchange Management Act 1999 and regulations made thereunder shall also be applicable.

Regulatory provisions under Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) Regulations, 2000

A foreign company or individual planning to set up business operations in India can do so through a Liaison Office / Representative Office, Project Office or a Branch Office. The FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000 govern the opening and operation of such offices.

Accordingly, Companies incorporated outside India, desirous of opening a Liaison/Branch office in India have to make an application in form FNC-1. It may be noted that RBI has authorized AD Category I bank to forward FNC 1 along with the necessary enclosures along with the comments and recommendations to—

The Chief Manager-in-charge, Reserve Bank of India Foreign Exchange Department Foreign Investment Division Central Office, Mumbai - 400 001

The applications will be considered by Reserve Bank of India under Reserve Bank route or Government route. For full details, please refer to the Master Circular No. RBI/2012-13/7 dated July 2, 2012 as amended from time to time.

A company can be converted from one type to another.

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered. A company of already registered in a class may convert itself as a company of another class by alteration of memorandum and articles of the company. All provisions relating to memorandum, articles and their alteration shall comply with by the company. The Registrar shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a certificate of incorporation. The conversion of a company shall not affect any debt, liabilities and obligations. Such debt, liabilities, obligation and contracts may be enforced as if there is no such conversion.

No one person company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. [Rule 3(7) of the Companies (Incorporation) Rules 2014]

After two years from the date of Incorporation, one person company may convert into any other company even without threshold limit.

Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company. [Rule 6(1) of the Companies (Incorporation) Rules 2014]

The One Person Company shall within period of sixty days from the date of applicability, give a notice to the Registrar in Form INC – 5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit.

Such One Person Company shall be required to convert itself, within six months of the date on which its paid up
share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

Procedure for conversion of One Person Company of the Companies Rules:

1. Where One Person Company has only one director, following resolutions shall be signed and dated by the director and shall be entered into minute – book:
   a. Take note about exceeding the threshold limits if applicable.
   b. Authorising giving Notice to the Registrar in Form INC – 5
   c. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:
      i. Alteration of Article for conversion, example Regulations 27, 48, ad 76 for Table – F in Schedule – I where adopted;
      ii. Alteration of Memorandum (name clause)
      iii. Alteration of Memorandum (Capital clause), to increase capital if required
      iv. Alteration of Memorandum to amend the reference of the name of one person and its nominee

2. Where One Person Company has more than one director, convene a Board meeting to:
   a. Take note about exceeding the threshold limits if applicable.
   b. Board Resolution for giving Notice to the Registrar
   c. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:
      i. Alteration of Article for conversion, example Regulations 27, 48, ad 76 for Table – F in Schedule – I where adopted;
      ii. Alteration of Memorandum (name clause)
      iii. Alteration of Memorandum (Capital clause), to increase capital if required
      iv. Alteration of Memorandum to amend the reference of the name of one person and its nominee

3. Special Resolutions to be signed, dated and communicated by the member to the company and entered by the company into minutes;

4. Copy of Special Resolutions along with explanatory statements to be filed within thirty days with the Registrar in Form MGT – 14 and copy of altered Memorandum and articles shall be attached therewith.

5. Increase the number of members to minimum two in case converted company is a private company, or to minimum seven in case converted company is a public company;

6. Where number of director are below the requirement of the Act for converted company, increase the number of director to two in case of private company or to three in case of public company;

7. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of the one person company into a private company or public company;

8. Have fresh copies of the altered memorandum and articles of association printed incorporating the changes or effect changes in all copies of the memorandum and articles of association lying in the office of the
company, and in letter heads, invoice forms, receipt forms, all other stationery items, and at every other place where the name of the company appears.

9. Issue, if necessary, a general notice in newspapers informing members and all other concerned persons and public at large that the company has become a public company and its name has been changed from ..........OPC to .......... Pvt. Ltd. or .......... Limited with effect from ............

10. Inform all concerned persons/authorities about the conversion of the company from private company to public company and about the change of its name, particularly to the Central Excise authorities, income tax authorities, Sales tax authorities in various States, Customs authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, other regulatory authorities, suppliers of raw materials, customers, banks etc.

11. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals in safe custody under lock and key.

12. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.

13. Have painted the new name of the Company on all the sign boards wherever they are displayed.

In case of voluntary conversion of One Person Company to Private company or Public Company, the procedure abovementioned shall be same but requirement for filing Form INC – 5 shall not be applicable.

CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY

(1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

(2) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.

(3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.

(4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-

(i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

(ii) The list of members and list of creditors;

(iii) The latest Audited Balance Sheet and the Profit and Loss Account; and

(iv) The copy of No Objection letter of secured creditors.

(5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY

Section 14 of the act lays down the procedure for alteration of articles. A company may alter its articles including alterations having effect of conversion of
a private company into a public company or
a public company into private company
with the approval of members through special resolution.

For conversion, the private company is required to take the following procedural steps:

1. convene a Board meeting to:
   a. for approving proposal for conversion of the company into a public company;
   b. for fixing time, date and venue for holding a general meeting of the company for passing the required special resolution through postal ballot for conversion of the company into a public company.
   c. for approving notice for the general meeting along with the explanatory statement as required. The notice shall contain texts of the special resolutions which will be required to be passed at the meeting; and
   d. for authorising the company secretary or any other competent officer to issue notice of the general meeting on behalf of the Board.

The following resolutions will be required to be passed at the general meeting:

   i. Alteration of Article for conversion,
   ii. Alteration of Memorandum (name clause)
   iii. Alteration of Memorandum (Capital clause), to increase capital if required

*Note:* The articles of association of the company shall be altered in such a manner that they would -

   (i) no longer contain the provisions which, under clause (68) of Section 2 of the Act, are required to be included in its articles in order to constitute it a private company;

   (ii) include all the provisions, which are required to be contained in the articles of a public company; and

   (iii) remove all the provisions which are inconsistent with the requirements of a public company.

The company may alter any number of articles or alternatively adopt a new set of articles. The resolution altering the articles must contain full text of all the alterations.

2. Hold the general meeting and have the aforementioned special resolutions passed. (Refer to Rule 22(16) of Companies (Management and Administration) Rules, 2014.

3. Copy of Special Resolutions along with explanatory statements to be filed within thirty days with the Registrar in Form MGT – 14 and copy of altered Memorandum and articles shall be attached therewith.

4. Increase the number of members to minimum seven;

5. Increase the number of director to three;

6. A copy of order of the competent authority approving the alteration shall be filed with the Registrar in Form INC – 27 with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.

7. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of a private company into public company;

8. Have fresh copies of the altered memorandum and articles of association printed, incorporating the changes or effect changes in all copies of the memorandum and articles of association lying in the office of the company, and in letter heads, invoice forms, receipt forms, all other stationery items, and at every other place where the name of the company appears.
9. Issue, if necessary, a general notice in newspapers informing members and all other concerned persons and public at large that the company has become a public company and its name has been changed from............... Pvt. Ltd. to ................. Limited with effect from ..........

10. Inform all concerned persons/authorities about the conversion of the company from private company to public company and about the change of its name, particularly to the Central Excise authorities, income tax authorities, Sales tax authorities in various States, Customs authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, other regulatory authorities, suppliers of raw materials, customers, banks etc.

11. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals in safe custody under lock and key.

12. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.

13. Have painted the new name of the Company on all the sign boards wherever they are displayed.

**CONVERSION OF PUBLIC COMPANY INTO A PRIVATE COMPANY**

According to Section 2(68) of the Companies Act, 2013 “Private Company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, –

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that –

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

In view of the above provisions, a public company may become a private company if its membership is within the limits in clause (68) of Section 2 of the Act, as mentioned above. Such a company is required to take the following procedural steps:

**General Circular No.18 dated 11th June, 2014 issued by Ministry of Corporate Affairs**

Considering, the difficulties being faced by the stakeholders while filling INC-27 for Conversion of a Public Company into a Private Company, the Ministry has clarified that since proviso to section 14(1) and section 14(2) have not been notified under Companies Act, 2013, the corresponding provisions of Companies Act, 1956 [Section 31(1) and 31(2A)] shall remain in force till the corresponding provisions of Companies Act, 2013 are notified.

*Therefore, Application for conversion of Public Company into Private Company has to be filed and disposed as per Companies Act, 1956.*
1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.

The following resolutions must be passed at the meeting:

(i) To approve the proposal for conversion of the company into private company.

(ii) To fix time, date and venue for holding an extraordinary general meeting of the company.

(iii) To approve notice for the general meeting along with the explanatory statement as required under Section 102 of the Act. The notice for the general meeting must contain text of the special resolutions, which will be required to be passed at the general meeting. The notice of the general meeting must contain text of the following resolutions, which will be required to be passed at the meeting:

(a) Special resolution for altering the articles of the company, as required under Section 14 of the Companies Act, 2013.

(b) Special resolution for changing the name of the company as required under proviso to Section 13 of the Act.

(c) Special resolution for altering the memorandum of association (name clause) of the company in accordance with Section 16 of the Act.

(iv) To authorize the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board.

2. Hold general meeting and have the aforementioned special resolutions passed.

3. Within thirty days of passing of the special resolutions, file Form MGT 14 with copy of resolution along with explanatory statement under Section 102 and amended copy of Articles of Association as attachment along with prescribed filing fee payable in the mode described earlier.

4. If the number of members of the company is above 200, appropriate steps should be taken to reduce the number to 200 or below.

5. Send to the stock exchanges where the securities of the company are listed, six copies including one certified copy of the amendments to the articles of association of the company as soon as they been approved by the company in general meeting.

6. In accordance with the Section 14 of the Companies Act, 2013, no alteration made in the articles of association of a company, which has the effect of converting a public company into a private company, shall be effective unless such alteration has been approved by the Central Government. Now, the power has been delegated to Registrar of Companies. Thereafter, an application in e-form 1B[Correspondence to Form INC 27 as per the Ministry Circular the old form have to filled in this regard] as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, along with the minutes of the members’ meeting and prescribed application fee, will have to be made, within three months from the date of passing of the special resolution for alteration of the articles, for obtaining the Central Government’s approval to the alteration of the articles of the company.

The application in electronic Form 1B must have scanned/digitized copy of the following duly attached with it:

(i) A copy of the minutes of the meeting of members where resolution has been passed.

(ii) Copy of any approval order obtained from the concerned authorities (such as RBI, IRDA, SEBI etc.) or the concerned department.
7. If the Registrar of Companies so directs, publish a notice in newspaper(s) as per his direction.

8. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting at which the special resolution was passed and also three copies of the newspaper advertisement of notice.

9. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies in e-form 1B within one month of the date of receipt of the order of approval.

10. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation consequent upon change of name on conversion of the company into a private company.

11. Change the name of the company in all copies of the memorandum and articles of association lying in the office of the company, letter heads, invoice forms, receipt forms, all other stationery items, common seal of the company, sign boards and at every other place where the name of the company appears.

12. If required, issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company and its name has been changed from............ Limited to.............. Private Limited with effect from..............

It is important to note that the company becomes a private company with effect from the date of approval of the Central Government under the proviso to Section 14 of the Companies Act, 2013, the change in the name of the company shall be effective from the date of issue of fresh Certificate of Incorporation consequent upon conversion into a private company, by the Registrar of Companies.

CONVERSION OF A SECTION 8 COMPANY INTO A COMPANY OF ANY OTHER KIND

(1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

(2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-

(a) The date of incorporation of the company;

(b) The principal objects of the company as set out in the memorandum of association;

(c) The reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;

(d) If the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;

(e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc

(f) Details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(3) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax
having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organization or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company

(4) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.

(5) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned above.

(6) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

(7) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC.19 and shall be published-

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and

(b) On the website of the company, if any, and as may be notified or directed by the Central Government.

(8) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(9) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority, a “No Objection Certificate” must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.

(10) The company should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

(11) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

(12) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar.
(13). On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely:-

(a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;

(b) if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;

(c) any accumulated profit or unutilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;

(14) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

(15) On receipt of the approval of the Regional Director,

(i) The company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;

(ii) The Company shall thereafter file with the Registrar,-

(a) A certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form No.INC.20 along with the fee;

(b) Amended memorandum of association and articles of association of the company.

(c) A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

(16) On receipt of the documents as mentioned above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation

**PRE-INCORPORATION AGREEMENTS AND CONTRACTS**

It is likely that due to non-availability of a suitable name, lack of clarity among the promoters or for other reasons, the formation of a company may take time. In the meanwhile, the promoters may enter into contracts on behalf of proposed company, like purchase of land, ordering machinery, employing key personnel, investment tie up etc. and also incur expenses relating to incorporation of the company. These must be ratified on the incorporation of the company.

The Articles must authorize the directors to pay the expenses relating to registration of the company. The directors do not have any implied power to incur pre-incorporation expenses.

As per section 15 of Specific Relief Act, 1963; if promoters have made a contract before incorporation of a company for the purpose of the proposed company, and if the contract is warranted by the terms of incorporation, the company may adopt and enforce the contract. The term ‘warranted by the terms of incorporation’ means ‘within the scope of the company’s objects as stated in the memorandum of the company’. Thus, the contract should be for the purposes of the company. As per section 19 of Specific Relief Act, 1963, if the pre-incorporation
contract is adopted or accepted by the company after its incorporation and if it is within the terms of incorporation, the other party can also enforce the contract, if such acceptance was communicated to other party to the contract.

However, pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation. Adoption or acceptance of contracts practically means ratification of contract. A Board resolution should be passed for adoption of pre-incorporation contracts at the first Board meeting of the company. On passing such resolution, the contract shall be binding on the company.

The procedure for ratification of pre-incorporation contract is as under:-

See that the power to enter and adopt pre-incorporation contracts is given in the objects, incidental or ancillary to the attainment of the main objects clause of the memorandum of the company.

See that the articles also give power to the directors to adopt such pre-incorporation contracts in the board meeting.

Prepare a statement of the pre-incorporation contracts giving the amount involved in each contract separately.

Convene the first board meeting after giving notice to all the directors of the company as per section 173 and place the above mentioned statement before the board meeting.

The statement should be initialed by the Chairman of the Board meeting and then pass a resolution adopting the pre-incorporation contract.

If the company is public company, then file a copy of the resolution with the concerned Registrar of Companies along with the statement in lieu of prospectus in form PAS – 2.

The said e-form is to be digitally signed by the managing director or director or manager or secretary of the company duly authorised by the Board of Directors.

**ANNEXURES**

**SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING ARTICLES OF A PRIVATE COMPANY CONVERTING IT INTO A PUBLIC COMPANY**

“Resolved That –

(i) pursuant to the applicable provisions of the Companies Act, 2013, the company be and is hereby converted into a public company;

(ii) the name of the company be and is hereby changed from ................. Private Limited to ................. Limited; and

(iii) the regulations contained in the document submitted for consideration and approval of this meeting, and initialed by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for, and to the exclusion of, the present articles of association of the company.”

**Explanatory Statement**

The Board of directors of the company, at its meeting held on ................., discussed the pros and cons of a public limited company and a private limited company, and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous, the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.
Your directors commend the proposed special resolution for your consideration and adoption of the new set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

**SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY AS PER PROVISO TO SECTION 13 OF THE ACT**

“RESOLVED THAT pursuant to the proviso to Section 13 of the Companies Act, 2013, the name of the company be and is hereby changed from “.......... Private Limited” to “.......... Limited” and the name clause in the memorandum and articles of association of the company be also accordingly altered.

**Explanatory Statement**

The Board of directors of the company had, at its meeting held on ........, resolved that the consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from “.......... Private Limited” to “.......... Limited”

No director is concerned or interested in the proposed resolution.

**SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY IN ACCORDANCE WITH SECTION 13 OF THE ACT**

“RESOLVED THAT pursuant to section 13 of the Companies Act, 2013, Clause I of the Memorandum of Association of the company be and is hereby altered by substituting the same with the following:

“Clause I. The name of the company is ............... Limited.”

**Explanatory Statement**

The Board of directors of the company had, at its meeting held on ........, resolved that the consequent upon conversion of the company from private limited company to public limited company, Clause I of the memorandum of association of the company be substituted with “The name of the company is.............. Limited”.

Hence the proposed special resolution is commended for approval by the members. No director is concerned or interested in the proposed resolution.

**SPECIMEN OF GENERAL NOTICE OF THE COMPANY ON BECOMING A PUBLIC COMPANY AND CONSEQUENT CHANGE OF NAME OF THE COMPANY**

**Name of the Company (new)**

**Registered Office Address**

PUBLIC NOTICE

All concerned are hereby informed that the name of the Company has been changed from “.......... Private Limited” to “............... Limited” with effect from ............... as per FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME issued by the Registrar of Companies, ............... on the ........ day of ........., 20.....

The registered office of the company continues to be situated at .................

Place: ................. for ................. Limited

Date: ................. (............... )

Company Secretary
SPECIMEN OF NOTICE FOR THE BOARD MEETING FOR CONVENING GENERAL MEETING FOR ALTERATION OF ARTICLES TO CONVERT A PUBLIC COMPANY INTO A PRIVATE COMPANY

Shri ........................................... Managing Director
Shri ........................................... Whole-time Director
Shri ........................................... Director
Shri ........................................... Director
Shri ........................................... Director
Shri ........................................... Director

Dear Sirs,

Notice is hereby given that the next meeting of the Board of directors of the company will be held at ......... Hrs. on ........ (day), .......... (month) ............ 20....... at the Corporate Office of the company at .................. to transact the following business:

1. To grant requests from directors for leave of absence, if any.
2. To confirm the minutes of the previous Board Meeting held on ............ and the chairman to sign the same.
3. Directors to make disclosure of their interest, or changes thereof, if any.
4. To discuss and approve financial results for the quarter ended .......... and to authorise the chairman to sign the same on behalf of the Board of directors of the company.
5. To authorise the company secretary to arrange for the publication of the approved financial results in the English daily newspaper ............... and the Hindi daily newspaper ............... in their earliest available editions and also to send the same to the stock exchanges where the securities of the company are listed within forty-eight hours of the close of the Board meeting.
6. To fix time, date and venue for holding an extraordinary general meeting of the company to transact the business as detailed in the agenda including an item for conversion of the company into a private company the draft whereof would be placed before the meeting as initialled by the chairman as a mark of identification.
7. To authorise the company secretary or any director to issue notice for the general meeting on behalf of the Board in accordance with the provisions of Section 101 of the Companies Act, 2013 along with the Explanatory Statement as required under Section 102 of the Act.
8. Any other business with the permission of the chair.

Please make it convenient to attend the meeting. Thanking you,

Yours faithfully

(..............................)
Company Secretary
SPECIMEN OF SPECIAL RESOLUTION ALTERING ARTICLES OF THE COMPANY SO AS TO INCLUDE RESTRICTION, LIMITATION AND PROHIBITION, SPECIFIED IN SECTION 2(68) OF THE ACT, CONVERTING A PUBLIC COMPANY INTO A PRIVATE COMPANY

"RESOLVED THAT –

(i) pursuant to proviso to Sub-section (1) of Section 14 of the Companies Act, 2013 and subject to the approval of the National Company Law Tribunal*, the company be and is hereby converted into a private company.

(ii) the articles of association of the company be and are hereby altered by inserting the following new article as article No........ after article No. ........... ;

*Article No.....

The company is a private company and accordingly -

(a) limits the number of its members to two hundred not including –

(i) persons who are in the employment of the company; and

(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and

(b) prohibits any invitation to the public to subscribe for any security of, the company;

(c) restricts the right to transfer its shares, provided that where two or more persons hold one or more shares in the company jointly, they shall, for the purposes of this article, treated as a single member; and

(iii) the name of the company be and is hereby accordingly changed from ............. Limited to .................. Private Limited.

(iv) the secretary of the company be and is hereby authorised to make an application in the prescribed Form, along with the prescribed enclosures and the prescribed application fee

Explanatory Statement:
The company was originally incorporated as a public company. During the course of its operations, it was found that the company has to comply with various onerous provisions of the Act as applicable to public companies. Since the company is a family owned company with very few shareholders, its requirements of funds is being met by the shareholders, directors or their relatives. As the company does not intend to borrow any public funds for its operations, there is no point in retaining the public character of the company. The Board of directors of the company, at its meeting held on ............................................ resolved to convert the company into a private company.

Accordingly, it is proposed to pass a special resolutions for conversion of the company into a private company and effect consequent alterations in the Articles of Association as applicable to a private company.

A copy of the existing memorandum and articles of association of the company is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution.

* NCLT is not yet notified and the power shall be authorised to CLB till the NCLT gets notified.
SPECIMEN OF BOARD RESOLUTION FOR CALLING A GENERAL MEETING

"RESOLVED THAT an extraordinary general meeting of the company be and is hereby called to be held at .......... Hrs. on ............ (day) ............ (month) ............ at the registered office of the company at ............................., for, inter alia, passing the special resolutions for -

(i) conversion of the company into a private company in accordance with Section 14(1) of the Companies Act, 2013;

(ii) for change of name of the company in accordance with Section 13 of the Companies Act, 2013;

(iii) for alteration of articles of association of the company so as to include, the required restrictions, limitation and prohibition specified in Section 2(68) of the Companies Act, 2013, delete all provisions that are inconsistent therewith in accordance with Section 14 read with Section 2(68) of the Companies Act, 2013 and include articles which are required for required for a private company; and

(iv) for alteration of the name clause in the memorandum of association of the company in accordance with the provision of Section 13 of the Act."

SPECIMEN OF GENERAL NOTICE ON THE COMPANY BECOMING A PRIVATE COMPANY AND CONSEQUENT CHANGE OF NAME OF THE COMPANY

Registered Office Address ........................................................

PUBLIC NOTICE

All concerned are hereby informed that the name of the Company has been changed from "..................... Limited" to ".................... PRIVATE LIMITED"............. with effect from as per FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME issued by the Registrar of Companies, ............ on the ............ day of ............, 20......

The registered office of the company..........................continuestobesituatedat

Place: .................. for ............. Limited
Date: ..................
(..........................)
Company Secretary

MODEL GENERAL POWER OF ATTORNEY

(On non-judicial Stamp Paper of Requisite Value)

The Registrar of Companies ........................................................

I/We, the undersigned, subscribers to the Memorandum and Articles of Association, ..........................................

do hereby authorise Shri................................. son of................................. resident of................................. to make any alteration, addition, correction, deletion, amendment, and such other work as may be necessary on our behalf in the Memorandum and Articles of Association and all other documents filed with you relating to the registration of the above-mentioned company and attest the same on my/our behalf and to receive/collect the Certificate of Incorporation on our behalf and to do such other things as may be necessary in connection with the incorporation of the above named company.
Lesson 1  ■  Company Formation and Conversion  31

Accepted.
Place: Subscriber(s) to the Memorandum and Articles of Association
Date:

SPECIMEN OF BOARD RESOLUTION FOR ADOPTION OF
PRE-INCORPORATION CONTRACTS

RESOLVED that the preliminary expenses for ₹ .......... incurred by the promoters of the company for the purpose of its incorporation as per the statement placed before the meeting be and are hereby approved.

RESOLVED FURTHER that the preliminary contracts entered into by the promoters in connection with the incorporation of the company as per the statement before the meeting be and are hereby approved.

LESSON ROUND UP

– Before starting a business, one needs to select the form of business entity. For taking this decision, one must look into advantages of one form of business on another; amount to be invested, objects of the business etc.

– To register a company, one needs to first apply for a Director Identification Number (DIN) which can be done by filing e-Form for acquiring the DIN. Then one should acquire the Digital Certificate and register the same on the portal. Thereafter, one needs to get the company name approved by the Ministry of Corporate Affairs. Once the company name is approved, one can register the company by filing the incorporation forms depending on the type of company.

– For incorporation of a public limited company having share capital, Form INC-1, INC-7, INC-8 INC-9, INC-10 INC 21 and INC-22 are required to be filed with the Registrar of Companies through MCA portal. Along with e-form 1, Memorandum of Association, Articles of Association, name approval letter are required to be attached.

– Procedure for incorporation of Company limited by Guarantee, for public company having a share capital, one person company, company for charitable and other public utility purposes without addition of the words “limited” or “private limited “ to its name is dealt with in the Chapter in detail.

– During the continuity of business, it may be found beneficial to convert one form of entity into another form of business entity. Companies Act provides the scope to convert one form of entity into another form of entity. The Chapter has dealt with in detail the procedure for conversion of Private company into public company; Public Company into a Private Company; private company into one person company, section 8 company into a company of any other kind.

– Public Companies cannot commence business unless they obtain the certificate of commencement of business in accordance with the provisions under the Act.

– Pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation.

SELF-TEST QUESTIONS

1. State the procedure for incorporation of Public Company having share capital.
2. State the procedure for incorporation of One Person Company.
3. Describe the procedure for conversion of a One Person Company to a Private Company.
4. Describe the procedure for conversion a Section 8 Company into a company of any other kind.
5. What is the procedure for incorporation of company limited by guarantee?

6. State the procedure for conversion of a public company into a private company.

7. Describe the procedure for commencement of business.

8. Draft a notice for Board meeting for convening general meeting for alteration of articles to convert Public company into a Private company.


10. Draft Board Resolution for adoption of pre-incorporation contracts.
Lesson 2
Procedure for Alteration of Memorandum and Articles

LEARNING OBJECTIVES

The expression ‘alter’ means to modify change or vary; to make or become different; to change in character, appearance, etc; to change in some respect. As per section 2(3) of the Companies Act, 2013 “alter” and “alteration” shall include the making of additions, omissions and substitutions. In accordance with this definition of alteration, an addition or an omission of a provision or a clause, a word, a phrase or an expression would be regarded, for the purposes of the provisions of the Act, an alteration, e.g., section 13 (alteration of memorandum) or section 14 (alteration of articles).

The scheme of the Act prescribes elaborately the scope of alteration and the procedure for effecting alteration of the Memorandum and Articles which may be permissible for a company under the Act. For this purpose, approvals of the Registrar of Companies, Regional Directors, and Shareholders have to be obtained.

After reading this lesson the students will be able to understand the procedural aspects relating to alteration in the clauses of Memorandum and Articles of Association of the Company.
1. CHANGE OF NAME OF A COMPANY

A company desiring to change its name may do so in accordance with the provisions of Section 13 of the Companies Act, 2013. The section lays down that a company may, by special resolution and with the approval of the Central Government signified in writing, change its name. The power of the Central Government under Section 13(2) to approve change in the name has been delegated to Registrar of Companies. However, if the only change required is the addition thereto or deletion there-from, of the word “Private”, consequent upon conversion of a public company into a private company or vice versa, no such approval of Central Government is required.

In the light of the above provisions of Section 13 of the Act, the company has to take the following procedural steps:

1. Issue notice in writing to every director of the company at his address registered with the company and the notice shall be sent by hand delivery, or by post or by electronic means as per the provisions of Section 173 (3) of the Companies Act 2013. The notice must be a seven day notice. The notice must contain time, date and venue for the board meeting and detailed agenda of the business to be transacted thereat.

2. Hold the Board meeting to –
   (i) consider and approve the proposed name by passing a resolution. The Board should use search facility at portal of the Ministry of Corporate affairs to check the availability of name. In case of any doubt for availability, the Board may consider and decide five more names in order of their preference. These names are required to be given in the application for availability of name to be made to the Registrar of Companies in Form INC – 1 for his consideration. If the proposed name is not available, the five additional names may be considered by the Registrar and whichever of those names is available, the same be reserved for the company. A formal Board resolution is required to be passed at the meeting.
   (ii) authorise the Company Secretary/Director to make the required application to the Registrar of Companies in Form INC - 1 for seeking availability of the proposed name and pay the prescribed application fee.

3. The application in Form INC - 1, to the Registrar of Companies accompanied by a fee paid electronically should have the following documents as attachment:
   (i) In case of change of name of an existing company, a copy of Board resolution;
   (ii) If change of name is due to direction received from the Central Government, then copy of such direction;
   (iii) In case the proposed name(s) are based on a registered trademark or is a subject matter of an application pending for registration under the Trade Marks Act, 1999, the approval of the owner of the trademark or the applicant of such application for registration of Trademark;
   (iv) Copy of Central Government’s approval in case the proposed name contains such word(s) or expression(s) for which the approval of Central Government is required;
   (v) Proof of relation;
   (vi) In principle approval from the concerned regulator;
   (vii) NOC from the sole proprietor/partners/other associates;
   (viii) NOC from existing company,
   (ix) Copy of affidavit, in case proposed name including phrase ‘Electoral Trust’
Lesson 2  ■  Procedure for Alteration of Memorandum and Articles  35

(x) Resolution of unregistered companies in case of Chapter XXI (Part I) companies;

(xi) Order of competent authority as required.

(xii) NOC from such other persons as required in Rule 8(4) of Companies (Incorporation) Rules, 2014.

(xiii) Optional attachment, if any.

Part C of this Form is required to be filled properly, as change of name require government approval. There is no need for separate application.

If the proposed name is available, the same should be adopted, that is to say, the adoption of such name should be effected, within sixty days from the date of intimation by the Registrar. The name allowed shall lapse after expiry of sixty days, from the date it is allowed.

On filing Form No. INC – 1, the system will process and generate a Service Request Number (SRN) which shall be used for tracking the status of name clearance.

4. On receipt of approval of name, the Company Secretary/Director must, in consultation with the Chairman of the Board, fix time, date and venue for holding another Board meeting for transacting the following business:

(i) To take note of the approval received from the ROC.

(ii) To fix time, date and venue for holding a general meeting (annual or extraordinary) of the shareholders of the company –

(a) for passing a special resolution for changing the name of the company; and

(b) To approve notice of the general meeting and the explanatory statement to be annexed to the notice for the general meeting and to authorise the Company Secretary/ Director to issue the notice on behalf of the Board.

5. Issue notice of the general meeting to all the members of the company, its directors and the auditors.

6. In the case of listed companies, send three copies of the notice to each stock exchange where the securities of the company are listed (Refer Clause 31 of the Listing Agreement).

7. A general notice of the proposed general meeting may also be published in newspapers.

8. Hold the general meeting and pass the resolutions as contained in the notice.

9. Send to each stock exchange, six copies of the alterations of the memorandum (one of them must be certified) soon after the conclusion of the general meeting, in case shares of the company are listed (Refer Listing Agreement).

10. Send to each stock exchange, a copy of the proceedings of the general meeting in case shares of the company are listed (Refer clause 31 of the Listing Agreement).

11. Make an application in Form No. INC-24 to the Central Government (delegated to Registrar of Companies) along with a copy of resolution and other necessary attachment.

12. File with the ROC Form No. MGT-14 with a certified true copy of each special resolution passed at the general meeting along with the explanatory statement under Section 102 and altered copy of Memorandum of Association and Articles of Association and prescribed filing fee. The Form MGT-14 has to be pre certified by a practising professional i.e., CA/CS or CWA.

13. After scrutiny of the documents filed, the ROC shall issue a fresh certificate of incorporation digitally signed.

13. Issue, if necessary, a general notice in newspapers informing all concerned, about the change of name of the company.
14. Intimate all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., Income Tax Authorities, Central Excise Authorities, Sales-tax Authorities in various States, Customs Authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, suppliers of raw materials, customers, banks etc.

15. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep both the old and the new Common Seals under lock and key.

16. Get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery including the blank share certificates.

17. Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.

18. Correct all records, registers including the Register of Members, Charges registered with ROC, share certificates, debenture certificates, bonds and other securities, every copy of Memorandum and Articles of Association, other books and documents pertaining to the company's business and affairs.

**CHANGE OF NAME BY RECTIFICATION**

According to section 16 (1) (a) of the Act of 2013, if a company is registered through inadvertence or otherwise by a name which is identical with or too nearly resembles, the name by which a company in existence has been previously registered, the company itself shall change the name by ordinary resolution at the direction of the Central Government. In such a case, the company should pass an ordinary resolution within three months from the date of issue of the direction. There is no time limit for Central Government to issue such direction.

Further, according to Section 16 (1) (b) of the Act of 2013, a registered proprietor may apply with Central government within three years of incorporation or registration or change of name of the company for direction to the company for change of its name. Where, in the opinion of the Central Government the name is identical with or too nearly resembles to an existing trademark, it may direct the company to change its name. The company shall by adopting an ordinary resolution change its name within a period of six month from the issue of such direction.

The procedure to be followed in this case is as under:

(i) Board of directors to pass resolutions for:
   (a) to approve change of name;
   (b) to make application in Para 19 of the Form INC - 1 of the Companies Rules for reservation of another name along with the direction received from the central Government;
   (c) to convene an general meeting and to authorize the Company Secretary or any Director to issue notice;
   (d) to provide necessary authorizations to the Company Secretary/any Director to sign various forms/documents for this purpose.

(ii) Convene general meeting and pass ordinary resolution for change of name by rectification.

(iii) Intimate the Registrar and Obtain fresh certificate of incorporation from the Registrar. [Section 16(2)]

(iv) After approval is received, the change will be carried out wherever the name appears.

(v) Issue, if necessary, a general notice in newspapers informing all concerned, about the change of name of the company.
(vi) Intimate all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., Income Tax Authorities, Central Excise Authorities, Sales-tax Authorities in various States, Customs Authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, suppliers of raw materials, customers, banks etc.

(vii) Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep both the old and the new Common Seals under lock and key.

(viii) Get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery including the blank share certificates.

(ix) Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.

(x) Correct all records, registers including the Register of Members, Charges registered with ROC, share certificates, debenture certificates, bonds and other securities, every copy of Memorandum and Articles of Association, other books and documents pertaining to the company's business and affairs.

EFFECT OF CHANGE OF NAME OF A COMPANY

1. **Continue Existence of Company**: The Companies Act, 2013 does not talk effect of the change of name as this is well settled that change of name:

   - Shall not affect any rights or obligations of the company;
   - Shall not render defective any legal proceedings by or against the company; and
   - Shall not affect any legal proceedings continued or commenced by or against the company pending in its old name; they may continue in its new name.

The Act recognizes the continued existence of a company which has changed its name. The effect of the issue of the certificate of incorporation on change of name is not to reform or re-incorporate the company as a new entity. When the section refers to the company changing its name, it recognizes the continued existence of the company notwithstanding the change.

A change of name of a company does not result in its dissolution and incorporation of a new company under a new name. Section 13 permits a company to change its name in the manner as prescribed. Old case laws relating to earlier Acts may still valid regarding change of name of a company.

Sub-section (3) of section 13 states that where a company changes its name, the Registrar shall enter the new name on the register in the place of the old name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate. It would be observed that the emphasis is on the expression ‘change of name’. (Kalipada Sinha v. Mahalaxmi Bank Ltd. AIR 1966 Cal 585)

2. **Right to sue**: A change of name under section 13 does not affect the rights and obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by or against the company by its new name.

When a company is converted into a public company, apart from the change in its name, the constitution and the entity of the company is not affected in any other manner and the legal proceedings instituted by its former name can be continued by its new name. (Solvex Oils & Fertilizers v. Bhandari Cross-Fields (P) Ltd. (1978) 48 Com Cases 260 (P&H))
The change of name does not affect the entity of the company or its continuity as the same entity. It remains for all practical purposes the same entity with same rights, privileges and liabilities as before. In case of change of name during the pendency of legal proceedings by or against the company, the question which arises before the court is whether the proceedings are initiated by an entity which is not in existence or by an entity in existence but only misdescribed in the plaint.[Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd. (1986) 60 Com Cases 707 (Cal) (DB): (1985) 3 Comp LJ 309 (Cal)] If a company ceases to be in existence, the plaint is liable to be rejected [Shree Choudhary Cold Storage (1972) v. Ruby General Insurance Co. Ltd. AIR 1982 Cal 124], but if the company continued to exist, the cause title of the plaint suffers from misdescription, which could be corrected by amendment of the plaint [Patel Roadways (P) Ltd. v. Bata Shoe Co. (P) Ltd. 1979 (2) Cal HCN 279]

Nothing in Section 13 authorizes the company to commence a legal proceeding in its former name at a time when it had acquired its new name, which has been put on the register of companies. Therefore, after the change of name, the company is not authorised to sue in its old name [Malhati Tea Syndicate Ltd. v. Revenue Officer, Jalpaiguri (1973) 43 Com Cases 337 (Cal): AIR 1973 Cal 78].

The change of name does not bring into existence a new company. The company remains the same entity as before, only the name changes. A new certificate of incorporation has to be issued but that does not incorporate a new company.

3. Tax liability: There is no substitution or succession of one legal person by another legal person in the instant case. It is only a change in name. Even in the absence of any special provision in the Income-Tax Act, the change does not affect the liability of the company to pay income tax arrears.[Economic Investment Corporation Ltd. v. CIT (1970) 40 Com Cases (Cal) (DB)]

Assessment of tax against a private limited company is no valid explanation to contend after becoming public limited company, that the assessment is not valid. [Rajamoni Amma (N.) v. DCIT (1991) 2 Comp LJ 77 (Ker): (1991) 72 Com Cases 728]

4. Execution of decree: The object of the section is to provide that notwithstanding the change in the name, there is no alteration in the constitution or the legal status of the company. Even after the name of a company is altered by special resolution and sanction by the Registrar is accorded under this section the company continues to possess the same rights and is subject to the same obligations as before the change. Therefore, if a company has the power to execute a decree in its old name it has a right after the change to execute the decree in its new name. The fact that alteration in the name was not brought to the notice of the court would not in any manner render defective or irregular proceedings initiated by a company in its former name. A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name. The change of the name does not affect the rights of the company. It is not necessary that the new name should have been entered in the decree. [Abdul Qayum (F S) v. Manindra Land & Building Corporation Ltd. (1955) 25 Com Cases 143 (All): AIR 1955 All 192]

5. Shareholding by company: The company which has changed its name would be entitled to ask those companies in which it is holding shares, to substitute its old certificates by new ones. [Sulphur Dyes Ltd. v. Hickson & Dadajee Ltd. (1995) 83 Com Cases 533 (Bom)]

2. CHANGE OF OBJECTS OF A COMPANY

A company may change its objects as enshrined in its memorandum of association in accordance with the provisions of Sections 13 of the Companies Act, 2013. Under sub – section (1) of Section 13 of the Act, any alteration of memorandum with respect to the objects of the company is permitted through a Special Resolution. However, sub – section (8) of Section 13 restrict change in object of a company, which has raised money from public through prospectus and still has any
unutilized amount out of the money so raised unless a special resolution is passed by the company and the
details of such resolution shall be published in one vernacular language and one English language newspaper
in circulation at the place of the registered office of the company as well as on the website of the company
indicating the justification for such change in object. The dissenting shareholders shall be given an opportunity
to exit from the company in accordance with the regulations specified by the Securities and Exchange Board of
India.

The change in objects of the company shall be effective only registration of special resolution. According to Rule
22(16)(a) of the Companies (Management and Administration) Rules 2014, special resolution for alternation of
object clause shall be passed only through postal ballot.

The company need to file with the ROC Form MGT – 14 with a certified true copy of each special resolution
passed at the general meeting along with the explanatory statement and altered copy of Memorandum of Association
and Articles of Association and prescribed filing fee.

The Registrar shall register any alteration of Memorandum with respect to the objects of the company and certify
the registration within a period of 30 days from the date of filing of the Special Resolution. No alteration shall have
effect until it is registered.

**PROCEDURE FOR CHANGING OBJECTS OF A COMPANY**

In the light of the above provisions of Sections 13 of the Act, a company, desirous of altering the objects clause in
its memorandum of association, is required to adopt the following procedure:

1. Issue notice in writing to every director of the company at his address registered with the company and the
notice shall be sent by hand delivery, or by post or by electronic means as per the provisions of Section
173 (3) of the Companies Act 2013. The notice must be a seven day notice. The notice must contain time,
date and venue for the meeting and detailed agenda of the business to be transacted thereat.

2. Hold the Board meeting at the appointed time, date and venue to –
   (i) consider and to pass a resolution approving the proposed amendments to the objects clause of the
   memorandum of association of the company.
   (ii) consider and to pass another resolution fixing time, date and venue for holding general meeting of the
   company for passing a special resolution under Section 13 of the Act for change of objects clause of
   the memorandum of association of the company.
   (iii) approve notice of the general meeting and draft resolution with the explanatory statement to be annexed
   to the notice for the general meeting and to authorise the company secretary or some other competent
   officer to issue the notice on behalf of the Board.

3. Issue notice of the general meeting to all the members of the company, its directors and the auditors.

4. Send three copies of the notice to each stock exchange where the securities of the company are listed
[Refer clause 31(c) of the Listing Agreement]. A general notice of the general meeting may also be published
in newspapers.

5. Hold the general meeting and pass the proposed special resolution. Company having members upto 200
are not required to transact any business through postal ballot.

6. Send to each stock exchange, six copies of the alterations of the memorandum of association (one of
them must be certified) as soon as they are adopted by the company in general meeting in case of a listed
company (Refer clause 33 of the Listing Agreement).

7. Send to each stock exchanges, a copy of the proceedings of the general meeting in case of a listed
company (Refer clause 31 of the Listing Agreement).
8. File with the Registrar of Companies, Form MGT – 14 along with a copy of the special resolution passed by the company with a copy of the explanatory statement annexed to the notice of the meeting and the amended copy of memorandum of association attached to the e-form, within 30 days of passing of the resolution.

9. Obtain from the Registrar of Companies, certificate of registration of the alteration of the memorandum. Under MCA-21, the user may select “Get Certified Copy” and follow the procedure.

10. Amend each copy of the memorandum of association of the company available in the office or in the alternative fresh copies of memorandum of association be got printed.

### ADDITIONAL REQUIREMENT- CHANGE OF OBJECTS FOR WHICH MONEY IS RAISED THROUGH PROSPECTUS

Rule 32 of Companies (Incorporation) Rules, 2014 contains the provisions for change of objects for which the money is raised through prospectus:

1. Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

   a. the total money received;
   b. the total money utilized for the objects stated in the prospectus;
   c. the unutilized amount out of the money so raised through prospectus,
   d. the particulars of the proposed alteration or change in the objects;
   e. the justification for the alteration or change in the objects;
   f. the amount proposed to be utilised for the new objects;
   g. the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
   h. the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
   i. the place from where any interested person may obtain a copy of the notice of resolution to be passed.

2. The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.

3. The notice shall also be placed on the website of the company, if any.

### 3. CHANGE OF REGISTERED OFFICE OF A COMPANY

Section 12 of the Companies Act, 2013 lays down that every company shall have a registered office on or from the fifteenth day of its incorporation and at all times thereafter, to which all communications and notices may be addressed.

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

Sub-section (5) of Section 12 lays down that except on the authority of a special resolution passed by the company, the registered office of the company shall not be changed outside the local limits of any city, town or village where such office is situated.
The Proviso to this sub-section lays down that in case of sifting of registered office form the jurisdiction of one registrar to another registrar within same state unless such change is confirmed by the Regional Director on an application made in this behalf.

The Companies Act permits a company to change its registered office from its existing situation to another situation, –

(i) within the local limits of the same city, town or village, or
(ii) outside the local limits of the same city, town or village
   (a) under the jurisdiction of the same Registrar of Companies or
   (b) under the jurisdiction of another Registrar of Companies within the same State or
(iii) from one state to another State.

The procedures for each of the above cases are given hereunder:

(i) Procedure for change of situation of registered office within the local limits of the city, town or village where it is presently situated.

A company desirous of changing the situation of its registered office within the local limits of the city, town or village where it is presently situated has to follow the following procedure:

1. Hold a meeting of its Board of directors of the company to take a decision by passing a resolution for shifting the registered office of the company to another place within local limits of city, town or village, where it is presently situated.

2. Within thirty days of the passing of the Board resolution, the company shall file with the concerned Registrar of Companies, Form INC – 22 along with a copy of the Board resolution. This Form contains verification by any one of practicing professionals - company secretary or chartered accountant or cost accountant (in whole-time practice). Further the company secretary or chartered accountant or cost accountant (in whole-time practice) has to personally visit the new registered office address or premises of the company and has to verify that the company actually exists at this address. In this context, he also has to certify that he has personally visited the new registered office address and is of the opinion that the premises are indeed at the disposal of the applicant company. Following documents have to be attached to Form INC – 22:

   – Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.;
   – Copies of the utility bills as mentioned above (not older than two months);
   – A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
   – Copy of order of competent authority;
   – List of all the companies (specifying their CIN) having the same registered office address, if any;

3. Issue, if necessary, a general notice by way of an advertisement in newspaper(s) informing all members and other concerned persons, about the change of situation of the registered office of the company so that they may address all future communications to the company at its new address.

4. Address of the new registered office of the company must also be incorporated on all items of stationery, sign boards and at all other places wherever it occurs.

5. The stock exchanges, where the securities of the company are listed, should also be promptly informed about the change of the registered office of the company.
(ii) (a) Procedure for shifting of registered office outside the local limits of the city, town or village where it is presently situated within the same State under the jurisdiction of the same Registrar of Companies.

According to Sub-section (5) of Section 12 of the Companies Act, 2013, a company cannot, except on the authority of a special resolution passed in general meeting, shift its registered office outside the local limits of the city, town or village where it is presently situated.

Accordingly, a company desirous of shifting its registered office outside the local limits of the city, town or village where it is presently situated is required to take the following procedural steps:

1. Hold a Board meeting –
   (i) to pass a resolution, for shifting the registered office of the company to another place outside the local limits of city, town or village, where it is presently situated;
   (ii) to pass a resolution for fixing time, date and venue for holding general meeting of the company for passing a special resolution pursuant to Sub-section (5) of Section 12 of the Companies Act, 2013. Company having members upto 200 are not required to transact any business through postal ballot.
   (iii) to pass a resolution approving notice of the general meeting along with the explanatory statement which is required to be annexed to the notice of the meeting as per requirement of Section 117 of the Companies Act.
   (iv) to pass a resolution authorising the Company Secretary/Director to issue the notice of the general meeting on behalf of the Board of directors of the company.

2. Issue notice along with the explanatory statement of the general meeting to each member, each director and the auditors of the company.

3. Send three copies of the notice to each stock exchange where the securities of the company are listed [Refer clause 31(c) of the Listing Agreement].

4. If necessary, public notice of the general meeting may also be published in newspapers.

5. Hold the general meeting and pass the special resolution as per notice of the general meeting.

6. Send to each stock exchange, a copy of the proceedings of the general meeting in case of a listed company (Refer clause 31 of the Listing Agreement).

7. File with ROC within thirty days of passing of the special resolution-
   (a) Form MGT – 14 along with a certified true copy of the special resolution passed at the general meeting and the explanatory statement annexed to the notice of the general meeting along with the prescribed filing fee.
   (b) Form INC – 22, containing notice of change of registered office, along with the filing fee and copy of the special resolution.

This Form contains a verification by any one of these professionals - company secretary or chartered accountant or cost accountant (in whole-time practice). Further the company secretary or chartered accountant or cost accountant (in whole-time practice) has to personally visit the new registered office address or premises of the company and has to verify that the company actually exists at this address. In this context, he also has to certify that he has personally visited the new registered office address and is of the opinion that the premises are indeed at the disposal of the applicant company.

Both the forms Form No. MGT 14 and Form No. INC 22 require the certification by any practicing professional i.e., any whole-time practicing CA, CS or CWA.
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Following documents have to be attached to Form INC – 22:

– Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.;
– Copies of the utility bills as mentioned above (not older than two months);
– A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
– Copy of order of competent authority;
– List of all the companies (specifying their CIN) having the same registered office address, if any;

8. Issue a public notice by an advertisement in newspaper(s) informing all the members of the company, other concerned persons about the change of registered office of the company so that they may address all future communications to the company at its new address.

9. Change address of the registered office of the company on all items of stationery, sign boards and at all other places wherever it occurs.

10. Inform the stock exchanges, where the securities of the company are listed, about the change of registered office of the company.

11. Get the new address of the registered office of the company painted on all the sign boards wherever they are displayed.

12. Write new address of the registered office of the company on all records, registers including the register of members, share certificates, sign boards, name plates etc.

(ii) (b) Procedure for shifting of registered office outside the local limits of the city, town or village where it is presently situated to the jurisdiction of another Registrar of Companies but within the same State.

According to Proviso to sub – section (5) of Section 12, a company cannot change the place of its registered office from one place to another from the jurisdiction of one Registrar to another within the same State wherein more than one Registrar of Companies have jurisdiction, unless such change is confirmed by the concerned Regional Director.

Hence, a company, which needs to change its registered office within the same State but under the jurisdiction of another Registrar of Companies, shall have to take the following procedural steps in addition to the steps 1 to 12, specified in the immediately preceding para i.e. (ii) (a) here of –

1. Publish a notice in a newspaper of local language and also in a English language;

2. Serve individual notices on each debenture holder, depositor and creditor of the company;

3. After special resolution passed for shifting of registered office from the jurisdiction of one Registrar to another Registrar within same state, the company should make application to the Regional Director in the prescribed Form INC – 23.

The attachments prescribed alongwith Form INC – 23 are:

– Copy of Memorandum of Association and articles of association;
– Copy of notice of the general meeting along with relevant explanatory statement;
– Copy of special resolution sanctioning alteration;
– Copy of the minutes of the general meeting authorizing such alteration;
– Power of attorney/vakalatnama/Board resolution;
– List of creditors and debenture holders;
– Affidavit from Directors in terms of Rules;
– Affidavit verifying the application;
– Affidavit by the company secretary of the company and the directors in regards to the correctness
  of list of creditors and affairs of the company;
– Affidavit by directors about no retrenchment of employees;
– Details of prosecution/inspection/inquiry/Investigation filed against the company and its officers
  in default;
– Copy of newspaper advertisement for notice of shifting the registered office;
– Affidavit verifying the list of creditors;
– Proof of service of the application to the Registrar, Chief secretary of the state, SEBI or any other
  regulatory authority (if applicable);
– Copy of objections (if received any);

4. The confirmation by Regional Director shall be communicated within a period of 30 days from the date
   of receipt of application by the Regional Director. The company shall file the confirmation with the
   Registrar within a period of 60 days of the date of confirmation. The Registrar shall register and certify
   the registration within a period of 30 days from the date of filing of such confirmation.

(iii) Procedure for changing the situation of registered office outside the State in which it is presently situated.

Section 13 lays down that a company may, by special resolution, alter the provisions of its memorandum
so as to change the place of its registered office from one State to another. The alteration of the provisions
of memorandum relating to the change of the place of its registered office from one State to another shall
take effect only when it is confirmed by the Central Government on petition.

The Central Government shall dispose of the application under sub-section (4) within a period of sixty
days and before passing its order may satisfy itself that the alteration has the consent of the creditors,
debenture-holders and other persons concerned with the company or that the sufficient provision has
been made by the company either for the due discharge of all its debts and obligations or that adequate
security has been provided for such discharge.[Section 13(5)]

Where an alteration of the memorandum results in the transfer of the registered office of a company from
one State to another, a certified copy of the order of the Central Government approving the alteration shall
be filed by the company with the Registrar of each of the States within such time and in such manner as
may be prescribed, who shall register the same, and the Registrar of the State where the registered office
is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

A company proposing to shift its registered office from the State where it is presently situated to another
State has to follow the following procedure:

1. Hold a Board meeting –

   (i) to decide about the proposal to shift the registered office of the company to another State.
   (ii) to fix time, date and venue for holding general meeting of the company for passing a special
        resolution for altering the memorandum of association of the company so as to change the situation
        of its registered office of the company to another State, subject to confirmation by the Central
        Government and also for authorising the company secretary to make a petition under Sub-section
        (7) of Section 13 of the Act to the Central Government seeking confirmation of the alteration of
        the memorandum of association of the company.
(iii) to approve notice of the general meeting along with the explanatory statement which is to be annexed to the notice of the meeting; and

(iv) to authorise the Company Secretary/Director to issue notice of the general meeting on behalf of the Board of directors of the company.

2. Issue notice (along with the explanatory statement) of the general meeting to all members, directors and the auditors of the company.

3. Send three copies of the notice to each stock exchange where the securities of the company are listed [Refer clause 31(c) of the Listing Agreement].

4. A general notice of the general meeting may also be published in newspapers.

5. Hold the general meeting and pass the special resolution for altering the memorandum of association of the company so as to change the situation of its registered office to another State, as per notice of the general meeting. Company having members upto 200 are not required to transact any business through postal ballot.

6. Send to each stock exchange, immediately after the conclusion of the general meeting, proceedings of the general meeting as required by the Listing Agreement.

7. Also send to each stock exchange, immediately after the conclusion of the general meeting, six copies (one of them certified) of the amendments to the memorandum of association of the company as per the Listing Agreement. (Refer Clause 33 of the Listing Agreement)

8. File with the ROC within thirty days of passing of the resolution, Form MGT – 14 along with a certified true copy of the special resolution passed at the general meeting along with the explanatory statement annexed to the notice of the general meeting and the prescribed filing fee.

9. As per Rule 30 of the companies (Incorporation) Rules 2014, the application for seeking approval for alteration of the memorandum with regard to the change of place of the registered office form one State to another shall be filed with the Central government in Form INC - 23 and shall be accompanied by the following documents:

   (i) a copy of the memorandum and articles of association;

   (ii) a copy of the notice convening the general meeting along with relevant Explanatory Statement;

   (iii) a copy of the special resolution sanctioning the alteration by the members of the company;

   (iv) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;

   (v) an affidavit verifying the application;

   (vi) the list of creditors and debenture holders entitled to object to the application;

   (vii) an affidavit verifying the list of creditors;

   (viii) the document relating to payment of application fee;

   (ix) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

8. There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

   (i) the names and address of every creditor and debenture holder of the company;
(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities.

9. The applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

10. There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

11. A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

12. There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

13. The company shall at least fourteen days before the date of hearing-

(i) advertise the application in the Form INC – 26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;

(ii) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(iii) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

14. Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.

15. Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.

16. Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

17. The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

18. The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
19. The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form INC - 28 along with the fee with the Registrar of each of the States within thirty days from the date of receipt of certified copy of the order.

Form INC 28 contains certification by Practising Professional in respect of all matters incidental to the subject matter of this form, the certification can be made by any full time practicing CA/CS or CWA.

20. The change of address of the registered office shall be effective from the date of issue of registration certificate by the Registrar of Companies of the State to which the registered office is shifted.

21. Form INC – 22, containing Verification of registered office, along with the filing fee and copy of the special resolution. This Form contain a verification by any one of these professionals - company secretary or chartered accountant or cost accountant (in whole-time practice). Further the company secretary or chartered accountant or cost accountant (in whole-time practice) has to personally visit the new registered office address or premises of the company and has to verify that the company actually exists at this address. In this context, he also has to certify that he has personally visited the new registered office address and is of the opinion that the premises are indeed at the disposal of the applicant company. Following documents have to be attached to Form INC – 22:

- Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.;
- Copies of the utility bills as mentioned above (not older than two months);
- A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
- Copy of order of competent authority;
- List of all the companies (specifying their CIN) having the same registered office address, if any;

22. Issue a general notice by way of an advertisement in newspaper(s) informing the members of the company all other concerned persons about the change of place of the registered office of the company so that they may address all future communications to the company at its new address.

23. The address of the registered office of the company must also be changed on all items of stationery, letter heads, bills forms, invoice forms, sign boards and at all other places wherever it occurs.

24. The stock exchanges, where the securities of the company are listed, should also be promptly informed about the change of place of the registered office of the company.

25. Correct the address of the registered office of the company on all records, registers including the register of members, share certificates, sign board, name plate etc.

II. ALTERATION OF ARTICLES OF ASSOCIATION OF A COMPANY

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)]

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

(i) by adoption of new set of articles;
(ii) by addition/insertion of a new article; 
(iii) by deletion of an article; 
(iv) by amendment of a specific article; or 
(v) by substitution of a specific article.

**Procedure for Altering Articles of Association**

A company which proposes to alter its articles of association has to follow the procedure detailed below:

1. Convene and hold a Board meeting to –
   (i) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect. 
   (ii) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013. 
   (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act. 
   (iv) Authorise the Company Secretary or any other competent officer of the company to issue notice of the general meeting as approved by the Board. 

2. On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company. 

3. Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company. 
   Also forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement. 

4. Hold the general meeting and have the special resolution passed. 
   *Note*: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolution as aforesaid is passed only through postal ballot. 

5. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement. 

6. File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and a copy of the Articles of Association, within fifteen days of the passing of the resolution along with the prescribed filing fee. 

7. Make necessary changes in all the copies of the articles of association of the company lying in the office of the company. 

**EFFECT OF ALTERATION OF ARTICLES**

Articles cannot be altered, if the alteration is repugnant to, or inconsistent with, any statute or general law or it is such as to defeat the provisions of any law. The articles cannot be altered to enable a company to carry on an illegal scheme (lottery business). *(Pioneer Mutual Benefit Society v. Asst. Registrar, (1933) 3 Com Cases 37, 40 : AIR 1933 Mad 129.* 

All members become bound by a valid alteration whether they voted for or against it *(Hari Chandana Yoga Deva*
Stringent provisions can be made in the Articles so long as they are not contrary to the provisions of the Act. Where the Act provides for an ordinary resolution for transacting a particular business, the articles may provide for a special resolution. Likewise, a public company which is required to give 21 days’ notice for a general meeting may provide in its articles to give 30 days’ notice. Such a public company cannot, however provide for giving less than 21 days’ notice.

In Tapas Sinha Roy v. Linkman Services P. Ltd., (2007) 77 CLA 340 (CLB) it was held that the power of alteration can be exercised only in good faith in the interests of the company as a whole. A discriminatory amendment depriving some members of their rights qua members would be struck down as invalid. The articles were altered in this case to enable the company to forfeit fully paid shares.

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**ANNEXURE**

**SPECIMEN BOARD RESOLUTION FOR CHANGE OF NAME**

**RESOLVED THAT**

(a) subject to the approval by the Company by a special resolution to be passed at a general meeting and of the Central Government under section 13 of the Companies Act, 2013, the name of the Company be and is hereby changed from ‘….. Ltd.’ to any of the following names in the order of preference:

(i) ‘….. Ltd.’
(ii) ‘….. Ltd.’
(iii) ‘….. Ltd.’
(iv) ‘….. Ltd.’
(v) ‘….. Ltd.’
(vi) ‘….. Ltd.’

or such other name as may be allowed by the Registrar of Companies.

(b) the Company Secretary be and is hereby authorised to make the application in FORM INC 1 to the Registrar of Companies for ascertaining the availability of the proposed name(s) and an application for approval for the change of name as above and to do such other acts, things and deeds as may be necessary to do to give effect to this resolution.

**SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY**

“RESOLVED THAT –

(i) subject to the approval of the Central Government, pursuant to the proviso to Section 13 of the Companies Act, 2013, as a consequence of the conversion of the company from a private limited company into a public limited company, the name of the company be and is hereby changed from “……….. Private Limited” to “……….. Limited”; and

(ii) clause I (name clause) in the memorandum of association of the company be and is hereby altered by substituting the same with the following:
I. The name of the company is .................. Limited."

Explanatory Statement

The Board of directors of the company had, at its meeting held on ......., resolved that consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from "......... Private Limited" to "..................... Limited" and accordingly clause I (name clause) in the memorandum of association of the company is to be altered by substituting the same with a clause as set out in the notice for approval of the shareholders of the company.

No director is concerned or interested in the proposed resolution.

Note: The above special resolution is a composite one for change of name of the company and also for change of name clause in the memorandum of association of the company. Alternatively, the company may pass two separate special resolutions viz., (i) for change of name of the company and (ii) for change of clause I (name clause) in the memorandum of association of the company. In such a case part (ii) of the resolution need not be incorporated in the above resolution and in addition the following special resolution (Annexure II) may also be passed.

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY

"RESOLVED THAT pursuant to Section 13 of the Companies Act, 2013, and consequent upon conversion of the company from a private limited company into a public limited company, clause I (name clause) of the memorandum of association of the company be and is hereby altered by substituting the same with the following:

"Clause I. The name of the company is ............... Limited."

Explanatory Statement

The Board of directors of the company had, at its meeting held on ......., resolved that consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from "......... Private Limited" to "......... Limited" and accordingly clause I (name clause) in the memorandum of association of the company is to be altered by substituting the same with new clause I as set out in the notice.

Hence, the proposed special resolution is commended for approval by the members. No director is concerned or interested in the proposed resolution.

"RESOLVED THAT : –

(a) subject to the approval of the company, by a special resolution at a general meeting and such other statutory approvals as may be necessary, the object clause of the memorandum of the company, be and is hereby altered by inserting new clauses in place of clause……

(I) ..............

(ii) ..............

(b) A special resolution according approval to the proposed alterations by the members of the company be and is hereby proposed at the______ annual general meeting/extraordinary general meeting to be convened and held on____ at____ at the registered office of the company and the Company Secretary be and is authorized to issue notice of the said meeting together with the related explanatory statement, in accordance with the draft placed before this meeting (as initialed by the Chairman), in accordance with the provisions of Companies Act, 2013, and the articles of association of the company".
SPECIAL RESOLUTION FOR AMENDING THE OBJECTS CLAUSE OF THE MEMORANDUM OF ASSOCIATION

"RESOLVED THAT pursuant to the provisions of Section 13 of the Companies Act, 2013, Clause III being the objects clause of the Memorandum of Association of the company be and is hereby altered as follows:

(i) To substitute the following sub-clause in place of the existing sub-clause (h):

(h) to borrow or raise money or to invite, receive or accept money on deposit for the purposes of the company (not amounting to the business of banking as defined under the Banking Regulation Act, 1949) in such manner and upon such terms and conditions as may seem expedient and to secure or arrange the repayment thereof by the company and create, issue and allot redeemable or irredeemable bonds, mortgages or other instruments, mortgage debentures, secured or unsecured debentures issuable or payable either at par or at premium or discount or as partly or fully paid and for any such purposes to charge all or any part of the property and profits of the company both present and future including its uncalled capital.

(ii) The following new sub-clauses be and are hereby added after the sub-clause 3(de):

(df) to carry on the business of manufacturers and processors of and dealers in paper, pulp and boards of all kinds and articles made from paper, pulp and boards of every description and materials or chemicals or agents used in the manufacture or treatment of paper and board including card boards and their by-products.

(dg) To carry on the business of manufacturers, installers, maintainers and repairers of and dealers in mechanical, electrical and electronic audio visual appliances, and apparatus of every description and of in radio, television, telecommunication requisites and suppliers of dynamos, accumulators, lamps and all apparatus now known or that may be invented in connection with the generation, accumulation, distribution and supply and employment of electricity including all cables, wires and appliances and glasses, cells, integrated circuits, electric posts, autometers, and other electrical and electronics apparatus and appliances and stores of all kinds.

(dh) To manufacture, sell, distribute, deal or trade in electrical and mechanical goods, equipments, accessories, components spares of all kinds, mechanical devices, wagons, tanks, galvanised iron pipes, conduit pipes.

(di) To carry on the business of and act as merchants, traders, commission and mercantile agents, clearing agents, shipping agents whether within or outside the territory of the Union of India and to import, export, buy, sell, barter, exchange, pledge, make advance upon or otherwise deal in goods, produce, articles and merchandise including capital and consumable goods.

(dj) To carry on the business of and as general electrical and mechanical engineers, founders, fabricators, manufacturers and dealers in iron, steel and alloys, engineering, mechanical and electrical apparatus and goods plants and machineries and equipments of various kinds and the manufacture, sale or hire of apparatus and goods, to which the application of electricity or any other power is or may be useful, convenient, ornamental or otherwise necessary.

(dk) To manufacture, produce, use, buy and sell and otherwise deal or trade in any and all metallurgical, electro chemical and electro thermal products in elemental, alloy or composite forms and all or any formulate compositions, consisting or partly consisting of the foregoing or any of them and all or any converted or fabricated products and articles of the foregoing or any of them.

(dl) To carry on the business as manufacturers and dealers of different kinds of cement, portland cement, cement products and building materials.

(dm) To carry on the business of financial and investment consultants, agents, underwriters and to render financial and management services.
The following sub-clauses be and are hereby added after the existing sub-clause m(iii):

m(iv) To sub-let all or any contracts from time to time and upon such terms and conditions as may be thought expedient.

m(v) To establish, provide, maintain or conduct otherwise schools, colleges, research laboratories, technical management and cultural institutions and experimental workshops for scientific and technical research and development and undertake experiments and carry on scientific and technical researches, experiments and tests of kinds, to promote studies and researches, scientific and technical investigations and innovations and developments by providing, sponsoring, subsidising or assisting laboratories, workshops, libraries, lecture meetings, seminars and conferences and by providing or contributing to the remuneration of scientific or technical professors, experts or otherwise qualified and competent persons and by providing or contributing to the award of scholarships, prizes, grants to students or otherwise and generally encourage, promote and reward studies, researches, investigations, experiments, tests and inventions of any kind that may be considered likely to assist any business which the company is authorised to carry on.

m(vi) To insure any of the properties, undertakings, contracts, guarantees or obligations of the company of every nature and kind in any manner whatsoever.

m(vii) To promote, carry on, maintain and develop, trade of all kinds, industrial and financial relations of every kind and description in all matters with the objects of the company.

m(viii) To subscribe, contribute, pay, transfer or guarantee money for or to dedicate, donate, present or otherwise dispose of either voluntarily or for value, any moneys or properties of the company to or for the benefit of any public, local, general or useful objects, purposes or institutions or for any exhibition or for any purpose which may be considered likely directly or indirectly to further the objects of the company or the interests of its members.

m(ix) To carry on any other trade, business, or undertaking which it may seem to the company capable of being conveniently carried on in connection with any of the company's objects or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights or which it may be advisable to undertake with a view to improving, developing, rendering valuable or turning to account any property movable or immovable belonging to the company or in which the company may be interested.

m(x) To subscribe for, underwrite, purchase or otherwise acquire, and to hold, dispose of and deal with the shares, stocks, securities and evidences of indebtedness or of the rights to participate in profits, assets or other similar documents issued or to be issued by any Government authority, corporation or body, or by any other company and any option or rights in respect thereof.

m(xi) To acquire debentures, debenture stock bonds, obligations or securities by original subscription, participation in syndicates, tender, purchase, exchange or otherwise and to subscribe for the same either conditionally or otherwise and to guarantee the subscription thereof and to exercise, enforce all rights and powers conferred by or incident to the ownership thereof.

Explanatory Statement

Your Board has to consider from time to time proposals for diversification into areas which would be profitable for the company as part of diversification plans. For the purpose of the objects clause of the company which is presently very restricted in scope, requires to be so made out as to cover a wide range of activities to enable your company to consider embarking upon new projects and activities considered to be convenient, advantageous and feasible for the company's business. Certain incidental powers are also being added for the convenience of the Company's operations. Your Directors recommend that the special resolution be passed.
None of the Directors of the Company is interested or concerned in the said resolution except as members of the Company.

**SPECIMEN OF BOARD RESOLUTION FOR SHIFTING THE REGISTERED OFFICE OF THE COMPANY TO ANOTHER PLACE WITHIN LOCAL LIMITS**

RESOLVED THAT –

“(i) the registered office of the company be and is hereby shifted from its present location at ........................ to ............................, under the jurisdiction of ............................ police station and within the local limit of the town where present registered office of the company is situated; and

(ii) The Company Secretary, Sh. ............................. be and is hereby authorized to file with the Registrar of Companies, FORM INC 22 containing verification of the situation of the registered office of the company.”

**SPECIMEN OF BOARD RESOLUTION APPROVING NOTICE OF THE EXTRAORDINARY GENERAL MEETING**

RESOLVED THAT the notice of the extra ordinary general meeting to be held at ..................... (time) ..................... (date) ..................... for passing the special resolution as required under Section 12 (5) of the Companies Act, 2013 for shifting of registered office from present situation at ........................ to ............................ a place falling under the jurisdiction of ............................ police station and outside the local limits of the town where registered office of the company is presently situated, a draft whereof was placed before the meeting and was initialied by the chairperson of the meeting for the purpose of identification, be and is hereby approved"

**SPECIMEN OF BOARD RESOLUTION AUTHORISING THE COMPANY SECRETARY TO ISSUE NOTICE OF THE EXTRAORDINARY GENERAL MEETING**

“RESOLVED THAT Sh. ............................. the company secretary of the company be and is hereby authorized to issue on behalf of the Board of directors of the company, the notice under Section 101 and the explanatory statement thereof under Section 102 of the Companies Act, 2013, as approved by the Board, the Extra-ordinary General Meeting of the company to be held at ..................... hrs ..................... in ..................... (date) ..................... for passing the special resolution under Section 12(5) of the Act, for shifting the registered office of the company.”

**SPECIMEN OF SPECIAL RESOLUTION FOR SHIFTING THE REGISTERED OFFICE OF THE COMPANY TO ANOTHER PLACE OUTSIDE THE LOCAL LIMITS BUT WITHIN THE SAME STATE**

Resolved that –

(1) Pursuant to the section 12(5) and other applicable provisions of the Companies Act, 2013, if any, the registered office of the Company be and is hereby shifted from its present situation at ........................ to ............................ a place falling under the jurisdiction of ............................ police station which is outside the local limit of the town where it is presently situated but within the same state; and

(2) Shri ............................. the company Secretary, be is hereby authorised to file with the concern Registrar of Companies, the FORM INC 22 containing verification of the registered office of the company.

**Explanatory Statement:**

The registered office of the company is situated at ..................... (a small town)..................... Often it becomes difficult to arrange the required facilities for holding the company's annual general meetings, which are required to be held at the registered office of the Company or at a place within the local limits of the same town. Therefore, the Board of directors of the company, at its meeting held on ....................., resolved that the registered office of the
company is to be shifted to ................., a place outside the local limits of the town where the company’s registered office is presently situated but which is within the same State, where it would be possible for the company to hold its annual general meetings more conveniently as all the required facilities are available there. Moreover, the company’s Central, Administrative and Marketing Offices are already situated there.

The Board, therefore, recommends the proposed special resolution to the members of the company for their consideration and approval.

None of the directors of the company is concerned or interested in the proposed resolution.

**SPECIMEN RESOLUTION FOR CHANGE OF REGISTERED OFFICE OUTSIDE LOCAL LIMITS OF CITY, TOWN OR VILLAGE FROM THE JURISDICTION OF ONE REGISTRAR TO ANOTHER WITHIN THE SAME STATE**

"RESOLVED THAT the Registered Office of the Company be and is hereby shifted from ................. to ................. which is outside the local limits of city, town or village but from the jurisdiction of one registrar to another within the same state where the company's registered office is presently situated with effect from ................. subject to confirmation by the Regional Director."

**Explanatory Statement**

The registered office of the company is situated at ................. while the administrative office is situated at .................

For administrative convenience and better control over the operations it is proposed to shift the Registered office from ................. to ................. Since the new place is within the jurisdiction of another Registrar of Companies, this requires prior approval of the Regional Director. Hence it is proposed to pass a special resolution for this purpose. No Director is interested or concerned in this resolution.

**SPECIMEN OF BOARD RESOLUTION FOR SHIFTING THE REGISTERED OFFICE FROM ONE STATE TO ANOTHER**

"RESOLVED THAT

(a) subject to the approval of members of the Company by a special resolution at a general meeting and confirmation of the Regional Director under section 12 of the Companies Act, 2013 and subject to such other approvals as may be necessary, the registered office of the Company be and is hereby shifted from its present location to the State/Union Territory of ................. and Clause ................. of the memorandum of the company be and is hereby altered accordingly;

(b) a special resolution according approval to the proposed alterations by the members of the Company be and is hereby proposed at the ..................... annual general meeting/extra-ordinary general meeting to be convened and held on ..................... at ..................... at the registered office of the company and the Company Secretary be and is hereby authorised to issue notice of the said meeting together with related explanatory statement, in accordance with the draft placed before this meeting, to the members of the company in accordance with the provisions of Companies Act, 1956 and the articles of association of the company;

(c) M/s ..................... Advocate/Secretary in whole-time practice/practising Chartered Accountant/practising Cost Accountant be and is hereby authorised to appear and represent the Company before the Regional Director, in the matter of the petition to be filed for their confirmation to the proposed alteration of the of the memorandum as to the change of the place of the registered office from one State to another and are also authorised to make such statements, furnish such information and do such acts, deeds and things as may be necessary in relation to the said petition;
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(d) Mr. ..................... director, Mr. ....................., director, and Mr. ....................., secretary, be and are hereby
authorised jointly and severally to sign the said petition/application, affidavits and such other documents
as may be necessary in relation to the said petition.

SPECIMEN OF SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF THE COMPANY SO AS TO CHANGE THE SITUATION OF ITS REGISTERED OFFICE TO ANOTHER STATE

"RESOLVED THAT—

(i) pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and subject to
confirmation by the Regional Director, as prescribed in Sub-section (4) of the said section, the memorandum
of association of the company be altered so as to change the place of the company’s registered office from
its present situation at.................. ....................................in the State of Maharashtra to .........................,
a place in the State of Gujarat, by substituting the words “in the State of Maharashtra” for the words “in the
State of Gujarat” in Clause II of the memorandum of association of the company."

(ii) Shri ................, the Company Secretary, be and is hereby authorised –

(i) to sign and file, the petition under Sub-section (4) of Section 13 of the Act to the Regional Director for
securing confirmation to the alteration to the memorandum of association of the company so as to change
the place of the Registered office of the company from the State of Maharashtra to the State
of Gujarat;

(ii) to represent the company in all hearings concerning the petition of the company; and

(iii) to appoint, on behalf of the company, Company Secretaries in whole-time practice, advocates, lawyers,
counsels and other consultants, if and when required, to represent the company and plead on its
behalf before the concerned Regional Director and or any other agency in all matters connected with
the petition of the company.

Explanatory Statement

When the company was incorporated it was decided that the main manufacturing unit of the company would be
located in the State of Maharashtra and in the memorandum of association it was stated that the registered office
of the company would be situated in that State.

Subsequently it was found that the location of the main manufacturing unit in the State of Gujarat would be more
advantageous to the company. At present, all the factories of the company are located in the State of Gujarat. For
better management and control, the Head Office of the company has already been shifted to Ahmedabad.

No useful purpose would be served by continuing to keep the company’s registered office in the State of
Maharashtra. Moreover, 90% of the members of the company have their registered addresses in the State of
Gujarat. The directors, therefore, consider that the memorandum of association of the company should be altered
so as to change the place of its registered office from its present situation at......................... in the State of
Maharashtra to ........................., a place situated in the State of Gujarat.

After the proposal is approved by the shareholders, a petition is required to be made, under Section 13(4) of the
Companies Act, 2013, to the Regional Director for confirmation of the alteration to the memorandum of association
of the company so as to shift the company’s registered office from the State of Maharashtra to the State of
Gujarat. It is also proposed to authorize Mr. ............ Company Secretary of the company to sign and file the
petition and appear before the Regional Director in connection with the petition. An enabling clause has also been
provided authorizing the Company Secretary to appoint any other authorized representative, as he considers
necessary in connection with the petition.

The Board recommends the resolution to the members for their consideration and approval.
None of the directors of the company is concerned or interested in the proposed resolution.

**SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE ARTICLES OF ASSOCIATION OF A COMPANY BY ADOPTION OF NEW SET OF ARTICLES**

“RESOLVED THAT the regulations contained in the document submitted for consideration and approval of this meeting, and initialled by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the Articles of Association of the company in substitution for, and to the exclusion of, the present Articles of Association of the company.”

**Explanatory Statement**

The present Articles of Association of the company were adopted in .............. They were based on the Companies Act, 1956, as amended till that point of time. The Act has since been amended several times. Moreover certain other Acts have affected various provisions of the Companies Act, 2013.

The directors of the company believe that it is desirable that the articles of association of the company be revised so that they fully reflect not only the law governing the company and rules and regulations made thereunder, but is also in conformity with modern secretarial practices and complies with the requirements of the listing agreements of the stock exchanges on which the company's shares are listed.

Since the proposed alterations, deletions, insertions etc. to the present articles of association are numerous, it is more convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed resolution for your consideration and adoption of the new set of Articles of Association of the company to replace the existing Articles of Association of the company.

A copy of the existing Articles of Association is available at the registered office of the company for the inspection of any member, if he so desire, between Monday to Friday between 2 P.M. and 5 P.M.

None of the directors is interested in the proposed resolution.

**SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES BY ADDITION/INSERTION OF A NEW ARTICLE**

“RESOLVED THAT the Articles of Association of the company be and are hereby altered by inserting at the end of article ...... of the Articles of Association of the company, the following:

“Notwithstanding anything contained in these articles, the managing directors and whole-time directors of the company shall not be required to hold any such qualification shares.”

**Explanatory Statement**

Article ...................... of the company's articles of association provides that the qualification of a director shall be the holding of equity shares in the company of the aggregate nominal value of ‘...............’. The managing directors/whole-time directors are, pursuant to article ........................ not normally liable to retire by rotation.

However, if at any time, the number of directors (including the managing/whole-time directors) as are not subject to retirement by rotation shall exceed one-third of the total number of directors for the time being, then it is provided by article ...................... that such directors are liable to retire by rotation to comply with the provisions of Section 152 of the Companies Act, 2013. As it is not contemplated that in such circumstances, the managing directors/whole-time directors should be required to hold qualification shares, it is proposed to make it clear beyond doubt that the managing directors/whole-time directors shall not be required to hold qualification shares.

A copy of the existing articles together with the proposed alteration is available for inspection at the registered office of the company during the business hours on any working day.
None of the directors is concerned or interested in the proposed resolution save and except to the extent of qualification shares required or not required by them to be held in the company.

**SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES BY DELETION OF AN ARTICLE**

Resolved that Articles of Association of the Company be and are hereby altered by deleting article ................. of the articles of association of the company.

Resolved further that after deletion, the existing Articles No. ................. to ................. be renumbered as Article No. ................. to .................

**Explanatory Statement**

Articles ................. of the articles of association of the company related to the appointment of managing agent. Under the present law, no company shall appoint managing agents/secretaries. This article has remained in the articles of association of the company in spite of the fact that it became redundant since long. The directors have now thought it fit to forthwith delete this article which is no longer in conformity with the provisions of the Companies Act, 2013.

A copy of the existing articles together with the proposed alteration is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution.

**SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES BY AMENDMENT OF A SPECIFIC ARTICLE**

“RESOLVED THAT the Articles of Association of the company be and are hereby altered by replacing Article No.13 of the Articles of Association of the company.

**Explanatory Statement**

The existing article 13 makes mention of Section 113 of the Companies Act, 1956 only. Subsequent to the enactment of the Companies Act 2013, the Central Government framed the Companies (Share Capital and Debentures) Rules 2014 and the listing agreements of the stock exchanges also contain obligatory provisions regarding the issue of share certificates by companies. Your directors have, therefore, resolved that alteration of the articles be effected by clarifying that the issue of share certificates shall be in compliance with the Companies (Share Capital and Debentures) Rules, 2014 and the provisions of the listing agreement of the stock exchanges. Accordingly, the proposed alteration is being placed before the company in general meeting for approval.

Existing article

“13. Share certificates:

“The certificate of title to shares and duplicate thereof when necessary shall be issued under the Seal of the company, subject to the provisions of Section 113 of the Act”

Proposed alteration

“The certificate of shares and the duplicate thereof shall be issued under the common seal of the company, subject to section 46 and Companies (Share Capital and Debentures) Rules, 2014.”

A copy of the existing articles of association of the company together with the proposed alteration is available for inspection of the members of the company at the company’s registered office, on any working day during business hours.

None of the directors of the company is concerned or interested in the proposed resolution.
### LESSON ROUND UP

- Section 13 of the act lays down the manner in which different clauses of the memorandum can be altered by passing a special resolution and after complying with the procedure specified in this section.
- The application for change of name shall be filed in Form INC 24, and for change of registered office from one state or union territory to another, shall be filed with the Central Government in Form INC 23.
- The registrar shall register any alteration in memorandum with respect to objects of the company and certify the registration within a period of 30 days from the date of filing the Special Resolution.
- Section 14 lays down the procedure for alteration of articles. A company may alter its articles including alterations having effect of conversion of a private company into a public company or a public company into a private company with the approval of members through a special resolution.
- If a private company alters its articles in such a manner where they no longer include the restrictions and limitations which are required to be included in the articles of a private company, the company shall ceases to be a private company from the date of such change.
- Every alteration in the memorandum or articles of the company shall be noted in every copy of the memorandum or articles.
- Every alteration in the articles and the copy of tribunal approving the alteration shall be filed with registrar, together with a printed copy of the altered articles within a period of 15 days.

### SELF-TEST QUESTIONS

1. Enumerate the procedural steps required to be taken by a company to change the name of the company.
2. Explain the procedure, as provided in the Companies Act, 2013 for change of registered office of Company from the jurisdiction of one Registrar of Companies to another Registrar of Companies within the same State.
3. What are the different modes of altering share capital of a company?
4. Draft a special resolution for alteration of articles by deletion of an article.
5. Draft the Board and Special resolution for change of name of a company.
Lesson 3
Issue and Allotment of Securities

LESSON OUTLINE

- Procedural aspects relating to
- Private placement
- Issue of equity shares with differential voting rights
- Issue of shares at discount
- Issue of sweat equity shares
- Issue of shares on premium
- Issue of Bonus shares
- Issue and redemption of preference shares
- Employee stock option

LEARNING OBJECTIVES

For raising the capital from the public by the issue of securities, listed companies have to comply with the provisions of Companies Act, 2013, the Securities Contract (Regulation) Act 1956, SEBI (ICDR) Regulation, 2009, other relevant regulations of SEBI, listing agreement, stock exchanges etc. The unlisted companies have to comply with the provisions of Companies Act 2013 and the relevant rules made thereunder.

After going through this lesson, students will be able to understand procedural aspects for issue of securities including issues such as private placement, rights issue, bonus issue, issue of shares at premium, issue of sweat equity shares, issue of shares under Employee Stock Option Scheme etc and also procedural aspects relating to allotment, issue of share certificates, forfeiture and buy back of securities. The details relating to public offer can be referred in the study “Secretarial Audit, Due Diligence and Compliance Management”.

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Section 23 of the Companies Act, 2013, provides that a company whether public or private may issue securities. Chapter III of the Companies Act, 2013 deals with “Prospectus and allotment of securities”. This chapter is divided into two parts, Part I deals with Public Offer and Part II deals with Private Placement. “Public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

**Provisions relating to Issue of Securities**

A public company may issue securities:

(a) To public through prospectus (“public offer”) by complying with the provisions of Part I of Chapter III of the Act; or

(b) Through private placement by complying with the provisions of Part II of Chapter III of the Act; or

(c) Through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made thereunder.

- For a private company the section provides that a private company may issue securities (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (b) through private placement by complying with the provisions of Part II Chapter III of the Act.

- In the case of a Public Company, which is a listed entity or is desirous of listing its securities on a recognized stock exchange in India, the issue of securities is governed by the Companies Act, Securities Contract Regulation Act, 1956, the SEBI Act, 1992 and the Issue of Capital and Disclosure Requirements (Regulations), 2009.

- In the case of all issues by Private Companies, the same is governed by the Companies Act, 2013 and the power of administration is exercised by the Central Government, the Tribunal or the Registrar of Companies as the case may be.

**Dematerialization**

Section 29 of the Act provides that every company making public offer of any security, shall issue the securities only in dematerialized from by complying with the provisions of Depositories Act, 1996 and the regulations made thereunder.

According to Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014 made under Chapter III of the Act, the promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialized form.

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 in to dematerialized form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

**LET US UNDERSTAND CERTAIN TERMS**

**Securities**

Securities has been defined under section 2(81) to mean the securities as defined in clause (h) of section 2 of the
Securities Contracts (Regulation) Act, 1956. The relevant section says that securities include:

“(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or body corporate; (ii) derivative; (iii) units or any other instrument issued by any collective investment scheme to the Investors in such schemes; (iv) security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (v) units or any other such instrument issued to the investors under any mutual fund scheme; (vi) “securities” shall not include any unit linked insurance policy or scripts or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such person and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938; (vii) any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be; (viii) government securities; (ix) such other instruments as may be declared by the Central Government to be securities and (ix) rights or interests in securities.”

Prospectus

In general parlance prospectus refers to an information booklet or offer document on the basis of which an investor invests in the securities of an issuer company.

The prospectus has been defined under section 2(70) so as to mean any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

Red herring Prospectus under explanation to section 32 has been defined as a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In simple terms a red herring prospectus contains most of the information pertaining to the company’s operations and prospects, but does not include key details of the issue such as its price and the number of shares offered. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

Shelf Prospectus under explanation to section 31 has been defined as a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

Deemed Prospectus

According to section 25(1) of the Companies Act, 2013, when a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made, shall, for all purposes, be deemed to be a prospectus issued by the company.

Section 25(2) provides that unless the contrary is proved, it shall be the evidence that an allotment of, or an agreement to allot, securities was made with a view to securities being offered for sale to the public if it is shown:

(A) that an offer of securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot, or

(B) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it
Abridged Prospectus

According to section 2(1) of the Act “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 33 of the Act provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.

Issue of securities through public offer

As discussed earlier, an unlisted public company issuing securities through public offer has to comply with the provisions of Chapter III (i.e. Prospectus and allotment of securities) and Chapter IV (Share Capital and Debentures) read with Companies (Prospectus and Allotment of Securities) Rules, 2014 and Companies (Share Capital and Debentures) Rules 2014. The listed companies in addition to compliances under Companies Act, 2013 are required to comply with SEBI Regulations, Securities Contracts Regulations Act, Depositories Act etc.

The procedural checklist with respect to issue of securities through public offer are dealt in detail in the paper ‘Secretarial Audit, Compliance Management and Due diligence.

PRIVATE PLACEMENT

Explanation II to section 42 (1) defines the term private placement which means offer of securities or invitation to subscribe securities to a selected 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.

Under the private placement, the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, (excluding qualified institutional buyers, and employees of the company being offered securities under a scheme of employee stock option), in a financial year and on such conditions as may be specified under Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014.

Private Placement to be Treated as Public Offer

According to section 42(4) any offer or invitation not in compliance with the provisions of section 42 shall be treated as public offer and all provisions of this Act, and Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall required to be complied with.

Offer Made only to Specified Persons

Section 42(7) states that private placement shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such person shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the registrar within a period of 30 days of circulation of the relevant private placement offer letter.

Allotment of Securities

According to subsection (6) of section 42, the company shall allot its securities within 60 days from the date of receipt of application money, if it does not allot within 60 days then the application money shall be repaid within 15 days after the expiry of 60 days and if company does not pay money after the aforesaid period, the company is liable to repay the money with interest @ 12% per annum from the expiry of 60 days the monies received shall be kept in separate bank account with a scheduled bank and shall not be utilized for any purpose other than –
(a) For adjustment against allotment of securities
(b) For the repayment of monies where the company is unable to allot securities.

**Exemption to NBFC and HFC**

Sub rule 5 of Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that the criteria of offer or invitation to 200 persons in aggregate in a financial year and minimum investment size of twenty thousand rupees of face value shall not be applicable to Non banking Financial Companies registered with the Reserve bank of India and Housing Finance Companies registered with the National Housing Bank, if they are complying with the regulations made by RBI or NHB in respect of offer or invitation to be issued on private placement basis.

**PROCEDURE TO MAKE ALLOTMENT THROUGH PRIVATE PLACEMENT**

- Hold the board meeting and pass board resolution for convening the meeting of members and approving draft notice of meeting of members.
- Hold the general meeting and pass the special resolution.
- Sent letter of offer in Form PAS.4 along with application form to the proposed subscribers.
- File Form MGT.14 along with the fees as provided in the Companies (Registration of Offices and Fees) Rules, 2014, with the Registrar within 30 days of passing the resolution.
- The explanatory statement annexed to the notice for the general meeting required u/s 102 shall disclose the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.
- If the said offer or invitation is for non-convertible debentures, it shall be sufficient if the company has passed a previous special resolution during year for all the offers or invitation for such debentures.
- The offer or invitation shall not be made to not more than 200 persons in the aggregate in a financial year excluding QIBs and employees offered securities under ESOP.
- The value of such offer or invitation per person shall be with an investment size of not less than 20,000 rupees of face value of the securities.
- All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received and the monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
- The company shall maintain a complete record of private placement offers in Form PAS-5:
  - File form PAS-5 along with the private placement offer letter in Form PAS-4 with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of 30 days of circulation of the private placement offer letter.
  - A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing –
(i) The full name, address, Permanent Account Number and E-mail ID of such security holder;

(ii) The class of security held;

(iii) The date of allotment of security;

(iv) The number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

• Issue share certificates and update minutes book and registers.

• Company shall intimate the details of allotment of securities to depository immediately on allotment of such shares.

**Note:** Explanation I to Section 42 (2) read along with section 42 (4), provides that any offer or invitation not in compliance with provisions of this section shall be treated as public offer and all the provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 shall be required to complied with.

**EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHT**

An equity share with differential rights is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in the voting rights can be achieved by reducing the degree of voting power. Companies issue equity share with differential rights for prevention of a hostile takeover and dilution of voting rights. It also helps strategic investors who do not want control, but are looking at a reasonably big investment in a company.

Section 43 provides that the share capital of a company limited by shares shall of two kinds, namely:-

(a) Equity share capital-

   (i) With voting rights; or

   (ii) With differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014 provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the conditions mentioned in this rules.

**Procedure for Issue Equity Shares With Differential Voting Rights**

1. Check whether the Articles of Association of the company authorizes issue of equity shares with differential rights and if not, then amend the Articles of Association of the company.

2. Hold the Board meeting to issue the notice of general meeting for issuance of equity share with differential rights along with the explanatory statement u/s 102 of the Act with the contents which is placed as Annexure at the end of this lesson.

3. Before issuing equity shares with differential rights as to dividend, voting or otherwise, ensure the following:

   (i) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

   (ii) the company has consistent track record of distributable profits for the last three years;

   (iii) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

   (iv) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have
become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

(v) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

(vi) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

4. If the company is listed with any of the recognized stock exchange, then within 15 minutes of the closure of the aforesaid Board Meeting intimate to the concerned Stock Exchange about the decision taken at the Board Meeting.

5. Pass the ordinary resolution in the general meeting.

6. If the company is listed, then ensure it obtains the approval of its shareholders through postal ballot as per rule 22 of the Companies (Management and administration) Rules, 2014.

7. Once the company makes any allotment, then its shall, within 30 days thereafter, file with the Registrar a return allotment in Form PAS-3, along with the fees as specified in the Companies( Registration Offices and Fees) Rules, 2014.

8. The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

9. In case of listed company, forward three copies of the notice and a copy of the proceedings of the general meeting to the stock exchange.

10. Complete all other proceedings for the issue of certificate of shares with differential voting rights making necessary entries in various registers. In case of a company whose shares are dematerialized form, inform the depositories about the same for credit to the respective accounts.

11. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

12. Maintain the Register of Members under section 88 containing all the relevant particulars of the shares so issued along with details of the shareholders.

### ISSUE OF SHARES AT DISCOUNT

Section 53 of the Companies Act, 2013, prohibits a company to issue shares at discount except in the case of issue of sweat equity shares. Any shares issued by a Company at a discounted price shall be void.

Where a company contravenes the provisions of section 53, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer in default shall be punishable with imprisonment for a term of which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

### ISSUE OF SWEAT EQUITY SHARES

The term 'Sweat Equity' in literal sense denotes an interest in a property earned by a talent in return by labor towards upkeep or restoration (The New Oxford Dictionary of English).
According to Section 2(88) of the Companies Act, 2013, sweat Equity Shares means such equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The New Oxford Dictionary of English defines intellectual property as 'intangible property that is a result of creativity, such as patents, copyrights, etc. The term value addition here means any valuable contribution made by an employee which is not covered by the term ‘Intellectual property rights’.

Sweat equity shares are different from shares issued by a company under Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).

The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares shall rank pari-passu with other equity shareholders.

### Conditions for issuance of sweat equity shares

Section 54 provides that, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:-

(a) The issue is authorized by a special resolution passed by the company;

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

(c) Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(d) Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules made under the Chapter IV of the Companies Act, 2013.

### Procedure for Issue Sweat Equity Shares

1. Convene Board meeting to approve the notice of general meeting.

2. Issue notices in writing or through electronic mode, at least clear twenty one days before the date of meeting along with the explanatory statement as required u/s 102.

3. The explanatory statement to be annexed to notice and the resolution for approving the sweat equity shall contain the following information:

   (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

   (b) The reasons or justification for the issue;

   (c) The class of shares under which sweat equity shares are intended to be issued;

   (d) The total number of shares to be issued as sweat equity;

   (e) The class or classes of directors or employees to whom such equity shares are to be issued;

   (f) The principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;

   (g) The time period of association of such person with the company;

   (h) The names of the directors or employees to whom the sweat equity shares will be issued and their
relationship with the promoter or/and Key Managerial Personnel;

(i) The price at which the sweat equity shares are proposed to be issued;

(j) The consideration including consideration other than cash, if any to be received for the sweat equity;

(k) The ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(l) a statement to the effect that the company shall conform to the applicable accounting standards; and

(m) Diluted Earnings Per Share pursuant to the issue of sweat equity shares, calculated in accordance with the applicable accounting standards.

4. A copy of the valuation report shall be sent to the shareholders with the notice of the general meeting.

5. Hold the general meeting and pass the Special Resolution.

6. The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing of the special resolution.

7. File the special resolution with the concerned ROC with explanatory statement in Form MGT. 14 along with the fees as provided in Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing of the special resolution.

8. If the shares of the company are listed with the stock exchange, then forward three copies of the notice and a copy of the proceedings of the general meeting.

9. If the shares are listed with any of the recognized stock exchange, then issue of the sweat equity shares shall be in accordance with SEBI (Issue of Sweat Equity) Regulations, 2002.

10. Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS.3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

11. The company shall maintain a register of Sweat Equity Shares in Form SH.3. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the board for the purpose.

12. Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

13. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

**ISSUE OF SHARES AT A PREMIUM**

The word ‘premium’ implies something more than normal. With reference to shares and securities issued by a company, premium means a sum over and above the face or par value of a security. It is the amount which is excess of the issue price of a share over its face value (or par value) and is referred to as ‘share premium’. When shares are issued by a company at a price above their face value (or nominal or par value) then the shares are said to have been issued at a ‘premium’. It is the difference between the price at which a company issues a share and the face value of a share.

Section 52 of the Companies Act, 2013 deals with the application of premium received on issue of shares. In accordance with sub-section (1) of section 52, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account, to be called, “the share premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company. The securities premium account may be applied by the company—
(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

Sub section 3 of section 52 provides that the securities premium account may, be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

(c) for the purchase of its own shares or other securities under section 68.

If the company is a listed company then the company is required to comply with the provisions of SEBI (ICDR) Regulations, 2009.

FURTHER ISSUE OF SHARES CAPITAL

Section 62 of the Companies Act contains provisions relating to further issue of share capital through

(a) Rights issue of shares (Section 62(1)(a)

(b) Issue of shares through Employee Stock Option (Section 62(1)(b)

(c) Issue of shares on Preferential Basis (Section 62(1)(c)

Rights Issue of Shares

Section 62. (1) states that at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

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

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;
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### Procedure for issue of Rights shares

(i) Check whether the rights issue results in increase of authorized capital.,

(ii) If so call a board meeting to approve the notice of General meeting to pass necessary special resolutions at the general meeting to amend Memorandum/Articles of Association.

(iii) Convene the general Meeting and obtain shareholders’ approval through special Resolution.

(iv) The offer should be made by notice, specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined. This notice shall be despatched through Registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

(v) Check the copy of form SH 7, MGT14 filed with ROC.

(vi) The shares declined by the existing shareholder can be disposed off by the company in manner which is not disadvantageous to the shareholders and the company.

(vii) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS.3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(viii) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(ix) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

(x) In case of listed companies, the conditions prescribed under Chapter IV of SEBI (ICDR) Regulations 2009.

### EMPLOYEE STOCK OPTION

As per Section 62(1) (b) of Companies Act 2013, the Company can offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Rule 12 of Companies (Share Capital and Debentures) Rules 2014.

For the purposes of clause (b) of sub-section (1) of section 62 and this rule “Employee” means –

(a) A permanent employee of the company who has been working in India or outside India; or

(b) A director of the company, whether a whole time director or not but excluding an independent director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company.

But does not include –

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

(ii) A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

### Procedure for issue of securities to employees through “Employees Stock Option scheme”

(1) Convene a Board Meeting to approve the notice of the General meeting along with special resolution, explanatory statement etc., to be approved by the shareholders through special resolution.

(2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution:
(a) The total number of stock options to be granted;
(b) Identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
(c) The appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
(d) The requirements of vesting and period of vesting;
(e) The maximum period within which the options shall be vested;
(f) The exercise price or the formula for arriving at the same;
(g) The exercise period and process of exercise;
(h) The Lock-in period, if any;
(i) The maximum number of options to be granted per employee and in aggregate;
(j) The method which the company shall use to value its options;
(k) The conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
(l) The specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
(m) A statement to the effect that the company shall comply with the applicable accounting standards.

Ensure that the special resolution is filled with ROC in MGT 14 within 30 days of passing the resolution.

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

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

(a) Grant of option to employees of subsidiary or holding company; or
(b) Grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

(5) (a) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.

(b) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

(6) (a) There shall be a minimum period of one year between the grant of options and vesting of option.

Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

(b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

(c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
(7) The amount, if any, payable by the employees, at the time of grant of option-

(a) May be forfeited by the company if the option is not exercised by the employees within the exercise period; or

(b) The amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

(8) (a) The option granted to employees shall not be transferable to any other person.

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

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

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

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

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

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

(a) Options granted;

(b) Options vested;

(c) Options exercised;

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

(e) Options lapsed;

(f) The exercise price;

(g) Variation of terms of options;

(h) Money realized by exercise of options;

(i) Total number of options in force;

(j) Employee wise details of options granted to:-

(i) Key managerial personnel;

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

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

(10) (a) The company shall maintain a Register of Employee Stock Options in Form No. SH.6 and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.
(b) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.

(c) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

(11) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS.3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(12) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(13) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

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

**ISSUE OF SHARES ON PREFERENTIAL BASIS**

Section 62(1)(C) of the Companies Act 2013 read with Rule 13 of Companies (Share Capital and Debentures) Rules 2014 enables issue of shares to persons other than the existing shareholders/employees as specified in Section 62(1)(a) and Section 62(1)(b), provided if the same is approved by special resolution and subject to the conditions stated in the said Rule 13.

**Procedure for issue of shares on Preferential basis**

(a) Check whether the issue is authorize by Articles. If not make necessary amendments to alter the articles of association, through special resolution passed at the shareholders’ meeting.

(b) Convene a Board Meeting to approve the notice of General Meeting and necessary special Resolution/s along with explanatory statements as required.

(c) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

   (i) The objects of the issue;
   
   (ii) The total number of shares or other securities to be issued;
   
   (iii) The price or price band at/within which the allotment is proposed;
   
   (iv) Basis on which the price has been arrived at along with report of the registered valuer;
   
   (v) Relevant date with reference to which the price has been arrived at;
   
   (vi) The class or classes of persons to whom the allotment is proposed to be made;
   
   (vii) Intention of promoters, directors or key managerial personnel to subscribe to the offer;
   
   (viii) The proposed time within which the allotment shall be completed;
   
   (ix) The names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
   
   (x) The change in control, if any, in the company that would occur consequent to the preferential offer;
   
   (xi) The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
(xii) The justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.

(xiii) The pre issue and post issue shareholding pattern of the company in the prescribed format-

(d) Convene General Meeting and pass necessary Special Resolution/s.

(e) Ensure to file Form MGT-14 with Registrar of Companies within 30 days of passing the Resolution.

(f) The securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.

(g) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of 12 months from the date of passing of the special resolution. If the allotment of securities is not completed within 12 months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

(h) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer; and when convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;

(i) Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

(j) Where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-

(i) Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(ii) Where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

(k) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS.3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(l) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(m) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

(n) In case of listed companies, the conditions/procedures prescribed under Chapter VII of SEBI (ICDR) Regulations are to be complied with.

**ISSUE OF BONUS SHARE**

Bonus issue refers to a further issue of shares made by a company having share capital to its existing share holders without receipt of any consideration from the shareholders for issuance of the shares. It is an offer of free additional shares to existing shareholders in proportion to their holdings.

The basic principle behind bonus shares is that the total number of shares increases with a constant ratio of number of shares held to the number of shares outstanding. For instance, if Investor ‘A’ holds 200 shares of a company and a company declares 4:1 bonus that is for every one share, he gets 4 shares for free. That is total 800 shares for free and his total holding will increase to 1000 shares.

Companies issue bonus shares to encourage retail participation and increase their equity base. When price per
share of a company is high, it becomes difficult for new investors to buy shares of that particular company. Increase in the number of shares reduces the price per share. But the overall capital remains the same even if bonus shares are declared.

### Issue of Bonus Shares

Issue of bonus shares is governed by the provisions of section 63 read along with rule 14 of the Companies (Share Capital and Debentures) Rules, 2014. In case of listed company, it has to comply with the provisions of chapter IX of SEBI (ICDR) Regulations, 2009.

### Sources of Bonus share

Section 63 provides that a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) Its free reserves;

(ii) The securities premium account; or

(iii) The capital redemption reserve account.

No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. The bonus shares shall not be issued in lieu of dividend.

### Conditions for issue of Bonus Share

The following conditions must be satisfied before issuing bonus shares:

(a) It is authorized by its articles;

(b) It has, on the recommendation of the Board, been authorized in the general meeting of the company;

(c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

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

(f) It complies with such conditions as may be prescribed.

### Restrictions on withdrawal of Bonus Issue

Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 provides that the company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

### Procedure for issue of Bonus share

1. Check whether the Article of Association authorizes issue of bonus share. If not, then amend the Articles of Association of the company by passing the Special Resolution.

2. Check whether the Bonus issue results in increase of authorized capital. If so, make necessary alterations in the Memorandum/Articles of Association by passing special Resolution.

3. Hold the Board Meeting and get the following proposal to be approved by the Board:
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(i) To recommend the bonus issue;
(ii) To approve the resolution to be passed at a general meeting;
   (a) To authorize the Bonus issue
   (b) To approve requisite resolution for increase of the capital and consequential alteration of the Memorandum of Association/Articles of Association(if necessary)
   (c) To enable the Articles to authorize the issue, if necessary.

4. Ensure that bonus issue has been made out of free reserves built out of the genuine profits or securities premium or capital redemption reserve account.

5. Ensure that reserves created by revaluation of assets are not capitalized.

6. Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits and or debt securities issued by it or in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.

7. Ensure that the bonus issue is not made in lieu of dividend.

8. The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

9. If there are any partly paid-up shares, ensure that these are made fully paid-up before the bonus issue is recommended by the Board of directors.

10. Hold the general meeting and get the resolution/s for issue of bonus shares passed by the members.

11. Once Special Resolution is passed file Form MGT-14 along with the fees with the Registrar within 30 days of passing of the resolution along with the altered article of association.

12. Within 30 days of allotment file with the registrar the Return of allotment in Form PAS-3 along with fee as specified in companies (registration of offices and fees), Rules 2014.

13. All share certificates shall be delivered to the shareholders within two months from the date of allotment of bonus issue as required under section 56 (4).

14. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

15. In case of listed companies, the conditions prescribed under listing agreement and chapter IX of SEBI (ICDR) Regulation 2009 is to be complied with.

**ISSUE AND REDEMPTION OF PREFERENCE SHARES**

Section 55 of the Companies act 2013 read with Rule 09 and 10 of Companies (Share Capital and Debentures) Rules, 2014 prescribes conditions/procedure relating to issue and redemption of preference shares.

No company limited by shares shall issue irredeemable preference shares however a company limited by shares may if so authorized by its articles, issue preference shares for a period not exceeding 20 years from the last date of their issue subject to such conditions prescribed in rules. The company engaged in setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum 10 percent of such preference shares per year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders (Rule 10) The term infrastructural projects means the infrastructural projects specified in schedule VI of the companies act 2013

**Procedure to issue and redemption of preference shares**

(1) For issue of preference shares the articles of the company should authorize for it , if not then amendment
in the articles of the company is required

(2) The company issuing preference shares shall set out in the resolution the particulars in respect of the following matters relating to such shares namely:

(a) The priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;

(b) The participation in surplus fund;

(c) The participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;

(d) The payment of dividend on cumulative or non-cumulative basis.

(e) The conversion of preference shares into equity shares.

(f) The voting rights;

(g) The redemption of preference shares.

(3) Issue the notice of general meeting along with the explanatory statement.

(4) Pass special resolution and file with the registrar Form MGT-14 along with the fee or the additional fee so specified in the Companies (Registration of offices and fees) Rules, 2014 within 30 days of passing the resolution

Note: in case of One Person Company for the purpose of passing of ordinary and special resolution in general meeting, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of meeting for all purpose under this act.

(5) Within 30 days of allotment file with the registrar the Return of allotment in Form PAS-3 along with fee as specified in companies (registration of offices and fees), Rules 2014

(6) Update the register of members maintained under section 88 after issue of preference shares

(7) The company may redeem the preference shares only on the terms on which they were issued or as varied after due approval of preference share holders

(8) The preference shares may be redeemed as given below:

1. At a fixed time or happening of a particular event

2. Any time at the company's option

3. Any time at the shareholders option

(9) The notice of redemption of preference shares shall be filed by the company with the registrar in Form SH-7 along with altered MOA with the fee as specified in Companies (Registration of offices and Fees), Rules 2014 within 30 days of redemption of preference shares.

(10) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS.3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(11) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(12) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares
The legal and the procedural aspects relating to buy back and reduction of share capital are discussed in detail in PAPER- Corporate Restructuring, valuation or Insolvency. Students may refer the same.

LESSON ROUND UP

- A Public company may issue securities through prospectus or through private placement or through right issue or bonus issue.
- In the case of issue by a private company the same is governed by the Companies Act 2013 and the power of administration is exercised by the Central Government.
- Prospectus refers to information booklet or offer documents on the basis of which an investor invests in the securities of an issuer company.
- The company shall allot its securities within 60 days from the date of receipt of application money, if it does not allot within 60 days then the application money shall be repaid within 15 days after the expiry of 60 days.
- According to Section 53 it prohibits a company to issue shares at discount except in the case of issue of sweat equity shares. Any shares issued by a company at a discounted price shall be void.
- Sweat equity shares are different from shares issued by a company under Employees Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).
- Section 62 of the Act contains provisions relating to further issue of share capital through Right issue, issue through Employee Stock Exchange Stock Option Scheme and on preferential basis.
- Bonus issue refers to a further issue of shares made by a company having share capital to its existing share holders without receipt of any consideration from the shareholders for issuance of the shares.
- The company engaged in setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a 10% of such preference shares per year from the 21st year onwards or earlier.

SELF – TEST QUESTIONS

1. Write the detail procedure of issue and redemption of preference shares.
2. State the procedure relating to Issue of Bonus Shares.
3. Write short notes on –
   (a) Minimum subscription
   (b) Abridged prospectus
   (c) Preferential allotment
   (d) Employee Stock Option Scheme.
4. Write down the provisions for issue of Sweat Equity Shares.
5. Write the procedure for preferential allotment of equity shares in case of unlisted public companies.
Lesson 4
Alteration of Share Capital

LESSON OUTLINE

- Alteration of share capital
- Procedure for Increase in share capital
- Procedure for consolidation of share capital
- Procedure for sub-division of share capital
- Conversion of shares into stock
- Re-conversion of stock into fully paid shares
- Forfeiture of shares
- Cancellation of shares
- Surrender of shares
- Reduction of share capital
- Annexures – Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The capital clause in Memorandum of Association states the amount of capital with which company is registered giving details of number of shares and the type of shares of the company. The share capital may be altered or increased, subject to certain conditions. A company cannot issue share capital in excess of the limit specified in the capital clause without altering the capital clause of the memorandum of association.

Under the Companies Act, 2013, a company limited by shares, if authorized by its articles of association, can alter the capital clause of its memorandum of association. Such alteration may either involve increase in share capital by issuing new shares, consolidation and division of share capital into shares of larger amount than existing shares, conversion of fully paid shares into stock, re-conversion of that stock into shares, sub-division of shares, cancellation of its shares, surrender of shares, reduction of share capital etc.

After going through this lesson, students will be able to understand practical and procedural aspects relating to alteration of its share capital and related compliances.
The provision relating to reduction of capital is not yet notified under Companies Act, 2013 and according to the procedure aspects relating to reduction is dealt under Companies Act, 1956.

ALTERATION OF SHARE CAPITAL OF A COMPANY

According to Section 61 (1), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to –

a) increase its authorised share capital by such amount as it thinks expedient;

b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

c) convert all or any of its fully paid-up shares into stock, and reconvergt that stock into fully paid-up shares of any denomination;

d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; and

e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

A company can exercise its powers to alter its share capital only if it is authorised by its articles. If the articles do not contain any such authorization, the articles must first be amended, before the power can be exercised. The power must be exercised bona fide in the interest of the company and not for benefitting any group (Piercy vs. Mills(s) & Co., (1920) 1 Ch. 77.)

Consolidation and division of shares, which results in changes in the voting percentage of shareholders shall take effect after it is approved by the Tribunal.

Filing of notice of change in share capital with ROC

Section 64 of the Act makes it obligatory on the part of a limited company having share capital, which alter its share capital under 61, or alter share capital on order of Government under Section 62 or redeems any redeemable preference shares shall file a notice with the Registrar within a period of thirty days of such alteration or increase or redemption along with altered memorandum. The Rules prescribe form SH – 7 for this purpose. This form require Certificate from practicing professional.

PROCEDURE FOR INCREASING SHARE CAPITAL

The need to increase the authorize capital may arise when the company is planning to enlarge its operations by fresh issue of capital. For increasing its authorized share capital, the following procedure has to be followed by a limited company having a share capital:

1. The company has to ensure that its articles of association contain a clause authorising it to increase its authorised share capital. If there is no such provision, then the company has to take steps for alteration of its articles of association in accordance with the provisions of section 14 of the Companies Act, 2013, so as to provide for power to increase the share capital of the company before increasing its authorised share capital. Thus, if the increase of share capital results in alteration of articles of association special resolution is required. Otherwise ordinary resolution is to be passed.

2. Issue notice in accordance with the provisions of Section 173(3) of the Act for convening a Board meeting.

3. Hold the meeting –

   (i) to decide about the increase in the authorised share capital of the company;
(ii) to fix time, date and venue for holding general meeting of the company to pass a special resolution/ordinary resolution as the case may be for increasing the authorised share capital of the company [Section 13(1)];

(iii) to approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act;

(iv) to authorise the company secretary, if any or a Director to issue, on behalf of the Board, notice of the general meeting as approved by the Board.

4. In case of a listed company, soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed increase in the authorised share capital of the company.

5. Issue notice of the general meeting to all members, directors and the auditors of the company. [Section 102].

6. In case of a listed company, forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement.

7. Hold the general meeting and pass special resolution for increasing the authorised share capital of the company [Section 13(1)];

8. In case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchange.

9. File with the Registrar within thirty days of passing of the resolution, Form MGT – 14 with a certified true copy of the special resolution passed at the general meeting along with a copy of the notice and explanatory statement annexed to the notice of the general meeting, copy of altered Memorandum of Association and Articles of Association.

10. File with ROC, Form SH – 7 along with the registration fee on increased authorised capital within 30 days of the passing of the resolution as per Section 64 of the Act. Following documents shall be attached along with Form SH – 7:

   (i) Copy of the resolution for alteration of capital;
   
   (ii) Copy of order of Central Government;
   
   (iii) Copy of the order of the Tribunal;
   
   (iv) Copy of Board resolution authorizing redemption of redeemable preference shares;
   
   (v) Altered memorandum of association;
   
   (vi) Altered articles of association;
   
   (vii) Workings for calculation of ratios

   – Stamp duty on Form SH – 7 can be paid electronically through the MCA portal.
   
   – Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf.
   
   – Refund of stamp duty, if any, will be processed by the respective State or Union Territory Government in accordance with the rules and procedures as per the State or Union Territory Stamp Act.

11. In the case of a listed company, forward six amended copies (one of them certified) memorandum and articles to all the stock exchanges, where the securities of the company are listed.

12. Alter the capital clause in all the copies of the memorandum and articles of association of the company lying at the registered office of the company so that no unaltered copy thereof is issued to any person.
PROCEDURE FOR CONSOLIDATION OF SHARE CAPITAL

For consolidation of share capital, a company is required to take the following procedural steps:

1. It must ensure that its articles of association contain a clause, authorizing it to consolidate its shares. If there is no such provision, the articles should be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.

2. Give twenty-one clear days’ notice of the proposed consolidation of the shares of the company to the stock exchanges where the securities of the company are listed.

3. Make an application to the stock exchanges where the securities of the company are listed and any other stock exchange where company proposes for getting its consolidated shares listed.

4. Convene and hold a Board meeting to –
   (i) Pass a resolution approving the proposed consolidation of the shares of the company;
   (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)];
   (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act;
   (iv) Authorise the company secretary or some other competent officer to issue, on behalf of the Board, notice of the general meeting as approved by the Board.

5. In the case of a listed company, soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.

6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.

7. In the case of a listed company, forward three copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges.

8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.

9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges. [Clause 31 of the Listing Agreement]

10. File with the ROC, Form MGT – 14 along with a certified copy of the resolution, notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution.

11. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. The Registrar will record the alteration in the memorandum of the company.

12. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association and six copies (one of which must be certified) of such amendments to the memorandum of association as soon as they are adopted by the company in general meeting, as per the Listing Agreements signed with the stock exchanges.
13. Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

**PROCEDURE FOR SUB-DIVISION OF SHARE CAPITAL**

For sub-dividing the share capital of a company, the following procedural steps are required to be taken by the Board of directors.

1. It must ensure that its articles of association contain a provision authorising it to sub-divide its shares. If there is no such provision then the articles have to be altered in accordance with the provisions of Section 14 of the Companies Act, 2013, before proceeding to sub-divide its shares.

2. Give twenty-one clear days’ notice of the proposed sub-division of the shares of the company to the stock exchanges on which the securities of the company are listed.

3. In the case of a listed company, make an application to the stock exchanges where the securities of the company are listed and any other stock exchange where the company proposes for getting its sub-divided shares listed. Convene and hold a Board meeting to –

   (i) Pass a resolution approving the proposed sub-division of the shares of the company;

   (ii) Fix time, date and venue for holding general meeting of the company to pass a special resolution, if so required by the articles for this purpose

   (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting

   (iv) Authorise the company secretary to issue, on behalf of the Board, notice of the general meeting as approved by the Board.

5. Soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.

6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.

7. In the case of a listed company, forward three copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges.

8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.

9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges in case of a listed company.

10. File with the ROC, Form MGT – 14 along with a certified copy of the resolution, the notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.

11. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. The Registrar will record the alteration in the memorandum of the company.

12. Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.
CONVERSION OF SHARES INTO STOCK

Section 61(1)(c) of the Companies Act 2013 provides that a limited company having a share capital, if authorized by its articles may convert any of its fully paid shares into stock, and reconvert stock into fully paid up shares of any denomination. Only fully paid shares can be converted into stock. The issue of a partly paid-up stock is void.

A company limited by shares or by guarantee having a share capital, if so authorised by its articles, may alter its memorandum for converting any of its fully-paid-up shares into stock or vice versa. When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock. It may be noted that no company is authorised to issue stock directly even against payment of full nominal value in cash. The company must first issue shares which may be converted into stock only when they are fully paid up.

The total amount of the share capital is divided into the number of shares. Each share has a fixed value. A share is a fixed unit of value. When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock.

Stock is the aggregate of the fully paid-up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal value of shares.

In either case, a notice must be given to the Registrar in Form SH – 7 within thirty days after doing so.

One of the ways of alteration of Share capital of a company is conversion of shares into stock, and also by re-conversion of the stock into shares. For example, if 100 shares of Rs. 10 each are converted into stock of Rs. 1,000, the holder of 100 shares of Rs. 10 each will have Rs. 1,000 stock after the conversion. But the resultant value of Rs. 1,000 is not the face value of the shares or the stock.

The convenience of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the number of various shares comprised in the transfer: a transfer is made of so much stock.

Procedure for Conversion of Fully Paid Shares into Stock

Stock is the aggregate of fully paid shares consolidated. Portions of this aggregate may be transferred or split up into fractions of any amount irrespective of the original nominal value of the shares which have been converted into stock.

A forged transfer of stock does not affect the title of the stockholder [Davies v. Bank of England (1824) 2 Bingh 363].

A company which proposes to convert any of its fully paid shares into stock has to follow the following procedure:

1. The company has to make sure that its articles of association contain a provision authorising it to convert its fully paid shares into stock. If there is no such provision, the articles have to be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.

2. Give the stock exchanges twenty-one days’ notice of the proposed conversion of its fully paid shares into stock.

3. Make applications to the stock exchanges on which the securities of the company are listed for listing of the stock which will come into being as a result of conversion of the fully paid shares into stock.

4. Convene and hold a Board meeting to –
   (i) Pass a resolution in respect of the conversion of fully paid shares of the company into stock.
   (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)].
(iii) Approve notice and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act.

(iv) Authorise the company secretary to issue notice of the general meeting as approved by the Board.

5. In the case of a listed company, on the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration to the share capital clause in the memorandum of association of the company.

6. Issue notice of the general meeting to the members, directors and auditors of the company. In the case of a listed company, forward three copies of the notice of the general meeting to the concerned stock exchanges.

7. Hold the general meeting and have the Special resolution passed.

8. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges.

9. File with the ROC, Form MGT - 14 along with a certified copy of the resolution, the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.

10. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution. The Registrar will record the alteration in the memorandum of the company.

11. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association and six copies (one of which must be certified) of such amendments to the memorandum of association as soon as they are adopted by the company in general meeting.

12. Issue necessary stock certificates in exchange of share certificates.

13. Remove the names of the persons from the register of members of the company to whom stock has been issued in exchange for the shares.

14. Make necessary alterations in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

**Effect of conversion of shares into stock**

Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply on so much of the share capital as is converted into stock.

**PROCEDURE FOR RE-CONVERSION OF STOCK INTO FULLY PAID SHARES**

A company which proposes to convert any of its stock into fully paid up shares has to follow the following procedure:

1. The company has to make sure that its articles of association contain a provision authorising it to convert its fully paid shares into stock. If there is no such provision, the articles have to be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.
2. In the case of a listed company, give the stock exchanges twenty-one clear days’ notice of the proposed conversion of its fully paid shares into stock [Refer Listing Agreements signed with stock exchanges].

3. Make applications to the stock exchanges on which the securities of the company are listed for listing of the shares which will come into being as a result of conversion of stock.

4. Convene and hold a Board meeting to –
   (i) Pass a resolution in respect of the conversion of stock of the company into fully paid shares.
   (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)].
   (iii) Approve notice and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act.
   (iv) Authorise the company secretary to issue notice of the general meeting as approved by the Board.

5. In the case of a listed company, on the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration to the share capital clause in the memorandum of association of the company.

6. Issue notice of the general meeting as per provisions of the Companies Act to the members, directors and auditors of the company.

7. In the case of a listed company, forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement.

8. Hold the general meeting and have the Special resolution passed.

9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.

10. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the Reconversion of stock of the company into fully paid shares, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution. The Registrar will record the alteration in the memorandum of the company.

11. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association and six copies (one of which must be certified) of such amendments to the memorandum of association as soon as they are adopted by the company in general meeting, as per the Listing Agreements signed with the stock exchanges.

12. Issue necessary share certificates in exchange of stock certificates.

13. Enter the names of the persons into the register of members of the company to whom shares has been issued in exchange for the stock.

14. Make necessary alterations in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

**Notice for Payment of Call on Defaulting Members and forfeiture of shares**

According to Regulation 13 of the Table – F of schedule – I, the Board may make calls upon the members in respect of any monies unpaid on their shares.

Regulation 17 of the Table – F of schedule – I, says, in case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
Regulation 28 of Table – F of Schedule – I provides that if a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board of directors of the company may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Regulation 29 of Table – F of Schedule – I lays down that the notice aforesaid shall –

(a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and

(b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

Regulation 30 of Table – F of Schedule – I provides that if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

Regulation 32 of Table – F of Schedule – I provide that a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

**Procedure for forfeiture of shares**

1. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

2. The board or committee thereof shall pass a resolution authorizing the forfeiture of share and issue of notice for this purpose.

3. The notice aforesaid shall:
   - name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
   - state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

4. The notice must:
   - specify clearly the amount payable on account of unpaid call money as well as interest accrued, if any, and other expenses.
   - mention the day on or before which the amount specified ought to be paid, not be earlier than 14 days from the date of service of the notice.
   - contain an unambiguous statement to the effect that in the event of failure to pay the specified amount latest on the appointed day, the shares in respect of which the amount remains unpaid would be liable to be forfeited.

5. The notice of forfeiture as contemplated in regulation 28 of Table – F of Schedule – I must be served in accordance with the provisions of section 20 of the Companies Act 2013.

6. If the call money is not paid in response to such notice threatening forfeiture, the company may, at any time thereafter, before the payment required by the notice has been made, forfeit the shares by a resolution of the Board to that effect.
7. Publish a notice of forfeiture in newspapers so that the members of the public are made aware of the
forfeiture and cautioned not to deal in the forfeited shares.

8. Inform the forfeiture of the shares to the concerned shareholders by registered post.

9. Regulation 33 of Table – F of Schedule – I provides for a verified declaration in writing to be issued under
the signature of a director, manager or secretary of the company that a share in the company has been
duly forfeited on a date stated in the declaration. The declaration so made shall be conclusive evidence of
the facts stated therein as against all persons claiming to be entitled to the shares forfeited.

10. The fact of the forfeiture will be entered in the Register of Members and the name of the concerned
shareholder as a member of the company will be deleted from the register.

11. In case of listed company, notify the Stock Exchange at which the securities of the Company are listed
about such forfeiture of shares.

**Sale, etc. of Forfeited Shares**

1. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares.
He shall remain liable to pay to the company all monies which were presently payable by him to the
company in respect of the shares.

2. The liability of such person shall cease if and when the company shall have received payment in full of all
such monies in respect of the shares.

3. The Company may execute a transfer of the share in favour of the person to whom the share is sold or
disposed of.

4. The company may receive the consideration, if any, given for the share on any sale or disposal thereof.

5. The transferee shall thereupon be registered as the holder of the share.

6. The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title
to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale
or disposal of the share.

**CANCELLATION OF SHARES**

According to clause (e) of Sub-section (1) of Section 61 of the Companies Act, 2013, a limited company having a
share capital may, if so authorised by its articles, cancel its shares which, at the date of the passing of the
resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its
share capital by the amount of the shares so cancelled.

Sub-section (2) of Section 61 of the Act lays down that such cancellation of shares shall not be deemed to be a
reduction of share capital.

Here the cancellation of shares means cancellation of shares of a particular unissued class of shares and not the
paid up share capital.

Section 64 of the Act makes it obligatory on the part of a limited company having share capital, which has
cancelled any share capital, to give notice thereof to the Registrar, within thirty days of the passing of the resolution,
specifying the shares cancelled.

**Procedure for Cancellation of Shares**

1. To ensure that the articles of association of the company contain a provision authorising it to cancel its
shares. In the absence of such a provision, the articles have first to be altered in accordance with the provisions of Section 14 of the Companies Act, 2013.

2. Convene and hold a Board meeting to –
   (i) decide and pass a resolution in respect of the scheme of cancellation of shares of the company;
   (ii) fix time, date and venue for holding general meeting (extraordinary or annual) of the company to pass an ordinary resolution or a special resolution, if so required by the articles for this purpose;
   (iii) approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act; and
   (iv) to authorise the company secretary or any other competent officer of the company to issue notice of the general meeting on behalf of the Board of directors of the company.

3. In case of listed company, on the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such cancellation of the shares of the company.

4. Issue notice of the general meeting as per provisions of the Companies Act to all the members, directors and auditors of the company.

5. In case of listed company, forward three copies of the notice of the general meeting along with the explanatory statement annexed to the notice to the concerned stock exchanges as per the Listing Agreement.

6. To hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.

7. In case of listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.

8. In case of cancellation resulting in alteration of articles file with the ROC, Form MGT – 14 along with a certified copy of the special resolution, the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution.

9. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the cancellation, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee. The Registrar will record the alteration in the memorandum of the company.

10. In case of listed company, forward to the concerned stock exchanges, six copies (one of which must be certified) of such amendments to the memorandum of association as soon as they are adopted by the company in general meeting, as per the Listing Agreements signed with the stock exchanges.

11. Make necessary changes in all the copies of the memorandum of association of the company lying in the registered office of the company so that no unaltered copy is issued to any person.

**SURRENDER OF SHARES**

Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares. Table – F of Schedule – I also does not give power to a company to accept surrender of its shares; it contains no regulation on this subject.

But articles usually empower the companies to accept surrender of shares.

There is difference between surrender and forfeiture of shares. There is no reference in the Act to surrender of shares; but these have been admitted by the courts, upon the principle that they have practically the same effect as forfeiture, the main difference being that one is a proceeding against an unwilling party and the other a proceeding taken with the assent of the shareholder who is unable to retain and pay future calls on the shares. Surrender is voluntary and forfeiture is due to breach of contract.
The surrender is good if it amounts to forfeiture. It is not open to a shareholder to surrender his shares at will, especially when he has to meet future calls, and it is not open to the company to accept a surrender of shares unless the act of the company can be brought within the rule relating to forfeiture of shares.

The Act permits forfeiture of shares on certain grounds; but to give an unlimited and wide power to a company to accept surrender of shares is opposed to the principle that a company cannot buy its own shares and to the principle that a company can reduce its capital only with the permission of the court and on such terms and conditions as the court may impose.

A surrender of shares releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the company, and is therefore illegal, null and void. Thus, a surrender of shares is not valid merely because the articles of the company authorise the Board to accept surrender of shares, unless it can be shown that the surrender took place in circumstances, which would have justified forfeiture.

There can be no valid surrender of shares that are not fully paid except where shares are lawfully forfeited, as it involves reduction of capital requiring the sanction of the court. A surrender of shares amounts to a reduction of capital, which is unlawful unless sanctioned by the court.

Where a company’s articles give the directors power to accept a surrender of shares, this power will be recognised as valid if it is used merely to avoid the formalities of forfeiture. Subject to the provisions allowing companies to acquire their own shares, a company cannot accept a surrender if the shares are not liable to forfeiture, so that such a surrender of partly paid shares would not relieve the shareholder from his uncalled liability; such a surrender would amount to an unauthorised purchase by the company of its own shares, or a reduction of capital without the court’s sanction, and is invalid. It is, however, valid to accept the surrender of partly paid shares from an insolvent member and discharge liability for future calls thereon, if this represents bona fide compromise of the company’s on him. The effect of a valid surrender is the same as forfeiture, provided the articles authorise it.

It is doubtful whether a company may accept a surrender of fully paid shares in exchange for the issue by the company of an equivalent nominal amount of fully paid shares.

There is a difference between surrender of shares and purchasing by a company of its own shares. A company cannot make any payment or give any valuable consideration for the surrender. This is because a surrender of shares in consideration of a payment in money or money’s worth by the company is a purchase by it of its own shares and is ultra vires that is to say, unless confirmed by the court as a reduction of capital.

Like forfeiture, surrender also does not involve any payment out of the funds of the company. If the surrender were made in consideration of any such payment it would be neither more nor less than a sale, and open to the same objections as purchase by the company of its own shares. If it were accepted in a case when the company was in a position to forfeit the shares, the transaction would be perfectly valid.

However, surrender of shares to the company for consideration may be valid if the circumstances are very special, e.g. where the surrender is part of a compromise. A valid surrender of shares would not amount to buying by a company of its own shares.

**REDUCTION OF SHARE CAPITAL**

Sub-section (1) of Section 100 of the Companies Act, 1956 lays down procedure for reduction of share capital. A company limited by shares or a company limited by guarantee and having a share capital may, subject to confirmation by Court, if so authorised by its articles, reduce its share capital in any way, by special resolution, and may –

* Since the provisions relating to reduction of capital under Companies Act, 2013 is not yet notified, the provisions of Companies Act, 1956, are dealt under ‘Reduction of Capital’
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(i) Extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(ii) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or

(iii) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

On analyzing the provisions of Section 100 of the Act, we find the following factors have to be taken care of in effecting reduction in the share capital of a company:

(i) Authority contained in the articles of the company.

(ii) Passing of a special resolution by the company.

(iii) Confirmation of the reduction by Court*.

The term “Court” means the High Court having jurisdiction in the State where the registered office of the company is situated.

Reduction of capital is permissible under the Act in the following way:-

(i) Diminishing the nominal amount of shares so as to leave a less sum unpaid;

(ii) Diminishing the nominal amount of any shares by writing off or repaying paid up share capital;

(iii) Diminishing the nominal amount by combining (i) & (ii);

(iv) Diminishing the number of shares by extinguishing the existing liability on certain shares/writing off or repaying the whole amount paid up thereon and canceling them.

In Elpro International Ltd., In re [(2009) 149 Com Cases 646 (Bom)], the brief facts of the case were that the company proposed to extinguish and cancel 8,89,169 shares held by shareholders constituting 25 per cent, of the issued and paid up share capital and return capital to such shareholders at `183 per equity share of `10 each so cancelled and extinguished in accordance with section 100 of the Act. According to the scheme as approved by the shareholders, the reduction of 25 percent, of the issued and paid up capital was to take place from amongst 3,835 share holders which included 112 shareholders who voted for the resolution, and 3,723 shareholders who did not object to the resolution. As equity shares of the company were listed with the Bombay Stock Exchange and Pune Stock Exchange it filed a draft of the proposed petition with the stock exchanges. The company presented a petition under section 101 of the Companies Act, 1956, seeking confirmation of reduction of the share capital of the company. The Bombay stock Exchange raised objections, inter alia, that (i) the share holders who did not cast their votes in the course of the postal ballot were being treated as if they had accepted the proposed scheme, the reduction of share capital of the company should be either applicable to all the shareholders or to only those shareholders who had specifically agreed to the reduction of share capital and (ii)the closing price of the shares was considerably higher than the exit price being offered to the shareholders.

The objections were overruled

Reasons stated were that a selective reduction of share capital is legally permissible. It had not been disputed before the court by the parties that the votes of those shareholders who had obtained from casting their ballots in support of the scheme, were not required to be taken into account in determining whether the resolution was passed by the requisite statutory majority. The shareholders who did not cast their votes were those who had abstained from voting at the meeting. 3723 shareholders who did not object to the scheme by casting their votes

* Since the provisions relating to reduction of capital under Companies Act, 2013 is not yet notified, the provisions of Companies Act, 1956, are dealt under ‘Reduction of Capital’
were not counted towards the votes required to approve the decision to reduce per se. The assumption made on account of abstention in respect of the persons who did not vote was only in respect of the mechanism of reduction. Therefore, it was not a case where the company had assumed that such persons who abstained from voting were in favour of the resolution that was resolved per se. Consequently, the question as to whether such abstention could be assumed to be in favour of the resolution would not arise in the facts of the case.

The material placed on record provided data of the share price movements. The price of ₹183 per share was well above the price at which the shares of the company were traded on the date on which the resolution was passed by the board of directors. The speculative variation in the price of the shares of the company would not operate to invalidate a resolution which had been validly passed. Moreover, there was no objection from any of the shareholders to the proposed reduction.

Where the object of reduction was to extinguish the holding of non-promoter shareholders on payment of fair value for their shares and reduction was approved by a majority of equity shareholders including majority of non-promoter shareholders, the reduction was sanctioned. [Sandvik Asia Ltd. v. Bharat Kumar Padamsi, (2009) 151 Com Cases 251: (2010) 2 Com LJ 255 (Bom).

**Procedure for reduction of share capital**

In view of the aforesaid provisions of the Act, a company proposing to reduce its share capital is required to take the following procedural steps:

1. Ensure that its articles of association contain a provision authorizing it to reduce its share capital. If there is no such provision then the articles have to be first altered in accordance with the provisions of Section 31 of the Companies Act, 1956.
2. Convene and hold a Board meeting to –
   (i) approve the scheme of capital reduction by a resolution;
   (ii) fix time, date and venue for holding a general meeting of the company for passing a special resolution for reduction of share capital subject to confirmation by Court* as per provisions of Section 100 of the Act and for altering the capital clause in the memorandum of association of the company, as a consequence of reduction in the share capital of the company;
   (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 173(2) of the Act; and
   (iv) Authorize the company secretary or some other competent officer to issue notice of the general meeting as approved by the Board.
3. Soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed reduction in the share capital of the company.
4. Issue notice of the general meeting to all members, directors and auditors of the company. Also send three copies of the notice of the general meeting to the stock exchanges where the securities of the company are listed.
5. Hold the general meeting and have the special resolution(s) passed.

In *Siel Ltd., In re.*, [(2008) 144 Com Cases 469 (Del)], reduction of capital was discussed that the petitioner company proposed to reduce its share capital to an amount of ₹24,63,86,251 by canceling its equity share capital of ₹49,31,21,830, which amount was to be credited to the general reserve account of the company. The reduction was approved by a special resolution passed in accordance with Section 189 of the Companies Act, 1956, at an extraordinary general meeting. The reduction was in accordance
with the articles of association of the company. The reduction of share capital was pursuant to a scheme of amalgamation approved by an overwhelming majority of the shareholders and creditors of the company.

The Central Government raised no objection to the proposed reduction of share capital.

The Petition was allowed. The reasons as stated are outlined in the following para:-

Reduction of the share capital of a company is a domestic concern of the company and the decision of the majority would prevail. If the majority by special resolution decides to reduce the share capital of the company, it has the right to decide to reduce the share capital of the company; it has the right to decide how this reduction should be effected. While reducing the share capital, the company can decide to extinguish some of its shares without dealing in the same manner with all other shares of the same class. A selective reduction is permissible within the framework of law for any company limited by shares.

The shareholders and the creditors of the company had approved the scheme including the reduction of share capital and none were affected by the scheme. There had been no unfair or inequitable transaction.

There was no legal impediment or valid reasons for not accepting the proposed scheme of cancellation and reduction of share capital. The resolution and the form of minutes proposed to be registered under Section 103(1) (b) of the Act for reduction of share capital of the company was to be approved.

6. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.

7. File e-form 23 along with a certified true copy of the special resolution(s), copy of explanatory statement under Section 173 and copy of altered Memorandum of Association and Articles of Association with the ROC within thirty days of the passing of the resolutions along with the prescribed filing fee for its registration under Section 192 of the Act.

8. Apply to Court for confirmation of the capital reduction by way of a petition in Form No.18 of the Companies (Court) Rules, 1959 [Refer Rule 11 of the said Rules].

9. The petition must be accompanied by an application by summons to the judge in chambers for directions as to the advertisement of the petition, the notices to be served and the proceedings to be taken.

10. The petition must be verified by an affidavit in Form No. 3 of the said Rules [Refer Rule 21 of the Companies (Court) Rules].

11. The petition should be accompanied by the following documents:

(a) A certified true copy of the memorandum and articles of association of the company.

(b) A certified true copy of the notice of the general meeting together with the explanatory statement annexed to the notice, at which the special resolution had been passed.

(c) A certified true copy of the special resolution authorizing the reduction of capital.

(d) A certified true copy of the latest audited balance sheet and profit and loss account of the company together with all the schedules and other papers attached/annexed thereto.

(e) A certified true copy of the minutes of proceedings at the general meeting at which the special resolution was passed.

12. Publish an advertisement of the petition not less than fourteen days before the date fixed for hearing in one issue of the Official Gazette of the State or the Union Territory concerned and in one issue each of a daily
newspaper in English language and a daily newspaper in the regional language circulating in the concerned State or Union Territory if the Judge so directs on receiving the petition.

13. The directions, if any, given by the Judge are to be adhered to with regard to:

(a) The proceeding to be taken for setting the list of creditors entitled to object including the dispensing with the observance of the provisions of Section 101(2) of the Companies Act, 1956 as regards any class or classes of creditors;

(b) Fixing the date with reference to which the list of creditors entitled to object including the dispensing with the observance of the provisions of Section 101(2) of the Companies Act, 1956 as regards any class or classes of creditors;

(c) Fixing the date with reference to which the list of such creditors is to be made out;

(d) The publication of notice; and

(e) Generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

14. A list of creditors in Form No. 21 of the Companies (Court) Rules, 1959, made out by an officer of the company competent to make the same should be filed by the company within the time allowed by the Judge. The list should contain the particulars as enumerated in Rule 49 of the Companies (Court) Rules, 1959. Copies of such list shall be kept at the registered office of the company and at the office of the advocate for the company, and any person desirous of inspecting the same, may, at any time, during the ordinary business hours, inspect and take extracts from the same on payment of the sum of one rupee.

15. The list of creditors should be verified by an affidavit made by an officer of the company competent to make the same. The affidavit should be in Form No. 22 with such variations as circumstances of the case may require [Rule 50 of the Companies (Court) Rules, 1959].

16. Within 7 days after the filing of the list of creditors or such further time as the Judge may allow, the company should send to each creditor a notice of presentation of the petition and the said list. The notice should contain the particulars as are enumerated in Rule 52 of the Companies (Court) Rules, 1959.

17. According to Rule 53, notice of the presentation of the petition and of the list of creditors in Rule 49 should within 7 days after the filing of the said list or such further time as Judge may allow, be advertised by the company in the manner prescribed by the Judge. The notice should be in Form No. 24 of the Rules.

18. The company should also, as soon as may be, file an affidavit proving the dispatch and the publication of the notices referred to in Rules 52 and 53, in Form No. 25 of the Rules.

19. Within the time fixed by the Judge, the company should also, according to Rule 55, file a statement signed and verified by the advocate of the company stating the result of the notices mentioned in the Rules 52 and 53.

20. The advocate of the company has to prepare the result of settlement of the list of creditors in the form of certificate which is to be signed by the Judge. Such certificate should contain the parts as enumerated in Rule 58.

21. After the expiry of not less than 14 days from the filing of the certificate mentioned above, petition will be set down for hearing. Notice of the hearing of the petition has to be advertised in Form No. 29 of the Rules, in such time and in such newspapers as the Judge may direct.

22. At the hearing of the petition the Judge may give such directions as he may deem proper with reference to
securing in the manner mentioned in Section 101(2)(c) of the Act, the debts or claims of any creditors who
do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to
enable the company to comply with such directions.

23. Before confirming reduction of capital, the Court* will satisfy itself that the interest of the creditors and
different classes of shareholders, if any, are not affected adversely by the said reduction of capital.

Where the Court* makes an order confirming reduction, it may also make an order, for any special reason,
directing the company to add to its name as the last words thereof, the words “and reduced” during such
period commencing on or at any time after the date of its order and also require the company to publish the
reasons for the reduction of such other information in regard thereto, as it thinks proper. If the Judge
makes an order directing the company to publish the reasons for the reduction or such other information
in regard thereto, the company should comply with the same as per Rule 64.

24. The order of the Court* confirming the reduction of capital and approving the minutes shall be in Form No.
30 of the Rules with such authorisation as may be necessary.

25. File e-form 21 prescribed in the Companies (Central Government's) General Rules and Forms (Amendment)
Rules, 2006 with the Registrar.

26. Deliver to the Registrar, a certified copy of the order of the Court* confirming the reduction of the share
capital of the company and of the minute approved by the Court* and produce before him, if so required,
the original copy of the order. The Registrar will register the copy of the order and the minute and will certify
the same under his hand.

On the registration of the order and the minute, the resolution for reducing share capital as confirmed by
the order, shall take effect. The minutes when registered shall be deemed to be substituted for the
Corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been
originally contained therein.

27. Publish the notice of registration in such manner as the Court* directs.

28. Make necessary alteration in the records of the company, on all stationery items, share certificates, blank
forms of share certificates lying in the office of the company and all copies of the memorandum and
articles of association of the company lying in the office of the company.

29. Take all other steps in accordance with the scheme of reduction of share capital of the company as
approved by the Court, e.g. to pay-up share capital which is in excess of the wants of the company.

30. The company must send to the concerned stock exchanges in case of listed company three copies of all
the notices, circulars etc. issued and/or published in newspapers by the company in connection with the
reduction of the share capital of the company as per the Listing Agreements signed with the stock
exchanges.
SPECIMEN OF ORDINARY RESOLUTION FOR INCREASING THE AUTHORISED SHARE CAPITAL OF THE COMPANY

“RESOLVED THAT pursuant to Section 61(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 and Article ... of the Articles of Association of the company, the Authorised Share capital of the company be and is hereby increased from ₹ 50,00,000 (Rupees fifty lakh) divided into 5,00,000 (five lakh) equity shares of ₹ 10 each to ₹ 5,00,00,000/- (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of ₹ 10 (Rupees ten) each by creation of 45,00,000 equity shares of ₹ 10 each ranking pari passu in all respect with the existing equity shares.”

(Note: If the Articles of Association prescribe that a special resolution is required for increase of authorized share capital, pass the resolution as a special resolution.)

Explanatory Statement

The directors of the company have felt that for profitable working of the company, the company needs more funds in the form of equity share capital. The present authorised share capital of the company is only ₹50,00,000 (Rupees fifty lakhs) divided into 5,00,000 (five lakh) equity shares of ₹10/- (Rupees ten) each and the entire authorised share capital has been issued, subscribed and paid up. The Board, therefore, decided that the authorised share capital of the company be increased to ₹5,00,00,000 (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of ₹ 10/- (Rupees ten) each.

Hence the proposed resolution is recommended for consideration of and approval by the shareholders of the company.

None of the directors is concerned or interested in the proposed resolution.

SPECIMEN OF THE RESOLUTION FOR CONSOLIDATION OF SHARES

(1) Ordinary Resolution

“RESOLVED THAT—

(i) pursuant to Section 61(1)(b) and other applicable provisions, if any, of the Companies Act, 2013, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of ₹ 5 (Rupees five) each of the company be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of ₹ 10/- (Rupees ten) each;

(ii) all the present shareholders holding in all 2,00,00,000 (two crore) issued, subscribed and fully paid equity shares of ₹ 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of ₹ 10 (Rupees ten) each;

(iii) the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.”

(2) Special Resolution

“RESOLVED THAT as a consequence of consolidation of the equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ₹ 25,00,00,000 (Rupees twenty-five crore) divided into two crore and fifty lakh (2,50,00,000) equity shares of ₹ 10/- (Rupees ten) each.”
Explanatory Statement

In order to maintain uniformity in the nominal value of the company’s equity shares with the nominal value of equity shares of other companies, the Board of directors of the company, at its meeting held on ............. resolved to take steps for consolidation of the company’s equity shares of ₹ 5/- (Rupees five) each into shares of ₹ 10/- (Rupees ten) each.

Therefore, the proposed resolutions are commended to the shareholders of the company for their consideration and approval.

The directors of the company are interested in the proposed resolutions to the extent of their respective shareholdings in the company.

SPECIMEN OF THE RESOLUTION FOR SUB-DIVISION OF SHARES

(1) Ordinary Resolution

“RESOLVED THAT –

(i) pursuant to Section 61(1)(d) and other applicable provisions, if any, of the Companies Act, 2013, and Article... of Articles of Association of the company, all the 5,00,000 (five lakh) equity shares of ₹100 (Rupees hundred) each of the company be hereby sub-divided into fifty lakh (50,00,000) equity shares of ₹ 10/- (Rupees ten) each;

(ii) all the present shareholders holding in all 2,00,000 (two lakh) issued, subscribed and fully paid equity shares of ₹ 100 (Rupees hundred) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of ₹10 (Rupees ten) each of the aggregate value equal to the amount paid by each shareholder on his/her existing fully paid equity shares of ₹ 100/- (Rupees hundred) each;

(iii) the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.”

(2) Special Resolution

“RESOLVED THAT as a consequence of sub-division of the equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ₹ 5,00,00,000 (Rupees five crore) divided into fifty lakh (50,00,000) equity shares of ₹ 10/- (Rupees ten) each”

Explanatory Statement

In order to maintain uniformity in the nominal value of the company’s equity shares with the nominal value of equity shares of other companies, the Board of directors of the company, at its meeting held on ............. resolved to take steps for sub-division of the company’s equity shares of ₹ 100/- (Rupees hundred) each into equity shares of ₹ 10/- (Rupees ten) each.

Therefore, the proposed resolutions are commended to the shareholders of the company for their consideration and approval.

The directors of the company are interested in the proposed resolutions to the extent of their respective shareholdings in the company.
SPECIMEN OF THE RESOLUTION FOR CONVERSION OF SHARES INTO STOCK

(1) Ordinary Resolution

“RESOLVED THAT—

(i) pursuant to Section 61(1)(c) and other applicable provisions, if any, of the Companies Act, 2013, and Article ............ of Articles of Association of the company, out of the total authorized share capital of ₹ 10 Crore, 10,00,000 (ten lakh) fully paid equity shares of ₹ 10 (Rupees ten) each of the company bearing distinctive Nos. 1 to 10,00,000 (both inclusive), be and are hereby converted into stock;

(ii) all the shareholders of the shares bearing distinctive Nos.1 to 10,00,000 be and are hereby authorised to surrender their share certificates to the company and obtain from the company stock certificates of the desired value, on an application addressed to the Board of directors of the company at the company’s registered office;

(iii) the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolutions, including recall of the existing share certificates, issue, on specific requests from the shareholders, of stock certificates in lieu of the surrendered share certificates in terms of the foregoing resolutions and removal of the names of those shareholders from the register of members of the company, who surrender their share certificates and desire to have stock issued in lieu thereof.”

(2) Special Resolution

“RESOLVED THAT consequent upon conversion of equity shares of the company into stock, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The Authorised Share Capital of the Company is ₹ 10,00,00,000 (Rupees ten crore) divided into ninety lakh (90,00,000) equity shares of ₹ 10/- (Rupees ten) each and stock of the aggregate value of ₹ 1,00,00,000/- (Rupees one crore)”

Explanatory Statement

Members of the company holding shares bearing distinctive Nos. 1 to 10,00,000 (inclusive) have requested the company for the issue of stock in lieu of the shares held by them in the company. They have made the request on the ground that handling stock is easier than shares, for which they are required to keep a number of share certificates in safe custody and every time they transfer certain shares or buy certain shares they have to send share transfer forms and the relevant share certificates and other related documents to the company involving the risk of their being lost/pilfered in transit. This process also involves long delays on account of the unending paperwork in the company’s office.

Responding to the demand of the members, the Board of directors of the company, at their meeting held on.......................... considered the matter in detail and eventually resolved to accede to the request of the members of the company and passed the necessary resolution to bring the matter before the shareholders of the company for their consideration and approval, with or without modifications.

Therefore, the proposed resolution is before the shareholders of the company for their consideration and approval. None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF THE RESOLUTION FOR RE-CONVERSION OF STOCK INTO SHARES

(1) Ordinary Resolution

“RESOLVED THAT—

(i) pursuant to Section 61(1)(c) and other applicable provisions, if any, of the Companies Act, 2013, and article ............ of articles of association of the company, stock of the aggregate value of ₹ 1,00,00,000/-
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(Rupees one crore) be and is hereby converted into 10,00,000 (ten lakh) fully paid equity shares of ₹ 10 (Rupees ten) each of the company bearing distinctive Nos. 1 to 10,00,000 (both inclusive) thereby increasing the number of equity shares in the authorised share capital clause (Clause V) of the company's memorandum of association by ten lakh equity shares of ₹ 10/- (Rupees ten) each and deleting the stock of the aggregate value of ₹ 1,00,00,000/- (Rupees one crore) from the share capital clause (Clause V) of the memorandum of association of the company;

(ii) all the stockholders of the aggregate value of ₹ 1,00,00,000/- (Rupees one crore) be and are hereby authorised to surrender their stock certificates to the company and obtain from the company share certificates to the extent of the nominal value of the stock held by them, on an application addressed to the Board of directors of the company at the company’s registered office;

(iii) the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing stock certificates, issue, on specific requests from the stockholders, share certificates in lieu of the surrendered stock certificates in terms of the foregoing resolutions and entry in the register of members of the company, of the names of those stockholders, who surrender their stock certificates and desire to have shares issued in lieu thereof.

(2) Special Resolution

“RESOLVED THAT consequent upon re-conversion of stock into fully paid equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ₹ 10,00,00,000 (Rupees ten crore) divided into one crore (One crore) equity shares of ₹ 10/- (Rupees ten) each”

Explanatory Statement

On .......... the company had issued stock of the aggregate value of ₹ 1,00,00,000/- (Rupees one crore) to the shareholders who had held 10,00,000 (ten lakh) fully paid equity shares of ₹ 10/- (Rupees ten) each of the company.

All the stockholders of the company have now requested the company for re-conversion of their stock into fully paid equity shares of ₹ 10/- (Rupees ten) each of the company.

In response to the demand of the stockholders, the Board of directors of the company, at their meeting held on ......................... considered the matter in detail and eventually resolved to accede to the request of the stockholders of the company and passed the necessary resolution to bring the matter before the shareholders of the company for their consideration and approval, with or without modifications.

Therefore, the proposed resolutions are before the shareholders of the company for their consideration and approval.

None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF BOARD RESOLUTION FOR SERVING NOTICE REQUIRING A DEFAULTING MEMBER TO PAY CALL OR INSTALLMENT THEREOF WITHIN STIPULATED TIME

“RESOLVED THAT –

(i) notice be given in accordance with articles and .......... of the Articles of Association of the company to all those members of the company, who have not paid the second call amount (as per list placed on the table and initialled by the chairman of the meeting for the purpose of identification ) on equity shares held by them in the company till the .......... day of .......... 2013, which date was fixed and notified for payment of
the call, calling upon them to pay such call amount on or before the day of 2013 together with interest at the rate of ........... per cent per annum from the following day of the said date ................... upto the date of actual payment and stating that in the event of non-payment of the call money on or before the said date, the shares will be liable to forfeiture; and

(ii) Shri…………… Company Secretary, be and is hereby authorised to serve, at the earliest possible date, the notice on the defaulting members of the company in terms of the foregoing resolution by registered post with acknowledgement due.

**SPECIMEN OF THE NOTICE TO A DEFAULTING MEMBER REQUIRING HIM TO PAY CALL OR INSTALLMENT THEREOF WITHIN STIPULATED PERIOD OF TIME**

Name of the Company
Regd.Off. Address
Ref. No. ......................... Dated ....................
Registered with AD
Shri .................................
Dear Sir/Madam,

Subject : Notice requiring to pay the second call of ₹ .......... per share due on equity shares of the company allotted to you.

Pursuant ................... to Articles and ................... of the Articles of Association of the company, and on the authority of the resolution of the Board of directors of the company passed at its meeting held on ............ , notice was given to you requiring you to pay the second call of ₹ .......... on all partly paid equity shares of the company, on or before the ............ Day of ............ 2013, but the said amount has till the date of this notice remained unpaid.

Under the authority of the Board of directors of the company, we hereby call upon you to pay the said second call of ₹ .......... per share on ........ equity shares held by you in the company on or before ........ and in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

We trust you will honour your obligation under the Articles of Association of the company within the stipulated time.

Thanking you,

Yours faithfully

for ........................................... Limited

(Company Secretary)

**SPECIMEN OF BOARD RESOLUTION FORFEITING SHARES FOR NON-PAYMENT OF CALL ON EQUITY SHARES**

“RESOLVED THAT pursuant to Article........... of the Articles of Association of the company, the undermentioned equity shares in the capital of the company be and are hereby forfeited for non-payment of the second and final call of ₹ .......... per share payable on or before.... 2013, of which due notice was served upon the defaulting members on ......... 2013 by registered post with acknowledgement due:

<table>
<thead>
<tr>
<th>No. of Shares</th>
<th>Dist. Nos.</th>
<th>Names of the Registered Holders</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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DRAFT RESOLUTION FOR FORFEITURE OF SHARES ON NON-PAYMENT OF
ALLOTMENT MONEY AS PER FINAL NOTICE

The Board was informed that pursuant to the resolution passed in the meeting of the Board of directors held on
21.10.2013, Final Notice for payment of Allotment Money dated 21.10.2013 (a copy was placed on the table) was
sent to 2489 shareholders of the company by registered post for payment of Allotment Money on 74880 equity
shares allotted on conversion of 14% Secured Fully Convertible Debentures of ` 120/- each and 5,50,909 Rights
equity shares. 2431 shareholders have not complied with the requirements of this final notice i.e. not remitted the
outstanding Allotment Money due on the shares allotted to and held by them, on or before the last date of
21.11.2013 fixed for the purpose and even till 31.12.2013. No Allotment Money was outstanding on shares held
by the directors/ promoters of the company.

Two lists of such shareholders were placed on the table and brief summary was given hereunder. Details of
shares and shareholders:

<table>
<thead>
<tr>
<th>No. of Shareholders</th>
<th>No. of Shares</th>
<th>Allotment Money Due (`)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Capital</td>
</tr>
<tr>
<td>487</td>
<td>69,032</td>
<td></td>
</tr>
<tr>
<td>1,944</td>
<td>5,45,589</td>
<td></td>
</tr>
</tbody>
</table>

Article 66 of the Articles of Association of the Company provides that if the requirements of such notice as
aforesaid are not complied with in respect of the shares for which such notice was given, such shares shall be
forfeited by a resolution of the Board of directors. Such forfeiture shall include all dividends declared but not
actually paid on such forfeited shares before forfeiture.

Pursuant to Article ......................... a notice of the resolution forfeiting the shares shall be given to such shareholders
and an entry of the forfeiture with the date thereof shall be made in the Register of Members forthwith.

As per Article ........................., the forfeited shares shall be deemed to be the property of the company and such
forfeited shares may be sold or issued or otherwise disposed off in such manner as the directors shall approve.
However, pursuant to Article ........................., the directors may annul forfeiture of any share(s) before disposal
thereof.

“RESOLVED that pursuant to the provisions of Article 66 of the Articles of Association of the Company and
consequent upon the shareholders having not complied with the requirements of the Final Notice for Payment of
Allotment Money dated 21.10.2013 sent under registered post i.e. not remitted the Allotment Money due on such
equity shares together with interest on or before 21.11.2010, the last date fixed for payment, the 69,032 equity
shares of ` 10/- each allotted on 23rd July, 2011 and 23rd January, 2012 on conversion of 14% Secured Fully
Convertible Debentures of ` 120/- each in terms of the prospectus dated 28.10.2013 and the 5,45,589 equity
shares of ` 10/- each allotted on 23.7.2011 on Rights basis in terms of the Letter of Offer dated 29.4.2010 as per
particulars whereof contained in the two lists placed on the table, be and are hereby forfeited.

RESOLVED further that necessary entry, as required under Article 67 of the Articles of Association of the Company
be made in the Register of members and the notice of this resolution of forfeiture be sent to the such members
individually under registered post and be notified to the Stock Exchanges at Mumbai, Kolkata, Delhi and Kanpur
where the equity shares of the company are listed and that Mr. .......................... President Finance and Mr.
.............................. Company Secretary be and are hereby authorised severally to sign and send requisite notice and
to do all acts, deed and things in connection therewith or incidental thereto.”
SPECIMEN OF BOARD RESOLUTION APPROVING SALE OF FORFEITED SHARES

“RESOLVED THAT ......................... equity shares of ₹ ......................... each bearing Distinctive Nos. ......................... to ........................., both inclusive, previously registered in the name of Shri ......................... and forfeited on ......................... as per declaration duly signed by the Company Secretary and placed on the table, be and are hereby sold to Shri ......................... for ₹ ......................... per share and that, upon payment of that sum, an equity share certificate of equity shares credited with ₹ ......................... paid-up per share be issued to the said Shri ......................... accordingly.”

SPECIMEN OF THE SPECIAL RESOLUTION FOR CANCELLATION OF SHARES

“RESOLVED THAT pursuant to Section 61(1)(e) and other applicable provisions, if any, of the Companies Act, 2013, and article........ of the articles of association of the company, the authorised share capital of the company be and is hereby reduced from ₹ 20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of ₹ 10/- (Rupees ten) each to ₹ 10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of ₹ 10/- (Rupees ten) each by cancelling one crore (1,00,00,000) equity shares of ₹ 10/- (Rupees ten) each, which have not been taken or agreed to be taken by any person and consequently Clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ₹ 10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of ₹ 10/- (Rupees ten) each.”

Explanatory Statement

The company was incorporated on ........ with an authorised share capital of ₹ 20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of ₹ 10/- (Rupees ten) each. The present issued, subscribed and paid-up share capital of the company is ₹ 7,00,00,000/- (Rupees seven crore) divided into 70,00,000 (Seventy lakh) equity shares of ₹ 10/- (Rupees ten) each. The company has no proposal at hand which would require additional capital. The Board of directors of the company, at its meeting held on ........ had resolved to reduce the authorised share capital of the company by cancelling one crore (1,00,00,000) equity shares of ₹ 10/- (Rupees ten) each, which have not been taken or agreed to be taken by any person. Therefore, the proposed special resolution is before the shareholders of the company for their consideration and approval.

None of the directors of the company is interested in the proposed resolution.

SPECIMEN OF REGULATION IN ARTICLES REGARDING SURRENDER OF SHARES

The Directors may, subject to the provisions of the Act, accept a surrender of any shares from or by any member desirous of surrendering them on such terms as they think fit.

The phrase “surrender of shares” means the surrender to the company on the part of the registered holder of the shares already issued. Power to surrender shares does not include power to renounce newly issued shares. A shareholder whose shares are forfeited ceases to be a member but a shareholder who surrenders his shares does not cease to be a member and can, therefore, be put on the list of contributories.

The Board may accept a surrender of shares and will have to approve it by its resolution. If the Board decides to reissue the surrendered shares, the Board will also give approval to the reissue or delegate that power to any director or officer of the company. The same procedure as in the case of reissue of forfeited shares will be followed.

SPECIMEN OF THE SPECIAL RESOLUTION FOR REDUCTION OF SHARE CAPITAL OF A COMPANY

“RESOLVED THAT—

(i) pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2103, article ................. of articles of association of the company and subject to confirmation by the National Company
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Law Tribunal at .......... and subject to such other approvals, consents, permissions or sanctions of any other authority, body or institution (hereinafter collectively referred to as “the concerned authorities”) as may be required, and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions, the subscribed, issued and paid up equity share capital of the company be reduced from ₹ 50,00,00,000 (Rupees fifty crore) divided into 5,00,00,000 (Five crore) equity shares of ₹ 10 each to ₹ 25,00,00,000 (Rupees twenty-five crore) divided into 5,00,00,000 (Five crore) equity shares of ₹ 5 each, and the surplus amount, i.e., ₹ 25,00,00,000 (Rupees twenty-five crore) , being in excess of the wants of the company be paid to the shareholders.”

Explanatory Statement
As the members are aware, the company has a cash surplus which has resulted from the recent restructuring including merger of the erstwhile .................. Ltd. with the company. The Board is of the view that the present economic environment in the country is not conducive to expansion or diversification. The Board of directors of the company discussed the matter in detail at its meeting held on ................... and resolved to return the surplus cash to the members in recognition of their dedication, consistency and utmost faith reposed by them in the management of the company.

Hence the proposed special resolution is for consideration of and approval by the members of the company.

Directors of the company are interested in the proposed resolution to the extent of their respective shareholdings in the company.

LESSON ROUND UP

– Section 61 of the Act deals with different modes of alteration of share capital of a company. Any modes of alteration of share capital must be authorised by the article of the company. In the absence of an express provision in the article, no alteration of the capital in any of the specified modes can be done. It should therefore, be ensured, before embarking upon passing of a resolution to alter the capital, that there is an express provision in the articles authorizing the company to alter its share capital.

– The alteration of share capital in any of the ways specified above requires an ordinary resolution to be passed at a general meeting of the company, unless the Articles otherwise provide.

– A company may alter its share capital by consolidation or division of all or any of its shares into shares of larger denominations than its existing shares. To consolidate means to bring together (separate parts) into a single or unified whole.

– A company may sub-divide its share capital if so authorised by articles of association. It is done by an ordinary resolution passed at a general meeting. Sub-division is the method by which the nominal value of each share is reduced to a smaller amount. For example one share of ₹ 100 may be subdivided into 10 shares of ₹ 10 each. However the total amount of authorised share capital remains unaltered. Such a change is commonly called a share split. It is made by a company to widen the ownership of its shares.

– Companies Act, 2013, provides the power to increase the share capital. if the increase of share capital results in alteration of articles of association special resolution is required, otherwise ordinary resolution is to be passed.

– When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock. Stock is the aggregate of the fully paid-up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal value of shares.

– Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply on so much of the share capital as is converted into stock.
A forfeited share is a partly paid share in a company that are forfeited because the shareholder has failed to pay a subsequent part or final payment; a share to which the right is lost by the shareholder who has defaulted in paying call money.

According to clause (e) of sub-section (1) of section 61 of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, cancel its share which, at the date of passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares capital by the amount of the shares so cancelled.

Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares.

The provision relating to reduction of capital is not yet notified under Companies Act, 2013 and according the procedure relating to reduction is dealt under companies Act, 1956.

A company limited by the shares or a company limited by guarantee and having share capital can if authorised by its articles, by special resolution and subject to confirmation by the High Court on petition reduce its share capital. If the articles do not contain any provision for reduction of capital, the articles must first be altered so as to give the power. In exercising its power the court will have due regard to the interests of creditors, who may consent or object to the reduction.

**SELF-TEST QUESTIONS**

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)*

1. Write the Board resolution/resolution in general Meeting for:
   - (a) Increasing the authorised share capital of the company
   - (b) For consolidation of shares
   - (c) For forfeiture of shares

2. Explain the procedure for Re-conversion of stock in to fully paid shares.

3. Draft a Board Resolution of sale of Forfeited shares.

4. Explain the procedure for cancellation of shares.

5. What are the different modes of altering share capital of a company? State the procedure for reduction of share capital of a company.
Lesson 5
Issue and Redemption of Debentures and Bonds

LESSON OUTLINE

- Debentures
- Types of debentures
- Conditions for issue of Secured debentures
- Debenture Redemption Reserve
- Debenture Trustee
- Debenture Trust Deed
- Obligations of Company
- Issue and Listing of Non Convertible Debt instruments
- Issue of Convertible Debt instruments
- Annexure
- Lesson Round UP
- Self Test Questions

LEARNING OBJECTIVES

The issue and redemption of Debentures are regulated by section 71 of Companies Act 2013 read with Rule 18 of Companies (Share Capital and Debentures) Rules 2014. In addition, in case of Issue and listing of non-convertible debt Instruments, the provisions of SEBI (Issue and Listing) of Debt Securities Regulations 2008 and in case of convertible debt Instruments SEBI (ICDR) Regulations 2009 are to be complied with.

After reading this lesson you will be able to understand the procedural aspects of debt securities including convertible and non-convertible Instruments.
DEBENTURES

A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest. It is one of the methods of raising the loan capital of the company. A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company’s capital structure, it does not become share capital.

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

The debentures in a company shall be movable property transferable in the manner provided by the articles of the company according to section 44.

Types of debentures

On the basis of charge: The section 2(30) of the Companies Act 2013 clarifies that the debentures can be secured or unsecured.

(a) **Secured debentures:** Where debentures are secured by a mortgage or a charge on the property of the company, they are called secured debentures. Debentures that are secured by a mortgage of the whole or part of the assets of the company are called mortgage debentures or secured debentures. The mortgage may be one duly registered in the formal way or one which is secured by the deposit of title deeds in case of urgency. If the issuer defaults in the repayment of principal or payment of interest, his assets can be sold to repay the liability to the investors.

(b) **Unsecured debentures:** Where they are not secured by any mortgage or charge on any property of the company they are said to be naked or unsecured debentures. These Debentures do not carry any charge on the assets of the company. The holders of such debentures do not therefore have the right to attach particular property by way of security as to repayment of principal or interest. If the issuer defaults in the repayment of principal or payment of interest, the investor has to be along with the unsecured creditors of the company.

On the basis of convertibility: the section 71(1) of the Companies Act 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Thus on the
basis of convertibility, debentures can be convertible and non-convertible debentures. Convertible debentures can be fully convertible or partly convertible.

(a) Convertible Debentures: Where the debentures are convertible, partly or wholly, into the shares of a company after a specified time, either as a result of exercise of option or in terms of the issue, they are called convertible debentures. Convertible debentures can be of following two types:

(i) Fully Convertible Debentures (FCDs): These are convertible into equity shares of the company with or without premium as per the terms of the issue, on the expiry of specified period or periods. The tenure of the convertible securities of the issuer shall not exceed 18 months from the date of their allotment. Interest will be payable on these debentures upto the date of conversion as per terms of the issue.

(ii) Partly Convertible Debentures (PCDs): These may consist of two kinds namely - convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non convertible portion is redeemed at the expiry of the stipulated period. If the conversion takes place at or after 18 months, the conversion is optional at the discretion of the debenture holder.

BONDS

Bonds are typically issued by financial institutions, government undertakings and large companies. The interest rate is assured and is paid at a fixed interval. On maturity, the principal is repaid. Bond is a form of loan. The holder of the bond is the lender and the issuer of the bond is the borrower. Bonds are issued to fund long-term capital expenditure needs. As per Section 2(30) of the Companies Act 2013 “debenture” includes bonds. Therefore all the provisions applicable for debentures given in the Companies Act 2013 and other relevant statutes are applicable for bonds also.

Types of bonds

Some of the types of bonds issued in the Indian markets are given below:

- Deep discount bonds, also known as zero-coupon bonds, are bonds wherein there is no interest or coupon payment and the interest amount is factored in the maturity value.

- Corporate bonds are issued by companies and offer interest rates higher than bonds issued by public sector units and other financial institutions. The interest rate on these bonds is governed by their credit rating and higher the rating, lower is the interest rate offered by them.

- Sovereign bonds are issued by the Reserve Bank of India. These can be referred to as low-risk or even risk-free bonds.

- Convertible bonds are another category wherein the bond holder has an option to convert the bonds into equity after a fixed tenor. These may be fully or partially convertible where only a part is converted and the other part matures.

ISSUE OF DEBENTURE

- Section 71 of the Companies Act 2013 specifies that any company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.

- The debentures can be issued in the same manner as shares in a company. But unlike shares, debentures can be issued at a discount or at a premium. The Companies Act, 2013 places no restriction in this regard.
- Debentures can be issued by any type of company- one person company, small company, private company, public company or listed company.
- Debentures cannot have voting rights.
- A public company has to appoint debenture trustee before the issue of debentures.
- Any company can issue secured or unsecured debentures.
- For secured debentures conditions for issue of secured debentures under the Companies Act 2013, have to be followed. Debenture trustee has to be appointed and the trust deed in Form No. SH-12 has to be executed.
- Any company can issue debentures which are convertible or non-convertible.
- For convertible debentures, a special resolution should be passed at a general meeting.
- A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. Interest payable on them is a debt and can be paid out of capital. There is no ceiling, minimum or maximum, for the rate of interest payable on debentures.
- Where debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
- Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. (Not notified)
- If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both. (Not notified)
- A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.
- For issue and listing of non-convertible debt securities, Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 has to be followed.
- For issue and listing of convertible debt securities, provisions mentioned in Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 has to be followed.

**CONDITIONS FOR ISSUE OF SECURED DEBENTURES**

Section 71(3) states that a company may issue secured debentures subject to terms and conditions as prescribed. According to Rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014, the company shall not issue secured debentures, unless it complies with the following conditions, namely:

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. However, 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;

(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription;
of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-

(i) any specific movable property of the company (not being in the nature of pledge); or

(ii) any specific immovable property wherever situate, or any interest therein.

DEBENTURE REDEMPTION RESERVE

Section 71(4) states that where debentures are issued by any company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

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

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

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

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

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

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

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;

(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
(d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

(e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

DEBENTURE TRUSTEE

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate. Section 71(5), specifies that no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred (500) for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees.

According to the Companies Act, 2013, the appointment of debenture trustees is compulsory only when the prospectus is issued to more than 500 persons for subscription of debentures. Further, the Rule 18 specifies that for secured debentures issued by any type of company, the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures.

The conditions governing the appointment of debenture trustees under sub-section (5) of section 71 are prescribed under Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014.

(a) The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

(b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

(c) A person shall not be appointed as a debenture trustee, if he-

(i) beneficially holds shares in the company;

(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

(d) The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act: Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

(e) Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.
To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee. In India, the issuer pays to the Debenture Trustee. Debenture Trustees are regulated by SEBI. The SEBI (Debenture Trustees) Regulations, 1993 govern the Debenture Trustees and provide for eligibility criteria for registration of Debenture Trustees, monitoring and review, registration, Code of Conduct, procedure of action in case of defaults, avoidance of conflict of interest and inspection of Debenture Trustees by SEBI, amongst other things.

**Duties of Debenture Trustee**

Section 71(6) of the Companies Act 2013 says that a debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances. It shall be the duty of every debenture trustee to –

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(c) call for periodical status or performance reports from the company;

(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee;

(e) appoint a nominee director on the Board of the company in the event of –
   (i) two consecutive defaults in payment of interest to the debenture holders; or
   (ii) default in creation of security for debentures; or
   (iii) default in redemption of debentures.

(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;

(j) do such acts as are necessary in the event the security becomes enforceable;

(k) call for reports on the utilization of funds raised by the issue of debentures-

(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;

(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;

(n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture
trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

Some of the obligations of Debenture Trustees provided in the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are-

i) The debenture trustee shall be vested with the requisite powers for protecting the interest of holders of debt securities including a right to appoint a nominee director on the Board of the issuer in consultation with institutional holders of such securities.

ii) The debenture trustee shall carry out its duties and perform its functions under these regulations, the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, the trust deed and offer document, with due care, diligence and loyalty.

iii) The debenture trustee shall ensure disclosure of all material events on an ongoing basis.

iv) The debenture trustees shall supervise the implementation of the conditions regarding creation of security for the debt securities and debenture redemption reserve.

**Role of debenture trustee with respect to creation or enforcing the security in a debenture issue**

Creation of security means mortgaging the property in favour of Debenture Trustee for the benefit of debenture holders. This is an incidence of ownership of property and creation of security has to be done by the owner of the property. However, the debenture holders are beneficiaries and they have no access to mortgaged property. The Debenture Trustee holds the secured property on behalf of issuer of security and for benefit of debenture holders. In the event of default by the issuer of security, the Debenture Trustee will have the power and authority to bring the secured property to sale following the procedure in the Transfer of Property Act and the proceeds of sale will have to be applied to redeem the debentures.

**DEBENTURE TRUST DEED**

Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders. As per section 71 (7), any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion: Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

As per section 71 and sub-rule (1) of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 a trust deed in **Form No. SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.
As given in Form No. SH.12, the debenture trust deed shall, *inter alia*, contain the following:-

1. **Description of debenture issue**

   (a) Purpose of raising finance through the debenture issue;
   
   (b) Details of debenture issue as regards amount, tenure, interest/coupon rate, periodicity of payment, mode of payment and period of redemption;
   
   (c) An undertaking by the company to pay the interest and principal amount of such debentures to the Debenture holders as and when it becomes due, as per the terms of offer;
   
   (d) The terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, options available, and debt equity ratio and debt service coverage ratio, if applicable.

2. **Details of charge created (in case of secured debentures)**

   (a) Nature of charge created and examination of title;
   
   (b) Rank of charge created viz. first, second, pari passu, residual, etc;
   
   (c) Minimum security cover required;
   
   (d) Complete details of the asset(s) on which charge is created such as description, nature, title, location, value, basis of valuation etc.;
   
   (e) Methods and mode of preservation of assets charged as security for the debentures;
   
   (f) Other particulars of the charge, e.g., time period of charge, rate of interest, name of the charge holder;
   
   (g) Provision for subsequent valuation;
   
   (h) Procedure for allowing inspection of charged assets and book of accounts by debenture trustee or any person or person authorized by it;
   
   (i) Charging of future assets
   
   (j) Time limit within which the future security for the issue of debentures shall be created
   
   (k) Circumstances specifying when the security may be disposed of or leased out with the approval of trustees
   
   (l) Enforceability of securities, events under which security becomes enforceable
   
   (m) Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee

3. **Particulars of the appointment of debenture trustee(s)**

   (a) The conditions and procedure for the appointment of the debenture trustee;
   
   (b) Procedure for resignation by trustee including appointment of new trustees;
   
   (c) Provision that the debenture trustee shall not relinquish his office until another debenture trustee has been appointed;
   
   (d) Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by the holders of not less than three fourth in value of debentures;
   
   (e) Fees or commission or other legal travelling and other expenses payable to the trustee(s) for their services;
   
   (f) Rights of the trustee including the right to inspect the registers of the company and to take copies and extract thereof and the right to appoint a nominee director;
Duties of the trustee.

4. Events of defaults

(a) Events under which the security becomes enforceable which shall include the following events:
   (i) When the company makes two consecutive defaults in the payment of any interest which ought to have been paid in accordance with the terms of the issue;
   (ii) When the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so;
   (iii) When an order has been made by the Tribunal or a special resolution has been passed by the members of the company for winding up of the company;
   (iv) When any breach of the terms of the prospectus inviting the subscriptions of debentures or of the covenants of this deed is committed;
   (v) When the company creates or attempts to create any charge on the mortgaged premises or any part thereof without the prior approval of the trustees/debenture holders;
   (vi) When in the opinion of the trustees the security of debenture holders is in jeopardy.

(b) Steps which shall be taken by the debenture trustee in the event of defaults;

(c) Circumstances specifying when the security may be disposed off or leased out with the approval of trustees;

(d) A covenant that the company may hold and enjoy all the mortgaged premises and carry on therein and therewith the business until the security constituted becomes enforceable.

5. Obligations of company

This section shall state the company’s duty with respect to-

(a) maintaining a Register of debenture holders including addresses of the debenture holders, record of subsequent transfers and changes of ownership;
(b) keeping proper books of accounts open for inspection by debenture trustee;
(c) permitting the debenture trustee to enter the debenture-holder’s premises and inspect the state and condition of charged assets;
(d) furnishing information required by the debenture trustee for the effective discharge of its duties and obligations, including copies of reports, balance sheets, profit and loss account etc.;
(e) keeping charged property/security adequately insured and in proper condition;
(f) paying all taxes, cesses, insurance premium with respect to charged property/security, on time;
(g) not declaring any dividend to the shareholders in any year until the company has paid or made satisfactory provision for the payment of the installments of principal and interest due on the debentures;
(h) creating the debenture redemption reserve;
(i) converting the debentures into equity in accordance with the terms of the issue, if applicable;
(j) informing the debenture trustee about any change in nature and conduct of business by the company before such change;
(k) informing the debenture trustee of any significant changes in the composition of its Board of Directors;
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(l) informing the debenture trustee of any amalgamation, merger or reconstruction scheme proposed by the company;

(m) keeping the debenture trustee informed of all orders, directions, notices, of court/tribunal affecting or likely to affect the charged assets;

(n) not creating further charge or encumbrance over the trust property without the approval of the trustee;

(o) obligation of the company to forward periodical reports to debenture trustees containing the following particulars:
   (i) updated list of the names and addresses of the debenture holders;
   (ii) details of interest due but unpaid and reasons thereof;
   (iii) the number and nature of grievances received from debenture holders and (a) resolved by the company (b) unresolved by the company and the reasons for the same.
   (iv) a statement that the assets of the company which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due

(p) complying with all directions/guidelines issued by a Regulatory authority, with regard to the debenture issue

(q) submitting such information, as required by the debenture trustee

6. Miscellaneous:

(a) The conditions under which the provisions of the trust deed or the terms and conditions of the debentures may be modified;

(b) The mode of service of notices and other documents on the company, the trustee and the holders of the debentures;

(c) The company to be responsible for paying any stamp duty on the trust deed or the debentures (if applicable);

(d) Provisions regarding meetings of the debenture holders;

(e) Provisions for redressal of grievances of debenture holders.

ISSUE AND LISTING OF NON CONVERTIBLE DEBT INSTRUMENTS

Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, shall apply to-

(a) public issue of debt securities where “debt securities” means a non-convertible debt securities which create or acknowledge indebtedness, and include debenture, 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 the Board, security receipts and securitized debt instruments; and

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

The company can make any public issue of debt securities only if as on the date of filing of draft offer document and final offer document, the issuer or the person in control of the issuer, or its promoter, has not been restrained or prohibited or debarred by the Board from accessing the securities market or dealing in securities and such direction or order is in force.

i) Call a Board Meeting after giving notice to all the directors of the company to decide following about the issue of debentures.
   – whether the debenture is non-convertible, or fully or partly convertible
   – credit rating
   – appointment of trustee
   – appointment of Lead Manager(s) and other intermediaries

ii) Make an application to one or more recognized stock exchanges for listing of such securities therein. If the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange. If the application is made to any of the stock exchanges having nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange.

iii) Obtain in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made.

iv) Obtain credit rating from at least one credit rating agency registered with the Board and disclose it in the offer document.

v) Enter into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made there-under.

vi) Appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

vii) Appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

viii) No debt securities will be issued for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management.

ix) Prepare an offer document containing following material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.
   – the disclosures specified in Section 26 of the Companies Act, 2013
   – additional disclosures as may be specified by the Board.

x) File the draft offer document with the designated stock exchange through the lead merchant banker and post the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. Also display the draft offer document on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.

xi) Following shall be ensured by the lead merchant banker –
   – The draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.
– All comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

xii) Forward a copy of draft and final offer document to the Board for its records.

xiii) Obtain a due diligence certificate as per Schedule II of these regulations from the lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies.

xiv) Obtain a due diligence certificate as per Schedule III of these regulations from the debenture trustee prior to the opening of the public issue.

xv) Both the draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

xvi) File the offer document with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. Also make physical copy of the offer document to the person demanding it.

xvii) Make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.

xviii) Ensure that every application form issued by the issuer is accompanied by a copy of the abridged prospectus.

xix) The company may propose to issue debt securities to the public through the on-line system of the designated stock exchange.

xx) The issuer may determine the price of debt securities in consultation with the lead merchant banker and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by the Board.

xxi) The minimum subscription for public issue of debt securities shall be 75% of the base issue size.

xxii) A public issue of debt securities may be underwritten by an underwriter registered with the Board and in such a case adequate disclosures regarding underwriting arrangements shall be disclosed in the offer document.

xxiii) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.

xxiv) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue containing such clauses as may be prescribed under section 71 of the Companies Act, 2013 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

xxv) Create debenture redemption reserve in accordance with the provisions of the Companies Act, 2013.

xxvi) Disclose the proposal to create a charge or security, if any, in respect of secured debt securities in the offer document along with its implications.

xxvii) Keep all the issue proceeds in an escrow account until the documents for creation of security as stated in the offer document are executed.
Procedure for Redemption and roll-over of non convertible debt securities under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

i) The issuer shall redeem the debt securities in terms of the offer document.

ii) Where the issuer desires to roll-over the debt securities issued by it, it shall do so only upon passing of a special resolution of holders of such securities and give twenty one days notice of the proposed roll over to them.

iii) The notice shall contain disclosures with regard to credit rating and rationale for roll-over.

iv) The issuer shall, prior to sending the notice to holders of debt securities, file a copy of the notice and proposed resolution with the stock exchanges where such securities are listed, for dissemination of the same to public on its website.

v) The debt securities issued can be rolled over subject to the following conditions:

Ø The roll-over is approved by a special resolution passed by the holders of debt securities through postal ballot having the consent of not less than 75% of the holders by value of such debt securities;

Ø atleast one rating is obtained from a credit rating agency within a period of six months prior to the due date of redemption and is disclosed in the notice referred to in sub-regulation (2);

Ø fresh trust deed shall be executed at the time of such roll –over or the existing trust deed may be continued if the trust deed provides for such continuation ;

Ø adequate security shall be created or maintained in respect of such debt securities to be rolled –over.

vi) Redeem the debt securities of all the debt securities holders, who have not given their positive consent to the roll-over.

PROCEDURE FOR LISTING OF NON CONVERTIBLE DEBT SECURITIES UNDER SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

i) Make an application for listing to one or more recognized stock exchanges in terms of section 40 of the Companies Act, 2013.

ii) Comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.

iii) For listing of debt securities issued on private placement basis on a recognized stock exchange, the following conditions have to be fulfilled:

a. the issuer has issued such debt securities in compliance with the provisions of the Companies Act, 2013, rules prescribed there under and other applicable laws;

b. credit rating has been obtained in respect of such debt securities from at least one credit rating agency registered with the Board;

c. the debt securities proposed to be listed are in dematerialized form ;

d. the disclosures as specified in Schedule I of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 have been made in the websites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

e. Comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.
OBLIGATIONS OF THE ISSUER, LEAD MERCHANT BANKER, ETC. UNDER SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

(i) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

(ii) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Section 26 of the Companies Act, 2013.

(iii) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.

(iv) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(v) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

(vi) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

PROCEDURE FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 will be applicable for issue of convertible debt instruments. In addition to the common conditions for public and rights issues following additional requirements are laid down in these regulations, for an issuer making a public issue or rights issue of convertible debt instruments:

(a) Obtain a credit rating from one or more credit rating agencies;

(b) Appoint one or more debenture trustees in accordance with the provisions of section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;

(c) Create debenture redemption reserve in accordance with the provisions of section 71 of the Companies Act, 2013;

(d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
   – such assets are sufficient to discharge the principal amount at all times;
   – such assets are free from any encumbrance;
   – where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
   – the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.

(e) Redeem the convertible debt instruments in terms of the offer document.
In case of an issue of convertible debt instruments, the issuer shall give following additional undertakings in the offer document:

- that the issuer shall forward the details of utilisation of the funds raised through the convertible debt instruments duly certified by the statutory auditors of the issuer, to the debenture trustees at the end of each half-year.

- that the issuer shall disclose the complete name and address of the debenture trustee in the annual report.

- that the issuer shall provide a compliance certificate to the convertible debt instrument holders (on yearly basis) in respect of compliance with the terms and conditions of issue of convertible debt instruments as contained in the offer document, duly certified by the debenture trustee.

- that the issuer shall furnish a confirmation certificate that the security created by the issuer in favour of the convertible debt instrument holders is properly maintained and is adequate to meet the payment obligations towards the convertible debt instrument holders in the event of default.

- that necessary cooperation with the credit rating agency(ies) shall be extended in providing true and adequate information till the debt obligations in respect of the instrument are outstanding.

**PROCEDURE FOR ROLL-OVER OF NON CONVERTIBLE PORTION OF PARTLY CONVERTIBLE DEBT INSTRUMENTS UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009**

The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds fifty lakh rupees, may be rolled over without change in the interest rate, subject to the following conditions:

(a) seventy five per cent. of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;

(b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors’ certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;

(c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;

(d) credit rating has been obtained from at least one credit rating agency registered with the Board within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over;

The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments; Provided that whether the issuer is required to create fresh security and to execute fresh trust deed or not shall be decided by the debenture trustee.

**PROCEDURE FOR CONVERSION OF OPTIONALLY CONVERTIBLE DEBT INSTRUMENTS INTO EQUITY SHARE CAPITAL UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009**

- An issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
Where the value of the convertible portion of any convertible debt instruments issued by a listed issuer exceeds fifty lakh rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares: Provided that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.

The provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

PROCEDURE FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS FOR FINANCING UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan to or for acquiring shares of any person who is part of the same group or who is under the same management: Provided that an issuer may issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

Note:

- A nomination form as given in Form No. SH.13 of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 is given in Annexure I

- All the Schedules of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are placed as Annexure 2.

- The Listing Agreement for Debt Securities, the Checklist for listing of privately placed Debt issuances and the Listing Agreement for Securitized Debt Instruments as prescribed by SEBI are available on the website of BSE. Students may refer at the link given below.
  (http://www.bseindia.com/Static/about/Listing_Agreement.aspx?expandable=2)

- Section 62(3) states that the provisions of 62 shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the companies to convert such debentures/loan into shares in the company. Provided that the term of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in General Meeting.
FORM NO. SH-13
Nomination Form

[Pursuant to section 72 of the Companies Act, 2013 and rule 19(1) of the Companies (Share Capital and Debentures) Rules 2014]

To
Name of the company: Address of the company:

I/We .................................................. the holder(s) of the securities particulars of which are given hereunder wish to make nomination and do hereby nominate the following persons in whom shall vest, all the rights in respect of such securities in the event of my/our death.

(1) Particulars of the Securities (in respect of which nomination is being made).

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(2) Particulars of Nominee/s –
   (a) Name:
   (b) Date of Birth
   (c) Father’s/Mother’s/Spouse’s name:
   (d) Occupation:
   (e) Nationality:
   (f) Address:
   (g) E-mail ID:
   (h) Relationship with the security holder:

(3) In case Nominee is a Minor:
   (a) Date of Birth
   (b) Date of attaining majority
   (c) Name of guardian:
   (d) Address of guardian:

Name of the Security
Holder(s)  Signature  Witness with the name and address

Name:
Address:
DISCLOSURES

1. The issuer seeking listing of its debt securities on a recognized stock exchange shall forward the listing application to the stock exchange along with the following documents –
   (a) Memorandum and Articles of Association and a copy of the Trust Deed.
   (b) Copy of latest audited balance sheet and Annual Report.
   (c) Statement containing particulars of dates of, and parties to all material contracts and agreements:
       Provided that a recognized stock exchange may call for such further particulars or documents as it deems proper.

2. The following disclosures shall be made where relevant:
   i. Name and address of the registered office of the issuer.
   ii. Names and addresses of the directors of the issuer.
   iii. A brief summary of the business/activities of the issuer and its line of business.
   iv. And a brief history of the issuer since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure, (authorized, issued and subscribed) and borrowings, if any.
   v. Details of debt securities issued and sought to be listed including face value, nature of debt securities mode of issue i.e. public issue or private placement.
   vi. Issue size.
   vii. Details of utilization of the issue proceeds.
   viii. A statement containing particulars of the dates of, and parties to all material contracts, agreements involving financial obligations of the issuer.
   ix. Details of other borrowings including any other issue of debt securities in past;
   x. Any material event/development or change at the time of issue or subsequent to the issue which may affect the issue or the investor’s decision to invest / continue to invest in the debt securities.
   xi. Particulars of the debt securities issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
   xii. A list of highest ten holders of each class or kind of securities of the issuer as on the date of application along with particulars as to number of shares or debt securities held by them and the address of each such holder.
   xiii. An undertaking that the issuer shall use a common form of transfer 
   xiv. Redemption amount, period of maturity, yield on redemption.
   xv. Information relating to the terms of offer or purchase.
   xvi. The discount at which such offer is made and the effective price for the investor as a result of such discount.
   xvii. The debt equity ratio prior to and after issue of the debt security.
xviii. Servicing behavior on existing debt securities, payment of due interest on due dates on term loans and debt securities.

xix. That the permission / consent from the prior creditor for a second or pari passu charge being created in favor of the trustees to the proposed issue has been obtained.

xx. The names of the debenture trustee(s) shall be mentioned with a statement to the effect that debenture trustee(s) has given his consent to the issuer for his appointment under regulation 4(4) and also in all the subsequent periodical communications sent to the holders of debt securities.

xxi. The rating rationale (s) adopted by the rating agencies shall be disclosed.

xxii. Names of all the recognised stock exchanges where securities are proposed to be listed clearly indicating the designated stock exchange and also whether in principle approval from the recognised stock exchange has been obtained.

xxiii. A summary term sheet shall be provided which shall include brief information pertaining to the Secured / Unsecured Non Convertible debt securities (or a series thereof) as follows (where relevant):

- Issuer
- Minimum Subscription of Debt securities and in multiples of thereafter
- Tenor Months from the Deemed Date of Allotment
- Coupon Rate / Coupon Date % p.a. (payable ) on each year
- Redemption Date
- Put / Call option
- Proposed listing of the debt securities with ......................... Stock Exchange
- Issuance Physical /Demat mode
- Trading Demat mode only
- Depository
- Security

Debt securities

- Rating by (All the credit rating/s, including any unaccepted credit ratings, shall be disclosed in the draft offer document to be filed with SEBI)
- Settlement By way of [Insert details of payment procedure]
- Issue Schedule:
  - Issue opens on:
  - Issue closes on
- Pay-in date
- Deemed date of allotment
SCHEDULE II

[See Regulation 6(7)]

FORMAT FOR DUE DILIGENCE CERTIFICATE AT THE TIME OF FILING THE OFFER DOCUMENT WITH REGISTRAR OF COMPANIES AND PRIOR TO OPENING OF THE ISSUE

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sir / Madam,

SUB.: ISSUE OF ................................. BY ................................. LTD.

1. We confirm that neither the issuer nor its promoters or directors have been prohibited from accessing the capital market under any order or direction passed by the Board. We also confirm that none of the intermediaries named in the offer document have been debarred from functioning by any regulatory authority.

2. We confirm that all the material disclosures in respect of the issuer have been made in the offer document and certify that any material development in the issue or relating to the issue up to the commencement of listing and trading of the shares offered through this issue shall be informed through public notices/advertisements in all those newspapers in which pre-issue advertisement and advertisement for opening or closure of the issue have been given.

3. We confirm that the offer document contains all disclosures as specified in the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

4. We also confirm that all relevant provisions of the Companies Act, 1956, Securities Contracts, (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and the Rules, Regulations, Guidelines, Circulars issued thereunder are complied with.

We confirm that all comments/complaints received on the draft offer document filed on the website of ................................ (designated stock exchange) have been suitably addressed.

PLACE

DATE: LEAD MERCHANT BANKER (S)

SCHEDULE III

[See Regulation 6(8)]

FORMAT OF DUE DILIGENCE CERTIFICATE TO BE GIVEN BY THE DEBENTURE TRUSTEE BEFORE OPENING OF THE ISSUE

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sir / Madam,

SUB.: ISSUE OF ................................. BY ................................. LTD.

We, the Debenture Trustee (s) to the above mentioned forthcoming issue state as follows:

(1) We have examined documents pertaining to the said issue and other such relevant documents.

(2) On the basis of such examination and of the discussions with the issuer, its directors and other officers, other agencies and of independent verification of the various relevant documents, WE CONFIRM that:
(a) The issuer has made adequate provisions for and/or has taken steps to provide for adequate security for the debt securities to be issued.

(b) The issuer has obtained the permissions / consents necessary for creating security on the said property (ies).

(c) The issuer has made all the relevant disclosures about the security and also its continued obligations towards the holders of debt securities.

(d) All disclosures made in the offer document with respect to the debt securities are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

We have satisfied ourselves about the ability of the issuer to service the debt securities.

PLACE
DATE: DEBENTURE TRUSTEE TO THE ISSUE WITH HIS SEAL

SCHEDULE IV
[See Regulation 8(1)]

FORMAT OF ISSUE ADVERTISEMENTS FOR PUBLIC ISSUES

This is an advertisement for information purposes

........................................... LIMITED

(Incorporated on ......................... under the Companies Act as and subsequently renamed ............................ on) Registered Office: .................................... Tel : .................................... Fax : ....................................

........................................... Corporate Office: .................................... Tel : .................................... Fax : ....................................

........................................... e-mail : .................................... Website : ....................................

THE ISSUE

Public issue of ........................................... debt securities of Rs. ........................................... each at a price of Rs. ........................................... (Summary Details of Coupon, Redemption, etc shall be disclosed)

PROMOTERS

XXXX

PROPOSED LISTING Names of Stock Exchanges MERCHANT BANKERS (Names)

COMPLIANCE OFFICER OF THE ISSUER

Name, address, telephone and fax numbers, email ID, website address

CREDIT RATING

(The Rating Obtained shall be disclosed prominently along with the meaning of the same)

DEBENTURE TRUSTEES

(Names)

AVAILABILITY OF APPLICATION FORMS

Names of Issuer, Lead Managers, etc. (Addresses optional)

AVAILABILITY OF OFFER DOCUMENT

Investors are advised to refer to the offer document, and the risk factors contained therein, before applying in
Lesson 5: Issue and Redemption of Debentures and Bonds

the issue. Full copy of the offer document is available on websites of issuer / lead manager(s) / Stock
Exchange(s) on www. .................................

ISSUE OPENS ON:

ISSUE CLOSES ON:

Issued by

Directors of Issuer

LESSON ROUND UP

– A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the
  sum at a specified rate and also carrying an interest.
– Bonds are typically issued by financial institutions, government undertaking and large companies.
– Section 71 of the Companies Act, 2013 specifies that any company can issue debenture with an option
to convert the debentures into shares, either wholly or partly at the time of redemption.
– Debenture trustee means the trustee of the trust deed for securing any issue of debentures of a body
corporate.
– Debenture trust deed is a written instrument legally conveying a property to the trustee often for the
  purpose of securing a loan or mortgage.
– The procedure for public issue of non-convertible debt instrument covered under SEBI (Issue and Listing
  of Debt Securities) Regulations 2008
– The procedure for public issue of convertible debt instrument covered under SEBI (ICDR) Regulations
  2009.

SELF-TEST QUESTIONS

1. Define debentures. What are the kinds of Debentures?
2. Write down the contents of debenture trust deed.
3. Write down the procedure for issue of debentures.
5. What is the procedure for conversion of optionally convertible debt instruments into equity share capital
Lesson 6
Acceptance of Deposits by Companies

LESSON OUTLINE

- Acceptance of deposit – A revisit
- Procedure for acceptance of deposits
  - Point of difference
  - Point of similarity
- Procedure for acceptance of deposits from members and public (other than members)
- Checklist of secretarial compliance for acceptance of deposits
- Annexure
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Companies generally raise funds through issue of equity or preference shares, debentures, and commercial papers and inter corporate loans. Deposits are also one of the sources available to a company to raise funds to meet the short term or long term requirements of the company. In order to protect the interest of the depositors and to stop the malpractices adopted by companies accepting deposits, the companies Act, 2013 read with rules made under Chapter V has introduced various conditions for acceptance of deposits by companies.

After going through this lesson students will be able to understand procedural and practical aspects relating to acceptance of deposits by companies and certain other matters related there.
Acceptance of Deposits

Regulatory Framework - A Revisit

- Section 73 to 76 of the Companies Act 2013 (herein after called the Act) read with Rules made under Chapter V of the Companies Act, 2013 (herein after called ‘the Rules’) regulate the invitation and acceptance of deposits. It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by “eligible company” being a public company through special resolution, subject to conditions specified in the rules. (Eligible company is defined under the rules based on net worth and turnover).

- “Eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than 500 crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits;

- Proviso to Section 73(1) read with rule 1(3) of Companies (Acceptance of Deposits) Rules 2014 excludes banking Companies, non-banking financial companies as defined in the Reserve Bank of India Act, 1934 and registered with Reserve Bank of India, a housing finance company registered with National Housing Bank established under the National Housing Bank Act 1987 and any other company as may be specified by the government in this regard.

- Section 2(31) of the Companies Act defines deposit to include any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India; The student may refer to the rules to know what is not a deposit [Rule 2(1)(c)]

- Section 73(2) states that a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the certain conditions.

- Every company referred to in sub-section (2) of section 73 i.e. from members and every other eligible company (other than members) inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.

- Section 73(3) states that every deposit accepted by a company under section 73(2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

- Every eligible company intending to invite deposits from public shall obtain the rating from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public to ensure adequate safety. The rating shall be obtained every year during the tenure of deposits.

- Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders.

- No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees.
Lesson 6  ■  Acceptance of Deposits by Companies  131

for creating security for the deposits [Rule 7]

– Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor.[Rule 14]

– Every company to which Companies (Acceptance of Deposits)Rules, 2014 apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3. [Rule 16]

TEST YOUR KNOWLEDGE

Illustration

Please check which of the following source of funds are coming under the definition of deposits in case of a private company.

(a) Rs. 5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper.
(b) Rs. 50 Lakhs by way of Share Application money
(c) Rs. 50 Lakhs from one of its director by way of loan
(d) Rs. 50 Lakhs from issue of bonds and debentures
(e) Rs. 50 Lakhs by means of inter corporate deposit
(f) Rs. 25 Lakhs from its employees. (g) Rs. 50 Lakhs as business advance from customers
(h) Rs. 50 Lakhs as advance against sale of its property
(i) Rs. 25 Lakhs as security deposit.
(j) Rs. 50 Lakhs from its promoter or their relative

Solution

(a) The said amount is to be received or borrowed from any government agency or Financial Institution or Bank or by way of Commercial paper is not covered under deposits.

(b) Company must allot share within 60 days of receipt of share application money or it must refund the share application money to the subscribers within 15 days from the date of completion of sixty days, otherwise, such amount shall be treated as a deposit.

(c) Company can receive loan from its director provided director gives an undertaking to the company that the loan given is from own funds and not from borrowed money.

(d) Company can raise money by way of bonds and debentures provided amount is secured by a first charge against property; or such bonds or debentures should be compulsorily convertible into shares within 5 years; otherwise it would come under the definition of deposits.

(e) Inter corporate deposits are not covered in the definition of deposits

(f) If amount received from employee doesn’t exceed their total annual salary; it would not come under the definition of deposit.

(g) Advance can be raised from customers however; such advance should be adjusted within 365 days from the date of receipt of advance. Otherwise it would be termed as deposits.

(h) Such amount should be adjusted against the property only; otherwise it would be termed as deposits.

(i) Security deposits are out of the ambit of definition of deposits. It is suggested to accept security deposits under specific agreement.
Amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank is not deposits subject to fulfillment of the following conditions, namely:

(i) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(ii) the loan is provided by the promoters themselves or by their relatives or by both; and

(iii) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

QUANTUM OF DEPOSITS THAT CAN BE ACCEPTED

From members

- No eligible company shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital and free reserves of the company and [Rule 3(4)(a)]

- No other company shall accept or renew any deposits from its members if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25% of the aggregate of the paid-up share capital and free reserves of the company.[Rule 3]

From public

- No eligible company shall accept or renew any deposit from public, if the amount of such deposit other than the deposit received from members, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital and free reserves of the company.[Rule 3(4)(b)]

- No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the paid-up share capital and free reserves of the company.[ Rule 3(5)]

The Quantum of deposits:

<table>
<thead>
<tr>
<th>Type of company</th>
<th>Members</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Company</td>
<td>Upto 10% of aggregate of the paid up share capital and free reserves</td>
<td>Upto 25% of aggregate of the paid up share capital and free reserves</td>
</tr>
<tr>
<td>Company other than Eligible Company</td>
<td>Upto 25% of aggregate of the paid up share capital and free reserves</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Government Company</td>
<td>–</td>
<td>Upto 35% of aggregate of the paid up share capital and free reserves</td>
</tr>
</tbody>
</table>

It may be noted that private companies and public companies (other than eligible companies) are not allowed to accept deposits from public.

PROCEDURE OF ACCEPTANCE OF DEPOSITS

Keeping the procedures or steps of acceptance of deposits in view, companies can be segregated in to three
types’ viz. Private Company, Public company (other than eligible company) and eligible company. There are several procedural differences among these companies, which are discussed below.

Students are expected to get themselves well conversant with the Companies (Acceptance of Deposits) Rules, 2014, which is discussed in detail in lesson-20 (Deposits) of Company law in executive programme before studying the procedure of acceptance of deposits.

### POINTS OF DIFFERENCE

<table>
<thead>
<tr>
<th>Category of Company</th>
<th>Private Company</th>
<th>Public Company (other than eligible company)</th>
<th>Public company (eligible company under section 76 of the Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source of deposits</td>
<td>From directors and members</td>
<td>From directors and members</td>
<td>From directors, members and general public</td>
</tr>
<tr>
<td>Conditions for deposits to be taken from directors</td>
<td>It is allowed to be taken without any limit. However, director has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.</td>
<td>It is allowed to be taken without any limit. However, director has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.</td>
<td>It is allowed to be taken without any limit. However, director has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.</td>
</tr>
<tr>
<td>Conditions for deposits to be taken from shareholders</td>
<td>It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves subject to the compliance of provisions of section 73(2) of the Act.</td>
<td>It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves subject to the compliance of provisions of section 73(2) of the Act.</td>
<td>It is allowed to be taken subject to the limit of 10% of the paid up share capital and free reserves subject to the compliance of provisions of section 73(2) of the Act. Provided that at any point of time, deposits shall not exceed 25% of the paid up share capital and free reserves.</td>
</tr>
<tr>
<td>Conditions for deposits to be taken from Public</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves. However, in case of Government company, who is eligible to accept deposits from public under section 76, it is allowed to be taken subject to the limit of 35% of the paid up share capital and free reserves.</td>
</tr>
<tr>
<td>Resolution</td>
<td>The company should pass a resolution in a general meeting.</td>
<td>The company should pass a resolution in a general meeting.</td>
<td>The company should pass a special resolution in a general meeting and file the same with the</td>
</tr>
</tbody>
</table>
So far procedure of acceptance of deposits is concerned, there are some procedural similarities exist among Private Company, Public company (other than eligible company) and eligible company, which are discussed below.

<table>
<thead>
<tr>
<th></th>
<th>Ordinary Registrar. However, ordinary resolution would be sufficient if the amount is within the limit specified under section 180 of the Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisement</td>
<td>Not necessary</td>
</tr>
<tr>
<td>Circular</td>
<td>Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1 and in addition to such issue of circular to publish the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.</td>
</tr>
<tr>
<td>Display of circular on website</td>
<td>Optional</td>
</tr>
<tr>
<td>Credit Rating</td>
<td>Required to be taken before the submission of the circular to the registrar as is an essential disclosure of the said circular.</td>
</tr>
</tbody>
</table>
### POINTS OF SIMILARITY

<table>
<thead>
<tr>
<th>Category of Company</th>
<th>Private Company</th>
<th>Public Company (other than eligible)</th>
<th>Public company (eligible company under section 76 of the Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenure of deposits</td>
<td>The deposit shall not be repayable on demand or upon receiving a notice within a period of less than 6 months and more than 36 months. However, To meet the short requirements of fund, such companies can accept or renew deposits for a period of less than six months but not less than three months and such deposits should not exceed ten per cent of aggregate of paid up capital and free reserves of the company.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement</td>
<td>Along with the circular a statement shall be circulated which shall contain the financial position of the company, the credit rating, the number of depositors and the amount due.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration of circular</td>
<td>The circular signed by majority of directors or their agents duly authorised along with the statement shall be submitted to registrar 30 days before the date of such issue.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Validity of circular</td>
<td>6 (six) months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposit insurance</td>
<td>Deposit insurance shall be taken 30 days prior to the date of issuance of the circular or renewal, which shall ensure the repayment of deposits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security</td>
<td>If secured deposits are invited then the company shall create a charge on its assets referred to in Schedule III excluding intangible assets which shall not be less than the amount remaining unsecured by deposit insurance.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quoting of “Unsecured Deposit”</td>
<td>Where the proposed deposits is unsecured or is partly secured, the deposits shall be termed as “unsecured deposits” and shall be quoted in every circular, form, advertisement or in any other document relating to invitation or acceptance of deposits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposit repayment reserve account</td>
<td>On or before 30th April of each year, a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial year shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Register</td>
<td>One or more separate registers for deposits accepted or renewed shall be maintained at the registered office and entries shall be made within 7 days from the date of issuance of deposit receipt.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Return of deposits</td>
<td>A return shall be filed on or before 30th June of every year with the Registrar in Form DPT-3 along with fee giving the status as on 31st March of that year duly audited by the auditor of the company.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penal rate of interest</td>
<td>A penal Rate of 18% p.a. shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premature payment</td>
<td>In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Procedure of acceptance of deposits can be discussed under two broad headings i.e. procedure of acceptance of deposits from members and procedure of acceptance of deposits from public (other than members) because non-eligible companies are allowed to accept deposits from its directors, members and their relatives whereas eligible companies are allowed to accept deposits from members as well as public.

**PROCEDURE OF ACCEPTANCE OF DEPOSITS FROM MEMBERS**

A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members.

The procedure to accept deposits from members can be summarised as under:-

1. The companies intending to invite deposits from its members shall convene a Board meeting to consider and approve the business to propose and accept deposits from members and decide the day, date, time and place of the general meeting.
2. Issue notice of general meeting to the members of the company.
3. Hold the general meeting and pass resolution for acceptance of deposits.
4. Comply with the Rules prescribed in consultation with RBI and terms and conditions mutually agreed by the company and deposit holders either for acceptance or for repayment of deposits.
5. Issue circular to the members of the company including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards depositors in respect of any previous deposits and such other particulars as may be prescribed. These details indicate the soundness of the company or a warning about risks involved. The circular shall be published at least once in English language in a leading English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.
6. File the copy of aforesaid circular in the Form DPT-1 along with such statement with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.
8. Eligible company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit Form CHG-1 with Registrar for assets other than intangible assets and for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. Secured deposits including interest thereon can in no case exceed the market value of the charged assets assessed by the registered valuer.
9. After the expiry of 30 days of filing Form DPT-1, the circular in Form DPT-1 along with application form is sent to all members by registered post with acknowledgement due/ speed post/electronic mail.
10. Collect duly signed application form along with money from the members.
11. Issue receipts of deposits within 21 days of the receipts of money/realisation of cheque.
12. Maintain register of deposits at its registered office which shall contain the details as prescribed under rule 14 Companies (Acceptance of Deposits) Rules, 2014 from the date of such acceptance.
13. Pay interest as per the rate proposed on agreed terms.
Lesson 6  ■  Acceptance of Deposits by Companies  137

14. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.

15. Company inviting deposits shall enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement for an amount covering minimum twenty thousand rupees for each deposit.

However, Companies may accept the deposits without deposit insurance contract till 31st March, 2015.

16. Submit return of deposits in Form DPT-3 on or before 30th June each year for information as on 31st March of respective year.

CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM PUBLIC (OTHER THAN MEMBERS)

A public company having net worth of not less than Rs. 100 Crores or turnover of not less than Rs. 500 Crores (Eligible Company) and which has obtained the prior consent of the members in a general meeting by means of special resolution and also filed the special resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits. Eligible company, which is accepting deposits within the limit specified under clause (c) of sub-section (1) of section 180 (Borrowing Powers) may accept deposits by means of an ordinary resolution.

Further, no Government company eligible to accept deposits under section 76 shall accept or renew any deposits, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five percent of the aggregate of its paid up share capital and free reserves.

The procedure to accept deposits from public (other than members) can be summarised as under:-

1. Convene a Board meeting to consider and approve the business to propose and accept deposits from public and to decide the day, date, time and place of the general meeting.

2. Hold the general meeting and pass special resolution, for acceptance of deposits.

3. Submit Form MGT-14 with the Registrar of Companies within 30 days of passing the resolution.

4. Once the proposal is approved, Directors are required to approach to the credit rating agency for the grant of rating, execution of deposit insurance contract, appointment of depositor trustee and execution of trust deed, if the deposits are secured, appointment of registered valuer, discussion and preparation of circular for the issue of deposits may be given.

5. Circular shall be issued to its members of the company by registered post with acknowledgement due or by speed post or by electronic mode in Form DPT-1 and in addition to such issue of circular to publish the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company. The eligible companies have to file a copy of the text of advertisement signed by a majority of directors with the Registrar before 30 days of publication. They shall upload the same on their website, if any.

6. File the copy of aforesaid circular in the Form DPT-1 along with such statement with the Registrar within thirty days before the date of issue of circular.

7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

8. The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing circular or circular in the form of advertisement.
9. Eligible company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit Form CHG-1 with Registrar for assets other than intangible assets and for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. Secured deposits including interest thereon can in no case exceed the market value of the charged assets assessed by the registered valuer.

10. Eligible companies proposed to accept deposits from public is required to issue advertisement one in English newspaper and one newspaper in vernacular language having wide circulation in the state in which the registered office of the company is situated. Said circular/advertisement shall be valid till before the expiry of six months from the end of respective financial year in which it was issued or up to the date of Annual General Meeting (or last due date of AGM), if not held) wherein the financial statement is laid before members, whichever is earlier.

11. Upload the circular/advertisement on the company Website, if any.

12. Collect duly signed application form along with money from the members.

13. Issue receipts of deposits within 21 days of the receipts of money/realisation of cheque.

14. Maintain register of deposits at its registered office which shall contain the details as prescribed under Rule 14 Companies (Acceptance of Deposits) Rules, 2014 from the date of such acceptance.

15. Pay interest as per the rate proposed on agreed terms.

16. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.

17. Company inviting deposits shall enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement for an amount covering minimum twenty thousand rupees for each deposit.

However, Companies may accept the deposits without deposit insurance contract till 31st March, 2015.

18. Submit return of deposits in Form DPT-3 on or before 30th June each year for information as on 31st March of respective year.

CHECK LIST OF SECRETARIAL COMPLIANCE FOR ACCEPTANCE OF DEPOSITS AS PER COMPANIES ACT 2013:

Check list of secretarial compliance for acceptance of deposits under Companies Act, 2013 are discussed below. The Company Secretary should check:

1. Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.

2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.

3. Whether the said resolution has been filed with Registrar in Form MGT-14 within 30 days of passing of such resolution.

4. Whether Board meeting has been held to obtain the approval for the draft Circular/Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the Company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT-1 for registration.

6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT-2 at least seven days before issuing circular or circular in the form of advertisement.

7. Whether the company has enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement with Insurance Company.

8. Whether the company has obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company.

9. Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a copy of Circular/Form of Advertisement with the Registrar.

10. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in Form DPT-1 and in addition to such issue of circular the company has published the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.

11. Whether the company has uploaded the copy of the circular on the Company’s website, if any.

12. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.

13. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.

14. Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.

15. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

These are the some of the checklist which are to be taken care of from compliance point of view.
RESOLVED THAT pursuant to the provisions of Section 73 and 76 of the Companies Act, 2013 (the Act) read with the Companies (Acceptance of Deposits) Rules, 2014 (the Rules) and other applicable provisions, if any, and subject to such conditions, approvals, permissions, as may be necessary, consent of the members be and is hereby accorded to the Company to invite/accept/renew/receive money by way of unsecured/secured deposits from its members and public.

RESOLVED FURTHER THAT Mr. x, Chairman & Managing Director, be and is hereby authorized to issue the circular or circular in the form of advertisement, which has been approved by the Board of Directors of the company at their meeting held on —the (day) of —— (month), 2014 (year) and which delineates the silent features of the deposit scheme of the company and other relevant particulars as prescribed by the Act and the Rules.

RESOLVED FURTHER THAT Mr. x, Chairman & Managing Director, be and is hereby authorized to have the circular or circular in the form of advertisement, which has been duly signed by the majority of directors, filed with the Registrar of Companies, NCT of Delhi & Haryana, New Delhi, pursuant to the Rules, and to publish the same in English language in Times of India (Delhi edition) and in Hindi in Dainik Jagran (Delhi edition).

RESOLVED FURTHER THAT for the purpose of giving effect to this Resolution, the Board of Directors be and is hereby authorized to do such acts, deeds, matters and things as Board of Directors may in its absolute discretion consider necessary, proper, expedient, desirable or appropriate for such invitation/acceptance/ renewal/ receipts as aforesaid and matters incidental thereto."

(The aforesaid specimen resolution is drafted on the assumption that the registered office of the company is in the state of Delhi and Times of India (Delhi edition) and Dainik jagran (Delhi edition) are widely circulated newspaper in the state of Delhi.)

**LESSON ROUND UP**

- Deposit includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount prescribed in consultation with RBI

- Section 73 prohibits a company to invite, accept or renew deposits from public. This prohibition however shall not apply in case of banking company and non- banking financial company and such other company as the Central Government may specify.

- A company can invite deposits from its members subject to the passing of a resolution in general meeting subject to some conditions.

- The company inviting deposits shall issue a circular to its members in Form DPT-1

- The company inviting deposits shall enter into a contract for providing deposit insurance at least 30 days before the issue of circular or advertisement or before the date of renewal.

- For appointing deposit trustees the company shall execute deposit trust deed in Form DPT-2.

- The company accepting deposits shall maintain at its registered office one or more registers for deposits accepted or renewed.

- The Return of Deposits shall be filed in Form DPT-3 with the Registrar.
– Any public company having a net worth of not less than 100 crore rupees or a turnover not less than 500 crore rupees can accept deposits from the public, such company shall obtain a prior consent of its members in general meeting through Special Resolution.

– Such company shall obtain the Credit rating from a recognised credit rating agency.

– Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules

**SELF TEST QUESTIONS**

1. Draft the resolutions for:
   (a) Acceptance of deposits from members
   (b) Acceptance of deposits from public

2. Make a list of amounts those are excluded from the definition of “deposit”.

3. Prepare a check list of secretarial compliance to be made by a company secretary for acceptance of deposits.

4. What is the procedure for accepting deposits from members?
LESSON OUTLINE

– Part I – Membership
– Part II – Transfer of Shares
– Part III – Transmission and Nomination of shares
– Part IV – Dematerialisation of shares
– Part V – Compliances relating to insider trading and takeovers
– Annexures – Special Resolutions
– LESSON ROUND UP
– SELF TEST QUESTIONS

LEARNING OBJECTIVES

A member means a shareholder of a company whose name is entered in the register of members. A person holding equity shares of a company and whose name is entered in the records of a depository as a beneficial owner of the share is deemed to be a member of the company. There are various modes of acquiring membership. Also one can cease to be a member of the company by various methods. This study will enable you learn all about modes of becoming member, procedure for variation of members’ rights, transfer of shares, transmission etc.
PART I - MEMBERSHIP

Meaning of Members

A company is composed of members, though it has its own entity distinct from the members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity.

In the case of a company limited by shares, the shareholders are the members. The terms “members” and “shareholders” are usually used interchangeably. Generally speaking, every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share by transfer but would not become member until the transfer is registered in the books of company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company under Section 88 of the Companies Act, 2013.

In a company limited by guarantee, the persons who are liable under the guarantee clause in its memorandum of association are members of the company.

In an unlimited company, the members are the persons who are liable each in proportion to the extent of their interests in the company, to contribute the sums necessary to discharge in full, the debts and liabilities of the company, in the event of its being wound up.

The terms ‘contributory’ and ‘member’ are not interchangeable; while every member would become a contributory the converse would not be true, unless the name of the contributory is entered in the register of members. 

[Rajdhani Grains & Jaggery Exchange Ltd., In re, 1983 54 Com Cases 166 (Del)]

Definition of ‘Member’

According to Section 2 (55) of the Companies Act, 2013, ‘member’ in relation to a company means-

(i) Those who deemed to have agreed to become member: The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register of members;

(ii) Those who agrees in writing to become member: Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company;

(iii) Those who are beneficial owner: Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

Thus, there are two important elements which must be present before a person can acquire membership of a company viz.,

(i) agreement in writing to become a member; and
(ii) entry of the name of the person, in the register of members of the company.

- In the case of subscriber to the memorandum, no agreement besides the memorandum is necessary. He is deemed to be the member of the company. A person other than the subscriber to the memorandum may acquire its membership by agreeing to become a member. Both these conditions are cumulative. 
- The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of Section 11 of the Indian Contract Act, 1872 which
Lesson 7  ■  Membership and Transfer/Transmission of Shares

provides that: “Every person is competent to contract, who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

- Both these conditions are cumulative as per the decision of the Supreme Court in Balkrishan Gupta v. Swadeshi Polytex Ltd. AIR 1985 SC 520.

- In case, these two conditions are not satisfied, the person in question cannot claim the status of member. [Lalithamba Bai v. Harrisons Malayalam Ltd. (1988) 63 Com Cases 662 (Ker)]

- It is abundantly clear that no one can become a member unless he has agreed in writing to become a member of the company. Shrikumar Malavalli v. CRCW Search Technologies (P.) Ltd. (2003) 56 CLA 1 (CLB) (Chennai). The words ‘in writing’ indicate, by necessary implication, that an application for allotment of shares should be made in writing. [Kumaran Potty v. Venad Pharmaceuticals Chemicals Ltd. (1989) 65 Com Cases 246 (Ker). An agreement to become a member can no longer be inferred or implied from conduct.

- The requirement prescribed by section 2(55) that a person must give his consent in writing for allotment of shares applies only when a person becomes a member for the first time. The provision does not apply to persons who are already shareholders. Further, in the case of a subscriber, no application or allotment is necessary to become a member. [Vijay Kumar Narang v. Prakash Coach Builders Pvt. Ltd. (2005) 128 Com Cases 976 (CLB).]

MODES OF ACQUIRING MEMBERSHIP

As per section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

(a) by subscribing to the memorandum of association; or

(b) by agreeing to become a member:
   (i) by making an application to the company for allotment of shares, or
   (ii) by executing an instrument of transfer of shares as transferee, or
   (iii) by consenting to the transmission of shares of a deceased member in his name; or
   (iv) by acquiescence or estoppel and on his name being entered in the register of the members of the company.

(c) by holding equity share capital of the company and on his name being entered as beneficial owner in the records of the depository under the Depository Act, 1996.

Procedure for Becoming a Member by subscribing to the Memorandum of Association

(a) The subscribers are selected by the promoters of a Company;

(b) The subscribers (minimum, two for a private company and seven for a public company) have to agree to take minimum one share in share capital of the company to be registered and state the number of shares agreed to be taken in the column meant for this purpose in the Memorandum of Association;

(c) The subscriber has to sign and write in his/her hand name in full, father’s/husbands’ name, address in full, occupation in the column meant for this purpose;

(d) On registration of the company, the subscribers become members of the company;

(e) The subscribers have to pay the money for the shares agreed to be taken by them;

(f) The names of the subscribers shall be placed on the register of members on registration of the company.
PROCEDURE FOR BECOMING A MEMBER BY MAKING AN APPLICATION FOR ALLOTMENT OF SHARES

(a) In case of a listed company, the investor should read carefully the terms and conditions of the prospectus for issue of Share Capital by a company and also risk factors, management background, working of other companies under the same management and the objectives of the Issue etc. In other companies, he must study the terms of the issue.

(b) If he decides to invest in the share capital, then he should read carefully the instructions for filling in the Application Form and complete the same in all respects and arrange to deposit the amount of share application in full as per the terms of the Issue.

(c) Keep a photo copy of the Application form for records.

(d) On allotment, the applicant becomes a member of the company for the shares so allotted in response to the application.

(e) On becoming a member, he/she shall have all the rights to which a member is entitled to.

PROCEDURE FOR BECOMING A MEMBER BY TRANSFER OF SHARES BOUGHT FROM THE EXISTING MEMBER(S)

(a) After deciding to buy shares of a company, the investor (buyer) should check up whether the shares of such company are under compulsory or optional demat form or are in physical form only.

(b) Place order with share broker for the number of shares decided to be bought and also inform Depository Participant No. and Client No. for crediting to account with Depository Participant in case of demat shares.

(c) If the shares are bought in physical form on receipt of the transfer deeds and share certificates, the transfer deeds are to be completed in all respects and share transfer stamps of requisite value are affixed on the reverse of the transfer deeds in accordance with the consideration of the shares bought.

In case the shares are in demat form, the delivery instructions of the seller is required to be given to the respective DP by the seller with the details of the buyer’s, Client ID & DP No. and the shares are automatically transferred to the buyers demat account.

(d) Keep photo copies of the transfer deeds and share certificates (both sides) for record.

(e) Send the transfer deeds and share certificates to the Company at its registered office or to its Share Transfer Agents for registration of transfer in the name of transferee(s) by registered post with acknowledgement due.

(f) On credit of shares in account with Depository Participant (DP) in case of demat shares the buyer shall become the beneficial owner of the company and have all the rights of a member in that company.

Or

On share duly registered in the name(s) of the buyer(s), the buyer(s) shall become the member of the company and have all rights of a member in that company. In the case of a person purchasing shares, registration of the transfer with the company is necessary to enable him to become a shareholder or member. As long as his name is not entered in the register of members he is not a member. [Balkrishan Gupta v. Swadeshi Polytex Ltd. AIR 1985 SC 520.]

(g) In case of unlisted public companies or private companies, the provisions regarding transfer of shares as contained in the Articles of Association have to be complied with.
PROCEDURE FOR BECOMING A MEMBER BY TRANSMISSION OF SHARES IN HIS NAME ON SUCCEEDING TO THE ESTATE OF DECEASED OR BANKRUPT MEMBER AS SUCCESSOR/ NOMINEE OR CREDITOR

(a) On the death of a member of the company, the successor/nominee of the deceased has to inform the company/the Depository Participant together with a certified copy of the death certificate and probate of the will/ Succession Certificate for requesting transmission of the shares held by the deceased in his name.

(b) On receipt of the reply from the company/the (DP), the successor/nominee shall have to follow the procedure as may be advised for the transmission of the shares.

(c) In case of nominee, if nominee decides to become a member of the company for the shares of the deceased, an application is to be made to the company/the DP. If such nominee has already opened a Demat Account with a DP, the nominee should mention DP No. and Client No. in the Application to the DP of the deceased. If such nominee has no Demat Account with any DP, the nominee should open a Demat A/c with a DP and apply for transmission of the shares.

(d) In case of successor to the deceased, the successor has to send succession certificate/together with an application for transmission of the shares to the company/the DP with whom the deceased had account. If the successor has no Demat Account, an account should be opened with the same DP of the deceased.

(e) On completion of all the requirements for transmission of shares held by the deceased, the nominee/ successor should receive share certificate(s) duly endorsed on transmission or statement of the shares from the DP.

(f) Thereafter, the nominee/successor shall become a member of the company and shall have all the rights of a member in that company.

(g) In case of unlisted public companies or private companies, the provisions regarding transmission of shares as contained in the Articles of Association have to be complied with.

Note: In case of a bankrupt member, the creditor shall have to follow the same procedure for becoming a member for shares held by the bankrupt member in the company except that a certified copy of the order of the Court shall be sent to the company/the DP of the bankrupt member. The rest of the procedure specified above remains the same.

PROCEDURE FOR BECOMING A MEMBER BY ACQUIESCENCE OR ESTOPPEL

A person can also become a member of the company under the doctrine of the acquiescence or estoppel. If any person allows his name without sufficient cause, to be on the register of members of the company or otherwise holds him out or allows himself to be held out as a member, he will become member of the company. In such a case, such person is estopped from denying his membership.

CESSATION OF MEMBERSHIP

A member ceases to be a member of a company when his name is removed from the register of members or register of beneficial owners. Cessation of membership may occur in following ways:

(i) **Transfer of shares by sale or otherwise:** When the member signs the transfer deed(s) and delivers it together with relevant share certificate(s) to the person to whom he intends to transfer the shares or broker as the case may be. In case of the shares held in the demat form, the members issue Delivery Instruction on the prescribed form to the Depository Participant (DP) with whom he has his Account for such shares. In the case of demat form, the name of the member shall be removed from the Register of
beneficial owners. In the case of Physical Form, the name of the member shall be removed from the register of members only on registration of the shares in the name of the transferee.

(ii) **Forfeiture of shares:** If a member does not pay the allotment/call money on the shares held by him in the company, the company is empowered to forfeit such shares for nonpayment of the due amount by the member after complying with the relevant procedure in this regard.

(iii) **Sale of shares under lien:** If a company has exercised lien on the shares of a member in accordance with its Articles of Association, the member ceases to be a member on removal of his name from the register of members/beneficial owners if the company enforces its lien by way of sale of such shares.

(iv) **Death/Insolvency:** A member ceases to be a member of the company on removal of his name from the register of members/ beneficial owners and entering the name of the nominee/ successor or creditor in the register of member/ beneficial owners in his place. The nominee/successor or creditor shall follow the same procedure as stated in case of transmission of shares.

(v) **Conversion of shares into share warrants/stocks:** If a company subject to its Articles of Association converts its fully paid equity shares into share warrants or stock, the names of the members are struck from the register of members/beneficial owners. Consequently, the members cease to be members of the company on and from the date of such conversion.

(vi) **Buy back of shares:** If a company, subject to its Articles of Association and the provisions of section 68 of the Companies Act, 2013, buys back its own shares from its existing members, then such members who offer all their shares in the company for sale cease to be members of the company on cancellation of such bought out shares.

(vii) **Purchase of Shares under the Court order:** If the shares of a member are purchased by another member or the Company, itself under the order of the Court under Section 242 of the Companies Act, 2013, such member ceases to be a member of such company on removal of his name and placing of the other person's name in the register of members/beneficial owners.

(viii) **Dissolution/Winding up/Striking off the name of the Company:** If a company is dissolved, wound up or its name has been stuck off from the register of the Companies by the Registrar of Companies; the members cease to be the members of such a company. In the case of winding up of a company, the members cease to be members of such company but they remain liable as contributory and/or entitled to claim share in the surplus, if any.

A member does not cease to be a member merely because winding up of the company has commenced. He continues to be a member of the company so long as the requirements of section 41 of Companies Act, 1956 [corresponding to section 2(55) of Companies Act, 2013] read with section 150 of Companies Act, 1956 [corresponding to section 88 of Companies Act, 2013] are complied with. [National Steel and General Mills v. Official Liquidator, (1990) 69 Com Cases 416 (Del)].

(ix) **Cancellation of Contract of membership:** If a member rescinds the contract of membership on the ground of fraud, misrepresentation, genuine mistake or irregular allotment, such member ceases to be a member of the company on removal of his name from the register of members/ beneficial owners.

**DISPUTE REGARDING TITLE OF SHARES AND ITS RESOLUTION**

- Under section 2(55) of the Act, a person cannot be made a member unless his name is entered on the register as a member. If one is a member in the books of the company, it is he alone who would be entitled to exercise the rights of a shareholder, viz. to vote as such or to receive the dividend payable in respect of the share and it certainly follows that he alone is liable for share calls or to be put on the list of contributories in case the company is wound up. Although a member be merely a trustee to the knowledge of the company, he is liable for calls and other obligations of his membership.
Where the title to shares in question was in dispute, the appellant was directed to take necessary steps to establish his title first and then approach the tribunal. Upon the appellant getting the title established through the court, the appeal filed under section 111 of Companies Act, 1956 [corresponding to section 58 of Companies Act, 2013] was allowed and the company was directed to register the transfer in the appellant’s name. [Amar Nath Berry v. Orissa Textile Mills Ltd. Appeal No. 21 of 1972]

In another case, Company Law Board has prescribed certain tests to be applied in case of dispute as to title. CLB has held that in case of a dispute as to whether the petitioner is a shareholder or not, when the name is not shown on the register of members; certain tests are to be applied as to (1) whether the person is in possession of the original share certificates to claim the membership, (2) whether there are independent records to establish that he is a member of the company, (3) whether the company has treated the petitioner as a member of the company in the past. [In Banford Investment Ltd. v. Magadh Spun Pipe Ltd. (1998) 93 Com Cases 685 (CLB)].

It is stated in Halsbury’s Laws of England 4th edition Para 392 that the Directors of a company may rectify the register of members without any application to the court if there is no dispute and the circumstances are such that the court would order rectification. Where a person on the register of members has a right to rectification and the company itself recognises that right, it is not essential for a valid rectification of the register that an order of the court should be sought and obtained. [Reese River Silver Mining Company v. Smith (1869) LR 4 HL 64]

A question had arisen as to whether a public limited company has powers to insert a clause in its articles of association relating to expulsion of a member by the Board of directors of the company where the directors are of the view that the activities or conduct of such a member is detrimental to the interests of the company.

The then Department of Company Affairs (Now Ministry of Corporate Affairs) clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is ultra vires the company, the reason being that such a provision militates against the provisions of the Companies Act relating to the rights of a member in a company.

According to Section 6 of the Companies Act, the Act overrides the memorandum and articles of association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.

The erstwhile Department of Company Affairs has, therefore, clarified that any assumption of the powers by the Board of directors to expel a member by alteration of articles of association shall be illegal and void. (Circular No. 32/7 dated November 1, 1975).

According to section 47(1), subject to the provisions of section 43 and sub-section (2) of section 50,—

(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.
which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

- Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

- Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

### VARIATION OF MEMBER’S RIGHTS

According to section 48(1), where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

### Procedure for Variation of Members’ Rights

1. Check the Memorandum and Articles of Association of the company, whether any of them authorizes the company to vary the rights attached to any class of shares and such rights of the company are not prohibited by either of them and also by the terms of issue of that class of shares. If not, then, alter the Articles of Association of the company to that effect.

2. Convene a Board Meeting after giving notice to all the directors of the company as per Section 173 of the Act and in the case of a listed company, also to the stock exchanges for consideration of the variation of the rights of the holders of issued shares of a particular class. Decide the way to adopt for variations, either through:

   (a) obtaining written consent of the holders of not less than three-fourths of the issued shares of that class; or

   (b) convening a separate meeting of the holders of the issued shares of that class for passing a special resolution thereat.

3. If the Board approves the first method as mentioned 2(a) above, then:

   - approve the resolution for circulation among the holders of the issued shares of that class, and

   - circulate such resolution amongst the holders and obtain their approval in writing of at least three-fourths of the issued shares of that class.

4. If the Board approves the second method as mentioned in 2(b) above, or the company fails to obtain written approval from the holders of not less than three-fourths of the issued shares of that class then —

   - authorize the company secretary to convene a separate meeting of the holders of the issued shares of that class; and
– approve the notice of such meeting containing special resolution with an explanatory statement relating thereto and a proxy form.

5. Give twenty one days’ prior notice of the meeting to the holders of shares of that class and also send three copies of the notice to the stock exchanges where such shares are listed in accordance with the listing agreement.

6. Hold the separate meeting of the holders of issued shares of that class and pass special resolution so proposed by three-fourths majority of the holders present.

7. A copy of the proceedings of the general meeting should also be sent to the stock exchange.

8. In both the cases, file Form No. MGT. 14 with certified copy of the resolution so approved or certified copy of the special resolution and explanatory statement within thirty days from the date of approval or the date of passing special resolution, as the case may be, together with requisite filing fees with the concerned Registrar of Companies.

9. Ensure that the said e-form is filed electronically and copy of the special resolution and explanatory statements are filed with the said e-form as attachments.

10. Ensure that the said e-form is digitally signed by the managing director or director or manager or secretary of the company duly authorized by the Board of directors.

11. Further ensure that the said e-form is certified by a chartered accountant or a cost accountant or a company secretary in whole-time practice by digitally signing the said e-form.

12. If the company is a listed company, then ensure that the aforesaid special resolution is passed only through postal ballot.

13. Inform the stock exchange where the shares of that class are listed about the variation in the members’ rights thereof.

14. If variation affects the rights of the holders of other class of shares, simultaneously obtain consent or approval from them.

15. On variation becoming effective, make necessary changes in all the papers, documents, registers etc.

**CANCELLATION OF MEMBER’S RIGHTS**

According to section 48(2), where the holders of not less than ten percent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal: Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

**Procedure for Cancellation of the Variation in the Members’ Rights**

(1) Ensure that the application to the Tribunal is made by the holders of not less than ten percent of the issued shares of that class who did not consent to or vote in favor of the special resolution for the variation. For brevity, such holders are called as dissentient shareholders.

(2) The petition is required to be made within twenty-one days after the date on which the consent was given or the special resolution was passed to have the variation cancelled.
(3) The application may be made by all the dissentient shareholders or by one or more acting on behalf of
the other dissentient shareholders.

(4) If the application is made by one or more of them, then the letter of authority from other dissentient
shareholders should be annexed to the application.

(5) The names, addresses and the number of shares held by each one of them are to be set out in the
application or a list of them may be annexed as an Annexure to the application.

(6) Ensure that the application sets out the following –

– particulars of registration of the company;
– authorised capital of the company, the different classes of shares in which it is divided and the rights
  attached to each class of shares;
– provisions of the Memorandum of Association or Articles of Association authorising the variation of
  the rights attached to the various classes of shares;
– total number of shares of the class whose rights have been varied;
– nature of variation made and so far as may be ascertained by the petitioner;
– number of the shareholders of the class who have given their consent to the variation or who voted
  in favour of the special resolution for variation and the number of shares held by them;
– number of shareholders who did not consent to the variation or who voted against the special
  resolution and the number of shares held by them;
– date or dates on which consent was given or the date when the special resolution for variation was
  passed;
– reasons/grounds for opposing the variation;
– prayer for cancellation of the variation so consented or passed as the case may be.

(7) The decision of the Tribunal on any application shall be binding on the shareholders.

(8) File the copy of the order of Tribunal with the Registrar of companies within thirty days of date of order.

**Punishment for not COMPLying with the provisions of section 48**

Where any default is made in complying with the provisions of section 48, the company shall be punishable with
fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and
every officer of the company who is in default shall be punishable with imprisonment for a term which may
extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend
to five lakh rupees, or with both.

**PART II TRANSFER OF SHARES**

**Introduction**

In general parlance, “transfer” takes place when title to the property is transferred from one person to another whereas “transmission” refers to devaluation of title by operation of law. Transmission may takes place either by succession or by testamentary transfer.

According to Section 44 of Companies Act, 2013, shares, debentures or other interest of a company are moveable
property, transferable in the manner provided by the articles of association of the company. A member can also
transfer any “other interest” in the company in the manner provided in the articles. For example, a guarantee
compny may transfer membership interest, suspension of membership or assignment of interest etc. by making
special provisions in the articles.

**Transfer of shares**

(1) **INSTRUMENT OF TRANSFER**: Section 56 of the Companies Act, 2013 provides that transfer of securities or interest of a member shall not be registered except on production of instrument of transfer duly stamped, dated and executed and has been delivered to the company by the transferor or the transferee within a period of sixty days (irrespective of the nature of the company, whether listed or unlisted) from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

(2) **IN CASE OF LOSS OF TRANSFER DEED**: In case of loss of the instrument, the company may register the transfer in terms of indemnity. It has been provided in section 56(2) of the Act that where, on an application in writing made to the company bearing adequate stamp value for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the transfer deed signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnify as the Board may think fit.

(3) **TRANSFER OF PARTLY PAID UP SHARES**: Section 56(3) of the Act provides that where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered unless a notice in **Form SH-5** is issued to the transferee and transferee gives “No objection” to the transfer within two weeks from the receipt of the notice. The notice to the transferee shall be deemed to have been duly given if it is dispatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

(4) **TIME LIMIT REGISTRATION OF TRANSFER FOR UNLISTED PUBLIC COMPANY**: Section 56(4) of the Act provides that every company unless prohibited by any provisions of law or of any order of any court, Tribunal* or other authority, shall deliver the certificates of all securities allotted, transferred or transmitted-

(i) Within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(ii) Within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(iii) Within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission, in the case of a transfer or transmission of securities.

(iv) Within a period of six months from the date of allotment in the case of any allotment of debenture.

Where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities. In case of a listed company, the listing agreement requires that the registration of transfers will be made within fifteen days of receipt of the transfer deeds.

(5) **TRANSFER BY LEGAL REPRESENTATIVE**: According to Section 56(5) of the Act, the transfer of any security or other instrument of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of execution of the instrument of transfer.

(6) **OFFENCE & PENALTY**: Where a company registers transfer or transmission of security not in accordance with the provisions of section 56 of the Act, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the
company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(7) **VALUATION OF SHARES:** If the shares are listed in stock exchange, the valuation will be determined on the basis of quotations available on the stock exchange on the date of execution of transfer deed or the consideration paid whichever is higher.

On the contrary, if shares are not listed on stock exchange, the value of the shares for the purpose of stamp means the price that the shares would fetch at the time of transfer of shares or consideration agreed, whichever is higher.

It is to be noted that no transfer duty is applicable for transfer of shares if shares are in dematerialized form.

(8) **STAMP DUTY:** At present, stamp duty applicable for transfer of shares is 25 paise for every one hundred rupees or part thereof of the value of share. Section 56 of the Companies Act requires that where share transfer form is delivered to the company should be adequately stamped. It means stamp of adequate value should be affixed and cancelled on transfer deed. Unless a transfer form is duly stamped when it was delivered to the company for registration of transfer, it could not say that mandatory requirement of section 56 is complied with and the company is justified to refuse the transfer. [Patel Engineering Co. v B.Y. Invest Pvt. Ltd. Case No. 20/CLB/WR/91]

- The share transfer stamps so affixed on a share transfer form are required to be cancelled either at the time of affixing them or at the time of execution of the deed by the transferee. The transferee must make sure that before lodgment of the transfer with the company, he must cancel the stamps by crossing them on their face. No such cancellation of stamps is required in case shares are in dematerialized form.

- If adhesive stamp on transfer deed is not defaced, a fresh deed is to be submitted; company is not obliged to cancel stamp. [Nuddea Tea Co. Ltd. V Ashok Kumar Saha (1988) 64 Comp Cas 775 (Cal)]

- Unless a particular mode of cancellation is prescribed in any state, crossing of stamps is sufficient. [Prafull Kumar Rout v Orient Engg. Works (P) Ltd. (1986) 60 Comp Cas 65 (Ori)]

- When the number of share transfer stamps to be affixed on a share transfer form is large it is practically impossible to affix all the stamps on the share transfer form. In such a situation, the share transfer form, with which a separate sheet of paper with share transfer stamps of appropriate value having been affixed is permanently attached, should be treated as duly stamped under the Stamp Act - In re. Mathrubhumi Printing & Publishing Co. Ltd. (1991) 5 CLA 64 (Ker.)

- It is not necessary that stamps be affixed before transfer deed is executed, they are to be affixed before delivery. [Prafull Kumar Rout v Orient Engg. Works (P) Ltd. (1986) 60 Comp Cas 65 (Ori)]

(9) **EXEMPTION FROM PAYMENT OF STAMP DUTY:** No duty shall be chargeable in respect of any instrument executed by or on behalf of or in favor of the Government in cases where but for this exemption, the Government would be liable to pay to pay the duty chargeable in respect of such instrument.

(10) **NON-APPLICABILITY OF above conditions:** The instrument of transfer and the concerned formalities in section 56 do not apply to the transfer of securities held under the system of depositories. Mere delivery of transfer instruction in the prescribed form to the depository participant by the transferor shall be sufficient.

**TRANSFERABILITY OF SHARES IN A PRIVATE COMPANY**

- Shares of a private company are not marketable securities due to restriction on right to transfer. Such
shares by their very nature are not freely transferable in the market. The objective behind the right of restriction on the transfer of shares is to preserve the composition of the shareholding.

- The section 2(68) of the Companies Act 2013 restricts the right to transfer shares but does not prohibit the right to transfer shares. In case of transfer of shares of a private company, the provisions or restrictions contained in the Articles of Association should be duly complied with by the transferor and transferee.

- As per the provisions of section 44 of the companies Act, 2013, shares or debentures or other interest are movable property, transferable in the manner provided by the Articles of the company. Therefore, there cannot be an absolute prohibition on the right to transfer shares. The right to transfer may be subjected to restrictions contained in the articles and there cannot be total prohibition or ban on transferability of shares. However, only permissible restriction on transferability may be contained in the Articles of association. Restrictions upon transfer of shares in private companies are not applicable in following cases:-

(a) On the right of a member to transfer his/ her shares in a case where the shares are to be transferred to his/her representative(s).

(b) In the event of death of a shareholder, legal representatives may require the registration of shares in the names of heirs, on whom the shares have been devolved.

(c) In respect of shares which are proposed to be issued on a right basis, existing members would have a right to renounce shares likely to be allotted to them. If the existing shareholders renounce their shares then these shares will be allotted to the renounces for the first time and therefore no transfer of shares will take place.

- Restriction on right to transfer shares is generally placed by using following two methods:

(a) **Right of pre-emption:** If a member wishes to sell some or all of his shares, such shares shall first be offered to other existing members of the company at a price determined by the directors or by the auditor of the company or by the use of formula set out in the articles. If no existing member is determined to acquire shares, then shares can be transferred by the transferor to the proposed transferee. A member is not bound to sell his shares to other members under pre-emption clause unless any other member or members agree to buy all the shares proposed to be sold. The transfer between the members is outside the purview of pre-emption clause. The pre-emption clause cannot place a complete ban on right to transfer; they cannot completely prohibit the transfer.

Valuation of Shares under Pre emption clause: Articles of Association of private company provide that the shares are to be sold under pre-emption clause at a fair price determined by the directors or the auditor of the company. It may also be provided that the fair price would be certified by the auditor of the company. If the pre-emption clause requires that the shares are required to be offered to other members at a price certified by the directors or auditor(s), the court are not in a position to enquire in to the correctness of valuation, unless there is evidence that valuation was not correctly made. If the person who made the valuation has acted negligently and failed to take into account all the necessary factors for arriving at the value of share, in such case the transferor may sue for damages to the person who made the valuation for difference between the value of the share, as computed by the valuer, and the real value of shares

(b) **Powers of directors to refuse registration of transfer of shares:** The Powers of directors to refuse registration of transfer of shares are specified in the articles of association of the company. This power is to be exercised by the Board of directors in good faith.

**TRANSFERABILITY OF SHARES IN A PUBLIC COMPANY**

The securities of a public company are freely transferable, subject to the provisions that any contract or
arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract.

**PROCEDURE OF TRANSFER OF SHARES IN A PRIVATE COMPANY**

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Following are the steps to be followed while transfer of shares.

(a) Transferor should give a notice in writing for his intention to transfer his share to the company.

(b) The company in turn should notify to other members as regards the availability of shares and the price at which such shares would be available to them.

(c) Such price is generally determined by the directors or the auditors of the company.

(d) The company should also intimate to the members, the time limit within which they should communicate their option to purchase share on transfer.

(e) If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer.

(f) It is to be noted that any transfer of shares to an outsider without complying with the procedure as specified in the articles for effecting transfer of shares will not be operative against the company. Even in the case where the procedure prescribed by the Articles was not followed and such failure was not due to any fault on the part of selling shareholder, the transfer to an outsider was held not to be effective.

(g) Transfer of shares without consent of holder of shares and without prior sanction of Board of Directors as required under articles of association of a private company concerned could not be held to be valid.

[John Tinson Co. (P) Ltd. V. Surjeet Malhan (1997) 88 Comp Cas 750 (SC)]

**Provisions for transfer of shares as per The Companies Act 2013**

1. An instrument of transfer of securities held in physical form shall be in Form no. SH-4 (Securities Transfer deed/form) and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution and where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

2. In the case of a company having no share capital, provisions of transfer of shares/securities shall apply as if the references therein to securities were references to the interest of the members in the company.

3. Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered,. Unless the company gives the notice of the application in Form SH-5, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of the notice.

4. Company shall unless prohibited by any provision of law or any order of court, Tribunal or other authority, deliver the certificates within a period of one month from the date of receipt by the company of the instrument of transfer of securities.

5. On the event of death of the security holder, if the nomination has been received by the company in Form SH-13, the share will be transmitted in the name of the nominees.

**Procedure for transfer of shares as per The Companies Act 2013**

(i) Obtain the transfer deed in prescribed Form i.e SH-4/SH-5, endorsed by the prescribed authority.

(ii) The instrument of transfer may not be in the prescribed form in the following cases:-
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- Shares transferred by a director or nominee on behalf of another body corporate under section 187 of the companies Act, 2013;
- Shares transferred by a director or nominee on behalf of a corporation owned or controlled by the central or state Government;
- Shares transferred by way of deposit as a security as a security for repayment of any loan or advance if they are made with any of the following:-
  (a) State Bank of India; or
  (b) Any scheduled bank; or
  (c) Any other banking company; or
  (d) Financial Institution; or
  (e) Central Government; or
  (f) State Government; or
  (g) Any corporation owned or controlled by the Central or State Government; or
  (h) Trustees who have filed the declarations.

(iii) For transferring debentures, the instrument of transfer need not be in prescribed form but standard format can be used, being convenient to do so.

(iv) Get the transfer deed duly executed either by the transferor and the transferee or on their behalf in accordance with section 56 of the Companies Act, 2013 and the Articles of Association, in case of shares, and also in accordance with trust deed in the case of debentures.

Requirement of execution of the transfer form by each of the joint shareholders cannot be met by execution of the transfer form by one of the shareholders even though between the shareholders inter se there is an agreement that one shareholder can sign on behalf of all other shareholders [Claude-Lila Parulekar V. Sakal Papers (P) Ltd. (2005) 124 Comp Cas 685 (SC): (2005) 59 SCL 414 (SC)]

(v) The transfer deed should bear stamps according to Indian Stamp Act and stamp duty notification in force in the state concerned. The present rate of transfer of shares is 25 paise for every one hundred rupees of the value of share or part thereof.

(vi) See that stamp affixed on the transfer deed is cancelled at the time or before signing of the transfer deed.

(vii) The signatures of the transferor and the transferee in the share/debentures transfer deed must witnessed by a person giving his signature, name and address.

(viii) Attach the relevant share or debenture certificate or allotment letter with the transfer deed and deliver the same to the company. The share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within the time limits.

(ix) Where the application is made by the transferor and relates to partly paid shares, the company has to give due notice of the amount due on shares/debentures to the transferee and the transferee shall raise objections, if any within two weeks from the date of receipt of the said notice.

(x) If signed transfer deed has been lost, affix the same stamp on a written application. In such case, the Board may, if it thinks fit to do so, register the transfer on such terms of indemnity as it thinks fit.

(xi) If the shares of the company are listed in a recognized stock exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.
A company secretary is required to put up before the Board or the Share Transfer Committee of the company for consideration and approval, only those cases of registration of share transfers, which have been checked up by him and have been found to be strictly in accordance with the provisions of section 56 and other applicable provisions of the Companies Act, 2013 and the articles of association of the company. If the Instrument received is deficient in any respect, the same should be returned to the person who had lodged the same with the company for making good the deficiency. The following checklist has been designed to help a company secretary in his work of processing of cases of share transfers:

1. Each column of transfer deed (SH-4) is properly and adequately filled in.
2. Date of execution is to be filled up properly.
3. Name of the company and its Corporate Identification Number (CIN) is correctly given.
4. Names of the recognized stock exchange, where dealt in, if any, have been given in the Instrument.
5. Description of shares, viz., equity, preference etc. is correctly given. Kind or class of securities, nominal value of each unit, amount called up and amount paid up, number of securities being transferred (both in figures and words) and consideration received (both in figures and words) are to be mentioned clearly.
6. Distinctive numbers of the shares mentioned in the share certificate(s) are to be mentioned in the deed.
7. Corresponding share certificate numbers are to be entered in the transfer deed.
8. Folio number of the transferor as given in the enclosed share certificate(s) is to be correctly entered in the transfer deed.
9. Name and address of the witness to the signature(s) of the transferor(s) are legibly written in the transfer deed and the witness has signed the transfer deed.
10. Signature(s) of the transferor(s) must tally with the specimen signature available with the company.
11. In case of joint share holdings, form shall be signed by all joint transferors.
12. Particulars of transferee viz. Name, Father’s name, address, E-mail Id, occupation and existing folio number are to be correctly entered in the transfer deed.
13. The transferee(s) or the buyer(s) has/have signed the Instrument.
14. Relevant certificate(s) of shares or debentures or other securities is/are to be enclosed.
15. If certificate was not issued, letter of allotment is to be enclosed.
16. Share Transfer Stamps of appropriate value have been affixed on the Instrument and they have been properly cancelled by a rubber stamp or defaced otherwise. If the shares are listed, the valuation of the Share Transfer Stamps is to be determined based on their quoted value. At present the stamp duty on transfer of shares is at the rate of twenty five paise for every hundred rupees of value of the shares on the date of sale, or part thereof.
17. Where the transfer is proposed to be in the name of the minor(s), whether the articles of association of the company permit such registration of transfer and the shares are fully paid.
18. Whether the transferor(s) and/or transferee(s) is/are non-resident Indians and if so, whether the transfer
is permitted under the Foreign Exchange Management Act, 1999, and if not, whether specific permission of the Reserve Bank of India has been obtained.

(19) Where the transferor is a body corporate, whether board resolution of the transferor is passed to this effect and proper authority has been given by the Board of directors to the person signing as the transferor on behalf of the company.

(20) In case of listed company, comply with the formalities of listing agreement and SEBI Guidelines.

(21) Check whether the shares under registration are subject to a lien of the company and if so, whether the company has lifted the lien.

(22) The transfer of shares must not contravene the provisions of SEBI (Substantial Acquisition of Share and Takeovers) Regulations, 2011.

**REFUSAL AND APPEAL AGAINST REFUSAL TO TRANSFER OF SHARES IN A PRIVATE COMPANY**

According to Section 58(1) of the Act, If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. While refusing to register transfer of shares, it is necessary that the directors must act in a good faith and for the benefit of a company and shareholders and not for some other purpose. Power of refusal to register transfer of shares should be exercised strictly on the grounds specified in the Articles and not on the basis of any other grounds.

According to Section 58(3) of the Act The right to appeal in the case of refusal of has now been restricted to only transferee. The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

**REFUSAL AND APPEAL AGAINST REFUSAL TO TRANSFER OF SHARES IN A PUBLIC COMPANY**

According to Section 58(2) of the Act The securities or other interest of any member in a public company shall be freely transferable, provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

According to Section 58(4) of the Act If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

**POWER OF TRIBUNAL [SECTION 58(5)]**

The tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal or by order-
(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

**OFEEENCE AND PENALTY [SECTION 58(6)]**

If a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

**RECTIFICATION OF REGISTER OF MEMBERS**

According to section 59(1) of the Companies act 2013,

- If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or
- If a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or
- any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal*, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of register. The person aggrieved would be the person who was personally and directly affected by an offence and not any member of the public or even a person who was charged with the duty of enforcing prohibitory regulations under a statute.

**Who can apply for rectification:** Any of the following persons may apply to the Tribunal for rectification in the register of members:-

(a) aggrieved person;

(b) any member of the company;

(c) the company;

(d) depository;

(e) participant; or

(f) SEBI.

**Order of Tribunal:** The Tribunal may, after hearing the parties to the appeal by order, either

- Dismiss the appeal, or
- Direct that the transfer or transmission shall be registered by the company within a period of ten days of receipt of the order, or
- Direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

**No restriction on transfer of securities:** Unless the voting right have been suspended by an order of the
Tribunal it shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights.

Where transfer of securities is in contravention of the SCRA and SEBI Act:

- According to section 59(4) of the Act, where the transfer of securities is in contravention of any of the provisions of the Securities Contract (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or Companies Act, 2013 or any other law for the time being in force, the Tribunal may on an application made by the depository company, depository participant, the holder of securities or the Securities and Exchange Board of India, direct any company or a depository to set right the contravention and rectify its register or records concerned.

- The NCLT, after hearing the parties, can either dismiss the appeal or direct registration of transfer or transmission within ten days of receipt of order or direct rectification of records of depository or the register or direct the company to pay damages suffered by aggrieved party. If NCLT accepts the appeal, it can direct company to pay damages, if any, sustained by the aggrieved party.

- NCLT can order payment of damages to aggrieved party. Even specific performance for transfer of such shares can be ordered under section 10 of Specific Relief Act. NCLT has the authority to exercise its power even if the applicants have filed civil suit in other courts. The applicant cannot be debarred from filing an application for rectification of register simply because he has also filed a suit. NCLT can consider question relating to title of shares. However, it cannot divide and allot shares among joint holders.

No time period has been specified for making an application to the tribunal by the depository, company, etc.: There is no time limit for filing application for rectification. There is no question of any non-intimation or non-refusal and hence there is no time limit for application for rectification of register. In Remanika Silks P Ltd. v. J C Augustine (1999) 19 SCL 71 (CLB), it was held that CLB (now it is NCLT) is not ‘court’ and Limitation Act is not applicable. There is no time limit prescribed for filing application for rectification of register. In A Devarajan v. N S N Consultancy P Ltd. (2005) 58 SCL 203 (CLB), it was held that there is no time limit for filing application for rectification of register of members. Filing application within three years from date of knowledge of transfer is not barred by limitation prescribed under section 137 of Limitation Act.

Offence & Penalty: If any default is made in complying with the order of the Tribunal, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. In S Bhuvaneswari v. ACI (Agro Chemical Industries) Ltd. (2004) 51 SCL 158 = 4 CTC 690 (Mad HC DB), it was held that CLB (now NCLT) cannot direct a member to transfer his shares. It can only direct company to register the transfer or transmission, direct rectification of registers and pay the damages, if any, sustained by aggrieved party.

CERTIFICATION OF TRANSFER

- When a shareholder sells only a part of the shares (and not all of them) mentioned in the share certificate, the transfer instrument, after being signed by the transferor, is not sent to the transferee, nor is the transferor’s share certificate handed over to the transferee.

- Both these documents are lodged by the transferor at the company’s registered office.

- The company retains the share certificate but issues to the transferor a balance ticket in respect of the shares which he is retaining, and an officer of the company, usually the secretary, certifies the transfer
by endorsing on the transfer instrument a signed statement “certificate lodged” or words to that effect and mentions the number of shares which it is lodged. This is called “Certification of transfer” and, taken by the buyer of the shares as tantamount for delivery to himself of the share certificate; and he can make a good title to the share in the “certified transfer”.

– When this “certified transfer instrument” is handed over to the transferee of shares, he signs it and forwards it to the company’s registered office with a request for registration.

– When the transfer has been registered, the company cancels the old share certificate and issues two new certificates; one to the transferee in respect of the shares transferred and the other to the transferor, in exchange for the balance ticket in respect of the shares retained by him.

– Certification is also necessary when a shareholder disposes of the whole of his holding to two or more transferees. In such a case, each transfer instrument is certified but no “balance ticket” is issued because the transferor has not retained any shares for himself.

– The “Certification” used to be in effect a representation by the company to any person acting on the faith of certification that the company has received such documents as show a prima facie title of the transferor but not that transferor has any title to the shares.

### AVOIDING FORGED TRANSFERS

One of the most delicate and important jobs in the process of registration of transfer of shares is matching the signature(s) of transferor(s) on the instruments of transfers that are lodged with companies. It is quite common that during transit by post, envelopes containing share transfer deeds and share certificates are pilfered or are removed, the original instruments of share transfer are retained, signature(s) of transferor(s) on a new instrument of transfer are forged and the shares are sold to unsuspecting persons along with the corresponding share certificates. The purchasers fill in their own names in the instruments of share transfers, as transferees of the shares and lodge the forged instruments with the company for registration of transfer of the shares in their names.

Where, a company acts in good faith and registers a transfer produced by the transferee and issues fresh certificate to him but later found that the transfer was forged and the company is compelled to restore the shares, the transferee is liable to indemnify the company against its liability. The company may not however be able to claim a complete indemnity if it is guilty of negligence in failing to spot the forgery.

Therefore, the company secretaries and/or those who are entrusted with the responsibility of matching signatures of the transferor(s) on the share transfer forms with those that are available in the records of companies, have to be very careful in checking the signature(s) of transferor(s) on the share transfer deeds. Even on the slightest doubt they should not entertain the documents and immediately send a notice to the transferor(s) notifying the fact of receipt of the transfer documents with the name(s) and other given details of the transferee(s) and requesting them to intimate to the company within a stipulated period of time whether the shares have in fact been sold to the said transferee(s) and also clearly saying that if the company does not hear to the contrary from the transferor(s) within the stipulated period of time, the transfer of shares would be registered in the names of the said transferees.

A copy of such a notice should also be endorsed to the regional stock exchange, where the securities of the company are listed, for its information and record.

A forged transfer is a nullity. Therefore, the registered holder of the shares [i.e. the transferor(s)] continues to be the owner and holder of the said shares and if the company has already acted on the forged transfer and has registered the share transfer in the name of the person who has lodged the forged instrument, the company is
bound to restore the name of the original shareholder on the register of members [People’s Ins. Co. v. Wood and Co; 1961 (31) Com Cases 61].

**TRANSPOSITION OF NAMES**

In the case of joint-shareholders, one or more of them may require the company to alter or rearrange the serial order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint-holders will be recognized for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorized officer of the company. Since no transfer of any interest in the shares takes place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition does not also require stamp duty.

The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.

**DEATH OF TRANSFEROR OR TRANSFEREE BEFORE REGISTRATION OF TRANSFER**

In accordance with section 56 of the Companies Act, 2013, a company shall register the transfer of shares when a proper instrument of transfer duly stamped and executed by or on behalf of the transferor, and transferee has been delivered to the company along with the share certificates.

If transferor sold his shares by executing a transfer deed in favor of transferee and such documents were lodged for transfer but the transferor dies before such transfer is registered by the Company, the company would register the transfer, irrespective of whether the death of transferor is intimated to company before registration of transfer or whether death is intimated after registration of transfer.

If transferee dies before registration, and company has notice of his death, transfer of shares cannot be registered in the name of the transferee who has already deceased. With the consent of the transferor and the legal representatives of the transferee, the transfer may be registered in the name of the legal heirs of the transferee (who has already died) or his nominee, if any. But if there is a dispute, an order of the Court will be insisted by the company before effecting the transfer.

In case, the death of transferee is not notified to the company, the company can register the transfer in the name of the deceased transferee, in as much as the company is not aware of the death of the transferee and the transfer is done bonafide by the company, as per the information available with it.

In Killick Nixon Ltd. v. Dhanraj Mills Ltd. (1983) 54 Com Cases 432, it was held that the company is not bound to enquire into the capability of the transferee to enter into a contract. The company has to act on the basis of what is presented in the transfer deed.

**PART III TRANSMISSION AND NOMINATION OF SHARES**

**TRANSMISSION OF SHARES**

Transmission of shares is a process by operation of law, where under the shares registered in a company in the name of a deceased person or an insolvent person are registered in the name of his legal heirs by the company on proof of death or insolvency and on the establishment of right and title of the heirs on the deceased member’s shares. Transmission of shares takes place when a registered member dies or is adjudicated insolvent or lunatic by a competent Court.
A transmission of shares or other interest in a company of a deceased member thereof made by the legal representative of a deceased member of the company shall be considered as transmission of shares by operation of law and will be registered by a company in the register of members.

Articles of companies generally provide for formalities to be observed for transmission of shares. In the absence of such provision in the articles of the company, Regulations 23 to 27 of Table F of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased or insolvent member could have made. The Board of directors also has the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the Tribunal under Section 58.

(a) **Execution of transfer deed not required in case of transmission of shares:** Section 56 (2) of the Companies Act, 2013 states that nothing in section 56 shall prejudice any power of the company to register as holder of securities any person to whom the right to securities of the company has been transmitted by operation of law. It is not necessary to have any instrument of transfer executed for the purpose of transmission of shares. Where title to the shares comes to vest in another person by operation of law, it is not necessary to submit transfer form. [Life Insurance Corpn. Of India v Bokaro & Ramgur Ltd. (1966) 36 Comp Cas 490 (Del)]

(b) **Transmission shall be subject to the liabilities, if any:** In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsists, notwithstanding the devaluation of shares.

(c) **Requirement of documents/evidences for transmission of shares:** Where title to shares comes to vest in another person by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:-

- Certified copy of death certificate;
- Succession Certificate;
- Probate;
- Specimen Signature of the successor.

However, requirement of these certificates is not essential and depends on various circumstances of the case. Where a succession certificate has been granted in respect of shares, the company cannot insist on the production of probate or letters of administration; the certificate affords full indemnity to company.[Thenappa Chettiar v Indian Overseas Bank Ltd. (1943) 13 Comp Cas 202 (Mad)]

(d) **No requirement of consideration and payment of stamp duty:** Since the transmission is by operation of law, neither consideration for transfer nor stamp duty is required on instruments for transmission.

(e) **Transmission in case of joint holding:** Regulation 23 in Table F provides that on the death of a
member where he was a joint holder, the survivor or survivors shall be the only persons recognized by the company as having any title to his interest in the shares. The legal heir of the deceased member is not entitled to get registered as a joint holder along with the surviving holder.

(f) **Modes of transmission of shares:**

(i) The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.

(ii) If a member of a company dies and leaves after him a will or letter of administration then the survivors shall get a copy of “will” certified under the seal of a Court competent jurisdiction. The certified copy of the will is called a “probate” and it shall be forwarded to the company.

(iii) If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company.

(iv) in case a member of a company becomes bankrupt, the official receiver shall produce documentary evidence of his appointment from a competent Court.

(g) **Transmission could be effected without succession certificate in case of small holdings:** In the case of small holdings, transmission of securities may be considered and effected by a company without obtaining succession certificate. However, the Board of directors should ensure that sufficient evidence has been produced by the legal heirs. The following documents are required to be submitted to the company;

- Certified copy of the death certificate.
- Particulars and signature of all legal heirs.
- Affidavit on non-judicial stamp paper certified by a first class magistrate or notary public.
- Deed of disclaimer.
- Indemnity bond on non-judicial stamp paper
- PAN of the legal heir.

It would be in order for the Board to register transmission of shares by obtaining indemnity bond rather than insisting upon production of succession certificate.

(h) **Right to dividend, right shares and bonus shares to legal representative shall be kept in abeyance:** As per Regulation 24 in Table F, a person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the shares. When a succession certificate is granted by a Court, it shall specify the debts and securities set forth in the application for the certificate and may empower the applicant to receive interest or dividend on the securities etc.

(i) **Voting rights:** The legal representatives of a deceased member shall not be entitled to exercise voting and other rights in general meetings of the company unless he is registered as a member in respect of the shares.

(j) **Requirement of probate:** Section 213(1) of Indian Succession Act, 1925 provides that no right as an executor or legatee be established in any court, unless a court is competent jurisdiction in India has granted probate of the will under which the right is claimed. It is not necessary to have the will registered
for the purpose. This section requires production of probate only in two cases; (i) when a person wants to establish a right as an executor, and (ii) when he wants to establish his right as a legatee.

(k) **Transmission in case of amalgamation:** The transfer of shares in amalgamation would not require execution of instrument of transfer or any other formalities under section 56 of the Act. This is a case of transmission of shares by operation of law, in as much as, by virtue of an order of the High Court under section 232 of the companies Act on sanctioning a scheme of amalgamation, all assets and liabilities of the transferor company vest, by operation of law, in the transferee company.

**REFUSAL TO REGISTER TRANSMISSION OF SHARES**

- A private company may refuse to register transmission of shares in pursuance of any power conferred on it by the Articles or otherwise, provided intimation shall be sent to this effect by the company.
- The company, shall, within 30 days from the date on which an application of transmission was delivered, to the company, send notice of the refusal to the person giving intimation of such transmission, giving reasons for such refusal under section 58 of the Companies Act, 2013.
- A private company can decline to register to register transfer or transmission of shares only on those grounds, which are contained in the Articles.
- Provisions of section 58 of the Companies Act, 2013 would no longer apply to the cases of refusal to register transfer/transmission of shares, debentures of both listed and unlisted public companies.
- Now the only remedy to aggrieved person is as provided under section 59 of the Companies Act, 2013, which is rectification of registration only on grounds specified in sub section (1) of section 59.
- As per section 59 (4), The Tribunal may, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of securities is in contravention of any of the provisions of the SEBI Act, 1992 or regulations made thereunder. Thus, it has abrogated the right to refuse registration of transfer of shares in all public companies on any ground. It would be obligatory for them to register such transfer but after having registered such transfer, the company may approach the Tribunal for an order of rectification so that it can delete the transferor’s name from its register subsequently.

**OTHER PROVISIONS RELATED REFUSAL TO REGISTER TRANSMISSION OF SHARES**

1. **Registration of transmission of shares:** In the case of transmission there is an instantaneous transfer of ownership of shares to the heirs of last holder from the moment of his death except that it may be necessary for the heir to produce a succession certificate. The succession certificate produced by the petitioner is conclusive evidence; it is statutory duty of a company to register transfer/transmission once there is a legal compliance.

2. **Petition for transmission not considered by the Tribunal:** In Anil Chhabria v Finolex Industries Ltd. (2000) 99 Comp Cas 168 (CLB): (1999)35 CLA 213(CLB), it was held that there was nothing on record to show that the Board of directors considered the delivery of intimation of transmission after the succession certificate has been lodged. Indeed there is no indication that the Board of directors had ever considered the matter; all the time it was company secretary who had been writing to the petitioner. In the instant case the chairman is related to the petitioners. There is an allegation that he was delaying the transmission. The delay in transmission in the circumstances is not bona fide.

3. **Whether intermediary in transaction of transfer of shares has a right to file appeal:** A stranger to section 58(1) by no means can be called “any person aggrieved”. The word ‘aggrieved’ refers to a
person having a substantial grievance, a person who has been denied some personal or property right. The mere fact that the transferor to transferee had not chosen to prefer an appeal before the Board; it would be no ground to permit the appellant to prefer an appeal on the alleged ground that he had suffered monetary loss. [Vinod K. Patel v Industrial Finance Corporation of India(2001) 103 Comp Cas 557 (Del): (1999) 35 CLA 376 (Del)]

(4) **Company cannot withhold transmission on account that the court fee paid was insufficient:** So far as the court fee is concerned, it is for the Court to satisfy about its correct payment and if it is found that it was insufficiently paid, the court can direct its recovery together with penalty, if any leviable. At any rate it is not for the company to withhold transmission of shares on this count. Once the succession certificate has been produced, the company ought to have effected transmission of shares on the basis of that certificate. [Arjun Kumar Israni v Cipla Ltd. (2000) 99 Comp Cas 237 (CLB)].

(5) **Time limit for filing an appeal with the Tribunal:** An appeal under section 58(3) of Companies Act, 2013 shall be made within thirty days of the receipt of the notice of such refusal or where no notice has been sent by the company within sixty days from the date on which intimation of transmission was delivered to the company.

### Procedure for Transmission of Shares

In the light of the foregoing provisions in the Act and the model articles of association of a company as enshrined in Table A of Schedule I to the Companies Act, 2013, a company which receives an intimation about the demise or insolvency of a registered shareholder, is required to follow the procedure as detailed below for effecting registration of transmission of the shares at that point of time registered in the name of the deceased member:

1. On receipt of the intimation about the death or lunacy or insolvency of a member, the company should write to the person who intimated the company about the death or lunacy or insolvency of the member, to enquire whether the deceased member had left a Will or there has been a proper order by a competent Court of law in the event of the member’s insolvency or lunacy, and whether the heirs of the deceased member had applied to a Court and obtained or would be applying to Court of law for the issue of a succession certificate.

2. In the event of insolvency of a member, his shares vest in the Official Receiver, who may get himself registered as holder of the shares or dispose them of. He is also entitled to disclaim partly-paid shares or fully paid shares which are subject to charge, hypothecation or any other encumbrance.

3. If shares are jointly held and one of the joint holders passes away, the company may transmit the shares in the name of the surviving holder. If there are more than one surviving holders, the company must insist on all of them jointly signing the application for such transmission. However, the course of action to be adopted by the company should be decided according to the provisions contained in its articles of association.

4. It is important to note that in the case of transmission of shares in a company—

   (i) no formal instrument of transfer is required since the registered shareholder either does not exist to execute the share transfer form as transferor or for reasons of his incapacity to execute the instrument because of his lunacy or insolvency;

   (ii) no share transfer stamps are required to be affixed on the application for transmission of shares because transmission is not transfer. Transfer is the result of free will of both the parties, whereas in the event of transmission of shares, only the transferee is present and the State or the law acts as the transferor of the shares, which is known as transfer by operation of law.
5. The company must thoroughly check the application for transmission of shares with specific attention to the following:

(a) Whether the application for transmission contains correct details of the deceased member, e.g., his name, address, occupation, father’s/husband’s name, his shareholding and is accompanied by the relevant share certificates.

(b) Whether the applicant has sent along with the application –

(i) death certificate, along with a certified true copy, of the deceased member;

(ii) succession certificate, if the deceased member has left no Will;

(iii) if the deceased member has left a Will, probate thereof or letter of administration;

(iv) affidavit by the legal heir declaring his right in the shares; and

(v) indemnity bond binding him and his heirs, assigns etc. to indemnify the company in the event of the company having to face any proceedings, incur some loss etc.

6. If the application is accompanied by a succession certificate, the company should ensure that the particulars of heir(s) have(s) been correctly given in the certificate and the certificate contains details of the shares to which the applicant has staked his claim.

7. The company must receive attested signature(s) of the applicant heir(s) duly certified by a competent person, e.g., a Magistrate, a Judge of a High Court, a Gazetted Officer, a Notary Public, an Oath Commissioner, a Bank Manager, or a member of a recognised stock exchange, for its record.

8. If the succession certificate entitles more than one heir to the properties of the deceased member including the shares in the company, the company must register the shares in the joint names of all the heirs. However, if they want the shares to be registered in the name of one of them, then the company must obtain from the remaining heirs a letter of disclaimer on a non-judicial stamp paper of the value applicable in the State where the disclaimer is signed and executed, disclaiming their rights in the shares and entitling the said heir to have the shares transmitted and the transmission registered in his name. Alternatively, the shares must first be registered in the joint names of all the heirs and thereafter the disclaiming heirs may transfer their respective share in the shares under reference by means of a regular share transfer.

9. After having ensured the above, the company secretary should place the application for transmission of the shares along with the relevant documents received therewith, before the Board of directors of the company or the Share Transfer/Transmission Committee, if there is one, for its consideration and approval.

10. As soon as the transmission is approved by means of a resolution of the Board or the Committee, the secretary should enter the name(s) of the authorized heir(s) in the register of members of the company and send the share certificates to the registered members, after appropriately endorsing them in their names.

**SUMMARY OF PROVISIONS RELATING TO TRANSMISSION OF SHARES**

(i) Transmission is devaluation of title by operation of law.

(ii) No instrument of transfer (Transfer Deed) is necessary

(iii) If there was any lien on the shares or any original liabilities, it would subsist even after transmission.
(iv) A simple application with certain documents such as death certificate, succession certificate, probate etc, depending upon various circumstances may be sufficient for transmission.

(v) In case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.

(vi) Succession certificate is not required when probate or letter of administration is issued.

(vii) Once succession certificate is granted, it provides full indemnity to the company to transmit the shares by operation of law.

(viii) In case of amalgamation, no instrument of transfer is required to be executed.

(ix) In case of shares of a private company, if company refuses to register transmission, notice of such intention within two months giving reasons must be sent by the company to the person sending intimation.

(x) Remedies provided under section 58 are no longer applicable on listed/unlisted public company.

(xi) Section 59 abrogates the right of the public company to refuse registration of transfer/ transmission of shares and debentures on any grounds.

(xii) The companies, after registration of transfer, may approach the Tribunal for an order of rectification in case the transfer is in contravention of any of the provisions of the Companies Act, 2013 and any other Act.

### Nomination of shares under the Companies Act 2013

According to section 72(1) every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

- Where the securities of a company are held by more than one person jointly, the joint holders may together nominate any person to whom all the rights in the securities shall vest in the event of death of all the joint holders. The nomination may be changed any time by the holder or joint holders of the securities.

- The nominee shall on the death of the holder of securities or as the case may be, on the death of joint holders, become entitled to all the rights in the securities, of the holder, or as the case may be, of all joint holders, in relation to such securities, to the exclusion of other persons.

- Where the nominee is a minor, it shall be lawful for the holder(s) of the shares or holder(s) of debentures to make the nomination to appoint in the presented manner, any person to become entitled to shares in or debentures of the Company in the event of his/their death, during the minority.

### Procedure for Nomination by securities holders:

The procedure for nomination by security holders is given under Rule 19 of Share Capital and debentures Rules 2014.

1. Any holder of securities of a company may, at any time, nominate, in **Form No. SH.13**, any person as his nominee in whom the securities shall vest in the event of his death.

2. On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.

3. Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No.SH.13 any person as nominee.
The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.

In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-

- to register himself as holder of the securities; or
- to transfer the securities, as the deceased holder could have done.

If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).

All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH.14.

The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. SH. 14 specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

Transmission of Shares to Nominee

Any person, who has been nominated, shall have to produce such evidence as may be required by the Board of the Company, may elect either –

(a) to be registered himself/herself as holder of the shares or debentures, or

(b) to make such transfer of the shares or debentures as the deceased shareholder or debenture holder could have made.
If the nominee elects to be registered as holder of the share or debenture himself/herself, he shall deliver or send to the company a notice in writing signed by him/her stating that he/she so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder.

Such nominee shall be entitled to the same dividends and other advantages to which he/she would be entitled if he/she was the registered shareholder or debenture holder. The Board of the company may also give notice to the nominee to elect either to be registered himself/herself or to transfer the share or debenture and if the notice is not complied with within 90 days, the Board may thereafter withhold payment of all dividends, bonuses or other money payable in respect of the share or debenture until the requirements of the notice have been complied with.

**Procedure for Transmission of Shares to Nominee**

1. The Company Secretary shall keep and maintain a register of nominations received from its shareholders. On receipt of nomination in the prescribed Form No. SH.13, the company secretary shall verify the details filled in Nomination Form and also tally the signatures of the shareholders with the specimen available with the company. On verifying the particulars, the same shall be recorded in the register of nominations and/or Register of members.

2. On being informed about the death of its shareholder, the company should check whether the deceased shareholder had submitted nomination form and the same was valid on the date of death. If so, the company should send a notice to the nominees to elect either to be registered as holders thereof or to transfer the shares as the deceased holder could have made.

3. The company may also receive a notice from the nominee to elect either to be registered as a holder or to transfer the shares as the deceased could have done, along with required documents i.e. death certificates, share certificates and an application containing full particulars of the nominee such as name in full, father’s/husband’s name, occupation, age, address in full, specimen signature duly attested by the magistrate/notary public or Banker of the nominee with Bank account number etc.

4. The company can act upon such notice after having been satisfied as to the request of the nominee as shareholder in place of the deceased as elected by him or if the nominee has elected to transfer the shares of the deceased, the company can register the transfer of such shares of the deceased to the transferee(s).

**PART IV- DEMATERIALISATION OF SECURITIES**

**DEMATeRiALiSATION OF SECURITIES**

Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates. Dematerialisation is comparable to keeping your money in a bank account. In demat form, physical share certificates are replaced by electronic book entries; purchase of shares are reflected as credits in demat account and sales are reflected as debits. The risk associated with physical share certificates such as loss, replacement, theft, damage etc. are overcome in the share certificates held in Dematerialisation form which are totally risk free.

- Dematerialisation of shares of a company is regulated by the Depositories Act, 1996
- According to the Depositories Act, 1996, an investor has the option to hold securities either in physical or electronic form. Part of holding can be in physical form and part in demat form. However, SEBI has notified that settlement of market trades in listed securities should take place only in the demat mode.
- Section 29 of the Companies Act, 2013 provides that every company making public offer; and such
other prescribed companies shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Any company, other than a company mentioned above, may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

- Further, SEBI (Issue of Capital and Disclosure Requirements), 2009 has made it mandatory for a company to make a public or rights issue or an offer for sale of securities in a dematerialized form but allows an option to be given to shareholders to receive the security certificates or hold securities in dematerialized form with a depository.

- Section 8 of the Depositories Act provides that every person subscribing to shares offered by a company shall have the option either to receive the share certificates or hold shares with a depository in electronic form. Where a person opts to hold his shares with a depository, the company shall intimate such depository the details of allotment of the shares and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of the shares [Sub-section (2) of Section 8].

- Section 9 of the Depositories Act clarifies that all the securities held by a depository shall be dematerialised and shall be in a fungible form that is, they do not bear any notable feature like distinctive number, folio number or certificate number. Once shares get dematerialized, they lose their identity in terms of share certificate, distinctive numbers and folio numbers.

- According to Section 10 of the Depositories Act, a depository shall be deemed to be the registered owner of the shares for the purposes of effecting transfer of ownership of the shares on behalf of a beneficial owner and the depository as a registered owner shall not have any voting rights or any other rights in respect of the shares held by it. It is only the beneficial owner of the shares who shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his shares held by a depository.

- Every depository shall maintain a register and an index of beneficial owners in the manner provided in Section 88 of the Companies Act, 2013.

**Procedure for dematerialisation of shares by the shareholder**

1. For the purpose of Dematerialisation of the shares of a registered shareholder of a company, the shareholder has to enter into an agreement with a depository through a participant in the manner specified by the bye-laws, for availing of its services [Refer Section 5 of the Depositories Act.]

2. Section 6(1) of the Act lays down that a person who has entered into an agreement under Section 5 shall surrender the certificate of the shares, for which he seeks to avail the services of a depository, to the company in the manner specified in the SEBI (Depositories and Participants) Regulations, 1996.

3. According to Sub-section (2) of Section 6 of the Act, the company, on receipt of the share certificate under Sub-section (1) from such a shareholder, shall cancel the certificate, (which action is referred to as Dematerialisation of shares) and substitute in its records, the name of the depository as the registered owner in respect of those shares and accordingly inform the depository.

4. On receipt of the information from the company under Sub-section (2), the depository shall enter the name of the shareholder in its records as the beneficial owner of the shares and inform the company, who shall in turn inform the shareholder that his shares have been dematerialized and his name has been entered in the depository’s electronic records [Refer Sub-section (3) of Section 6 of Depositories Act, 1996.

5. A Dematerialisation Request Form (DRF) issued by the Depository Participant is to be filled and deposited
with the concerned DP together with certificates after writing “Surrendered for Dematerialisation” on the face of each certificate.

6. The DP will send DRF along with the certificates to the concerned company for confirmation of its genuineness simultaneously to Share Transfer Agents electronically through the Depository (NSDL or CDSL as the case may be).

7. After checking the genuineness of the certificates and DRF the company/Share Transfer Agents destroy the certificates and send a confirmation to the NSDL or CDSL which, in turns, confirm the dematerialisation of securities to DPs.

8. DPs on receipt of such confirmation should inform the investor accordingly.

**Procedure for dematerialisation of shares by the company**

A company proposing to have its shares dematerialized is required to take the following procedural steps:

1. It should ensure that its articles of association do contain an article which authorizes the company to have its securities dematerialized. If the articles of the company do not contain such a provision, it shall be required to alter its articles by passing a special resolution in general meeting in accordance with the provisions of Section 14 of the Companies Act, 2013 so as to include such a provision and thereafter comply with the provisions of the Depositories Act, 1996 and the SEBI (Depositories and Participants) Regulations, 1996 for dematerialisation of its securities. (For a specimen of the special resolution for alteration of articles of association of the company to include an article authorizing the company to have its securities dematerialised, please see Annexure VII at the end of this study).

2. The said company, which is desirous of dematerialising any of its above-detailed securities, after having altered its articles of association to incorporate an article to authorize the company to dematerialize its securities, will have to approach a depository for the purpose. The depository shall enter into an agreement with the company in respect of securities that are to be declared as eligible to be held in dematerialized form. Further, no such agreements shall be required to be entered into where the State or the Central Government is the issuer of such securities. [Refer Regulation 29(1) of the said regulations].

3. If the company has appointed a Registrar to the issue, in case of a new issue, or a share transfer agent for transfer/transmission of its existing shares, who has been granted certificate of registration by SEBI under Sub-section (1) of Section 12 of the Depositories Act, 1996, the depository shall enter into a tripartite agreement with the company and the registrar to the issue or share transfer agent, as the case may be, in respect of the securities to be declared by the depository as eligible to be held in dematerialized form. [Sub-regulation (2) of Regulation 29 of the said regulations].

4. Thereafter, the shareholders may surrender their share certificates to the company and the company shall inform the depository accordingly. According to Sub-section (2) of Section 6 of the Act, the company, on receipt of the share certificates under Sub-section (1) from its shareholders, shall cancel the certificates, (which action is referred to as dematerialisation of shares) and substitute in its records, the name of the depository as the registered owner in respect of all those shares and accordingly inform the depository.

5. On receipt of the information from the company under Sub-section (2), the depository shall enter the names of the shareholders in its records as the beneficial owners of the shares and inform the company, who shall in turn inform the shareholders that their shares have been dematerialised and their names have been entered in the depository’s electronic records as beneficial owners of the shares [Refer sub-section (3) of Section 6 of Depositories Act, 1996].
6. According to Regulation 30 of the said regulations, every depository shall have systems and procedures which will enable it to coordinate with the company or its agent, and the participants, to reconcile the records of ownership of securities with the company or its agent, as the case may be, and with participants, on a daily basis.

7. Every depository shall maintain continuous electronic means of communication with all its participants, issuer companies or companies’ agents, as the case may be, clearing houses and clearing corporations of the stock exchanges and with other depositories [Refer Regulation 31].

8. The depository shall satisfy the Board that it has a mechanism in place to ensure that the interests of the persons buying and selling securities held in the depository are adequately protected. [Regulation 32]

9. Where records are kept electronically by the depository, it shall ensure that the integrity of the automatic data processing systems is maintained at all times and take all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place [Refer Regulation 37].

TRANSFER OF DEMATERIALISED SHARES

- Section 7 of the Depositories Act lays down that every depository shall, on receipt of intimation from a participant, register the transfer of shares in the name of the transferee and where the beneficial owner or a transferee of any shares seeks to have custody of such shares, the depository shall inform the issuer accordingly.

- The transfer deed and all other provisions stipulated in Section 56 of the Companies Act, 2013 shall not apply to the transfers affected within the depository mode.

- No stamp duty is levied on transfer of securities held in demat form. Any number of securities can be transferred/ delivered with one delivery instruction. Therefore, the paperwork and signing of multiple transfer forms is done away with.

The procedure for sale of shares held in demat form is as under:-

(i) Sale shall be made through a broker who is a member of National Stock Exchange;

(ii) Shareholder i.e. the beneficial owner (BO) will give delivery instruction through Delivery Instruction Slip (DIS) to depository participant (DP) to debit his account and credit the broker’s account. Such instruction should reach the DP’s office at least 24 hours before the pay-in, failing which, DP will accept the instruction only at the BO’s risk;

(iii) The broker shall give instructions to his DP for delivery to clearing corporation of the concerned stock exchange and receive payment from clearing corporation;

(iv) The broker shall make payment to the investor in physical form.

The procedure for purchase of securities held in demat form is as under:-

(i) broker will receive the securities in his account on the payout day;

(ii) broker will give instruction to its depository participant to debit his account and credit beneficial owner’s account;

(iii) BO will give ‘Receipt Instruction’ to DP for receiving credit by filling appropriate form. However, BO can give standing instruction for credit to his account that will obviate the need of giving Receipt Instruction every time.
Pledge or Hypothecation of Dematerialised Shares

A beneficial owner may, with the prior approval of the depository, pledge or hypothecate his shares held in a depository. Upon receipt of intimation from the beneficial owner about the pledge or hypothecation of his shares, the depository shall accordingly make entries in its records. Such an entry in the records of a depository shall be evidence of a pledge or hypothecation [Refer Section 12]. Both the pledger and pledgee must have a depository account. The procedure for pledge or hypothecation of shares held in demat form is as under:-

(i) Investor shall submit the details of shares to be pledged to the DP in the prescribed format
(ii) DP shall verify the records and on being satisfied that the shares are available for pledge, make a note in the records and forward the application to the Depository for approval.
(iii) Depository shall obtain confirmation from pledgee and the records the pledge within 15 days of application.
(iv) Depository shall send intimation to the DP of both the pledger and pledgee who will inform the pledger and pledgee respectively.
(v) The pledgee may invoke the pledge in accordance with the terms of pledge and on such invocation the name of pledgee is entered in the Register of Beneficial Owners by the Depository.
(vi) During the pledge is in force, the DP shall not give effect to transfer of any security without the concurrence of the pledgee.
(vii) On closure of the loan, the pledger shall request the DP to close the pledge. The pledgee, on getting payment, shall make a request for closure of pledge to his DP.
(viii) For making hypothecation of shares held in demat form the above procedure is to be followed. However before registering the hypothecatee as a beneficial owner, the Depository should obtain the consent from the hypothecator.

REMA T ERIALISA TION OF SECURITIES

Rematerialisation is conversion of electronic securities into physical certificates of such securities. This can be done in the following manner:

1. Beneficial owner sends request to DP.
2. DP intimates Depository (NSDL or CDSL) of such request electronically.
3. Depository (NSDL/CDSL) confirms rematerialisation request to the company’s Share Transfer Agents.
4. Share Transfer Agent updates accounts and prints certificates and confirms the Depository (NSDL/ CDSL).
5. Depository (NSDL/CDSL) updates accounts and downloads the details to the DP.
6. Share Transfer Agent dispatches certificates to holder thereof.
7. The DP also sends intimation about rematerialisation to its client.

PART V COMPLIANCES RELATED TO INSIDER TRADING AND TAKEOVERS

Concept of Insider Trading

The concept of insider trading is regulated by SEBI (Prohibition on Insider Trading) Regulations, 1992. For the first time, it has been made part of the Companies Act, 2013 by inserting provisions relating to insider trading by virtue of section 195 of the said Act.
As per Section 195 of the Companies Act, 2013, No person including any director or KMP of a company shall enter into insider trading except any communication required in the ordinary course of business or profession or employment or under any law. It prohibits directors and key managerial personnel from purchasing call and put options of shares of the company, its holding company and its subsidiary and associate companies as if such person is reasonably expected to have access to price-sensitive information.

‘Insider trading’ means-

(i) an act of buying or selling, dealing or agreeing to subscribe, buy, sell or deal in any by any director or key managerial personnel or any other officer of the 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 counseling about, procuring or communicating directly or indirectly any non-public price sensitive information to any person;

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

Further, SEBI had notified (Settlement of Administrative and Civil Proceedings) Regulations, 2014 which keep insider trading outside the ambit of the consent order mechanism. A consent order mechanism is a process where violations can be settled by paying fine as against full-fledged enforcement proceedings. Penalties for Insider Trading have been envisaged under SEBI Act, 1992 and Section 195 of the Companies Act, 2013.

SEBI (Prohibition of Insider Trading) Regulations, 1992

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 seek to govern the conduct of the insiders, connected persons and persons who are deemed to be connected persons on matters relating to Insider Trading which is summarized as under:

- All directors/officers/designated employees and their dependents (as defined by the company) shall execute their order in respect of securities of the company within one week after the approval of pre-clearance is given. If the order is not executed within one week after the approval is given, the employee/director must pre-clear the transaction again.

- All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/officers/designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

- In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

- In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his/her reasons in this regard.

- Regulation 12 of the Insider Regulations provide that all listed companies and organizations associated with securities markets including the intermediaries, the self regulatory organizations, recognized stock exchanges, clearing houses, public financial institutions, professional firms who are engaged in assisting or advising listed companies shall for prevention of insider trading frame a code of internal procedures
and conduct as near thereto the Model Code specified in the Schedule I of the Regulations without diluting it in any manner and ensure compliance of the same.

– They shall also abide by the code of corporate disclosure practices as specified in Schedule II of the Regulations.

– In addition to the compliance of regulation 12 of the Insider Regulations, every listed company is also required to disclose to all stock exchanges on which the company is listed, the information received by the company under sub-regulations (1), (2) (3), (4) and (4A) of regulation 13 in the prescribed format within two working days of receipt.

– As required by the code of conduct of every listed company, the compliance officer of the company is obliged to inform the SEBI about violation of SEBI (Prohibition of Insider Trading) Regulations, 1992 whenever he finds any violation.

– As per regulation 13(1), any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in the prescribed Form A of the Regulations, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.

– As per regulation 13(2), every director or officer of a listed company shall disclose to the company in the prescribed Form B of the Regulations, the number of shares or voting rights held and positions taken in derivatives by such person and his dependents, within 2 working days, of becoming a director or officer of the company.

– As per regulation 13(3), any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C of the Regulations the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure; and such change exceeds 2% of total shareholding or voting rights in the company. Such disclosure shall be made within 2 working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights as the case may be.

– As per regulation 13(4), Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D of the Regulations, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

– Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under these Regulations in the respective formats specified in Schedule III of these Regulations.

**Role of Company Secretary**

According to the Model Code of Conduct for prevention of insider trading, every company to which the regulations apply has to appoint a compliance officer who is generally the Company Secretary of the company. The regulations may be applicable to an unlisted public company or even other entity because they may be intermediaries to which SEBI provisions are applicable. Once the Company Secretary has been nominated by the Board of a company as compliance officer he becomes the nodal point for all compliance related matters of the company under the regulations. He is then a link between the SEBI and the management or officers and employees of the
Company. As a good compliance officer, he is expected to keep himself informed, from time to time about the requirements under the regulations and their practical interpretation.

Though the said regulations substantially govern disclosure requirements, there may be instances where transfer of securities may be involved concerning the promoters, promoter group, directors or officers of the company. In such cases, the Company Secretary should carefully study the applicability of the Insider Trading Regulations in connection with such transfer of securities.

He is also expected to guide them whenever the need arises. He is required to report on the compliance status from time to time to the Managing Director/Chief Operating Officer and also periodically inform the Board. It is the Company Secretary who comes to know about the holdings and also the movement of shares in different DP ids. All concerned will send their return to the compliance officer and he in turn has to take note and intimate the outcome to the regulators. As the penal provisions of SEBI are very stringent, he is expected to keep a watch particularly during closed period or when the trading window is closed with an objective of guiding the directors/officers/designated employees of the company.

The obligations cast upon the Company Secretary in relation to the insider trading regulations can be summarized as under:

1. To frame a code of internal procedures and conduct in line with the Model Code specified in Schedule I of the regulations and get the same approved from the Board of Directors of the Company.

2. To place before the Board the “Code of Corporate Disclosure Practices for Prevention of Insider Trading” as enumerated in Schedule II of the regulations.

3. The Company Secretary has to place before the Board for their consideration and approval the following:
   (i) closing period for trading window
   (ii) minimum threshold limit beyond which it would be mandatory for the directors/officers/designated employees to obtain pre-clearance from the compliance officer before they trade in the company's securities.
   (iii) format of application form for pre-clearance
   (iv) format of undertaking to be attached with pre-clearance application.
   (v) internal guidelines as to the circumstances when the holding period may be waived by the compliance officer.
   (vi) periodicity at which the directors/officers/designated employees are required to submit periodic statement of transaction in securities of the company to comply with the Code of Corporate Disclosure Practices.

4. In case of unlisted company (if they are intermediaries to which SEBI regulations are applicable), the company secretary is required
   (i) To prepare the Chinese wall policy for adoption in the company.
   (ii) To prepare Restricted/ Grey List of securities from time to time.

5. To frame and then to monitor adherences to the rules for the preservation of “Price Sensitive information”

6. To monitor and confirm whether transactions for which pre-clearance has been granted were executed within one week.
Lesson 7  
Membership and Transfer/Transmission of Shares  
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7. To suggest any improvements required in the policies, procedures, etc, so that they conform to best practices and in order to ensure effective implementation of the code.

8. To maintain a record of all directors, officers and persons covered within the ambit of the term ‘designated employee’ and any changes in the same.

9. To assist in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and the company’s code of conduct.

10. To maintain a list of all information termed as ‘price sensitive information’.

11. To maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.

12. To ensure that computer data is adequately secured.

13. To keep records of periods specified as ‘close period’ and the ‘Trading Widow’.

14. To ensure that the ‘Trading Window’ is closed at the time of:
   (i) Declaration of Financial results (quarterly, half-yearly and annual).
   (ii) Declaration of dividends (interim and final)
   (iii) Issue of securities by way of public/right/bonus etc.
   (iv) Any major expansion plans or execution of new projects.
   (v) Amalgamation, mergers, takeovers and buy-back.
   (vi) Disposal of whole or substantially whole ‘of the undertaking.
   (vii) Any change in policies, plans or operations of the company.
   (viii) Considering ay other matter which could be construed as price-sensitive information.
   (ix) All other events as specified under clause 36 of the Listing Agreement.

15. To ensure that the trading widow is opened 24 hours after the information mentioned in para 14 is made public.

16. To ensure that the trading restrictions are strictly observed and that all directors/officers/designated employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company’s securities during the period when the trading window is closed.

17. To ensure that no sale of shares allotted on exercise of ESOPs is made during a close period.

18. To receive disclosure from any person holding more than 5% shares or voting rights in the company, in the prescribed form within four working days of:
   (i) the receipt of information of allotment of shares; or
   (ii) the acquisition of shares or voting rights, as the case may be.

19. To procure initial disclosure of the number of shares or voting rights held by any person who is a director or officer of the company in the prescribed form within four working days of becoming a director or officer of the company.

20. To receive from any person continual disclosures of the number of shares or voting rights held in the company and changes (purchase or sales or otherwise) therein, even if the shareholding falls below 5%
since the last disclosure made under para 18 or this para, and such change exceeds 2% of the total shareholding or voting rights in the prescribed form within 4 working days of:

- the receipt of intimation of allotment of shares; or
- the acquisition or sale of shares or voting rights, as the case may be.

21. To procure from any person who is a director or officer of the company continual disclosures of the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under para 19 above or this para, and the change exceeds Rs. 5 lac in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower, in the prescribed form within 4 working days of:

- the receipt of intimation of allotment of shares; or
- the acquisition or sale of shares or voting rights, as the case may be.

22. To inform all stock exchanges on which the company’s securities are listed, the information received under para 18, 19, 20 and 21 within five days of receipt.

23. To process the applications received for pre-clearance of transactions from the directors/officers/ designated employees

24. To confirm whether the directors/ officers/ designated employees executed their order in respect of securities of the company within one week after the approval of pre-clearance is given.

25. To ensure that a minimum holding period as specified by the company, which is not less than 30 days is observed by all directors/officers/ designated employees.

26. To waive the requirement of holding period under certain circumstances.

27. To receive and maintain records of periodic and annual statement of holdings from directors/officers/ designated employees and their dependant family members.

28. To maintain records of all disclosures made by directors/officers/designated employees for a minimum period of three years.

29. To place before the Managing Director or Chief Executive Officer or Committee of directors, as may be specified for the purpose, on a monthly basis all the details of the dealings in the securities by directors/ officers of the company and the accompanying documents that such persons had executed under the pre-clearance procedure.

30. To implement the punitive measures or disciplinary action prescribed for any violation or contravention of the code of conduct.

Compliances Relating to Takeovers

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [SAST Regulations, 2011] contains certain compliances and disclosures to be made by persons acquiring certain percentage of shares or voting rights of a company. It also casts certain obligations on target companies in open offer process. These provisions are summarized as under:-

Threshold limits for acquisition of Shares / Voting Rights, beyond which an obligation to make an open offer is triggered.

(a) Acquisition of 25% or more shares or voting rights: An acquirer, who (along with persons acting in concert, if any) holds less than 25% shares or voting rights in a target company and agrees to acquire
shares or acquires shares which along with his/ person acting in concert’s existing shareholding would entitle him to exercise 25% or more shares or voting rights in a target company, will need to make an open offer before acquiring such additional shares.\[(\text{Regulation 3(1)})\]

\[\text{(b) Acquisition of more than 5\% shares or voting rights in a financial year:} \text{ An acquirer who (along with persons acting in concert, if any) holds 25\% or more but less than the maximum permissible non-public shareholding in a target company, can acquire additional shares in the target company as would entitle him to exercise more than 5\% of the voting rights in any financial year ending March 31, only after making an open offer.}(\text{Regulation 3(2)})\].

<table>
<thead>
<tr>
<th>Disclosures (other than the ones given in Public Announcement/Detailed Public Statement/Letter of Offer for the Open Offer) required to be made in Terms of SAST Regulations, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>[(i)\text{ Event Based Disclosures}]</td>
</tr>
<tr>
<td>[\text{(a) Any person, who along with PACs crosses the threshold limit of 5% of shares or voting rights, has to disclose his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed within 2 working days of acquisition as per the format specified by SEBI.}]</td>
</tr>
<tr>
<td>[\text{(b) Any person who holds 5% or more of shares or Voting rights of the target company and who acquires or sells shares representing 2% or more of the voting rights, shall disclose details of such acquisitions/sales to the Target company at its registered office and to every Stock Exchanges where the shares of the Target Company are listed within 2 working days of such transaction, as per the format specified by SEBI.}]</td>
</tr>
<tr>
<td>[(ii)\text{ Continual Disclosures:} \text{Continual disclosures of aggregate shareholding shall be made within 7 days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed by:}]</td>
</tr>
<tr>
<td>[\text{(a) Shareholders (along with PACs, if any) holding shares or voting rights entitling them to exercise 25% or more of the voting rights in the target company.}]</td>
</tr>
<tr>
<td>[\text{(b) Promoter (along with PACs, if any) of the target company irrespective of their percentage of holding.}]</td>
</tr>
</tbody>
</table>
| \[(iii)\text{Disclosures of Encumbered Shares:} \text{The promoter (along with PACs) of the target company shall disclose details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event.}\]
Resolution for the extension of the date of redemption of Preference Shares (for variation of rights)

“RESOLVED THAT consent of shareholders be and is hereby accorded to the variation of the rights attached to the Equity Shares of the Company deemed to have been caused by reason of extension of the date of redemption and increase in rate of interest of 11% Redeemable Cumulative Preference Shares (First Series) of Rs.100 each fully paid-up, agreed to by the holders of the said Preference Shares.

Explanatory Statement

First Series of 10,000 — 11% Redeemable Cumulative Preference Shares of Rs. 100 each fully paid-up issued by the Company in 2005 fell due for redemption on ........., 20... The date was extended and accordingly the shares were to be redeemed in five equal installments of ` 2.00 lakhs each annually commencing from .......20.... In the interest of the Company it has been considered expedient not to redeem these Preference Shares immediately.

In any case, in the absence of the required reserves it would not be possible to redeem the said Preference Shares in terms of Section 55 of the Companies Act, 2013. The Company’s request to the Preference Shareholders to give their consent to this effect is under their consideration. A meeting of the holders of these 11% Redeemable Cumulative Preference Shares (First Series of Rs.100 each fully paid-up) has been convened to consider the necessary resolution for extension of date of redemption and increase in the rate of interest.

As holders of the Equity Shares, your rights are deemed to be affected from the date of extension of redemption in respect of First Series of the Preference Shares as aforesaid.

It is, therefore, proposed that your consent be obtained to such variation of your rights as per the resolution.

The necessary resolution for extending the date of redemption of and increasing the rate of dividend on the 11% Redeemable Cumulative Preference Shares of the company is included separately in the notice.

Directors of the company are not interested in the said resolution except to the extent of their shareholdings.

Specimen resolution of general meeting for variation of rights of the holders of Redeemable Cumulative Preference shares (1st Series) of Rs. 100 each.

RESOLVED THAT pursuant to the provisions of Section 48 and all other applicable provisions, if any, of the Companies Act, 2013 and subject to the Memorandum and Articles of Association of the Company and terms of the issue of 10,000 — 9% Redeemable Cumulative Preference Shares (1st Series) of Rs.100 each contained in the Prospectus dated 9th April, 2005 consent of the holders of 10,000 — 9% Redeemable Cumulative Preference Shares (1st series) of Rs. 100 each falling due for redemption in full on 31st December, 2011 be and is hereby accorded to the company for redemption on 31st December 2014 and also for an increase in fixed preferential dividend to 11% per annum with effect from 1st January 2012 till the date of redemption so extended to 31st December 2014 and the Board of Directors be and is hereby authorized to do all acts, deeds and things in the matter of giving effect to this resolution.

Explanatory Statement

The Board of Directors of the Company has, in terms of Prospectus dated 9th April 2005 for issuing 10,000 —
9%. Redeemable Cumulative Preference Shares (1st series) of Rs. 100 each, decided in their meeting held on 11.01.2011 to extend the date of redemption of two years from 31.12.2011 to 31st December 2014 and in consideration of such extension to increase the fixed preferential dividend from 9% to 11% per annum with effect from 1st January 2012.

Pursuant to the provisions of Section 48 of the Companies Act, 2013 consent/ approval of the holders of the said shares is necessary to be obtained by way of special resolution. Hence, the resolution as set out in the notice is recommended for approval of the holders thereof.

Since this variation in the rights of the holders of 9% Redeemable Cumulative Preference Shares (1st series) of Rs.100 each shall affect the rights of the holders of issued equity shares of the company. Hence, the consent of the equity shareholders has been obtained by way of special resolution in the separate Extraordinary General Meeting held on 28th February 2011.

None of the director is concerned or interested in the proposed resolution.

ANNEXURE V

SPECIMEN OF THE BOARD RESOLUTION APPROVING THE REGISTRATION OF TRANSFER OF SHARES

“RESOLVED THAT—

(i) Registration of transfer of ....... fully paid equity shares of the company as per details in the register of share transfers of the company entered on page.... to ......., entries Nos......to....... (both inclusive), which was placed before the meeting and each page was initialled by the chairman of the meeting as a mark of identification, be and is hereby approved; and

(ii) Shri ........................., Company Secretary be and is hereby authorized to endorse the relevant share certificates under his signature, arrange for their dispatch to the transferees of the shares and make appropriate entries in the register of members and other records of the company.”

ANNEXURE VI

SPECIMEN OF BOARD RESOLUTION APPROVING REGISTRATION OF TRANSMISSION OF SHARES

“RESOLVED THAT—

(i) Transmission of .................no.s of fully paid equity shares of the company bearing distinctive numbers ......to........(both numbers inclusive) presently registered in the name of Shri ................., who has been reported as deceased on .................in the district of ...........which is situated in the state of..........., in the name of Shri .............son of Shri ..............resident of ........................................... be and is hereby approved.

(ii) since the company has received a letter from the said Shri........................., intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name; and

(iii) Shri ...................................., Company Secretary, be and is hereby authorized to enter the name of the said Shri ........................., in the register of members of the company and send the relevant share certificates to him after appropriately endorsing them in his name.”
"RESOLVED THAT pursuant to Section 14 of the Companies Act, 2013, the articles of association of the company be and are hereby altered in the following manner:

After article No..., the following be inserted as article ... :

Article ... Dematerialization of Securities

A. Definitions:

For the purpose of this article:-

‘Beneficial Owner’ means a person or persons whose name is recorded as such with a depository. ‘SEBI’ means the Securities and Exchange Board of India.

‘Depository’ means a company formed and registered under the Companies Act, 2013, and which has been granted a certificate of registration to act as a depository under the Securities and Exchange Board of India Act, 1992; and

‘Security’ means such security as may be specified by SEBI from time to time.

B. Dematerialisation of Securities

Notwithstanding anything contained in these articles, the company shall be entitled to dematerialise its securities and to offer securities in a dematerialised form pursuant to the Depositories Act, 1996.

C. Options for investors

Every person subscribing to securities offered by the company shall have the option to receive security certificates or to hold the securities with a depository. Such a person who is the beneficial owner of the securities can at any time opt out of a depository, if permitted by the applicable law in respect of any security in the manner provided by the Depositories Act, 1996 and the company shall, in the manner and within the time prescribed, issue to the beneficial owner the required certificates of securities.

If a person opts to hold his security with a depository, the company shall intimate such depository the details of allotment of the security and/or transfer of securities in his name and on receipt of the information, the depository shall enter in its record the name of the allottee and/or transferee as the beneficial owner of the security.

D. Securities in Depositories to be in Fungible Form

All securities held by a depository shall be dematerialised and be in fungible form. Nothing contained in Sections 89 and 186 of the Act shall apply to a depository in respect of the securities held by it on behalf of the beneficial owners.

E. Distinctive Numbers of Securities held in a Depository

Nothing contained in the Act or these articles regarding the necessity of having distinctive numbers for securities issued by the company shall apply to securities held with a depository.

F. Rights of Depositories and Beneficial Owners

(i) Notwithstanding anything to the contrary contained in the Act or these articles, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of the beneficial owner.

(ii) Save as otherwise provided in (a) above, the depository as the registered owner of the securities shall
not have any voting rights or any other rights in respect of the securities held by it.

(iii) Every person holding securities of the company and whose name is entered as the beneficial owner in
the records of the depository shall be deemed to be a member of the company. The beneficial owner of
securities shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his
securities which are held by a depository.

G. Service of Documents

Notwithstanding anything to the contrary contained in the Act or these articles, where securities are held in a
depository, the records of the beneficial ownership may be served by such depository on the company by
means of electronic mode or by delivery of floppies or discs.

H. Transfer of Securities

Nothing contained in Section 108 of the Act or these articles shall apply to a transfer of securities effected by a
transferor and transferee both of whom are entered as beneficial owners in the records of a depository.

I. Allotment of Securities Dealt in a Depository

Notwithstanding anything contained in the Act or these articles, where securities are dealt in a depository, the
company shall intimate the details thereof to the depository immediately on allotment and/or registration of
transfer of such securities.

J. Register and Index of Beneficial Owners

The register and index of beneficial owners maintained by a depository under the Depositories Act, 1996, shall
be deemed to be the register and index of members and security holders for the purposes of these articles.”

Explanatory Statement

With the enactment of the Depositories Act, 1996, and coming into operation of the depository system, some of
the provisions of the Companies Act, 2013, relating to the issue, holding, transfer, transmission of equity shares
and other securities of companies have been amended to facilitate the implementation of the depository system.

The depository system of holding securities in an electronic mode is a far safer and more convenient method of
securing, holding and trading in the securities of a company.

Under the depository system, the securities can be dematerialised. The company intends joining a depository. It
is, therefore, proposed that the company’s articles of association be suitably altered, as set out in the proposed
resolution to enable it to dematerialise its securities. The resolution contains (i) definitions of some of the important
terms used in the system; (ii) dematerialisation of securities; (iii) options for investors; (iv) securities in depositories
to be in fungible form; (v) distinctive numbers of securities held in a depository; (vi) rights of depositories and
beneficial owners; (vii) service of documents; (viii) transfer of securities; (ix) allotment of securities dealt in a
depository; and (x) register and index of beneficial owners.

None of the directors of the company is concerned or interested in the proposed resolution except to the extent
of the shareholdings of the directors.
LESSON ROUND UP

- A Company is composed of members, though it has its own entity distinct from members.
- A member means a shareholder of a company whose name is entered in the register of members.
- The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of Section 11 of the Indian Contract Act, 1872.
- In the case of subscriber to the memorandum, no agreement besides the memorandum is necessary. He is deemed to be the member of the company.
- A member ceases to be a member of a company when his name is removed from the register of members or register of beneficial owners.
- According to Section 6 of the Companies Act, the Act overrides the memorandum and articles of association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.
- In general parlance, “transfer” takes place when title to the property is transferred from one person to another whereas “transmission” refers to devaluation of title by operation of law.
- Transmission may takes place either by succession or by testamentary transfer.
- According to Section 44 of Companies Act, 2013, shares, debentures or other interest of a company are moveable property, transferable in the manner provided by the articles of association of the company.
- At present, stamp duty applicable for transfer of shares is 25 paise for every one hundred rupees or part thereof of the value of share. Section 56 of the Companies Act requires that where share transfer form is delivered to the company should be adequately stamped.
- Shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market.
- The securities of a public company are freely transferable, subject to the provisions that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract.
- Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates. Dematerialisation is comparable to keeping your money in a bank account.

SELF- TEST QUESTIONS

1. Write the procedure for becoming a member by subscribing to the memorandum of association.
2. What is the meaning of becoming a member by acquiescence or estoppels.
3. Write in detail the ways of Cessation of membership.
4. Write the procedure for Variation of Members’ Rights.
5. What do you understand by expulsion of members? Whether a company can legally expel a member.
6. Enumerate the steps for transfer of dematerialised shares.
7. Write short notes on the following:-
   (a) Dematerialisation of securities
   (b) Transmission of shares to Nominee
   (c) Modes of acquiring membership
   (d) Transfer and Transmission.
Lesson 8
Key Managerial Personnel

LESSON OUTLINE

- Key Managerial Personnel
- Board Composition
- Appointment, Removal of directors and vacation of office by a director
- Resignation of Director
- Procedure for managing director’s appointment
- Remuneration of managing director/whole-time director
- Waiver of recovery of remuneration
- Procedure for removal of managing director/whole-time director before the expiry of his term of office
- Loans to directors
- Procedure for entering in contracts in which directors are interested
- Disclosure of interests by a director
- Related Party Transactions
- Procedure for a director or persons related to a director to hold an office or place of profit
- Compensation for loss of office of director and other managerial personnel
- Directors and officers liability insurance
- Filing of agreements with managerial personnel
- Annexures – Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

The Board of Directors of a company is one of its organs; the other being the general body of shareholders. A company, being an artificial person created by law cannot function on its own. It has to act through individuals. The Board of Directors is the pivot around which a company functions. Thus, in the corporate form of organisation, the constitution of the Board, the appointment of directors, their behaviour and conduct towards the affairs of a company, the meetings of the Board, etc. assume utmost importance. These are regulated by statute, the Companies Act, and in the case of listed companies also by the Listing Agreement.

This lesson deals with the procedural aspects for appointment, removal, remuneration etc. of directors and managerial personnel.
KEY MANAGERIAL PERSONNEL

Section 203 of the Act read with Rule 8 of the Companies (Appointment And Remuneration of Managerial Personnel) Rules, 2014 provides that every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel comprising of

- Managing director;
- Chief executive officer (CEO) or manager and in their absence, a whole-time director;
- Company secretary; and
- Chief financial officer (CFO).

Thus, private companies and public companies with a paid-up share capital of less than ten crore rupees have been exempted from appointing key managerial personnel.

An individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or CEO of the company at the same time unless, the articles provide otherwise or company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more CEOs for each such business as may be notified by the Central Government are exempt from the aforesaid provision.

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled up by the Board at a meeting of the board within a period of 6 months from the date of such vacancy.

If a company contravenes the provisions relating to appointment of whole-time key managerial personnel, the company shall be punishable with fine and every director and key managerial personnel of the company who is in default shall also be punishable with fine.

Procedure to appoint Key Managerial Personnel

1. Hold the Board meeting in consideration with appointment of key managerial personnel and pass the Board resolution containing the terms and conditions of the appointment.

2. A whole-time Key Managerial Personnel shall not hold office in more than one company except in its subsidiary at the same time.

3. A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

4. On vacation of the office of a whole-time Key Managerial Personnel, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months.

5. File with the Registrar the Form MGT-14 and a return of appointment of a managing director, whole-time director or manager in Form MR-1.

6. File DIR-12 along with the fee prescribed in Companies (Registration of Offices and Fees) Rules, 2014.

DIRECTORS

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. Although the Board comprises individual
directors, yet the actions and deeds of individual director cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company.

Section 2(34) of the Companies Act 2013 define the term “director” means a director appointed to the Board of the Company. This clearly indicate any person who is not appointed to the Board, is not a director. Same time, Section 2(10) say, Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

Chapter XI of the Companies Act, 2013 broadly deals with the Directors. We may relate a director with the Powers and duties of Directors as well duty of the Board.

Section 179(1) states the Board of Directors of a company shall be entitled to exercise all powers, and to do all acts and things, as the company is authorised to exercise and do. The Board shall be subject to restrictions imposed under this Act or in Memorandum or Articles or any regulation of the Company. The Board shall not exercise any power which is required to be exercised by the company in general meeting.

In view of the foregoing, the term “directors” may be defined as individuals who, collectively as a team, known as the Board of Directors of the company, direct, control and manage the business and affairs of the company and exercise powers of the company. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

MANAGING DIRECTOR

Section 2(54) provides that “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation for the purposes of this definition, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

As per above definition, a managing director has to be a director before he can be appointed as managing director. Therefore, if a company wants to appoint a person as managing director, who is not a director of the company, he has first to be appointed as a director or an additional director.

WHOLE TIME DIRECTOR

Section 2(94) provides that “whole-time director” includes a director in the whole-time employment of the company.

If a whole time employee of a company is also appointed as a director of the company, he is in the position of a whole time director of the company. This is equally applicable in the case of an alternate director working as whole time director.

MANAGER

Section 2(53) defines “manager “as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

Unlike the managing director, who is entrusted with substantial powers of management of the company, a manager has the management of the whole, or substantially the whole, of the affairs of a company.
According to section 196 of the Companies Act, 2013, no company shall appoint at the same time, a managing
director and a manager.

**BOARD COMPOSITION**

A public company shall have minimum three directors while a private company shall have minimum two directors.
One Person Company shall have minimum one director. All companies may have maximum fifteen directors.
However, a company may appoint more than fifteen directors after passing a special resolution.

**Woman Director**

Proviso to section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules,
2014 provides that the following class of companies shall appoint at least one woman director:

(i) Every listed company;

(ii) Every 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.

**Resident Director**

Every company shall have at least one director who has stayed in India for a total period of not less than 182 days
in the previous calendar year.

**Independent Director**

Independent Director in relation to company, means a Director other than:

– A managing director; or

– Whole time director; or

– A nominee director.

Section 149(4) of the act provides that every listed public company shall have at least one-third of the total
number of directors as independent directors.

The Central Government may prescribe the minimum number of Independent Directors in case of any class or
classes of public companies. Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014
provides that the following class or classes of companies shall have at least two directors as independent
directors –

(i) The Public Companies having paid up share capital of ten crore rupees or more; or

(ii) The Public Companies having turnover of one hundred crore rupees or more; or

(iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding
fifty crore rupees.

Section 165 prescribes number of directorship an individual can hold. A maximum limit on total number of
directorship has been fixed at 20 companies including a sub-limit of 10 for public companies. i.e., a person cannot
be a director of more than 10 public companies.

For the purpose of counting such directorship in public company, directorship in private companies that are either
holding or subsidiary company of a public company shall be included. Alternate directorship which was earlier excluded
while calculating the limit of directorship, will now be included while calculating the directorship of 20 companies.
PROCEDURE FOR APPOINTMENT OF DIRECTORS IN A COMPANY

Obtaining DIN

According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. The maximum number of public companies in which a person can be appointed as a director shall not exceed ten. Such companies can be located in the jurisdiction in any of the Registrar of Companies. There is a need for individual identity of person(s) intending to be directors of companies to be established. This would also facilitate effective legal action against the directors of such companies under the law, keeping in view the possibility of fraud by companies under the phenomenon of companies that raise funds from the public and vanish thereafter.

Section 152(3) provides, no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under Section 154.

Every individual intending to be appointed as director of a company shall make an application for allotment for Director Identification Number (DIN) to the Central government. (Section 153)

Director Identification Number (DIN) is a unique identification number allotted to an existing director or a person intending to become the director of a company. In the scenario of e-filing, DIN is a pre-requisite for filing of certain company related documents. Any individual who is a director or intends to be a director of a company should apply for DIN.

Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014

Application for allotment of Director Identification Number –

(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically –

(i) photograph;

(ii) proof of identity;

(iii) proof of residence;

(iv) verification by the applicant for applying for allotment of DIN in Form DIR-4; and

(v) specimen signature duly verified.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by –

(i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.
Allotment of DIN.- (1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that the Central Government shall –

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Intimation of changes in particulars specified in DIN application

Rule 12 of Companies (Appointment and Qualification of Directors) Rules, 2014 –

(1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 in the following manner, namely: –

(i) the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;

(ii) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;

(iii) the applicant shall submit the Form DIR-6;

(2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

**Cancellation or Deactivation of DIN**

Rule 11 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides for cancellation or deactivation of DIN in certain cases. As per this Rule, the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director, upon being satisfied on verification of particulars of proof attached with the application received from any person seeking cancellation or deactivation of DIN, in case –

(a) the DIN is found to be duplicate;

(b) the DIN was obtained by wrongful manner or fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as lunatic by the competent Court;

(e) if the concerned individual has been adjudicated an insolvent;

then the allotted DIN shall be cancelled or deactivated by the Central Government or Regional Director (NR), Noida or any other officer authorised by the Regional Director (NR). Before cancellation or deactivation of DIN under clause (b), an opportunity of being heard shall be given to the concerned individual.

**Surrender of DIN by DIN holder**

On an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN. Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

For the purposes of clause (b), –

(i) the term “wrongful manner” means if the DIN was obtained on the strength of documents which are not legally valid.

(ii) the term ‘Fraudulent means” means if the DIN obtained unlawfully to deceive any other person or any authority including the Central Government.

**Appointment of First Directors**

According to Section 7(1)(c) read with Section 152(1) of the companies Act, 2013; at the time of incorporation, a company may name some person as first directors of the company. Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

**Appointment of Directors by Members at General Meeting**

A person appointed as director shall not act as director unless he gives his consent to hold office of director and such consent in Form DIR - 2 has been filed with the registrar within thirty days of his appointment. According to Section 152, every director shall be appointed by the company in general meeting.

Separate motion should move for the appointment of each director as per section 162. A motion for approving a person for appointment or for nomination a person for appointment shall also be treated as motion for his appointment.

Under section 152(6), articles of a company may provide that all directors of the company shall be retiring by
rotation. Where article does not provide for retirement by rotation for all directors, not less than two-thirds of total number of directors of a public company shall be liable to be retired by rotation and be appointed by company in general meeting. At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

**Procedure for re-appointment of the retiring director at the Annual General Meeting**

1. Ascertain which directors are due to retire by rotation. As a general principle, the directors to retire shall be those who have been longest in office since their last appointment.

2. Ensure that the retiring director is not subject to any disqualification for re-appointment as director of the company under sections 164 and 165 of the Companies Act, 2013.

3. Ensure that the consent of the director as well as the declaration from the director has been obtained.

4. Convene a Board meeting after giving notice to all directors of the company in accordance with Section 173 of the Act, to consider the re-appointment of retiring director.

5. Fix the time, place and agenda of the annual general meeting to pass an ordinary resolution for the re-appointment of retiring director.

6. Send the notice in writing at least 21 clear days before the date of annual general meeting to the members and also to the Stock Exchanges where the shares of company are listed.

7. Hold the annual general meeting and pass an ordinary resolution for re-appointment of the retiring director.

8. In case of listed companies, forward a copy of the proceedings of the annual general meeting to the stock exchanges where the company’s shares are listed. [Clause 31(d) of the Listing Agreement]

**Right of a Person other than Retiring Directors to stand for directorship**

A person other than retiring director is eligible for appointment to the office of a director at any general meeting, if he himself or some member intending to propose him as a director has not less than fourteen days before the annual general meeting left a notice in writing under his signature proposing his candidature as director with a deposit of Rs one lakh. This deposit shall be refunded to him or the member if he gets elected as director or gets more than twenty five percent of total valid votes cast either on show of hand or on poll on such resolution. [Section 160]

**Procedure for appointment of a director other than a retiring director at the Annual General Meeting**

In case of a public company, the following procedure is to be adopted:

- The candidate for directorship or any member proposing other person for appointment to office of director, is required to give a notice in writing not less than fourteen days before the meeting at the office of the company, signifying candidature for the office of director or intention to propose other person as a candidate for that office, as the case may be, along with a deposit of one lakh rupees which shall be refunded to such person, or as the case may be, to such member, if the person succeeds in getting elected as a director.

- On receipt of notice, the company will inform its members of the candidature of a person for the office of
director or intention of the member to propose such person as candidate for that office by serving individual notice on the members, not less than seven days before the meeting.

– Where individual notice is not practicable, publish notice not less than seven days before the meeting, in at least two newspapers (one in English and the other in regional language) circulating in the place where the registered office of the company is situated.

– In case of listed company, forward copies of this notice also to the stock exchange, where the shares of the company are listed.

– Check whether the director to be appointed in the general meeting has obtained Director Identification Number (DIN). If not then ask such person to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Director Identification Number to the Company.

– Ensure that the consent of the director as well as the declaration from the director has been obtained in Form DIR – 2.

– At the general meeting, the motion to appoint a person other than the retiring director will be taken up.

Where more than one such proposals are to be decided, they are to be discussed one by one and the decision of the meeting to be arrived at in respect of each proposal separately.

– In case of listed company, send three copies of the notice and a copy of the proceedings of the general meeting to the stock exchange with which the company is listed.

– In case the person is appointed as a director, the company shall refund the deposit of one lakh rupees to such person or to such other member, who had proposed his name for directorship.

– The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

For the purpose of filing Form DIR – 12, the following attachments are required:

(a) Letter of appointment

(b) Consent letter of appointee director

– Ensure that said Form is digitally signed by managing director or manager or secretary of the company.

– In case of listed company, particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.

– The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189

– After appointment the director concerned has to inform other companies in which he is director about his appointment.

In case of a private company, any additional requirement in its Articles of Association will also have to be followed.

### Appointment of Independent Director

(1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.

(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of
independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalized through a letter of appointment, which shall set out:

(a) The term of appointment;
(b) The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
(c) The fiduciary duties that come with such an appointment along with accompanying liabilities;
(d) Provision for Directors and Officers (D and O) insurance, if any;
(e) The Code of Business Ethics that the company expects its directors and employees to follow;
(f) The list of actions that a director should not do while functioning as such in the company; and
(g) The remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent directors shall also be posted on the company’s website.

(7) He shall be hold office for a term of upto 5 consecutive years of a company. [Section 149(10)]

**Re-appointment of Independent Director**

The re-appointment of independent director shall be on the basis of report of performance evaluation.

Section 149(11) provides that the Independent Director shall be eligible for re-appointment on passing of special resolution. He shall not hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director.

However, he shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

**Appointment of Independent Directors for less than 5 years**

It is clarified by Ministry of Corporate Affairs on 9 June 2014 through a general Circular that section 149(10) of the Act provides for a term of ‘upto 5 consecutive years’ for an ID. As such while appointment of an ID for a term of less than 5 years would be permissible, appointment for any term (whether for 5 years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing ‘consecutive terms of less than 10 years’ shall be eligible for appointment only after the expiry of the requisite cooling-off period of 3 years.

**APPOINTMENT OF DIRECTORS BY BOARD**

(i) **Appointment of Additional Directors**

Articles of a company may confer its Board of Director power to appoint Additional Director. A person failed to be appointed through general meeting shall not be appointed as Additional Director. An Additional Director may hold
office only up to the date of next Annual General Meeting or the last day, on which the Annual General Meeting should have been held, whichever is earlier. [Section 161(1)]

However, the total number of directors and additional directors shall not exceed the maximum strength of directors fixed for the Board.

An additional director holds office only up to the date of the next annual general meeting of the company. If the annual general meeting of the company is not held or cannot be held, the person appointed as additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 161 of the Act.

The composition of the Board of Directors is required to be in compliance with the conditions of clause 49 of the listing agreement, if applicable.

If an additional director, during his tenure as additional director of the company, had been appointed as managing director of the company, his appointment as managing director also ceases simultaneously with the termination of his directorship at the commencement of the annual general meeting. However, if such a person was elected as a full-fledged director at the annual general meeting he will continue to be a director of the company and also as its managing director for the period for which his appointment as managing director had been made under Section 196 of the Companies Act, 2013.

**Procedure for Appointment of Additional Director**

- Ensure that the Articles of the company authorise the Board to appoint an additional director and such appointment is within the maximum limit of directors mentioned in the Articles.

- Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification mentioned.

- The Board shall appoint an additional director by passing a resolution either at a meeting or by circulation.

- Before appointing a person as an additional director, his consent to act as director should be obtained.

- Check whether the additional director to be appointed in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.

- Ensure that the consent of the director as well as the declaration from the director has been obtained.

- Send notice in writing to all directors of the company in accordance with Section 173 of the Companies Act, 2013 for holding Board meeting.

- Hold the Board meeting and pass resolution for appointment of an additional director.

- The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

For the purpose of filing Form DIR – 12, the following attachments are required:

(a) Letter of appointment

(b) Consent letter of appointee director
   - Ensure that said Form is digitally signed by managing director or manager or secretary of the company.
   - The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
   - The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.
After appointment the director concerned has to inform other companies in which he is director about his appointment.

(ii) Appointment of Directors to Fill Casual Vacancies

A contingency may occur between two annual general meetings due to death, resignation, insolvency, disqualification, etc. Vacancies arising out of these reasons are called casual vacancies.

Section 161(4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board: The person so appointed shall hold office only up to the day up to which the director in whose place he has been appointed, would have held office if he had not vacated as aforesaid. Where a person appointed by the Board vacates his office it is not a case of casual vacancy and cannot be filled by the Board in the place.

In case of a private company, the procedure for appointment will be governed by its Articles. (For specimen of Board resolution appointing director to fill casual vacancy please see Annexure IX to this study)

Procedure for appointing directors in casual vacancy

- Where it is proposed by the Board to appoint a person to fill a casual vacancy, his written consent to act as a director has to be obtained before appointment.

- Check whether the director to be appointed in the casual vacancy in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.

- Convene a Board meeting after giving notice to all the directors of the company as per Section 173. At the Board meeting the matter will be discussed and appointment may be made by passing a resolution.

- Ensure that the consent of the director as well as the declaration from the director has been obtained.

  The company has to file particulars of director in Form DIR - 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

  For the purpose of filing Form DIR – 12, the following attachments are required:

  (a) Letter of appointment

  (b) Consent letter of appointee director

- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a CS or CA or CMA in whole-time practice by digitally signing it.

- The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.

- The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189

- After appointment the director concerned has to inform other companies in which he is director about his appointment.

(iii) Appointment of Alternate Director

Section 161(2) of the Companies Act, 2013, empowers the Board of directors of a company to appoint, if the articles provide or a resolution passed by the company in general meeting so authorises, an alternate director to
act in place of a director during his absence for not less than three months, from the State in which the Board meetings are ordinarily held. The alternate director holds office for the period the original director is away from the State and when the original director returns, the alternate director ceases to be director. If the term of office of the original director comes to an end before he returns, the provisions of the Act relating to automatic re-appointment of retiring directors in default of another appointment will apply to the original director and not to the alternate one. Thus, the original and not the alternate director will be deemed to be reappointed.

Only a person qualified to be an independent director shall be appointed as an alternate director for an independent director.

**Procedure for appointment of an alternate Director**

- Consult the Articles of Association of the company to see whether they authorize the Board to appoint an alternate director. Otherwise, either alter them accordingly or pass a resolution in company’s general meeting authorizing the Board to make such appointment.

- Where it is proposed to appoint a person as an alternate director his written consent to act as director shall be obtained.

- Check whether alternate director to be appointed in board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.

- Convene a Board meeting after giving notice to all the directors as per section 173. The Board may approve the appointment by passing a resolution either at a Board meeting or by circulation.

- Ensure that the consent of the director as well as the declaration from the director has been obtained.

- The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

  For the purpose of filing Form DIR – 12, the following attachments are required:

  (a) Letter of appointment

  (b) Consent letter of appointee director

- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a CS or CA or CMA in whole-time practice by digitally signing it.

- The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.

- The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.

- After appointment the director concerned has to inform other companies in which he is director about his appointment. [Section 165]

- The said alternate director will not hold office as such for a period longer than that permissible for the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which the Board meetings are ordinarily held.

- Where the alternate director vacates his office as per the section, the Board may reappoint him as an alternate director when the original director leaves the State concerned.
**Appointment of Directors by Tribunal**

Under Section 242(2)(k) of Companies Act, 2013, The Tribunal may order for appointment if such numbers of persons as directors of the company and ask them to report to the Tribunal on matters as the Tribunal may direct.

The directors, so appointed, may or may not be the members of the company. For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Tribunal shall not be taken into account. Such director or directors shall not liable to determination by retirement of directors by rotation. But they can be removed by the Tribunal at any time and other persons can be appointed by it in their place. Where the directors have been appointed by the Tribunal, it may also issue such directions to the company, as it may consider necessary or appropriate in regard to their affairs.

**Appointment of Director by System of Proportional Representation**

According to section 163 the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

**Appointment of nominee Directors**

Explanation to Section 149(7) defines, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. Nominee Director shall not be deemed to be independent director as per Section 149(6).

Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the appointing bank/institution/Government, the company may choose any of these two methods.

**Procedure for Appointment of Director to be Elected by Small Shareholders**

A listed company may have one director elected by small shareholders. Small shareholders means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum prescribed. [Section 151] Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014

1. A listed company having a paid-up capital of five crore rupees or more and having one thousand or more small shareholders (holding shares of nominal value of ` 20,000 or less may have a director elected by such small shareholders.

2. small shareholders intending to propose a person as a candidate for the post of small shareholders’ director shall leave a notice of their intention with the company at least fourteen days before the meeting
under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

3. The notice shall be accompanied by statement of proposed director stating his DIN, that he is not disqualified and his consent to act as director of the company.

4. Such director shall be considered as an independent director subject to his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.

5. The small shareholder director shall be elected through postal ballot.

6. Such director shall not be retire by rotation and shall have tenure of continuous three years.

7. After completion of tenure small shareholders director shall not be eligible for reappoint.

8. When small shareholders directors cease to be a small shareholder, he cease to be a small shareholders director.

9. Small share holders director shall not be appointed in two companies. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

10. For the purpose of filing Form DIR – 12, the following attachments are required:
    a. Letter of appointment
    b. Consent letter of appointee director

11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company.

12. In case of listed company, the particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.

13. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189

14. After appointment the director concerned has to inform other companies in which he is director about his appointment.

Disqualifications for Appointment of Director

Section 164(1) Provides that a person shall not be eligible for appointment as a director of a company, if –

(a) He is of unsound mind and stands so declared by a competent court;

(b) He is an undischarged insolvent;

(c) He has applied to be adjudicated as an insolvent and his application is pending;

(d) He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

    Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company

(e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) He has not complied with sub-section (3) of section 152.

Section 164(2) also provides that no person who is or has been a director of a company which –

(a) Has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) Has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, in Form DIR-8 before he is appointed or re-appointed.

Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form DIR-9, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.

When a company fails to file the Form DIR-9 within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.

Upon receipt of the Form DIR-9 under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection. Any application for removal of disqualification of directors shall be made in Form DIR-10.

However, a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

The disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect –

(i) For thirty days from the date of conviction or order of disqualification.

(ii) Where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or

(iii) Where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

### REMOVAL OF DIRECTORS

#### Removal of Director by Shareholders

According to Section 169, a company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. The provision relating to removal shall not apply where the company has availed itself
of the option to appoint not less than two – thirds of the total number of directors according to the principle of proportional representation.

**Procedure for Removal of Director**

The following procedure is required to be adopted for removal of a director:

1. A special notice from a member of the company proposing an ordinary resolution for removing the director is necessary.

2. Send forthwith a copy of the special notice to the director proposed to be removed.

3. Decide to call a general meeting through the Board resolution.

4. Issue notice of the general meeting in writing at least twenty-one clear days before the date of the meeting informing about the special notice and proposing the ordinary resolution for removal.

5. In the notice of the meeting, state the facts of the representation made by the director concerned and also send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after the receipt of the representations by the company).

6. If the representation is received too late and it could not be sent to the members, the director concerned may require that the representation shall be read out at the meeting. The director concerned has also the right of being heard at the meeting.

7. However, the National Company Law Tribunal on an application of the company or any other person who claims to be aggrieved, on having satisfied, may dispense with the procedure of sending a copy of representation and reading thereof at the meeting if it is being used to secure needless publicity for defamatory matter.

8. In case of listed company, forward three copies of notice of the general meeting to the stock exchange(s) where the company is listed.

9. Hold the general meeting and pass the proposed resolution by ordinary resolution.

10. In case of listed company, forward a copy of the proceedings of the meeting to the stock exchange(s) where the company is listed.

11. In case of listed company, notify the change in directors of the company to the stock exchange(s) where the company is listed.

12. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the removal after paying the requisite fee electronically.

13. Ensure that said Form is digitally signed by managing director or manager or secretary of the company.

14. In case of listed company, particulars of removal of director should also be given to the stock exchange if the shares of the company are listed.

15. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.

16. After appointment the director concerned has to inform other companies in which he is director about his appointment.

17. Give a general public notice in newspaper regarding removal of the director if it is so warranted for the protection of the company and benefit of the general public.
Removal of Director by the National Company Law Tribunal

Where an application has been made to the National Company Law Tribunal under Section 241 of the Companies Act 2013 for prevention of oppression or mismanagement and the Tribunal has conducted its proceedings on the application, it has the power under Section 242(2)(h) of the Act, to remove any director.

VACATION OF OFFICE BY A DIRECTOR

According to Section 167 of the Companies Act, 2013, the office of a director shall become vacant in case –

(a) he incurs any of the disqualifications specified in section 164;

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months. The office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company, which is not a subsidiary of a public company, may, by its articles, provide additional grounds for vacation of office of director.

On vacation of office of director, the company is required to file Form DIR – 12 to the Registrar of Companies.

If the office held by any director has become vacant on the ground of disqualification provided above and the concerned director continues to function, he shall be punishable with an imprisonment for 1 year and a fine from 1 lakh to 5 lakh rupees.

Resignation of Directors

1. A director may resign from its office by giving a notice with the reasons of resignation in writing to the company

2. The Board shall on receipt of such a notice from a director shall take note of the same.

3. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the registrar in form DIR-12 and post the information on its website if any as provided in Rule 15 of the companies (Appointment and Qualification of Directors) Rules, 2014.

4. According to Revised clause 49 of Listing Agreement a listed company shall forward a copy of the letter of resignation along with the detailed reasons of resignation to the stock exchanges not later than one working day from the date of receipt of resignation for dissemination through its website.

Note: Revised clause 49 applicable to listed companies with effect from 1-10-2014
5. The board shall place the facts of such resignation by the director in the Report of Directors laid in immediately following general meeting by the company.

6. The Director shall within 30 days from his resignation, forward to the registrar a copy of his resignation along with reasons for resignation with reasons provided therein in Form DIR-11 along with the fee provided.

7. The resignation shall be effective from the date on which the notice is received by the company or the date specified by the Director in the notice whichever is later.

8. When all the Directors resign at the same time under section 167, in such case the required number of directors are to be appointed by the promoter or, the Central Government. The Directors so appointed shall hold office till the Directors are appointed by the company in general meeting.

### Appointment of Managing Director

A company can appoint either Managing Director or Manager not both. [Section 196(1)] Appointment of Managing Director shall be for a term which must be less than five years. No re-appointment shall be made earlier than one year before the expiry of his term.

The minimum age for appointment for these positions is twenty – one years and normal retirement age is seventy years. A company may appoint a person on these positions, who has attained the age of seventy years. Where it is proposed to appoint a person who has attained aged of seventy years, an explanatory statement justifying such appointment shall be annexed to the notice for motion of appointment.

Appointee should not be an undischarged insolvent nor has any time been adjudged as an insolvent. Appointee has not any time suspended payment to his creditors or has made a composition with them. Appointee should not be a convict of an offence and sentenced for a period of more than six months. [Section 196 (3)]

According to Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 every listed company and every other company having a paid-up share capital of five crore rupees or more shall have whole-time key managerial personnel.

### Procedure for Managing Director’s Appointment

Appointment of Managing Director is to be made according to Section 196 and its remuneration should be in accordance with Section 197 and Schedule V of the Companies Act, 2013. Provisions relating to managerial remuneration are not applicable to a private company.

1. Convene and hold a Board meeting after giving to all the directors due notice as required under Section 173 of the Companies Act, for transacting, *inter alia*, the following business:-

   (a) take a decision on the person to be appointed as managing director after fully ensuring that he does not suffer from any disqualification in Sections 164, 196, 203, Schedule V and any other provision of the Companies Act;

   (b) approve the draft agreement to be signed and executed by and between the company and the proposed managing director (it is not mandatory);

   (c) fix time, date and venue for holding a general meeting of the company;

   (d) approve notice of the general meeting along with the explanatory statement as required by Sections 101 and 102 of the Act after keeping in mind the requirements of Section 190 of the Act and

   (e) to authorise company secretary to issue notice of the general meeting on behalf of the Board.

2. In case of listed company, send three copies of the notice to the stock exchanges on which the securities
of the company are listed.

3. Hold the general meeting and get the resolution passed approving appointment of the managing director.

4. In case the appointment of the managing director is not in accordance with the provisions of Schedule V of the Act, the company is required to obtain approval of the Central Government as per Section 201 of the Act.

5. For getting the approval of the Central Government under Section 201 certain formalities are to be complied with:

(a) As required by Section 201 of the Act, the Company shall give a general notice to the members of the company indicating the nature of the application proposed to be made, and

(b) this notice has to be published at least once in the principal language of the district in which the registered office of the company is situate, and circulating in that district and also once in English in an English newspaper also circulating in that district,

(c) the company shall attach a copy of this notice with the application together with certificate as to the due publication thereof.

(d) The application should be filed electronically in MR – 2 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees. Details of proposal needs to be entered along with certain attachments as given below:

   i. Copy of the calculation sheet of effective capital;

   ii. Copy(ies) of Board Resolutions;

   iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;

   iv. copy of share holders resolution;

   v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;

   vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;

   vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;

   viii. copy of scheme of approval by the Tribunal for the revival of the company;

   ix. Copy of Draft agreement between the company and the proposed appointee;

   x. Newspaper clipping of notices published under section 201

   xi. Copy of visa or passport in case the proposed appointee is foreign national;

   xii. Copies of education or professional qualification certificate;

   xiii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013

   xiv. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013

   xv. Projections of the Turnover and net profits for next three years;

   xvi. Calculation of estimated profit under section 198 of the Act;
xvii. An application under Section 460 of the Act for condonation of delay;

xviii. Full and proper justification in favour of the proposal along with bio-data of the appointee;

xix. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/re-appointment of the proposed appointee;

xx. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;

xxi. Details, if applicant company is a subsidiary of listed company;

xxii. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;

5. Execute the agreement, as approved by the Board, with the managing director.

6. Make necessary entries in the register of directors etc. and other records and registers of the company.

7. File the following documents with the ROC:

(a) The company should file with the ROC return of appointment of the managing director in Form MR - 1, within sixty days as per Section 196(4) of the appointment and the return must be certified by the auditors of the company or the company secretary or a secretary in whole-time practice.

   The Mandatory attachments for Form MR – 1:

   i. Copy of Board Resolution,

   ii. Copy of Shareholders Resolution

   iii. Copy of letter of consent to act as managing director

   iv. Copy of Central Government Approval

   v. Copy of certificate by nomination and remuneration committee

(b) Form DIR – 12 for particular of appointment of a key managerial personnel, within thirty days of the appointment.

(c) Form MGT – 14 for special resolution within thirty days of the appointment.

9. In case of listed company, submit to the stock exchanges, proceedings of the general meeting. Inform stock exchanges of the appointment of the managing director immediately after the appointment.

10. Inform all concerned about the appointment of the managing director. It is advisable to issue a general notice in newspapers about the appointment of the managing director.

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**Appointment of a Person as Managing Director, who is Managing Director of Another Company**

According to Section 203(3) of the Companies Act, 2013, Whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

In case a case, procedure shall remain same as discussed earlier but notice for the board meeting shall be a special notice.
Appointment of Managing Director/whole-time Director/Manager of a Private Company

The appointment of a managing director or a whole-time director or a manager in a company would be as per provisions contained in the articles. If the articles are silent in this behalf, such appointment can be made by the company in a general meeting.

REMNUNERATION OF MANAGING DIRECTOR/WHOLE-TIME DIRECTOR

There is no restriction relating to managerial remuneration for a private company. [Section 197(1)]

Total managerial remuneration payable by a public company to its directors (including Managing Director and Whole Time Director) and Manager in a financial year shall not exceed eleven percent of net profit of the company. Manner of calculation is given in Section 198. [Section 197(1)] Any remuneration exceeding 11% of net profit limit may be payable subject to compliance of conditions given in Schedule V. In case these requirements of Schedule are not fulfilled, such remuneration will be subject to the approval of Central Government. [First Proviso to Section 197(1)]

The remuneration of any one Managing Director or Whole Time Director or Manager shall not exceed 5% of net profit. Where, there is more than one Managing Director or Whole Time Director, the overall limit is 10% of net profit. The remuneration may exceed this limit only after approval by company in general meeting and after satisfying the conditions given in this Section and Schedule V. [Second Proviso to Section 197(1)]

Remuneration in case of inadequate or no profit (Section II Part II Schedule V):

In case of inadequate or no profit, a company may pay to a managerial person without central government approval higher of the following two options (A or B):

A. As per following table with approval of company by ordinary resolution in general meeting or double of these limit with approval by special resolution:

<table>
<thead>
<tr>
<th>Effective Capital (EC)</th>
<th>Remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative to Rs. 5 Crore</td>
<td>Rs. 30 Lakh yearly</td>
</tr>
<tr>
<td>Rs. 5 crore to Rs. 100 Crore</td>
<td>Rs. 42 Lakh yearly</td>
</tr>
<tr>
<td>Rs. 100 crore to Rs.250 Crore</td>
<td>Rs. 60 Lakh yearly</td>
</tr>
<tr>
<td>Rs. 250 Crore and above</td>
<td>Rs. 60 lakh + 0.01% of EC above these Rs. 250 Crore</td>
</tr>
</tbody>
</table>

OR

B. In case of managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, – 2.5% of the current relevant profit.

If, shareholders passes special resolution this limit will be double. This remuneration should be approved by resolution of Board of director and also by Nomination and Remuneration committee (where it is). The company has not made any default in repayment of its debt or debenture or interest thereon for a continuous period of 30 days in preceding financial year. The approval of remuneration by special resolution should be for not more than three years. The statement along with the notice of this resolution should provide information like:

(I) General Information i.e. Nature of industry, commencement of production, Financial performance, Foreign investment or collaboration;
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(II) Appointee information i.e. Background, past remuneration, recognition or award, job profile, suitability, proposed remuneration, comparative remuneration profile, Pecuniary relationship;

(III) Other information i.e. reason for loss or inadequate profit, step for improvement and expected increase.

(IV) Disclosure in Board of Director’s report under corporate governance i.e. remuneration package, fixed component and performance linked incentives, service contract, notice period, severance fee, stock options.

**Remuneration in case of inadequate or no profit without central government approval in certain circumstances (Section III Part II Schedule V):**

In these cases, the company may pay remuneration in excess of amount provided in Section I:

(a) Where remuneration in excess of these limit is paid by other company, which is within permissible limit under Section 197.

(b) A company within seven year from its incorporation or a sick company within five years from sanction of scheme of revival may pay up to two times the amount permissible under Section II.

(c) Remuneration fixed by BIFR or NCLT

(d) An unlisted company in SEZ may pay up to Rs. 240 Lakh yearly.

The conditions are:

i. An auditor or Company Secretary of the company or company secretary in practice has certifies that:- all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed.

   There is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

   ii. For Para (b) and (c), the managerial person is not receiving remuneration from any other company.

**Perquisites not included in managerial remuneration (Section IV Part II Schedule V):**

A managerial person shall be eligible for:

1. Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act.

2. Gratuity payable at a rate not exceeding half a month’s salary for each completed Year of service; and

3. Encashment of leave at the end of the tenure

A expatriate managerial person shall be eligible for:

1. Children’s education allowance

2. Holiday package studying outside India or family staying outside India.

3. Leave travel concession

These perquisites shall not be included in the computation of ceiling of Remuneration.

**Remuneration payable to a managerial person in two companies (Section V Part II Schedule V):**

A managerial person shall draw remuneration from one or both companies. The total remuneration drawn should not exceed the higher maximum limit admissible from any company of which he is a managerial person.
Procedure for Fixation of Remuneration to Managing Director/Whole-time Director/Manager

The procedure to be followed for fixation of remuneration of Managing Director is as follows:

1. Convene a Board meeting after giving notices to all the directors of company in accordance with Section 173, to fix the date, time, place and agenda of the General Meeting to pass an ordinary or special resolution for fixing the remuneration of Managing Director.

2. Send the notice in writing at least twenty-one days before the date of General Meeting.

3. Hold the general meeting and pass the ordinary or special resolution as the case may be.

4. If special resolution has been passed, then file Form MGT – 14 along with explanatory statement with the Registrar of Companies within thirty days.

5. Send three copies of the notices and copy of the proceedings of the General Meeting to the Stock Exchange(s), if the shares of company are listed.

(e) If the remuneration fixed in the meeting, is more than stipulated under Section 197 read with Schedule V to the Act, The application should be filed electronically in MR – 2 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees. Details of proposal needs to be entered along with certain attachments as given below:

i. Copy of the calculation sheet of effective capital;

ii. copy(ies) of Board Resolutions;

iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;

iv. copy of share holders resolution;

v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;

vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;

vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;

viii. copy of scheme of approval by the Tribunal for the revival of the company;

ix. Copy of Draft agreement between the company and the proposed appointee;

x. Newspaper clipping of notices published under section 201

xi. Copy of visa or passport in case the proposed appointee is foreign national;

xii. Copies of education or professional qualification certificate;

xiii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013

xiv. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013

xv. Projections of the Turnover and net profits for next three years;

xvi. Calculation of estimated profit under section 198 of the Act;

xvii. An application under Section 460 of the Act for condonation of delay;
xvii. Full and proper justification in favour of the proposal along with bio-data of the appointee;  
xviii. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee;  
xix. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;  
xx. Details, if applicant company is a subsidiary of listed company;  
xxi. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;  

6. Execute the agreement, as approved by the Board and Central Government (where applicable), with the managing director.

7. Make necessary entries in the register of directors etc. and other records and registers of the company.

8. File the following documents with the ROC:

(a) The company should file with the ROC return of appointment of the managing director in Form MR -1, within sixty days as per Section 196(4) of the appointment and the return must be certified by the auditors of the company or the company secretary or a secretary in whole-time practice.

The Mandatory attachments for Form MR – 1:

i. Copy of Board Resolution,  
ii. Copy of Shareholders Resolution  
iii. Copy of letter of consent to act as managing director  
iv. Copy of Central Government Approval  
v. Copy of certificate by nomination and remuneration committee

(b) Form DIR – 12 for particular of appointment of a key managerial personnel, within thirty days of the appointment.

(c) Form MGT – 14 for special resolution within thirty days of the appointment.

9. In case of listed company, submit to the stock exchanges, proceedings of the general meeting. Inform stock exchanges about remuneration immediately.

10. Inform all concerned about the appointment of the managing director. It is advisable to issue a general notice in newspapers about the appointment of the managing director.

**Procedure for Payment of Remuneration to Part-time Directors**

According to proviso to Section 197(1), the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed, –

(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;  
(B) three per cent. of the net profits in any other case.

Further, under Section 197(5), a director may also receive a sitting Fee for attaining meetings. The Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, regarding sitting fee state; the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees one lakh per meeting of the Board or committee thereof. The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors. For giving sitting fee, only board resolution is sufficient.
The procedure to be followed for giving remuneration to other directors as monthly amount or commission as percentage of profit is as under:

1. A Board meeting should be called and a resolution should be passed for payment of remuneration to non-whole-time directors and for convening a general meeting to secure the consent of members for such payment.

2. The notice convening the general meeting should be sent to members, directors and auditor of the company.

3. In case of a listed company, three copies of the notice of the meeting should be sent to each of the stock exchanges in which the securities of the company are listed.

4. The general meeting should accordingly be held and the resolution for payment of remuneration on commission basis to non-whole-time directors should be duly passed. If the remuneration is to be paid by way of monthly, quarterly or annual payment, then make an application to the Central Government for its approval.

5. In the case of a listed company, copy of the proceedings of the meeting should be sent to each of the Stock Exchanges in which the securities of the company are listed.

Revision of Remuneration of Managing Director/Whole-time Director

The remuneration of any one Managing Director or Whole Time Director or Manager shall not exceed 5% of net profit. Where, there is more than one Managing Director or Whole Time Director, the overall limit is 10% of net profit. The remuneration may exceed this limit only after approval by company in general meeting and after satisfying the conditions given in this Section and Schedule V.

Any revision of remuneration shall also be accordingly and similar procedure as that of the fixing of remuneration at the time of appointment as discussed above.

1. As per Section 197,

2. As per Schedule V where applicable, or

3. As per Central Government approval.

WAIVER OF RECOVERY OF REMUNERATION

Section 197(9) states, If any director draws or receives, directly or indirectly, by way of remuneration any sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. Further, Section 197(10) adds, the company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.

(a) For permission of the Central Government, The application should be filed electronically in MR – 2 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees. Details of proposal needs to be entered along with certain attachments as given below:

i. Copy of the calculation sheet of effective capital;

ii. Copy(ies) of Board Resolutions;

iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;

iv. copy of share holders resolution;

v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;
vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;

vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;

viii. copy of scheme of approval by the Tribunal for the revival of the company;

ix. Copy of Draft agreement between the company and the proposed appointee;

x. Newspaper clipping of notices published under section 201

xi. Copy of visa or passport in case the proposed appointee is foreign national;

xii. Copies of education or professional qualification certificate;

xii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013

xiii. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013

xiv. Projections of the Turnover and net profits for next three years;

xv. Calculation of estimated profit under section 198 of the Act;

xvi. An application under Section 460 of the Act for condonation of delay;

xvii. Full and proper justification in favour of the proposal along with bio-data of the appointee;

xviii. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee;

xix. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;

xx. Details, if applicant company is a subsidiary of listed company;

xxi. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;

PROCEDURE FOR REMOVAL OF MANAGING DIRECTOR/WHOLE-TIME DIRECTOR BEFORE THE EXPIRY OF HIS TERM OF OFFICE

Appointment of a Managing or Whole-time director is a contract between him and the company. Removal in breach of contract will entail payment of compensation under Section 202 of the Act. Further, the appointing authority can only remove him. Hence, he can be removed by the Board or the general meeting depending on whether the Board or the general meeting had appointed him.

There is no specific provision for the removal of the Managing/Whole-time director in the Act. If any provisions have been made in the Articles of Association, they shall apply.

If the terms and conditions of appointment or re-appointment provide for determination of the office prior to the expiry of the period by either party giving notice of three months or so to the other party, such condition shall be applicable.

All conditions applicable to removal of director are also applicable to managing director and whole – time directors.

LOANS TO DIRECTORS

According to section 185(1) save as otherwise provided in the act, no company shall directly or indirectly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom director is interested or give any guarantee or provide any security in connection with any loan
taken by him or such other person.

The above provisions shall not apply in the following cases:

(a) the giving of any loan to a managing or whole-time director –
   
   (i) as a part of the conditions of service extended by the company to all its employees; or
   
   (ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for
the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than
the bank rate declared by the Reserve Bank of India.

**Explanation**: For the purposes of this section, the expression “to 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 25% 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.

The companies (meeting of boards and its power) Rules, 2014 also Prescribe various provisions related to loan
to directors.

**RULE 10 OF THE COMPANIES (MEETING OF BOARDS AND ITS POWERS) RULES 2014**

(1) Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or
security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is
exempted from the requirements under this section; and

(2) Any guarantee given or security provided by a holding company in respect of loan made by any bank or
financial institution to its subsidiary company is exempted from the requirements under this section:

Provided that such loans made under sub-rule(1) and (2) are utilised by the subsidiary company for its principle
business activities.

**DISCLOSURES BY A DIRECTOR OF HIS INTEREST**

Section 184 (1) states that every director shall 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, then at the first Board meeting held after such change, disclose his concern or
interest in any company or companies or bodies corporate, firms, or other association of individuals which shall
include the shareholding, in such manner as may be prescribed.

**Rule 9 of Companies (Meetings of Board and its Powers) Rules, 2014**

(1) Every director shall disclose 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.
(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

**Directors interest in a contract or arrangement section 184(2)**

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into –

1. with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
2. with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

A contract or arrangement entered into by the company without disclosure under section 184(2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

**Contravention of section 184(1) and 184(2)**

According to section 184(4) if a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

According to section 184(5) section 184 shall not –

1. prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
2. apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

**RELATED PARTY TRANSACTIONS**

According to Section 188(1), No company shall enter into any contract or arrangement with a related party with respect to –

1. sale, purchase or supply of any goods or materials;
2. selling or otherwise disposing of, or buying, property of any kind;
3. leasing of property of any kind;
4. availing or rendering of any services;
5. appointment of any agent for purchase or sale of goods, materials, services or property;
(f) such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) Underwriting the subscription of any securities or derivatives thereof, of the company.

Section 2(76) define related party and Section 2(77) define relatives, which are also a related party.

These contracts may be contract with (a) consent of board (b) given by way of resolution (c) at a meeting of the Board and (d) subject to prescribed conditions. No related party contract or arrangement, 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 in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a special resolution. No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

This sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm’s length basis.

**PROCEDURE FOR ENTERING INTO A RELATED PARTY TRANSACTION**

1. A notice of Board meeting as per section 173 with additional requirement of Section 188(1). The notice of the meeting shall disclose the following agenda:
   (i) Name of related party and nature of relationship;
   (ii) Nature, duration and particular of the contract or arrangement;
   (iii) Material terms of the contract or arrangement including value;
   (iv) Any advance paid or received, if any;
   (v) Any other relevant information;

2. Information that any directors who are interested in the related party transactions shall not be present at the meeting during the discussion;

3. Where any transaction/paid up capital is under the threshold limits, the board shall pass a resolution to approve the related party transaction;

4. Where any transaction/paid up capital is above the following threshold limits, the board shall issue a notice for convening a general meeting as per Section 101 and 102 of the Act;
   (i) Where company has paid up share capital of one crore rupees or more
   (ii) Where transactions is with the related party with all previous transactions during the financial year exceed 5% of annual turnover or 20% of networth whichever is higher;
   (iii) Where transaction is to appoint a related party to any place of profit in the company, wholly owned subsidiary, associate company at a monthly remuneration exceeding one lakh rupees;
   (iv) Where transaction for underwriting the subscription of any security or derivative of the company exceeding ten lakh rupees

5. All related party transaction to be discussed in the general meeting shall be passed as special resolution, the notice for general meeting under section 101 shall contain following particulars:
   (i) Name of related party;
   (ii) Name of the director or key managerial personnel who is related;
   (iii) Nature of relationship;
(iv) Nature, material terms, monetary value and particulars of the contract or arrangement;

(v) Any other relevant information

6. Form MGT – 14 for passing of special resolution shall be filled with the Registrar.

REGISTER OF CONTRACTS OR ARRANGEMENT IN WHICH DIRECTORS ARE INTERESTED

Section 189 provides that every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

The register referred above shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

Nothing contained in this section shall apply to any contract or arrangement –

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(b) By a banking company for the collection of bills in the ordinary course of its business.

Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

CONTRACT OF EMPLOYMENT WITH MANAGING OR WHOLE TIME DIRECTORS

Section 190(1) provides that every company shall keep at its registered office, –

(a) Where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or

(b) Where such a contract is not in writing, a written memorandum setting out its terms.

The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.[Section 190(2)]

If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default. The provisions of this section shall not apply to a private company.

Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.

Section 191 (1) Provides that no director of a company shall, in connection with –
(a) The transfer of the whole or any part of any undertaking or property of the company; or

(b) The transfer to any person of all or any of the shares in a company being a transfer resulting from –

(i) An offer made to the general body of shareholders;

(ii) An offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;

(iii) An offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.[Section 191(2).

If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved. Where a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

The restriction on non-cash transactions involving directors

Section 192(1) provides that no company shall enter into an arrangement by which –

(a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.[Section 192(2)]

However, any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless –

(a) the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
(b) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

**Prohibition on forward dealing in securities of company by director or key managerial personnel**

Section 194(1) provides that no director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company –

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

**COMPENSATION FOR LOSS OF OFFICE OF DIRECTOR AND OTHER MANAGERIAL PERSONNEL**

A Company may make payment to a Managing Director or a Director holding the office of Manager or in the whole-time employment of the Company, by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement in accordance with Section 202 of the Companies Act other than the following circumstances –

(a) where director resign from his office as a result of the reconstruction or amalgamation and appointed in a position in the reconstructed company or resulting company;

(b) where the director resign from his office;

(c) where the office of director is vacated under Section 167 (1) vacation of office;

(d) where the company is being wound up, provided the winding up was due to the negligence or default of the director;

(e) where the director has guilty of fraud or breach of trust in relation to or gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(f) where the director has instigated or has taken part directly or indirectly in bring about the termination of his office.

Any payment of compensation shall not exceed the remuneration for remaining period of his term or for three years, whichever is shorter calculated on average actual remuneration for last three years. Where he held the office for a lesser period than three years, than calculation shall be made on that period.

This section does not prohibit payment of any remuneration for services rendered by him to the company in any other capacity.

**Procedure for payment of Compensation for Loss of Office of Director and other Managerial Personnel**

- Ensure that the payment of compensation paid is for loss of office to a Managing Director/Whole-time Director or to Director who are Managers
– Ensure that no compensation is paid for loss of office is paid to a Managing Director/Whole-time Director or to a Director who is a Manager as envisaged in Section 202(2) of the Companies Act

– Payments made to a Managing Director/Whole-time Director or to Director who are Managers should be subject to the limits specified in Section 202(3) of the Companies Act

– Ensure that the name of the Director is mentioned in the Register of Directors

– Ensure that there is agreement(s) with the Director concerned for payment of compensation for loss of office in accordance with the provisions of Section 202 (3)

– Check the Minutes of the Board and the General Meeting authorizing payment of compensation for loss of office to a Director or other managerial personnel

**POWERS OF BOARD**

Section 179 empowers the board to exercise its powers in all areas of the Act, except where it is specifically mentioned in the Act or in the memorandum or articles that the power shall be exercised at a general meeting by the shareholders.

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely: –

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to authorise buy-back of securities under section 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board’s report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

*Explanation I*: Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

*Explanation II*: In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing
of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

**Rule 8 of the Companies (Meeting of Board and its powers) Rules, 2014** provides that in addition to the powers specified under section 179(3) of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:-

1. to make political contributions;
2. to appoint or remove key managerial personnel (KMP);
3. to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
4. to appoint internal auditors and secretarial auditor;
5. to take note of the disclosure of director’s interest and shareholding;
6. to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
7. to invite or accept or renew public deposits and related matters;
8. to review or change the terms and conditions of public deposit;
9. to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

**Restriction on Powers of Board**

According to section 180(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely: –

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

*Explanation*: For the purposes of this clause, –

(i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year;

(ii) the expression “substantially the whole of the undertaking” in any financial year shall mean 20% or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

*Explanation*: For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the
discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) to remit, or give time for the repayment of, any debt due from a director.

According to section 180(3) nothing contained in clause (a) of sub-section (1) shall affect –

(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

Section 180(2) contains provisions on limits on borrowing the section provides that every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.

Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act. [Section 180(4)]

No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded. [Section 180(5)]

**Duties of Directors**

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

**Contribution of Bonafide and Charitable Funds**

According to section 181 the Board of Directors of a company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.
Prohibition and Restrictions Regarding Political Contribution

According to section 182 (1) the following companies are barred from making political contributions:

- Government company
- The company which has been in existence for less than 3 financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

Contributions for Political Purpose

Section 182(2) provides that without prejudice to the generality of the provisions of section 180(1)

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed –

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

Political Contribution to be Disclosed in Profit and Loss Account

Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

Punishment for Contravention of Section 182

If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed. [Section 182(4)]

Explanation: For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.
Contribution to National Defence Fund

Section 183(1) states that the Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates. [section 183(2)]

DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE

Directors’ and Officers’ Liability Insurance provides financial protection for the Directors and Officers of the Company in the event they are sued in conjunction with the performance of their duties as they relate to the Company. Directors’ and Officers’ Insurance can also be treated as management Errors and Omissions Policy. Directors’ and Officers’ Liability Insurance can usually include Employment Practices Liability and sometimes Fiduciary Liability. The Company needs Directors’ and Officers’ Liability insurance when the Company assembles a Board of Directors. Investors, especially Venture Capitalists, will also require that evidence be shown that Directors and Officers liability insurance as part of the conditions for funding the Company. Directors and Officers Insurance is needed because claims from stockholders, employees and clients may be made against the Company and against the Directors of a Company. Since a Director can be held personally responsible for acts of the Company, most Directors and officers will demand that they be protected rather than put their personal assets at stake.

What is D & O Liability Insurance

D & O policy is designed to protect the personal fortune of Directors and officers of a company (public or private) against the consequences of their personal liability for financial losses arising out of wrongful acts and or omissions done, or wrongfully attempted in their’ capacity as Directors or officers.

Wrongful act is defined as any actual or alleged error, omission, misstatement, misleading statement, neglect, breach of duty or negligent act by any of the Directors or officers, solely in their capacity as Directors or officers of the company.

Directors’ and Officers’ Liability coverage comprises two sections: (a) Damages awarded against Directors and officers including legal cost, (b) Company reimbursement.

The Directors’ and Officers’ section indemnifies the Directors and officers in respect of claims made against them where the company is not legally permitted to reimburse them. (In the absence of D&O insurance cover, Directors and officers would have to pay the loss settlement and defense costs out of their own resources).

The company reimbursement section indemnifies the company in respect of claims made against the Directors and officers of the company where it (the company) may reimburse the Directors and officers in accordance with the Articles of Association.

According to Section 197(13), premium paid for a insurance on indemnifying them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust shall not be included to the remuneration of any key managerial personnel. However, if such person found guilty, such premium shall be treated as part of their remuneration.

Who is Covered

D&O policy also covers former, present and future members of the board of Directors and the management.
Cover will also apply to the above individuals of the parent company, the subsidiary companies and subsidiary companies newly acquired or incorporated during the policy period. (Outside Directors, public representatives or shadow Directors may also require cover). The company’s auditor is generally not considered as an officer of the company so special mention is to be made to include him/her in the D&O policy.

Essentially, personal liability claim may arise under contract in tort and by statute. Directors can be personally liable for their own default as well as jointly and severally with the company and their fellow Directors for its or their negligence or omission.

Insurance Cover:
The policy will normally indemnify in respect of damages awarded against Directors or officers and the company reimbursement of the insured companies in case of a valid contractual obligation on their part to hold a director or officer harmless. Defence costs are also normally covered.

What is not Covered/What Are the Main Exclusions:
– Criminal behavior,
– Libel, slander or other defamation,
– Fraudulent acts of an insured,
– Professional liability (cover under a professional liability policy),
– Environmental damage or pollution,
– Bodily injury or property damage (cover all under a general liability or property program),
– Fines, penalties and other penal liability.

Is the Policy on a “Claims Made” or an “Occurrence Basis”:
The policy is on ‘claims made basis’ similar to product liability insurance. This will of course allow only claims made during the period of if such claims may be as a result of wrongful acts committed prior to the inception of the policy and would be covered so long as such acts were not thought to give rise to a claim.

An onerous declaration is required to protect insurers against providing cover for known circumstances. Clearly, current litigation would not be insured. Retroactive dates are sometimes imposed if there is good reason, which would mean that only acts committed after the inception of the policy which give rise to a claim would be covered.

Indian Scenario
The exposure to D&O claims in India is very akin to that of the United Kingdom. The main difference between the two countries from a D&O point of view is purely awareness. Once the awareness is created, the plaintiffs are more likely to press for some recourse and therefore the Directors will need protection.

Recent Development in Asia Affecting D&O
Asia as a whole is becoming an attractive source of new income for the insurance market (in respect of D&O). The companies that have the most concerns regarding D&O suits are those companies with operations in the USA. Particularly, the companies those are listed in the USA or have ADRs (American Depository Receipts) are exposed to the regulations of the SEC (Securities Exchange Commission).

FILING OF AGREEMENTS WITH MANAGERIAL PERSONNEL
Section II of Part II of Schedule V ask for disclosure of service contracts, notice period, severance fees.
Every company shall keep a copy of contract of service with managing or whole – time director in writing. Where
the contract is not in writing, a written memorandum setting out terms of contract shall be kept. The copies of the contract or the memorandum shall be open to inspection by any member of the company without payment of fee.

This section is not applicable to private company.

It is common, and desirable, to enter into an agreement with a managing director setting out terms and conditions of employment, remuneration, term, termination. As to the relationship between a company and the managing director, there may be a formal contract between a managing director and the company, evidencing the contractual relationship between the two.

However, in the absence of a formal agreement the relationship may be established by an implied contract. Where a managing director is appointed, and acts as such, in accordance with the company’s articles, and no separate formal contract is entered into, the existence of an implied contract may be inferred, although the articles do not constitute a contract between the company and the managing director qua managing director.

An implied contract on the terms of the company’s articles, which included a provision regarding managing director, was held to have been proved in absence of a formal express contract. The court observed: “A contract may be either express or implied. An express contract can be proved by written or spoken words which constitute an agreement between the parties and an implied contract, on the other hand, may be proved by circumstantial evidence of an agreement. A contract may also be of a mixed character, that is, partly expressed in words and partly implied from acts of the parties and circumstances.” However, it is desirable to have a formal express written agreement.

Powers delegated to managing director by power of attorney

It is common to delegate to the managing director powers of management by a power of attorney approved by the Board and duly authenticated by a notary public. A specimen power of attorney is given at Annexure at the end of the study.

ANNEXURES

SPECIMEN RESOLUTION AUTHORIZING A DIRECTOR TO DISCHARGE CERTAIN RESPONSIBILITIES ON BEHALF OF THE BOARD

“RESOLVED THAT Shri A, Director, be and is hereby authorised to sign and execute counter guarantees in favour of the State Bank of India on behalf of the company whenever the company has to get guarantees issued by the said Bank for the purpose of giving quotations against the tenders floated by the agencies of Central or State Government and any other company.”

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR LIABLE TO RETIRE BY ROTATION

“RESOLVED THAT Shri A, whose period of office is liable to determination by retirement of directors by rotation and who has offered himself for re-appointment, be and is hereby re-appointed as director of the company.”

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR OTHER THAN THE RETIRING DIRECTOR

“RESOLVED THAT Mr. B who has filed his consent to act as a director pursuant to Section 152(5) of the Companies Act, 2013, be and is hereby appointed as director of the company whose period of office shall be liable to determination by the retirement of directors by rotation.”

SPECIMEN RESOLUTION OF THE BOARD FOR APPOINTMENT OF ADDITIONAL DIRECTOR

“RESOLVED THAT pursuant to the provisions of article .......... of the Articles of Association of the company, Shri
“Y” who has signified his consent to act as a director, be and is hereby appointed as an additional director of the company to hold office till the next annual general meeting.”

“RESOLVED FURTHER THAT Shri ……… Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

**SPECIMEN RESOLUTION OF THE BOARD TO FILL THE CASUAL VACANCY**

“RESOLVED THAT pursuant to the provisions of Section 161 and article ……… of the Articles of Association of the company, Shri ‘X’ be and is hereby appointed as director to fill the casual vacancy caused by the death of Shri ‘Y’ whose office shall be liable to termination on the date upto which Shri ‘Y’ would have held office if he were alive.”

“RESOLVED FURTHER THAT Shri ……… Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

**SPECIMEN RESOLUTION OF THE BOARD FOR APPOINTMENT OF ALTERNATE DIRECTOR**

“RESOLVED THAT pursuant to the provisions of Section 161 of the Companies Act, 2013, read with Article ……… of the Articles of Association of the Companies, Shri …………………………… be and is hereby appointed as alternate director to Shri …………………………… during the latter’s absence for a period of not less than three months from the State of …………………………… (mention the State where the meetings are held) and that the alternate director shall vacate his office as and when Shri …………………………… returns to the said State.”

“RESOLVED FURTHER THAT Shri ……… Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

**SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR ELECTED BY SMALL SHAREHOLDERS**

“WHEREAS the company has 2000 small shareholders holding shares of nominal value as per the list tabled and initialled by the Chairman of the meeting,

AND WHEREAS pursuant to Section 151, the company may have at least one shareholder elected by such small shareholders where the number of such small shareholders is 1000 or more,

NOW THEREFORE it is Resolved that Mr. X, director, be and is hereby elected in accordance with the Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014.”

**SPECIMEN RESOLUTION FOR REMOVAL OF DIRECTOR**

“RESOLVED THAT pursuant to notice received from Mr. X, member of the company in accordance with Section 169 of the Companies Act, 2013, Mr. B be and is hereby removed from the office of director of the company.

RESOLVED FURTHER THAT an extraordinary general meeting of the company be held on ……… at ……… (time) at ……… (venue) to secure the consent of members in this regard.

RESOLVED FURTHER THAT the notice of the General Meeting, as per the draft submitted to this meeting, be approved and that the same to issued to all eligible members of the company.

RESOLVED FURTHER THAT the Secretary of the company be authorised to take all further steps as required under Section 169 of the Companies Act, 2013, in respect of this resolution.”
SPECIMEN OF NOTICE TO THE DIRECTOR PROPOSED TO BE REMOVED NOTICE

To, Dear Sir,

We write to inform you that the company has received a notice from a shareholder of the company of a resolution for your removal from the office of director. The said resolution is intended to be moved at the .........................

General Meeting to be held at.................on.................. 2013............. at.............hours.

A copy of the aforesaid resolution is enclosed for your perusal. We draw your attention to the provisions contained in Section 169(3) of the Companies Act, 2013 pursuant to which you are entitled to be heard on the resolution at the meeting. Further in terms of Sub-section (4) thereof you can make a representation in writing to the company for notification to the members of the company. We also enclose the agenda of the meeting with a request to attend the Meeting.

Thanking you

Yours faithfully for ABC Limited

Place:

Dated: Secretary

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGING DIRECTOR

“RESOLVED THAT –

(i) in accordance with Sections 164, 196, 197, 203 and other applicable provisions, if any, of the Companies Act, 2013 and Schedule V to the Act and subject to the approval by a resolution of the shareholders in general meeting, Shri ......................... be and is hereby appointed as Managing Director of the company for a period of five years commencing from .................. and ending on ..................., on the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting and initialled by the chairman of the meeting as a mark of identification, and the same agreement be executed by the and between the company and Shri .......................... on the day the managing director assumes charge of the office;

(ii) Shri ................................. Director of the company, be and is hereby authorised to sign and execute, on behalf of the company, the agreement with Shri .........................., which shall be executed under the common seal of the company to be affixed in the presence of, Shri .......................... Director and Shri .......................... Secretary of the company, who shall sign the same, and

(iii) Shri .........................., Company Secretary, be and is hereby authorised to prepare, sign and file with the concerned Registrar of Companies with the prescribed filing fee, the following documents:

(a) return is Form MR-1 for the appointment of the Managing Director as per requirement of Sub-section (2) of Section 170 of the Companies Act, 2013 and Part III of Schedule V to the Companies Act, 2013, duly certified by the auditor or the company secretary or secretary in whole time practice to the effect that the requirements of Schedule V have been complied with and such certificate shall be incorporated in the return, to be filed within ninety days of the passing of this resolution;

(b) along with a certified copy of the foregoing resolution for registration of the resolution as required under Section 117 of the Companies Act, 2013, within thirty days of the passing of the resolution.

SPECIMEN OF ORDINARY RESOLUTION APPOINTING MANAGING DIRECTOR

“RESOLVED THAT pursuant to the provisions of Sections 164, 196, 197 and 203 read with Schedule V and all other applicable provisions, if any, of the Companies Act, 2013 including any statutory modification or re-enactment thereof and subject to such approvals as may be necessary, approval of the members of the company be and is
hereby accorded to the appointment of Shri ............................ as the Managing Director of the company for a
period of five years with effect from 1st January, 2015 upon the terms and conditions including remuneration as
set out in draft agreement submitted to this meeting and initialled by the Chairman for the purpose of identification,
which agreement be and is hereby approved and sanctioned with the authority to the Board of directors of the
Company to alter and vary the terms and conditions of the said appointment and/or agreement in such manner as
the Board may deem fit and as may be acceptable to Shri.........................., the Managing Director.”

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorized to do all such
acts, deeds and things and execute all such documents, instruments, and writings as may be required to give
effect to the aforesaid resolution.”

Explanatory Statement
The Board of directors of the company at their meeting held on .................... appointed Shri ....................... as the
Managing Director of the Company for a period of five years effective from 1st January, 2015 on the terms of
appointment and remuneration payable to Shri........................., Managing Director of the company as are specified
in the draft agreement to be executed between him and the company, a copy of which (as has also been duly
approved by the Board) will be placed before the meeting and is subject to the approval of the shareholders and
other approvals, if any, as may be necessary.

The principal terms of appointment and remuneration of Shri.................... are as follows:

1. Salary: ...............................................................……………………....
2. Commission: .................................................................……………….
3. Perquisites, allowance and other benefits: ........................................
4. Minimum Remuneration: .............................................................

Notwithstanding anything to the contrary herein contained, where in any financial year, the company has no
profits or its profits are inadequate, the company will pay Shri........................., the Managing Director of the company,
the remuneration by way of salary, perquisites and allowances as specified above subject to the approval of the
Central Government, if required.

The Managing Director shall also be entitled to reimbursement of expenses actually incurred by him for the business
of the company. He shall not be paid any sitting fees for attending meetings of the Board or Committee thereof.

Shri........................., Managing Director shall not be liable to retire by rotation. The resolution is recommended for
your approval.

Copies of the Memorandum and Articles of Association of the company, draft agreement to be entered into
between the company and Shri........................., Managing director duly approved by the Board, and all other relevant
documents and papers are open for inspection at the Registered Office of the company between 10.00 a.m. to
12.00 noon on any working day prior to the date of the meeting.

None of the directors of the company except Shri................. is concerned or interested in the resolution.

SPECIMEN NOTICE UNDER SECTION 201
I. Notice under Section 201 for Central Government’s Approval to the Appointment of Managing Director

............................Limited

Notice
Pursuant to the provisions of Section 201 of the Companies Act, 2013, notice is hereby given that the Company
intends to apply to the Central Government for its approval under Section 200 of the Companies Act, 2013 for the
appointment of Shri ................... as Managing director of the Company, for a period of five years effective from
......................... on the terms and conditions as contained in the Draft Agreement approved by the Board of directors
on .................

Registered Office: For ........................... Limited

............................ .....................................

............................ Secretary

Dated...................

II. Notice under Section 201 for Central Government’s Approval to Increase Managing Director’s
Remuneration

For .................... Limited

............................ .....................................

........................ Secretary

Dated...................

SPECIMEN OF BOARD RESOLUTION APPOINTING A PERSON AS MANAGING DIRECTOR, WHO IS
MANAGING DIRECTOR OR MANAGER OF ONE OTHER COMPANY

The chairman informed the meeting that –

(i) Shri ................................. is the managing director of ABC Ltd., which is a wholly-owned subsidiary of this
company;

(ii) For administrative convenience and better functioning of both the companies, this company is desirous
of appointing the said Shri ................................. as its managing director and the said Shri..............................
is willing to accept the appointment as managing director of this company without any remuneration.

(iii) Shri ................................. is already a director of this company and is competent and not disqualified to be
appointed as the managing director of this company and pursuant to proviso to Sub-section (3) of
Section 203 of the Companies Act, 2013, due specific notice of this meeting and of the proposed resolution
has been given to all the directors for the time being present in India.

The meeting discussed the matter and passed the following resolution:

“RESOLVED THAT consent of all the directors present at the meeting be and is hereby accorded to the appointment
of Shri ................................., who is managing director of ABC Ltd. also, as the managing director of this company
without any remuneration and the managing director shall exercise such powers and perform such functions as the
Board of directors may, from time to time require him to exercise and perform.”

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGER

“RESOLVED THAT –

(i) in accordance with Sections 164, 196, 197 and 203 read with Schedule V and other applicable provisions
of the Companies Act, 2013 and Schedule V to the Act and subject to approval by a resolution of the
shareholders in general meeting, Shri ................................. be and is hereby appointed as manager of
the company for a period of five years commencing from ............................ and ending on ...........................on the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification, to be executed by and between the company and Shri ............................ on the day the manager assumes charge of the office;

(ii) Shri ............................, director of the company, be and is hereby authorised to sign and execute, on behalf of the company, the agreement of appointment of Shri ............................ as manager of the company, which shall be executed under the common seal of the company to be affixed in the presence of Shri ............................, director and Shri ............................, secretary of the company, who shall also sign the same in token thereof, and

(iii) Shri ............................, company secretary, be and is hereby authorised to prepare, sign and file with the concerned Registrar of Companies with the prescribed filing fee, the following documents:

(a) return is Form MR-2 for the appointment of the Managing Director as per requirement of Sub-section (2) of Section 170 of the Companies Act, 2013 and Part III of Schedule V to the Companies Act, 2013, duly certified by the auditor or the company secretary or secretary in whole time practice to the effect that the requirements of Schedule V have been complied with and such certificate shall be incorporated in the return, to be filed within ninety days of the passing of this resolution; and

(b) Form MR-2, in respect of the appointment of the manager, to be filed within thirty days of the passing of this resolution.

MANAGING DIRECTOR’S AGREEMENT

This Agreement is made at ...... on ...... between ...... Limited and its Managing Director Mr. ............................

PREAMBLE

(1) ............................ Limited (“the Company”) is a public company incorporated under the Companies Act, 2013 and has its Registered Office at ............................

(2) Mr. ............................ aged years, an Indian resident, currently residing at ............................

(3) The Board of Directors of the Company at their meeting held on ................. appointed Mr. ............................ as the Managing Director of the Company by a resolution.

This Agreement sets out the terms and conditions governing the appointment of the Managing Director ............................

DEFINITIONS

1. “Act” means the Companies Act, 2013

2. “Articles” means the Articles of ABC Limited.


4. “Managing Director” means ............................

5. “Board” means the Board of directors of ABC Limited.

AGREEMENT

(1) The Company appoints Mr. ............................ as its Managing Director and the Mr. ............................ agrees to act as a Managing Director of the Company for 3 years from...... to .......

(2) The Managing Director shall work under the superintendence, control and direction of the Company’s
Board, shall have the powers of general conduct and management of business and affairs of the company in relation to the following functions, namely: (a)........, (b) .........., (c)........, except in the matters which may be specifically required to be done by the Board either by the Act or by the Articles.

(3) The Managing Director will exercise and perform such powers and duties as the Board may from time to time delegate to him. He will also do and perform all other acts, deeds and things which in the ordinary course of business he may consider necessary or proper, or in the interest of the Company.

(4) Without restricting the general powers and authorities as mentioned above, the Managing Director will have the following powers to be exercised on behalf of the Company:

(a) ............;

(b) .............; and

(c) ..............

(5) The Managing Director shall hold his office for 3 years beginning from..... However the Board may extend the term of his office.

(6) The Company or the Managing director may terminate this Agreement before its term is over by giving a notice of the intention to terminate it at least 3 months before the date on which the termination is to come into effect. If such notice is given, the Agreement will come to an end when the 3 months notice period is over.

(7) The Managing Director shall devote adequate time and attention to the Company’s business.

(8) The Managing Director shall always comply with the directions given and regulations made by the Board and he shall faithfully serve the Company and use his best efforts to promote its interests.

(9) For the services provided, the Company shall pay the Managing Director the remuneration specified below.

**SALARY**

₹........... (Rupees ............... only) per month.

**PERQUISITES:**

In addition to the aforesaid salary, the Managing Director shall be entitled to the following perquisites:

(a) Fully furnished residential accommodation. Where no accommodation is provided by the Company, suitable house rent allowance in lieu thereof may be paid. The expenses on furnishings, gas, electricity, water and other utilities shall be borne by the Company.

(b) Reimbursement of all medical expenses incurred for self and family.

(c) Leave travel assistance for self and family as per Company rules.

(d) Fees of clubs, which will include admission and life membership fees.

(e) Education allowance for the education of his children not exceeding ₹.... per annum per child.

(f) Personal accident insurance, premium whereof does not exceed ₹ ... per annum.

(g) A car with driver for official purpose.

(h) Telephone and fax facilities at residence.

(i) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961.

(j) Gratuity at the rate not exceeding half a months salary for each completed year of service, and
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(k) Leave at the rate of one month for every eleven months of service. Leave not availed of may be encashed. Family for the above purpose means wife, dependent children and dependent parents of the Managing Director.

COMMISSION

Commission shall be decided by the Board of Directors based on the net profits of the Company each year subject to the condition that the aggregate remuneration of the Managing Director shall not exceed 5% of the net profits of the Company, in accordance with sections 196, 197 and Schedule V to the Companies Act, 2013.

MINIMUM REMUNERATION

In the event of loss or inadequacy of profits in any financial year during the currency of his tenure as Managing Director, the payment of salary, perquisites and other allowances shall be restricted to ₹ ….. per annum or ₹ ….. per month in terms of SECTION II of Part II of Schedule V to the Companies Act, 2013 as minimum remuneration.

For the purpose of computation of minimum remuneration, the following shall not be included:

(a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961.

(b) Gratuity at the rate not exceeding half a months salary for each completed year of service, and

(c) Encashment of leave at the end of the tenure.

(10) Sitting Fees. The Managing Director shall not be paid any sitting fees for attending the meeting of the Board of directors or Committee thereof from the date of his appointment.

(11) The Headquarter of the Managing Director shall be .................... in the State of .........................

(12) Subject to the provisions of the Act, Managing Director shall not while he continues to hold office of the Managing Director be subject to retirement by rotation of Directors and he shall not be reckoned as a Director for the purpose of determining the rotation or retirement of Director or in fixing the number of Directors to retire, but he shall ipso facto and immediately cease to be the Managing Director if he ceases to hold office of Director for any cause.

(13) The Managing Director shall not during the continuance of his employment or at any time thereafter divulge or disclose to any person whomsoever or make any use whatever for his own or for whatever purpose, of any confidential information or knowledge obtained by him during his employment as to the business or affairs of the company or as to any trade secrets or secret processes of the company and the Managing Director shall during the continuance of his employment hereunder also use his best endeavours to prevent any other person from doing so.

IN WITNESS WHEREOF the company has caused its Common Seal to be hereunto affixed and the Managing Director has hereunto set his hand the day and year first hereinabove written.

The Common Seal of ......................... Ltd. was hereunto affixed pursuant to a resolution of the Board of directors of the company, dated the ......................... in the presence of Shri ......................... the Director thereof.

Director

Director
Special Power of Attorney

This power of Attorney is executed and given on this ................................... day of ................................... by ................................... Limited, a public company within the meaning of Section  of the Companies Act, 2013 (the Act) and having its registered office at ................................... state of ..................................., India (the Company).

The company has appointed Mr. ................................... as its managing director.

In connection with the affairs of the company, by this Power of Attorney, the Company gives Mr. ................................... the powers specified below:

Subject to the superintendence, control and direction of the Board of directors of the company the said Attorney as the Managing Director of the company and only so long as he holds the position of the Managing Director of the company shall have the general conduct and management of the whole of business and affairs of the company except in the matters which may be specifically required to be done by the Board either by the Companies Act, 2013 or by the articles of association of the Company and the Managing Director shall also exercise and perform such powers and duties as the Board of directors of the company (hereinafter called “the Board”) may from time to time determine and shall also do and perform all other acts and things which in the ordinary course of business he may consider necessary or proper or in the interest of the Company and in particular but without in any way restricting the general powers and authorities hereinbefore conferred upon the Managing Director, the attorney shall in particular have the following powers on behalf of the company viz.:

1. To manage, conduct and transact all the business affairs and operations of the company including power to enter into contracts and to vary and rescind them.

2. To enter into and sign for and on behalf of the company (not being required to be executed under its Common Seal or not otherwise provided for in the articles of association of the company), all deeds, instruments, contracts, receipts, letters, papers, agreements, documents of title, banking and commercial documents and all other documents, papers, etc. whether in India or abroad whatsoever in connection with or relating to the business and affairs of the company.

3. For and on behalf of the company, to make, sign, draw, accept, endorse, negotiate, sell and transfer, discharge and deliver, assign, re-transfer, re-assign, surrender, discontinue, make paid up, deal with and exercise any right in respect of or arising out of any policy of insurance or any other actionable claim and all cheques, bills of exchange (inland or foreign), drafts, hundies, pay orders, promissory notes, dock warrants, delivery orders, railway receipts, motor transport receipts, bills of lading, air consignment notes, warehouse warrants, and other mercantile documents and other negotiable instruments and securities charter party, ships certificate or all other warrants, certificates or other documents of symbol or indicia of goods or of possession or title to goods or movable property of any kind.

4. To become party to and to present for registration and admit execution of and to do every act, matter or thing necessary or proper to enable registration on behalf of the company of all deeds, instruments, contracts, agreements, receipts and all other documents whatsoever.
(5) To institute, defend, prosecute, conduct, compound, refer to arbitration and abandon and to compromise legal or other proceedings, claims and disputes by or against the company or in which the company may be concerned or interested, AND ALSO to accept service of any writ of summons or other legal processes and to appear and to represent the company in any courts and before all judges, magistrates or judicial, revenue and administrative or executive officers or bodies or tribunals and before all other authorities including municipal, industrial, labour, income-tax and other tax authorities, tribunals and bodies whatsoever as the said Attorney may think fit and for and in the name of the company or otherwise as may be necessary to commence any action, suit, appeal, petition or other proceedings in any court, judicial, revenue, industrial, labour or other, or before any other officer, body, authority or tribunal for any reliefs, declaration, right, title, interest, property, matter or thing wherein the company is or may hereafter become interested or concerned by any means or on any account whatsoever or otherwise in relation to any of the company's affairs, property and business or in which the Company may be or may be deemed to be necessary as a party and the same action, suit, appeal, petition or proceedings to prosecute or discontinue or to become non-suit therein if the said Attorney shall think fit or be advised and to take all execution and other proceedings and also to take such other lawful ways, means or steps for the enforcement, realisation or possession of any reliefs, rights, interests, claims, demands or property in relation to any of the properties, affairs and business of the company whatsoever to which the said Attorney may consider the company to be entitled or which may be considered to be due, owing or belonging to the company by or from any person(s), firm or company whatsoever; AND also to join with any other party as a party to any action, suit, petition or other legal proceeding whether as plaintiff or defendant or appellant or respondent and to interplead, claim set-off or make a counter claim, and to issue or cause to be issued third party notices.

(6) To receive and give effectual receipts and discharges of moneys, funds, goods or property payable to or to be received by the company; AND ALSO to make the following payments on behalf of the company:

(i) Payments to suppliers of raw materials, goods and services as are required to carry on business of the company.

(ii) Payments on account of capital goods purchases subject to the limits laid down by the Board of directors vide its resolution passed at its meeting held on ......................

(iii) Payments to employees and contract labour employed or engaged by the company.

(iv) Payments for administrative expenses.

(v) Payments of all taxes and duties as may be levied and/or imposed by State/ Central Government(s) or local authorities.

(vi) Interest on deposits/loans at rates sanctioned by the Board of directors or at agreed rates or fixed under any law.

(vii) Acceptance and refund of deposits and loans as per rules previously framed by the Board of directors or under any law.

(viii) Any other payment to be made by the company in the conduct of its business.

(ix) All incentive payments to staff and workers according to the schemes in that behalf.

(x) All payments on account of discounts, commission to be paid to the distributors/dealers and agents or any other customer and depot managers as per arrangements in that behalf.

(7) To convene meetings of the Board of directors, Committees, Sub-Committees of directors, if any, and pursuant to the directions of the Board of directors also the Ordinary or Extraordinary General Meetings of the shareholders.

(8) Within the limits laid down by the Board of directors by its resolution passed at its meeting held on
(9) To purchase, pay for, acquire, sell, re-sell, re-purchase and import raw materials, articles, stores, appliances, apparatus, and all other materials and things necessary or expedient for the day to day working of the Company either for cash or credit and either for present or future delivery as also to export the products of the company.

(10) To build, construct, erect and maintain, pull down, demolish and re-construct warehouses, factories, offices, workshops and all other buildings for manufacturing, storing and otherwise dealing with the Company's properties, articles or things or for the purposes of the trade or business of the Company.

(11) (i) To make advance upon or for the purchase of goods and all other articles required for the purposes of the Company upon such terms as the Managing Director may think fit;

(ii) Subject to any schemes, conditions as may be approved/laid down/prescribed by the Board of directors from time to time, to make advances and grant any loans or accommodation to employees of the company not exceeding such prescribed limits.

(12) Subject to the provisions of the Act and subject to the provisions of any agreement for the time being in force between the company and any person, to appoint agents, sub-agents, distributors at such place or places as the Managing Director may think fit or necessary.

(13) Subject to and within the limits laid down by the Board of directors vide its resolution passed at its meeting held on ............. to sell, or otherwise dispose of, re-sell, lease-out, export, transfer, exchange, etc. any capital assets, properties, buildings, lands, premises, machinery, plant, articles, things and products, etc; not involving any sale or disposal of the whole or a part of the undertakings of the company whether for cash or credit and either present or future.

(14) Subject to and within the overall borrowing limits as laid down by the Board of directors vide its resolution passed at its meeting held on ............ to raise or borrow (otherwise than by debentures) from time to time in the name of or otherwise on behalf of the company such sum(s) of money as may be deemed necessary or expedient.

(15) Within the limits laid down by the Board of directors vide its resolution passed at its meeting held on ................., to invest and deal with the moneys of the Company not immediately required upon such investments of such nature as may be specified by the Board of Directors from time to time or to deposit the same with banks, shroffs, or persons and from time to time to realise and vary such investments.

(16) Subject to the provisions of section 179 of the Companies Act, 2013, and when so authorised by the Board and within the limits from time to time fixed by the Board, to make loans for such purposes and upto such maximum amount for such purpose as may be specified by the Board from time to time.

(17) To insure and keep insured company's properties, buildings, machinery, plants, materials, equipment and all other properties of the company, movable or immovable either lying in the godowns, showrooms, or offices or in the workshops or factories or elsewhere or in transit for import or in which the company is interested whether as owner, mortgagee, pledgee, hypothecatee, chargee or otherwise howsoever against loss or damage by fire or other risks to such amount and for such period as the Managing Director may deem proper and to sell, assign, surrender or discontinue any of the insurances effected in pursuance of this power and also to receive moneys payable upon such policy and to give receipts and discharges for the same.

(18) To operate upon and open accounts, current, fixed or otherwise with any bank or bankers, merchant(s) or
with any company(ies), firm(s), individual(s) and to pay moneys into and to draw moneys from any such account(s) from time to time as the attorney may think fit and also to operate such account(s) and to authorise such officers/employees of the Company as the attorney may deem fit to operate such account(s) on behalf of the company.

(19) To attend and vote at all meetings in all bankruptcy, insolvency and liquidation or other proceedings in which the company may be interested or concerned.

(20) Within the limit for salary laid down by the Board of directors vide its resolution passed at its meeting held on ....................., to appoint or employ, engage for the company's transactions, and management of affairs persons in the service of the company either on probation or temporarily or permanently and from time to time to suspend, award punishment, or dismiss, remove, or otherwise terminate the employment with or without notice of any person(s) whether now or hereafter employed in the service of the Company and also from time to time to transfer, re-transfer, re-appoint, re-employ or replace any persons, managers, officers, clerks, workmen, employees and other members who may be in the employment of the company now or hereafter be so employed.

(21) Within the limits laid down by the Board of directors vide its resolution passed at its meeting held on .................. to make and pay donation(s) or contribution(s) to charitable and other funds not directly relating to the business of the Company or the welfare of its employees.

(22) To employ, engage, retain, consult, pay and to terminate the engagement or employment of brokers, notaries, architects, surveyors, valuers, clearing and forwarding agents and all such persons, and agents whose services may be necessary or proper for the exercise of powers conferred on the attorney; to appoint, engage and instruct, lawyers, advocates, pleaders, attorneys, solicitors, barristers, vakils, income-tax and other consultants, experts, brokers, merchants, engineers, retail and wholesale commission dealers, muccadams, technicians, experts, etc. with such powers and duties and upon such terms as to duration of employment, remuneration or otherwise as the attorney may deem fit and to give and sign any retainers, authorities, vakalatnamas, warrants and other papers in connection therewith or otherwise as may be required or advised.

(23) To incur from time to time subject nevertheless to the provisions of the Act, such expenses and to lay out such sum(s) of money as the Managing Director may deem expedient for the offices, or the establishments of the Company and for the purpose of maintaining and carrying on the works and business of the company as he may think fit.

(24) From time to time, provide by the appointment of any attorney(s) or officer(s) for management and transaction of the affairs of the Company generally or in specified locality or district or province or State.

(25) To sign, make and file any notice or form or return or account in connection with the income tax or any other tax whether in respect of income or capital; by whatever name called whether now levied or hereafter to be levied or in connection with any rate, tax, assessment, levy or cess, and to make, sign, declare, affirm, verify and file any petition, application, affidavit, appeal, reference, review or revision applications or any other proceedings whatsoever under any Act, Ordinance or Order or rules or regulations relating to taxation of income or capital or the levying and collection of any tax, rates, cess, assessment of levy of whatsoever kind or nature whether now or hereafter to be in force and to sign and execute Court Bonds, or any other Bond, recognisance or bail bonds.

(26) To sign, execute and deliver all such affidavits or declarations or agreements, contracts, deeds, assurances, documents and instruments as the attorney may deem necessary or proper including in particular and without prejudice to the generality of the foregoing and subject to the provisions in the Companies Act, 2013 and any other applicable enactment any deed of sale or conveyance or assignment, or deed of mortgage or charge or transfer of mortgage or sub-mortgage or release and/or reconveyance of mortgage or
re-assignment of mortgage, or deed of lease or sub-lease or surrender of lease, or deed of exchange or
surrender or renunciation, or deed or transfer of any property, deed or agreement of pledge, hypothecation
or lien or charge or any other encumbrance and any other deed or document or instrument whatsoever
which may in the opinion of the Attorney be required to be executed by the company whether alone or
jointly with other or others.

(27) To make, sign and execute, receipts, releases, re-conveyances, re-assignments, re-transfers and
acquittances and discharges of all kinds and to adjust or record satisfaction of any decree or order or
award or any other matter requiring record of satisfaction and either in full or in part and to sign receipts
and discharges for any monies payable to the company.

(28) To execute, enforce, perform and carry out and obey any decree, order, award or decision in which the
company may be in anywise interested or concerned either as a party or otherwise.

(29) To concur in doing any of the acts and things hereinbefore mentioned in conjunction with any other persons
interested in the premises.

(30) For the better and more effectually doing, effecting, executing and performing the several matters and
things aforesaid, to appoint from time to time or generally such person or persons as the attorney or
attorneys shall think fit as their or his substitute or substitutes to do, execute and perform all or any such
matters and things as aforesaid and at pleasure to remove any such substitute or substitutes and to
appoint any other or others in his or their place.

(31) To comply with and/or cause to be complied with all statutory requirements affecting the Company and to
represent the Company before any Government, courts of law, civil, criminal, industrial or labour, revenue
or before all conciliators, other public officers, authorities, bodies or tribunals in connection with all suits,
actions, petitions, appeals and other legal or other proceedings and matters whether civil, criminal, revenue,
industrial or labour in which the Company may be concerned or interested whether as plaintiffs, defendants,
petitioners, appellants, respondents, opponents, prosecutors, opposing creditors or in any other capacity
whatsoever or otherwise howsoever and in all matters in anywise concerning the business affairs and
properties of the company and to appear and to represent the company in all actions, suits, appeals,
petitions, and other proceedings under all Acts or enactments of the Parliament of India or of any State
Legislature including particularly, among others the following Acts or enactments namely:

........................................................................................................................................
and to affirm, declare and sign
all pleadings, applications, petitions, statements, memoranda of appeal, affidavits, documents,
acknowledgments and papers in connection therewith and to appear and to represent the company before
all officers, authorities, bodies or tribunals under any of the said Acts or enactments.

(32) AND GENERALLY for the purposes aforesaid to execute all such instruments, acts, deeds, matters and
things as the said Attorney shall be advised or think incidental or proper and that as amply and effectually
to all intents and purposes as the company itself could do or would have done if these presents had not
been made the company ratifying and confirming and agreeing to ratify and confirm all and whatsoever the
said Attorneys or Attorney shall lawfully do or cause to be done in or about the premises by virtue of these
presents:

Provided always that no person/persons dealing with the Attorney shall be concerned to see or enquire whether
or not the Attorney is acting in accordance with the directions of the Board of Directors in those matters wherein
he is required to act subject to such directions and notwithstanding any breach of such directions committed by
the Attorney in regard to any act, deed, matter or thing authorised to be done or executed the same shall between
the company and the person or persons dealing with the Attorney be valid and binding on the company to all
intents and purposes unless the person or persons dealing with the Attorney shall have notice of such directions.

In witness whereof, the company has caused its Common Seal to be affixed hereto at this .......... day of ........ 20......
The Common Seal of the ................................ was hereunto affixed pursuant to a resolution of the Board of Directors of the company dated ....................... in presence of .........................

Counter signed by .........................

LESSON ROUND UP

- Every listed company and every other public company having a paid up share capital of ten crore rupees or more shall have whole time key managerial personnel.
- Directors may be appointed by the Board or by the shareholders at the General Meeting.
- Directors may be appointed as Additional Directors, Alternate Director or for filling the Casual vacancy.
- The increase in number of directors beyond the limit of twelve directors needs prior approval of the Central Government and authority by the Articles of Association.
- Directors may be removed by the shareholders at the General Meeting by the Central Government and/or by the Company Law Board.
- A managing director or a whole-time director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by other.
- Section 185 of the Companies Act, 2013 governs the making of loan to directors.
- D & O Liability Insurance policy normally indemnifies in respect of damages awarded against Directors or officers and the company reimbursement of the insured companies in case of a valid contractual obligation on their part to hold a director or officer harmless.
- It is common to enter into agreements between the companies and Managerial Personnel entrusting the powers of management to them.

SELF TEST QUESTIONS

1. State the procedure for increasing the number of directors.
2. Explain the procedure for re-appointment of the retiring director at the Annual General Meeting.
3. State the procedure in regard to removal of a director by Government.
4. Under what circumstances the office of a director shall become vacant?
5. Can a producer company appoint additional director?
6. Explain the procedure for payment of remuneration to Directors.
7. State the procedure for appointment of Manager.
8. Draft resolution for appointment of a director liable to retire by rotation.
9. State the procedure for obtaining Director Identification Number.
10. What is Director’s and Officer’s liability Insurance?
11. Write down the procedure for granting loans to directors.
Company Secretaries are the natural conscience keepers for the corporate sector since they are specialists in the field of corporate Governance, regulation and processes and are the eyes and ears of the Board on such matters.

Rule-8A Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees or more.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice.

Hence, a Company Secretary assumes great importance in the corporate world. This lesson will make you understand about the role and functions of Company Secretary in employment as well as in practice, requirements related to their appointment, removal etc.
WHO CAN BE A COMPANY SECRETARY

According to Section 2(24) of the Companies Act, 2013, “Company Secretary” or ‘Secretary’ means a company secretary as defined in clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who is appointed by a company to perform the functions of a company secretary under this Act.

According to clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a company secretary means a person who is a member of the Institute of Company Secretaries of India.

Therefore, ‘Company Secretary’ means a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the functions of a company secretary. The functions of company secretary have been defined in section 205 of the Act.

FUNCTIONS OF A COMPANY SECRETARY

According to Section 205 the functions of the company secretary shall include,—

(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 issued by the Institute of Company secretaries of India (ICSI) and approved by the Central Government.

(c) to discharge such other duties as may be prescribed.

DUTIES OF COMPANY SECRETARY AS PRESCRIBED IN COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

The Central Government has prescribed following duties of Company Secretary:-

(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 meetings, the Government and such other authorities as required under the provisions of the Act;

(4) to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions 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.

Section 205(2) provides that provisions contained in section 204 in relation to secretarial audit and section 205 in relation to functions of company secretary shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.
A company secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act, 2013 and various other corporate, taxation, industrial and economic laws applicable to companies in general.

Under the Companies Act, the role of a secretary is three-fold, viz., as a statutory officer, as a co-ordinator and as an administrative officer if so authorized. Similarly, the responsibility of company secretaries extends not only to a company, but also to its shareholders, depositors, creditors, employees, consumers, society and government.

The role of a company secretary may conveniently be studied from three different angles:

(a) as a statutory officer,
(b) as a co-ordinator,
(c) as an administrative officer.

(a) Statutory Officer: The company secretary is an officer responsible for compliance with numerous legal requirements under different Acts including the Companies Act, 2013 as applicable to companies. The responsibilities of company secretary has also increased as he has been included in the definition of Key Managerial Personnel as defined in section 2(51) of the Act, who are also liable to punishment by way of imprisonment, fine or otherwise for violation of the provisions of the Companies Act which hold the “officers in default” under Section 2(60).

However, for a proper understanding of the role and responsibilities of a company secretary under different Acts, it would be desirable to study the provisions of those Acts in this regard.

Company Secretary is one of the key managerial person of a company, all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees of more. However, Company Secretary is not a 'managerial personnel' for purpose of restriction on remuneration under section 197 of Companies Act, 2013. His salary is not considered for purpose of computation of ‘managerial remuneration’ under section 197 of the Companies Act, 2013, unless he is also a director of the company.

The various provisions and rules framed under the Companies Act make it obligatory for the secretary to sign the annual return filed with the Registrar [Section 92], duty to report fraud [Section 143(12)] and to make declaration under Section 7(1) of the Act before incorporation of a company confirming that all the requirements of Act and the Rules thereunder have been complied with in respect of registration of a company and the Registrar may accept such a declaration as sufficient evidence of such compliance.

Under clause 49 (III) (A) (6) of the Listing Agreement, the Company Secretary shall act as the secretary to the Audit Committee in case of a listed company.

Under the Indian Stamp Act it is the duty of a secretary to see that the documents such as letter of allotment, share certificate, debentures, and mortgages are issued duly stamped. He is the principal officer under Section 2(35) of the Income Tax Act, 1961.

The most important task of the company pertaining to statutory and legal obligations comes upon the secretary. Under the Companies Act, he has to either comply with the various provisions of the Act or is liable to be fined or imprisoned for non-compliance of his obligations.

Thus the responsibility of a secretary as a statutory officer has been greatly expanded by enactment of various economic statutes, like Competition Act, Industries (Development and Regulation) Act, Foreign Exchange Management Act, SEBI Act, SCRA and Depositories Act. Accordingly, the numerous provisions which a Company is obliged to comply with, makes the secretary’s job onerous and difficult. The duties imposed upon a secretary by various statutes clearly indicate the important place he occupies in the corporate administrative hierarchy.
(b) **Co-ordinator**: On dealing with the Board functions, Peter Drucker has this to say — “But there are real functions which only a Board of directors can discharge. Somebody has to give final approval to the objectives; the company has set for itself and the measurements it has developed to judge its progress towards these objectives. Somebody has to look critically at the profit planning of the company, its capital investment policy and its managed expenditure budget. Somebody has to discharge the final judicial function in respect of organisational problems.”

This concept of Peter Drucker provides for the company secretary to co-effectively play a co-ordinating role to achieve the tasks the Board has set itself to.

In India, most companies have an increasing dependence on the financial institutions for assistance. Every big-sized project involves assistance from the financial institutions. These institutions expect the Board of directors to oversee the overall management and performance of the assisted companies and for this purpose, would insist on all basic policy issues to be discussed at the Board meetings and decisions reached. For this purpose, it would be necessary for the company’s management to place all the salient features and information before the Board in order that they can arrive at a proper decision.

This is evidenced by the various conditions imposed in the loan agreements entered into between the financial institutions and the assisted companies. Company managements look to the company secretary for implementation of the conditions in the loan agreements.

The financial institutions stipulate that in the case of companies assisted by them financially, compliance certificate as per their format duly certified by the company secretary should be furnished periodically at the Board meetings.

Furnishing of the certificate requires skill of coordination between the company secretary and the functional heads and the factory manager.

The Company Secretary as a co-ordinator has an important role to play in administration of the company’s business and affairs. It is for the secretary to ensure effective execution and implementation of the management policies laid out by the Board. The position that the company secretary occupies in the administrative set-up of the company makes his function as one of co-ordinator and link between the top management and other levels. He is not only the communicating channel between the Board and the executives but he also co-ordinates the actions of other executives vis-a-vis the Board. The ambit of his role as a co-ordinator also extends beyond the Company and he is the link between the Company and its shareholders, the society and the Government. Thus, the role of a company secretary as a co-ordinator has two aspects, namely internal and external. The internal role of a co-ordinator extends to the Board including the Chairman and Managing Director, various line and staff personnel, the trade unions and the auditors of the company. His role as an external co-ordinator extends to the relationship of the company with shareholders, Regulators, Government and Society.

### Relationship with the Board, Chairman and Managing Director

Whilst the Directors discuss and decide policy matters as a body, the Secretary is responsible for transmitting the policies and decisions of the Board, to all levels in the company and outsiders. His duties in relation to the Board include amongst others:

(i) Arranging meetings, both Board and general, drafting out the minutes and reports.

(ii) Keeping the Board informed as an advisor on matters regarding legal, financial and other laws and problems as far as they relate to the company. This will include advising the Board of the various obligations imposed on the directors by various statutes, including changes in laws which will have a bearing on the activities of the company.

(iii) He must ensure that all decisions taken by the Board are in consonance with legal requirements, and the powers they exercise do not require approval of the shareholders, Central Government or any other authority.
(iv) Since meetings of the Board are confidential in nature, he should ensure secrecy regarding matters discussed at such meetings.

Whilst the Board decides on policy matters, the day-to-day administration of companies is vested in the managing director, if there is one. In other cases, where the company is a board managed company, i.e. where none of the directors is a managing director or a whole-time director, the Secretary has to seek guidance and instructions from the Chairman on all important matters. He must, however, ensure that a Chairman who is not a managing director does not exercise substantial powers of management as he will be deemed to be a managing director within the meaning of the Act and, therefore, his appointment and remuneration will require the approval of the shareholders and the Central Government, if necessary. Where, however, the company has a managing director, he must seek his guidance and instructions regarding implementation of the policies laid down by the Board and also on matters arising out of the implementation of the decisions. He is also required to keep the chairman and managing director apprised of changes in policies of the Government, obligations under various statutes and to give balanced advice on matters which have legal ramifications.

**Relationship with other Functionaries**

We have seen that the Secretary is responsible for conveying the Board’s decisions on various aspects of the company’s policies to the persons in-charge of such functions. He is, in addition, responsible to ensure that the returns and reports received from various operational executives are submitted in time, complete in all respects, and do not conflict with the corporate objectives.

Even where different persons are in-charge of other functions, e.g., sales, personnel, etc., it is usually the Secretary who communicates with outside agencies, particularly with government and semi-government bodies to ensure that the information given to various agencies do not conflict with each other and are in accordance with the corporate objectives of the organisation.

**Trade Union(s)**

Where the Secretary is responsible either directly or through his assistants with industrial relations, he must exercise extreme caution while dealing with Trade Union officials whether they belong to recognised unions or not. He must ensure that proper notes are kept of the discussions and negotiations and all decisions arrived at during such negotiations. Whenever long-term settlement with recognised unions are finalised he should see that the agreement embodying these settlements are in accordance with the relevant statutes applicable.

It is the responsibility of the Secretary through the Human Relations/Industrial Relations to ensure compliance with the provisions of various labour legislations such as Industrial Disputes Act, 1947, Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Payment of Wages Act, 1936, etc.

In many companies there is a system whereby a compliance report is submitted to the Board at every meeting confirming that there has been no delay in the compliance with the statutory formalities like deposit of Provident Fund Money, E.S.I. Contribution etc.

Whilst he must ensure that the employees guilty of misconduct are charge-sheeted and punished, he must simultaneously ensure that all formalities, e.g., holding of enquiries etc., must also be scrupulously followed. He should ensure that industrial labor relations are always cordial and he should take steps to further ensure that various creative activities of the employees are encouraged wherever possible by grants and subsidies from the company.

**Auditors**

Apart from the statutory audit, services of the company’s auditors are required for certifications required under various statutes and, therefore, the Secretary must liaise very closely with the auditors. It may be pointed out
that copies of minutes of Board meetings and general meetings should be made available for the inspection of the auditors during the statutory annual audit. He is to ensure that before their appointment, proper certificate is obtained under Section 141 (3) (g) of the Companies Act, 2013. The company secretary, on behalf of the company, is required to file a notice with the Registrar about the appointment within 15 days of the annual general meeting.

**Shareholders**

The relationship with the shareholders is an important sphere of his co-ordinating role and, therefore, the Secretary will have to maintain proper relationships with the shareholders of the company.

He should ensure that there is no delay in the inspection of books and registers required by a shareholder provided all formalities are complied with. He must ensure that extracts of registers demanded by shareholders are furnished to them within the prescribed time.

However, the most important thing for a Secretary is to ensure that all correspondence from shareholders is dealt with promptly and their queries are answered as far as possible keeping the statutory provisions in mind. As part of public relations, he should be able to give time without prior notice to shareholders who personally come for information, to furnish documents or any other matter. He must also ensure that requests for issues of duplicate certificates/dividend warrants and intimation of address are dealt with properly and promptly. This is important as the image of the company will, to a great extent, depend on the relationship of the Secretary with the shareholders.

**Government**

All the information and correspondence with the government are normally co-ordinated or routed through the Secretary to ensure uniform reporting. The Secretary has a very important role vis-a-vis the government. He should endeavour to have information on government policies and programmes in advance wherever possible to ensure effective implementation. Good relationship with the Government can be developed where the company sincerely tries to implement various statutes in letter as well as in spirit.

**Community**

In recent years, corporate social responsibility of a company has become very important since the company is expected to fulfill certain obligations to the society in which it functions. With this in view, a number of companies have undertaken rural development initiatives including adoption of villages and have built schools, colleges and hospitals to cater to the needs of society. In respect of companies in consumer goods industry, it is necessary to project that the products and their prices are in consonance with the standards expected by the consumers.

Arising out of such social responsibility, many companies have also allowed small sectors to manufacture ancillaries and raw materials required by the organisation for promotion of employment opportunities. The provisions of the Consumer Protection Act, 1986, the Pollution Control Laws, Public Liability Insurance Act, 1991, etc., are important in the operations of companies and the role of Company Secretaries in these areas is quite important.

(c) Administrative Officer: We have seen that the role of a Company Secretary has widened over the years, especially as an administrator.

The principal duty of a secretary as an administrator is to ensure that the activities of a company are in conformity with the company’s policy. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed.

The role of a company secretary as an administrator can be sub-divided into organisational, financial, office and personnel administration.
**Organizational Administration**

Since the secretary has an opportunity of looking at the entire organisation, he has the scope to advise the top management including the Board of directors on the need to develop a good structure. Since the secretary collects, interprets and assimilates information relating to all aspects of business to aid and assist the Board in carrying out its function, he, therefore, gets an opportunity to know the strengths and the weaknesses of the functional executives.

In his role as administrator, wherever applicable he has to make a detailed analysis of various activities, decision-making machinery, inter-departmental relationship and their functioning. He has, therefore, to ensure that the organisational structure is always under constant study. The making of such examination and study and the consequent advice and recommendation for making changes is a task which the company secretary has to perform.

**Financial Administration**

Since various monthly and periodical operating reports and financial statements are routed for consideration of the board through the secretary, he should analytically study these statements. Thus, as a secretary to the board, the Company Secretary in consultation with the Finance Manager has to devise suitable and proper systems of accounting procedure, internal control and internal audit with a view to safeguarding the company's funds. The Company Secretary should have a good knowledge of budgetary control and procedures, accounts and other related matters. He is also expected to be proficient in dealing with matters connected with taxation.

The Company Secretary is generally assisted by the Chief Accountant in the discharge of his functions relating to financial administration. In many companies, the Secretary is also the Chief Accountant. He has to negotiate with banks and financial institutions the terms of finance both for working capital requirements and capital expenditure.

**Office Administration**

In all big companies, the office administration is carried on by a departmental head or an officer who generally reports to the Company Secretary. It is the duty of the Secretary to ensure that different departments of the office are properly staffed, organised, co-ordinated and supervised.

He has to review from time to time the various procedures and systems with a view to making the administration effective. He is also responsible in most organisations for office services including transport. The image of a company depends on the design and office layout from the reception to the records.

The Secretary has not only to ensure that these services are maintained and improved but to also ensure that the cost of such services is reviewed from time to time.

**Personnel Administration**

Personnel administration includes recruitment, training, remuneration, promotion retirement, discharge and dismissal of staff. This is a very important yet difficult task to administer. Whilst in large organisations there may be a separate personnel or Human Resources Manager or Officer, in smaller companies the Secretary may be called upon to advise and assist the directors on principles and legal points involved in this area of administration.

The Company Secretary should ensure that implication of new rules, orders, in this field of management are advised to all concerned for effective implementation.

**Administration-Company's Properties**

The secretary has an important role to play in safeguarding the company's interest in property matters. He has to ensure that all properties are properly maintained and insured and maintain a suitable register for each property containing relevant information. He should have a good knowledge of relevant rules and bye-laws.
applicable to property. He should also ensure that registration of trademarks, patents, licenses or other intellectual property rights are done from time to time and take legal action in respect of infringement of such rights.

The Secretary is required to maintain certain other records in addition to those specified under the Companies Act. The volume, method and procedure will vary with the size and nature of the company.

The secretary also has to ensure that the statutory time limits relating to directors’ and shareholders’ meetings, payment of dividend and interest, filing of returns under the Companies Act, 2013, Income-tax Act and Sales Tax Act, etc., renewals of contracts and leases and the formalities under stock exchange and SEBI regulations and the listing agreements are complied with.

The secretary has to ensure that adequate systems of safety and security of personnel based on technical advice are available in the factory and office. He is also responsible for devising and maintaining systems to safeguard the valuable company records, or information against loss, theft, fire, etc. He is to review these from time to time to ensure that the properties of the company are adequately insured. The company secretary should have good knowledge of insurance law and practice.

Whilst the above discussion only gives a brief outline, the duties and responsibilities of the company secretary are subject to continuous change and therefore, has to be reviewed from time to time to ensure that he effectively contributes in respect of the above matters. He should, therefore, keep himself abreast with legal changes and practices.

**STATUTORY DUTIES AND LIABILITIES OF A COMPANY SECRETARY**

Apart from general secretarial duties with regards to organizing Board and general meetings, keeping minutes of meeting, recording approved share transfers, corresponding with directors and shareholders, maintaining statutory records, filing necessary returns with Registrar of Companies etc., the Companies Act, 2013 has also prescribed some duties and authorities, which are as follows—

1. **Declaration regarding compliance with requirement of registration**

   In terms of section 7(1) (b) of the Companies Act, 2013, a company gets incorporated by submitting memorandum and articles duly signed along with a declaration in a prescribed form that all requirements of Act and rules have been complied with in respect of registration of company. Such declaration in prescribed form can be signed by an Advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company.

2. **Authentication of documents, proceedings and contracts**

   Authentication is more than simply attestation. Authentication is attestation made by proper officer by which he certifies that a record is in due form of law and that the person who certifies is the officer appointed to do so. A document or proceeding requiring authentication by a company or contract made by or on behalf of a company may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf. [Section 21]

3. **Signing share certificate**

   Share certificates of the company should be signed by two directors (out of which one should be Managing Director or whole time director, if appointed) and Secretary or other person authorized by Board.

4. **Signing annual return**

   Annual return to be filed with Registrar of Companies has to be signed by a director and Company Secretary. If
company does not have Company Secretary, the return can be signed by company secretary in practice.[Section 92(1)]

5. Signing of financial statements:
The financial statement of a company is required to be signed on behalf of the Board at least by the Chairperson of the company or by two directors out of which one shall be Managing Director and the chief executive officer (If he is director), the chief financial officer and the Company Secretary wherever they are appointed [Section 134(1)]

6. Appear before NCLT:
A Company Secretary can appear before National Company Law Tribunal (NCLT) on behalf of the company [Section 432]

7. Secretary of audit committee:
Company Secretary will be secretary of Audit Committee which is required to be formed by listed companies as per Corporate Governance Code prescribed by SEBI through listing agreement.

8. Secretary as Compliance Officer of listed company:
As per clause 47 (a) of the equity listing agreement of the stock exchange (NSE, BSE), a listed company is required to appoint the company secretary to act as ‘Compliance Officer’, who will be responsible for monitoring the share transfer process and report to Company’s Board in each meeting. The compliance officer will directly liaise with SEBI, stock exchanges, ROC, investors etc.

9. Demat shares:
Secretary has to coordinate between depository and stock exchange in case of demat shares.

10. Additional duties:
In addition to statutory duties of company secretary, he is often entrusted with additional duties like looking after legal matters, personnel matters, finance and sometime even general administration.

Liabilities of Company Secretary
Company Secretary has been defined as ‘Officer in default’ along with Managing Director, Manager and Whole-time Director etc. Thus, he can be punished in respect of offences under Companies Act. A Secretary is guilty if he was responsible to the company for conduct of its business.

Summons to company in civil matters can be served on a secretary
As per rule 2 of order 9 of Code of Civil Procedure, in case of suit against a corporation, summons can be served on

(a) Company Secretary, Director or other principal officer of the corporation or
(b) By leaving it or by sending by post to registered office of the corporation.

However, validity of this provision has been upheld in *Jute & Gunny Brokers v. UOI* (1962) 32 Comp Cas 845 (SC).

### APPOINTMENT OF COMPANY SECRETARY

Under section 2 (51) of the Companies Act, 2013, Company Secretary has been defined as “Key managerial person”.

Under section 203 of the Companies Act, 2013, being a key managerial person, company secretary is required
Appointment of Key Managerial Person:

Section 203 (1) of the Companies Act, 2013 provides that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial person,-

(i) Managing director, or Chief Executive Officer or manager and in their absence a whole time director;

(ii) Company Secretary; and

(iii) Chief financial officer

Provided that an individual shall not be appointed or re-appointed as the chairperson of the company, in pursuance of the articles of association of the company, as well as managing director or Chief Executive Officer of the company at the same time after the date of commencement of the Act unless,-

(a) The articles of such a company provide otherwise; or

(b) Company does not carry multiple business;

According to rule 8 of Companies (appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having paid-up share capital of ten crore rupees or more shall have whole time key managerial person comprising of managing director, chief executive officer (CEO) or manager and in their absence, a whole time director, company secretary and chief financial officer (CFO). Thus, private companies and public companies with a paid up share capital of less than ten crore rupees have been exempted from appointing key managerial personnel.

However, The Ministry of Corporate Affairs (MCA) has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and inserted Rule 8A on 9th June 2014.

Rule - 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

A company other than a company covered under Rule 8 which has a paid up share capital of five crore rupees or more shall have a whole–time Company Secretary.

This means that all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees or more.

LEGAL PROVISIONS RELATING TO APPOINTMENT OF COMPANY SECRETARY

Since company secretary is included in the definition of key managerial person as defined in section 2 (51) of the Companies Act, 2013, the procedure of appointment of company secretary would be similar to other key managerial person. Therefore, Company secretary shall be appointed by means of Board resolution containing the terms and conditions of the appointment including the remuneration. He shall not hold office in more than one company except in its subsidiary company at the same time. Sub-section (3) of Section 203 allows a whole-time key managerial personnel (which includes company secretary) shall not hold office in more than one company except in its subsidiary company at the same time. However, a company secretary can be appointed as director of any company with the permission of the Board.

A director can be appointed as Chief Executive officer, Manager, Company Secretary or Chief Financial Officer [Regulation 77 (ii) of Model Articles of Association Table-F of the Companies Act, 2013]

However, a director cannot sign or authorize a thing in two different capacities [Regulation 78 of Model Articles of Association of company limited by shares as contained in Table-F of Schedule I of Companies Act, 2013]

However, articles of association of companies usually contain an article providing for the appointment of a
company secretary. Such a provision is based on regulation 77(1) in Table F of Schedule I to the Companies Act and according to this regulation, subject to the provisions of the Act,—

“a chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.”

The above regulation gives absolute discretion to the Board of directors of a company to appoint a company secretary, fix the period of his tenure as such, fix his remuneration, revise his remuneration and vary the terms of appointment of company secretary. The Board of directors of a company may appoint a company secretary by passing a resolution either at a duly convened and held meeting or by means of resolution passed by circulation.

**Company Secretary is not ‘managerial personnel’ for purpose of restriction on remuneration**

Company Secretary is not a ‘managerial personnel’ for purpose of restriction on remuneration under section 197 of Companies Act, 2013. His salary is not considered for purpose of computation of ‘managerial remuneration’ under section 197 of 2013, unless he is also a director of the company.

**Vacancy In The Office Of Whole-Time Key Managerial Personnel [Section 203(4)]**

If the office of any whole-time key managerial personnel (which includes company secretary) is vacated, the resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

**Offence & Penalty [Section 203(5)]**

If a company contravenes the provisions relating to appointment of whole-time key managerial personnel (which includes company secretary), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall also be punishable with fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

**Procedure for Appointment of a Company Secretary [section 203 read with Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014**

Since company secretary is one among the key managerial person, the procedure of appointment of company secretary would be similar to appointment of all other key managerial person.

As per Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every company having a paid-up share capital of Rupees five crore or more is required to have a whole time company secretary.

Only an individual, who is a Company Secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or who possesses the prescribed qualifications, can be appointed as secretary of the company. The Companies (Appointment and Qualification of Secretary Rules), 1988 contain the prescribed qualifications.

(For text of these rules please refer Annexure I at the end of this study).

The following procedural steps should be taken for appointing a whole-time company secretary:

1. Advertise the post, collect applications, hold interview, short list the individuals for the position, and finalise the terms of appointment.

2. Convene a Board meeting after giving notice to all the directors of the company as per section 173 of the Act. At the board meeting, place the proposal of appointing Company Secretary with the details of
the person finalized and pass a resolution appointing the company secretary and approving the terms and conditions of his appointment.

3. File return of appointment of company secretary with the Registrar in Form DIR 12 within thirty days from the date of appointment (date of joining office) and Form MGT. 14 is also required to be filed along with such fee as specified in Companies (Registration of offices and Fees) Rules, 2014.

The particulars of Company Secretary, Income-tax PAN, Membership details (will be validated from ICSI records), residential details, date of appointment, e-mail ID of the person for communication purpose are required to be filled in the Form.

4. A Company Secretary shall not hold office in more than one company except in its subsidiary company at the same time.

5. Make entries in the Register of directors and key managerial personnel under Section 170 of the Act.

6. Inform the Stock Exchange(s) where the company is listed.

7. Since key managerial personnel are included in 'related party' as defined in section 2(76) of the Act, Please verify whether the company secretary so appointed involved in any related party transactions within the provisions of Section 188 of the Act. If yes, then comply with the requirements in this regard.

REMOVAL OF A COMPANY SECRETARY

A company secretary can be removed or dismissed like any other employees of the organization. Since he is appointed by Board, the Board of directors of a company has absolute discretion to remove a company secretary or to terminate his services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

Procedure for Removal/Resignation of a Company Secretary

1. A Company Secretary can be removed in accordance with the terms of appointment and the Board can record the same.

2. Convene a Board meeting after giving notice to all the directors of the company as per section 173, place the matter of removal/resignation of the Company Secretary and pass a resolution to the effect.

3. File Form DIR-12 in electronic mode within thirty days with the Registrar of Companies together with requisite filing fees. Evidence of Cessation (for example Resignation Letter) is an optional attachment.

4. Inform the stock exchange where the company is listed.

5. Make entries in the Register maintained for recording the particulars of Company Secretaries under section 170.

6. Issue a general public notice, if it is so warranted, according to size and nature of the company.

7. The resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

APPOINTMENT AS COMPLIANCE OFFICER

Under clause 47(a) of the equity listing agreement, a listed company has to appoint the Company Secretary to act as a Compliance Officer who will be responsible for monitoring the share transfer process and reporting to the company’s Board in its each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies etc. and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matters.
Under clause 47(f) of the equity listing agreement, the company has to designate an e-mail ID of the grievance redressal division/compliance officer exclusively for the purpose of registering complaints by investors. The company shall display the e-mail ID and other relevant details prominently on their websites and in the various materials / pamphlets / advertisement campaigns initiated by them for creating investor awareness.

Further under clause 49 (X) (B) of equity listing agreement relating to Corporate Governance, the companies shall have to submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in Annexure -XI of the listing agreement. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

The appointment of compliance officer is to be made by the Board and the same is to be intimated to the stock exchanges where the securities are listed, together with certified copy of the Board resolution, telephone number, E-mail address etc. of the compliance officer.

(For specimen of the Board Resolution, please refer to Annexure III at the end of this Study).

(ii) Under clause 23(a) of Model Listing Agreement for Indian Depository Receipts and clause 26 (a) of Listing agreement for Indian Depository Receipts who are signatories to IOSCO MOU, Company Secretary is authorized to act as Compliance Officer.

(iii) Under clause 50 (a) of SME listing agreement, the company is required to appoint company secretary as Compliance officer and the responsibilities of compliance officer is defined under clause 54 (ii) of the SME listing agreement.

(iv) Clause 22 of the Debt listing agreement provides that the Issuer agrees and undertakes to designate the Company Secretary or any other person as Compliance Officer of the company.

**COMPANY SECRETARY IN PRACTICE**

According to Section 2(25) of the Companies Act, 2013 "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act, 1980.

Section 2(2) of the Company Secretaries Act, 1980 provides that a member of the Institute shall be deemed “to be in practice” when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, he, in consideration of remuneration received or to be received,-

(a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or

(b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or

(c) offers to perform or performs such services as may be performed by –

(i) an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,

(ii) a share transfer agent,

(iii) an issue house,

(iv) a share and stock broker,

(v) a secretarial auditor or consultant,

(vi) an adviser to a company on management, including any legal or procedural matter falling under the
Capital Issues (Control) Act, 1947, the Industries (Development & Regulation) Act, 1951, the
Companies Act, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye laws made
by a recognized stock exchange, the Competition Act, 2002, the Foreign Exchange Management
Act, 1999, or under any other law for the time being in force,

(vii) Issuing certificates on behalf of, or for the purposes of, a company; or

(d) holds himself out to the public as a Company Secretary in practice; or

(e) renders professional services or assistance with respect to matters of principle or detail relating to the
practice of the profession of Company Secretaries; or

(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company
Secretary in practice; and the words “to be in practice” with their grammatical variations and cognate
expressions, shall be construed accordingly.

Under section 6(1) of the Company Secretaries Act, 1980, no member of the Institute shall be entitled to practice
whether in India or elsewhere unless he has obtained from the Council of the Institute a certificate of practice.

Categories of services specified by the Council under section 2(2)(f) of Companies Secretaries
Act, 1980

Section 2(2)(f) of the Company Secretaries Act, 1980 says:

renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary
in practice;

The Council of the Institute has specified the following categories of Management, Advisory and Other Services,
which may be rendered by a Company Secretary in Practice. Any of such services may be rendered by practicing
members to corporations, bodies corporate, societies, trusts, associations, enterprises, undertakings, clubs,
non-trading corporations, industrial co-operatives, co-operative societies, non-government organizations, local
self-government bodies, estates, firms, small, medium and large industrial undertakings, entrepreneurs, investors,
and other persons in carrying out their activities and operations:

– Providing all services in MCA-21 Systems including those relating to Front Office, Facilitation Centre,
Filing Centre, and Local Registration Authority of Digital Signature Certificate Providers.

– Conceptualization, identification, crystallization of business enterprise, industrial project or business
activity.

– Carrying out feasibility studies, preparation of project reports, proposals for business operations including
setting up a new unit or enterprise, as well as expansion, or diversification and also representations,
follow-up with financial institutions, Government and other authorities for procurement of the requisite
approval, clearance or permission in respect of such proposals.

– Guidance and support in relation to collaborations, joint ventures, business agreements, arrangements,
restructuring, contracts, tie-ups in India and abroad.

– Business planning, policy and management in all fields including manpower, recruitment, employment,
industrial relations, human resource development, management information systems, marketing, publicity
and public relations.

– Planning, supervision and carrying out of internal audit, systems audit, labour audit, management audit,
operational audit, quality audit, social audit, environment audit and energy audit.

– Risk management of properties, profits, resources, know-how and operations.

– Management, planning, representation and protection of trademarks, patents and intellectual property service.
- Procurement and management of materials and inventories.
- Assessment, procurement and management of financial requirements and resources including project finance, working capital finance, forex management, loan syndication, portfolio management.
- Evaluation and management of deployment of funds in investments, assets and securities, loans, collaborations, tie-ups, joint-ventures.
- Formulating and implementing all activities relating to capital structure including creation, issue, offer, allotment, placement, and procurement, listing of shares, debentures, bonds, deposits, coupons, ADR, GDR, IDR and all types of financial instruments.
- Recovery consultant in banking and financial sector.
- Insurance advisor and other related activities.
- Acting as an arbitrator, mediator or conciliator for settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.
- Acting as advisor to investors, depositors, mutual fund unit holders and stakeholders;
- Acting as advisor in relation to intermediary in securities and commodities markets;
- Due diligence and legal services;
- Corporate governance services;
- Competition law and practice;
- Business process outsourcing, knowledge process outsourcing and legal outsourcing;
- Valuer, surveyor and loss assessor.
- Investigator, private liquidator, insolvency practitioner; operating agency.

Permissions granted by general or specific resolution of the Council under Regulation 168 of Company Secretaries Regulations, 1982

Regulation 168 (1) prohibits a company secretary in practice from engaging in any business or occupation other than the profession of company secretary unless it is permitted by a general or specific resolution of the Council. As per regulation 168 (2), without prejudice to the discretion vested in the Council in this behalf, a Company Secretary in practice may act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority.

The Council has permitted the members in practice to engage in the following business or occupation under Regulation 168 of the Company Secretaries Regulations, 1982:

PERMISSION GRANTED GENERALLY

(i) Private tutorship.
(ii) Authorship of books and articles.
(iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
(iv) Holding of public elective offices such as M.P, M.L.A., M.LC.
(v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
(vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
(vii) Teaching assignment under the Coaching Organization of the Institute or any other organization, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.

(viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.

(ix) Editorship of professional journals.

(x) Acting as ISO lead auditor.

(xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.

(xii) Acting as Recovery Consultant in the Banking Sector.

(xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

(xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The Council has in its resolution defined the term ‘non-executive director’ to mean an ordinary director who is required to attend the meetings of the Board or its committees only, is not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and who devotes his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Resolution under regulation 168 of the Company Secretaries Regulations, 1982 allowing members in practice to carry out non-attestation services through the new business structure of Limited Liability Partnership.

The Council of the Institute has passed the following resolution under regulation 168 allowing Company Secretaries in Practice to become partners of LLP, the objects of which include areas which fall within the scope of non-attestation services of the profession of Company Secretaries or in any other business or occupation.

“Resolved that under regulation 168 of the Company Secretaries Regulations, 1982, the Council gives general permission to the members in practice to:

(a) become passive partner of a limited liability partnership (LLP) the objects of which include carrying out non-attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;

(b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

(i) “Attestation Services” include services which require signing any certificate, document, report or any other statements relating thereto on behalf of a Company Secretary in Practice or a firm of such Company Secretaries in his or its professional capacity or which require signing anything that is required to be signed by a Company Secretary in practice.

(ii) “Non-attestation Services” means services which are not attestation services.
(iii) A “passive partner” means a partner of LLP who fulfils the following conditions:

(a) he must not be a designated partner;
(b) subject to the LLP agreement, he may make agreed contribution to the capital of LLP and receive share in the profits of the LLP; and
(c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

(1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).
(2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.
(3) Approving or disapproving an amendment to the partnership agreement.
(4) Reviewing and approving the accounts of the LLP;
(5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –
   (a) the dissolution and winding up of the LLP;
   (b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;
   (c) a change in the nature of the activities of the LLP;
   (d) the admission or removal of a partner of the LLP;
   (e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;
   (f) any amendment to the LLP agreement;

(iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.”

PERMISSION TO BE GRANTED SPECIFICALLY

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

(i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.

(ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.

(iii) Editorship of journals other than professional journals.

APPOINTMENT OF A COMPANY SECRETARY IN PRACTICE

SECRETARIAL AUDIT

Secretarial audit is a comprehensive audit to check whether the concerned company is complying with the provisions of rules, regulations and procedures mentioned in various laws. Secretarial audit is carried out by an independent professional to ensure that the company has complied with the legal and procedural requirements and keeps proper books, records etc. It is essentially a mechanism to monitor compliance with the requirements of stated laws and processes.
Timely examination of compliance reduces risks as well as potential cost of non-compliance and also builds better corporate image. Secretarial audit establishes better compliance platform by checking the compliances with the provisions of various statutes, laws, rules & regulations, procedures by an independent professional to make necessary recommendations/remedies. The primary objective of compliance management backed secretarial audit is to safeguard the interest of the Directors & officers of the companies, shareholders, creditors, employees, customers etc.

The Companies Act, 2013 has introduced the Secretarial Audit as a new class of audit in addition to Statutory Audit, Internal Audit and Cost Audit prescribed in the Act. Section 204 of the Act read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deals with provisions relating to Secretarial Audit.

**APPLICABILITY**

According to Sub-Section (1) of Section 204 of the Act, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board’s report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the other class of companies as under:

(a) every public company having a paid-up share capital of rupees fifty crore or more; or

(b) every public company having a turnover of rupees two hundred fifty crore or more.

*The format of Secretarial Audit Report shall be in Form MR.3. Thus private companies have been exempted from the provisions of the concept of secretarial audit. Secretarial Audit is extensively discussed in the paper ‘Secretarial Audit, Due Diligence and Compliance Management’.*

Duties, Rights and Powers of Company Secretary in Practice conducting Secretarial Audit:

According to Section 204 (2) of the Act, 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 related records of the company. Further, a company secretary in practice conducting secretarial audit has been granted similar powers and rights as that granted to statutory auditor. [Section 143(14) of the Act].

The report of Board of Directors prepared under Section 134(3) of the Act shall include explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the company secretary in practice in his secretarial audit report. [Section 204 (3) of the Act].

**Punishment for Default**

According to Section 204(4) of the Act, if a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of the Act, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than rupees one lakh but which may extend to rupees five lakh.

**Duty to report fraud**

The provision of Section 143 mutatis mutandis apply to company secretary in practice in conduct of secretarial audit, if the company secretary in practice, in the course of the performance of his duties as secretarial 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 within such time and in such manner as may be prescribed. If company secretary in practice conducting Secretarial Audit under section 204 of the Act do not comply with such provisions, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty five lakh rupees. [Section 143(15) of the Act].
Reporting Requirements

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that the format of the Secretarial Audit Report shall be in Form No. MR. 3. The scope of reporting is very broad and the Company Secretary in practice has to ensure compliances of following statutory provisions in addition to Secretarial standards issued by The Institute of Company secretaries of India.

1. The Listing Agreement;
2. The Companies Act, 2013 (including the rules made thereunder);
3. The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the rules made thereunder;
4. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
5. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
6. 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;
7. any other laws as may be applicable specifically to the company.

Procedure for Appointment of Company Secretary in Practice for Secretarial Audit

The following procedure should be adopted in this regard:

1. Before appointment of Company Secretary in practice ensure that individual to be appointed, satisfies the definition of company secretary in practice under Section 2(25) of Companies Act, 2013 i.e. he is a member of the Institute of Company Secretaries of India and is not in full-time employment anywhere.
2. Further ensure that individual proposed to be appointed, holds a certificate of practice from the Institute of Company Secretaries of India and that certificate is valid.
3. Convene a Board meeting after giving notice to all the directors of the company in accordance with Section 173 of the Companies Act, 2013.
4. Consider the proposal to appoint company secretary in practice for secretarial audit and pass Board resolution in the meeting, appointing company secretary in practice for secretarial audit. (For specimen
resolutions for appointment of company secretary in practice for issue of secretarial audit, please see Annexure IV to this study).

5. The resolution should mention the remuneration to be paid to such individual as company secretary in practice or authorize the Managing Director/any other director to fix the remuneration.

6. The appointment shall be made up to the conclusion of the annual general meeting held after such appointment.

REMOVAL OF COMPANY SECRETARY IN PRACTICE

A Company Secretary in practice can be removed *suo-moto* by the engaging Company or if found guilty of professional misconduct in the manner specified in Schedule I of the Company Secretaries Act, 1980 by the Institute and his name is removed from the Register of Members.

A Board resolution to this effect is to be passed at the Board meeting of the Company. In case the company is listed company, then notify such removal to the stock exchange immediately after Board meeting.

FUNCTIONS OF COMPANY SECRETARY IN PRACTICE

The educational background, knowledge, training and exposure that a Company Secretary acquires makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms, etc. on retainership or job basis. The profile of services, which a Company Secretary in Practice can render, are listed below:

**Project Planning**

- Promotion, formation and incorporation of companies, and matters related therewith including choice of type of company, availability of name, drafting of Memorandum and Articles of Association and other documents, their stamping and registration with the Registrar of Companies.
- Identification of Project.
- Selection of location for the project and advising on various incentives available.
- Selection of Land, Search of titles, and getting required approvals for carrying out industrial/commercial activities on such land.
- Advising on size of the project, drawing schedule of implementation and follow up from the stage of conceiving of project up to the commencement of commercial production.
- Advising on expansion and modernization.
- Drafting of agreements, conveyances, bonds, etc. relating to projects and ventures.

**Raising of Resources/Financial Services**

- Preparation of Project Reports and Feasibility Studies.
- Syndication of long term and short term loans from financial institutions, banks and other agencies.
- Loan documentation, registration of charges, search and status report.
- Advisor/Consultant in issue of shares and securities.
- Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities, and obtaining various approvals in association of lead managers.
- Listing of securities/delisting of securities with recognized stock exchanges.
– Private placement of shares and securities.
– Buy back of shares and securities.
– Raising of funds from international markets – ADR/GDR/ECB.
– Investment subsidies, sales tax and other incentives.
– Liaisoning with financial institutions, banks, other lenders, and stock exchanges, and furnishing periodical returns, reports and information required by them.
– Advising sick companies with respect to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and drafting of rehabilitation schemes.
– Advisor and Consultant in raising funds from Money Market and Capital Market.
– Advising and guiding in ascertaining Stamp Duty, Payment of Duty and other related services under Central and State Stamp Laws.

Foreign Collaboration and Joint Ventures Abroad

– Advising on Foreign Collaborations.
– Advising on setting up of subsidiaries in India.
– Advising on setting up of joint ventures abroad or setting up of subsidiaries abroad.
– Drafting of Memorandum of Understanding, Promoters’ Agreement, Shareholders’ Agreement and Commercial Agreements.

Corporate Restructuring

– Planning strategies for amalgamation/merger, acquisition, takeover, spin off, reconstruction, reorganization, restructuring and winding up of companies, forward and backward integration.
– Change of name, change of objects and shifting of registered office of the company.
– Drafting schemes of amalgamation or arrangement, public offer for acquisition or takeover, and Promoters’ Agreement.
– Complying with necessary legal and procedural requirements.
– Advising the management on post merger, acquisitions or restructuring strategies.

Corporate Laws Advisory Services

Companies Act:

– Filing, registering, representing, attesting or verifying any document including forms, returns and applications by or on behalf of the Company as an authorized representative.
– Compilation of status/search reports for companies, banks and financial institutions.
– Pre-certification of forms relating to Registration/Modification/Satisfaction of charges and their filing with the Registrar of Companies.
– Advising on legal and procedural matters under the Act.
– Maintenance of secretarial records, statutory books and registers.
– Acting as Secretarial Auditor, Advisor or Consultant.
– Filing of petitions before the Company Law Board/NCLT/NCLAT.
– Appearing as authorized representative before the Company Law Board/NCLT/NCLAT, Central Government, Regional Director and Registrar of Companies.
– Acting as Scrutinizer for postal ballot voting process.

**Competition Act/Consumer Protection Act:**
– Appearing as authorized representative before the Competition Commission/Competition Appellate Tribunal/Consumer Forums.
– Advising on dealership agreements, trade practices, sales promotion schemes, marketing and sales campaigns.
– Advising on Competition policy and strategy of the company.

**Foreign Exchange Management Act:**
– Advising on legal and procedural matters falling under FEMA.
– Advising Non-Resident Indians regarding investment in India and repatriation of such investments and returns thereon.
– Obtaining RBI/FIPB/SIA approvals.

**Depositories Act:**
– Conducted of Internal Audit of Operations of Depository Participants.
– Appearing as authorised representative before Securities Appellate Tribunal. State Laws:
– Advising on legal and procedural matters on various laws of different states on Pollution Control, Cooperative Societies, Public Trusts, Non Trading Corporation, Land Ceilings, Sales Tax, Revenue Laws etc.

**Appearing before Regulatory Authorities:**
– Appearing as authorised representative before the Central Government, Company Law Board/National Company Law Tribunal/Appellate Tribunal, Regional Director, Registrar of Companies, Consumer Forums, Securities Appellate Tribunal, Central Excise Authorities, Wealth Tax Authorities, Customs Authorities, Income-tax Authorities and Appellate Tribunals, Central Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission, Telecom Disputes Settlement and Appellate Tribunal, BIFR, etc.

**Tax Planning and Management**

**Income tax:**
– Computation of tax payable, filing of returns of income of the company and its directors obtaining permanent account numbers.
– Computation and payment of advance tax.
– Computation of deduction of tax at source, filing of forms and issue of TDS certificates.
– Acting as authorized representative before the Income Tax authorities during assessment proceedings, furnishing of records/documents/ explanations called for.
– Filing of appeals, claiming refunds getting the transactions registered.
– Advising on tax planning and tax management, availing tax concessions, incentives, reliefs and tax benefits.


Excise:
- Acting as authorized representative before central excise authorities.
- Valuation and classification of goods.
- Assessment of duty and obtaining refunds.
- Complying with formalities for removal of excisable goods for home consumption and exports.
- CENVAT procedures.
- Advising on search, seizure etc.
- Documentation.

Customs:
- Acting as authorized representative before customs authorities and the Appellate Tribunal.
- Assisting in clearance of import/export classification of goods.
- Valuation of goods and assessment of customs duty and obtaining refunds.
- Documentation.
- Availing duty exemptions and drawback benefits.

Service Tax:
- Registration with tax authorities.
- Advising on Applicability, rate and payment of service tax.
- Filing of returns with the authorities.
- Claiming exemption from service tax.
- Advising on various procedural matters relating to service tax.

Export-Import and Forex Dealings
- Advising on Foreign Trade policy and procedures.
- Export-Import documentation.
- Advising on Letters of Credit, and drafting suitable conditions in LOCs.
- Advising and assisting in receipt and remittance of funds in foreign currency.

Arbitration and Conciliation
- Advising on arbitration, negotiations and conciliation.
- Drafting Arbitration/Conciliation Agreement/Clauses.
- Acting as Arbitrator/Conciliator in domestic and international commercial disputes.

Intellectual Property Rights and WTO
- Advising on matters relating to Intellectual Property and TRIPS Agreement of WTO.
- Advising on Intellectual Property Licensing and drafting of agreement.
- Acting as registered Trade Mark Agent.
– Advising on passing off/infringement matters.
– Advising on registration of patents, trade marks and copyrights.
– Advising on anti-dumping matters – Computation of Normal Value, Sale Price, Comparisons and Appraisals.

**Personnel and other Matters**

– Manpower planning and development.
– Recruitments, fixation of terms of appointment and devising pay packages.
– Advising on matters with respect to labour and industrial laws, maintenance of registers and records, filing of various forms and registers, and follow up with the authorities.
– Providing necessary inputs to lawyers to add value to the proceedings under Conventional litigation.
– Advising in Insurance matters.

**Issue of Certificates under Various Statutes**

**Companies Act/Stock Exchanges:**

– Making a verified declaration of compliances for obtaining a certificate of commencement of business/commencement of other business.
– Making the statutory declaration that all requirements of the Companies Act and rules thereunder have been complied with in respect of registration of a company and matters precedent and incidental thereto.
– Giving declaration that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Act and compliance of provisions with respect to registration or matters incidental thereto.
– Signing of annual returns of companies.
– Certification regarding dispatch of share certificate after transfer etc. under the Listing Agreement.
– Certification of statement of amounts credited/to be credited to Investor Education and Protection Fund.
– Certificate on appointment of Managing Director/Whole-time Director/ Manager.
– Certification regarding compliance with Private Limited Company.
– Issuing certificate to listed company to the effect that all refund orders/certificates issued were dispatched within prescribed time and manner and securities were listed on the stock exchanges and specified in the offer document.
– Issuing a certificate to a listed company regarding compliance of conditions of corporate governance as stipulated in clause 49 of the listing agreement.

**Export-Import Policy:**

– Various certificates under the Foreign Trade Policy and Procedures. Foreign Exchange Management Act:
– Various certificates for exchange control purposes under FEMA. Charter Policy 1986 of the Deptt. of Agriculture and Co-operation:
– Certifying particulars of the company chartering foreign fishing vessels.
ROLE OF COMPANY SECRETARY IN PRACTICE

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. While the Companies Act, 2013 has opened up a significant area of practice for Company Secretaries, it casts immense responsibility on Company Secretaries, and poses a great challenge to justify fully, the faith and confidence reposed in them.

Following are the some of the areas where practicing company secretaries can excel:

1. Incorporation of company [Section 7]

Section 7 lays down the procedure for incorporation of a company. A company was incorporated by submitting memorandum and articles duly signed along with a declaration in prescribed form to the effect that the requirements of the Act in respect of registration have been complied with.

Section 7 (1) of the Act provides that there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:-

(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. Therefore, company secretary in practice along with other professionals has vast scope at the time of incorporation of a company.

2. Signing of Annual Return (Section 92)

Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding:

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:
Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

As per Companies (Management and Administration) Rules, 2014, such prescribed class means 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.

Section 92(6) of the Act provides that if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Thus, concerned company secretary in practice shall remain vigilant while certifying the annual return of the companies. He should disclose all facts correctly, adequately and in compliance with all provisions of the Companies Act, 2013.

3. Voting through electronic means

Every listed company or a company having not less than one thousand shareholders, provide to its members facility to exercise their right to vote at general meetings by electronic means;

– during the e-voting period, shareholders holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically;

– once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently;

– the Board of directors to appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner.

– the scrutinizer to maintain a register either manually or electronically to record the assent or dissent, received and other details as provided under the rules;

– Manner in which the Chairman of meeting shall get the poll process scrutinized and report thereon is provided under the rules.

The company secretary in practice has a very important role as a scrutinizer in case of voting through electronic means.

4. Report on annual general meeting [Section 121]

Every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder. A copy of this report shall be filed with the Registrar. Company Secretary is authorized to sign the report on every Annual General Meeting along with two directors one of whom shall be the Managing Director if there is one.

5. Secretarial Audit for Bigger Companies [Section 204]

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

The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.
This exclusive provision of secretarial audit report shall help compliance on the part of listed companies to a
better level. It shall curb fraudulent manipulations by listed companies and related group companies. The Act
has made it obligatory to comment the Board of Directors on the adverse remarks of a Practicing Company
Secretary in his secretarial audit report. This will certainly help in enhancing the usefulness of secretarial auditing.
Secretarial audit would provide great scope to practicing company secretaries as well.

6. Appointment as Administrator [Section 259]

Company Secretaries along with other professionals have been recognized for being appointed as Interim/
Company Administrator from the panel to be maintained by the Central Government or any institute or agency
authorized by the Central Government, in respect of rehabilitation of revival and sick companies.

7. Company Liquidators [Section 275]

Section 275 provides for appointment of official liquidator or liquidators for the purpose of winding up of a
company from a panel of professionals maintained by the Central Government as the company liquidator. Such
professional must be having at least ten years of experience in company matters or such other qualifications.

Company Secretaries have been recognized to be appointed as Provisional Liquidator or the Company Liquidator,
from a panel to be maintained by the Central Government.

8. Professional assistance to Company Liquidator (Section 291)

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including
Company Secretaries on such terms and conditions, as may be necessary, to assist him in the performance of
his duties and functions under the Act.

9. Qualifications of President and Members of Tribunal (Section 409)

The constitution of National Company Law Appellate Tribunal (NCLT) shall widen the scope of services of
practicing company secretaries. A Company Secretary in practice is eligible to become a Technical Member of
National Company law Tribunal, if he is practicing for at least fifteen years.

10. Right to legal representation (Section 432)

Section 432 of the Act enables a party to any proceeding to appear in person or to authorize professionals
including company secretaries to present the case before the Tribunal or the Appellate Tribunal.

11. Merger and amalgamation of Companies [Section 232]

Filing of statement every year until completion of scheme [Section 232(7)]:

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement
in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered
accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being
complied with in accordance with the orders of the Tribunal or not.

12. Certification under Listing Agreement

(i) As per clause 47(c) of the equity listing agreement, company has to ensure that the Registrar and/or
Share Transfer Agent (RTA) and/or officers from the in-house Share Transfer department, as the case
may be, obtain a certificate from a practising company secretary within one month of the end of each
half of the financial year, certifying that all certificates have been issued within fifteen days of the date of
lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment
monies. A copy of the said certificate should be made available to the concerned stock exchange within
24 hours of the receipt of the certificate by the company.

(ii) Further clause 49 (XI) of the equity listing agreement relating to Corporate Governance lays down that
the company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in that clause and annex the certificate with the directors’ report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

(iii) A practicing company secretary is authorized to issue half yearly certificate regarding maintenance of 100% security cover in respect of listed secured debt securities under Clause 2(d) of Part A and Clause 13 (d) of Part B of Debt Listing Agreement.

(iv) Under Clause 52 of SME listing agreement and clause 24 of the model listing agreement for listing of Indian Depository Receipts, the Issuer is required to obtain a certificate from either the auditors or practicing Company Secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors report, which is sent annually to all the shareholders of the Issuer. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the Issuer.

(v) BSE Vide its circular dated 26th November 2012 requires that Companies seeking listing on BSE SME Platform are required to comply with the quantitative eligibility norms as prescribed by BSE. Additionally, it will desirable for a company to file a compliance certificate by a Practising Company Secretary as per the guidance note issued by the Institute of Company Secretaries of India as and when such a certification is made applicable by the SME Platform of BSE Ltd.

AUDIT OF VARIOUS INTERMEDIARIES

(i) Under Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996, a practising company secretary is authorized to issue quarterly certificate with regard to reconciliation of the total capital issued, listed and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed.

(ii) Further, a Practising company secretary is authorized to conduct internal audit of intermediaries like portfolio manager, stock broker/ clearing member/ trading member, credit rating agency, depository participants.

(iii) SEBI has authorized the practicing company secretaries to carry out the audit of Investment advisers on yearly basis under regulation 19 (3) of SEBI (Investment Advisers) Regulations, 2013.

(iv) A Practising Company Secretary is authorized to conduct concurrent audit of Depository Participants which covers audit of the process of demat account opening, control and verification of Delivery Instructions Slip.

ELIGIBLE TO BE AN INDEPENDENT DIRECTOR

Section 2(47) of the Act states that Independent director means an independent director referred in Section 149(5) of Companies Act, 2013. The Act makes it mandatory for every listed public company to appoint at least one-third of the total strength as independent directors. Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 has prescribed certain class or classes of companies which shall have at least two directors as independent directors.

Manner of selection of Independent Director

Section 150 (1) of the Act, indicates that the independent directors may be selected from a data bank of eligible and willing persons maintained by any Institute or Association as may be prescribed by Central Government. For this purpose practicing company secretaries are one of the suitable and deserved professionals in the corporate sector. This section further stipulates that the appointment of independent directors has to be approved
by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment.

**OTHER RECOGNITIONS FOR COMPANY SECRETARIES**

1. **Minutes of the proceedings [Section 118]**

Where the minutes have been kept in accordance with sub-section (1) of section 118 of the Act, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

Apparently, now the Practicing Company Secretary is to be appointed only by passing a resolution at the meeting of the Board of the company. The provisions call for timely & proper appointment of Practicing Company Secretary so that there is no scope of ambiguity and hence removal/termination, if any, of such Practicing Company Secretary has also to be through same authority.

2. **Adjudication of penalties (Section 454)**

In case of failure to comply with certain provisions of the Act, heavy monetary penalties are imposed. The determination of quantum of penalties will be decided by adjudicating officers. Section 454 provides for appointment of adjudicating officers for adjudging penalty under the provisions of Companies Act. The adjudicating officer shall have power by an order to impose penalty on the company and the officer who is in default for non-compliance or default after giving a reasonable opportunity of being heard. The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default. Any person aggrieved by an order will have a right to prefer an appeal to the Regional Director.

This would greatly enhance role of Company Secretaries both in employment as well as in practice as they would be called upon to represent the companies before the Registrar/Regional Director in such matters.

3. **Duties and Liabilities of Management**

The role and responsibilities of the management (Board of Directors) have been specifically laid down in the Act. Since the Board of Directors are involved in the enhancement of the business, they have little time to comply with the provisions of Companies Act and other Acts properly, certainly they would look forward to the advice and assistance of professionals like Company Secretaries in the discharge of their duties.

4. **Enhanced Disclosures**

To promote good governance, detailed disclosures are contemplated under the Act, for compliance of which the companies would look forward to professionals including Company Secretaries.

5. **Insolvency, Rehabilitation, Liquidation and Winding Up**

Revised framework for regulation of mergers and amalgamations, insolvency, rehabilitation, liquidation and winding up of companies offers great scope for Companies Secretaries not only to act as liquidator/administrator but also to represent the various stakeholders before the Tribunal.

**DESIGNATION TO BE USED BY MEMBERS IN PRACTICE**

Under Section 7 of the Company Secretaries Act, 1980, a member in practice shall use the designation of a Company Secretary and shall not to use any other designation, whether in addition thereto or in substitution therefor. However, use of the prefix ‘practising’ before the designation ‘Company Secretary’ would not offend Section 7. Similarly, use of the suffix ‘in whole-time practice’ or ‘in practice’ after the designation ‘Company Secretary’ would also not offend Section 7. Further, use of any description or letters to indicate membership of any other Institute in India or elsewhere is permissible, if recognized by the Council. Any other qualification
possessed by a member in practice is also not prohibited to be used – say M.Com, M.A., M.B.A., A.C.A., A.I.C.M.A., etc. The Council has recognized membership of the Institute of Chartered Accountants of India and Institute of Cost Accountants of India and Bar Councils for purposes of allowing members of the Institute to use the relevant statutory descriptions of such bodies, provided members are not holding certificates of practice of the Institute or using the description of “Company Secretary”. Use of designations like “Company Law Consultant”, “Corporate Law Advisor”, “Corporate Advisor”, “Investment Advisor”, “Management Consultant” is prohibited.

PREFIX OF CS

The Council of the Institute in its 173rd meeting held on June 23-24, 2007 has decided that a member of the Institute may prefix CS to his name in order to distinguish himself from other professionals and to create brand image of the CS profession, for example: CS. “A”, ACS

LOGO FOR MEMBERS

As a part of brand building, a logo for Members has been specially designed with a view to enhance the visibility of the profession.

Concept

The letters ‘CS’ to be used by the members as a prefix before their names; shares a direct and umbilical relationship with the identity of the Institute. A compact unit in itself, with the central arrow of growth and excellence, it represents stability and integrity, which are the hallmark of the profession.

Set a sober deep blue colour, it represents a very confident and upright professional.

ANNEXURES

Companies (Appointment & Qualifications of Secretary) Rules, 1988

In exercise of the powers conferred by clauses (a) and (b) of section 642 read with clause (45) of section 2 and section 383A of the Companies Act, 1956 (1 of 1956), and in supersession of the Companies (Secretary’s Qualifications) Rules, 1975, the Central Government hereby makes the following rules, namely:

1. Short title and commencement:-

(1) These rules may be called the Companies (Appointment and Qualifications of Secretary) Rules, 1988.

(2) It shall come into force on the 1st day of December, 1988.

2. Appointment, etc., of whole-time secretary:-

(1) Every company having a paid-up share capital of not less than five crore rupees shall have a whole-time secretary.

(2) No person shall be appointed as whole-time secretary under sub-rule (1) unless he is a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980).

(3) A company having a paid-up share capital of less than rupees two crores may appoint any individual as its whole-time secretary to perform the duties of a secretary under the Companies Act, 1956, and any other ministerial or administrative duties:
Provided that no individual shall be eligible to be so appointed unless he possesses one or more of the qualifications specified in sub-rule (4).

(3A) A company having a paid-up share capital of two crore rupees or more but less than five crore rupees may appoint any individual who possesses the qualification of membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980), as a whole-time secretary to perform the duties of a secretary under the Companies Act, 1956:

Provided that where a company has appointed under sub-rule (3) or this sub-rule, a whole-time company secretary, possessing the qualification of membership of the Institute of Company Secretaries of India, such a company is not required to obtain a certificate from a secretary in whole-time practice under rule 3 of the Companies (Compliance Certificate) Rules, 2001.

(4) No individual shall be appointed as secretary pursuant to sub-rule (3) unless he possesses any one or more of the following qualifications, namely:

(i) membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980);

(ii) pass in the Intermediate examination conducted either by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980), or by the earlier Institute of Company Secretaries of India incorporated on 4th October, 1968, under the Companies Act, 1956 (1 of 1956), and licensed under section 25 of that Act;

(iii) post-graduate degree in commerce or corporate secretaryship granted by any university in India;

(iv) degree in law granted by any university;

(v) membership of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949);

(vi) membership of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959);

(vii) post-graduate degree or diploma in management sciences, granted by any university, or the Institutes of Management, Ahmedabad, Calcutta, Bangalore or Lucknow;

(viii) post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice under the Delhi Administration or Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi;

(ix) post-graduate diploma in company law and secretarial practice granted by the University of Udaipur; or

(x) membership of the Association of Secretaries and Managers, Calcutta, registered under the West Bengal Registration of Societies Act, 1961 (26 of 1961):

Provided that where the paid-up share capital of such company is increased to five crore rupees or more, the company shall, within a period of one year from the date of such increase, comply with the provisions of sub-rules (1) and (2) of rule 2.

Explanation: In this rule, “University” has the meaning assigned to it in the University Grants Commission Act, 1956 (3 of 1956), and includes any university outside India which is recognised by the Union Public Service Commission for the purposes of recruitment to public services and posts in connection with the affairs of the Union or of any State.

3. Provisions relating to existing secretaries:-

(1) Notwithstanding anything contained in sub-rules (1) and (2) of rule 2, the qualifications possessed by a
person holding the office of whole-time secretary of a company immediately before 30th October, 1980, in terms of the second proviso to clause (a) of rule 2 of the Companies (Secretaries Qualifications) Rules, 1975, shall be deemed to be the qualifications which he shall be required to possess in order to be eligible to continue as whole-time secretary in that company.

Since Companies (Appointment & Qualifications of Secretary) Rules, 1988 has not been amended after commencement of Companies Act, 2013, Students are advised to refer corresponding provisions of Companies Act, 2013 in the place of provisions of Companies Act, 1956.

SPECIMEN OF BOARD RESOLUTION APPOINTING COMPANY SECRETARY

RESOLVED THAT—

(i) Shri......................, who is an Associate Member of the Institute of Company Secretaries of India and has had four years’ experience in a listed company, be and is hereby appointed as Company Secretary on the terms and conditions contained in the letter of appointment, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification; and

(ii) the chairman and managing director of the company, Shri......................, be and is hereby authorised to sign the letter of appointment of the Company Secretary, on behalf of the Board of directors of the company.

OR

(i) Shri......................, be and is hereby appointed Company Secretary on the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification; and

(ii) the Chairman and Managing Director of the company, Shri ......................, be and is hereby authorised to sign, on behalf of the Board, the agreement with the Company Secretary.

OR

(i) Shri......................, be and is hereby appointed Company Secretary on the following terms and conditions:

(a) Salary............. रु. ............ per month in the pay scale of रु. ............

(b) Other allowances .................. रु. ............ per month.

(c) Company’s leased accommodation for residential purpose.

(d) Company's car with driver for company's work.

(e) One Mobile and one telephone line at his residence at company's cost for company's work. Long distance personal calls will be payable by him.

(f) Leave as per company's leave rules.

(g) Provident Fund Contribution as per company’s rules.

(h) Superannuation Fund Contribution as per company's rules.

(i) Gratuity as per rules of the Company.

(j) Leave encashment as per company's rules.

(k) Determination of service on three months notice by either party.

(ii) The Chairman and Managing Director, Shri ......................, be and is hereby authorised to sign the letter of appointment of the Company Secretary, on behalf of the Board of directors of the company.
BOARD RESOLUTION FOR APPOINTMENT OF COMPLIANCE OFFICER

“RESOLVED THAT the company do hereby appoint Mr. ......................., Deputy Company Secretary of the company who has ten years experience in Listed Companies, as Compliance Officer of the company who shall be responsible for monitoring the share transfer process (both physical and demat mode) and report to the Board in its each meeting and liaise directly with the authorities of the SEBI, Stock Exchanges, Registrar of Companies etc, the shareholders of the company and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investors services and complaints related matters and in compliance with the provisions of the Companies Act, 1956, Listing Agreement and Rules and Regulations framed thereunder.”

SPECIMEN RESOLUTIONS FOR APPOINTMENT OF COMPANY SECRETARY IN PRACTICE FOR SECRETARIAL AUDIT.

Board Resolution

“RESOLVEDTHAT M/s ABC & Co., Company Secretaries be and is hereby appointed as secretarial auditor of the company in terms of the provisions of Section 204 of the Companies Act,2013 and to hold the office till the conclusion of the next Annual General Meeting on such remuneration as may be determined by the Board and agreeable to them.”

Draft Resolution for appointment of a Company Secretary in Practice at Annual General Meeting for Special Business

To consider and if thought fit, to pass with or without modifications the following resolution as ordinary resolution:-

“RESOLVED THAT M/s ABC & Co., Company secretaries within the meaning of Section 2(25) of the Companies Act, 2013 be and is hereby appointed as secretarial auditor of the company on the terms of remuneration as agreed by the Board of directors and the Board of directors of the company be and is hereby authorized to vary the terms of remuneration and fill the vacancy in his office, if any, caused from the conclusion of this annual general meeting until the conclusion of next annual general meeting.”

Explanatory Statement

Under the provisions of section 204(1) of the Companies Act, 2013, the company is required to obtain secretarial audit report from a practicing company secretary which shall be annexed with the report of Board of Directors.

Mr..........is a practicing company secretary of M/s ABC & Co., Company Secretaries has consented to be appointed as secretarial auditor for the financial year ended..........., Therefore, the company may appoint him from the conclusion of this annual general meeting until the conclusion of next annual general meeting by passing the proposed ordinary resolution as set out in the notice of the meeting. None of the directors of the company is concerned or interested in the proposed resolution.
LEsson Round Up

- Company Secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act 2013 and various other corporate taxation industrial and economic laws applicable to companies in general.

- Under listing agreement clause 49(III) (A) (6), the company secretary shall act as the secretary to the audit committee in case of a listed company.

- According to clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a Company secretary means a person who is a member of the Institute of Company Secretaries of India.

- The Company Secretary has relationship with Board of the company, Trade union, Auditors, shareholders, Government and Community etc.

- Companies Act 2013 has prescribed some duties and powers to be practiced by the Company Secretary.

- Section 2(51) of the Companies Act 2013 defines the Company Secretary as a “key managerial personnel”.

- According to section 203 of the Companies Act 2013 the Company Secretary is required to be mandatorily appointed in every company belonging to such class or classes of the companies as may be prescribed in rules.

- Company Secretary is not managerial personnel for the purpose of restriction on remuneration.

- Section 2(25) of the Companies Act defines a “company secretary in practice” means a Company Secretary who is deemed to be in practice under sub section (2) of section 2 of the Company Secretaries Act 1980.

- A Practicing Company Secretary can render a plethora of services as listed in the Lesson.

Self Test Questions

1. Define Company Secretary. What are the functions of Company Secretary in practice?

2. Draft a Resolution for appointment of a Company Secretary.

3. What are the legal provisions for appointment of company secretaries?

4. Write down the procedure for removal of a Company Secretary.

5. What are the statutory duties and liabilities of a Company Secretary?
A company, being a legal entity, cannot act by itself. It, therefore, expresses its will or takes its decisions through Resolutions passed at validly held Meetings. Determining what constitutes a Meeting is therefore an important issue. A Meeting has been defined as “coming together of two or more persons face to face so as to be in each other’s presence or company”. [In Re. Associated Color Laboratories Ltd. (1970) 12 D.L.R.].

The decision-making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. The will of members of a company is expressed through Resolutions passed at general meetings. Similarly, the will of the governing body of the company (i.e. its Board of Directors) is expressed through Resolutions at meetings of the Board or those passed by circulation. General Meetings of the Members provide a forum for them to express their will with regard to the management of the affairs of the company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures. In this lesson, you will learn about the procedural aspects relating to meetings.
COLLECTIVE DECISION MAKING FORUMS

A company, though an artificial person, is a legal person having its entity separate from its members. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person it expresses its will or takes its decisions through resolutions passed at the meetings of either its directors, who manage, control and direct the business of the company or of the shareholders who ultimately own the company.

DIVISION OF POWERS BETWEEN SHAREHOLDERS AND DIRECTORS

The powers relating to the affairs of a company are divided between the Board and shareholders of the company. Every public company should be headed by an effective board which can both lead and control the business. The Board of Directors is called ‘the directing mind and will of the company’. Shareholders are responsible for electing board members and it is in their interest to see that the boards of their companies are properly constituted and not dominated by any one individual. It is a well-settled principle of company law that shareholders cannot interfere with directors’ powers.

The Board of directors is the principal organ of a company. The management of the affairs of the company is vested in the Board and all powers excepting those which are specifically reserved for the general meeting by the Act or the articles or memorandum or otherwise must be done by the Board. The directors of a company can do whatever the company can do subject to the restrictions imposed in law and the articles of the company. Section 179 of Companies Act 2013 recognises this principle and vests in the Board of directors, as a governing body and the supreme managerial organ of a company, general powers of management of a company, subject, however, to the exceptions mentioned in that section. The Section say; The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.

The main sources of directors’ powers are (a) the law; (b) the memorandum and articles of association of the company; and (c) resolutions passed by the company’s members at general meetings. This supremacy is no doubt subject to two limitations, namely, first, that the Board shall not do anything which is required to be done by the shareholders; and second, anything done by the Board should be in accordance with the provisions of the law, memorandum or articles of the company. Thus, the Board is the custodian of the interests of the company and its stakeholders. When powers are vested in the Board of directors by the articles of association of a company, the shareholders cannot interfere with them. If the shareholders are dissatisfied with what the directors do, their remedy is to remove them in the manner provided by the Act or the articles. But so long as the board of directors exists and particular powers are vested in it by the articles, they are entitled to exercise those powers without interference by the shareholders and it is irrelevant whether the shareholders approve of what the directors have done or not. Jagdish Prasad v. Paras Ram (1942) 12 Com Cases 21 (All): AIR 1941 All 360

The directors of a company are collectively referred to in the Companies Act as the “Board of directors” or “Board”. “Board of directors” or “Board”, in relation to a company, means the Board of directors of the company. Except where individual directors are entrusted with specific powers by the Board, the powers are to be exercised by the directors collectively. The Board is collectively responsible for the management and conduct of the business of the company. Each and every act which a company is required to do under the provisions of the Act including the maintenance of books of account, minute books, etc, is the collective responsibility of the board of directors as the general administration of the company vests in the board.

The ultimate power of decision is given to members assembled in general meeting. A transaction by the directors which is beyond their own powers but within the powers of the company can be ratified by a resolution of the company in a general meeting, provided that the shareholders have knowledge of the facts relating to the transaction to be ratified or the means of knowledge are available to them and a company may by a resolution at a subsequent
meeting ratify business which it purported to transact at a meeting informally called.

In *John Shaw & Sons (Salford) Ltd v. Shaw* (1935) 2 KB 113, Green LJ said: “The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering the articles, or, if opportunity arises, under the articles by refusing to re-elect the directors of whose action they disapprove. They cannot themselves usurp the powers which by articles are vested in the directors, nor can the directors usurp the powers vested by the articles in the general body of the shareholders.”

**RESPONSIBILITY AND ACCOUNTABILITY**

Boards of Directors are responsible for the governance of their companies and accountable for the resources entrusted to it by the shareholders. A system of good corporate governance promotes relationships of accountability between the board, the management and the auditor. It holds the management accountable to the board and the board accountable to the shareholders. The Board is accountable towards the shareholders in maximizing shareholders’ welfare. The Directors should not abuse their powers and further ensure that they act in the best interests of the company in its broad sense. The responsibilities of the board include setting the company's aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meetings.

The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.

**DELEGATION OF POWERS**

Subject to the provisions of the Act and as hereinafter stated, all powers which the company is authorised to exercise can be exercised by the Directors either at a Meeting [Section 173] or by Resolutions passed by circulation [Section175] or by delegating the same to Committees or to the Managing Director or other principal officers [Proviso to 179(3)] or others in accordance with the provisions of the Act and the Articles.

**Powers to be exercised only at Board Meetings**

The powers that may be exercised by the Board only by means of a Resolution passed at a Meeting, as prescribed by Section 179(3), are:

(a) to make calls on shareholders in respect of money unpaid on their shares;
(b) to authorise buy-back of securities under section 68;
(c) to issue securities, including debentures, whether in or outside India;
(d) to borrow monies;
(e) to invest the funds of the company;
(f) to grant loans or give guarantee or provide security in respect of loans;
(g) to approve financial statement and the Board’s report;
(h) to diversify the business of the company;
(i) to approve amalgamation, merger or reconstruction;
(j) to take over a company or acquire a controlling or substantial stake in another company;
(k) any other matter which may be prescribed

Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director,
the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

The Act has also prescribed certain other items of business which can be transacted by the Board only at Meetings. An illustrative list of such items is given below:

(a) Buy back through Board Resolution [Section 68(2)];
(b) Filling causal vacanties on the Board [Section 161(4)];
(c) Where not less than one third directors think it should be passed in Meeting [175(1)]
(d) Making contribution for a political party or for a political purpose [182(1)];
(e) Disclosure of interest by a director {Section 184(1)};
(f) Loan, investment and guarantee by a company [Section 186(5)];
(g) Related Party Transaction [188(1)];
(h) Signature on register of Contracts and Arrangements [189(1)]
(i) Appointment of a managing director; whole – time director or manager [Section 196(4) and 203(3)],
(j) Casual vacancy of a whole time key managerial personnel [203(4)]

Additionally, in respect of listed companies, there are certain items which should also be approved at Meetings of the Board or, where permissible, by Committees thereof. An illustrative list of such items is given below:

(i) to take note of the quarterly and half-yearly financial results;
(ii) to declare dividend/issue bonus shares;
(iii) to consider annual accounts;
(iv) to issue securities;
(v) to re-issue forfeited shares; and
(vi) to note the report of the company secretary (compliance officer) with regard to the share transfer process.

The authority to delegate any power to a Committee or any other person must not be in contravention of any of the provisions of the Act and of the Articles or the Memorandum of Association of the company or the requirements of any regulatory bodies. The scope of the authority given may be limited by the Board and conditions may also be attached thereto.

As indicated earlier, if authorised by the Articles, the Directors may delegate all or any of their powers to Committees subject to such restrictions and limits as may be imposed. For this purpose, a company may incorporate a Regulation in its Articles on the lines of Regulation 71 of Table – F of Schedule – I appended to the Act which reads as follows:

“(1) The board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such number or numbers of its body as it thinks fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the board”.

The Directors have the power to delegate their authority to a Committee, consisting of at least two members. When the Board constitutes a Committee, the Resolution constituting the Committee should stipulate:
(a) the terms of reference or purpose for constituting the Committee;
(b) the Chairman of the Committee;
(c) the quorum and other requirements for conducting meetings of the Committee; and
(d) its power and authority.

The appointment and functioning of the Audit Committee shall be as per Section 177 of the Act. The appointment
and functioning of ‘nomination and remuneration committee’ and ‘stakeholders relationship committee’ shall be
as per Section 178 of the Act.

**MEETINGS**

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for
transacting any lawful business. However, every gathering or assembly does not constitute a meeting. A company
meeting must be convened and held in perfect compliance with the various provisions of the Act and the rules
framed thereunder. It is essential that the business dealt with at the meetings, should be validly transacted and
not liable to be questioned later due to any irregularity. It is the duty of the Company Secretary to study carefully
the provisions of the Companies Act, 2013 (the Act) relating to meetings and to ensure that the business at
meetings is conducted in conformity with the provisions of the Act.

The meetings of a company under the Companies Act, 2013 can be classified as under:

1. Meetings of the Directors and their Committees
2. Meetings of Shareholders:
   (a) Annual General Meetings (AGM)
   (b) Extraordinary General Meetings (EGM)
   (c) Class Meetings.
3. Meetings of Debenture/bond holders
4. Meetings of the creditors otherwise than in winding up
5. Meeting of creditors and contributories in winding up.
6. Court convened meetings.

**Board Meetings**

Generally, directors act through meetings. Meetings of the directors provide a means to discuss the business and
take formal decisions. The directors can only act at a meeting of the Board of directors through resolutions
passed at such a meeting. As a general rule, the Board of Directors should exercise its powers at duly convened
Board meeting. However, the Board may take decisions by resolutions passed by circulation, instead of assembling
at a Board meeting. Regulation 67(1) of Table – F provides that the Board of directors may meet for the dispatch
of business, adjourn and otherwise regulate its meetings, as it thinks fit. This provision clearly indicates that as a
general rule, the directors must exercise their powers collectively as Board.

Meetings of directors provide a means to discuss the business and take formal decisions. The law therefore,
specifically enjoins that the Board must formally meet once a quarter. It also provides for the matters which the
Board should formally decide at its meetings by resolutions. That apart, the meetings provide a forum for deliberating
on matters affecting the business and affairs of the company.
NOTICE OF BOARD MEETINGS

A meeting of the Board shall be called by giving not less than seven days’ notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. [Section 173]

A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

In the notice of Board meeting, the following matters are required to be Specific Notice:

1. Appointment of Managing Director who is already a Managing Director or Manager of another company [Section 203(3)].

2. Appointment of Manager who is already a Manager or Managing Director of another company [Section 203(3)].

In case of a listed company, notice of the Board Meeting should also be given to the stock exchange(s), where the securities of the company are listed, in accordance with the various clauses of the listing agreement for the items like, unaudited quarterly results, annual accounts, issue of securities by way of public/ rights/bonus or offer for sale, declaration/recommendation of dividend etc.

PROCEDURE FOR HOLDING MEETING OF THE BOARD OF DIRECTORS

Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board. [Section 173(1)]

As per Clause 49 of the listing agreement, every listed company, which is covered by this clause, is required to hold at least four Board meetings in a year with a maximum time gap of four months between any two meetings. Further, in case of a Section 8 company, it is required to hold Board meeting at least once in every six months.

The procedural steps for Board meetings are as follows:

1. Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.

2. Every company shall hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

3. The Secretary or any other person so authorised shall call give not less than seven days’ notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. [Section 173(3)].

4. Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

5. According to Regulation 67 of Table – F of Schedule – I of the Act, a director may, or the manager or secretary on the requisition of a director shall, any time summon a meeting of the Board.

6. In case of first board meeting, the notice must also mention that it is the first Board meeting.

7. It is not obligatory to give agenda in the notice, but it is a good secretarial practice to enclose the agenda to the notice of the meeting.
8. In case of First Board meeting, keep ready –

(i) Original certificate of Incorporation.

(ii) Copy of Memorandum and Articles of Association.

(iii) Copies of Form Nos. INC-1 (Application for reservation of name), INC-7 (Application for Incorporation), INC-11 (Application of Incorporation), INC-21 (Declaration prior to the commencement of business or excercising borrowing), INC-22 (Notice of situation of Registered Office) and power of attorney.

(iv) Consent of directors;

(v) Design etc. of common seal, share certificate, sign board, name plate, letterhead etc.

(vi) Statement of preliminary expenses incurred.

(vii) Certificate in writing about eligibility to appointment from the proposed Auditors [Second and third proviso to Section 139(1)].

(viii) Certificate in writing about eligibility to appointment from the proposed Secretarial Auditor.

(ix) Account opening form of the Bank with which Bank account of the company is to be opened.

(x) Cheques/drafts from members towards payment for the shares agreed to be taken by them.

(xi) Application(s) of qualified secretary to be appointed as secretary.

(xii) Original/copies of agreement entered into between the promoters before the incorporation of the company, for adoption and approval.

(xiii) Attendance Register for signature by directors.

(xiv) Arrange pads, pencils, a latest copy of the Companies Act, 2013, statutory registers and books etc.

(xv) Arrange for sitting, proper lighting, refreshment/lunch etc.

(xvi) Arrange projector etc. for presentation of the project for which the company is formed.

9. Contact and request all the directors to attend the meeting and arrange the facilities required by them in this regard, like conveyance, stay arrangements, location of venue etc.

10. At least half an hour before the meeting, the persons responsible for the conducting the meeting should place the folders containing Agenda, notes to Agenda, draft minutes to Agenda, statement of expenses incurred/to be incurred, Business Plan etc. for ready reference of all directors to enable them to deliberate and discuss on each item of the agenda in detail.

11. Before holding the meeting, welcome the directors and obtain their signatures on the Attendance Register.

12. If quorum, as required under Section 174, is present, declare the meeting in order and inform the names of the directors who sought leave of absence from attending the meeting. The Quorum of a company shall be one third of the total strength of the Board or two directors whichever is higher. The participation of directors by video conferencing or by other means shall also be complied for the purpose of quorum.

13. The directors who are present at the meeting may elect one of them as the Chairman of the meeting and request him to take the Chair.

14. Help the Chairman to conduct the meeting as per the agenda.

15. If any director wants to place any other item for the discussion at the meeting, then such item may be taken up with the permission of the Chairman.

16. Every director shall disclose his concern or interest in any company or companies or bodies corporate,
firms or other association of individuals, by giving notice in writing in From MBP-1

17. Decide the date, time and place of the next Board meeting.

18. After the meeting is over, prepare draft minutes of the meeting; get it reviewed by the chairman of the meeting and/or the Managing Director of the company.

19. Send copy of draft minutes of the meeting to each of the directors of the company for information and comments.

20. Contact and collect draft minutes from each of the directors with their comments. After that, in consultation with the Chairman/Managing Director finalise the minutes and enter them into the Minutes Book. All pages should be consecutively numbered.

21. Such final minutes may be signed and dated by the Chairman of the meeting or by the Chairman of the succeeding meeting. All pages of the minutes are to be initialled and the last page of the minutes is to be signed and dated by the Chairman.

22. Ensure that the minutes are signed within 30 days of the conclusion of meeting.

MEETINGS OF COMMITTEE OF DIRECTORS

If authorised by articles, the directors have power to delegate their authority to a committee and a company may adopt Regulation 71 of Table F to Schedule I which reads as under:

Regulation 71 states: “(1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit;

(2) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.”

For transacting business of the company, the committee meetings can be conducted in accordance with Regulations 72 to 75 of Table F to Schedule I of the Act or other corresponding provisions of the company’s articles. These regulations read as under:

Regulation 72 provides: “(1) A committee may elect a chairman of its meetings,

(2) if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.”

Regulation 73 provides: “(1) A committee may meet and adjourn as it thinks proper (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present and in case of an equality of votes, the chairman shall have a second or casting vote.”

Regulation 74 provides: “All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.”

Regulation 75 provides: “Save as otherwise expressly provided in the Act, a resolution in writing by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or Committee, duly convened and held.”
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Audit Committee

Relevant provisions relating to meetings of Audit Committee as given under Section 177 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 are as follows:

1. Following companies shall constitute an audit committee:
   (1) Every listed company;
   (2) Every public company having paid up capital of ten crore rupees or more;
   (3) Every public company having turnover of one hundred crore rupees or more;
   (4) Every public company which have in aggregate outstanding loan or borrowings or debentures or deposits exceeding fifty crore rupees.
2. The audit committee shall have minimum three directors with independent directors forming majority.
3. Every audit committee shall act in accordance with the terms of reference to be specified in writing by the Board.
4. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
5. The Audit Committee shall have authority to investigate into any matters in relations to items referred to it by the Board and for this purpose, shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
6. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor’s report but shall not have the right to vote.

Clause 49 of the Listing Agreement specifies certain requirements with respect to Audit Committees which is applicable to Listed Companies. Section 177 & Clause 49 need to be read in conjunction and the stricter interpretation to be adopted to arrive at the right composition etc.

Other Committees

- The Board of Directors of every listed company and other prescribed class of Companies (Same Prescription as per Audit Committee shall constitute a nomination and remuneration committee constituting of not less than 3 non-executive director out of which not less than half shall be Independent Director.
- The Board of Directors of the company which consist more than 1000 shareholders/debenture holders/deposit holder/any other security holder at any time during financial year shall constitute stakeholders relationship committee with Chairman as non-executive Director.

PREPARATION OF NOTICES AND AGENDA PAPERS FOR MEETINGS OF BOARD/ COMMITTEES OF BOARD

The agenda is compiled by secretary, possibly in collaboration with the chairman or managing director. The chairman is not obliged to adhere strictly to the exact order of business set out in the agenda, although it is customary for him to secure the assent of the meeting to any variation. The initial item in the agenda is usually grant of requests for leave of absence, if any and the approval of the minutes of the last Board meeting. The next business usually refers to matters arising out of the previous minutes and then would follow matters of routine nature. The notice of a directors’ meeting need not necessarily disclose the purpose of the meeting, [Compagnie de Mayville v. Whitley, (1896) 1 Ch 788(CA).]

The agenda of the Board meeting is finalized based on the company law requirements and on the matters submitted by the management. A listed company shall also comply with the requirements of clause 49 of the
Listing Agreement while preparing agenda. The minimum information to be made available to the board is given in Annexure-I A to clause 49 which is as under:-

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed structure on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.
16. The law does not require any agenda for meetings of the Board [Abnash Kaur v. Lord Krishan Sugar Mills Ltd. (1974) 44 Com Cases 390, 413 (Del)].

Board of directors can transact business even without a formal agenda [Sunil Dev v. Delhi & District Cricket Association, (1994) 80 Com Cases 174 (Del)].

It is not necessary that an agenda for directors’ meeting should be specified [Maharashtra Power Development Corpn Ltd. v. Dabhol Power Co., (2004) 120 Com Cases 560 (Bom)].

**Secretarial Standard on Meetings of the Board of Directors**

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) had revised its Secretarial Standards on Meetings of Board of Directors and Secretarial Standards General Meetings as per the Law Act & Rules thereunder and listed the exposure drafts thereon for public comments on its website.

Briefly, the Exposure Draft on Board and general meeting provides for the following amongst others:

- Unless the Articles provide otherwise, any Director of a company may, and the Manager or Secretary on the requisition of a Director should, at any time, summon a Meeting of the Board.

- Notice in writing of every Meeting should be given to every Director by hand or by post or by facsimile or by e-mail or by any other electronic mode. Where a Director specifies a particular mode, the Notice should be given to him by such mode.

- The Notice should specify the day, date, time and full address of the venue of the Meeting.

- The Notice should specify the day, date, time and full address of the venue of the Meeting.
– The Notice should inform the Directors if facility of participation through Electronic Mode is made available and provide necessary information to enable Directors to access such facility.

– The Notice of a Meeting should be given even when Meetings are held on pre-determined dates or at pre-determined intervals.

– Unless the Articles prescribe a longer notice period, Notice convening the Meeting should be given at least seven days before the date of the Meeting.

– The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should also be given at least seven days before the date of the Meeting.

– Each item of business should be supported by a note setting out the details of the proposal and where approval by means of a Resolution is required; the draft of such Resolution should be set out in the note.

– The Board should hold its first Meeting within thirty days of the date of its incorporation and thereafter should hold at least four Meetings in each year with a maximum interval of 120 days between any two consecutive Meetings.

– Committees should meet at least as often as stipulated by the Board or as prescribed by any other law or authority.

– Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not present.

– Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

– A Resolution proposed to be passed by circulation should be sent in draft, together with the necessary papers, individually, to all the Directors or, in the case of a Committee, to all the members of the Committee.

– Within fifteen days from the date of the Meeting of the Board or Committee or of an adjourned Meeting, the draft Minutes thereof should be circulated in physical or Electronic Mode to all the members of the Board or the Committee, as the case may be, for their comments.

– The Minutes of proceedings of a Meeting should be entered in the Minutes Book within thirty days from the conclusion of the Meeting.

– The date of entering the Minutes should be specified in the Minutes Book by a Director or the Secretary.

– The Chairperson should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

– Minutes should not be pasted or attached to the Minutes Book.

– Minutes, if maintained in loose-leaf form, should be bound at intervals coinciding with the financial year of the company.

– The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

– The Minutes of all Meetings should be preserved permanently either in physical or electronic form.

**PROCEDURE FOR PASSING A BOARD RESOLUTION BY CIRCULATION**

Decisions relating to the policy and operations of a Company are arrived at meetings of the Board, held periodically. However, it may not always be practicable to convene a meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to. Rule 5 of the Companies (meeting of Board and its Power) Rules 2014, a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.
The procedure to pass a board resolution by circulation is as under:

Circulate the draft of the resolution in duplicate with all necessary papers, if any, to all the directors (in the case of a committee of Board to all the members of the committee) at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means for approval by signing one copy of the resolution and sending it back to the company.

1. If all or majority of the above directors as are entitled to vote on the resolution approve the resolution, the resolution shall be deemed to have been duly passed by the Board. [Section 175]

2. Record the resolution having been passed by circulation in the minutes of the immediate next Board Meeting.

3. Please enclose a copy of the circular resolution to the agenda of the ensuing immediately next Board meeting mentioning in the notes that the said resolution was approved by so many number of directors and a certain number of directors dissented from it, if any and also that it was passed by majority of directors.

4. The Institute has covered Secretarial Standards on passing Board Resolution through circulation in its’ exposure draft issued on “Secretarial Standards with respect to Board and General Meeting.

Secretarial Standard on Passing of Resolutions by Circulation (Based on the issued by ICSI exposure draft on Board and General Meeting)

The Secretarial Standards Board (SSB) of the Institute of Company Secretary of India (ICSI) had revised its Secretarial standards on Meetings of the Board of directors and Secretarial Standards on General Meetings (SS-2) as per the new Act and Rules thereunder and hosted the Exposure Drafts thereon for public comments on its website.

Briefly, the Exposure Draft on Board and General Meetings provides for the following, amongst others:

– A Resolution proposed to be passed by circulation should be sent in draft, together with the necessary papers, individually, to all the Directors or, in the case of a Committee, to all the members of the Committee.

– The draft Resolution to be passed by circulation and the necessary papers should be circulated by hand, or by post or by courier at the addresses registered with the company in India, of the Directors or members, as the case may be, or by facsimile, or by e-mail or by any other Electronic Mode.

– Where not less than one-third of the total number of Directors for the time being require the Resolution to be decided at a Meeting, the Chairperson should put the Resolution to be decided at a Meeting of the Board.

– The Resolution shall be effective from the last date specified for signifying assent or dissent by the Directors, if no other effective date is specified in the Resolution.

– Resolutions passed by circulation should be noted at the next Meeting of the Board or Committee, as the case may be, and recorded in the Minutes of such Meeting.

PARTICIPATION OF DIRECTORS IN MEETINGS OF BOARD/COMMITTEE OF DIRECTORS THROUGH ELECTRONIC MODE

Section 173(2) provides the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

“Video conferencing or other audio visual means” means audio-visual electronic communication facility employed
which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

As per Rule 3 of the Companies (Meetings of Board and its Power) Rules 2014, a company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care:
   (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
   (b) 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;
   (c) to record proceedings and prepare the minutes of the meeting;
   (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;
   (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
   (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.
   (g) The persons, who are differently abled, may make request to the Board to allow a person to accompany him.
3. The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
4. The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
5. A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
6. If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
7. The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
8. In the absence of any such intimation, it shall be assumed that the director shall attend the meeting in person.
9. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record,
   (a) name;
   (b) the location from where he is participating;
   (c) that he has received the agenda and all the relevant material for the meeting; and
(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

10. After the roll call, the Chairperson or the Company Secretary shall inform the Board about 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 confirm that the required quorum is complete.

11. A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

12. The Chairperson shall ensure that the required quorum is present throughout the meeting.

13. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

14. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

15. Every participant shall identify himself for the record before speaking on any item of business on the agenda.

16. If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

17. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

18. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

19. At the end of discussion on each agenda item, the Chairperson of the meeting shall announce 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.

20. The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

21. The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

22. Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give 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.

23. After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Matters not to be dealt with in meeting through video conferencing:
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(a) the approval of the annual financial statements;
(b) approval of the Board’s report;
(c) the approval of the prospectus;
(d) the Audit Committee Meetings for consideration of accounts; and
(e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

PROCEDURE FOR HOLDING AN ANNUAL GENERAL MEETING

According to Section 96(1) of the Companies Act, 2013, a meeting known as an annual general meeting is required to be held by every company other than ‘one person company’ every year. The company shall specify the meeting as such in the notices calling Annual General Meeting.

In case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company. If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

This means, for a company incorporated on 1st day of January 2015, the first financial year shall be closed on 31st day of March 2016 and Annual General Meeting should be convened on or before 31st day of December 2016. However for a company incorporated on 31st day of December 2014, the first financial year shall be closed on 31st day of March 2015 and Annual General Meeting should be convened on or before 31st day of December 2015.

In any case other than first annual general meeting, it shall be held within a period of six months, from the date of closing of the financial year. Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

The Registrar may, for any special reason, extend the time within which any annual general meeting, shall be held, by a period not exceeding three months. However the Registrar may not extend the time for first annual general meeting.

Where, last annual general meeting was held on 31st day of December 2015, next annual general meeting shall be held on or before 30th day of September 2016. However where, last annual general meeting was held on 31st day of May 2015, next annual general meeting shall be held on or before 31st day of August 2016. The Registrar may extend these dates to 31st day of December 2016 and 30th day of November 2016 respectively.

Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be 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.

The Company Secretary is responsible for making all the arrangements for holding the annual general meetings of the company. He is required to perform the following functions and duties in this connection.

(A) Before the Meeting:

1. To convene a Board meeting, after giving notice as per Section 173(3), as soon as the final accounts are ready, invite the Auditors for their report and transact the following business (in case of listed company, give advance notice to stock exchange):
   (a) To consider and discuss the report of Audit Committee on the Annual accounts.
   (b) To approve the accounts and authorise signing of accounts.
   (c) To secure Auditor’s report on the accounts.
   (d) To approve the draft of the Board’s Report in compliance with the provisions of Section 134 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.
(e) To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting

(Note: 1. In case of listed company prior intimation have to be sent to stock exchange of the Board meeting where recommendation of dividend is proposed to be considered at least 2 working days in advance vide clause 19 of listing agreement. 2. If the Auditors’ report contains any reservations qualification or adverse remarks, the Board’s Report must contain explanations therefor.)

(f) To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting. The Notice must contain Ordinary Business in accordance with the provisions of Section 102 of the Act,

While fixing the time, date and place for the annual general meeting, care should be taken that the time should be during 9 am to 6 pm, the date should not be a National holiday, and the place should be either the registered office of the company or some other place within the same city, town or village in which the registered office of the company is situated.

(g) To consider the closure of the Register of Members and the Share Transfer Books of the Company in compliance with the provisions of Section 91 of the Act and to authorise the Secretary to arrange for its publication in a newspaper. In case of listed company, a notice in advance of at least 7 working days should be sent to the stock exchange(s) about the proposed dates for such closure and also to comply with the requirement of stock exchange for book closure.

2. Immediately after the Board meeting, the stock exchanges should be informed of the dividends and/or cash bonuses recommended by the Board and to the shareholders in their Report, and financial information like the total turnover, gross profit/loss, provision for depreciation, tax provision and net profit/loss, for the year with comparative figures of the last year and the amounts appropriated from reserves and accumulated profits of the previous years etc. Such intimation has to be sent within 15 minutes of closure of the Board meeting.

3. To arrange for the publication in a newspaper of at least 7 days previous notice of closure of the Register of Members and the Share Transfer Books as per Section 91 of the Act.

4. In case of listed company, close the registers for the period as advertised and inform the all the stock exchanges by giving a notice in advance of at least 7 working days.

5. To arrange for the printing of the balance sheet, profit and loss account, reports of the directors and of the auditors and the notice for the meeting.

6. To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier in terms of section 101. Notice of the meeting must also be send to the directors (whether member or not), auditors and stock exchanges.

7. If the directors decide for the publication of the Chairman’s statement, make arrangements for the same.

8. In case of listed company, send six copies of the directors’ report, balance sheet and profit and loss account and three copies of the notices to such stock exchange(s) and one copy of each of them to all other recognised stock exchanges in India.

9. Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to-date position is available till the date of the meeting.

10. To arrange for the printing of attendance slips or attendance register and ballot papers.
11. In consultation with the chairman or the Managing Director, prepare a detailed agenda for the meeting.

12. To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.

13. To make arrangement for the printing of a combined document containing “Notice of Dividend” and “Dividend Warrant”.

(B) At the Meeting:

1. To arrange for the collection of admission slips or in the alternative to get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.

2. To help the Chairman in ascertaining quorum.

3. To read out the notice of the meeting if advised by the Chairman.

4. To read out the Auditor’s Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.

5. To produce copies of Memorandum and Articles of Association of the company.

6. To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.

7. To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.

8. Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.

9. To take notes of the proceedings for the purpose of preparing minutes thereof.

10. To keep at the meeting Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.

11. To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries;

(C) After the Meeting:

1. To prepare minutes of the proceedings.

2. To record the minutes of the meeting and get them signed by the Chairman within thirty days of the meeting.

3. To send intimation of appointment/re-appointment of directors. File Form DIR-12 with the Registrar of Companies within 30 days of appointment along with filing fee.

4. To send intimation of appointment/re-appointment of auditors.

5. To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT-14 with the Registrar of Companies, within thirty days of the meeting.

6. To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4 within thirty days of the meeting. In case of companies covered under XBRL filing, it should be ensured that the annual accounts are filed in XBRL format. Ensure that a copy of Secretarial Audit Report obtained from a Secretary in whole time practice as required under Section 204(1) of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual
general meeting.
In case of listed company, send a copy of the proceedings of the annual general meeting to the stock exchange.

(7) Deposit dividend distribution tax at the applicable rate within the prescribed time limit under Income-tax Act, 1961.

(8) Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI.

(9) To open a separate bank account known as “Dividend Account for the year........” and to deposit the total amount of dividend within five days from the date of declaration of dividend.

(10) To get the Dividend Warrants and Notice of Dividend signed by authorised persons.

(11) To despatch Dividend Warrants together with the Notice of Dividend to the shareholders within thirty days of the declaration of dividend after making arrangement with the banker for payment of dividend warrants at prescribed number of branches at par.

(12) To file along with the prescribed filing fee, Annual Return in Schedule V to the Companies Act as an attachment to Form MGT – 7 with the Registrar of Companies within sixty days of the meeting prepared as at the date of the annual general meeting, as required by Section 92 of the Companies Act, 1956. The Certificate of Company Secretary shall be in Form MGT – 8 and abstract of annual return shall be attached with Board Report in Form MGT – 9.

Ensure that in the case of listed company, the annual return is also signed by a Company Secretary in whole time practice.

(13) To take action on other decisions of the shareholders.

(14) If the company is listed then to submit to the stock exchange, within 48 hours of conclusion of annual general meeting, details regarding the voting results in the following format as prescribed in clause 35A of the listing agreement:-

Date of the AGM/EGM: _______________________
Total number of shareholders on record date:

No. of Shareholders present in the meeting either in person or through proxy:
Promoters and Promoter Group: Public:

No. of Shareholders attended the meeting through Video Conferencing
Promoters and Promoter Group: Public:

(Agenda-wise)

Detail of the Agenda:
Resolution required: (Ordinary/ Special)

Mode of voting: (Show of hands/Poll/ Postal ballot/E-voting)
In case of Poll/Postal ballot/E-voting:
### Secretarial Standards on General Meetings

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) had revised its Secretarial standards on Meetings of the Board of Directors and Secretarial Standards on General Meetings as per the new Act and Rules thereunder and hosted the Exposure Drafts thereon for public comments on its website.

The silent features of this Exposure Draft on General Meetings which supplement the Company Law and on which the Companies Act is silent are:

- A General Meeting should be convened on the authority of the Board Notice in writing of every Meeting should be given to every Member of the company. Such Notice should also be given to the Directors and Auditors of the company, to the Practicing Company Secretary who has issued the Secretarial Audit Report, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

- Notice should be given by hand or by post or by courier or by facsimile or by e-mail or by any other Electronic Mode and should also be placed on the website, if any, of the company.

- The Notice should specify the day, date, time and venue of the Meeting with complete address.

- The Notice should inform Members whether facility of participation through Electronic Mode is made available and provide necessary information to enable Members to access the available facility.

- The Notice should clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item should be in the form of a Resolution and should be accompanied by an explanatory statement which should set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the

- Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.

- Notice and accompanying documents should be sent at least twenty-one days in advance of the Meeting if sent by Electronic Mode and at least twenty-five days in advance of the Meeting if sent by any other mode.

- Notice may be given at a shorter period of time if consent in writing is given thereto, by physical or Electronic Mode by not less than ninety-five per cent of the Members entitled to vote at such Meeting.
In the case of listed companies, the Notice should also be hosted on the website of the company.

No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.

No items of business other than those specified in the Notice should be taken up for consideration at the Meeting.

Every company other than a One Person Company should, in each year, hold a Meeting called the Annual General Meeting.

Members need to be personally present at a Meeting to constitute the Quorum.

Proxies are to be excluded for determining the Quorum.

The Directors of the company should attend all Meetings of the company, particularly the Annual General Meeting, and should be seated with the Chairperson.

The Practicing Company Secretary who has issued the Secretarial Audit Report should attend the Annual General Meeting.

The Chairperson should not propose any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.

Every Resolution should be proposed by a Member and seconded by another Member entitled to vote thereon.

A Director should not propose or second any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.

Every Resolution should, in the first instance, be put to vote on a show of hands.

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by such Members as prescribed under the Act.

A Member present in person or by Proxy shall, on a poll, have votes in proportion to his share of the paid up equity capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Every Member of the company prescribed under the Act and not present physically may exercise his right to vote by the Electronic Mode.

If the Articles so provide, the Chairperson shall have a casting vote.

Every Notice calling a Meeting of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, should prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy to attend and vote instead of himself and that a Proxy need not be a Member.

A Proxy shall act on behalf of number of Members not exceeding fifty and such number of shares as may be prescribed.

An instrument appointing a Proxy should be either in the Form specified in the Articles or in any of the Form set out in the Act.

An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

An instrument of Proxy is valid only if it is properly stamped. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.
– The Proxy-holder should prove his identity at the time of attending the meeting.

– An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

– A proxy form which does not state the name of the Proxy should not be considered valid.

– If an undated Proxy, which is otherwise complete in all respects, is lodged within the prescribed time limit, it should be considered valid.

– If a company receives multiple Proxies for the same holdings of a Member, the proxy which is dated last should be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies should be treated as invalid.

– Proxies should be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy should be accepted even on a holiday if the last date by which it could be accepted is a holiday.

– A Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

– If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

– A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

– A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

– Requisitions, if any, for inspection of Proxies should be received in writing from a Member at least three days before the commencement of the Meeting.

– Proxies should be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

– A fresh requisition, conforming to the above requirements, should be given for inspection of Proxies in case the original Meeting is adjourned.

– All Proxies received by the company should be recorded chronologically in a register kept for that purpose.

– In case any Proxy entered in the register is rejected, the reasons therefore should be entered in the remarks column.

– When a poll is demanded on any Resolution, the Chairperson should get the validity of the demand verified and, if the demand is valid, should order the poll forthwith if it is demanded on the question of appointment of the Chairperson or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.

– In the case of a poll which is not taken forthwith, the Chairperson should announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairperson should also announce that any Member who so desires may be present at the time of counting of votes.

– Each Resolution on which a poll is demanded should be put to vote separately.

– The Chairperson should appoint such number of scrutineers, as he deems necessary to ensure that the scrutiny of the votes cast on a poll is done fairly, accurately and properly. At least one of the scrutineers should be a Member who is present at the Meeting and is not an officer or employee of the company.


− The result of the poll should be displayed on the notice board of the company at its Registered Office and its Corporate/Head Office, if such office is situated elsewhere, and also placed on the website of the company. In the case of listed companies with more than 5,000 Members, the result of the poll should also be published in a leading national newspaper.

− Resolutions for items of business which are likely to affect the market price of the securities of the company should not be withdrawn.

− A Resolution passed at a Meeting should not be rescinded other than by a Resolution passed at a subsequent Meeting.

− Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the amended Resolution should be duly proposed, seconded and put to vote.

− The qualifications, observations or comments on the financial statements or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor’s Report including the Statement pursuant to the Companies (Auditor’s Report) Order, 2003 (CARO) should be read at the Annual General Meeting and attention of the Members present should be drawn to the explanations / comments given by the Board of Directors in their report.

− The qualifications, observations or comments on the financial statements or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Secretarial Audit Report issued by the Practicing Company Secretary, should be read at the Annual General Meeting and attention of Members present should be drawn to the explanations / comments given by the Board of Directors in their report.

− No gifts, gift coupons, or cash in lieu of gifts should be distributed to Members at or in connection with the Meeting.

− A duly convened Meeting should not be adjourned arbitrarily by the Chairperson. The Chairperson may adjourn a Meeting with the consent of the Members and should adjourn a Meeting if so decided by the Members.

− If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting should be given in accordance with the provisions contained hereinabove relating to Notice.

− If a Meeting is adjourned for a period of less than thirty days, the company should give not less than three days’ notice specifying the day, date, time and venue of the Meeting, to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the Registered Office of the company is situated. In the case of listed companies, notice thereof specifying the day, date, time and venue of the Meeting should also be published simultaneously in a leading national newspaper.

− If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be determined by the Board.

− If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand dissolved.

− At an adjourned Meeting, only the unfinished business of the original Meeting should be considered.

− The Minutes should be entered and signed within thirty days from the conclusion of the Meeting.

− Every listed public company should prepare a report in the prescribed manner, of the Annual General Meeting,
including a confirmation that the meeting was convened, held and conducted as per the provisions of the Act.

- The Annual Report of a company should disclose all Meetings held during the last three years.

### CONDUCT OF POLL

At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.[Section 107(1)]

Poll is a method of voting in which votes are cast by a Member, in person or by Proxy, in proportion to the number of shares held by him. Section 47(1) provides that the voting rights of a Member (holding equity shares) on a poll shall be in proportion to his share of the paid-up equity capital of the company. This is governed by the principle 'one share-one vote', subject, however, to Section 43 which provides for equity shares having differential rights as to voting.

Where a preference shareholder has a right to vote on any resolution, his voting right on a poll shall be in the same proportion as the capital paid-up in respect of the preference share bears to the total paid-up equity capital of the company. [Section 47(2)].

Section 109(4) stipulates the time for taking a poll at a General Meeting. When a poll is demanded on the question of adjournment of the Meeting or if it pertains to the Resolution for election of a Chairman of the Meeting under Section 109(3), it must be taken “forthwith”, i.e. immediately after it is demanded. When a poll is demanded on any other resolution, the Chairman should decide the time for taking a poll and such poll should be taken within forty-eight hours from the time when the demand was made.

Where the Articles provided for a poll to be taken "immediately", it was held that the word 'immediately' meant as soon as practicable. [Jackson v. Hamlyn (1953) 1 All ER 887; (1953) 2 WLR 709]. In this case, the Articles of the company provided that a poll on any question of adjournment should be taken immediately at the Meeting and without adjournment and that proxies should be lodged at least forty-eight hours before the time appointed for holding a Meeting or adjourned Meeting. At an Extraordinary General Meeting of the company, held on January 20, 1953, to consider certain resolutions proposed by some of the shareholders, a poll was demanded on a motion for adjournment. The Meeting, which had started at noon and had already lasted for over three hours, could not be continued in the room where it was being held as that was then required for another purpose, and no other room was available. As the scrutineers would require over two hours to count the votes on the poll, the Chairman stated that the poll would be taken immediately and the result announced later. He went on to say that, if the poll was in favour of adjournment, the Meeting would stand adjourned for thirty days and, if against, another Meeting would be called as soon as practicable. The poll was then taken and the result was made public on January 22, 1953, the motion for adjournment being lost by a substantial majority. It was held that the requirement in the company's Articles that a poll on any question of adjournment should be taken immediately meant that the poll was to be taken as soon as practicable in all the circumstances. As it was impossible, for physical reasons, to carry on with the Meeting on January 20, any Meeting convened to hear the result of the poll and to continue with the business of the Meeting of January 20 (the motion for adjournment having been lost) would be a continuation of the Meeting of January 20 and, therefore, any proxies deposited after mid-day on January 18 would not be valid.

In terms of Section 109, the chairperson has power to order a poll before or on declaration of result of a voting on his own motion. In case of companies having share capital, the members present or their proxies with one – tenth of voting power or members holding not less than five lakh rupees may demand a poll before or on declaration of result. In case of companies not having a share capital, the members present in person or by proxy having not less than one – tenth of the total voting power may demand poll before or on declaration of result.

Once a valid demand for a poll has been received, Sub-section (2) of Section 109 provides that those who have presented the demand may withdraw it at any time. However, the demand for poll cannot be withdrawn once the
Chairman declares that a poll will be taken and then adjourns the Meeting for that purpose, fixing the time and hour of poll. [R v. Mayor of Dover (1903) 1 KB 668].

The Chairman has the right to order a poll to be taken on any resolution either of his own motion or when it is validly demanded by one or more Member/s. The Chairman can order a poll before a resolution is put to the vote on a show of hands or on the declaration of the result of voting by a show of hands. 

Regulation 54 of Table – F of Schedule – I provides that any business other than that upon which a poll is demanded can be proceeded with, pending the conducting of the poll.

Where the Chairman refused to order a poll even after a valid demand had been made, the Company Law Board held that the business on the agenda for which the poll was demanded and which was carried through by show of hands becomes invalid. [Namita Gupta v. Cachar Native Joint Stock Co. Ltd., (1999) 98, Com Cases 655].

A poll when validly demanded should be taken, even if the Chairman had refused to grant the poll. [M.K. Srinivasan and Others v. W.S. Subrahmanya Ayyar and Others (1932) 2 Com Cases147]. Consequently, if a valid demand for poll is refused by the Chairman, the Meeting should either be re-convened or a new Meeting should be convened to hold the poll or to consider the item in respect of which the valid demand for poll was not granted, as the case may be.

The result of the poll shall be deemed to be decision of the meeting, the chairman is bound by the result of the poll. [Section 109(7)]. The result of poll once declared shall be final. The decision as declared by the Chairman should be recorded in the Minutes of the Meeting.

The poll is complete on the day when the result is ascertained and declared, and not when the voting is completed. [Holmes v. Lord Keyes (1958) Ch 199; All ER 129].

VOTING THROUGH ELECTRONIC MODE

Voting by electronic mode means a process for recording votes by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the entire voting gets registered and counted in an electronic registry in a centralized server.

According to Section 108 of the Companies Act, 2013 any company may opt voting through electronic means. The central government may prescribe certain companies for compulsory electronic voting in general meetings. Every listed company or a company having five hundreds or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system.

For this purpose the company shall also comply with Rule 20 (3) of the Companies (Management and Administration) Rules 2014 in addition to the normal procedures required under the Companies Act, 2013 for holding general meeting:-

(i) The notices of the meeting shall be sent to all the members/ auditors of accompany/directors/key managerial personal either, –

(a) by Registered Post or speed post with AD, or

(b) through electronic means like registered e-mail id etc, in accordance with the provisions of section 101.

(c) Through courier service.

(ii) The notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members.
(iii) The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means.

(iv) The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner.

(v) The company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters:

(a) statement that the business may be transacted by electronic voting;
(b) the date of completion of sending of notices;
(c) the date and time of commencement of voting through electronic means;
(d) the date and time of end of voting through electronic means;
(e) the statement that voting shall not be allowed beyond the said date and time;
(f) website address of the company and agency, if any, where notice of the meeting is displayed; and
(g) contact details of the person responsible to address the grievances connected with the electronic voting.

(vi) E-voting shall remain open for not less than one day and not more than three days. In all such cases, such voting period shall be completed three days prior to the date of the general meeting.

(vii) During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically:

(viii) At the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(ix) The Board of directors shall appoint one scrutinizer, who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner:

(x) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(xi) The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses and make a scrutinizer’s report of the votes cast in favour or against, if any, forthwith to the Chairman.

(xii) The scrutinizer shall maintain a register either manually or electronically to record the consent or otherwise, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

(xiii) The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.

(xiv) The results declared along with the scrutinizer’s report shall be placed on the website of the company and
on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.

(xv) Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

As per clause 35B of the listing agreement, a listed company:

(i) has to provide e-voting facility to its shareholders, in respect of those businesses, which are transacted through postal ballot. Such e-voting facility shall be kept open for such period specified under the Companies (Passing of the Resolution by Postal Ballot) Rules, 2011 for shareholders to send their assent or dissent;

(ii) shall continue to enable those shareholders, who do not have access to e-voting facility, to send their assent or dissent in writing on a postal ballot pursuant to the provisions of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2011 or amendments made thereto;

(iii) shall utilize the service of any one of the agencies providing e-voting platform, which is in compliance with conditions specified by the Ministry of Corporate Affairs from time to time;

(iv) shall mention the Internet link of such e-voting platform in the notice to their shareholders.

PROCEDURE FOR PASSING OF RESOLUTIONS BY POSTAL BALLOT

According to Section 110, A company shall transact businesses notified by Central Government through postal ballot only not in general meeting. A company may transact any business through postal ballot except –

(i) ordinary business in an annual general meeting; and

(ii) business in respect of which directors or auditors have a right to be heard at any meeting.

A resolution passed through postal ballot shall be deemed to have been passed at a general meeting.

Postal Ballot is not same as voting through electronic mode. The concept of Postal Ballot is a unique provision which gives shareholders the right to vote on items of business of a corporate body without actually attending its general meetings either personally or through their proxies/representatives. The of Postal Ballot provides an opportunity even to such shareholders to take part in the decision making process. The facility now provided to all shareholders, regardless of their location or their ability to be physically present at an appointed day and place, to approve or reject a proposal of the Board and to vote on items of business by postal or electronic mode, is a further step to encourage corporate democracy and to promote good corporate governance.

Every company except one person company and other companies having upto fifty members are required to transact business through postal ballot.

However, a company is required to hold an Annual General Meeting, every year, as this is a mandatory requirement under Section 96 of the Act.

Items of business to be transacted through postal ballot

Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

(a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
(c) **Change in place of registered office** outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) **Change in objects** for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) **Issue of shares with differential rights** as to voting or dividend or otherwise under subclause (ii) of clause (a) of section 43;

(f) **Variation in the rights attached** to a class of shares or debentures or other securities as specified under section 48;

(g) **Buy-back of shares** by a company under sub-section (1) of section 68;

(h) **Election of a director** under section 151 of the Act;

(i) **Sale of the whole or substantially the whole of an undertaking** of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) **Giving loans or extending guarantee** or providing security in excess of the limit specified under sub-section (3) of section 186. [Rule 22(16)]

One Person Company and other companies having **members up to two hundred** are not required to transact any business through postal ballot. [Proviso to Rule 22(16)]

### Procedure for Postal Ballot


2. Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a **notice** to all the shareholders (**read members**), along with a draft resolution explaining the reasons there for. The Company shall request members them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of dispatch of the notice. **Postal ballot means voting by post or through electronic means.** [Rule 22(1)]

3. The notice shall be sent either
   (a) by Registered Post or speed post, or
   (b) through electronic means like registered e-mail id or
   (c) through courier service

   for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days. [Rule 22(2)]

4. An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters, namely:-
   (a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
   (b) the date of completion of dispatch of notices;
   (c) the date of commencement of voting;
   (d) the date of end of voting;
(e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;

(f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

(g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means. [Rule 22(3)]

5. The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members. [Rule 22(4)]

6. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner. [Rule 22(5)]

7. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority. [Rule 22(6)]

8. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf. [Rule 22(7)]

9. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder. [Rule 22(8)]

10. The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof. [Rule 22(9)]

11. The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid. [Rule 22(10)]

12. The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely. [Rule 22(11)]

13. The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received. [Rule 22(12)]

14. The results shall be declared by placing it, along with the scrutinizer’s report, on the website of the company. [Rule 22(13)]

15. The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf. [Rule 22(14)]

16. The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means. [Rule 22(15)]

ADJOURNMENT OF A MEETING

1. Adjournment means to defer or suspend the Meeting to a future time, either at an appointed date or indefinitely
or as decided by the members present at the scheduled Meeting. For a valid adjournment of a General Meeting, the holding of the Meeting at its scheduled time is necessary. A duly convened Meeting should not be adjourned arbitrarily by the Chairman. The Chairman may adjourn a Meeting with the consent of the members and shall adjourn a Meeting if so decided by the members. The Meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned Meeting.

2. Regulation 49 of Table – F of Schedule - I of the Act provides that the Chairman may, with the consent of any Meeting at which a Quorum is present, and shall, if so directed by the Meeting, adjourn the Meeting from time to time and from place to place and may adjourn the Meeting for bona fide reasons. Once a Meeting is called, the Chairman cannot adjourn it arbitrarily. Its continuance or adjournment rests entirely on the will of the members. If a Chairman vacates the Chair or adjourns the Meeting regardless of the views of the majority, those remaining, even if a minority, can appoint a Chairman and conduct the business left unfinished by the former Chairman. [Catesby v. Burnett, (1916) 2 Ch 325 (Ch D)].

3. Where a Meeting is unlawfully adjourned by the Chairman thinking that he is not likely to succeed in his object, the remaining Members possess the right to continue the Meeting and conduct the business left untransacted by the Chairman. [Seth Sobhag Mal Lodha v. Edward Mills. Co. Ltd., (1972) 42 Com Cases 1 at 18 (Raj)]. In the case of United Bank of India Ltd. v. United India Credit and Development Corporation Ltd. (1977) 47 Com Cases 689, it was held that every Chairman has the right to make a bona fide adjournment whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe or seriously difficult for the members to tender their votes. The question will turn upon the intention and effect of the adjournment; if the intention and effect were to interrupt or delay the business, such an adjournment would be illegal; if, on the contrary, the intention and effect were to forward or facilitate it and no injurious effects would result, such an adjournment would generally be supported.

4. If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting should be given in accordance with the provisions contained hereinabove relating to Notice. Instead of sending a fresh Notice for the adjourned Meeting, the notice of the original Meeting may be sent, under cover of an intimation specifying the day, date, time and place of the adjourned Meeting. The intimation should clarify that certain items of business had been transacted at the original Meeting, state the reasons for adjournment and list the remaining items of business to be transacted at the adjourned Meeting. The relevant explanatory statement in respect of such remaining items of business should also be given.

5. If a Meeting is adjourned for a period of less than thirty days, in the case of listed companies with more than 5,000 Members, Notice thereof specifying the day, date, time and venue of the Meeting should be published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

An adjourned Meeting is merely the continuation of the original Meeting and, unless the Articles provide otherwise, a fresh Notice of the adjourned Meeting is not necessary. However, it is desirable and a good corporate practice to make an announcement in newspapers regarding the adjournment of the Meeting, giving details of the day, date, time and place and the business to be transacted at the adjourned Meeting. Such announcement should also be placed on the website, if any, of the company.

6. If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be determined by the Board. In the case of listed companies with more than 5,000 Members, Notice thereof, specifying the day, date, time and venue of the Meeting, should be published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.
7. If a Quorum is not present at a Meeting, the Meeting is not validly constituted for the transaction of business. If within half an hour from the time appointed for holding a General Meeting, a Quorum is not present, then in the case of a Meeting called by the Board, the Meeting must be adjourned to the same day in the next week at the same time and the same place.

8. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

9. In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

10. If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand cancelled.

11. At an adjourned Meeting, only the unfinished business of the original Meeting should be considered. If any new business has to be transacted, a fresh Meeting must be duly convened.

REPORT ON ANNUAL GENERAL MEETING

Under Section 121 of the Companies Act, 2013, Every listed public company shall, prepare in accordance with Rule 31 of the Companies (Management and Administration) Rules 2014.

1. The report in pursuance of the provisions of sub-section (1) of section 121 shall be prepared in the following manner, namely:-
   (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
   (b) the report shall be 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;
   (c) the report shall contain the details in respect of the following, namely:-
       (i) the day, date, hour and venue of the annual general meeting;
       (ii) confirmation with respect to appointment of Chairman of the meeting;
       (iii) number of members attending the meeting;
       (iv) confirmation of quorum;
       (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
       (vi) business transacted at the meeting and result thereof;
       (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
       (viii) any other points relevant for inclusion in the report.
   (d) the Report shall contain fair and correct summary of the proceedings of the meeting.

2. The copy of the report prepared in pursuance of section 121 and rule 31, shall be filed with the Registrar in Form MGT – 15 within thirty days of the conclusion of the annual general meeting along with the fee.

PROCEDURE FOR HOLDING AN EXTRAORDINARY GENERAL MEETING

Any general meeting held between two annual general meetings will be called an extraordinary general meeting. Business, which arises between two annual general meetings and being urgent and cannot be deferred till the next annual general meeting, is transacted at an extraordinary general meeting.
According to Section 100, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

The Board shall, at the requisition made by,—

(a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company.

The requisition made shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

**Procedure for meeting by requisitionists**

Procedure for calling a meeting by requisitionists is given in Rules 17 of the Companies (Management and Administration) Rules 2014.

1. The Board shall, at the requisition made by,—
   
   (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

   (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,

2. call an extraordinary general meeting of the company. [Section 100(2)]

3. The requisition made shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100(3)]

4. If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Section 100(4)]

5. A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. [Section 100(5)]

6. The members may requisition convening of an extraordinary general meeting in accordance with subsection (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting. [Rule 17(1)]
The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. Requisitionists should convene meeting at registered office or in the same city or town where registered office is situated and such meeting should be convened on working day. [Rule 17(2)]

If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114. [Rule 17(3)]

The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition. [Rule 17(4)]

No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting. [Rule 17(5)]

The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting. [Rule 17(6)]

Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition. [Rule 17(7)]

The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting. [Rule 17(8)]

Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6)]

**PROCEDURE FOR CLASS MEETINGS**

Regulation 6 of the Table F of Schedule I of the Act provides as under:

(a) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(b) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.

The articles of companies will have to be suitably modified or incorporated depending on the needs of each case on the above lines.

A class meeting will have to be convened by the Board of directors in the same manner as calling any other extraordinary general meeting. The Board will authorise the secretary or any other competent officer to issue the notice.
The other procedures/provisions relating to service of notice, persons to whom notice should be given, chairman, voting, proxy, minutes, poll etc. are similar to those discussed earlier in case of general meetings.

Further if the company is listed then it has to submit to the stock exchange, within 48 hours of conclusion of class meeting, details regarding the voting results in the format prescribed in clause 35A of the listing agreement.

**PRACTICAL ASPECTS OF DRAFTING RESOLUTIONS AND MINUTES**

**Resolutions**

All resolutions, no matter how simple they are, should be drafted in clear and distinct terms since resolutions embody the decisions of the meetings. The following points should be remembered while drafting resolutions, both for Board and general meetings:

(a) All essential facts are included in the resolution - e.g., the resolution for re-appointment of a managing director should indicate that the re-appointment is subject to the approval of the Central Government if approval of the Central Government is required and should also cover the period of appointment, terms and conditions of such appointment.

(b) Surplus and meaningless words or phrases should not be included in resolutions.

(c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialled by the chairman for the purpose of identification.

(d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.

(e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.

(f) A resolution must indicate when it will become effective.

(g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.

(h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.

(i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.

(j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

**Minutes**

The matters which must be covered whilst drafting the minutes of a meeting whether for Board or general meetings have been stated in Section 118 of the Act. Minutes are of two types namely, minutes of narration and minutes of resolution, but in practice the precise form of minutes is often a matter of discretion and lies somewhere between two methods or a combination of the two.

**Minutes of Narration**

These are records of events or items of business which do not required formal resolution to establish them. Generally these include minutes covering:
(a) Names of those who are present at the meeting;
(b) Signing of minutes of the previous meeting;
(c) Recording of leave of absence;
(d) Taking note of financial statements, reports, plans, etc., which are tabled and considered at the meeting;
(e) Recording and tabling and consideration of correspondence; and
(f) Taking a note of receipt of notice of interest from the directors.

Minutes of Resolution

These are records of formal decisions of directors or shareholders and are prefixed by the word 'Resolved', such a resolution may simply cover the resolution passed or alternatively may also indicate the name of the proposer and the seconder and showing the quantum of votes with which it was carried. Normally, however, especially minutes of Board meetings, do have a preamble or background leading to the decision namely the resolution that was passed. Such a recital or preamble or background is a brief explanation why it was necessary or expedient to pass the resolution.

The Secretary is responsible for convening the Board meetings and for drafting out the explanatory statement as well as the resolution for a general meeting. Minutes of a Board meeting can be drafted keeping in mind the points required to be taken into consideration whilst drafting resolutions and explanatory statement for a general meeting.

The background or preamble of a Board resolution will be basically the portion covered by material facts. Secondly, the resolution at a Board meeting will be similar to that of a resolution at a general meeting except that in case of Board minutes it will indicate that it is subject to the approval of both the shareholders and the Central Government/NCLT wherever required, whereas the resolution passed at a general meeting will only indicate that 'it is subject to the approval of the Central Government/NCLT/Other Regulatory Authorities, wherever required. Finally, the interest of directors shall be stated in the minutes of the Board meeting, as interested directors are not eligible to participate, discuss or vote on a resolution in which they are interested or concerned. Further, interested directors are also not counted for the purpose of quorum.

It will be evident from the above that except for inspection of documents which is covered in the explanatory statement, the resolution for a Board meeting will cover all other aspects of explanatory statement as well as resolution to be adopted at a general meeting.

Secretarial Standard on Minutes

This Secretarial Standard on Minutes issued by the ICSI has dealt with Minutes of the Meetings of:
(a) the Board or Committees of the Board,
(b) members,
(c) debentureholders,
(d) creditors,
(e) others as may be required under the Act, and matters related thereto.

The Standard prescribes a set of principles for maintaining, recording, signing, dating, inspecting and preserving the minutes so as to ensure that the minutes record the true proceedings of the meetings and are accessible for future reference.

Some of the features of this Secretarial Standard which supplement the Company Law and on which the Companies Act is silent are:
Minutes should contain a summary of the proceedings of the Meeting, recorded fairly, correctly, completely and in unambiguous terms, and should be written in third person and past tense.

The Minutes should be entered and signed within thirty days from the conclusion of the Meeting.

The Chairperson should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

Minutes, once entered in the Minutes Book, should not be altered. However, minor errors may be corrected and initialled by the Chairperson even after the Minutes have been signed.

Minutes should not be pasted or attached to the Minutes Book.

Minutes, if maintained in loose-leaf form, should be bound at reasonable intervals.

The name of the Chairperson of the Meeting, the Chairpersons of the Audit Committee, the Nomination and Remuneration Committee and the Stakeholders Relationship Committee and the names of other Directors present at the Meeting should be recorded.

The fact that the required Quorum was present should be recorded.

The number of Members present in person and through representatives and Proxies should be recorded.

The presence of the Auditor and the Practicing Company Secretary, who has issued the Secretarial Audit Report, should be recorded.

If the Chairperson was interested in an item of business at the Meeting, the fact that he vacated the Chair and requested the Vice-Chairperson, if any, or some other Director or Member to Chair the Meeting to transact such business, should be recorded.

Minutes Book to record Minutes of General Meetings should be kept separately from those books used to record Minutes of any other meetings and should be kept at the Registered Office of the company.

The Minutes of all General Meetings should be preserved permanently.

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the transferor company should be preserved permanently by the transferee company, notwithstanding that the identity of the transferor company may not survive such arrangement.

Office copies of Notices and supporting papers relating to the Notices should be preserved in good order either in physical or electronic form for as long as they remain current or for ten years, whichever is later.

### Matters Requiring Sanction by Ordinary Resolution (Unless otherwise specified in the Articles)

(i) To change name applied by furnishing wrong or incorrect information [Section 4(5)(ii)]

(ii) to rectify the name of the company [Section 16(1)];

(iii) After the Capital Clause of MOA for Limited Company having share capital [Section 13]

(iv) conversion of unlimited company into limited company [Section 65]

(v) Acceptance of public deposit [Section 73(2)]

(vi) Authorize a representative to participate in a general meeting [Section 113(1)]

(vii) Appointment of auditor [Section 39]

(viii) Removal of a Director [Section 169(1)]

(ix) Company to have Board of directors [Section 149]
(x) Appointment of directors [Section 152]

(xi) Appointment of managing or whole time director [Section 196(4)]

(xii) Voluntary winding up after expiry of period fixed for existence [Section 304]

(xiii) Winding up of a company in final meeting of a company [Section 318(3)]

(xiv) Re – appointment of retiring director

(xv) Remuneration of director [Section 197]

**Matters Requiring Special Resolution**

(1) Alteration of article under entrenchment [Section 5(3)]

(2) Shifting of Registered Office outside local limit [Section 12(5)]

(3) Alteration of Memorandum [Section 13(1)]

(4) Change in object clause where money raised from public through prospectus and still has unutilized amount out of the money so raised [Section 13(8)]

(5) Conversion of private company into public company [Section 14(1)]

(6) Conversion of Public company into private company [Section 14(1)]

(7) Variation in the terms of a contract referred to in the prospectus or objects for which the prospectus was issued [Section 27(1)]

(8) Issue of Global Depository Receipt [Section 41]

(9) Variation of Shareholders rights[Section 48(1)]

(10) Issue of sweet equity shares [Section 54(1)]

(11) Issue of share capital under employee’s stock options [Section 62(1)(b)]

(12) Issue of share capital to any person other than members or employees [Section 62(1)(c)]

(13) Issue of convertible debenture [Section 62(1)(c)]

(14) Reduction of Share Capital [Section 66(1)]

(15) Funding of purchase of share by trust for benefit of employees [Section 67(3)]

(16) Buy back of shares other than through Board Resolution [Section 68(2)]

(17) Issue of Convertible Debenture [Section 71(1)]

(18) Place of keeping registers and returns other than registered office [Section 94(1)]

(19) Removal of auditor before expiry of term [Section 140(1)]

(20) Appointment of more than fifteen directors [Section 149(1)]

(21) Re- appointment of retiring independent director [Section 149(10)]

(22) Specify a lesser number of companies in which a director may be a director [Section 165(2)]

(23) Exercise of restricted powers by Board [Section 180(1)]

(24) Related Party Transaction in certain companies or above certain threshold limit [Section 188(1)]
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(25) Approval of certain non – cash transaction with directors [Section 192(1)]

(26) Appointment of managing director or whole time director or manager who has attained age of seventy [Section 196(2)]

(27) Appointment of managing or whole – time director or manager on certain terms [Section 197(4)]

(28) Request for investigation of affairs of the Company [Section 210(1)]

(29) Removal of the name of the company from the Register of Companies [Section 248(2)]

(30) Sanction of scheme by a sick company [Section 262(2)]

(31) Resolution for winding up of company by Tribunal [Section 271(1)]

(32) Voluntary winding up [Section 304]

(33) Power to remove and fill casual vacancy of company liquidator [Section 311]

(34) Power of company liquidator to accept certain consideration on sale of company property [Section 319(1)]

(35) Arrangement binding on company and creditors [Section 321(1)]

(36) Company liquidator to exercise certain powers [Section 342(1)]

(37) Disposal of books and papers [Section 347(1)]

(38) Applicability of Table – F of Schedule – I on company registered under Part – I of Chapter – XXI [Section 371(3)]

Matters Requiring Special Notice

(a) Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].

(b) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].

(c) Resolution to remove a director before the expiry of his period of office [Section 169(2)]

(d) Resolution to appoint another director in place of the removed director [(Section 169(5)]
NOTICE FOR BOARD MEETING

Notice for Board Meeting may be prepared and issued on the following pattern or as near thereto as may be possible.

NOTICE OF BOARD MEETING

Mr. ................................
Director,
New Delhi

Dear Sir,

A meeting of the Board of Directors of the Company will be held on ................................ (day of the week), the ................................ (date) ................................ (month) ................................ (year) at ................................ (a.m./p.m.) at the Registered Office of the Company. The Agenda of the business to be transacted at the meeting is enclosed/will follow.

You are requested to make it convenient to attend the Meeting.

Yours faithfully,

(Signature)

(Name) (Designation)

DRAFTING OF AGENDA AND NOTES ON AGENDA – PRACTICAL ASPECTS

1. While preparing the Agenda and notes thereon, good drafting is one of the essential aspects. While part of the Agenda consists of routine items, the drafting of which does not pose any problem, where there are important or non-routine items, the Agenda has to be prepared carefully, employing not only good drafting skill but also an understanding of commercial considerations and the business environment. For the purpose:

   (a) Divide the Agenda into two parts: - the first part containing usual or routine items and the second part containing other items which can further be bifurcated as (i) items for approval; and (ii) items for information/noting.

   (b) For each item of the Agenda give an explanatory note followed by a draft of the resolution, if any, proposed to be passed. The explanatory note should give sufficient details of the proposal, including the proposed resolution, if any, with references to the provisions of the Companies Act, the Memorandum and Articles of Association, other relevant documents, decisions of previous Board or general meetings, statutory enactments, case laws, etc. For the purpose, the note should be drafted under the following heads:

      (i) Background (or Introduction);
      (ii) Proposal;
      (iii) Provisions of Law;

1. This should be on the letter-head of the Company.

2. If at some other venue, give detailed location of such venue.

3. The Agenda, together with the notes thereon, may either be sent along with the Notice or may follow at a later date.

4. The telephone numbers and e-mail address of the person signing the Notice should be given so that Directors may confirm their attendance or otherwise communicate directly with such person.
(iv) Decision(s) required; and
(v) Interest, if any, of any Directors.

2. The Secretary should specify a date by which items requiring approval/ noting by the Board should be given to him by the concerned Departments for inclusion in the Agenda and a deadline for furnishing papers in support of each such item.

3. The Secretary should refer to the Agenda of previous Meetings, to see whether any items had been deferred and should include them for discussion at the ensuing Meeting.

4. The Secretary should also refer to the Minutes of the Meeting held during the corresponding period of the previous year to see whether there are any recurring periodic items (e.g. interim/final dividend, quarterly results).

5. The Secretary should finalise the Agenda in consultation with the Chairman/Managing Director.

6. Notes on policy matters should present clear-cut issues in order to facilitate due deliberations and precise decisions at the Meeting.

7. Circulation of draft resolutions to be passed at the Meeting would enable Directors to know in advance as to what they are required to consider and save time at the Meeting, facilitate discussion and simplify the preparation of minutes of the Meeting.

8. The names of those persons who will be attending the Meeting as invitees should be given in the notes to the relevant items of the Agenda. e.g. if there is an item for approval of the Capital Budget, the note thereon should state that Mr. A, Chief Financial Officer, will make a presentation on the Budget.

9. As a good corporate secretarial practice, the Secretary should keep, in addition to a record of matters to be discussed, a separate folder of all such correspondence, notes and documents which need to be dealt with at the Meeting. In preparing the Agenda, the Secretary should refer to this folder to ensure that all items which require the decision of the Board are included in the Agenda.

10. A separate Agenda item number should be given for items which are brought forward for discussion from a previous Meeting rather than placing them under the omnibus Agenda item of “matters arising from previous Meetings” for example :

   “Item No. 9. DISINVESTMENT MANDATE

   To note the appointment of the Company as advisors for the disinvestment process of ABC Limited (Refer to Item No. 18 of the minutes of the Meeting held on…….).”

11. A few extra copies of the Agenda should always be kept available at the Meeting.

AGENDA OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF ………………………… COMPANY LIMITED, TO BE HELD ON ………………….. (DAY), ………………… (DATE, MONTH AND YEAR) AT ………………… (TIME) AT…………………… (VENUE)

1. To elect the Chairman of the Meeting.
2. To take note of the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To take note of the situation of the Registered Office of the company.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of the Chairman of the Board.
8. To fix the financial year of the company.
9. To consider the appointment of the first Auditors.
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorize printing of share certificates.
13. To authorize the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve preliminary expenses and preliminary contracts.
15. To consider the appointment of the Managing Director/Whole-time Director/Manager and Secretary, if applicable and other senior officers.

NOTES ON AGENDA FOR THE FIRST BOARD MEETING

Item No. 1

Item: To appoint chairman of the meeting

Note: In terms of Article ................. of the Articles of Association of the Company, the Directors to select one of them as Chairman of the meeting.

Item No. 2

Item: To note the certificate of incorporation of the company, issued by the Registrar of Companies.

Note: Original Certificate of Incorporation No. .................... dated ............... received from the Registrar of Companies together with a copy of the Memorandum and Articles of Association will be placed before the meeting.

Item No. 3

Item: To take note of Memorandum and Articles of Association of Company, as registered.

Note: Printed copies of the Memorandum and Articles of Association as registered with the Registrar of Companies will be placed before the meeting.

Item No. 4

Item: To note the situation of the registered office of the company.

Note: The Board may kindly take note of the situation of the registered office of the company as intimated to the Registrar of Companies.
Item No. 5

Item: To note the appointment of the first directors of the Company

Note: Mr. ......................... and Mr. ......................... are the first directors as stated in Article ......................... of the Articles of Association of the company and as intimated to the Registrar of Companies.

Item No. 6

Item: To read and record the notices of disclosure of interest given by the Director.

Note: The Board may kindly record the notices of disclosure of interest given by Directors of the Company.

Item No. 7

Item: To elect chairman, appoint Managing Director and Secretary.

Note: Article ......................... of the Articles of Association of the company relating to the Chairman of the Board be referred to the Board. The Board may kindly appoint a managing director and a secretary of the company.

Item No. 8

Item: To consider the appointment of first auditors of the company.

Note: Certificate in writing received from the proposed Auditors will be placed before the meeting for appointment of the first Auditors of the company.

Item No. 9

Item: To approve preliminary expenses and preliminary contracts.

Note: Statement of preliminary expenses and preliminary contracts incurred will be placed before the meeting.

Item No. 10

Item: To adopt the common seal of the company.

Note: Common Seal of the company will be placed before the meeting for approval, adoption and safe custody.

Item No. 11

Item: To authorise printing of the Share Certificate form.

Note: Design sample of Share Certificate will be placed before the meeting for approval and printing.

Item No. 12

Item: To place draft statement in lieu of prospectus.

Note: Draft statement in lieu of Prospectus will be placed before the meeting.

Item No. 13

Item: To consider plan of action for commencement of business.

Note: Board be informed that Certificate of Commencement of Business is essential for commencement of
business by a public company.

**Item No. 14**

*Item:* To place copies of agreements entered into prior to incorporation.

*Note:* Copy of the Memorandum of Understanding entered into between Mr. ......................... Chairman of the company and M/s. ......................... be placed before the Board.

**Item No. 15**

*Item:* To appoint bankers and to open bank account of the Company.

*Note:* Board be informed about the bankers of the company and the opening of the Company’s Bank Account with ......................... Bank.

**Item No. 16**

*Item:* To decide payment of sitting fees

*Note:* Board be informed about payment of sitting fees to the Directors in accordance with Article ......................... of Articles of Association of the Company.

**Item No. 18**

*Item:* To consider any other matter with the permission of the chair.

*Note:* Board may discuss any other item apart from notified items of business with the permission of the chair.

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**MINUTES OF THE FIRST BOARD MEETING OF ........................., BOARD MEETING NO 1/2014 HELD ON ......................... (DAY), ......................... (DATE, MONTH AND YEAR), AT ......................... (TIME), AT ......................... (VENUE)

**Present:**

1. .........................
2. .........................
3. .........................
4. .........................

**In attendance:**

.........................

**Company Secretary**

1. Chairman of the Meeting

   Mr ......................... was unanimously elected the Chairman of the Meeting.

2. Incorporation of the company

   The Board was informed that the company had been incorporated on........ and the Directors noted the Certificate of Incorporation vide CIN . date........ issued by the Registrar of Companies................. .
The Board also took note of the filing of Forms INC-1, 11, 21 and 22 with the Registrar of Companies.

3. Memorandum and Articles of Association

A printed copy of the Memorandum and Articles of Association of the company as registered with the Registrar of Companies was placed before the Meeting and noted by the Board.

4. Registered Office

The Board noted that the Registered Office of the company will be at………………., the intimation of which had already been given to the Registrar of Companies.

5. First Directors

The Board noted that Mr. …...............................……………, Mr. .…......................…………… and Mr.……………………… were named as the first Directors of the Company in the Articles of Association of the company.

6. General notices of disclosure of interest

General notices of interest under Section 184(1) of the Companies Act 2013, received from Mr. ……………, Mr. ………..................................................…. and Mr.….............................………………, Directors of the company, on ………………, were placed on the table and the contents thereof were read and noted by the Board.

7. Chairman and Vice-Chairman of the Board

The Board decided to appoint a Chairman of the Board, who would be the Chairman for all Meetings of the Board as also for General Meetings of the Company and, accordingly, the following Resolution was unanimously passed :

“RESOLVED THAT, until otherwise decided by the Board, Mr.…………………………………. be and is hereby elected Chairman of the Board of Directors and also for all General Meetings of the company;”

“RESOLVED FURTHER THAT, until otherwise decided by the Board, Mr. ……. be and is hereby elected Vice-Chairman of the Board of Directors of the company”.

8. Appointment of Auditors

The Chairman stated that Messrs ……...................., Chartered Accountants,……….......................................,. had been approached for their consent to their appointment as the auditors of the company. A letter received from Messrs………....., conveying their consent was placed before the Directors and the Board unanimously passed the following Resolution :

“RESOLVED THAT Messrs ………………………………., Chartered Accountants,…………………., be and are hereby appointed pursuant to Section 139(6) of the Companies Act, 2013, Auditors of the company to hold office from the date of this meeting till the conclusion of the first Annual General Meeting of the company”.

9. Common Seal

The Chairman produced at the Meeting a Seal bearing the company’s name, to be the Common Seal of the company, and the following Resolution was unanimously passed :
“RESOLVED THAT the Common Seal of the company, the impression of which appears in the margin against this Resolution, be and is hereby adopted as the Common Seal of the company”.

12. Appointment of Company Secretary

The Chairman informed the Board that Mr. …………., who holds the prescribed qualification for appointment as Company Secretary and who is competent to hold the position of secretary of the company should be considered for appointment as Company Secretary. The Board agreed and the following Resolution was unanimously passed:

“RESOLVED THAT Mr. ………………………………………………………., aged……., holding the prescribed qualification be and is hereby appointed as Secretary of the company, on the terms specified in the draft agreement/appointment letter, placed on the table duly initialled by the Chairman for the purpose of identification.

“RESOLVED FURTHER THAT the Company Secretary do perform the duties which may be performed by a secretary under Section 205 of the Companies Act, 2013, and any other duties assigned to him by the Board or the Chief Executive and do report to the Chief Executive of the company”.

13. Appointment of bankers

The Chairman informed the Board that a current account in the name of the company be opened in …………………………………….Bank. The Board agreed and the following Resolution was passed unanimously:

“RESOLVED THAT a current account be opened in the name of ……………………………………. Limited with the ………. Bank, ……………., and that the Bank be instructed to honour all cheques, bills of exchange, promissory notes or other orders which may be drawn by/accepted/made on behalf of the company and to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the company and that any two of the following directors/officers of the company, jointly, namely:

(a) Mr ...Director
(b) Mr ...Director
(c) Mr ...General Manager (Finance)
(d) Mr ...Company Secretary
be and are hereby authorised to sign on behalf of the company cheques or any other instruments/documents drawn on or in relation to the said account and the signatures shall be sufficient authority and shall bind the company in all transactions between the Bank and the company”.

14. Printing of Share Certificates

The Chairman informed the Board that it would be necessary to print share certificates for allotment of shares to the subscribers to the Memorandum of Association as well as for any further issue of capital. A format of the share certificate was placed on the table and the Board passed the following Resolution:

“RESOLVED THAT equity share certificates of the company be printed, in the format placed before the meeting and initialled by the Chairman for the purpose of identification, and that the certificates bear serial Nos. 1 to 1,00,000.”
“RESOLVED FURTHER THAT the stock of blank share certificates be kept in safe custody with Mr. …………….”.

15. Issue of Share certificates to the subscribers

The Chairman informed the Board that Mr. …………, Mr…………………………………………………………….
and Mr. ………………………………………………., who are subscribers to the Memorandum of Association of the company, had each agreed to take and have taken 10 (ten) equity shares in the company. He further informed the Board that, pursuant to Section 56(4) of the Companies Act, 2013, the names of the said subscribers to the Memorandum of Association have been entered as the members in the register of members and that equity share certificates be issued to them. The following Resolution was passed unanimously:

“RESOLVED THAT Mr. ……………………………………., Mr. ………………………………………….. and Mr. …………………, the subscribers to the Memorandum of Association of the company who had agreed to take and have taken 10 (ten) equity shares each, of the company, be issued equity share certificates under the Common Seal of the company and that Mr. ……………………………. and Mr. ………………………………, Directors of the company, and Mr. ………………………………. Company Secretary, shall sign the said certificates”.

16. Approval of Statement of Preliminary Expenses incurred

The Chairman placed before the Meeting a statement of expenses incurred in connection with the formation of the company. The Board approved and passed the following Resolution:

“RESOLVED THAT preliminary expenses of ₹……... incurred/contracted be and are hereby approved and confirmed as per the statement submitted by the Chairman.”

“RESOLVED FURTHER THAT the preliminary expenses of ₹……... incurred by Mr. ………., Director of the Company, in the matter of incorporation of the Company, be and are hereby approved and the same be reimbursed to the said Mr. ………..., Director, out of the funds of the company”.

17. Next Meeting

It was decided to hold the next Board Meeting at ………. a.m./p.m. on ………. (Day), ………..(Date, Month and Year) and……………. (Venue).

18. Termination of the Meeting

The Meeting ended with a vote of thanks to the chair.

.........................

Chairman

Entered on

Date .........................
AGENDA OF A SUBSEQUENT MEETING OF THE BOARD OF DIRECTORS AGENDA FOR THE MEETING OF THE BOARD OF DIRECTORS OF COMPANY LTD., TO BE HELD ON (DAY), (DATE, MONTH AND YEAR), AT (TIME), AT (VENUE)

1. Attendance and Minutes
   1.1 To elect a Chairman of the Meeting (in case there is no permanent Chairman);
   1.2 To grant requests from directors for leave of absence, if any;
   1.3 To note the minutes of the previous Meeting;
   1.4 To note resolutions passed by circulation;
   1.5 To note minutes of meetings of Committee(s);
   1.6 To note certificate of compliance.

2. Directors (including, where applicable, Alternate Directors)
   2.1 To read and take note of the disclosure of interests;
   2.2 To read and take note of the disclosure of shareholdings;
   2.3 To sign the register of contracts;
   2.4 To give consent to a contract in which a Director has an interest;
   2.5 To consider appointment(s) and fixation of remuneration(s) of managerial personnel;
   2.6 To consider and to give consent for the appointment of a Managing Director/Manger who is already a Managing Director/Manager of another company;
   2.7 To take note of nomination of Director(s) made by financial institution(s)/BIFR/Central Government/ bank(s);
   2.8 To appoint additional Directors(s);
   2.9 To appoint a Director to fill the casual vacancy of a Director;
   2.10 To accept/take note of resignation(s) of Director(s)/withdrawal of nominee Director(s);
   2.11 To consider loans to Directors;
   2.12 To consider payment of commission to Non-Executive Directors;
   2.13 To constitute Committees of the Board;
   2.14 To delegate powers to Managing/Whole-time Directors.

3. Shares
   3.1 To authorise printing of new share certificates;
   3.2 To approve requests for transfer/transmission/transposition of shares;
   3.3 To authorize issue of duplicate share certificates;
   3.4 To authorise issue of share certificates without surrender of letters of allotment;
   3.5 To refuse to register transfer of shares;
   3.6 To consider the position of dematerialized and rematerialized shares and the beneficial owners.

4. Share Capital
4.1 To make allotment of shares;
4.2 To make calls on shares;
4.3 To forfeit shares;
4.4 To issue bonus shares;
4.5 To issue “rights” shares;
4.6 To make fresh issue of share capital;
4.7 To authorise buy-back of shares.
5. Debentures, Loans and Public Deposits
5.1 To consider matters relating to issue of debentures including appointment of Debenture Trustees;
5.2 To borrow money otherwise than on debentures and by way of Commercial Paper, Certificate of Deposit, etc.;
5.3 To approve the text of the advertisement for acceptance of fixed deposits and to sign the same.
6. Long term loans from financial institutions/banks
6.1 To authorise making applications/availing long term loans from financial institutions/banks and to authorise officers to accept modifications, approve the terms and conditions of loans, execute loan and other agreements and to affix the Common Seal of the company on documents;
6.2 To accept terms contained in the letter of intent of financial institutions/banks;
6.3 To approve draft loan agreements and other documents, as finalised;
6.4 To authorise execution of hypothecation agreements and to create charges on the company’s assets;
6.5 To note the statement of total borrowings/indebtedness of the company.
   In case of availing of loans/financial assistance from banks/financial institutions, the draft resolutions are generally provided by the banks/financial institutions, which may be modified as appropriate and circulated to the Directors along with the item of the Agenda.
7. Banking Facilities
7.1 To open/operate/close bank accounts;
7.2 To delegate the authority to avail bank loans;
7.3 To renew/enhance banking facilities;
7.4 To open special/separate banks accounts for dividend, deposits and unpaid amounts thereof.
8. Investments, Loans and Guarantees
8.1 To consider investment in shares of subsidiary companies;
8.2 To consider inter-corporate investments in shares/debentures;
8.3 To consider other investments;
8.4 To consider placing inter-corporate deposits;
8.5 To consider giving guarantees for loans to other bodies corporate or security in connection with such loans.
9. Review of Operations
9.1 To review operations;
9.2 To consider periodic performance report of the company;
9.3 To consider payment of interim dividend.

Brief notes on the working of the company or its units or branches should contain figures comparable with the figures for the corresponding period of the previous year and that of the budget or forecast for that period.

10. Projects
10.1 To note the progress of implementation of modernization/new project(s) in hand;
10.2 To consider expansion/diversification.

11. Capital Expenditure
11.1 To sanction capital expenditure for purchasing/replacing machinery and other fixed assets;
11.2 To approve sale of old machinery/other fixed assets of the company.

The notes on agenda items relating to capital expenditure should include the necessity of incurring the expenditure, quantum of expenditure to be incurred, mode of financing the capital expenditure, the pay back period and the time schedule by which the capital expenditure will be incurred or, in case of project expenditure, the time by which the project will be completed.

12. Revenue Expenditure
12.1 To approve donations;
12.2 To sanction grants to public welfare institutions;
12.3 To sanction staff welfare grants and other revenue expenditure;
12.4 To approve writing off bad debts.

13. Auditors, etc.
13.1 To appoint an auditor to fill a casual vacancy in the office of the auditor;
13.2 To appoint a cost auditor;
13.3 To appoint a Practicing Company Secretary.

14. Personnel
14.1 To appoint, accept the resignation of, promote or to transfer any senior officer of the company;
14.2 To approve/amend rules relating to employment/employee welfare schemes, and provident fund/super-annuation/gratuity schemes of the company;
14.3 To sanction loan limits for officers and staff for personal exigencies or for purchase of a vehicle, land, house, etc.;
14.4 To formulate personnel policies.

15. Legal Matters
15.1 To note and to give directions on significant matters;
15.2 To consider amendment to memorandum/articles of association;
15.3 To approve agreements.
16. Restructuring
16.1 To approve merger/demerger/amalgamation;
16.2 To consider formation of joint ventures;
16.3 To consider subsidiarisation/desubsidiarisation of other companies.

17. Delegation of Authority
17.1 To nominate occupier/factory manager under Factories Act; an owner under Mines Act;
17.2 To delegate powers to representatives to attend general meetings of companies in which the company
holds shares;
17.3 To delegate powers to approve transfers, transmission, issue of duplicate share certificates/allotment
letters, etc.;
17.4 To delegate authority with regard to signing of contracts, deeds and other documents; execution of
indemnities, guarantees and counter guarantees; filing, withdrawing or compromising legal suits;
17.5 To delegate authority with regard to registration, filing of statutory returns, declarations, etc. under company
law, central excise, sales tax, customs and other laws;
17.6 To delegate powers relating to appointments, confirmations, discharge, dismissal, acceptance of
resignations, granting of increments and promotions, taking disciplinary actions, sanctioning of leave,
travel bills and welfare expenses, etc.;
17.7 To delegate powers to grant advances to contractors, suppliers, agents, etc.;
17.8 To delegate powers relating to purchase/construction and sale of stores, spare parts, raw materials, fuel
and packing materials; fixed assets; shares or debentures of companies; government securities; and to fix
limits upto which executives can authorise or sanction payments; operating of bank accounts; etc.;
17.9 To delegate powers to engage consultants, retainers, contractors, etc.;
17.10 To delegate powers to provide financial assistance to employees, etc. for personal exigencies or for purchase
of a vehicle, house, etc.;
17.11 To delegate powers to allow rebates/discounts on sales; to incur expenditure on advertisements, to settle
claims, to sanction donations; etc.

18. Annual Accounts
18.1 To consider approval of annual accounts – after approval thereof by the Audit Committee, if any;
18.2 To approve appropriation of profits and transfers to reserves;
18.3 To consider recommending dividends to shareholders;
18.4 To take note of the Auditors’ report;

To have a fruitful discussion on the Agenda relating to approval of accounts, it would be advisable to
highlight items which have had an impact on the financial results for that year and also to circulate a copy
of the draft accounts in advance.

Where the Board is to consider the rate of dividend, the note should contain the restrictions imposed under
the Companies Act and by the financial institutions; past dividend record of the company; dividend policies
of companies of comparative standing in the same industry; profitability and liquidity position of the company;
it’s future plans and capital commitments, etc.

19. Annual General Meeting
19.1 To approve the Directors’ report;
19.2 To ascertain the Directors retiring by rotation;
19.3 To convene annual/extraordinary general meeting;
19.4 To close the register of members;
19.5 To consider matters requiring shareholders’ approval;
19.6 To approve the Notice of the General Meeting.

20. Miscellaneous matters
20.1 To consider matters arising out of the Minutes of the previous Meeting;
20.2 To fix the date and venue of the next Meeting;
20.3 Any other matter with the permission of the Chair

NOTES ON AGENDA OF BOARD MEETING

Board meeting on........................ (day)...........................(date).................2014…at the ....................... (Venue)
at .................. (time)

Agenda Item No. 1

Note : The Chairman of the Board shall take the Chair. In his absence, any one of the director shall be elected Chairman of the meeting.

Agenda Item No. 2

Leave of absence

Notes : Leave of absence will be granted to those Directors who have expressed their inability to attend the Board meeting.

Agenda Item No. 3

Confirmation of the Minutes of last Board meeting

Notes : The Minutes of the last Board Meeting held on ..................... of which a copy was circulated amongst the directors of the company, are submitted herewith for confirmation and signatures by the Chairman of the meeting.

Agenda Item No. 4

Resolution passed by circulation

Notes : A copy of the resolution passed by circulation on ............... by the directors of the company is circulated herewith for taking on record.

Agenda Item No. 5

Resolution passed at the Committee meeting

Notes : A copy of the resolution passed at the meeting of the Committee of Directors held on ............... is circulated herewith for taking on record.

Agenda Item No. 6

Registration of transfer of Shares
Notes: Details of registration of transfer of shares approved subsequent to the last Board Meeting are submitted for taking on record.

Agenda Item No. 7

Notice of Interest, if any, received from Directors

Notes: Notice dated .................. received from .................... that he has joined the Board of ............ Co. Ltd. with effect from ................ will be submitted at the meeting for taking on record.

Agenda Item No. 8

Managing Director’s Report on the performance of the company

Notes: The Managing Director will brief the Board on the performance of the Company since the last meeting and the performance during the year ended ............ The statement of working results for the months of April and May of the current financial year are submitted.

Statutory Compliance Certificate is also submitted for taking on record.

Agenda Item No. 9

Cost Audit

Notes: The Central Government is vested under Section 148 with the power to order audit of its cost accounts. As maintenance of cost accounts is applicable to the Company, the Department of Company Affairs has issued an order directing an audit of cost accounts for every year. The auditor shall be appointed by the Board subject to the approval of the Central Government. The following resolution is submitted for the consideration and approval of the Board:-

Draft Resolution:

“RESOLVED THAT pursuant to the order No......................... dated.................. of the Central Government, copy whereof was placed on the table directing audit of cost accounts of the Company every year, Mr...................... Cost Accountant, Membership No. ........................................ who has certified that the appointment, if made, will be in accordance with Section 148 of the Act, be appointed for the year 2013-2014 subject to the approval of the Central Government.”

“RESOLVED FURTHER THAT a remuneration of ₹ ......................... be paid to the Cost Auditor plus reimbursement of incidental expenses incurred by the Auditor for carrying out the cost audit.”

“RESOLVED FURTHER THAT the Secretary be entrusted with responsibility to obtain the approval of the Central Government to the appointment of Mr...................... as Cost Auditor.”

Agenda Item No. 11

Appointment of a Whole-time Director

Notes: As the activities of the company are growing, it is proposed to appoint Mr............................... who has more than 25 years of experience in the company as a Director on the Board, which will be held by him as a Whole-time Director having been in the full-time employment of the Company. He will be paid remuneration in accordance with the Schedule V of the Act and his appointment will be subject to the approval of the Company in general meeting. If the proposal is found in order, the Board may consent to the following resolution:

Draft Resolution:

“RESOLVED THAT Mr. ...................... who is in the employment of the company, be appointed a Director on the Board and be deemed to be a Whole-time Director.”

RESOLVED FURTHER THAT, subject to the approval of the Company in general meeting, Mr. ......................... be and is hereby appointed a Whole-time Director for a period of five years with effect from .........................
on the basis of the remuneration, terms and conditions set out hereunder which are in conformity with Schedule V to the Act, namely:

1. (a) Salary: ₹ ........................................... per month.
   (b) Commission: At the rate of 1 per cent of the net profit of the company.

2. Perquisites

**CATEGORY 'A'**

(i) Housing:

(I) The expenditure by the company on hiring accommodation to the appointee shall not exceed 60 per cent of the salary over and above 10 per cent payable by him.

OR

(II) Where the accommodation is owned by the company, 10 per cent of the salary of the appointee shall be deducted by the company towards house rent.

OR

(III) In case no accommodation is provided by the company, house rent allowance shall be paid to the appointee not exceeding 60 per cent of his salary.

(ii) Expenditure may be incurred by the company on gas, electricity water and furnishings in respect of the accommodation up to a ceiling of 10 per cent of the salary of the appointee.

(iii) Medical reimbursement to the appointee for self, and family up to one month's salary in a year or three months' salary over a period of three years.

(iv) Leave travel concession to the appointee and his family once in a year as per rules of the company.

(v) Club fees will be paid by the company in respect of appointee's membership subject to a maximum of two clubs. Admission and life membership fee can not be paid by the company.

(vi) Personal accident insurance may be arranged for the appointee subject to the condition that the annual premium shall not exceed ₹ 4000.

**CATEGORY 'B'**

The following perquisites will also be extended to the appointee:

1. Company's contribution to provident fund and superannuation fund or annuity fund where the said contributions are up to the limits which are not taxable under the Income Tax Act, 1961.

2. Gratuity should not exceed half month's salary for each completed year of service. Encashment of leave at the end of the term will not also be included in the monetary value of perquisites.

**CATEGORY 'C'**

Provision of car to the incumbent for use on company's business and of telephone at residence will not be considered as perquisite.

“RESOLVED FURTHER THAT the necessary certificate signed by the secretary confirming compliance with the requirements of Schedule V in respect of the appointment of the Whole-time Director be filed with the Registrar of Companies in terms of Section 149 of the Act and that an agreement on the basis of the draft circulated to the Directors and hereby approved be entered into with the Whole-time Director after the company in general meeting approves the appointment which will be signed on behalf of the company by any two directors and the common Seal of the Company will be affixed in their presence.”
“RESOLVED FURTHER THAT the said appointment shall be placed for approval by the general meeting at the forthcoming Annual General Meeting by way of ordinary resolution.”

Agenda Item No. 12

(1) Remuneration to Non-Executive Directors

Notes: Section 197 of the Act provides that a Director who is neither a whole-time Director nor a Managing Director or all such Directors may be paid remuneration by way of commission if the proposal is approved by the general meeting by a special resolution. Such commission cannot ordinarily exceed one per cent of the net profits of a company where there is already a Managing Director and/or Whole-time Director in the company concerned or three per cent of the net profits where the company does not have Managing/Whole-time directors.

Further as far as the Articles of association of the company is concerned, there is no provision in the Articles permitting (the Board to pay commission to the non-executive directors. Hence the articles of the Company needs to be modified to incorporate a suitable provision for the payment of commission to such Directors.

Thus to enable the Board to implement the proposal, approval of the Central Government and of the company in general meeting are required. Accordingly the following resolutions are submitted for Board’s consideration:

Draft Resolution:

“RESOLVED THAT subject to the approval of the Central Government under Section 197 of the Companies Act, 2013 and subject to the approval of the company in general meeting, payment of commission not exceeding one per cent of the net profits of the Company computed in the manner laid down in Section 198 of the Act for a period of five years commencing from the financial year ended 31st March, 2014 and at the rate of 3 per cent of the net profits computed in the said manner for any one or more years where the company shall not have a Managing and/or Whole-time Director or Manager during any such year out of the said financial years be paid to the Non-Executive Directors to be shared equally amongst such Directors.

RESOLVED FURTHER THAT necessary notices be published in newspapers in terms of Section 201 of the Act and the Secretary be and is hereby authorised to make the necessary application to the Central Government.”

(2) Amendment of Articles

Notes: The Board may recommend the following resolution as special resolution for the approval of general meeting at the forthcoming Annual General Meeting:

“RESOLVED THAT the Articles of Association of the Company be altered by the incorporation therein of the following new Article................ after existing Article................ the Directors of the company (other than a managing Director and a Whole-time Director) may be paid remuneration, in addition to fees for the meetings of the Board or any Committee attended by them on the lines prescribed in the second proviso of Section 197(1), by way of commission if the company, by a special resolution or in any other manner as may be applicable from time to time, authorises such payment provided that such commission shall not in the aggregate exceed three per cent of the net profits of the company and where the company has a Managing Director and/or Whole-time Director or a Manager in any year, such commission shall not exceed one per cent of the net profits of the Company, said net profits having been computed in the manner laid down in section 198 of the Act and further that such remuneration shall be paid to all the Directors for the time being in office (other than a Managing director or Whole-time Director) or to any one or more of them in such proportion as the Board may by resolution decide, or equally to all such Directors.

RESOLVED FURTHER THAT the Secretary be and is hereby authorised to take necessary action to obtain the approval of the general meeting at the forthcoming Annual General Meeting.”
Agenda Item No. 13

Accounts of the Company for the year ended 31st March, 2014

Notes: Draft of the Balance Sheet as at 31st March, 2014 and the Profit and Loss Account for the year ended as on the said date as circulated to the Directors may be considered for approval. The Board may pass the following resolution after deciding the appropriations to be made from the profits:

Draft Resolution:

“RESOLVED THAT the Profit and Loss Account of the Company for the year ended 31st March, 2012 and the Balance Sheet as on that date be and are hereby approved and the following amounts towards tax and in respect of appropriations against the profits be made as under:

Profit for the year ......................
Profit brought forward ....................
Provision for Taxation .....................
Transfer to Debenture Redemption Reserve .....................
Transfer to General Reserve as per Transfer of Profits to Reserve Rules .....................
Interim dividend paid on ............... Proposed final dividend .....................
Profit carried forward .....................
RESOLVED FURTHER THAT the accounts be signed on behalf of the Board by Mr.................. Chairman and Mr .................. Managing Director and Mr .................... Company Secretary and be then passed on to the Auditors for their report.”

Agenda Item No. 14

Recommendation of Final Dividend

Notes: The following resolution is for approval of the Board. The dividend recommended is in accordance with the provisions of Section 20 of the Companies Act, 2013 and the Companies

Draft Resolution:

“RESOLVED THAT Final Dividend at the rate of `.................... per equity share of ` 10 each aggregating ` ..................... be and is hereby recommended for the approval of the members at the forthcoming Annual General Meeting.
RESOLVED FURTHER THAT the dividend, if declared at the Annual General Meeting, be paid, to those shareholders whose names appear in the books of the company on .................... (date of the Annual General Meeting).”

Agenda Item No. 15

Take note of the Directors Retiring and Eligible for Reappointment

Notes: It is submitted to the Board that out of the Directors subject to the retirement by rotation, Mr.................. and Mr. ............................. Directors are due to retire at the forthcoming Annual General Meeting and being eligible, offer themselves for reappointment.

Agenda Item No. 16

Taking note of the Certificate from the retiring Auditors

Notes: It is submitted to the Board that the retiring Auditors, .................... have furnished a certificate to the
Company in terms of Section 139(9) of the Act to the effect that if they are reappointed, they will be Auditors of the number of companies as specified in Section 141(3)(g). This may be noted by the Board.

**Agenda Item No. 17**

**Consideration of Draft Directors’ Report**

*Notes*: The draft Directors’ Report circulated to the Directors along with particulars of conservation of energy, technology absorption and foreign exchange earning and outgo in the prescribed format and the particulars of employees as specified and Compliance Certificate by the Secretary in whole-time practice placed as Annexures to the draft Report, may be considered and approved by the Board. The Board may request the Chairman to sign the Directors Report on behalf of the Board.

**Agenda Item No. 18**

**Closure of the Books and Notice to Stock Exchange**

*Notes*: It is proposed to close the Register of Members and transfer books for the purpose of the forthcoming Annual General Meeting and payment of dividend from ........................... to ........................... (both days inclusive) and to pay the dividend, if declared, to those members who are registered with the company on the day of the said meeting. Notice of the said closure shall be given to the concerned stock exchanges 7 days in advance and also published in a newspaper under Section 91 of the Act. This may be approved by the Board. (It may be noted that where the shares in a company are not listed in a stock exchange, it is not obligatory for the company to close its Register of Members before AGM).

**Agenda Item No. 19**

**Approval of date of next Annual General Meeting and of Notice**

*Notes*: The Board may authorise calling and holding the forthcoming Annual General Meeting on ........................... (day) the ........................... 2014 (date) at A.M./P.M. at ........................... (place in the city or town). The Board may also approve of the draft notice as circulated to the Board containing the ordinary business considered at the Annual General Meeting and the special business along with explanatory statement and authorise the Secretary to forward the same to the members along with other documents and take all necessary actions in connection with the Annual General Meeting and matters relating thereto.

**Agenda Item No. 20**

**Inviting Deposits from the Public**

*Notes*: In terms of the Companies (Acceptance of Deposits) Rules, 2013, a company is allowed to invite or accept deposits from the public repayable not earlier than six months and not later than three years but subject to renewal. The main features of the Rules are as follows:

No company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies

*Issue of advertisement*:

Every company under sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement.

Such circular shall also be published at least once in English language in a leading English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.
No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorized by them in writing.

**Validity of advertisement:**

An advertisement once issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act.

The Board may consider the matter and if it is proposed to invite deposits, the following resolution is submitted for approval:

Draft Resolution:

“RESOLVED THAT pursuant to the provisions of Section 73 and the Companies (Acceptance of Deposits) Rules, 2014 the Company may borrow by inviting deposits from the public on the basis of its audited accounts for the year ended 31st March, 2014 as under:

Up to ………Lakh from the shareholders being 10% of company’s paid up share capital and free reserve and up to ……. Lakh from public being 25% of company’s paid up share capital and free reserve at the interest rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India that the Non Banking Financial Companies can pay on their public deposits ____ per cent per annum in the manner set out for the various schemes and that the draft advertisement and the terms and conditions placed before the meeting be and are hereby approved.

RESOLVED FURTHER THAT the Secretary be and is hereby authorised to file the circular/advertisement duly signed by the majority of Directors on the Board of the company with the Registrar of Companies and send to all members and publish the same in two newspapers as required.

RESOLVED FURTHER THAT any one of the following, namely, Mr. ................. Mr. ................. or Mr. ................. be and is hereby severally authorised to sign and issue the Deposit Receipts and take other actions as may be necessary in respect of the deposits accepted from time to time."

**Bank Account**

The Board may also authorise opening of a separate account for receiving the deposits and pass the following resolution:

Draft Resolution:

“RESOLVED THAT a Current Account of the Company styled “XYZ Limited Public Deposit Account” be opened with ……………………… (Name of the bank and address of the Branch) and the cheques and other instruments received under the Public Deposits Scheme 2014 of the company be credited to the said Account and any two of the following, namely, Mr. ................. Mr. ................. Mr. ................. and Mr. ................. be and are hereby jointly authorised to give instructions to the Bank relating to the said Account.”

Note:

1. The advertisement in two newspapers inviting deposits may be issued on or after the date of the Annual General Meeting if the Company is already accepting deposits or immediately in other cases.

2. On or before the date of publication of the advertisement (or where deposits are accepted without inviting) or on or before accepting deposits in the case, the text of the advertisement duly signed by majority of Directors (or the text of the Statement in lieu of advertisement) shall be filed with the Registrar of Companies.
(3) Please note that a return shall be filed with the ROC showing the deposits as on 31st March duly certified by the Company’s Auditors by 30th June every year.

(4) Please also take necessary action to deposit in a special Bank Account or in any other way the prescribed percentage of the deposits maturing by 31st March at the following year.

MINUTES OF A SUBSEQUENT BOARD MEETING

MINUTES OF THE ................................ MEETING OF THE BOARD OF DIRECTORS OF ................................ LIMITED HELD ON ................................ (DAY), ................................ (DATE, MONTH AND YEAR), AT ............................ (TIME), AT ............................ (VENUE)

PRESENT
A.B. Chairman
C.D.
E.F. Directors
G.H.
I.J.
K.L. Managing Director

IN ATTENDANCE
X. ....... Secretary
Y. ....... Finance Manager

1. Minutes
The Minutes of the ........... meeting of the Board of Directors of the company, held on ...................., were noted by the Board and signed by the Chairman.

2. Register of Contracts
The Register of Contracts was signed by all the Directors present.

3. Leave of absence
Leave of absence from attending the meeting was granted to Mr. M.N. and Mr. O.P.

4. Notices of Disclosure of Interest
The following notices, received from the Directors of the Company, notifying their interest in other bodies corporate pursuant to the provisions of Section 184 of the Companies Act, 2013, were read and recorded:

<table>
<thead>
<tr>
<th>Name of the Director</th>
<th>Nature of Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. C.D.</td>
<td>Appointed as a Member of the (date, month, year) Committee of (date, month, year) Limited with effect from (date, month, year).</td>
</tr>
<tr>
<td>Mr. E.F. ........</td>
<td>Resigned as a Director of (date, month, year) Limited with effect from (date, month, year).</td>
</tr>
</tbody>
</table>
5. Share Transfer

The Share Transfer Register of the Company was placed before the meeting and the following Resolution was passed:

“RESOLVED THAT share transfers Nos. ....... to ........... inclusive consisting of .......... Equity shares of the company, be approved and the names of the transferees be entered in the Register of Members.”

“RESOLVED FURTHER THAT Mr. X, Secretary, be and is hereby authorised to take further necessary action with regard to the transfer of shares approved by the Board.”

6. Managing Director’s Report

The Managing Director’s Report for the month of March 2014 was tabled, discussed and noted.

7. Sole Selling Agents

The appointment of Messrs S & T Bros. as the sole selling agents of the Company in the State of Maharashtra was considered and the following Resolution was passed:

“RESOLVED THAT, Messrs S & T Bros. of ................. (address), be and are hereby appointed Sole Selling Agents for the sale of the Company’s products in the State of Maharashtra for a period of five years with effect from ..........on the terms and conditions contained in the draft agreement to be entered into between Messrs S & T Bros. and the Company, a copy of which was placed before the meeting and intialed by the Chairman for the purpose of identification, and that the agreement be signed by the Managing Director on behalf of the company.”

“RESOLVED FURTHER THAT the Managing Director be and is hereby authorised to take further necessary action to give effect to the resolution”.

8. Payment of Interim Dividend

The payment of interim dividend for the year ending............... was considered on the basis of the proforma accounts. The Directors opined that there were adequate profits to permit payment of interim dividend. Accordingly, the following Resolution was passed:

“RESOLVED THAT an interim dividend of Rupee one per equity share absorbing ₹ 10,00,000, be paid on the .......... (date), out of the profits of the Company for the year ending ........................., on 10,00,000 equity shares, subject to the deduction of income tax in accordance with the provisions of the Income Tax Act, 1961, to those equity shareholders whose names stand in the register of members on the ................. of .........., and that the transfer books and the register of members be closed from the ............ of .......... to the ............ of .........., both days inclusive, for the purpose of payment of such dividend.”

“RESOLVED FURTHER THAT a bank account be opened under the name and style “Interim Dividend Account of .......Company Limited” with ......Bank and that the total amount of interim dividend be deposited in the said bank within 5 days from the date of this resolution and that Mr. ............Managing Director be and is hereby authorized to operate the said account.”

9. Approving advertisement for public deposit

The Board considered a note on the subject, setting out the terms and conditions under which the company will accept/renew deposits from the public and shareholders. The Board then passed the following Resolution:

“RESOLVED THAT, pursuant to Section 73 of the Companies Act, 2013, and the Companies (Acceptance of Deposits) Rules, 2014, the advertisement both in English and (vernacular language) inviting deposits from the public, from shareholders, employees, and others on the authority and in the name of the Board
of Directors of the company, the draft whereof submitted to this meeting duly initialled by and for the purpose of identification, be and is hereby approved and adopted."

"RESOLVED FURTHER THAT copies of the advertisement signed by the majority of the Directors on the Board or through their agents duly authorised in writing be delivered to the Registrar of Companies by the Company Secretary for registration as required under Rule 11, of the Companies (Acceptance of Deposits) Rules, 2014."

"RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to issue, circulate and advertise the same in newspapers in accordance with the provisions of the Companies (Acceptance of Deposits) Rules, 2014."

10. Delegation of power to Managing Director

The Chairman stated that it would be advantageous to deploy the surplus funds raised by the company, as and when suitable investment opportunities arise. The Board agreed and passed the following Resolution to authorize the Managing Director to make such investments:

"RESOLVED THAT Mr. K.L., Managing Director, be authorised to make investments in bonds and debentures of financial corporations in such a way that the surplus funds of the company may be beneficially utilized and the said investments may be disposed of as and when necessary and that such investment should not exceed the aggregate value of ₹ ............... at any time provided that no investment should be made by the Managing Director in shares of companies in excess of the ceiling prescribed in sub-section (2) of Section 186 of the Companies Act, 2013."

"RESOLVED FURTHER THAT the Managing Director be and is hereby authorised to sign the applications, receive any moneys in respect of the said investment, furnish receipts and to sign papers to dispose of the investments by sale as and when necessary."

11. Constitution of a share transfer committee

The Chairman informed the Board that, with the increasing number of transfers, it was impractical to wait for Board Meetings to approve such transfers. He suggested that a Committee be constituted for this purpose. The Board agreed and passed the following Resolution:

"RESOLVED THAT a Committee of Directors named the Share Transfer Committee, consisting of Mr. C. D., Mr. G.H., and Mr. K.L. be and is hereby constituted to approve of registration of transfer of shares received by the company and further to:

1. approve and register transfer/transmission of shares.
2. sub-divide, consolidate and issue share certificates.
3. authorise affixation of the Common Seal of the company.
4. issue share certificates in place of those which are damaged, or in which the space for endorsement has been exhausted, provided the original certificates are surrendered to the company."

"RESOLVED FURTHER THAT two Directors shall form the quorum for a meeting of the said Committee."

12. Availing of Credit facilities from .................................. Bank

The Chairman informed the Board that the company had approached .................................. Bank for a loan facility of ₹ 25,00,00,000 (Rupees Twenty Five Crores). The Bank had sanctioned the facility vide its sanction letter dated ............... The sanction letter was placed before the Board. After discussion, the Board passed the following Resolution:

"RESOLVED THAT approval be and is hereby accorded to avail of the Demand Loan facility of ₹ 25,00,00,000
RESOLVED FURTHER THAT Mr. A.B., Managing Director of the company, be and is hereby authorised to execute the necessary documents in favour of ......................... Bank, to avail of the aforesaid Demand Loan facility.

RESOLVED FURTHER THAT the Common Seal of the company be affixed to the said documents in the presence of any two Directors of the company and the Company Secretary.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to file the necessary Form for registration of charge with the Registrar of Companies, and also forward a copy of this Resolution to......................... Bank.

13. Termination of the Meeting

There being no other business, the Meeting terminated with a vote of thanks to the Chair.

...............  
Chairman

Entered on Date...........

Note:

WHILE PREPARING MINUTES OF THE MEETINGS, MENTION MUST BE MADE OF:

(a) the names of the Directors present at the Meeting;
(b) the names of the Directors who were absent and had sought leave of absence;
(c) the fact that the Register of contracts was placed before the meeting and the Register was signed by all the Directors present thereat;
(d) that Notices given by Directors disclosing their Directorships in other companies were read and noted;
(e) the appointments of officers made at the Meeting;
(f) the fact of giving of notice of the proposal and unanimity of decisions of disinterested Directors;
(g) that interested Director(s) did not take part in the discussion of or vote on the items in which he/they was/were interested.

NOTICE OF ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office : ................................................

NOTICE is hereby given that the Second Annual General Meeting of the Members of XYZ Limited will be held on Tuesday, the 24th September 2014, at 3:30 p.m. at __________________ (address) to transact the following business:

Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet as at March 31, 2014, the Profit & Loss Account for the year ended on that date together with the Schedules and Notes attached thereto, alongwith the Reports of the Auditors and Directors thereon.

2. To declare a dividend.
3. To appoint a Director in place of Mr A, who retires by rotation and being eligible, offers himself for reappointment.

4. To appoint a Director in place of Mr B, who retires by rotation and being eligible, offers himself for reappointment.

5. To appoint a Director in place of Mr C, who retires by rotation and being eligible, offers himself for reappointment.

6. To appoint Auditors and to fix their remuneration.

**Special Business:**

**Appointment of Director**

7. To consider and, if thought fit, to pass, with or without modifications, the following Resolution as an Ordinary Resolution:

“RESOLVED THAT Mr D, who was appointed as an Additional Director by the Board of Directors of the Company pursuant to sub section (1) of Section 161 of the Companies Act, 2013 and Article ___ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 160 of the Companies Act, 2013, from a Member signifying his intention to propose Mr. D as a candidate for the office of a Director of the Company, together with the deposit of one lakh rupees be and is hereby appointed a Director of the Company liable to retire by rotation.”

**Delisting of securities**

8. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“RESOLVED THAT, subject to the provisions of the Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India Act, 1992 and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by The Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from The Stock Exchange - Ahmedabad, The Calcutta Stock Exchange Association Limited and The Ludhiana Stock Exchange Association Limited.

“RESOLVED FURTHER THAT the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution.”

By order of the Board of Directors

PQR
Company Secretary

Place : New Delhi
Date : 26th August 2014.

**Notes:**

1. The explanatory statement pursuant to Section 102 of the Companies Act, 2013 relating to special business to be transacted at the Meeting is annexed.
2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting. A proxy form is enclosed.

3. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. up to the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.

4. The Register of Members and Share Transfer Books will remain closed from Tuesday, 17th September 2014 to Tuesday, 24th September 2014 (both days inclusive).

5. The dividend on shares, if declared at the Meeting, will be paid within thirty days from the date of declaration to those Members or their mandatees whose names appear:

   (a) as beneficial owners as on Tuesday, 24th September 2014, as per the lists to be furnished by NSDL/CDSL, in respect of shares held in electronic form; and

   (b) as Members in the Register of Members of the Company after giving effect to valid share transfers in physical form lodged with the Company on or before Tuesday, 24th September 2014.

6. Pursuant to Section 123 of the Companies Act, 2013, dividend for the financial year ended 31st March 2007, which remains unclaimed for a period of seven years, will be transferred to the Investor Education & Protection Fund of the Central Government. Members who have not encashed their dividend warrants in respect of the said dividend are requested to make their claim to the Share Department of the Company at the Registered Office of the Company or to the Registrars & Share Transfer Agents of the Company at [address]. It may be noted that once the amounts in the unpaid dividend accounts are transferred to the Investor Education and Protection Fund of the Central Government, no claim shall lie against the Fund or the Company in respect thereof and the Members would lose their right to claim such dividend.

7. The Company has already transferred unclaimed dividend to the General Revenue Account of the Central Government. Members who have so far not claimed or collected their dividends for the said period may claim their dividend from the Registrar of Companies, NCT of Delhi, by submitting an application in the prescribed form.

8. Members are requested to notify the change in their address to the Company and always quote their Folio Numbers or DP ID and Client ID Numbers in all correspondence with the Company. In respect of holding in electronic form, Members are requested to notify any change of address to their respective Depository Participants.

9. Members holding shares in electronic form may please note that their bank details as furnished to the respective Depositories will be printed on their dividend warrants as per the applicable regulations. The Company will not entertain any direct request from such Members for deletion or change of such bank details. Instructions, if any, already given by Members in respect of shares held in physical form will not be automatically applicable to the dividend paid on shares in electronic form.

10. Any query relating to Accounts must be sent to the Company’s Registered Office at least seven days before the date of the Meeting.

11. With a view to serving the Members better and for administrative convenience, an attempt has been made to consolidate multiple folios. Members who hold shares in identical names and in the same order of names in more than one folio are requested to write to the Company to consolidate their holdings in one folio.
12. Members who still hold shares certificates in physical form are advised to dematerialise their shareholding to avail the benefits of dematerialisation, which include easy liquidity (since trading is permitted in dematerialised form only), electronic transfer, savings in stamp duty and elimination of any possibility of loss of documents and bad deliveries.

13. Members can avail of the nomination facility under Section 72 of the Companies Act by filing relevant Forms, with the Company. Blank forms will be supplied on request.

14. As per the provisions of the Income Tax Act, 1961, tax is required to be deducted at source if the gross amount of dividend payable to a resident individual shareholder during the financial year exceeds ₹2,500. Resident individual shareholders who are likely to receive dividend amounting to more than ₹2,500 during the financial year and whose total estimated income from dividend as provided in Section 197A(1B) of the Income Tax Act, 1961, during such financial year is not likely to exceed ₹50,000 can claim gross dividend without deduction of tax at source by submitting a declaration in Form 15G (in duplicate) with the Company’s Share Department at its Registered Office or with the Company’s Registrars & Share Transfer Agents before 19th September 2014. Please note that it would not be possible for the Company to act upon 15G declarations received thereafter. As per the provisions of the Income Tax Act, 1961, every person from whose income any tax is to be deducted at source is mandatorily required to intimate Permanent Account Number (PAN) to the person responsible for deducting such tax at source. In case the Income Tax Department has not allotted PAN, the person is required to intimate General Index Register Number (GIR No.). Members whose dividend will be liable to deduction of tax at source are requested to intimate PAN/GIR No. to the Company’s Share Department or the Company’s Registrars & Share Transfer Agents before 19th September 2014.

15. In accordance with the provisions of Article __________ of the Articles of Association of the Company, Mr. A, Mr. B and Mr. C will retire by rotation at the Annual General Meeting and, being eligible, offer themselves for re-election. Further, Mr. D was appointed as an Additional Director and retires at the Annual General Meeting and the Company has received a notice for his reappointment at the Annual General Meeting. Additional information pursuant to Clause 49 of the Listing Agreement with Stock Exchanges, in respect of Directors seeking election, those retiring by rotation and seeking reappointment at the Annual General Meeting is given elsewhere in the Annual Report.

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 7 and 8 of the accompanying Notice dated 26th August 2014.

Item No. 7

Appointment of Director

Mr. D was appointed by the Board of Directors of the Company on 15th April, 2014 as an additional Director and, as per the provisions of Section 161(1) of the Companies Act, 2013, he holds office as a Director up to the date of this Annual General Meeting. The Company has received a Notice from a Member alongwith a deposit of ₹100,000 signifying his intention to propose the appointment of Mr. D as a Director of the Company.

The Directors commend the passing of the resolution at Item No. 7

Mr. D may be deemed to be concerned or interested in the resolution relating to his appointment.

Item No. 8

Delisting of Securities

The equity shares of the Company are listed on the following stock exchanges: The Stock Exchange, Mumbai (BSE)

With the extensive connectivity of the BSE and NSE, investors have access to dealings in the equity shares of the Company all over the country. The bulk of the trading in the equity shares of the Company takes place on the BSE and NSE only. Trading, if any, on the other stock exchanges is negligible and the listing fees paid to these other stock exchanges are dis-proportionately high as compared to the trading volumes. As part of the cost reduction measures and to protect the investors’ funds, it is proposed to voluntarily delist the equity shares of the Company from the Stock Exchanges at Ahmedabad, Ludhiana and Calcutta. However, the shares will continue to be listed at DSE, being the principal stock exchange. The proposed delisting of equity shares will not adversely affect the investors, as the Company’s equity shares will continue to be listed on the BSE, NSE and the principal stock exchange DSE. The delisting will take effect after all approvals, permissions and sanctions are received.

Since the approval of Members is required for such voluntary delisting by way of a Special Resolution, the Directors commend the passing of the Special Resolution at Item No. 8.

None of the Directors of the Company is deemed to be concerned or interested in the above resolution.

By order of the Board of Directors PQR Company Secretary
Place : New Delhi
Date : 26th August 2014.

ATTENDANCE SLIP

XYZ LIMITED

Registered Office : ..................................................

Members attending the Meeting in person or by Proxy or as Authorised Representatives are requested to complete this attendance slip and hand it over at the entrance of the Meeting hall.

I hereby record my presence at the SECOND ANNUAL GENERAL MEETING of XYZ LIMITED at .........................(address), at 3:30 p.m. on Tuesday, 24th September, 2014.

Full name of the Shareholder                                 Signature
Folio No.:       / DP ID No.:                               & Client ID No.:
Full name of Proxy/Authorised                                Signature of Proxy/Authorised
Representative                                             Representative
(in capital letters)

Note : Shareholder/Proxy holder/Authorised Representative desiring to attend the Meeting should bring his copy of the Annual Report to the Meeting.

FORM OF PROXY

XYZ LIMITED

Registered Office : ..................................................

I/We ....................................................... , being a Member(s) of XYZ LIMITED, hereby appoint the following as
Lesson 10  ■  Meetings 343

my/our Proxy to attend on my/our behalf at the ............................................ Annual General Meeting/General Meeting of the Company, to be held on ............................................ at ............................................ a.m./p.m. and at any adjournment thereof:

1. Mr./Ms. .................................... (Name) .................................... (Signature), or failing him -
2. Mr./Ms. .................................... (Name) .................................... (Signature), or failing him -
3. Mr./Ms. .................................... (Name) .................................... (Signature), or failing him -

*I/We direct my/our Proxy to vote on the Resolutions in the manner as indicated below:

<table>
<thead>
<tr>
<th>Resolutions</th>
<th>For</th>
<th>Against</th>
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<tr>
<td>Resolution No. 1. (To specify)</td>
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<td>Resolution No. 2. (To specify)</td>
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<td>Resolution No. 4. (To specify)</td>
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Signed this .................................... day of .................................... 2014. Reference Folio No./DP ID & Client ID

Signature(s) of Members(s)
(1) ....................................
(2) ....................................
(3) ....................................

Notes:
1. The Proxy, to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
2. A Proxy need not be a Member of the Company.
3. In the case of joint holders, the vote of the senior who tenders the vote, whether in person or by proxy, shall be accepted to the exclusion of the vote of the other joint holder(s). Seniority shall be determined by the order in which the names stand in the Register of Members.
4. This form of Proxy confers authority on the holder to demand or join in demanding a poll.
5. The submission by a Member of this Proxy form will not preclude such Member from attending in person and voting at the Meeting.
6. **This is optional. Please put a tick mark ( ) in the appropriate column against the Resolution indicated in the box. If a Member leaves the “For” or “Against” column blank against any or all Resolutions, the Proxy will be entitled to vote in the manner he thinks appropriate. If a Member wishes to abstain from voting on a particular Resolution, he should write “abstain” across the boxes against that Resolution.
7. In case a Member wishes his votes to be used differently, he should indicate the number of shares under the columns “For” and “Against”, as appropriate.
NOTICE IN THE NEWSPAPER FOR CLOSURE OF REGISTER OF MEMBERS
AB LIMITED

(Registered Office)

Notice is hereby given, under Section 91 of the Companies Act, 2013, that the Register of Members of the Company will remain closed from .......... to .......... September 2014 to ..........the ....September 2014 (both days inclusive) for the purpose of annual dividends on equity shares and on preference shares, to the year ended 31st March 2014. The dividends when declared will be paid to those shareholders whose names appear in the register of members on the ...... September 2014.

Place :
Dated:

Company Secretary

NOTICE IN NEWSPAPERS OF ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office : ....................................................

NOTICE is hereby given that the Second Annual General Meeting of the Company will be held on Tuesday, 24th September 2014 at 3:30 p.m. at ................................................................. (address) to transact the business as set out in the Notice dated 26th August 2014 a copy of which, along with the relative explanatory statement, has been posted to the Members of the Company at their address registered with the Company, together with the Annual Report and accounts for the year ended 31st March 2014.

The Register of Members and the Share Transfer Books will remain closed from the 17th September 2014 to 24th September 2014 (both days inclusive) for the purpose of the Annual General Meeting and payment of dividend, if declared at the Meeting.

Dividend, if declared, will be payable to those Members whose names appear on the Register of Members of the Company on 24th September 2014. In respect of shares held in electronic form, dividend will be payable on the basis of beneficial ownership as per details furnished on 24th September 2014 by NSDL/CDSL.

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By order of the Board of Directors

PQR

Place : New Delhi.

Company Secretary

Date : 28th August 2014.

Note: Members may please intimate immediately any change in their address.

NOTICE OF POSTPONED ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office : ....................................................

Members are hereby informed that, due to unforeseen and unavoidable circumstances, the ............... th Annual General Meeting of the Company, which was to have been held on Tuesday, 24th September 2014, will now be held on ................................. 2014, at ................. p.m. at the Registered Office of the Company, to consider the business mentioned in the Notice dated 26th August 2014 which had been sent to Members in connection with the Meeting originally scheduled to have been held on 24th September 2014.
A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By order of the Board of Directors

PQR

Company Secretary

Place: New Delhi.

Date: 3rd September 2014.

Note: Members may please immediately intimate any change in their address.

SPECIMEN AGENDA FOR GUIDANCE OF THE CHAIRMAN AT
ANNUAL GENERAL MEETING
PQR LIMITED

AGENDA FOR THE 40TH ANNUAL GENERAL MEETING OF PQR LIMITED TO BE HELD AT ITS REGISTERED OFFICE AT .................... ON ............... 2014............... AT 11.30 A.M.

1. CHAIRMAN

Pursuant to Article ......................... of the Articles of Association of the Company, Mr............... Chairman will take the Chair.

2. QUORUM

Five members of the company personally present will form a quorum. After satisfying that the quorum is present, the Chairman will declare the meeting duly constituted and proceed to commence the proceedings.

3. WELCOME

The Chairman will welcome the members for the Annual General Meeting.

4. REGISTER OF DIRECTORS' SHAREHOLDINGS

The Chairman will inform the members that the Register of Directors’ shareholdings maintained under Section 170 of the Companies Act, 2013, is kept open at the meeting and would remain open till the conclusion of the meeting.

5. NOTICE CONVENING THE MEETING & AUDITOR’S REPORT

The Chairman, with the consent of the members present, may take their approval to treat the notice convening the Annual General Meeting together with the Explanatory Statement, the Audited Accounts for the year ended 31st March, 2014, and the Directors’ Report having already been circulated to the Members as read. The Chairman will ask the Company Secretary to read the Auditors’ Report to the members.

6. REPORTS & ACCOUNTS

The Chairman may himself like to move, for consideration of the Meeting, the following motion or the motion may be moved by Mr................ a member personally present.

“That the audited Balance Sheet of the Company as on 31st March, 2014, and the Profit & Loss Account for the year ended on that date with the Reports of the Directors and the Auditors thereon, be received, approved and adopted.”
This will be seconded by Mr......................another member present in person.

The Chairman will invite the members to speak on the motion and he will answer the questions raised by them. No proxy will have a right to participate in the discussion.

After adequate discussion the Chairman will put the above motion to vote and after taking count of the votes “for” and “against” by members personally present, he will declare the result on a show of hands.

7. DECLARATION OF DIVIDEND

Mr..................a member personally present will propose the following motion:

“That pursuant to the recommendation of the Board of directors of the Company, the dividend in respect of the year ended 31st March, 2014, on the equity shares of the Company at the rate of ₹ 5.00 (Rupees Five only) per share (50%), be paid to those shareholders of the Company whose names appear on the Company’s Register of Members on........................2014..............or their mandatees.”

This will be seconded by Mr..........a member personally present. The Chairman will put this for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, declare the result on a show of hands.

8. REAPPOINTMENT OF MR..........................

Mr.......................... a member personally present will propose the following motion:

“That Mr.......................... who retires by rotation and who is eligible for reappointment, be and is hereby appointed a Director of the Company liable to retire by rotation.”

This is seconded by Mr..........................another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.

9. REAPPOINTMENT OF MR...........................

Mr.......................... a member personally present will propose the following motion:

“That Mr.......................... who retires by rotation and who is eligible for reappointment, be and is hereby appointed a Director of the Company liable to retire by rotation.”

This will be seconded by Mr. .............................. another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.

10. APPOINTMENT OF A DIRECTOR

The company received a notice under Section 160 from Mr........................ a member, signifying his intention to propose Mr............. for election as director and the company had advertised the notice in two newspapers. The Chairman may inform the meeting about this and call the proposer to move the motion as given in the notice which has to be seconded. (If the proposer is not present at the meeting, the motion will fall through).

11. APPOINTMENT OF AUDITORS

Mr.................. a member personally present will propose the following motion.

“The M/s............................................. Chartered Accountants, be and are hereby appointed Auditors of the company to hold office from the conclusion of this meeting unit the conclusion of the next Annual General Meeting of the company at a remuneration that may be determined by the Board of directors in
consultation with the Auditor”. This will be seconded by Mr...........................another member present in person.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.

12. SPECIAL BUSINESS

Special Resolutions

(i) Under Section 180(1)(a)

Mr...............................a member personally present proposes:

“That pursuant to Section 180(1)(a) of the Companies Act, 2013, the consent of the Company in general meeting be and is hereby accorded to Board of directors, (“the Board”) to mortgage and/or charge the immovable and movable properties of the Company, wheresoever situated, both present and future, as may be specified in each individual case, and the whole of the undertaking of the Company with power to enter upon and take possession of the assets of the Company in certain events to or in favour of all or any of the following, viz.:

1. .........................

2. .........................

3. .........................

4. .........................

A. To Secure:

– the financial assistance from one or more of the said Institutions not exceeding `.................. in the form of subscription to non-convertible debentures issued and/or to be issued by way of private placement;

– the financial assistance from:

(i) .........................

(ii) .........................

(iii) Any of the above mentioned Public Financial Institutions and/or banks in respect of the Rupees and foreign currency loans aggregating to about ` .................. lakh that may be granted to the Company to finance the cost of the Company’s ongoing modernisation plans, together with interest at the respective agreed rate, additional interest, liquidated damages, commitment charge, premium on prepayment or on redemption, cost/charges, expenses and all other monies payable by Company to.................. and .................. as Agent and Trustees in terms of their respective Loan Agreements/Heads of Agreement/ Hypothecation Agreements/Trustee Agreements/Letters of Sanction/Memorandum of Terms and Conditions, entered into/to be entered into by the Company, in respect of the said term loans/debentures: and

B. To agree with all or any of the aforesaid Institutions and..................as Agent and Trustees in terms of their respective Loan Agreements/Heads of Agreement/Hypothecation Agreements/Trustees Agreements/ Letters of Sanction/Memorandum of Terms and Conditions to reserve a right to take over the management of the business and concern of the Company in certain events, and the Board of directors of the Company be and is hereby authorised to finalise with the aforesaid Institutions and.................. as Agent and Trustee the documents for creating aforesaid mortgage and/or charge and for reserving the aforesaid right and to do all such acts and things as may be necessary for giving effect to this resolution.”
This will be seconded by Mr........................another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately on a show of hands by members personally present, the Chairman will declare the result.

(ii) Under Section 180(1)(c)

Mr.............................................. a member personally present will propose:

“That pursuant to the provisions of Section 180(1)(c) of the Companies Act, 2013, and in supersession of the Special Resolution passed by the members in General Meeting held on................. the company hereby accords its consent to the Board of directors borrowing from time to time all such sums of monies as it may deem requisite or proper for the purpose of the business of the Company notwithstanding that monies to be borrowed together with the monies already borrowed by the Company (apart from Cash Credit and temporary loans obtained from the Company’s bankers in the ordinary course of business) exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose provided that the total amount upto which monies may be borrowed by the Boards of directors (apart from Cash Credit and temporary loan obtained from the company’s bankers in the ordinary course of business) shall not exceed the sum of ` 60,00,00,000 (Rupees Sixty crore only)”.

This will be seconded by Mr.............................................. another member present in person.

The Chairman will put the motion for discussion and thereafter to vote and after taking count of the votes “for” and “against” separately on a show of hands by members personally present, the Chairman will declare the result.

Note: A proxy cannot speak at the meeting unless the Articles of the Company otherwise provide. A proxy can exercise his voting only where there is a poll. Therefore, in a meeting members personally present and personsholding proxies have to be seated separately so that the Chairman can ensure that proxies do not take part in the proceeding nor vote on a show of hands.

There will be a two way counting of votes on a voting by a show of hands, that is, the votes cast in favour will be counted first and then the votes cast against will be counted.

SPECIMEN MINUTES OF ANNUAL GENERAL MEETING OF MEMBERS

PQR Limited

MINUTES OF THE PROCEEDINGS OF THE SECOND ANNUAL GENERAL MEETING OF XYZ LIMITED
HELD ON TUESDAY, 24TH SEPTEMBER 2014 AT 3:30 p.m. AT_______ (ADDRESS)

The following were present:
1. Mr. W (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. E. (Director, Chairman of Audit Committee)
6. Mr. F (Company Secretary)
7. _________ (Members present in person) [state number]
8. _________ (Members present by Proxy) [state number]
Mr. G, Partner of M/s_________, Chartered Accountants, Auditors of the Company, was present. Mr. H, Practising Company Secretary, was also present.

CHAIRMAN

In accordance with Article ____________ of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.

OR

{Mr. B was elected Chairman of the Meeting, in terms of Article ____ of the Articles of Association of the Company}. The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the Meeting to order. The Register of Directors’ shareholdings was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read. The Chairman requested the Company Secretary to read the Auditors’ Report.

After the Auditor’s Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. Adoption of Accounts

The Chairman requested Mr. ______________ to read the Ordinary Resolution for the adoption of the Accounts for the year ended 31st March 2014 and Mr.____________ read out the Ordinary Resolution as follows:

“RESOLVED THAT the audited Balance Sheet of the Company as at 31st March 2014 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

After the above Resolution was proposed and seconded, but before it was put to the vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and Accounts, as well as on the other Resolutions set out in the Notice convening the Meeting.

Some Members made their observations and comments and raised queries on the Annual Report and Accounts and other items set out in the Notice and the Chairman answered their queries.

Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Accounts and the Reports thereon to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. Declaration of Dividend

Mr. ______________ read the following Resolution as an Ordinary Resolution:

“RESOLVED THAT the dividend @ ₹ 2 on the equity shares of ₹ 10 each, fully paid-up, be and is hereby declared for payment, after deduction of tax at source, if any, to those Members whose names appear on the Company’s Register of Members on Tuesday, 24th September 2014”.

The Resolution was proposed by Mr. ______________ and seconded by Mr.____________, and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.
3. Appointment of Director

Proposed by: Mr. ___________________
Seconded by: Mr. ___________________

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section 152(6)(a) of the Companies Act, 2014, Mr. A, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. Appointment of Director

Proposed by: Mr. ___________________
Seconded by: Mr. ___________________

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section 152(6)(a) of the Companies Act, 2013, Mr. B, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

6. Appointment of Auditors

Proposed by: Mr. ______________
Seconded by: Mr. ______________

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT M/s._________________________, Chartered Accountants, _________________, be and are hereby re-appointed as Auditors of the Company to hold office from the conclusion of this Meeting until the conclusion of the next Annual General Meeting of the Company on a remuneration of ₹ _____, plus applicable service tax and other out of pocket expenses incurred for the purposes of the audit”.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

7. Appointment of Director

Proposed by: Mr. ______________
Seconded by: Mr. ______________

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT Mr. D who was appointed as an Additional Director by the Board under Section 161(1) of the Companies Act, 2013 and Article ____ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 160 of the Companies Act, 2013, from a Member signifying his intention to propose Mr. D as a
candidate for the office of a Director of the Company, together with the prescribed deposit be and is hereby appointed a Director of the Company liable to retire by rotation."

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

8. Delisting of Securities – Special Resolution

Proposed by: Mr. _____________
Seconded by: Mr. _____________

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as a Special Resolution:

“RESOLVED THAT, subject to the provisions of the Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India, Act, 1992, and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by The Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being, exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from The Stock Exchange - Ahmedabad, The Calcutta Stock Exchange Association The Limited and Ludhiana Stock Exchange Association Limited.

“RESOLVED FURTHER THAT the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above Resolution.”

On a show of hands, the Chairman declared the aforesaid Special Resolution carried with the requisite majority.

TERMINATION OF THE MEETING

The Meeting terminated with a vote of thanks to the Chair.

________________

CHAIRMAN

Date: __________

DEMAND FOR POLL

To

The Chairman of the Second Annual General Meeting of XYZ Limited being held on Tuesday, 24th September 2014 at 3:30 p.m. at___________(address).

We the undersigned, being the holders of an aggregate of ______ equity shares of ₹ 10 each of the Company, as per the details set out below against our respective names, demand that, pursuant to the provisions of Section 109 of the Companies Act, 2013, a poll be taken in respect of the Resolution proposed at Item No. 3 of the Notice dated 26th August 2014 of the second Annual General Meeting of the Company on which the voting is yet to be taken on a show of hands.

OR

{on which voting on a show of hands has been taken but the result thereof is yet to be announced} OR

{which was declared carried on voting by show of hands.}
ANNOUNCEMENTS BY THE CHAIRMAN OF THE MEETING
IN CONNECTION WITH A POLL

1. Immediately after a Poll is demanded:

“I request you to make your demand on the Poll Demand Sheet so that the same can be verified to
avert the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association
of the Company.”

After verification of the demand and if the demand is found to be validly made:

“I now order that the Poll on the Resolution in respect of Item No.______________ of the Notice, on the
subject of ______________ be taken and I appoint Mr ____________ and Mr ____________ as the
Scrutineers.

The Poll will commence half an hour after the conclusion of all the items on the Agenda for the Meeting.

The Poll will be held in a part of this hall and will continue for half an hour or till all the Members or their valid
Proxies or Authorised Representatives present and willing to cast their votes, have cast their votes, whichever
is earlier.

I authorise the Scrutineers to issue the Poll papers to Members/Proxies/ Authorised Representatives and
to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof,
after ensuring that all the Members/Proxies/ Authorised Representatives present have been provided the
opportunity to vote. In terms of the provisions of the Articles of Association of the Company, a Member who
is in arrears of moneys payable on the shares allotted to him is not entitled to vote. The Scrutineers can
take the assistance as may be required of the officers or employees of the Company in the conduct of the
poll. I request you all to extend your co-operation in the conduct of the poll.

The details of the result of the poll would be displayed on the notice board at the Registered Office of the
Company not later than 11:00 a.m. on September ________ It would also be put up on the website of the
Company at the id ________________ “

XYZ LIMITED

Registered Office : ________________________________

POLL PAPER

Poll paper for poll on the Resolution placed before the Meeting of the Equity Shareholders of XYZ Limited on
Tuesday, 24th September 2014, at_________________ (address)

*1. To be filled if the person present is a Member:

(a) Name of the Member/s (as appearing in the Register of Members)

(b) Registered Folio Number/Client ID

*2. To be filled if the person present is a Proxy:

(a) Name of the Proxy Holder
Lesson 10  
Meetings 353

(b) Name of the Member/s (as appearing in the Register of Members) whom the proxy represents

(c) Registered Folio Number/Client ID

*3. To be filled if the person present is an Authorised Representative under Section 113 of the Companies Act, 2013:

(a) Name of the Body Corporate

(b) Name of the Authorised Representative

(c) Date of Board Resolution/other authorisation

(d) Registered Folio Number/Client ID

4. Number of Equity Shares Held.

* Complete item 1 or 2 or 3 as applicable in your case.

**Voting**

<p>| | |</p>
<table>
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<tbody>
<tr>
<td><strong>For</strong></td>
<td><strong>Against</strong></td>
</tr>
<tr>
<td>No. of Votes</td>
<td>No. of Votes</td>
</tr>
<tr>
<td>(i.e. Shares)</td>
<td>(i.e. Shares)</td>
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</table>

Resolution for approving (give details)

Signature of Member/Proxy Holder/Authorised Representative

**Notes:**

1. Kindly fill in all relevant particulars carefully. A poll paper incomplete in any respect would be liable to be treated as invalid.

2. If you vote for the Resolution, specify the number of votes (i.e. shares) under the column “For”.

3. If you vote against the Resolution, specify the number of votes (i.e. shares) under the column “Against”.

4. A person voting as a Member/Proxy Holder/Authorised Representative should use separate Poll papers to vote as Member/Proxy Holder/ Authorised Representative.

5. You can split your votes and use them differentially.

6. In the case of joint shareholders:

   (i) the Member present can vote. The Member casting the vote should indicate the name of the first holder as also his name in item 1(a) of the Poll Paper.

   (ii) where more than one of the joint shareholders are present, the Member whose name stands first or higher (amongst the joint-holders) is alone entitled to vote. The Member casting the vote should indicate the name of the first holder as also his name in item 1(a) of the Poll Paper.

7. In case the Member votes in person, the signature on the Poll Paper should be as per the specimen signature lodged with the Company or with the Depository Participant.

8. No writings other than what is called for in the Poll Paper should be made thereon.

9. After it is completed and signed, the Poll Paper must be deposited only in the ballot box provided therefor.
XYZ LIMITED

Registered Office: ________________________________

POLLING RECORD

Date of Meeting _______________

Item No. of the Notice dated ____________ of the Meeting on which the poll was held: ____________

Subject matter on which the poll was held: ________________________

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name(s) of Member(s)</th>
<th>Folio No. or Client ID No. For</th>
<th>No. of shares held For</th>
<th>No. of shares held Against</th>
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</table>

Date: _______ Initials of Scrutineers: ____________ (each page should be initialled by the Scrutineers and they should sign the last page in full)

REPORT OF THE SCRUTINEERS TO THE CHAIRMAN

From: Mr. ....................................... & Mr. .......................................

To:

The Chairman of the ....................................... th Meeting of XYZ Limited, held on .......................................

Dear Sir,

In terms of your directions, we the Scrutineers appointed for the conduct of the Poll, had conducted the Poll on the Resolution at Item No. ....................................... of the Notice dated ....................................... on the subject ....................................... and we report that:

1. The Poll commenced at _____ a.m.
2. The Ballot Boxes were verified by us to be empty and were locked and sealed under our supervision
3. The Poll voting papers, duly initialled by one of us, were issued to the Members/Proxies/Authorised Representatives who were present and were willing to vote.
4. After all of them had exercised their votes, the polling was declared concluded at ___ a.m.
5. The sealed ballot boxes were opened in our presence thereafter and the poll voting papers were scrutinized by us with the assistance of the staff of the Secretarial Department of the Company.
6. We give hereunder the voting details:
   - Total number of votes cast: ____________ (consisting of _____ voting papers) {state number}
   - Less: Invalid votes: ____________ (consisting of _____ voting papers) {state number}
   - Total valid votes: ____________ (consisting of _____ voting papers) {state number}
   - Votes FOR the Resolution: ____________
   - Votes AGAINST the Resolution: ____________
7. All the _______ (state number) poll voting papers are submitted herewith in an envelope duly sealed in our presence and initialled by us.
Thanking you,
Yours faithfully,
1. ............................................................  2. ............................................
(Signature and name of Scrutineer)  (Signature and name of Scrutineer)
Date : ........................................
Time : ......................................

ANNOUNCEMENT ON THE NOTICE BOARD OF THE COMPANY OF THE RESULT OF THE POLL

XYZ LIMITED

Registered Office : ________________________________

RESULT OF THE POLL HELD AT THE _____ MEETING OF THE COMPANY HELD ON SEPTEMBER __________

Item No. ____ of the Notice dated ________ Subject: ________________

Total number of votes cast : ________________________________

Invalid votes : __________________________________________

Total number of valid votes : ________________________________

Number of votes cast FOR the Resolution : _____________________

Number of votes cast AGAINST the Resolution : ________________

Result : ________________________________________________


Place : __________
Date : __________
Time : __________

CHAIRMAN

BOARD RESOLUTION AUTHORIZING THE PROCESS FOR OBTAINING APPROVAL OF SHAREHOLDERS THROUGH VOTING BY POSTAL BALLOT

“RESOLVED THAT, pursuant to Section 110 and other applicable provisions, if any, of the Companies Act, 2013, and the Rules issued thereunder, approval of the Board be and is hereby accorded to conduct a Postal Ballot to seek the approval of the Members of the Company by a Special/Ordinary Resolution for (here set out the purpose of the Resolution) and that the draft of the Notice together with the Explanatory Statement annexed thereto, placed before the Board and initialled by the Chairman for identification, be and is hereby approved and that the said Notice along with the Explanatory Statement thereto be issued to the Members by the Company Secretary.

RESOLVED FURTHER THAT the following calendar of events for implementing the proposal be and is hereby approved :
RESOLVED FURTHER THAT Mr.___________ (here set out the name of the Scrutinizer and his occupation), who has given his consent to act as a Scrutinizer if so appointed, be and is hereby appointed as Scrutinizer for a period not exceeding sixty days from the date of appointment to conduct the Postal Ballot of the Company at a remuneration of (here set out the remuneration or in case the power to fix remuneration is delegated, insert “at such remuneration and out of pocket expenses as may be determined by Mr._______, Managing Director and Mr.____________, Director of the Company”) excluding incidental expenses which would be reimbursed by the company.

RESOLVED FURTHER THAT Mr. _______, Director, and Mr. ________, Company Secretary, be made responsible for the entire Postal Ballot process and that they are hereby jointly and severally authorised to do all things and to take all incidental and necessary steps including sending of the Notice to all the Members and filing of this Resolution with the Registrar of Companies, to conduct the said Postal Ballot process for and on behalf of the Company and to settle all questions or difficulties that may arise in the course of implementing this Resolution.

RESOLVED FURTHER THAT Notice be given to every Member of the company and the voting rights of such Members be reckoned as on the cut-off date which shall be_____________(date).

AND RESOLVED FURTHER THAT the last date for despatch of Notice shall be_______(date), the last date for receipt of postal ballot forms shall be ____________(date) and the date of declaration of result of Postal Ballot shall be ____________(date)."

NOTICE

XYZ Limited

Registered Office : ________________________________

Dear Shareholder(s),

Notice pursuant to Section 180(1)(a) of the Companies Act, 2013

Pursuant to the provisions of Section 180(1)(a) of the Companies Act, 2013, sale, lease or otherwise disposal of the whole or substantially the whole of any undertaking of the Company requires the approval of Members by way of an Ordinary Resolution.

The Company proposes to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the Company at_____________ engaged in the business of manufacture of _____________.

As per Section 110 of the Companies Act, 2013, read with Rule 22 (16) of the Companies (Management and Administration) Rules, 2014, consent of the Members under Section 180(1)(a) of the Companies Act, 2013, is required to be obtained by means of voting by Postal Ballot. The proposed Ordinary Resolution and Explanatory Statement stating all material facts and the reasons for the proposal is appended below and a postal ballot form is enclosed for your consideration. The Company has appointed Mr.__________________, as Scrutinizer for conducting the Postal Ballot process in a fair and transparent manner.

Please read carefully the instructions printed in the postal ballot form and return the form duly completed in all respects in the enclosed self-addressed pre-paid postage envelope so as to reach the Scrutinizer on or before the close of working hours on ____________ (Day) ______________ (Date).

The Scrutinizer will submit his report to the Chairman after completion of the scrutiny and the result of the voting by Postal Ballot will be announced on ____________ (Day) ______________ (Date) at ______________ a.m./p.m. at ____________ (address).
ORDINARY RESOLUTION

To consider and, if thought fit, to pass, with or without modification(s), the following Resolution as an Ordinary Resolution:

“RESOLVED THAT the consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at __________________ engaged in the business of manufacture of ___________________.

RESOLVED FURTHER THAT the Board be and is hereby authorized to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect to the aforesaid Resolution”.

By order of the Board of Directors
Company Secretary

Place : ______________
Date : ______________

ANNEXURE TO NOTICE

Explanatory Statement pursuant to Section 102 of the Companies Act, 2013

The Company had during the year________ undertaken a comprehensive review of its business in India. The Board of Directors, at its meeting held on __________, noted and took on record the report of the review and analysed the various options detailed therein.

The Board decided that it was no longer cost effective to manufacture and export from the _____________ manufacturing plant (the plant). Maintaining production for the Indian market alone was not viable and it was decided to discontinue production at the plant.

The Board of Directors of the Company, at its meeting held on ______________, has approved, subject to your approval, the sale, lease or otherwise disposal of the undertaking engaged in the business of manufacture of ______________ located at ______________

The Board commends the resolution for approval by the members.

None of the Directors is concerned or interested in the said Resolution except to the extent of shares held by them in the Company.

By order of the Board of Directors
Company Secretary

Place : ______________
Date : ______________

Notes:

(1) Shareholders who wish to be present at the time of declaration of the result may do so.

(2) Only a shareholder entitled to vote is entitled to exercise his vote through Postal Ballot and a shareholder having no voting rights should treat this Notice as an intimation only.
NOTICE TO MEMBERS

Members are hereby informed that the Company has on _______ (Date) completed the despatch of a Notice under Section 110 of the Companies Act, 2013, along with the postal ballot form and a self addressed reply envelope (for which postage will be paid by the Company) in relation to an Ordinary Resolution under Section 180(1)(a) of the Companies Act, 2013, seeking members’ consent to the sale, lease or disposal of the whole or substantially the whole of the undertaking, as set out therein.

The Board of Directors of the Company has appointed ______________ (Name & occupation) as the Scrutinizer for conducting the Postal Ballot in a fair and transparent manner. Members are requested to note that the postal ballot form duly completed and signed should reach the Scrutinizer not later than the close of working hours on ______________ (Day) ______________ (Date). All postal ballot forms received after the said date will be treated as if reply from such Members has not been received.

A Member may request for a duplicate postal ballot form, if so required.

A person who has become a Member after ______________ (Date) (date of commencement of despatch of Notice) but before ______________ (Date) (the cut-off date) may obtain the postal ballot form from the company and vote on the Resolution by Postal Ballot.

The voting rights of Members shall be reckoned on___________(date) which is the cut-off date.

XYZ Limited Company Secretary
Registered Office:

_________________________________
_________________________________
_________________________________

Date : ______________

POSTAL BALLOT FORM

XYZ LIMITED

Registered Office _________________________

POSTAL BALLOT FORM

1. Name(s) of Shareholder(s) : _______________________________
   (in block letters) _______________________________
   (including joint holders, if any) _______________________________

2. Registered address of the
   Sole/First named Shareholder: _______________________________

3. Folio No./DP ID No./Client ID No.* (*Applicable to investors holding shares in dematerialized form) : _______________________________

4. Number of shares held : _______________________________

5. I/We hereby exercise my/our vote in respect of the Ordinary/Special Resolution to be passed through
Postal Ballot for the business stated in the Notice of the Company by conveying my/our assent or dissent to the said Resolution by placing the tick ( ) mark in the appropriate box below.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>No. of shares</th>
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<tbody>
<tr>
<td>(1)</td>
<td></td>
<td>I/We assent to the Resolution</td>
</tr>
<tr>
<td>(2)</td>
<td></td>
<td>I/We dissent the Resolution</td>
</tr>
</tbody>
</table>

Place: ______________
Date: ______________

(Signature of the Shareholder)

INSTRUCTIONS

1. A shareholder desiring to exercise his vote by Postal Ballot may complete this postal ballot form and send it to the Scrutinizer in the attached self-addressed envelope. Postage will be borne and paid by the Company. However, envelopes containing postal ballots, if deposited in person or sent by courier at the expense of the shareholder will also be accepted.

2. The self-addressed envelope bears the address of the Scrutinizer appointed by the Board of Directors of the Company.

3. This postal ballot form should be completed and signed by the shareholder. Unsigned postal ballot forms will be rejected.

4. Where the postal ballot form has been signed by an authorized representative of a body corporate, a certified copy of the relevant authorisation to vote on the Postal Ballot should accompany the postal ballot form. Where the form has been signed by a representative of the President of India or of the Governor of a State, a certified copy of the nomination should accompany the postal ballot form. A Member may sign the form through an Attorney appointed specifically for this purpose, in which case an attested true copy of the Power of Attorney should be attached to the postal ballot form.

5. A shareholder need not use all his votes nor he needs to cast all his votes in the same way.

6. Duly completed postal ballot forms should reach the Scrutinizer not later than the close of working hours on __________ (Day) __________ (Date). Any postal ballot form received after this date will be treated as if the reply from the shareholder has not been received.

7. A shareholder may request for a duplicate postal ballot form, if so required. However, the duly filled in duplicate postal ballot form should reach the Scrutinizer not later than the date specified at item 6 above.

8. Voting rights shall be reckoned on the paid up value of shares registered in the name of the shareholder on the cut-off date, which is the date of completion of despatch of the Notice. This date shall be announced through advertisement.

9. Shareholders are requested not to send any other paper along with the postal ballot form in the enclosed self-addressed postage prepaid envelope in as much as all such envelopes will be sent to the Scrutinizer and any extraneous paper found in such envelope would be destroyed by the Scrutinizer.
Dear Sir,

1. The Board of Directors of the company at its meeting held on__________ has appointed me as a Scrutinizer for conducting the postal ballot voting process.

2. I submit my report as under:

2.1 The company has completed on ______________(date) the despatch of postal ballot forms alongwith postage prepaid business reply envelope to its Members whose name(s) appeared on the Register of Members/list of beneficiaries as on _________ (date).

2.2 Particulars of all the postal ballot forms received from the Members have been entered in a register separately maintained for the purpose.

2.3 The postal ballot forms were kept under my safe custody in sealed and tamper proof ballot boxes before commencing the scrutiny of such postal ballot forms.

2.4 The ballot boxes were opened on _______ (date) in my presence.

2.5 The postal ballot forms were duly opened in my presence and scrutinized and the shareholding was matched/confirmed with the Register of Members of the company/list of beneficiaries as on__________ (date).

2.6 All postal ballot forms received upto the close of working hours on_____ (date), the last date and time fixed by the company for receipt of the forms, were considered for my scrutiny.

2.7 Envelopes containing postal ballot forms received after ______ (date) were not considered for my scrutiny. Such envelopes aggregate to________ vide serial number ____ to _____. These envelopes were not opened and they are separately kept.

2.8 Envelopes containing postal ballot forms returned undelivered aggregated to ____ (nos.) vide serial number ______ to _______. These envelopes were also not opened and they are separately kept.

2.9 I did not find any defaced or mutilated ballot paper.

   OR

   ........ (nos.) ballot papers were defaced/mutilated and are separately kept.

3. A summary of the postal ballot forms received is given below:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>No. of postal ballot forms</th>
<th>No. of Shares Equity</th>
<th>% of total paid up capital</th>
</tr>
</thead>
</table>

(a) Total postal ballot forms received
(b) Less : Invalid postal ballot forms (as per register)
(c) Net valid postal ballot forms (as per register)
(c) Postal ballot forms with assent for the Resolution
(d) Postal ballot forms with dissent for the Resolution

4. I have handed over the postal ballot forms and other related papers/ registers and records for safe custody to the Company Secretary/Director authorised by the Board to supervise the postal ballot process.

5. You may accordingly declare the result of the voting by Postal Ballot.

Thanking you,

Name & signature of Scrutinizer

Place :

Dated :

RESULT OF POSTAL BALLOT

Result of the voting conducted through Postal Ballot on the Ordinary Resolution under Section 180(1)(a) of the Companies Act, 2013, relating to sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the company at __________ engaged in the business of manufacture of __________

Number of valid postal ballot forms received

Votes in favour of the Resolution

Votes against the Resolution

Number of invalid postal ballot forms received

The Resolution has therefore been approved/not approved by the shareholders with the requisite majority.

Place : __________  

Date : __________  

Chairman

MINUTES

XYZ LIMITED

Minutes of the proceedings held on __________ (date) at __________ (time) at __________ (address) of XYZ Limited, relating to declaration of the result on the voting by Postal Ballot conducted pursuant to Section 110 of the Companies Act, 2013 on the Ordinary Resolution under Section 180(1)(a) of the said Act as set out in the Notice dated __________ pursuant to Section 110 of the Act.

Present :

1. Mr. A  Chairman of the Board of Directors
2. Mr. B  Company Secretary of the Company and as a Member
3. Mr. C  Scrutinizer for the Postal Ballot
4. Mr. D  Member
5. Mr. E  Member
6. Mr. F  Member
7. Mr. G  Member
8. Mr. H  Member

The Chairman stated that the Company had, on __________ despatched to all the shareholders, a Notice dated __________ under Section 110 of the Companies Act, 2013, for obtaining the consent of the shareholders to the following Ordinary Resolution by means of Postal Ballot:
“RESOLVED THAT the consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at __________ engaged in the business of manufacture of __________.

RESOLVED FURTHER THAT the Board be and is hereby authorized to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect to the aforesaid Resolution”.

The Chairman stated that it was mentioned in the said Notice dated __________ that the postal ballot form sent therewith should be returned by the shareholders duly completed so as to reach the Scrutinizer on or before __________ and that the Scrutinizer will submit his report to the Chairman after completion of the scrutiny.

The Chairman thereafter stated that the Scrutinizer, Mr. __________, had carried out the scrutiny of all the postal ballot forms received upto the close of working hours on __________ and that Mr. __________ had submitted his Report dated __________ and that he as the Chairman had accepted the said Report.

The Chairman then announced the following result of the Postal Ballot as per the Scrutinizer’s Report: Number of valid postal ballot forms received

<table>
<thead>
<tr>
<th>Votes in favour of the Resolution</th>
<th>Votes against the Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of valid postal ballot forms received</td>
<td></td>
</tr>
</tbody>
</table>

The Chairman thereafter stated that the Ordinary Resolution set out in the Notice dated __________ was therefore duly approved/not approved by the requisite majority of the shareholders.

Place : __________
Date : __________
Chairman

### TIME-FRAME FOR POSTAL BALLOT

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Particulars</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Draft the following:</td>
<td>27th April 2014</td>
</tr>
<tr>
<td></td>
<td>(a) Notice u/s 2(65)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Draft Resolution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Explanatory Statement</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) Postal ballot form.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Obtain consent of the Scrutinizer.</td>
<td>27th April 2014</td>
</tr>
<tr>
<td>3.</td>
<td>Hold the Board Meeting to do the following and announce to Stock Exchange:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) Approve the documents drafted as in (1) above.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) Appoint the Scrutinizer.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) Pass a Resolution nominating a Managing Director/ Whole-time Director and the Company Secretary for being responsible to complete the ‘Postal Ballot’ process.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iv) Approve the calendar of events.</td>
<td>1st May 2014</td>
</tr>
<tr>
<td>4.</td>
<td>A copy of the Board Resolution alongwith the calendar of events to be forwarded to the Registrar of Companies within one week of the Board Meeting.</td>
<td>7th May 2014</td>
</tr>
</tbody>
</table>
5. Print Notice, postal ballot forms and arrange for self-addressed envelopes (bearing the name and address of the Scrutinizer), address slips, etc. | 14th May 2014
6. Complete despatch of Notices (names of shareholders to be ascertained on a date as close as possible to the despatch date). | 1st June 2014
7. Release an advertisement in newspapers giving the date of completion of despatch of the Notice and the last date for receipt of postal ballot forms from the shareholders (thirty days from the last date of despatch). | 3rd June 2014
8. Last date for receipt of postal ballot forms. | 1st July 2014
9. To keep safe custody of all postal ballot forms in closed envelopes and put the receipt stamp on envelopes as and when these are received till the last date for receiving the postal ballot forms. | 1st July 2014
10. Preparation of Scrutinizer’s Report and submission of the same to the Chairman by the Scrutinizer | 17th July 2014
11. Declaration of result. | 17th July 2014
12. Result to be displayed on Notice Board and released to the Press. | 17th July 2014
13. File the Resolution with Registrar of Companies. | 16th August 2014
14. Last date for signing the Minutes. | 16th August 2014

**NOTICE OF EXTRAORDINARY GENERAL MEETING**

**XYZ LIMITED**

**Registered Office**: ________________________________

NOTICE is hereby given that an Extra Ordinary General Meeting of the Members of XYZ Limited will be held on Friday, 25th October 2014 at 11:00 a.m. at _____________________ (address) to transact the following business:

**Shifting of Registered Office**

1. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

   “RESOLVED THAT, pursuant to Section 12 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the confirmation of the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction) the Registered Office of the Company be shifted from the State of Delhi to the State of Haryana.

   “RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the word ‘National Capital Territory of Delhi’ with the words ‘State of Haryana.’

   “AND RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, Ministry of Corporate Affairs (as per jurisdiction) for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, to give effect to this resolution.”

   By order of the Board of Directors
   
   PQR
   Company Secretary

**Place**: New Delhi.

**Date**: 30th September 2014
Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting. A Proxy form is enclosed.

2. The explanatory statement pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 1 and 2 of the accompanying Notice dated 30th September 2015.

Item No. 1

The Registered Office of the Company has been situated in New Delhi since the incorporation of the Company. The business of the Company has increased manifold since incorporation and it is expected that such growth trends will be maintained in future.

The employee strength of the Company has also increased manifold and the Company needs an area of around 50,000 square feet to accommodate the entire staff and to carry out its growing business activities efficiently. However, expansion at the present location is not possible and prevailing rentals in Delhi render it unviable to look for additional premises in the vicinity of the Registered Office.

The Board of Directors has identified suitable premises at Gurgaon in the State of Haryana, not very far from the present Registered Office. Acquiring such premises, situated close to Delhi, is advantageous for the Company to carry on its business more conveniently, economically and efficiently.

There also then is no need for retaining the present Registered Office accommodation and hence the Company has commenced preliminary negotiations for termination of the lease agreement.

In view of these advantages, the Board of Directors has decided to shift the Registered Office of the Company from the State of Delhi to the State of Haryana subject to necessary approvals. As required under Section 17 of the Act, a petition will be made to the Regional Director, Ministry of Corporate Affairs (as per jurisdiction) to obtain his confirmation for the proposed change.

A copy of the Memorandum of Association is available for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Meeting and at the venue of the Meeting for the duration of the Meeting.

The Board commends the passing of the Resolution at Item No.1 as a Special Resolution. None of the Directors is concerned or interested in the proposed Resolution.

By order of the Board of Directors

Place : New Delhi.

PQR

Date : 30th September 2014

Company Secretary

NOTES ON AGENDA FOR EXTRAORDINARY GENERAL MEETING

Day & Date : Thursday, the 20th September, 2014

Time : 11.30 a.m.

1. Chairman :
Lesson 10  •  Meetings 365

Under Article 89, Shri A, Chairman & Managing Director will take the Chair.

If the Chairman is not present, one of the directors present, will be elected Chairman.

If no director is present or if present but unwilling, then one of the members present, will be elected Chairman of the meeting.

Shri ....................................... proposes ....................................... and Shri ....................................... seconds the motion for appointing Shri ....................................... as the Chairman of the meeting.

The motion is to be put to vote by show of hands.

Carried unanimously/by majority.

Shri ....................................... to take the chair.

2. Quorum:

The Chairman on having ascertained that the requisite quorum is present has to call the meeting in order.

3. Notice of the Meeting:

Notice dated 16th August, 2014 convening the Extra Ordinary General Meeting is to/be taken as read with the consent of the meeting.

4. Mortgaging of Assets to IDBI and IFCI:

The Chairman to inform the members that the company has to mortgage its assets to Industrial Development Bank of India and the IFCI Limited to secure the Rupee Term Loans of ₹ 1000.00 lacs and ₹ 880.00 lacs respectively.

Then, he will ask the members to propose and second the Ordinary Resolution: Proposed by : Shri ....................................... 

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, together with power to takeover the assets of the Company in certain events, to or in favour of Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) by way of first pari passu Charge to secure the Rupees Term Loans of ₹ 1000.00 lacs and ‘880.00 lacs respectively granted to the Company together with interest at the agreed rate(s), liquidated damages, front end fees, premia on pre payment, costs, charges, expenses and all other moneys payable by the Company under the Loan Agreements, Deeds of Hypothecation and other documents executed/to be executed by the Company in respect of the Term Loans from IDBI and IFCI.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with IDBI and IFCI the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Seconded by : Shri ....................................... 

The motion was put to vote by show of hands. Carried unanimously/by majority.

5. Second Charge on Assets to SBI:

The Chairman to inform the members that the company has to Create Second Charge to secure the various fund based/non-fund based credit facilities sanctioned by State Bank of India, New Delhi.
Then, he will ask the members to propose and Second the Ordinary Resolution: Proposed by : Shri .............................................

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, in favour of State Bank of India, New Delhi the Company’s Bankers by way of Second Charge to secure the various fund based/non-fund based credit facilities granted/to be granted to the Company and the interest at the agreed rate, costs, charges, expenses and all other moneys payable by the Company under the Deed(s) of Hypothecation and other documents executed/to be executed by the Company in respect of credit facilities of State Bank of India, in such form and manner as may be acceptable to State Bank of India.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with State Bank of India the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Seconded by : Shri .............................................

The motion was put to vote by show of hands. Carried unanimously/by majority.

6. Appointment of Managing Director:

The Chairman to inform that the Board of directors of the Company has reappointed Mr. A as Managing Director for a further period of 5 years w.e.f. 1.1.2014 and the resolution is for approval of the Shareholders of the company.

Then, he will ask the members to propose and/Second the Ordinary Resolution: Proposed by : Shri .............................................

“RESOLVED THAT pursuant to the provisions of Sections 196, 197, 203, Schedule V and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, the reappointment of Shri A as Managing Director of the Company for a period of 5 years with effect from 1st January, 2012 be and is hereby approved on the terms of remuneration as set out in the Explanatory Statement annexed hereto which shall be deemed to form part hereof, and in the event of inadequacy or absence of profits 197 of the said Act in any financial year, the remuneration comprising salary, commission, perquisites and benefits as approved herein be paid as minimum remuneration to the Managing director subject to the approval(s), if any, as may be required.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised to take steps as may be necessary to give effect to this resolution and to settle any question or difficulties in connection therewith or incidental thereto.”

Seconded by : Shri .............................................

The motion was put to vote by show of hands. Carried unanimously/by majority/nem con.

7. Confirmation to Guarantee Issued by the Company:

The Chairman to inform that due to urgency, the Board of directors had given corporate guarantee to Hongkong & Shanghai Banking Corporation Ltd. subject to confirmation by the Shareholders of the Company. The resolution is for their confirmation.

Then he has to ask the members to propose and second the Special Resolution: Proposed by : Shri .............................................
“RESOLVED THAT pursuant to Section 186(2) and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, the guarantee of the company for ₹ 5,46,10,000/- furnished by the Managing Director of the Company as per the resolution passed in the meeting of the Board of directors of the company held on 29.7.2014, to The Hongkong and Shanghai Banking Corporation Ltd., New Delhi, for the Banking facilities granted to W&M (India) Ltd., in lieu of the guarantee for ₹ 5,61,66,250 furnished earlier be the company, by and is hereby confirmed and approved.”

Seconded by : Shri

The motion was put to vote by show of hands. Carried unanimously/by majority.

8. Authority to make investments, loans and guarantees:

The Chairman to inform that the company would have to make investment in Shares of W&M (India) Limited promoted by the Company and give guarantees to the bankers for banking facilities granted to W&M (India) Limited and XY Packagings Private Limited the associated companies. The resolution is for approval of the Shareholders.

Then, he will ask the members to propose and second the Special Resolution: Proposed by : Shri

“RESOLVED THAT pursuant to Section 186(2) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof and subject to the approvals of the Financial Institutions, if any, as may be required, approval of the company be and is hereby accorded to the Board of directors of the company for directly or indirectly making of investments by way of subscription, purchase or otherwise in equity shares of, and/or making loans and/or giving guarantees and/or providing securities in connection with loan(s) made/to be made by any bank, company or person to, the following companies promoted or associated with the company for the total sum not exceeding ₹ 2,600.00 lac from and out of the company’s internal accruals, over and above the existing investments in shares/ debentures/other securities, loans and guarantees made or given by the company, as under:-

(₹ in lacs)

<table>
<thead>
<tr>
<th></th>
<th>in Equity Shares</th>
<th>(₹ in lacs)</th>
<th>Security</th>
</tr>
</thead>
<tbody>
<tr>
<td>W&amp;M (India) Ltd.</td>
<td>1000.00</td>
<td>400.00</td>
<td>1200.00</td>
</tr>
<tr>
<td>XY Packagings Pvt. Ltd.</td>
<td>Nil</td>
<td>100.00</td>
<td>350.00</td>
</tr>
</tbody>
</table>

RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to make investments/loans, give guarantee(s), provide security(ies), for the amount as specified above, as it may be deemed fit and proper and to authorise any director(s) and/or officer(s) of the company to finalise the terms of such investment(s), loan(s), guarantee(s), security(ies) as the case may be and sign necessary papers on behalf of the company and take all necessary steps for giving effect to this resolution.”

Seconded by : Shri

The motion was put to vote by show of hands.

Carried unanimously/by majority.

9. Vote of thanks:

One of the members shall propose a vote of thanks to the Chair.
MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF XYZ LIMITED
HELD ON FRIDAY, 25TH OCTOBER 2014 AT
11:00 A.M. AT ________(address)

The following were present:
1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. F (Company Secretary)
6. ________ (Members present in person) {state number}
7. ________ (Members present by Proxy) {state number}

CHAIRMAN

In accordance with Article ____________ of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.

{OR:}

Mr. B was elected Chairman of the Meeting, in terms of Article __ of the Articles of Association of the Company

The Chairman welcomed the Members. He declared that the requisite Quorum was present and called the Meeting to order.

With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

1. Shifting of the Registered Office

Proposed by : Mr. ______
Seconded by : Mr. ______

The following Resolution having been proposed and seconded by the aforementioned two Members was put to the vote as a Special Resolution:

“RESOLVED THAT, pursuant to Section 12 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the confirmation of the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction), the Registered Office of the Company be shifted from the State of Delhi to the State of Haryana.

“RESOLVED FURTHER THAT Clause II of the Memorandum of Association of the Company be altered by substitution of the words “National Capital Territory of Delhi” with the words “State of Haryana”.

“AND RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file necessary petition(s) before the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction) for confirmation of the alteration of Clause II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith.

On a show of hands, the Chairman declared the aforesaid Special Resolution carried by the requisite majority.

On a show of hands, the Chairman declared the aforesaid Special Resolution carried by the requisite majority.
TERMINATION OF THE MEETING

The Meeting terminated with a vote of thanks to the Chair.

____________________
CHAIRMAN
Date: ___________

SPECIMEN FORM OF WRITTEN CONSENT TO VARIATION OF CLASS SHAREHOLDERS' RIGHTS

We, the holders of ................................ issued share capital in A.B.C. Company Ltd., pursuant to Section 48 of the Companies Act, 2013, read with Article ........................... of the Articles of Association of the Company consent to the following variation of the rights attached or belonging to the said shares proposed to be effected thereto:

Signatures of shareholders:

(1)
(2)
(3)
(4)

Note
The consent can be effective only if it is given by such number of shareholders as are holding not less than 3/4th of the issued share capital of that class.

SPECIMEN BOARD RESOLUTION AND NOTICE OF CLASS MEETING

(a) Board Resolution to call a class meeting

RESOLVEDTHATa meeting of the preference shareholders of the Company be convened and held on ........................................ the ..................... day of .............. 20 .................... at ................ at ..............A.M/P.M. for considering, and if thought fit, adopting the following resolutions:

“(1) ....................................................................................”
“(2) ...................................................................................”

(Indicate the resolutions)

RESOLVED FURTHER THAT the Company Secretary be and is hereby directed to issue notice of the meeting to the members entitled to attend the meeting.

Where on the same day an extraordinary general meeting of the Company is also to be held, the same resolution can provide further:

RESOLVED FURTHER THAT an extraordinary general meeting of the Company be convened and held on ..................... at .............. at ................ for ................ considering, and, if thought fit, passing the following resolution:

“(1) ....................................................................................” and that the Company Secretary be and is hereby directed to issue notice thereof.
(b) Notice of class meeting

Notice is hereby given that a Separate Class Meeting of the holders of per cent Redeemable Cumulative Preference Shares in the share capital of the Company will be held at the Registered Office of the Company at on at A.M./P.M. to transact the following business:

Special Business

1. To consider and, if thought fit, to pass the following resolution as a Special Resolution with or without modification:

RESOLVED THAT subject to the compliance of the provisions of the SEBI regulations and in pursuance of Section 61 and other applicable provisions, if any, of the Companies Act, 2013, consent of the Company be and is hereby accorded for the extension in the redemption period of years of the Redeemable Cumulative Preference Shares of each of the Company, of which Redeemable Cumulative Preference Shares each were allotted on and Redeemable Cumulative Preference Shares each were allotted on by a further period of years from their respective due dates of redemption, namely, and for the Redeemable Cumulative Preference Shares of each so that the Redeemable Cumulative Preference Shares shall be redeemable in two annual installments of and on and respectively.

RESOLVED FURTHER THAT on such extension becoming effective, the rate of cumulative preference dividend on the said redeemable Cumulative Preference shares be increased from % to % from the said due dates of redemption.

2. To consider and, if thought fit to pass the following Resolution as a Special Resolution with or without modification:

Resolved that on the above resolution becoming effective, existing Clauses and of the Articles of Association be substituted by the following:

“....................................................................................................”

An Explanatory statement pursuant to Section 102 of the Companies Act, 2013, is annexed hereto. All Redeemable Cumulative Preference shareholders are requested to be present in person or by proxy. A member entitled to attend and vote at a meeting is entitled to appoint a proxy to attend and vote instead of himself and a proxy need not be a member.

By Order of the Board

Place:

Dated:

Company Secretary

Explanatory Statement

(As required by Section 102 of the Companies Act, 2013).

Item No. 1

The Company had issued a total of Redeemable Cumulative Preference Shares of each, of which Redeemable Cumulative Preference Shares each were allotted on and Redeemable Cumulative Preference Shares each were allotted on.

According to the terms of issue, these shares are redeemable on or after the expiry of years from the
date of allotment of the respective shares but not later than ................ years. Therefore, the .................... Redeemable Cumulative Preference Shares of ₹ ................ each are due for redemption on .................. and the .................... Redeemable Cumulative Preference Shares of ₹ ................ each are due for redemption on .....................

Owing to the loss suffered during the year ................ amounting to ₹ ................ lakhs and having still a carried forward loss of ₹ ................ lakhs as at the each of ................, the Company is unable to find the resources for the redemption of the Redeemable Cumulative Preference Shares on the due dates. The Company cannot also create a reserve out of profits for the redemption of the Redeemable Cumulative Preference Shares, as there are no profits carried forward at the end of the year. Further, it is also necessary for the Company to conserve its financial resources in order to improve the working capital base. Hence, the Company is not in a position to redeem the shares on the due dates.

It is, therefore, proposed to extend the date of redemption in respect of the above Redeemable Cumulative Preference Shares by a period of ................ years from their respective due dates of redemption so that the .................... Redeemable Cumulative Preference Shares of ₹ ................ each amounting to ₹ ................ be redeemed on .................. and the Redeemable Cumulative Preference Shares of ₹ ................ each amounting to ₹ ................ be redeemed on ............ The Company has already obtained the consent for this purpose from financial institutions holding a total of ................ the Redeemable Cumulative Preference Shares of the Company.

The consent of the Preference Shareholders of the Company in this Separate Class Meeting is required to be obtained in terms of the provisions contained in Section 106 of the Companies Act, 2013, since the dates of redemption of the said Redeemable Cumulative Preference Shares are now sought to be extended resulting in a variation in the terms of issue of the preference shares.

The proposed Resolutions being in the interest of the Company and shareholders, are commended for the acceptance of the members.

The letters received from (financial institutions) and according their respective consents containing the terms and conditions as aforesaid can be inspected at the Registered Office of the Company at ................ on any working day during office hours.

None of the Directors of the Company is interested in the above resolution. By Order of the Board

Place :

Date :

Company Secretary

<table>
<thead>
<tr>
<th>LESSON ROUND UP</th>
</tr>
</thead>
<tbody>
<tr>
<td>– A Company being an artificial person cannot act on its own. It, therefore, expresses its will or takes its decisions through Resolutions passed at validly held meetings.</td>
</tr>
<tr>
<td>– The primary purpose of a meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.</td>
</tr>
<tr>
<td>– The powers relating to the affairs of a company are divided between the Board and shareholders of the company.</td>
</tr>
<tr>
<td>– The management of the affairs of the company is vested in the Board and all powers excepting those which are specifically reserved for the general meeting by the Act or the articles or memorandum or otherwise must be exercised by the Board.</td>
</tr>
</tbody>
</table>
Boards of Directors are responsible for the governance of their companies and accountable for the resources entrusted to it by the shareholders.

The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.

If authorised by the Articles, the Directors may delegate all or any of their powers to Committees subject to such restrictions and limits as may be prescribed.

The meetings of a company under the Companies Act are Meetings of Directors (including Committees of Directors), Meetings of Shareholders (AGM, EGM, and Class Meetings), and Meetings of Debenture-holders, Meetings of the creditors (in winding up and otherwise than in winding up). There may also be meetings convened on the directions of the Court.

Section 173 provides the participation of directors in a meeting may be either in person or through video conferencing or other audio visual means, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Section 109(4) stipulates the time for taking a poll at a General Meeting and provides that when a poll is demanded on the question of adjournment of the Meeting or if it pertains to the Resolution for election of a Chairman of the Meeting under Section 175, it must be taken “forthwith”, i.e. immediately after it is demanded. When a poll is demanded on any other Resolution, the Chairman should decide the time for taking a poll and such poll should be taken within forty-eight hours from the time when the demand was made.

Section 108 of the act provides that any company may opt voting through electronic means voting by electronic mode means a process for recording voted by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favor or against such that the entire voting gets registered and counted in a electronic registry in a centralized server.

According to Section 110 of the Companies Act, 2013 provides that a company shall transact businesses notified by Central Government through postal ballot only in general meeting.

Adjournment means to defer or suspend the meeting to a future time, either at an appointed date or indefinitely or as decided by the members present at the scheduled Meeting.

The Chairman may adjourn a Meeting with the consent of the Members and shall adjourn a Meeting if so decided by the Members. The Meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned Meeting.

**SELF TEST QUESTIONS**

1. State the procedure for holding first meeting of the Board of directors.

2. What is the agenda for the first meeting of the Board of directors?

3. Draft a notice of the Statutory Meeting.

4. Draft a resolution for convening an Annual General Meeting.

5. Draft the Minutes of the First Board Meeting.

6. State the procedure for holding a Statutory Meeting.

7. State the procedure for passing Board resolutions by circulation.
8. Write short notes on:
   (i) Meetings of Committee of Directors
   (ii) Class meetings.

9. Explain the provisions relating to holding of an Annual General Meeting of a Producer company.

10. Draft a notice and agenda for an Annual General Meeting.
Lesson 11
Auditors

LESSON OUTLINE

- Procedure for Selection of Auditor
- Procedure of Appointment of First Auditor
- Procedure of Appointment of Auditor at any AGM
- Procedure for Rotation of Auditor
- Procedure for Rotation of Auditor
- Procedure for Appointment of an Auditor in Casual Vacancy
- Re-appointment of Auditor
- Resignation of Auditor
- Resignation of Auditor
- Fraudulent by Auditor
- Eligibility, Qualification and Disqualification of Auditors
- Remuneration of Auditors
- Powers and Duties of Auditors
- Auditor’s Report
- Supplementary Audit, Test Audit, Branch Audit, Cost Audit
- Secretarial Audit
- Annexures – Specimen Resolutions
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

For every company it is mandatory to appoint an Auditor (an individual or firm) the auditors are required to form an opinion as to whether the annual accounts of a company give a true and fair view of its profit or loss for the period under review. They are also required to certify that the accounts are prepared in accordance with the requirement of the Companies Act 2013. Auditors play an important role by giving the Auditor’s Report which is a report to the members of a company in accordance with section 143.

After going through this lesson, you will be able to understand the various procedural aspects relating to auditors of the company.
According to section 139 every company shall, at the first annual general meeting, appoint an individual or a firm (firm includes LLP) as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. The company shall place the matter relating to such appointment for ratification by members at every annual general meeting. In other words, the company shall appoint an auditor for five years with yearly ratification by the shareholders in the annual general meeting. In practical terms, the auditor shall be appointed every year by the shareholders.

Here, “Appointment” includes reappointment and “auditor” includes a ‘firm’ which includes a limited liability partnership (LLP).

**MANNER AND PROCEDURE OF SELECTION AND APPOINTMENT OF AUDITORS**

The manner and procedure of selection of auditors has been specified under rule 3 of Companies (Audit and Auditors) Rules, 2014.

*Consideration of Qualification and experience for the appointment as auditors by the Audit Committee/Board:*

In the case of a company that has constituted an Audit Committee under section 177, the audit committee and in other case; the Board shall take into consideration, the qualifications and experience of the person proposed to be considered for appointment as auditor and whether these are commensurate with the size and requirements of the company. While considering the appointment, the Board or audit committee shall have due regard to:

(a) Any order of professional misconduct passed against the proposed auditor; and

(b) Any proceedings of professional misconduct pending against the proposed auditor before the Institute of Chartered Accountants of India or the National Financial Reporting Authority or Tribunal or any Court of law. [Rule 3(1)]

*Recommendation by audit committee/Board*

Where a company has constituted an audit committee, the audit committee shall recommend the name of an individual or a firm as auditor to the Board. In other cases, the Board shall consider and recommend an individual or a firm as auditor to members in the annual general meeting for appointment. [Rule 3(3)]

If the Board is satisfied with the recommendation of the audit committee, it shall consider and recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting. [Rule 3(4)]

If the Board is not satisfied with the recommendation of the audit committee, it may send back the recommendation to the audit committee for reconsideration with their reasons. [Rule 3(5)]

If the Audit Committee, after considering the reasons given by the Board, does not agree to reconsider its recommendation, the Board shall submit to the members its own recommendation for consideration of members and appointment of one of them as Auditors and shall explain the reasons for not accepting the recommendation of the audit committee in the Board’s report. [Rule 3(6)]

*Explanation:* For the purpose of constitution of Audit Committee section 177 of the Act read with the Companies (Meetings of Board and its Powers) Rules, 2014 provides that: The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee of the Board-(i) all public companies with a paid up capital of ten crore rupees or more;(ii) all public companies having turnover of one hundred crore rupees or more;(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or
deposits exceeding fifty crore rupees or more.

Here the paid up share capital, loans or turnover or borrowings or deposits or debentures shall be taken on the
date of last audited financial statement.

**Appointment to be at Annual General Meeting**

The members at the annual general meeting shall appoint auditor of the company, recommended by the Board
who shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting,
counting the current meeting as the first, which shall be subject to the ratification by members at every
annual general meeting till the sixth such meeting by way of passing of an ordinary resolution. The company
shall place the matter relating to such appointment/reappointment for ratification by members at the succeeding
(i.e. second, third, fourth and fifth etc.) annual general meetings. If the appointment is not ratified by the members
of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after
following the procedure laid down in this behalf under the Act. [Rule 3(7)]

**Conditions for Appointment**

Before such appointment is made, the company shall obtain a written consent of the (proposed) auditor to such
appointment, and a certificate from him/her that the appointment, if made, shall be in accordance with the conditions
as prescribed under rule 4 of Companies (Audit and Auditors) Rules, 2014, namely:

(a) The individual or firm is eligible for appointment and is not disqualified for appointment under the Act, the

(b) the proposed appointment is within the term allowed under the Act.

(c) the proposed appointment is within the limit laid down in the Act.

(d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with
respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 (eligibility,
qualifications and disqualifications of auditors) of the Companies Act, 2013.

**Intimation to the Auditor and the Registrar:**

The company shall inform the auditor concerned of his/her appointment, and also file a notice of such appointment
in Form ADT-1 with the Registrar within fifteen days of the meeting in which the auditor is appointed.

**APPOINTMENT OF FIRST AUDITOR**

The procedure of appointment of first auditor can be described under two broad headings as per the details given
below.

**Appointment of first auditor in case of every company except government company or company owned/
controlled by Central Government/State Government/Central Government and State Government [Section
139(6)]:**

The first auditor of a company, other than a Government company, shall be appointed by the Board within
thirty days from the date of registration of the company and if the Board fails to appoint such auditor, it shall
inform the members of the company and the members shall make the appointment of first auditor within ninety
days of information at an extra ordinary general meeting and such auditor shall hold office till the conclusion
of the first annual general meeting.

**Appointment of first auditor in case of government company or company owned/controlled by Central
Government (CG)/State Government(SG)/Central Government and State Government [Section139(7)] :

Appointment of first auditor shall be made by Comptroller and Auditor-General of India (CAG) within sixty days of registration of the company. If CAG fails to appoint the first auditor within given time then Board of such company shall appoint first auditor within next 30 days. If Board fails to appoint the first auditor within given time then it shall inform to members and members shall make the appointment of first auditor within 60 days of information at an extra ordinary general meeting. The First Auditor shall hold office till the conclusion of first AGM.

According to section 2(45) of the Act, Government company means any company in which not less than fifty-one percent of the paid-up share capital is held by-

(a) Central Government; or
(b) State Government(s);or
(c) Partly by Central Government and partly by State Government(s).

'Government Company' includes a company which is a subsidiary company of a Government company.

Tenure of first auditor: The first auditor shall hold office till the conclusion of the first annual general meeting[Section 139(6) and 139(7)]

Procedure of Appointment of First Auditor

In case of a company, other than a Government company:

General procedure of appointment of first auditor in case of a company, other than a Government company is as follows.

1. Obtain certificate in writing from the proposed auditor confirming his eligibility and consent to be appointed as auditor of the company.

2. Convene a Board meeting within 30 days of registration of the company after giving notice to all directors as per section 173 of the Act and pass a resolution for appointing the first auditor and fixing his remuneration.

3. Inform the first auditor so appointed with a certified copy of the resolution.

Procedure where the auditor is not appointed by the Board:

Section 139 (6) lays down that if the Board fails to exercise its power to appoint the first auditor within 30 days of registration of company, the Board shall intimate such failure to the members of the company. In this case, the following procedure is to be adopted-

1. Convene a Board meeting, discuss the matter, decide the day, date, time and place of the general meeting (extra-ordinary general meeting) which shall not be beyond 90 days of Board’s information of failure to appoint first auditor and approve the notice of the meeting.

2. Issue notice of extra-ordinary general meeting to the members of the company.

3. Hold the extra-ordinary general meeting and pass resolution for appointing the first auditor.

4. Immediately inform the first auditor of his appointment, forwarding therewith a certified copy of the resolution passed at the meeting.

5. In case of listed company, forward promptly to the stock exchange three copies of notice and copy of proceedings of the meeting.
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In case of Government Companies:

Appointment of first auditor shall be made by the Comptroller and Auditor-General of India (CAG) within **sixty days of registration** of the company. If CAG fails to appoint the first auditor within the 60 days of registration of the company, the following procedure follows.

1. Obtain certificate in writing from the proposed auditor confirming his eligibility and consent to be appointed as auditor of the company.
2. Convene a Board meeting within 30 days of getting information of CAG’s failure to appoint first auditor after giving notice to all directors as per section 173 and pass a resolution for appointing the first auditor and fixing his remuneration.
3. Inform the first auditor so appointed with a certified copy of the resolution.

**Procedure where the auditor is not appointed even by the Board:**

Section 139 (7) lays down that if the Board fails to exercise its power to appoint the first auditor within 30 days of getting information of CAG’s failure to appoint first auditor of company, the Board shall intimate such failure to the members of the company. In this case, the following procedure is to be adopted-

1. Convene a Board meeting, discuss the matter, decide the day, date, time and place of the general meeting (extra-ordinary general meeting) which shall not be beyond 60 days of Board’s information of failure to appoint first auditor and approve the notice of the meeting.
2. Issue notice of extra-ordinary general meeting to the members of the company.
3. Hold the extra-ordinary general meeting and pass resolution for appointing the first auditor.
4. Immediately inform the first auditor of his appointment, forwarding therewith a certified copy of the resolution passed at the meeting.
5. In case of listed company, forward promptly to the stock exchange three copies of notice and copy of proceedings of the meeting.

**Appointment of Subsequent Auditor in case of Government Company or company owned/ controlled by CG/SG/ CG and SG [Section 139(5)]:**

Appointment or reappointment of auditor in case of Government Company or company owned/ controlled by CG/SG/CG and SG shall be made by CAG within 180 days from the commencement of financial year i.e. 1st April of each year. The Auditor shall hold office for a till the conclusion of AGM.

**APPOINTMENT OF AUDITORS AT AGM (FIRST AGM AND SUBSEQUENT AGM)**

Appointment of Subsequent Auditor in case of every company except Government Company or company owned/ controlled by Central G/SG/CG and SG [Section 139(1)]:

Appointment of auditor shall be made by members at First AGM and every subsequent 6th AGM. At the first AGM, every company shall appoint an individual or a firm as an auditor. The auditor so appointed shall hold office from the conclusion of first AGM till the conclusion of 6th AGM. After the 1st AGM, when any appointment of auditor is made at any AGM, the auditor so appointed shall hold office till the conclusion of 6th AGM, with the AGM wherein such appointment has been made being counted as the 1st AGM. At every AGM (viz. 2nd, 3rd, 4th and 5th AGM), the appointment of auditor shall be ratified by the members. If at any AGM, the appointment of auditor is not ratified by the members, the Board of Directors shall appoint another individual or firm as its auditor(s) after following the procedure laid down under the Act [Explanation to Rule 3(7)]. Simply speaking, if the appointment is not ratified at any AGM, the auditor shall have to vacate his office and such vacancy shall amount to casual vacancy. The Board shall fill such casual vacancy in accordance with sub-section (8) of section 139.
PROCEDURE OF APPOINTMENT OF AUDITOR AT ANY AGM:

The manner and procedure of selection of auditors by the members of the company at any AGM has been specified under rule 3 of Companies (Audit and Auditors) Rules, 2014.

1. The qualification and experience of the individual or the firm proposed to be appointed as auditor shall be considered by –
   (a) The Board; or
   (b) The audit committee, in case the company is required to constitute an Audit committee.

2. While considering the appointment, the Board/Audit Committee shall have due regard to–
   (a) Any order of professional misconduct passed against the proposed auditor; and
   (b) Any proceedings of professional misconduct pending against the proposed auditor.

3. The Board/Audit Committee may call for such other information from the proposed auditor as it may deem fit.

4. In case the company is not required to constitute the Audit committee, the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

5. In case the company is required to constitute the Audit Committee, following procedure shall be adopted:
   (a) The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration.
   (b) If the Board agrees with the recommendation of the audit committee, it shall further recommend such individual or such firm as auditor to the members in the AGM for appointment.
   (c) If the Board dis agrees with the recommendation of the audit committee, it shall refer back the recommendation to the audit committee for reconsideration citing reasons for such dis agreement.
   (d) If the audit committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, and the Board continues to disagree with the recommendations of the audit committee, the Board shall –
      (i) record reasons for its disagreement with the committee
      (ii) send its own recommendation for consideration of the members in the AGM;
   (e) If the audit committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, and the Board agrees with the recommendations of the audit committee, the Board shall recommend the name of the individual or the firm as recommended by the Audit committee to the members in the AGM for appointment.
   (f) The appointment will be considered at the duly convened annual general meeting of the company and the necessary resolution be passed.
   (g) In case of listed company, the copies of notices and copy of proceedings of annual general meeting be forwarded promptly.
   (h) The auditor must be intimated of his appointment and certified copy of resolution of appointment must be sent to the auditor.
   (i) Then, company is required to file a notice about the appointment of auditor(s) with the Registrar in form ADT-1 along with filling fees and necessary enclosures within 15 Days of the meeting.
ROTATION OF AUDITOR [SECTION 139(2) and 139 (4)]

The section 139(2) of the Companies Act, 2013 has introduced the system of rotation of auditors which is applicable to –

(i) listed companies; or
(ii) all companies belonging to such class or classes of companies as prescribed under Rule 5 of the Companies (Audit and Auditors) Rules 2014.

Class of companies covered in rotation scheme:

According to Rule 5 of the Companies (Audit and Auditors) Rules, 2014 and for the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

(a) all unlisted public companies having paid up share capital of rupees 10 crore or more;
(b) all private limited companies having paid up share capital of rupees 20 crore or more;
(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crore or more.

The concept of rotation of auditors shall not apply to one person companies and small companies.

The provisions for rotation of auditors under sub sections 2,3 and 4 of section 139 are given below:

In case of an individual as auditor:

(a) No individual shall be appointed or re-appointed as auditor for more than 1 term of 5 consecutive years.
(b) An individual auditor, who has completed his term of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the date of completion.

In case of a firm as an auditor:

(a) No audit firm shall be appointed or re-appointed as auditor for more than 2 terms of 5 consecutive years.
(b) An audit firm which has completed its 2 terms of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such terms.
(c) If any firm/LLP which has one or more partners who are also partners in the outgoing audit firm/LLP cannot be appointed as auditors during the 5 year period. In other words, if two or more audit firms have common partner(s), and one of these firms has completed its 2 terms of 5 consecutive years, none of such audit firms shall be eligible for re-appointment as auditor in the same company for 5 years.

The aforementioned provisions can be explained by the following examples.

Example 1: Mr. X has completed 5 years in M/s ABC Ltd. in FY 2012-13. Now, he is not eligible for re-appointment for next 5 years in M/s ABC Ltd.

Example 2: Firm XYZ has completed 10 years in M/s ABC Ltd. Now, he is not eligible for re-appointment for next 5 years M/s ABC Ltd.

Example 3: If Mr. X is a common partner in firm XYZ and Firm VWX, then Firm VWX is also not eligible for appointment as auditor in M/s ABC Ltd for that 5 years (i.e. from 2013-14 ).

Transition Period

There is a transition period of three years, from date of enactment of the 2013 Act, to comply with this requirement. All listed companies or specified companies will have to comply with the above provisions relating to rotation of
auditors within 3 years from the date of commencement of this Act i.e. within 31st March 2017.

The aforementioned provisions can be explained by the following illustration in a better manner.

If ABC & Co. is auditor of M/S XYZ Ltd. and the balance sheet of M/S XYZ Ltd. is being signed by Mr. A who is also a partner in other firm PQR & Co. If the original tenure of appointment of ABC & Co. is expiring on 20th August, 2020. The firm PQR & Co. can't take the appointment of auditor of M/S XYZ Ltd. for the period of five years starting from 21st August, 2020 and up to 20th August, 2025.

In the above example, PQR & Co. can take the advantage of being appointed as auditor on a date starting after the expiry of financial year 2020-2021. In simple words, PQR & Co. is being eligible for appointment of auditor of M/S XYZ Ltd. after the start of new financial year from the expiry of original tenure of ABC & Co., as the proviso mentions only of one preceding financial year.

Right of removal or resignation not affected [4th proviso to Section 139(2)]

1. The right of the company to remove an auditor before expiry of one or two term(s) of 5 consecutive years shall not be affected due to any provision contained in section 139(2).

2. The right of auditor to resign from the office of auditor before expiry of one or two term (s) of 5 consecutive years shall not be affected due to any provision contained in section 139(2).

**Internal Rotation (sub-section 3 of Section 139)**

Besides the above rotation, the members of the company may also resolve to provide that -

(a) in the audit firm appointed by it, the **auditing partner** and his team shall be **rotated** at such intervals as may be resolved by members; or

(b) the audit shall be conducted by more than one auditor.

**Position of Joint Auditors**

According to sub-rule 4 of Rule 6 of The Companies (Audit and Auditors) Rules, 2014, where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

**MANNER AND PROCEDURE FOR ROTATION OF AUDITOR**

Manner of rotation of auditor by the companies on expiry of their term:

Rule 6 of The Companies (Audit and Auditors) Rules, 2014 prescribes the following manner of rotation of auditors by the companies:

1. In case the company is required to constitute an audit committee, the procedure shall be as follows:
   
   (a) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
   
   (b) The Board shall consider the recommendation of the audit committee.

   (c) The Board shall make its own recommendation for appointment of the next auditor by the members in the AGM.

2. In case the company is not required to constitute an audit committee, the procedure shall be as follows:

   (a) The Board shall itself consider the matter of rotation of auditors.
(b) The Board shall make its own recommendation for appointment of the next auditor by the members in the AGM.

3. In case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.

4. The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

5. If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of 5 years.

Explanation I - For the purposes of these rules the term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Explanation II - For the purpose of rotation of auditors,-

(a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;

(b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

### Illustration explaining rotation in case of Individual Auditor

The following illustration tries to explain the total tenure of appointment in case of Individual Auditor being appointed before the commencement of provisions of Section 139(2) of the Act.

<table>
<thead>
<tr>
<th>Number of consecutive years for which an audit firm has been functioning as auditor in the same company [In the first AGM held after the commencement of provisions of section 139(2)]</th>
<th>Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)</th>
<th>Aggregate period which the firm would complete in the same company in view of column I and II [Total of years covered from date of appointment, being appointment before the commencement of provisions of Section 139(2)]</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>II</td>
<td>III</td>
<td>IV</td>
</tr>
<tr>
<td>5 Years (or more than 5 years)</td>
<td>3 Years</td>
<td>8 Years or more</td>
<td>Auditors being appointed in AGM on 30.09.2009 (or before) can hold their office till the AGM to be held on or before 29.09.2017</td>
</tr>
<tr>
<td>4 years</td>
<td>3 years</td>
<td>7 years</td>
<td>Auditors being appointed in AGM on 30.09.2010 can hold their office till the AGM to be held on or before 29.09.2017.</td>
</tr>
<tr>
<td>Number of consecutive years for which an audit firm has been functioning as auditor in the same company [In the first AGM held after the commencement of provisions of section 139(2)]</td>
<td>Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)</td>
<td>Aggregate period which the firm would complete in the same company in view of column I and II [Total of years covered from date of appointment, being appointment before the commencement of provisions of Section 139(2)]</td>
<td>Example</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>10 years (or more than 10 years)</td>
<td>3 years</td>
<td>13 years or more</td>
<td>Audit firm being appointed in AGM on 30.09.2004 (or before) can hold their office till the AGM to be held on or before 29.09.2017.</td>
</tr>
<tr>
<td>9 years</td>
<td>3 years</td>
<td>12 years</td>
<td>Audit firm being appointed in AGM on 30.09.2005 can hold their office till the AGM to be held on or before 29.09.2017.</td>
</tr>
<tr>
<td>8 years</td>
<td>3 years</td>
<td>11 years</td>
<td>Audit firm being appointed in AGM on 30.09.2006 can hold their office till the AGM to be held on or before 29.09.2017.</td>
</tr>
<tr>
<td>7 years</td>
<td>3 years</td>
<td>10 years</td>
<td>Audit firm being appointed in AGM on 30.09.2007 can hold their office till the AGM to be held on or before 29.09.2017.</td>
</tr>
</tbody>
</table>

Illustration explaining rotation in case of Audit firm

The following illustration tries to explain the total tenure of appointment in case of Audit firm being appointed before the commencement of provisions of Section 139(2) of the Act.
<table>
<thead>
<tr>
<th>Years</th>
<th>Years</th>
<th>Years</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>4</td>
<td>10</td>
<td>Audit firm being appointed in AGM on 30.09.2008 can hold their office till the AGM to be held on or before 29.09.2018.</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>10</td>
<td>Audit firm or LLP being appointed in AGM on 30.09.2009 can hold their office till the AGM to be held on or before 29.09.2019.</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
<td>10</td>
<td>Audit firm or LLP being appointed in AGM on 30.09.2010 can hold their office till the AGM to be held on or before 29.09.2020.</td>
</tr>
<tr>
<td>3</td>
<td>7</td>
<td>10</td>
<td>Audit firm or LLP being appointed in AGM on 30.09.2011 can hold their office till the AGM to be held on or before 29.09.2021.</td>
</tr>
<tr>
<td>2</td>
<td>8</td>
<td>10</td>
<td>Audit firm or LLP being appointed in AGM on 30.09.2012 can hold their office till the AGM to be held on or before 29.09.2022.</td>
</tr>
<tr>
<td>1</td>
<td>9</td>
<td>10</td>
<td>Audit firm or LLP being appointed in AGM on 30.09.2013 can hold their office till the AGM to be held on or before 29.09.2023.</td>
</tr>
</tbody>
</table>

Note:

1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
2. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
3. Consecutive years shall mean all the preceding financial years for which the individual auditor/firm has been the auditor until there has been a break by five years or more.

**CASUAL VACANCY IN THE OFFICE OF AUDITORS [SECTION 139(8)]**

The term casual vacancy has not been defined in Companies Act, 2013. Generally, it means a vacancy caused due to death, disqualification, resignation etc of the auditor after accepting a valid appointment because of which the auditor cease to act as auditor of the company. Where no auditor is appointed or re-appointed, it does not result casual vacancy.

**PROCEDURE IN REGARD TO APPOINTMENT OF AN AUDITOR IN CASUAL VACANCY:**

The procedure of appointment of auditor in case of casual vacancy can be discussed under two broad headings.

Appointment of auditor in Casual Vacancy in every company except Govt. Company or company owned/controlled by CG/SG/CG and SG [Section 139(8)(i)]:-

**Casual vacancy arising by other than resignation:** Whereas casual vacancy is arising by other than resignation
then vacancy shall be filled the Board within 30 days.

Procedures:

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of arising casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.
4. Inform the Registrar in prescribed form with requisite filing fee and annexures.

Casual vacancy arising due to resignation: If casual vacancy is arising due to the resignation of auditor, it shall be filled within 30 days by the Board of directors, and the appointment made by the Board shall be approved in a general meeting convened within 3 months from the date of recommendation of the Board.

Procedures:

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of arising casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.
4. Issue notice to hold general meeting within 3 months from the date of recommendation of the Board to the members of the company.
5. Hold the general meeting and approve the appointment of auditor already made by the Board of directors.
6. Inform the Registrar in prescribed form with requisite filing fees and annexures.
7. In case of listed company, forward promptly to the stock exchange the notice and proceedings of the general meeting.

Appointment of auditor in Casual Vacancy in case of Govt. Company or company owned/ controlled by CG/SG/CG and SG [Section 139(8)(ii)] :

Casual vacancy shall be filled by the CAG within 30 days. If CAG fails to fill the vacancy within given time then BOD shall fill the vacancy within next 30 days.

Procedures:

The following procedure follows after the CAG’s failure to appoint auditor to fill up casual vacancy within 30 days.

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of information of CAG’s failure to appoint auditor to fill up casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.

Inform the Registrar in prescribed form with requisite filing fees and annexures.

RE-APPOINTMENT OF RETIRING AUDITOR [SECTION 139 (9) & 139(10)]

A retiring auditor may be re-appointed at an annual general meeting, if –

(a) he is not disqualified for re-appointment;
(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and

(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company [sub-section (10) of Section 139]

**Procedure relating to Re-appointment of Retiring Auditor at the Annual General Meeting**

1. A company may re-appoint the auditors at the next annual general meeting on the same remuneration or in certain cases with an increase in remuneration. However, before taking steps to re-appoint the same auditor, it must be ascertained from the retiring auditor his willingness to act as an auditor and also a certificate that his re-appointment will be in conformity with the limits specified in the Act should be obtained.

2. After obtaining his eligibility and consent to act as auditor, the Board will consider the same and the subject relating to his appointment and remuneration will be included in the agenda for the annual general meeting.

3. The appointment will be considered at the annual general meeting and the necessary resolution be passed.

4. In case of listed company, forward promptly to the stock exchange copies of the notice and a copy of the proceedings of the annual general meeting.

5. The auditor must be intimated of his appointment.

6. The company shall inform the Registrar in prescribed form along with requisite fee and necessary annexures.

**REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM [SECTION 140(1) AND RULE 7] OF COMPANIES (AUDIT AND AUDITORS) RULES, 2014**

Section 140(1) of the Act provides for removal of auditor before the expiry of his term. The auditor may be removed from his office before expiry of his term only by a special resolution and after obtaining the previous approval of the Central Government.

However, before taking any such action, the auditor concerned shall be given reasonable opportunity of being heard.

**Procedure for Obtaining Approval of CG and Passing of Special Resolution (Rule 7)**

(a) An application shall be made to Central Government for removal of auditor shall be made in **Form ADT-2** and shall be accompanied with fees as provided under the Companies (Registration offices and Fees) Rules, 2014.

(b) The application shall be made within thirty days of the resolution passed by the Board.

(c) The Company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

(d) Intimate the stock exchange promptly in respect of proceedings of the meeting.

(e) Intimate the auditor who was removed with a certified copy of the resolution passed along with a copy of the approval of Central Government.

(f) File MGT-14 with the Registrar with requisite fee and relevant annexures within 30 days of passing special resolution.

(g) Send a certified copy of the proceedings of general meeting and inform about the change in auditor of the company to stock exchanges where the company is listed.
RESIGNATION OF AUDITOR [SECTION 140(2) AND 140(3) AND RULE 8]

Section 140(2) of the Act provides that the auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in Form ADT-3 with the company and the registrar and the CAG (in case of Government company), indicating the reasons and other facts as may be relevant with regard to his resignation.

If the auditor does not comply with the aforesaid provision, he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Procedure for Appointment of Auditor other than Retiring Auditor [Section 140(4)]:

– **A Special notice** shall be required for a resolution at an annual general meeting for –
  
  (a) appointing as auditor a person other than the retiring auditor; or
  
  (b) providing expressly that a retiring auditor shall not be re-appointed except where the retiring auditor has completed a consecutive tenure of five years or ten years as the case may be.

– On receipt of notice of such a resolution, the company should forthwith send a copy of the same to the retiring auditor.

– Where the notice is received well in advance, the company can conveniently send the notice of the resolution to the members by including the same in the notice of the annual general meeting.

– The retiring auditor can make a representation. Where he makes any representation in writing to the company and requests for the notification to members of the company, the company should, unless the representations are received by it too late for it to do so:
  
  (a) In any notice of the resolution given to the members state the fact of the representations having been made; and
  
  (b) Send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after the receipt of the representations by the company.

– Where a copy of the representations is not sent as aforesaid, because they are received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting. Obtain a certificate from the auditor to be so appointed to the effect that such appointment, if made, will be in conformity with the limits specified in the Act.

– In the general meeting, the appointment will be considered and the necessary resolution be passed.

– In case of listed company, forward promptly to the stock exchange copies of the notice and a copy of the proceedings of the annual general meeting. After the appointment, the new auditor will be informed of the appointment along with a certified copy of the resolution passed at the meeting. The company shall inform the Registrar in prescribed form along with requisite fee and necessary annexures.

FRAUDULENT ACT BY AUDITOR

Section 140(5) of the Act provides that where the auditors are found guilty of abetting or colluding in any fraud, the tribunal may, by order, direct the company to change its auditors. If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.
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Such an auditor will be removed and be debarred to act as auditor of any company for a period of five years. In such cases, both the firm and the partner concerned will be jointly and severally liable.

As per rule 3 of companies (audit and auditors) Rules, 2014, in case of criminal liability of any audit firm, the liability other than fine, shall devolve only on concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud.

ELIGIBILITY, QUALIFICATION AND DISQUALIFICATION OF AUDITORS

Section 141 of the Companies Act 2013 deals with the eligibility, qualifications and disqualifications of auditors. This section is similar to the existing section 226 of the Companies Act 1956. Under the 1956 Act, a Chartered Accountant holding a certificate of practice or a firm of Chartered Accountants (only) can be appointed as auditor(s) of a company. The section 141 (1) and (2) of the 2013 Act, in addition, provides--

- A firm of Chartered Accountants or Limited Liability Partnership (LLP) can be appointed as an auditor of a company only if majority partners practising in India are qualified for appointment as an auditor of a company.
- Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

Summary – Eligibility

For an individual:

An individual shall be eligible for appointment as an auditor of a company only if he is a chartered accountant (holding certificate of practice under the Chartered Accountants Act, 1949)

For a firm:

A firm shall be eligible for appointment as an auditor of a company only if majority of partners practising in India are qualified for appointment (i.e. they are Chartered Accountants).

Where a firm including a LLP is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

DISQUALIFICATION of AUDITORS [ SECTION 141(3)]

The Companies Act, 2013 has also made addition in the list of disqualifications of auditors. According to the section 141 (3) of the Companies Act, 2013, the following persons shall not be eligible for appointment as an auditor of a company: –

a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

b) an officer or employee of the company;

c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

d) a person who, or his relative or partner –

- is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh;

- is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company in excess of rupees five lakh or
has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company in excess of one lakh rupees.

e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. The term “business relationship” shall be construed as any transaction entered into for a commercial purpose, except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

- commercial transactions which are in the ordinary course of business of the company at arm’s length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

DISQUALIFICATION OF AUDITOR AFTER APPOINTMENT

Section 141(4) provides that where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Punishment for contravention of the provisions of Sec.141, the Company attracts fine between Rs.25000 and Rs.500, 000 and every officer in default with imprisonment for a term up to one year or with fine between Rs.10, 000 and Rs.100, 000 or with both. The auditor shall be punishable with fine of between Rs.25, 000 and Rs.500, 000. However, for wilful default (with intention to deceive the company or its shareholders or creditors or tax authorities), the auditor will be liable to a higher punishment by way of imprisonment for a term up to one year and with fine between Rs.100,000 and Rs.25,00,000.(Sec. 147)

REMUNERATION OF AUDITOR (SECTION 142)

Remuneration to be fixed in general meeting:

The remuneration of the auditor of a company shall be fixed-

(a) in its general meeting or

(b) in such manner as may be determined therein
Remuneration to be fixed by the Board

The Board may fix remuneration of the first auditor appointed by it.

Certain sums to be included in remuneration

The remuneration shall include following in addition to the fees payable to an auditor-

- the expenses, if any, incurred by the auditor in connection with the audit of the company and
- any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Punishment for contravention of the provisions of Sec.142, the Company attracts fine between Rs.25000 and Rs.500,000 and every officer in default with imprisonment for a term up to one year or with fine between Rs.10,000 and Rs.100,000 or with both. The auditor shall be punishable with fine of between Rs.25,000 and Rs.500,000. However, for wilful default (with intention to deceive the company or its shareholders or creditors or tax authorities), the auditor will be liable to a higher punishment by way of imprisonment for a term up to one year and with fine between Rs.100,000 and Rs.25,00,000.(Sec. 147).

Powers or Rights of Auditors

Section 143(1) provides for powers or rights of auditors. Auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

Duties of Auditors

Section 143(2), 143(3) and 143(4) provides for the duties of auditors. The auditor shall make a report to the members of the company on –
(a) the accounts examined by him and
(b) on every financial statement which are required by or under this Act to be laid before the company in general meeting.

The auditor shall state in his report as to whether the accounts examined by him and financial statements give a true and fair view of –

(a) the state of the company's affairs as at the end of its financial year;
(b) the profit or loss for the year; and
(c) cash flow for the year and such other matters as may be prescribed.

The auditor shall prepare his report after taking into account –

(a) the provisions of this Act
(b) the accounting and auditing standards

AUDITOR’S REPORT [SECTION 143(3)]

The auditor’s report shall also state –

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company’s auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
(d) whether the company’s balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
(e) whether, in his opinion, the financial statements comply with the accounting standards;
(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

Other matters to be included in auditor’s report: The auditor’s report shall also include their views and comments on the following matters, namely:-

a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

**AUDITING STANDARDS AND NATIONAL FINANCIAL REPORTING AUTHORITY**

The Companies Act, 2013 provides that every auditor shall comply with the auditing standards. The auditing standards will be prescribed by the Central Government as recommended by the Institute of Chartered Accountants of India (ICAI), constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA).

However, until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

The Central Government may, in consultation with the NFRA, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor’s report shall also include a statement on such matters as may be specified therein.

**SPECIAL PROVISIONS W.R.T. GOVERNMENT COMPANY**

In the case of a Government company, the Comptroller and Auditor- General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit the Comptroller and Auditor- General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor- General of India which, among other things, include the directions, if any, issued by the CAG, the action taken thereon and its impact on the accounts and financial statement of the company.

**Supplementary Audit**

The CAG shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to:

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the CAG may direct; and

(b) comment upon or supplement such audit report: However, any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 (Right of member to copies of audited financial statement) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

**Test Audit**

Sub-Section (7) of Section 143 of the Act provides that the Comptroller and Auditor- General of India may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of any company covered under sub section (5) or sub section (7) of section 139 and the provisions of section 19A of the Comptroller and Auditor- General of India (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.
**BRANCH AUDIT [SECTION 143 (8)]**

*Audit of a company having branch in India:* Where a company has a branch office, the accounts of that office shall be audited either by –

(a) the auditor appointed for the company (herein referred to as the company’s auditor) under this Act; or

(b) by any other person qualified for appointment as an auditor of the company.

*Audit of a company having branch outside India*

Where the branch office is situated in a country outside India, the accounts of the branch office shall be audited by –

(a) the company’s auditor or

(b) by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

*Appointment of branch auditor*

The branch auditor shall be appointed under section 139.

*Duties and powers of the company’s auditor prescribed under the Rules (Rule 12)*

The duties and powers of the company’s auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

*Report of Branch Auditor*

The branch auditor shall prepare a report on the accounts of the branch examined by him and submit his report to the company’s auditor. The auditor of the company shall deal with the report of the branch auditor, in his report in such manner as he considers necessary.

*Fraud reporting by auditors*

Under section 143(12), if an auditor of a company, 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 immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below:

- auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;

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

- in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

- The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.

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

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

The provisions of this section shall mutatis mutandis apply to –

(a) the cost accountant in practice conducting cost audit under section 148; or
(b) the company secretary in practice conducting secretarial audit under section 204.

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (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. [Section 143(15)]

AUDITORS NOT TO RENDER CERTAIN SERVICES (SEC-144)

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, (of the company concerned ) but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely,

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed:

This is a new provision and there was no restriction of this type in the Companies Act 1956. Therefore, an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of commencement of the Act i.e within 31st March 2015.

It is also provided in this section that the prohibited non-audit services cannot be rendered by the following associates of the auditor.

i) If the auditor is an Individual :- The Individual himself or his relative or any person connected or associated with him, or any entity in which the Individual has significant influence or control or whose name or trade mark/brand is used by the Individual.

ii) If the auditor is a firm or LLP:- Such firm/LLP either itself or through its partner or through its parent, subsidiary or associate or through any entity in which the firm/LLP or its partner has significant influence or control or whose name, trade mark or brand is used by the firm/LLP or any of its partners.
AUDITOR(S) TO SIGN AUDIT REPORTS (SEC 145)

The person appointed as an auditor of the company shall sign the auditor’s report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141- namely, that, in the case of an LLP, only the partners who are chartered accountants are authorised to sign on behalf of the firm. The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company (evidently, at or during the meeting).

AUDITOR(S) TO ATTEND GENERAL MEETING

According to section 146 all notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend the meeting either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting and such auditor/authorized representative shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

PENAL PROVISIONS

Section 147 provides for punishment for contravention of the provisions of sections 139 to 146. These penalty provisions are as under.

- If a company contravenes any of the provisions of sections 139 to 146 it shall be liable to pay minimum fine of Rs. 25,000/- which may extend to Rs. five lakh. Further, every officer who is in default shall be punishable with imprisonment upto one year and minimum fine of Rs. 10,000/- which may extend to Rs. one lakh or with both.

- If an auditor of a company contravenes any of the provisions of sections 139, 143 144 or 145, the auditor shall be punishable with minimum fine of Rs. 25,000/- which may extend to Rs. five lakh.

- If it is found that the auditor has contravened the provisions of sections 139, 143 144 or 145, knowingly or willfully with the intention to deceive the company, its share holders, creditors or tax authorities, he shall be punishable with imprisonment for a term upto one year and with a minimum fine of Rs. one lakh which may extend upto Rs. 25 lakh.

- If any auditor contravened any of the provisions of sections 139, 143 144 or 145, he shall be liable to:
  a) refund the remuneration received by him to the company and
  b) pay for damages to the company, statutory bodies/authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

- The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

- Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

- In case of criminal liability of any audit firm the liability other than fine, shall devolve only in the concerned partners, who acted in a fraudulent manner or abetted or as the case may be, ............ in any fraud. [Rule 9]
COST AUDIT

Section 148 of the Companies Act provides that the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

- If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

- The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed: Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

“Cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

- An audit conducted under this section shall be in addition to the audit conducted under section 143.

- The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company: Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

- A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

- If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

- If any default is made in complying with the provisions of this section,—

  (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;

  (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

Cost Auditor

The provisions relating to appointment of cost auditors’ appointment are dealt in Companies (Cost Record and Audit) Rules, 2014.

Appointment

The category of companies specified in rule 3 and the thresholds limits laid down in rule 4, shall within one
hundred and eighty days of the commencement of every financial year, appoint a cost auditor. “Cost auditor” means a Cost Accountant in practice, as defined in clause (b), who is appointed by the Board [Rule 6].

**Remuneration**

Rule 14 of Companies (Audit and Auditors) Rules, 2014 deals with Remuneration of the Cost Auditor. For the purpose of sub-section (3) of section 148, –

(a) in the case of companies which are required to constitute an audit committee-

(i) the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;

(ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;

(b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

**PROCEDURE FOR APPOINTMENT OF COST AUDITOR**

(1) The category of companies specified in rule 3 and the thresholds limits laid down in rule 4 of Companies (Cost Records and Audit) Rules, 2014, shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor.

(2) The audit committee, if constituted by the company shall ensure that the cost auditor is free from any disqualifications.

(3) The audit committee shall obtain a certificate from the cost auditor certifying his independence.

(4) Every company referred to in sub-rule (1) shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in form CRA-2, along with the fee as specified in Companies (Registration Offices and Fees) Rules, 2014.

(5) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within 30 days from the date of filing of such application.

(6) If within thirty days from the date of filing of such application, the Central Government directs the company to re-submit the said application with additional information the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.

(7) After the expiry of thirty days, the company shall issue formal letter of appointment to the cost auditor.

(8) The audit committee, if constituted by the company recommends to the Board a suitable remuneration to be paid to the cost auditor. In the case of those companies which are not required to constitute an audit committee, the Board shall consider and approve the remuneration of the Cost Auditor which shall be ratified by shareholders subsequently.

(9) Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.
Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in form CRA-3.

Every cost auditor shall forward his report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of directors shall consider and examine such report particularly any reservation or qualification contained therein.

Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein, in form CRA-4 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.

In those companies, where constitution of Audit Committee is not required by law, then the role of Audit Committee shall be discharged by the Board of Directors.

The provisions of sub-section (12) of section 143 of the Act and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and these rules.

SECRETARIAL AUDIT (SECTION-204)

The Companies Act, 2013 has introduced a new requirement of Secretarial Audit for bigger companies, which has been prescribed under Section 204 of the Act. The provisions regarding secretarial audit of the company according to section 204 of the Companies Act, 2013 and the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 are discussed below-

Companies required conducting secretarial audit:

1) Every listed company and
2) Company belonging to other class of companies: The other class of companies are
   - every public company having a paid-up share capital of fifty crore rupees or more; or
   - every public company having a turnover of two hundred fifty crore rupees or more.

Qualifications for the secretarial auditor: A Secretarial Audit has to be conducted by a Practising Company Secretary in respect of the secretarial and other records of the company.

Report of the secretarial audit: A secretarial audit report shall be annexed with the Board’s report of the company. The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1). The format of the Secretarial Audit Report shall be in Form No.MR.3.

Other Provisions:

– 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 related records of the company.

– If a company or any officer of the company or the company secretary in practise, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. As per Section 143(14), all provisions regarding rights, duties and obligations of statutory auditors shall also apply to Company Secretary in Practice conducting secretarial audit.
SPECIMEN OF BOARD RESOLUTION FOR THE APPOINTMENT OF FIRST AUDITOR

“RESOLVED THAT the consent of the Board of directors be and is hereby given to the appointment of M/s ABC and Co., Chartered Accountants, as the Auditor of the Company to hold office up to the conclusion of the First Annual General Meeting of the company at a remuneration of ₹ ............. in addition to the out of pocket expenses incurred by them in connection with audit of company accounts.”

RESOLVED FURTHER THAT the Secretary of the company be and is hereby directed to give intimation of the appointment to the Auditors so appointed within seven days of the date of this resolution.”

SPECIMEN OF ORDINARY RESOLUTION PASSED AT A GENERAL MEETING APPOINTING THE FIRST AUDITOR(S) WHERE BOARD FAILS TO APPOINT WITHIN THIRTY DAYS OF OF COMPANY’S REGISTRATION

“RESOLVED THAT pursuant to provisos to Sub-section (6) of Section 139 of the Companies Act, 2013, Shri................, Chartered Accountant, ........................, be and is hereby appointed as the auditor of the company to hold office until the conclusion of the first Annual General Meeting on a remuneration of ₹............... plus reimbursement of out-of-pocket expenses that may be incurred by the auditor in the performance of his duties as auditor of the company.

Explanatory Statement

The company was registered on............. The Board of directors of the company failed to exercise its power under Sub-section (6) of Section 139 of the Companies Act, 2013 within thirty days of the date of registration of the company and did not appoint the first auditor of the company.

Therefore, in exercise of its power under the proviso to Sub-section (6) of Section 139 of the Act, the company may appoint the first auditor of the company by passing the proposed ordinary resolution as set out in the notice of the meeting.

None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR(S) OF THE COMPANY AT AN AGM

“RESOLVED THAT pursuant to Sub-section (1) of Section 139 of the Companies Act, 2013, M/s. ........................, Chartered Accountants, ........................, New Delhi, be and are hereby appointed as the auditors of the company to hold office from the conclusion of this annual general meeting until the conclusion of next annual general meeting of the company to audit the financial accounts of the company for the financial year ended ........................ on a remuneration of ₹ ............. (Rupees..................) and reimbursement of actual expenses that may be incurred by the auditors in the performance of their duty as auditors of the company.”

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR OF THE COMPANY TO FILL VACANCY CAUSED BY RESIGNATION

“RESOLVED THAT, pursuant to proviso to Sub-section (8) of Section 139 of the Companies Act, 2013, M/s.......................... Chartered Accountants ........................, New Delhi, be and are hereby appointed as the auditors of the company to fill the vacancy caused by the resignation of M/s...................... Chartered Accountants, ........................, New Delhi, present auditors of the company, to hold the office from the date of this meeting until the conclusion of the next annual general meeting of the company on a remuneration of................. plus reimbursement of out-of-pocket expenses that may be incurred by the auditors in the performance of their duties as auditors of the company.”
Explanatory Statement

M/s. ........................, the existing auditors have submitted their letter of resignation, citing personal reasons. Proviso to Section 139 (8) of the Companies Act, 2013, lays down that where vacancy in the office of an auditor is caused by the resignation of the existing auditor, the vacancy shall be filled by the Board of Directors and the appointment made by the Board shall be approved in a general meeting within 3 months of the recommendation of the Board.

The letter of resignation of M/s.........................., may be inspected at the registered office of the company at........................ during the business hours on any working day.

None of the directors is interested or concerned in the proposed resolution.

BOARD RESOLUTION FOR APPOINTMENT OF AUDITOR TO FILL CASUAL VACANCY

“RESOLVED THAT consequent to the casual vacancy caused by the sudden death of ..........Chartered Accountants and existing auditors of the company, M/s. .................. .........................., Chartered Accountants, be and are hereby appointed as Auditors of the Company to fill the casual vacancy and they shall hold office until the conclusion of the next annual general meeting and they be remunerated by way of such fee as the Directors may determine.

BOARD RESOLUTION REGARDING REMOVAL OF AUDITOR AND OTHER INCIDENTAL MATTERS

The Board resolves that:-

(a) in accordance with section 140(1) of the Companies Act, 2013 read with rule 7 of Companies (Audit and auditors) Rules, 2014 and subject to the approval of the Company at a general meeting, ..........., Chartered Accountant, the Auditor of the Company be removed from his office as auditor;

(b) an extraordinary general meeting of the Company be held on ...... at ...... at ...... to transact the business as set out in the draft notice of the meeting tabled at this meeting which, together with the explanatory statement to be annexed thereto, are approved;

(c) Shri ........, Secretary of the Company is authorised to issue the notice of the extraordinary general meeting to the members of the Company;

(d) Shri ........, Secretary of the Company is authorised to inform the Auditor of the decision of the Board as required under the Act;

(e) Shri........, Secretary of the Company is authorised to digitally sign e-form ADT-2 for make an application to the Central Government for approval for the removal of the Auditor under section 140 of the Act.

RESOLUTION AT A GENERAL MEETING TO REMOVE AUDITOR

RESOLVED THAT pursuant to section 140 of the Companies Act, 2013 and in accordance with the approval accorded the Central Government vide letter No. ...........dt. ...........M/s........, Chartered Accountants who were appointed at the last Annual General Meeting held on .......... as auditors of the company be and are hereby removed from the office of the Auditors of the company.
MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING TO APPOINT BRANCH AUDITOR

“RESOLVED THAT in accordance with section 143 (8) of the Companies Act, 2013 M/s. ..........., Chartered Accountant/s, who are qualified for appointment as Auditor of the Company under section 139 of the Companies Act, 2013 be and are hereby appointed as Branch Auditor to audit the accounts for the year ending 31st March, 2014 of the Company’s branch office/s at ...... on a remuneration of ₹ .........., besides reimbursement of out of pocket expenses actually incurred by them in the performance of their duties as branch auditor.

MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING TO AUTHORISE BOARD OF DIRECTORS TO APPOINT BRANCH AUDITOR

“RESOLVED THAT pursuant to section 143(8) of the Companies Act, 2013, the accounts for the year ending 31st March, 2014 of the Company’s branch office/s at .......... be audited by such person/s, other than the Company’s Auditor, as is/are qualified for appointment as Auditor of the Company under section 139 of the Companies Act, 1956, and the Board of Directors be and is hereby authorised to appoint such Branch Auditor/s in consultation with the Company’s Auditor and on such terms and conditions and on such remuneration as may be fixed by the Board.

MODEL BOARD RESOLUTION TO APPOINT BRANCH AUDITOR AND FIX HIS REMUNERATION

“RESOLVED THAT pursuant to section 143(8) of the Companies Act, 2013 and the power conferred on the Board by the Company by an ordinary resolution passed at the annual general meeting held on……………….., M/s ……………., Chartered Accountant/s, who is/are qualified under section 139 of the Companies Act, 2013, be and is/are hereby appointed as the Branch Auditor to audit the accounts for the year ending 31st March, 2014 of the Company’s branch office situated at……….., and they shall hold office from the date of this meeting till the conclusion of the next annual general meeting of the Company, and that the said Branch Auditor be paid the remuneration of ₹…………….., besides travelling, lodging, boarding and out of pocket expenses incurred by him in connection with his audit work.”

MODEL BOARD RESOLUTION TO APPOINT COST AUDITOR AND FIX HIS REMUNERATION

“RESOLVED THAT pursuant to the provisions of the Companies (Cost Records and audit) Rules, 2014, M/s. ……………………….., ……………………………………, be and are hereby appointed as Cost Auditor of the Company subject to ratification by the shareholders of the Company, for the year 2014-15, to carry out the Cost Audit and issue Compliance Report in the prescribed form regarding the compliance by the Company of all the provisions of The companies (Cost records and audit) Rules, 2014 and Mr. ..............., Director, Mr. ……………………………., Director of the Company be and is hereby authorized severally to negotiate and finalize the remuneration payable to M/s ………………….. in consultation with the said appointment”

LESSON ROUND-UP

– According to section 139(1) every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be prescribed by the Rules.
In accordance with section 142(1) the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein: Provided that the Board may fix remuneration of the first auditor appointed by it. The remuneration under sub-section (7) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required to be laid before the company in general meeting.

Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company’s auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139.

**SELF TEST QUESTIONS**

1. Explain the procedure for appointment of first auditors of a company.
2. Draft a resolution for the appointment of Auditors of the company at AGM.
3. Discuss the manner and procedure for rotation of Auditor.
4. What are the powers and duties of the auditors provided by the Companies Act 2013?
5. Write down the procedure to appoint the Cost Auditor of a Company.
LESSON OUTLINE

- Procedure for preparation, finalization of Balance sheet and Profit and Loss Account
- Procedure for preparing abridged balance sheet and profit and loss account by a listed Company
- Auditors' Report
- Report on Corporate Governance under Clause 49 of the Listing Agreement
- Management discussion and analysis report
- Directors' Responsibility statement
- Disclosure of information about each director
- Declaration from Independent directors
- Particulars of employees
- Procedure for preparation of Directors' Report
- Secretarial Standard on Board's Report
- Chairman's statement
- Annexures – Format of Resolutions/Reports
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

It is mandatory for the Board of Directors of every company to present annual accounts to the shareholders along with its report i.e. Board’s Report. Annual report prepared, presented and filed annually is the most important means of communication by the Board of Directors of a company with its shareholders. Companies Act provides for the contents and disclosures required to be given in these annual reports. It also provides the detailed procedure of presenting at the meeting of the shareholders and filing of these documents with Registrar of Companies. The contents of these documents have already been covered in the study of Company Law of the Executive Programme.

This lesson deals with the procedure for preparing and placing the annual reports at the Shareholders meeting.
In case of a company, there exists a divorce between the shareholders (contributors of capital) and the management of a company. The Board of Directors manages the affairs of a company. Mandatory disclosure through annual reports and accounts is a method of providing information to the shareholders and the public about the financial position and activities of the company so as to enable its members to exercise a more intelligent and purposeful control thereon.

Annual Reports and Accounts consist of balance sheet, profit and loss account (Income and expenditure statement in case of non-profit making companies) directors/governing body’s report, auditors’ report, schedules to balance sheet, profit and loss account/income and expenditure account, notes to accounts. In case of listed companies, annual report also consists of Corporate Governance Report and Management Discussion and Analysis Report.

E-FILING

The Ministry of Corporate Affairs (‘MCA’) had notified the Companies (Electronic Filing and Authentication of Documents) Rules, 2006 w.e.f. 16.9.2006 vide notification number GSR 557(E) dated 14.9.2006. According to the said Rules, every e-form or application or document or declaration required to be filed or delivered under the Companies Act and rules made thereunder, shall be filed in computer readable electronic form, in portable document format (pdf) and authenticated by a managing director, director or secretary or person specified in the Act for such purpose by the use of a valid digital signature.

Section 398 of the Companies Act, 2013 has provisions related to filling of applications, documents inspection in electronic form.

The filings of e-forms can be done from the website of MCA viz. http://www.mca.gov.in

ANNUAL ACCOUNTS

Section 128 of the Companies Act, 2013 (the Act) provides that every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

Under Section 129 of the Companies Act, 2013, at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Where a company has one or more subsidiaries, it shall, in addition to financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed.

Every company shall file the financial statements with registrar together with form AOC-4.

According to Rule 12(2) of the companies (Accounts) Rules, 2014 the class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies.

As per section 2(13) of Companies Act, 2013 “books of account” includes records maintained in respect of –

(i) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
(ii) All sales and purchases of goods and services by the company;
(iii) The assets and liabilities of the company; and
(iv) The items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

According to section 2(12) “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

Rule 3 of Companies (Accounts) Rules, 2014 prescribes the following manner of books of account to be kept in electronic mode –

1. The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
2. The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.
3. The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.
4. The information in the electronic record of the document shall be capable of being displayed in a legible form.
5. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

6. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-
   (a) The name of the service provider;
   (b) The internet protocol address of service provider;
   (c) The location of the service provider (wherever applicable);
   (d) Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Explanation. – For the purposes of this rule, the expression “electronic mode” includes “electronic form” as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 and “books of account” shall have the meaning assigned to it under the Act.

Rule 4 of Companies (Accounts) Rules, 2014 lays down the following conditions regarding maintenance and inspection of certain financial information by directors –

1. The summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.
2. Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information
sought, the period for which such information is sought.

(3) The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.

(4) The financial information required under sub-rules (2) and (3) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under section 129 shall be in Form AOC-1.

Extensible Business Reporting language means a standardised language for communication in electronics form to express, report of fill financial information by companies under Companies (Accounts) Rules, 2014.

Where the financial statements of a company do not comply with the accounting standards referred to in section 129, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation. [Section 129(5)]

**Financial Statements**

– “financial statement” in relation to a company, includes:

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

The financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement

– As per clause 32 of the listing agreement, a listed company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account to be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3).

**PROCEDURE FOR PREPARATION, FINALISATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT**

1. At the close of the financial year of the company, the company should prepare Profit and Loss Account (Income and Expenditure Account for non-profit making company), and Balance Sheet as at the close of the financial year. It should be ensured that the annual accounts are being prepared in accordance with the Schedules III to the Companies Act, 2013.

2. The basic/primary accounts are to be kept and maintained at the Registered Office of the Company. However, they can be kept and maintained at a place other than the Registered Office of the company. All or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. The company
may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

For this purpose –

(i) Call a Board meeting by giving notice in writing to all the directors.

(ii) Hold a meeting of the Board and pass a resolution for keeping accounts at a place other than the registered office.

(For specimen resolution, please see Annexure at the end of this Study).

(iii) File the Certified true copy of the resolution with the concerned Registrar of Companies in e-Form MGT-14, with requisite filing fees.

3. The Accounts are to be prepared on a going concern basis and on accrual basis by following all the applicable accounting standards and proper and sufficient care should be taken in maintenance of adequate accounting records in pursuance of the provisions of the Act.

Note: - In case of listed companies, Para IV (B) of clause 49 of the listing agreement is relevant. As per this para, where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management’s explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

4. Every balance sheet and profit and loss account shall give a true and fair view of the state of affairs/profit or loss for the financial year of the company at the end of financial year and shall be in the form set out in Part I and Part II of Schedule III of the Act respectively and shall be in accordance with the accounting standards.

5. Internal audit and statutory audit of the accounts is a continuous process. Hence, the annual accounts so prepared and finalised should be duly audited.

6. After the annual accounts have been audited, these are required to be approved by the Board of Directors:

(i) For this purpose, call a Board meeting by giving a notice in writing to all the directors.

(ii) If the company is listed, notice of such Board meeting should also be sent to the stock exchanges where the company’s securities are listed.

(iii) At the Board Meeting, first of all the draft annual accounts shall be approved by the Board of Directors.

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

(iv) Such approved annual audited accounts together with Directors’ report, Auditors Report, and notice of meeting will be sent to the members, directors, auditors of the company and others entitled as provided in the Act.

(v) The annual accounts and reports are to be laid before the annual general meeting of the members of the company for their adoption. For the purpose, the maximum period prescribed is six months from the date of closing of the relevant financial year, in case of subsequent annual general meetings.

A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual
general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting. The statement containing salient features of the financial statement of a company's subsidiary under section 129 shall be in Form AOC-1.

Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.

Note: The requirement of preparation of balance sheet and profit and loss account as per Schedule III is not applicable to insurance company or banking company or electricity company or other class of company for which a separate form is specified under the respective Acts governing them.

### Reopening of Account

A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that –

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

The court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section. [Section 130]

### PROCEDURE FOR PREPARING ABRIDGED BALANCE SHEET AND PROFIT AND LOSS ACCOUNT BY A LISTED COMPANY

Section 136(1) provides that without prejudice to the provisions of section 101 [Notice of Meeting], a copy of the financial statements, including consolidated financial statements, if any, auditor’s report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

It may be noted that in the case of a listed company, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

The Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed: Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

Every company having a subsidiary or subsidiaries shall, –
(a) Place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it

According to Rule 10 of the Companies (Accounts) Rule 2014, the statement containing features of documents referred to in first proviso to sub-section (1) of section 136 shall be in Form AOC – 3.

(a) At the Board Meeting while discussing, considering and approving draft audited annual accounts of the company, the Annual Reports and Accounts prepared in abridged form should also be approved and authenticated in accordance with the provisions of Section 136 of the Act.

(b) A complete set of full annual reports and accounts should be kept for inspection at the Registered Office of the company at least twenty one days during working hours before the date of ensuing annual general meeting.

(c) On a demand from a member, debentureholder or depositor of the company a copy of the full annual report and accounts shall be sent to such requisitionist, free of cost, within seven days from the date of making such demand.

(d) A signed true copy of the abridged annual reports and accounts are also required to be filed in Form AOC – 3 with the concerned Registrar of Companies along with true certified copies of full annual reports and accounts.

(e) Pursuant to clause 32 of the listing agreement, a listed company will have to supply:-

(i) Soft copies of full annual reports containing its Balance Sheet, Profit & Loss account and Directors’ Report to all those shareholder(s) who have registered their email address(es) for the purpose;

(ii) Hard copy of statement containing the salient features of all the documents in Form AOC – 3 to those shareholder(s) who have not so registered;

(iii) Hard copies of full annual reports to those shareholders, who request for the same.

The MCA vide its Circular No. 8/2014 dated 4.4.2014 clarified that the provisions of Companies Act, 2013 would apply with respect to Annual Accounts for the financial year commencing on or after April 1, 2014.

**AUDITOR’S REPORT**

Under Section 143(2), it is the duty of the auditor to make a report to the members of the company on the accounts examined by him, and on every balance sheet, every profit and loss account and/or every other document declared by the Act to be part of or annexed to either and laid before the company in general meeting during his tenure of office. Although the auditor must report to the members, he is not bound to send it to every shareholder. It is sufficient if the auditors after having affixed their signatures to the report annexed to the balance sheet forward that report to the secretary of the company, leaving the secretary or directors of the company to perform the duties which the statute imposes on them of convening a general meeting to consider the report [Allen Craig & Co. (London) Ltd., In re. (1934) 4 Com Cases 319 (Ch.D)].

The report, according to Section 143(3) besides other things necessary in any particular case, must expressly state:

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(e) whether, in his opinion, the financial statements comply with the accounting standards;

(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(j) such other matters as may be prescribed.

According to Rule 11 of the Companies (Audit and Auditors) Rule 2014 the auditor's report shall also include their views and comments on the following matters, namely:-

(a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

Section 143(4) states that where any of the above matters is answered in the negative or with a qualification, the auditors' report must state the reason for the answer.

**DIRECTORS' REPORT**

Section 134(3) of the Act provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include –

(a) the extract of the annual return as provided under sub-section (3) of section 92;

(b) number of meetings of the Board;

(c) Directors’ Responsibility Statement;

(d) a statement on declaration given by independent directors under sub-section (6) of section 149;

(e) in case of a company covered under sub-section (1) of section 178, company's policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –

(i) by the auditor in his report; and
(ii) by the company secretary in practice in his secretarial audit report;

(g) particulars of loans, guarantees or investments under section 186;

(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

(i) the state of the company’s affairs;

(j) the amounts, if any, which it proposes to carry to any reserves;

(k) the amount, if any, which it recommends should be paid by way of dividend;

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, 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;

**Directors’ Responsibility Statement**

The Directors’ Responsibility Statement referred to in clause (c) of sub-section (3) of section 134 shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

(f) the directors, had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Further Rule 8(3) of Companies (Accounts) Rules 2014 provides that the report of the Board shall contain the following information and details, namely:-

(A) Conservation of energy –

(i) the steps taken or impact on conservation of energy;
(ii) the steps taken by the company for utilising alternate sources of energy;

(iii) the capital investment on energy conservation equipments;

(B) Technology absorption –

(i) the efforts made towards technology absorption;

(ii) the benefits derived like product improvement, cost reduction, product development or import substitution;

(iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year) –

(a) the details of technology imported;

(b) the year of import;

(c) whether the technology been fully absorbed;

(d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and

(iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo – The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

Formal Annual Evaluation

According to Rule 8(4) of Companies (Accounts) Rules 2014; 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 shall include, in the report by its Board of directors, 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.

According to Rule 8(5) of Companies (Accounts) Rules 2014, in addition to the information and details specified in sub-rule (4), the report of the Board shall also contain -

(i) the financial summary or highlights;

(ii) the change in the nature of business, if any;

(iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;

(iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;

(v) the details relating to deposits, covered under Chapter V of the Act,-

(a) accepted during the year;

(b) remained unpaid or unclaimed as at the end of the year;

(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-

(i) at the beginning of the year;

(ii) maximum during the year;

(iii) at the end of the year;

(v) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
(vi) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;

(vii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

The other disclosures relating to reappointment of Independent Director, Issue of Sweat & Equity Shares, Issue of Shares with differential Voting Right, Audit Committee, Nomination and Remuneration Committee, CSR Committee etc. are already discussed Lesson 23 of the Paper “Company Law” at executive level.

REPORT ON CORPORATE GOVERNANCE UNDER CLAUSE 49 OF THE LISTING AGREEMENT

SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumaramangalam Birla to promote and raise the standard on Corporate Governance in the corporate sector. The committee submitted its report to SEBI. Accepting the recommendation of the committee SEBI has advised all Stock Exchanges to amend their listing agreements by inserting a new clause 49 which deals with good corporate governance practices to be adopted by all listed public and private sector companies, to which this clause applies. The clause was inserted vide SEBI F. No. SMDRP/Policy Cir. 10/2000 dated 21.2.2000. This clause was amended from time to time and the recent amendment was on April 17, 2014 to be applicable from October 1, 2014.

As per the said clause, the company shall have a separate section on Corporate Governance in the Annual Report of the company with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement i.e. which is part of the listing agreements with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

[Suggested list of items to be included in the Report on Corporate Governance in the Annual Report of Companies as provided in Clause 49 of the listing Agreement is given at Annexure and a specimen of Report on Corporate Governance is given at Annexure to end this study].

The Companies are also required to submit a quarterly compliance report to the stock exchanges within 15 days of the end of each quarter. Such report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Point need to know:-

Annual Report of a listed company shall also contain a declaration to the effect that all Board members and senior management personnel have affirmed compliance with the code of conduct laid down for them. Such declaration shall be signed by the CEO of the company.

REPORTING OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

According to Rule 8 of the Companies (Corporate social Responsibility Policy) Rules 2014 the Board’s Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to these rules.

In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

MANAGEMENT DISCUSSION AND ANALYSIS REPORT (MDAR)

In case of listed companies, the MDAR should either form a part of the Board’s Report or be given as an addition thereto in the annual report to the shareholders. As per para IV (F) of clause 49 of the listing agreement, the MDAR should include a discussion on the following matters within the limits set by the company’s competitive position:

– Industry structure and developments
– Opportunities and threats
Segment-wise or product-wise performance
Outlook
Risks and areas of concern
Internal control systems and their adequacy
Discussion on financial performance with respect to operational performance
Material developments in human resources/industrial relations front, including number of people employed.

MDAR should be considered and approved by the Board in a meeting of the Board and not through resolution passed by circulation. It is desirable that MDAR is signed in the same manner as in the case of the Board’s Report.

DISCLOSURE OF INFORMATION ABOUT EACH DIRECTOR

Every director is expected to monitor the number of Committees he is member of and/or his Chairmanship and keep the Company informed in this regard including any changes therein. It would help in ensuring the compliance of one of the requirement under the clause 49 of listing agreement. It should be borne in mind that there is no requirement in this regard in the Companies Act, 2013. Directors should be persuaded to furnish this information which can be obtained as at the last date of the financial year. Such information should be periodically updated.

[Specimen format for disclosing information about directors is given at Annexure at the end of the study.]  

DECLARATION FROM INDEPENDENT DIRECTORS

Every Independent Director in his first board meeting participated after appointment and first board meeting in every financial year or whenever there is any change give declaration that he meets the criteria of independence as provided in sub-section (6) of Section 149 of the Companies Act 2013.

In accordance with Clause 49 of the Listing Agreement, a person is not an independent director if he has any material pecuniary relationships or transactions, other than directors’ remuneration (includes sitting fees, commission and/or stock options), which may affect his independence. A relationship or transaction that does not involve money or cannot be measured in terms of money would not affect independence of a director.

A pecuniary relationship or transaction that affects independence of a director has been termed herein as material, which is vis-à-vis the director. The material relationships or transactions may be with the Company; its promoters; its directors; its senior management; its holding Company, its subsidiaries and associates. Whether the relationship or transaction is material or not should be determined by considering the facts and with reference to the director concerned. Further it is the duty of independent director(s) not to enter into any transactions or relationships without the prior approval of the Board. The Board and/or the concerned director can take a view on the materiality of the transaction.

However, prior approval from the Board for entering into a material pecuniary relationship with any of the parties stated in the Clause does not assure his status as an independent director. The Company may obtain from every independent director a declaration to this effect as a matter of good practice. The declaration placed before the Board shall be reviewed and its decision recorded in the minutes.

Suggested format of the declaration is given at Annexure at the end of the study.

REPORT ON ANNUAL GENERAL MEETING

Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.
This Report shall be in Form MGT – 15.

Details of the meeting:

(i) day, date, hour of the annual general meeting: __________________;
(ii) venue of the annual general meeting: __________________;
(iii) whether chairman of the meeting appointed: __________________;
(iv) number of members attending the meeting: __________________;
(v) whether the requisite quorum is present: __________________;
(vi) business transacted at the meeting and result thereof: __________________;
(vii) particulars with respect to any adjournment of meeting and change in venue: ______;
(viii) particulars with respect of postponement of meeting and change in venue; and ______;
(ix) Any other points relevant for inclusion in the Report. __________________.
(x) Fair summary of proceedings of the meeting. __________________

Confirmed that the meeting was called, convened, held and conducted as per the provisions of the Act, the rules and secretarial standards made thereunder.

PROCEDURE FOR PREPARATION OF DIRECTORS’ REPORT

1. At the close of the financial year, obtain particulars and information required to be stated in the Directors’ Report, in addition to noting the material events and their impact on the working results of the company such as union budget, change in Government policies, strike /lock out in the industrial undertaking etc.

2. Financial data for the current year and previous year (in case of existing company) are to be stated in a summarised form with the details of the appropriation of the credit balance (including the balance brought forward from the previous year). It should also contain tax provisions, provision for proposed dividend and dividend tax and balance (credit/debit) to be carried to balance sheet.

3. A statement of recommended dividend specifying rate of dividend on different classes of shares and shares allotted during the year is to be given. If no dividend is recommended, a statement of reasons is to be given.

4. Brief description of the company’s working during the year. If there is more than one division, division wise working details are required to be given. Besides, working details of current years and future prospects of the company’s working have also to be given. A statement justifying the reasons for improvement/depressed results in comparison of the previous year is also required to be given.

5. A statement regarding matters specified in the Directors’ Report of the previous year is to be given about the progress/actions taken thereabout.

6. A statement is to be given about the projects undertaken during the year and the current year and progress made therein.

7. A statement about strategic agreement entered into by the company during the year and the current year having effect on the working of the company.

8. A statement in respect of changes made in the financial structure particularly relating to share and debenture capital by way of issue, redemption, conversion or otherwise.

9. Material changes occurred subsequent to the close of the financial year of the company to which the balance sheet relates and the date of the report like settlement of tax liabilities, operation of patent
rights, depression in market value of investments, institution of cases by or against the company, sale or purchase of capital assets or destruction of any assets etc.

10. A statement of public deposits invited accepted, renewed, repaid and not repaid on maturity (No. of depositors and amount as on the close of the year) and subsequently repaid till the date of the report along with the reasons for non-repayment of the due deposits.

11. A statement about subsidiary company(ies) is to be given.

12. A statement about the changes in the managerial personnel, in particular, about the directors of the company by way of appointment, redesignation, resignation, cessation on resignation, death or disqualification, variation made or withdrawn etc. In the case of a public company, the name of the director who is/are liable to retire by rotation and also whether he/they offers/offer for reappointment.

13. Similar statement about the statutory auditors of the company, any change made during the year, whether existing auditor(s) is/are eligible for reappointment etc.

14. A statement about the actions taken by the company towards its obligation to the social responsibility for upliftment of the society in which it is operating.

15. An acknowledgement to all with whose help, cooperation and hard work the company is able to achieve the results.

16. Statements as required by the law.

17. In the case of listed companies, the annual report of the company should also disclose—

(i) the fact of delisting together with a statement of reasons, and in case of voluntary delisting, justification therefor, likewise disclosure about suspension of trading in the securities;

(ii) The name(s) and address(es) of the stock exchange(s) at which the company’s securities are listed and whether the company has paid the annual listing fee to each such stock exchange; and

(iii) Compliance certificate from the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in Clause 49 of the Listing agreement, is to be annexed with the Directors’ Report.

18. The Board’s report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. [Section 134(6)]

(For Board resolution regarding approval of the Directors’ Report and for approval of Board’s Report containing Board’s response to Auditor’s Comments and qualifications, please see Annexure at the end of the Study).

20. The Directors’ Report should be signed on receipt of the Auditors Report duly signed. Hence, it can bear the same or subsequent date which the Auditors’ Report bears.

(A specimen of Directors’ Report is given at Annexure at the end of the study).

SECRETARIAL STANDARD ON BOARD’S REPORT (SS-10)

It may be noted that since MCA has clarified that the provisions of Companies Act, 1956 would apply for annual accounts pertaining financial year ended March 2013, the Secretarial Standard based on Companies Act, 1956 are discussed.

The Board’s Report is the most important means of communication by the Board of Directors of a company with its stakeholders. The Companies Act, 1956 requires the Board of Directors of every company to present annual accounts to the shareholders along with its report, known as the “Board’s Report”. Disclosures in the Board’s
Report are specified under various sections of the Act. The Board’s Report should cover wide spectrum of information that stakeholders need, more than financial data, to understand fully the prospects of the company’s business and the quality of the management. Looking at its importance and substantial information involved in preparation of Board’s report, the ICSI has prepared and issued the Secretarial Standard on Board’s Report (SS-10).

Apart from various disclosures required under the Companies Act, this Standard seeks to lay down certain additional disclosures which are required to be made in Board’s Report under various other enactments like disclosures pursuant to employee stock option and employee stock purchase schemes, pursuant to directions of Reserve Bank of India, pursuant to directions of national housing bank directions, various disclosures under listing agreement etc. An attempt is made to cover every aspect for preparation and presentation of the Board’s Report. This Standard also seeks to cover the approval, signing, dating aspects for its preparation. Briefly, the Secretarial Standard provides, amongst others, for the following:

- The Board’s Report should be attached with balance sheet of the company.
- As per the Standard, the disclosures in the Board’s Report are as under:
  - state of affairs of the company;
  - material changes and commitments, if any, affecting the financial position of the company;
  - amount, if any, proposed to carry to any reserves;
  - amount, if any, recommended by way of dividend per share;
  - particulars with respect to conservation of energy, technology, absorption and foreign exchange earnings and outgo in accordance with the prescribed rules;
  - changes during the year of the specified items;
  - director’s responsibility statement;
  - a statement by the Board that the company has devised proper systems to ensure compliance of all laws applicable to the company;
  - the factors leading sickness and the steps proposed to be taken;
  - specified details of issue of sweat equity shares;
  - status of buy-back process;
  - reasons for failure to implement any proposal relating to preferential allotment; to redeem debentures or preference shares on due date(s);
  - changes in the composition of board;
  - any disqualification or vacation of office of director;
  - amount transferred to Investor Education and Protection Fund;
  - payment of managerial remuneration in excess of limit;
  - composition of audit committee;
  - specified disclosures pursuant to the listing agreement of stock exchanges;
  - specified disclosures pursuant to employee stock option and employee stock purchase schemes;
  - additional disclosures by producer company;
  - specified disclosures pursuant to directions of Reserve Bank of India;
  - specified disclosures pursuant to National Housing Bank directions;
  - other disclosures;
– explanations in the Board’s Report in response to Auditors’ Qualifications;
– explanations in the Board’s Report in response to Qualification of Secretary in whole-time practice;
– information on accounts.
– The report should be considered and approved at a duly convened meeting of the Board.
– The report and any addendum thereto should be signed by the chairman of the Board, if any, or by not less than two directors of the company, one of whom shall be a managing director, where there is one;
– The report shall be collective responsibility of all the directors though the report may have been approved only by a majority of directors.

CHAIRPERSON’S STATEMENT

There is no statutory provision under which chairperson of an annual general meeting must make a speech or statement at the meeting. However, the chairperson has to explain the working of the company during the year and current year before proposing resolution relating to adoption of the statement of audited accounts and the reports of the Directors and Auditors. A convention has also, developed that the chairperson of annual general meetings makes a statement or give a speech which is a personal message or address to the shareholders being family members of the company. Some companies also arrange for publication of chairperson’s statement in various newspapers and/or financial magazines.

Chairperson’s speech is usually utilised for a wide-ranging review of the company’s progress.

General pointers for preparing a speech for the Chairperson

In addition to the matters relating to the working results of the company for the previous year and current year covered by the Directors’ Report, the speech should mention about the following points vis-a-vis nature of the business of the company engaged in:

(a) general political position in the country;
(b) general economic position in the country;
(c) status of the industry in which the company is engaged;
(d) government policy relating to the industry in which the company is engaged; import and export; fiscal, banking and financial location, etc.
(e) financial position of the company and arrangements with institutions/Banks;
(f) relations with the employees and workers of the company;
(g) company’s position for and against competitors and its strategy to face the challenges;
(h) company’s research and development activities;
(i) company’s action towards its commitments to the community/society in which it is operating and the steps taken thereof;
(j) company’s commitment towards its employees, consumers, creditors, distributors and all other concerned and actions taken for improvement thereof.

In general it should give relevant information which amounts to be special to the shareholders of the company since the Chairperson has the opportunity to interact with the shareholders directly only once a year.

(For specimen of the chairperson’s speech, see Annexure at the end of the Study).
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NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

Section 132* lays down the framework for constitution of NFRA. The Central Government, by notification shall constitute the NFRA, to provide for matters relating to accounting and auditing standard. NFRA, a quasi-judicial regulator will replace National Advisory Committee on accounting standards. The authority will monitor and enforce the compliance with accounting and auditing standards, and to oversee the quality of service of the professionals associated with insuring compliances with such standards.

The NFRA will be headed by a person of eminence and having expertise in accountancy, auditing, finance or law will be appointed by the Central Government. There will be upto 15 part time and full time members. The chairperson and members, who are in full time employment with NFRA, shall not be associated with any audit firm during the course of their appointment and 2 years after ceasing to hold such appointment.

ANNEXURES

SPECIMEN BOARD RESOLUTION FOR KEEPING AND MAINTAINING BOOKS OF ACCOUNTS AT A PLACE OTHER THAN THE REGISTERED OFFICE

“RESOLVED THAT pursuant to the proviso to Section 128(1) of the Companies Act, 2013, the books of accounts of the company be kept and maintained at the company's head office at ......................... with effect from ......................... and that Mr. ........................., secretary of the company, be and is hereby authorised to file electronically E-Form No MGT - 14 with the Registrar of Companies ......................... at ......................... by affixing his digital signature thereon and with the requisite filing fees within the prescribed time of seven days hereof and to take all necessary actions in this respect.”

SPECIMEN BOARD RESOLUTION FOR APPROVAL OF ANNUAL ACCOUNTS

“RESOLVED THAT draft of the audited Balance Sheet as at ___________, Profit and Loss Account for the year ended on that date alongwith schedules and notes thereon as placed before the Board be and are hereby approved and the same be authenticated by the directors of the company as required under Section 134 of the Companies Act, 2013 and be sent to the Statutory Auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing Annual General Meeting of the Company.”

SPECIMEN BOARD RESOLUTION FOR PREPARATION OF ANNUAL REPORT IN ABRIDGED FORM FOR MAILING TO THE MEMBERS

“RESOLVED THAT pursuant to the provisions of First proviso of sub – section (1) of Section 136 of the Companies Act, 2013 and Rule 10 of the Companies (Accounts) Rules 2014, the Annual Reports comprising of the Balance Sheet, Profit and Loss Account etc. of the company for the financial year ended 31st March 2013 be also prepared, finalised and audited in the prescribed Form No AOC – 3 for sending to the members of the company.”

“RESOLVED FURTHER THAT the draft audited statement containing salient features of financial statements for the year ended 31st March 2013, prepared in the prescribed Form No. AOC – 3 in accordance with First

*yet to be notified
proviso of sub – section (1) of Section 136 of the Companies Act, 2013 and Rule 10 of the Companies
(Accounts) Rules 2014 as submitted to the meeting, be and are hereby approved and the same be authenticated
by the directors of the company as required under Section 136 of the Act and be sent to the statutory auditors
of the company for their report thereon and thereafter be sent to the members of the company for adoption at
the ensuing annual general meeting of the company.”

**SPECIMEN BOARD RESOLUTION FOR APPROVAL OF THE DIRECTORS’ REPORT**

“RESOLVED THAT the draft Directors’ Report to the Shareholders of the company for the year ended 31st
March 2013 prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together
with its Annexures and also containing suitable explanation and fullest information on every reservation,
qualification or adverse remarks contained in Auditors reports, as submitted to the meeting, be and is hereby
approved and the same be signed by Shri................... Chairman of the company, by Shri.................... Managing
Director and Shri................... Director for and on behalf of the Board of Directors of the company.”

**SPECIMEN RESOLUTION TO BE PASSED AT A MEETING OF THE BOARD OF DIRECTORS FOR
APPROVAL OF THE BOARD’S REPORT CONTAINING BOARD’S RESPONSE TO AUDITORS’
COMMENTS AND QUALIFICATIONS**

“RESOLVED THAT, pursuant to Section 134 of the Companies Act, 2013 the draft of the Board’s Report for
the year ended..........., 2013 as circulated earlier and as modified by incorporating the information and
explanation given by the Board on every reservation, qualification or adverse remark contained in the Auditor’s
Report under Section 143 (2), and as laid on the table, be and is hereby approved and that the Board’s
Report be signed by the Chairman on behalf of the Board and that the Secretary of the company be directed
to issue the same to the members of the company together with the printed copies of the audited accounts,
and the Auditors’ Report.”

**SUGGESTED LIST OF ITEMS TO BE INCLUDED IN THE REPORT ON CORPORATE GOVERNANCE IN
THE ANNUAL REPORT OF COMPANIES**

[AS PER CLAUSE 49 OF LISTING AGREEMENT]

1. A brief statement on company’s philosophy on code of governance.
2. Board of Directors:
   (a) Composition and category of directors, for example, promoter, executive, non-executive, independent
       non-executive, nominee director, which institution represented as lender or as equity investor.
   (b) Attendance of each director at the Board meetings and the last AGM.
   (c) Number of other Board of Directors or Board Committees in which he/she is a member or Chairperson.
   (d) Number of Board of Directors meetings held, dates on which held.
3. Audit Committee:
   (i) Brief description of terms of reference
   (ii) Composition, name of members and Chairperson
   (iii) Meetings and attendance during the year
4. Nomination and Remuneration Committee:
   (a) Brief description of terms of reference
Lesson 12 — Preparation and Presentation of Reports

(b) Composition, name of members and Chairperson
(c) Attendance during the year
(d) Remuneration policy
(e) Details of remuneration to all the directors, as per format in main report.

5. Stakeholders’ Grievance Committee:
   (a) Name of non-executive director heading the committee
   (b) Name and designation of compliance officer
   (c) Number of shareholders’ complaints received so far
   (d) Number not solved to the satisfaction of shareholders
   (e) Number of pending complaints

6. General Body meetings:
   (a) Location and time, where last three AGMs held.
   (b) Whether any special resolutions passed in the previous three AGMs
   (c) Whether any special resolution passed last year through postal ballot — details of voting pattern
   (d) Person who conducted the postal ballot exercise
   (e) Whether any special resolution is proposed to be conducted through postal ballot
   (f) Procedure for postal ballot

7. Disclosures:
   (a) Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
   (b) Details of non-compliance by the company, penalties, and structures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
   (c) Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
   (d) Details of compliance with mandatory requirements and adoption of the non-mandatory requirements of this clause.

   (a) Quarterly results
   (b) Newspapers wherein results normally published
   (c) Any website, where displayed
   (d) Whether it also displays official news releases; and
   (e) The presentations made to institutional investors or to the analysts.

9. General Shareholder information:
   (a) AGM: Date, time and venue
   (b) Financial calendar
SPECIMEN CORPORATE GOVERNANCE REPORT

COMPLIANCE WITH CLAUSE 49 OF THE LISTING AGREEMENT WITH THE STOCK EXCHANGES

Since the amendment to clause 49 vide SEBI Circular dated April 17, 2014, is effective from October 1, 2014, the format is given as per the prevailing requirement

As the company is a part of Group A of Bombay Stock Exchange index, in terms of Clause 49 of the Listing Agreement of the Stock Exchanges, the Compliance Report on Corporate Governance (in the prescribed format), along with the Certificate of Practising Company Secretary (Annexure ‘A’) is given as under:

1. Company’s Philosophy on Code of Governance

The Company’s Philosophy on Code of Governance as adopted by the Board is as under:

(i) Ensure that the quantity, quality and frequency of financial and managerial information, which management shares with the Board, fully places the Board members in control of the Company’s affairs;

(ii) Ensure that the Board exercises its fiduciary responsibilities towards Share owners and Creditors, thereby ensuring high accountability;

(iii) Ensure that the extent to which the information is disclosed to present and potential investors is maximized;

(iv) Ensure that the decision making is transparent and documentary evidence is traceable through the minutes of the meetings of the Board/Committee thereof;

(v) Ensure that the Corporate Governance Task Force itself, the Board, the Employees and all concerned are fully committed to maximizing long-term value to the Shareowners and the Company;

(vi) Ensure that the core values of the Company are protected;

(vii) Ensure that the Company positions itself from time to time to be at par with any other Company of world class in operating practices.

2. Board of Directors

1. Details of Directors:
Lesson 12 — Preparation and Presentation of Reports

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Director</th>
<th>PD/NPD*</th>
<th>ED/NED/ID*</th>
<th>Attendance in Board in last Meetings Held</th>
<th>Attendance Attended</th>
<th>Other Board</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>AGM Directorship</td>
<td>Committee Chairmanships</td>
<td>Committee Memberships</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>1.</td>
<td>Mr. A</td>
<td>PD</td>
<td>NED</td>
<td>11</td>
<td>11</td>
<td>Present</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. B</td>
<td>PD</td>
<td>ED</td>
<td>11</td>
<td>11</td>
<td>Present</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. C</td>
<td>PD</td>
<td>ED</td>
<td>11</td>
<td>10</td>
<td>Present</td>
</tr>
<tr>
<td>4.</td>
<td>Mr. D</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>11</td>
<td>Present</td>
</tr>
<tr>
<td>5.</td>
<td>Mr. E</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>10</td>
<td>Present</td>
</tr>
<tr>
<td>6.</td>
<td>Mr. F</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>11</td>
<td>Present</td>
</tr>
<tr>
<td>7.</td>
<td>Mr. G</td>
<td>NPD</td>
<td>ED**</td>
<td>11</td>
<td>9</td>
<td>Present</td>
</tr>
<tr>
<td>8.</td>
<td>Mr. H</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>8</td>
<td>Present</td>
</tr>
<tr>
<td>9.</td>
<td>Mr. I</td>
<td>NPD</td>
<td>NED/ID</td>
<td>9</td>
<td>7</td>
<td>Absent</td>
</tr>
<tr>
<td>10.</td>
<td>Mr. J</td>
<td>NPD</td>
<td>NED/ID</td>
<td>4</td>
<td>2</td>
<td>Present</td>
</tr>
</tbody>
</table>

*PD — Promoter Director; NPD — Non-Promoter Director; ED — Executive Director; NED — Non-Executive Director; ID — Independent Director

** w.e.f. January 1, 2012

2. Details of Board Meetings held during the year:

<table>
<thead>
<tr>
<th>Date of Board Meeting</th>
<th>6.4.12</th>
<th>24.4.12</th>
<th>12.6.12</th>
<th>7.7.12</th>
<th>18.7.12</th>
<th>25.7.12</th>
<th>20.9.12</th>
<th>16.10.12</th>
<th>6.11.12</th>
<th>9.1.13</th>
<th>23.1.13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Strength</td>
<td>9</td>
<td>9</td>
<td>10</td>
<td>10</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>No. of Directors</td>
<td>5</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>8</td>
<td>9</td>
<td>7</td>
<td>9</td>
<td>8</td>
<td>9</td>
</tr>
</tbody>
</table>

Present

*Excluding Mr. ......................... who was appointed as an Additional Director in the said meeting.

Note: Mr. J., who was a member of the Board retired on July 7, 2012.

3. Audit Committee

(1) Brief description of terms of reference:

   (i) Adopt and review Formal Written Charter approved by the Board for its self governance;

   (ii) Review with the management the annual/half-yearly/quarterly financial statements;

   (iii) Hold separate discussion with Head-Internal Audit, Statutory Auditors and among members of Audit committee to find out whether the Company’s financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP);

   (iv) Review the adequacy of accounting records maintained in accordance with the provisions of Companies Act ;
(v) To look into reasons for substantial defaults if any in payment to depositors, shareowners and creditors;

(vi) Review the performance of Statutory Auditors and recommend their appointment and remuneration to the Board, considering their independence and effectiveness;

(vii) Perform other activities consistent with the Charter, Company’s Memorandum and Articles, the Companies Act, and other Governing Laws.

(2) Composition of committee and attendance of members:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Director and position</th>
<th>24.4.12</th>
<th>25.7.12</th>
<th>16.10.12</th>
<th>23.1.13</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mr. D., Chairman</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. F, Member</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. H, Member</td>
<td>Absent</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
</tr>
<tr>
<td>4.</td>
<td>Mr. I, Member*</td>
<td>NA</td>
<td>Absent</td>
<td>Present</td>
<td>Present</td>
</tr>
</tbody>
</table>

* Inducted w.e.f. 12.6.12

4. Nomination and Remuneration Committee:

(I) Brief description of terms of reference:

(1) To frame Company’s policy from time to time on
   (i) Selection criteria for Directors
   (ii) Compensation Policy for Directors
   (iii) Role of Directors
   (iv) Duties of Directors
   (v) Code of Conduct
   (vi) Insider Trading
   (vii) Code of Ethics and
   (viii) Other matters relating to Directors and Employees

(2) To recommend suitable candidates to the Board for appointment as Executive/Non-Executive Directors

(3) To review performance and recommend remuneration of Executive Directors to the Board

(4) To review the role and conduct of directors other than Members of the Committee and inform the Board

(5) To administer and supervise the securities (ESOP) given to the employees of Companies Act.

(II) Composition of committee and attendance of members:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Director and position</th>
<th>24.4.12</th>
<th>25.7.12</th>
<th>28.8.12</th>
<th>23.11.12</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mr. F, Chairman</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. D, Member</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. E., Member*</td>
<td>Present</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>4.</td>
<td>Mr. I, Member#</td>
<td>NA</td>
<td>Absent</td>
<td>Present</td>
<td>Absent</td>
</tr>
</tbody>
</table>

* Ceased w.e.f. 12.6.12 # Inducted w.e.f. 12.6.12
(III) Remuneration Policy:

The Policy Dossier *inter alia* provides for the following:

(a) **Executive Directors:**

(i) Salary and commission not to exceed limits prescribed under the Companies Act;

(ii) Revised from time to time depending upon the performance of the Company, individual Director’s performance and prevailing Industry norms;

(iii) No sitting fees;

(iv) No ESOP for Promoter Directors

(b) **Non-Executive Directors:**

(i) Eligible for commission

(ii) Sitting fees and commission not to exceed limits prescribed under the Companies Act

(iii) Eligible for ESOP (except Promoter Directors)

(iv) To provide office space to minimum 2 Non-Executive Directors and compensate them by way of commission towards their services, time, efforts and output given by them.

(IV) Details of remuneration to all the Directors, as per format in main report:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Director</th>
<th>Salary (₹)</th>
<th>Benefits (₹)</th>
<th>Bonus/Commission (₹)</th>
<th>Performance linked incentives (alongwith criteria)</th>
<th>Total (₹)</th>
<th>Stock Options</th>
<th>Service contract/notice period/severance fees/pension</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mr. A</td>
<td>Nil</td>
<td>Nil</td>
<td>290,000</td>
<td>Nil</td>
<td>290,000</td>
<td>Nil</td>
<td>Retirement</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. B</td>
<td>300,000</td>
<td>128,534</td>
<td>4,800,000</td>
<td>Nil</td>
<td>5,228,534</td>
<td>Nil</td>
<td>*</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. C</td>
<td>1,080,000</td>
<td>293,638</td>
<td>4,320,000</td>
<td>Nil</td>
<td>5,693,638</td>
<td>Nil</td>
<td>*</td>
</tr>
<tr>
<td>4.</td>
<td>Mr. D</td>
<td>Nil</td>
<td>Nil</td>
<td>1,000,000</td>
<td>Nil</td>
<td>1,000,000</td>
<td>Nil</td>
<td>Retirement by rotation</td>
</tr>
<tr>
<td>5.</td>
<td>Mr. E</td>
<td>Nil</td>
<td>Nil</td>
<td>105,000</td>
<td>Nil</td>
<td>105,000</td>
<td>Nil</td>
<td>Retirement by rotation</td>
</tr>
<tr>
<td>6.</td>
<td>Mr. F</td>
<td>Nil</td>
<td>Nil</td>
<td>1,435,000</td>
<td>Nil</td>
<td>1,435,000</td>
<td>Nil**</td>
<td>Retirement by rotation</td>
</tr>
<tr>
<td>7.</td>
<td>Mr. G</td>
<td>367,187</td>
<td>10,800</td>
<td>60,000</td>
<td>Nil</td>
<td>737,987</td>
<td>Nil***</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Mr. H</td>
<td>Nil</td>
<td>Nil</td>
<td>70,000</td>
<td>Nil</td>
<td>70,000</td>
<td>Nil</td>
<td>Retirement by rotation</td>
</tr>
<tr>
<td>9.</td>
<td>Mr. I</td>
<td>Nil</td>
<td>Nil</td>
<td>60,000</td>
<td>Nil</td>
<td>60,000</td>
<td>Nil</td>
<td>Retirement by rotation</td>
</tr>
<tr>
<td>10.</td>
<td>Mr. J</td>
<td>Nil</td>
<td>Nil</td>
<td>10,000</td>
<td>Nil</td>
<td>10,000</td>
<td>Nil</td>
<td>Retirement by rotation (retired on 7/7/11)</td>
</tr>
</tbody>
</table>

* 5 years w.e.f. 01.08.2000/notice period 3 months/remuneration for un-expired period or 2 years whichever is less/NA.
**25,000 warrants were allotted on 3rd August 2011, underlying equal number of Equity Shares of Face Value of `10/- at a premium of `90/- per share. Warrants are convertible over a period of 1-4 years from August 3, 2011. Accordingly 3,750 warrants were converted into shares on August 28, 2012.**

***2 years w.e.f. 01.01.13/notice period 3 months/NA/NA.***

**Note:** The Bonus/Commission to the Non-Executive Directors is paid out of the provision of `45 lakhs made in the books of accounts.

5. **Stakeholders’ Grievance Committee:**

   - Name of Non-Executive Director heading the Committee; Mr. ....................
   - Name and Designation of compliance officer: Mr. .................... Company Secretary
   - Number of shareholders complaints received so far: 2422
   - Number not solved to the satisfaction of shareholders: 5*
   - Number of pending share transfers: 1*

   (* Since resolved/ transferred)

6. **General Meetings:**

   - Location and time, where last three AGMs were held:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>FY 2009-10</th>
<th>FY 2010-11</th>
<th>FY 2011-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date and Time</td>
<td>September 4, 2010</td>
<td>July 8, 2011</td>
<td>July 7, 2012</td>
</tr>
<tr>
<td></td>
<td>12.30 p.m.</td>
<td>11.00 a.m.</td>
<td>12.00 Noon</td>
</tr>
</tbody>
</table>

   - Whether special resolutions were put through postal ballot last year, details of voting pattern:

     No special resolutions were put through postal ballot last year.

   - Person who conducted the postal ballot exercise:

     Not applicable.

   - Whether special resolutions are proposed to be conducted through postal ballot: Shall be conducted as per the provisions of the Companies Act as applicable at the relevant point of time.

   - Procedure for postal ballot:

     The procedure shall be as per the provisions of the Companies Act and rules made thereunder as applicable at the relevant point of time.

7. **Disclosures:**

   - Disclosures on materially significant related party transactions i.e. transactions of the Company of material nature, with its promoters, Directors or the management, their subsidiaries or relative that may have potential conflict with the interests of Company at large:

     The Company does not have any related party transactions, which may have potential conflict with its interest at large.

   - Details of non-compliance by the Company, penalties, strictures imposed on the Company by Stock
Exchanges or SEBI or any Statutory Authority, on any matter related to capital markets, during the last three years;

The Company has complied with the requirement of regulatory authorities on capital markets and no penalties/strictures have been imposed against it in the last three years.

8. Means of Communication

- Half-yearly report to each household of shareholders:

The Audited Financial Results for the Half year ended September 30, 2012 alongwith Notes were sent to the shareholders vide letter dated October 16, 2012 of the Company.

- Quarterly results:

The Audited Quarterly Results alongwith the Notes were published in the Newspapers as under:

<table>
<thead>
<tr>
<th>Newspapers</th>
<th>Date of Publication of results for the quarter ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Economic Times</td>
<td>25.4.12  26.7.12  17.10.12  25.1.13</td>
</tr>
<tr>
<td>Maharashtra Times</td>
<td>25.4.12  27.7.12  N.A.  25.1.13</td>
</tr>
<tr>
<td>Nav Shakti</td>
<td>NA       NA  18.10.12  NA</td>
</tr>
</tbody>
</table>

- Website where displayed:

In Company’s website...........................

- Whether it also displays official news releases, the presentations made to Institutional Investors or to the Analysts:

Yes. The Company’s official news releases, other press coverage and corporate presentations made to Institutional Investors and Analysts are also available on the website.

- Whether the Management Discussion and Analysis Report is a part of Annual Report or not:

Yes. The Information is covered in different chapters/headings at appropriate places in this Annual Report.

9. General Shareholder Information:

The general shareholders’ information is given under a separate head elsewhere.

The additional clause regarding Corporate Governance viz. Clause 49 has been added to the listing agreement.

For existing listed companies, which are part of Group A of the Bombay Stock Exchange index or S&P CNX Nifty index.

Annexure ‘A’

CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE

Registration No. of the Company........

Nominal Capital..........

To

The Members

.....................Ltd.*

........................
I/We* have examined all relevant records of _________ Limited (the Company) for the purpose of certifying compliance of the conditions of Corporate Governance under Clause 49 of the Listing Agreement with ______________________________ Stock Exchange(s) for the financial year ended_______. I/we* have obtained all the information and explanations which to the best of my/our* knowledge and belief were necessary for the purposes of certification.

The compliance of the conditions of Corporate Governance is the responsibility of the management. My/Our* examination was limited to the procedure and implementation thereof. This certificate 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.

On the basis of my/our* examination of the records produced, explanations and information furnished, I/we* certify that the Company** has complied with

(a) all the mandatory conditions of the said Clause 49 of the Listing Agreement. (if there are adverse comments or qualifications, this part of the certificate should be suitably modified).__________

(b) the following non-mandatory requirements of the said Clause 49:__________


<table>
<thead>
<tr>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:.......</td>
</tr>
<tr>
<td>Place:.......</td>
</tr>
</tbody>
</table>

[……….name………….....]
Practising Company Secretary

Membership No. ______________
Certificate of Practice No. ________

* Retain whichever is applicable

** If the entity is not a Company under the Companies Act, the entity may be referred to appropriately (e.g. public/private sector banks, financial institutions, insurance companies etc.)

ANNEXURE VII

FORMAT OF QUARTERLY COMPLIANCE REPORT ON CORPORATE GOVERNANCE

Name of the Company:
Quarter ending on:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Clause of Listing Agreement</th>
<th>Compliance Status</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Board of Directors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Composition of Board</td>
<td>49(I)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Non-executive directors compensation &amp; disclosures</td>
<td>49(IA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(C) Other provisions as to Board and Committees</td>
<td>49(IB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(D) Code of Conduct</td>
<td>49(IC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II. Audit Committee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Qualified &amp; Independent Audit Committee</td>
<td>49(ID)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Meeting of Audit Committee</td>
<td>49(IIA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Meeting of Audit Committee</td>
<td>49(IIB)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### ANNEXURE VIII

**SPECIMEN OF DIRECTORS’ REPORT**

To,

The Members,

Your Directors have pleasure in presenting their Fortieth Annual Report on the business and operations of the
Company and the accounts for the Financial Year ended 31st March, 2013.

1. PERFORMANCE OF THE COMPANY

(a) Turnover:

<table>
<thead>
<tr>
<th>Current Year</th>
<th>Previous Year</th>
<th>% Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>₹ 5447.9 Million</td>
<td>₹ 5852.7 Million</td>
<td>6.9</td>
</tr>
</tbody>
</table>

During the year, almost all customer segments of the Company saw a lower production level. Heavy Commercial Vehicles (HCV), Light Commercial Vehicles (LCV), Passenger Cars as well as Tractors showed decline in volumes from 5% to 22%.

Consequently, large investments made both in forging and machining facilities to cater to the expected growth in market have remained under-utilized.

(b) Exports:

The North American market, which is major user of Company's exports, suffered major volume erosion of about 40%. Exports to Oil and Gas Industry were started and were about US Dollar 2 Million. This is expected to increase substantially in the future.

(c) Net Profit:

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit for the year before Taxation and Extra-ordinary Item</td>
<td>358.671</td>
<td>727.571</td>
</tr>
<tr>
<td>Provision for Taxation</td>
<td>32.220</td>
<td>101.400</td>
</tr>
<tr>
<td></td>
<td>326.451</td>
<td>626.171</td>
</tr>
<tr>
<td>Extraordinary Item of Expenditure</td>
<td>—</td>
<td>133.299</td>
</tr>
<tr>
<td>Net Profit</td>
<td>326.451</td>
<td>492.872</td>
</tr>
<tr>
<td>Balance of Profit from Previous Year</td>
<td>586.023</td>
<td>505.758</td>
</tr>
<tr>
<td></td>
<td>912.474</td>
<td>998.630</td>
</tr>
<tr>
<td>Add/(Less): Tax Refunds and Excess Provisions net of prior year items</td>
<td>(32.815)</td>
<td>(34.732)</td>
</tr>
<tr>
<td>Profit available for appropriation</td>
<td>879.659</td>
<td>963.898</td>
</tr>
<tr>
<td>APPROPRIATIONS :</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed dividend on Preference Shares</td>
<td>11.500</td>
<td>7.436</td>
</tr>
<tr>
<td>Tax on above dividend</td>
<td>2.599</td>
<td>0.818</td>
</tr>
<tr>
<td>Proposed dividend on Equity Shares</td>
<td>113.003</td>
<td>188.338</td>
</tr>
<tr>
<td>Tax on above dividend</td>
<td>11.526</td>
<td>20.717</td>
</tr>
<tr>
<td>Debenture Redemption Reserve</td>
<td>25.700</td>
<td>30.566</td>
</tr>
<tr>
<td>Transfer to General Reserve</td>
<td>35.000</td>
<td>70.000</td>
</tr>
<tr>
<td>Transfer to Contingency Reserve</td>
<td>—</td>
<td>60.000</td>
</tr>
<tr>
<td>Surplus retained in Profit and Loss Account</td>
<td>680.331</td>
<td>586.023</td>
</tr>
</tbody>
</table>
(d) Financial Restructuring – Demerger – Subsidiaries:

As reported in last year’s Report, the Company during the previous years had carried out financial restructuring exercise for reduction of capital assets. This was done to enable the Company to focus on its core business in manufacturing. This process has been completed during the year under report. The scheme of Arrangement between the Company and AB Ltd. (ABL), for which approval of shareholders was obtained at the Extra-ordinary General Meeting held on August 14, 2012, has been approved by the Hon. High Court of Judicature at Bombay. Under the Scheme, the Investment Division and Wind Mills Division have been demerged and transferred to ABL, effective from March 1, 2013.

Under the Scheme, Shareholders of the Company will be issued one fully paid Equity share of ₹ 5 of ABL (free of cost) for one fully paid Equity Share of ₹ 10 of the Company held on the Record Date i.e. April 16, 2014. ABL is awaiting certain statutory clearances from the regulatory authorities and will shortly be forwarding its Equity Shares to the eligible shareholders of the Company.

The Subsidiaries of the Company, which were part of the Investment Division, under the said Scheme of Arrangement, stand transferred to ABL and are now Subsidiaries of ABL. Consequent upon the said Subsidiaries ceasing to be Subsidiaries of the Company, Statement pursuant to the Companies Act and accounts of the erstwhile subsidiaries of the Company are not attached to these accounts.

2. EXPANSION AND DIVERSIFICATION:

New machining lines for Front Axle Beams and Steering Knuckles were fully commissioned. The lines, however, are under-utilized on account of the market conditions.

3. DIVIDEND:

Your Directors recommend a Dividend of 30% (₹ 3.00 per Equity Share of ₹ 10 each) for the year ended March 31, 2013. Your Directors also recommend a dividend of 11.50% on Preference Capital of ₹ 100.00 million for the year ended March 31, 2013.

4. TERM DEPOSITS:

As on 31st March, 2013; 539 Depositors having deposits aggregating to ₹ 3,716,200 has been collected. However, deposits amounting to ₹ 553,000 (63 Depositors) have been subsequently repaid.

6. DIRECTORS:

Mr. A has been nominated on the Board, with effect from April 3, 2013, as nominee of ICICI Limited in place of Mr. B whose nomination was withdrawn, with effect from March 29, 2013. The Directors place on record their sincere appreciation of the services offered and the very useful contributions made by Mr. B during his association with the Company.

Mr. C, who was appointed as Director on the Board, with effect from July 24, 2012, in the casual vacancy caused by the demise of Mr. D, holds office till the ensuing Annual General Meeting. A Notice proposing appointment of Mr. C as Director having been received, the matter is included in the Notice for the ensuing Annual General Meeting.

In accordance with the provisions of the Companies Act and the Articles of Association of the Company, Mr. E and Mr. F, Directors of the Company, retire by rotation and, being eligible, they offer themselves for reappointment.

7. DIRECTORS’ RESPONSIBILITY STATEMENT:

Pursuant to the requirement under the Companies Act, with respect to Directors’ Responsibility Statement, it is hereby confirmed:
(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along 
with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments 
and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of 
the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records 
in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing 
and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by 
the company and that such internal financial controls are adequate and were operating effectively.

(f) the directors, had devised proper systems to ensure compliance with the provisions of all applicable 
laws and that such systems were adequate and operating effectively.

8. AUDITORS:

You are requested to re-appoint Auditors for the current year to hold the office from the conclusion of the ensuing 
Annual General Meeting until the conclusion of the next Annual General Meeting.

Your directors wish to place on record their appreciation of the positive co-operation received from the Central 
Government and the Government of Maharashtra, Financial Institutions and the Bankers. The directors also 
wish to place on record their thanks to all employees of the Company for their unstinted efforts during the year.

The directors express their special thanks to Mr. G, Chairman and Managing Director, for his untiring efforts for 
the progress of the Company.

For and on behalf of the Board of Directors

Pune, 

Chairman and Managing Director

Dated : June 2, 2013

INFORMATION AS PER SECTION 134(3)(m) OF THE COMPANIES ACT, 2014 FORMING PART OF THE 
DIRECTORS’ REPORT FOR THE YEAR ENDED 31ST MARCH, 2013

I. CONSERVATION OF ENERGY:

(a) Energy conservation measures taken:

(i) Introduction of recuperator on Rotary Hearth Furnace.

(ii) Interconnection of compressors in FMD-1 and FMD-2.


(iv) Use of impellers instead of pumps in Quench Tanks.

(v) Conversion of electric motor in Utility Area to permanent star.

(vi) Replacement of water-cooled condensers with air-cooled type in air-conditioning packages.

(vii) Load management.
(b) Additional investments and proposals, if any, being implemented for reduction of consumption of energy:

Use of fuel additives.

(c) Impact of the measures at (a) and (b) above for reduction of energy consumption and consequent impact on the cost of production of goods:

The Company has achieved energy cost savings of ₹ 24 million during the year.

(d) Total energy consumption and energy consumption per unit of production as per Form-A of the Annexure to the Rules in respect of Industries specified in the schedule thereto:

<table>
<thead>
<tr>
<th></th>
<th>2012-2013</th>
<th>2013-2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(A) Power and Fuel consumption:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. <strong>Electricity:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Purchased:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Units (KWH in thousand)</td>
<td>54.584</td>
<td>60.460</td>
</tr>
<tr>
<td>Total Amount (₹ in Million)</td>
<td>227.485</td>
<td>253.422</td>
</tr>
<tr>
<td>Rate/KWH (₹)</td>
<td>4.17</td>
<td>4.19</td>
</tr>
<tr>
<td>(b) Own Generation:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Though diesel Generator Units (in thousand)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Units per Ltr. of Diesel Oil</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Cost/Unit (₹)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>(ii) Through Seam turbine/Generator Units</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Units per Ltr. of Fuel Oil/Gas</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Cost/Unit (₹)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>2. <strong>Coal (Steam used for generation of Steam in boiler):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qty. (Tonnes)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total Cost (₹ in million)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Rate (₹)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3. <strong>Furnace Oil:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qty. (K. Ltrs.)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total Amount</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Rate (₹)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4. <strong>Others:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) <strong>Fuel Oil:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qty. (K. Ltrs.)</td>
<td>14.595</td>
<td>19.371</td>
</tr>
<tr>
<td>Total Cost (₹ in million)</td>
<td>158.395</td>
<td>172.600</td>
</tr>
<tr>
<td>Rate/K. Ltr. (₹)</td>
<td>10.852</td>
<td>8.910</td>
</tr>
<tr>
<td>(ii) <strong>L.P.G.:</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Qt. (Kgs. in thousand) | 1.969 | 2.217
Total cost (₹ in million) | 34.583 | 28.836
Rate/Kg. (₹) | 17.56 | 13.01

(B) Consumption per unit of production:

1. Steel Forgings (Unit : MT) Electricity (Unit - KWH) | 778 | 754
   Fuel Oil (K. Ltrs.) | 0.278 | 0.321
   L.P.G. (Kgs.) | 38 | 37
2. Crankshafts and others (Unit : Nos.) Electricity
   (Unit - KWH) | 38 | 35
3. General Engineering and Material Handling
   Equipment (Unit - Nos.) Electricity (Unit - KWH) | 2.550 | 3.730

II. TECHNOLOGY ABSORPTION:

Efforts made in technology absorption as per Form-B of the Annexure to the rules:

1. Research & Development (R&D):

   (a) Specific areas in which R&D carried out by the Company:

      (i) Improved heat treatment processes to improve mechanical properties.
      (ii) Use of “carbon restoration process” for improving fatigue life of connecting rods.
      (iii) “Stress Analysis“ for crankshaft and investigation of field failures.

   (b) Benefits derived as a result of the above R&D:

      Improved quality/performance of forgings.

   (c) Future Plan of Action:

      Development of 8, 12 and 16 cylinder heavy crankshafts weighing up to 650 Kg.

   (d) Expenditure on R&D:

      ₹ in Million

      (i) Capital
      (ii) Recurring | 4.677
      (iii) Total | 4.677
      (iv) Total R&D Expenditure as a percentage of total turnover | 0.09%

2. Technology absorption, adaptation and innovation:

   (a) Efforts, in brief, made towards technology absorption, adaptation and innovation:

      (i) Use of CAD-CAM software to make continuous improvements in die quality and to reduce machining time.
      (ii) Value engineering on various forging parts through—

          − Reduction of machining stock
Lesson 12  
Preparation and Presentation of Reports 437

- Input material savings
- Change in forging process to eliminate labour intensive post processing on forging parts.

(iii) Capability for multi-cylinder crankshaft balancing.
(iv) Validation of die designs and technical feasibility studies by using CAE metal flow simulation.
(v) Successful integration of CAD-CAM Center and 30 NC machines through DNC Network.
(vi) Launch of “Engineering Database”: and “QS-9000” documents on Intranet.
(vii) Productivity, die life and quality improvements by taking up various continuous improvement projects.
(viii) Standardization of dies and auxiliary tooling.
(ix) Generation of back-up data storage system for all drawing and CAD-CAM files to ensure availability of such files in case main drive system crashes or breaks down.
(x) Successful incorporation of Auto-cad system to speed up drawing preparation process with high accuracy and better quality. This has resulted in elimination of conventional drafting boards.
(xi) Continuous Improvement Plans (CIP) to achieve international benchmarks.

(b) Benefits derived as a result of the above efforts e.g. product improvement, cost reduction, product development, import substitution, etc.:
(i) ‘First time right’ development for almost all new forging parts.
(ii) Development time frame for forging parts reduced from 90-120 days to 20-45 days depending on the complexity of part.
(iii) Reduction of scrap level.
(iv) New business opportunity as a result of faster response.

(c) In case of imported technology (imported during the last 5 years from the beginning of the financial year):

<table>
<thead>
<tr>
<th>Technology Imported (Product)</th>
<th>Year of Import</th>
<th>Has technology been fully absorbed</th>
<th>If not fully absorbed, areas where this has not taken place, reasons therefor and future plan of action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical know-how and Assistance for the manufacturers of Steel Forgings, from Metalart Corporation, Japan.</td>
<td>1998</td>
<td>Being absorbed.</td>
<td></td>
</tr>
</tbody>
</table>

III. FOREIGN EXCHANGE EARNINGS AND OUTGO

(a) Activities relating to exports, initiatives taken to increase exports, development of new export markets for products and services and export plans:

Efforts made to increase geographical spread in Global market. Company has started supplying to Daimler Chrysler in Germany. Besides traditional automotive components, the Company is diversifying its product portfolio and entering new customer segment such as Oil and Gas. Exports to Oil and Gas
segment, during the year 2011-2012, were to the tune of US $ 2 million and are likely to increase in future.

(b) Total foreign exchange used and earned:

<table>
<thead>
<tr>
<th>Used</th>
<th>₹ 419.833 Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earned</td>
<td>₹ 1125.596 Million</td>
</tr>
</tbody>
</table>

For and on behalf of Board of Directors
Pune,
Chairman and Managing Director
Dated : June 2, 2013

ANNEXURE IX

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

Name of Director :
Position of Director :
Category of director :
If nominee, whether Institution is Lending or investing institution.
Academic qualifications :
Date of joining the Company :
Relationship with other directors :
Total number of directorships :
No. of committee memberships across Companies :
Chairmanship in number of committees :

Directorship details

Committee membership/Chairmanship details
Name of the Company
Name(s) of Committee(s) in the Company

- Indian
  - Executive
  - Non executive
- Foreign
  - Executive
  - Non Executive
  - Main achievement of the director
Specimen Format of declaration which the Companies may obtain from its Independent Directors on Annual Basis

The Board of Directors

M/s………………………………………………

Dear Sir,

I undertake to comply with the conditions laid down in Sub-Clause of Clause 49 read with section 149 and schedule IV of the Companies Act, 2013 in relation to conditions of independence and in particular:

(a) I declare that upto the date of this certificate, apart from receiving director’s remuneration, I did not have any material pecuniary relationship or transactions with the Company, its promoters, its directors, its senior management or its holding Company, its subsidiary and associates as named in the Annexure thereto which may affect my independence as director on the Board of the Company. I further declare that I will not enter into any such relationship/ transaction. However, if and when I intend to enter into any such relationships/ transactions, whether material or non-material I shall seek prior approval of the Board. I agree that I shall cease to be an independent director from the date of entering into such relationship / transaction.

(b) I declare that I am not related to promoters or persons occupying management positions at the board level or at one level below the board and also have not been an executive of the Company in the immediately preceding three financial years.

(c) I was not a partner or an executive or was also not partner or an executive during the preceding three years, of any of the following:
   (i) the statutory audit firm or the internal audit firm that is associated with the Company, and
   (ii) the legal firm(s) and consulting firm(s) that have a material association with the Company.

(d) I have not been a material supplier, service provider or customer or a lessor or lessee of the Company, which may affect independence of the director; and was not a substantial shareholder of the Company i.e. owning two percent or more of the block of voting shares.

Thanking you,

Yours faithfully,

Name
(Independent director)

Date : ______________________

Place : ______________________

SPECIMEN OF THE CHAIRMAN’S SPEECH

Dear Shareholders,

First of all let me share with you in very brief the highlights of our performance in the year we just completed as per our current Indian Accounting Standards and also the Consolidated Accounts prepared as per US GAAP.
**XY Ltd. Stand-Alone Profit and Loss Account**

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Previous Year</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012-2013</td>
<td>2011-2012</td>
<td>Growth</td>
</tr>
<tr>
<td>Sales (₹ Crores)</td>
<td>486.5</td>
<td>430.0</td>
<td>13</td>
</tr>
<tr>
<td>Profit After Tax (₹ Crores)</td>
<td>56.9</td>
<td>45.3</td>
<td>26</td>
</tr>
<tr>
<td>EVA (₹ Crores)</td>
<td>23.9</td>
<td>14.9</td>
<td>60.4</td>
</tr>
</tbody>
</table>

**XY Ltd. Consolidated Profit and Loss Account (In consonance with US GAAP)**

<table>
<thead>
<tr>
<th></th>
<th>Current Year</th>
<th>Previous Year</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012-2013</td>
<td>2011-2012</td>
<td>Growth</td>
</tr>
<tr>
<td>Net Sales (₹ Crores)</td>
<td>624.7</td>
<td>516.1</td>
<td>21</td>
</tr>
<tr>
<td>(Net of Excise Duty and Sales Tax)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Income from continuing operations (₹ Crores)</td>
<td>42.5.</td>
<td>30.1.</td>
<td>41</td>
</tr>
</tbody>
</table>

It has been another good year for us — no matter whether you look at the Indian or the US GAAP accounting. I want to take this opportunity to share with you a few of my thoughts on the future strategies of your company in the rapidly changing business environment.

**Mergers and Acquisitions**

Our first strategy was to use Mergers and Acquisitions to attain critical mass. Having acquired P.S. Ltd. in 1990, R. Ltd. 1995, B Ltd. in 1998, and creating access to new product pipeline of our partners from whom we acquired their business in India. In 1999 we resorted to a three way merger with G.S. Limited to gain considerably by creating one large company under a single management with the obvious other benefits of mergers. Careful consideration was given to rationalising operations, integrating cultures, developing a world class manufacturing base. The strongest marketing/distribution infrastructure in the Indian healthcare market was created via ten or more focused field forces and a streamlined supply chain with 2000+ stockists. XY Ltd. today, is a clear leader in M&A capability within Indian healthcare. This was later supplemented by key strategic alliances/joint ventures.

In future also, we will continue to seek out synergistic and win-win acquisitions/partnerships in the domestic as well as international markets. However, the greatest single advantage of achieving critical mass in my opinion was our new ability to invest in serious and sustainable Discovery Research and Development of patentable new products. Let me share with you why I think this is so important to the future growth of your company.

**The Emerging Business Environment**

While our quantum growth: 29 times increase in Sales and 73 times increase in Profits (on stand alone basis) over the last 12 years after our acquisition of N is a good testimony to the strategy we adopted in our formative phase. The business environment has changed dramatically after India joined the WTO, has accepted TRIPS and changed our Patent Law to fall in line to give full 20 years patent protection to product patents filed after January 1995. (India did not allow Product patents since 1970, only process patents were allowed in pharmaceuticals). The full impact of this change will be felt perhaps after the next 7 to 10 years when the products patented after 1995 will start coming in the Indian market.

I am greatly pleased to assure you that thanks to the strategy we adopted, our company has secured a good access to the new product pipeline of our strategic alliance and JV partners. This was possible entirely because we had anticipated these changes and implemented strategies proactively to secure these relationships. We have therefore secured a major advantage for our company as compared to others.
Research and Development – the New Thrust Area

However, in the long term the real sustainable strength of any Pharmaceutical Company under the new business environment can come only from its own Research efforts and the stable of patented and effective new products it can generate continuously at low costs.

To achieve this strength, your Board of Directors have agreed to make significant additional investments in Discovery Research.

- When it comes to R&D, we in India have a special advantage over the rest of the world. It is said that, “in the new knowledge millenium the centre of focus of knowledge production will shift to India. Why is this so? First and foremost it pertains to our cost advantage. The intellectual capital available per dollar in India is the highest in the world”. (Source: Presidential Address by Dr. R.A. Mashelkar at the 87th Indian Science Congress, Pune, 3rd January 2009). It is estimated that in India, we could undertake Discovery Research at one-third the international costs and in addition compress the time taken between discovery and bringing it to market—a very substantial benefit. Every year gained for marketing before the 20 years span of patent protection expires can mean in the international market millions of dollars in profits.

- We were able to crystallise our strategy of Discovery Research with the acquisition of the … … … Research Facility in 1998 — just one year after we achieved “critical mass” through the 3-way merger of XY, B and C. This has been revitalized using a “business drived R&D” approach and strengthened with an additional orientation to natural/herbal products, where India globally has a unique niche because of its rich bio-diversity and our ancient heritage in Ayurveda. The net result is the high probability of a strong new herbal product pipeline with a choice of several products to choose from for launch in the 2010-2013 period because of the relatively short time needed for product registration for herbal products.

The investment led R&D strategy also creates the platform to go global for herbal as well as modern medicine.

Our research strategy has several elements

Discovery Research is conducted at the ……………………… and has focused on five therapeutic areas and in three of these we have already identified patentable leads. While determining the success probability of these still needs a couple of years more work. In addition to launching the product exclusively in India, we also have the exclusive rights to market or license the product globally. A second NCE is in advanced clinical trials for cancer and AIDS. The company will be actively looking for international partners to help take its NCEs global.

The Herbal research will also be conducted at the …………. facility. There are more than a dozen projects in this Herbal pipeline, with a good chance of about four new products being launched in the next 18 to 24 months.

Our Programme on chemical synthesis/chiral chemistry primarily uses reverse engineering with 12+ projects on hand, some of which are directed towards the global generics market. This developmental work is undertaken both at … …… and at our …………… facility.

I am also pleased to inform you that, we plan to start genomic research. The objective is to ‘harvest’ the knowledge of the International Human Genome Research project which is in the public domain i.e. NOT PATENT PROTECTED and can be accessed by any one. We will use this knowledge for the development of genetic healthcare products which can be patent protected. We plan to look for alliances in this area. We in India seem to have certain special advantages when it comes to discovery and development of products to treat diseases triggered by genetic problems. The Genome research facility in Mumbai will be located in the Wellspring Centre.

Strategic Alliances

XY Ltd. sees Strategic Alliances as vital to access technology and improve learning. The initial thrust was on marketing alliances, notably in the OTC segment, where the company is now a market leader thanks to its alliances with ………………. The alliance with ………………. in eye care has also achieved leadership in that segment. Our entry into herbal/natural products category is being facilitated by learnings we are acquiring from
our JV partnerships. The emphasis will increasingly be on Research Partnerships in the future, which should help XY Ltd. go global.

**International Expansion**

XY Ltd. already has a cost effective world class manufacturing base which we propose to leverage to manufacture and market products to our alliance partners and other multinationals in the international market.

As regards the product line for international expansion, XY Ltd. has three options.

A range of branded generics

The new Herbal/Naturals line

The NCEs in its own pipeline

The early geographic targets include Africa, South East Asia, Europe and the USA in that or with entry facilitated by strategic investments, alliances and/or small acquisitions to speed up take off.

**Pursue World Class Operating Model**

The company is committed to developing a world class organisation, with our top 101 Managers/Leaders identified, being trained and empowered to perform via a decentralised SBU (Strategic Business Unit) structure with clearly defined objectives emphasising entrepreneurship. A performance culture is being developed by modifying compensation packages to key employees to be in tune with their profit performance. Long term performance is also supported via a successfully implemented ESOP programme.

The company also periodically looks at cost compression, using ‘benchmarking’, and a ‘zero-base’ approach.

The next initiative in this regard is scheduled for the second half of the year. The comprehensive ‘IT’ strategy review currently underway will also look at the impact of the Internet on various aspects of the business, with a view to using IT power for most cost effective and empowering solutions.

**Listing on the American Stock Exchange (ADS)**

As you are aware, our shareholders have already approved our proposal in the Extra Ordinary General Meeting of shareholders held on 29th April, 2012. We propose to go through with this at an opportune time. In the meantime, let me share with you how the company proposes to use the money as and when it is raised abroad.

A part of the money will be used for funding capital expenditure related to R&D projects. Some will be used for potential acquisitions in India or outside and partly for repaying debt and reducing our interest burden.

With all the proactive strategies we are implementing and the focused entrepreneurial way in which our empowered Strategic Business Unit Chiefs are focusing on our ‘here-and-now’ business operations in our reorganised structure gives me every confidence that we will continue to give excellent results year on year while also getting ready to face the evolving market place with strength and confidence.

Chairman

XY Ltd.
LESSON ROUND-UP

– After the financial statements have been audited by the auditors and approved by the Board, these are laid before the annual general meeting of the members of the company for their adoption.

– A holding company is required to attach with its balance sheet a copy of the balance sheet, profit and loss accounts, Board of Directors’ report, Auditors’ Report of its subsidiary Company.

– Under Section 143(2), it is the duty of the auditor to make a report to the members of the company on the accounts examined by, and on every balance sheet, every profit and loss account and/or every other document declared by the Act to be part of or annexed to either and laid before the company in general meeting during his tenure of office.

– The matters to be included in the Board’s report have been specified in section 134(3) of the Companies Act, 1956.

– Listed companies are required to comply with clause 49 of the listing agreement and should provide separate section on Corporate Governance as well as a Management Discussion and Analysis report in the annual report of the company.

– Directors’ Responsibility statement, Disclosure of information about each director, Declaration form Independent directors and Particulars of employees should also form part of Board’s report.

– There is no statutory provision under which chairperson of an annual general meeting must make a speech or statement at the meeting. However, Chairman’s speech is usually utilized for a wide-ranging review of Company’s progress.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not be submitted for evaluation)

1. Explain the procedure to be followed for preparing abridged balance sheet and profit and loss account by a listed company.

2. Every Producer Company is required to keep at it registered office proper books of account. Explain.

3. State the items that are to be covered under Directors’ Responsibility Statement.

4. What information is required for the preparation of Directors’ Report?

5. What points should be kept in mind while preparing the chairman’s speech of the Company?
Lesson 13
Distribution of Profits

LESSON OUTLINE

- Meaning of Dividend
- Declaration of Dividend
- Procedure for declaration and payment of Interim Dividend
- Procedure for declaration and payment of Final Dividend
- Procedure for declaration of dividend out of Company’s reserves
- Claiming of Unclaimed/Unpaid Dividend
- Procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection fund
- Annexures – Specimen Notice/Resolution
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

When a company distributes the profits earned by it to the shareholders, it is said that it has paid dividend. Thus, dividend is the payment made by a company to its shareholders out of the distributable profits.

Dividend is calculated as a percentage of the nominal value of their shares, which is fixed for holders of preference shares and fluctuating for holders of equity or ordinary shares. Distributable profits are the profits of a company that are available for distribution as dividends to the shareholders in accordance with the provisions of the Act.

After going through this lesson, you will be able to understand practical and procedural aspects relating to declaration and payment of dividend as well as transfer of unpaid and unclaimed dividend to Investor Education and Protection Fund.
MEANING OF DIVIDEND

The term ‘dividend’ has been defined under Section 2(35) of the Companies Act, 2013. The term “Dividend” includes any interim dividend. It is an inclusive and not an exhaustive definition. According to the generally accepted definition, “dividend” means the profit of a company, which is not retained in the business and is distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

Dividends are usually payable for a financial year after the final accounts are ready and the amount of distributable profits is available. Dividend for a financial year of the company (which is called ‘final dividend’) are payable only if it is declared by the company at its annual general meeting on the recommendation of the directors. Sometimes dividends are also paid by the directors between two annual general meetings without declaring them at an annual general meeting (which is called ‘interim dividend’).

The Supreme Court in re. C.I.T. v. Girdhardas & Co. (P) Ltd. (1967) 1 Comp. LJ 1. defined the term “dividend” in the following manner:

(i) As applied to a company which is a going concern, it ordinarily means the portion of the profit of the company which is allocated to the holders of shares in the company.

(ii) In the event of winding up, it means a division of the net realised assets among creditors and contributories according to their respective rights.

The companies having licence under Section 8 of the Act are prohibited by their constitution from paying any dividend to its members. They apply the profits in promoting the objects of the company.

DECLARATION OF DIVIDEND

Chapter VIII of the Companies Act 2013 deals with provisions related to dividend. Section 123 provide for declaration of dividend. A company shall declare dividend and pay it, only out of profit of the company for the financial year or out of undistributed profit of any previous financial year or out of both.

In case, any guarantee give by any Government (Central or State), the company may declare dividend out of money provided by that government for payment of dividend after providing for depreciation with Schedule II.

Before declaration of dividend, a company may transfer a portion from the profit to the reserves of the company. The company is free to decide the percentage for such transfer to the reserve.

Where a company has no adequate profit or any profit in a financial year or any accumulated profit to distribute as dividend, it may declare dividend out of reserves in accordance with the rules made by the government. The company may pay dividend only from free reserves, not from any other reserves.

Declaration of interim Dividend

The Board of Directors may declare interim dividend during financial year out of surplus in profit and loss account. In case, a company is incurring loss as per financials of latest quarter, interim dividend shall not be higher than average dividend declared by the company during last three financial years.

Deposit of declared Dividend

The amount of dividend and interim dividend shall be deposited in a separate account in a scheduled Bank within five days from the date of declaration of such dividend.

The dividend shall be paid to shareholder or to his banker in cash not otherwise. However issue of bonus shares out of distributable profit or free reserve is permitted and not be deemed to be a violation of this rule. Making a partly paid share, fully paid through payment from distributable profit and free reserve is permitted.
Any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder.

**Prohibition on declaration of Dividend**

A company which fails to comply with the provisions of Section 73 and 74 related to deposit and repayment of deposit or interest thereon shall not declare and dividend on its equity shares as long as such failure continue.

**Right of Members Pending Registration of Transfer**

According to section 126, where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall,—

(a) transfer the dividend in relation to such shares to the Unpaid Dividend Account unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares, (a) any offer of rights shares and (b) any issue of fully paid-up bonus shares.

**Punishment for Failure to Distribute Dividend (Section 127):**

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and (b) the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

No offence under this section shall be deemed to have been committed:—

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

**Unpaid Dividend Account (Not yet notified)**

According to section 124, where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Thus number of days to transfer unpaid or unclaimed amount of dividend to unpaid dividend account comes to 30 + 7 = 37 days.

The company shall, within a period of ninety days of 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.
If any default is made in transferring the total amount referred to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. The Term enure convey to take, or have effect or serve to the use, benefit, or advantage of members.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. The person can claim this amount form company only within seven years of its transfer to Unpaid Dividend Account. After this period not only his dividend amount but also shares shall be transferred to the Investor Education and Protection Fund (IEPF).

If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

**Other provisions**

The Companies Act, 2013 lays down certain other provisions for declaration of dividend, which are:

(I) The provisions contained in Chapter III, Chapter IV and in Section 127 shall, in so far related to non-payment of dividend by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf; or in any other case, be administered by the Central Government. [Section 24]

(II) The Share capital of the company may consist of equity shares with differential rights as to dividend. [Section 43]

A clause in the memorandum fixing the limit of dividends to be declared on a particular class of shares cannot be regarded as a condition within the meaning of the word in section 16(1), and it can be altered by a special resolution [Re, Rampuria Cotton Mills Ltd. (1959) 29 Com Cases 85 (Cal.).]

In British India Corporation Ltd. v Shanti Narain AIR 1935 All 310, it was held with reference to Section 10 of Indian Companies Act, 1913 (corresponding to the present section): “The provisions as regards the rights and privileges attaching to particular class of shares are not required by the Statute to be inserted in the memorandum of a company, but if they are stated in the memorandum without the reservation of the power to modify or alter those rights and privileges, they cannot be altered in view of the provisions of section 10 of the Act, except in the mode and to the extent for which express provision is made in the Act”.

(III) Preference share capital would carry a preferential right with respect to payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax. [Section 43]

(IV) Where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. [Section 47]

(V) A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share. [Section 51] This Section permits companies to pay dividends proportionately, i.e. in proportion to the amount paid-up on each share when all shares are not uniformly paid up, i.e. pro rata. Pro rata means in proportion or proportionately, according to a certain rate. The Board of Directors of a company may decide to pay dividends on pro rata basis if all the equity shares of the company are not equally
paid-up. The permission given by this section is, however, conditional upon the company’s articles of association expressly authorising the company in this regard.

(VI) The bonus shares shall not be issued in lieu of dividend. [Section 63(3)]

(VII) Final Dividend is generally declared at an annual general meeting at a rate not more than what is recommended by the directors in accordance with the articles of association of a company [Section 102(2)(a)(ii)].

(VIII) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include the amount, if any, which it recommends should be paid by way of dividend. [Section 134(3)(k)]

(IX) The company’s lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares. [Schedule I, Table F, Article 9(ii)]

(X) A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends [Schedule I, Table F, Article 26]

(XI) The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Schedule I, Table F, Article 80]

(XII) The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company. [Schedule I, Table F, Article 81]

(XIII) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, thinks fit.

The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve. [Schedule I, Table F, Article 82]

(XIV) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly. [Schedule I, Table F, Article 83]

(XV) The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company. [Schedule I, Table F, Article 84]

(XVI) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. [Schedule I, Table F, Article 85]
Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share. [Schedule I, Table F, Article 86]

Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act. [Schedule I, Table F, Article 87]

No dividend shall bear interest against the company. [Schedule I, Table F, Article 88]

**PROCEDURE FOR DECLARATION AND PAYMENT OF INTERIM DIVIDEND**

1. Verify from company’s Articles of Association that they authorise the directors to declare interim dividend; if not then alter the Articles of Association accordingly.

2. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. The notice must be in accordance. It must state time, date and venue of the meeting and details of the business to be transacted thereat and be sent to all the directors for the time being in India and to all other directors, at their usual address in India.

3. In case of listed companies, notify Stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of interim dividend is to be considered. [Clause 19 of listing agreement].

4. At the Board meeting, the Board of Directors considers in detail all the matters with regard to the declaration and payment of an interim dividend including:
   
   (a) Before declaring an interim dividend, the directors must satisfy themselves that the financial position of the company allows the payment of such a dividend out of profits available for distribution. The company must have earned adequate profits to pay interim dividend after providing for depreciation for the full year. The directors of a company may be held personally liable in the event of wrong declaration of an interim dividend. Therefore, it is prudent on the part of the directors to have a proforma profit and loss account and balance sheet of the company prepared up to the latest possible date of the financial year in respect of which interim dividend is proposed to be declared and provision must be made for all the working expenses and depreciation for the whole year. In case, a company is incurring loss as per financials of latest quarter, interim dividend shall not be higher than average dividend declared by the company during last three financial years.

   (b) quantum of dividend,

   (c) entitlement,

   (d) closure of register of members for the purpose of payment of interim dividend or fixation of record date,

   (e) publication of notice in newspapers for closure of share transfer register and the register of members of the company at least 7 days before the proposed closure (applicable for listed companies)

   (f) opening of a separate bank account,

   (g) printing of dividend warrants,

   (h) authority for signing the dividend warrants and pass appropriate resolutions covering all these aspects of the matter,

   (i) posting of the dividend warrants, and

   (j) pass a suitable resolution for declaration and payment of interim dividend on equity shares of the company.
(k) **Interim dividend on preference shares**: Generally, dividend on preference shares is paid annually.

However, the dividend at a fixed rate on the preference shares can be paid more than once during a year, in proportion to the period of completion of current financial period over the whole financial year, by declaring it as interim dividend, in the Board meeting by the Board of directors. A suitable resolution should be passed to the effect that the dividend will be paid to the registered preference share holders whose names appear in the register of preference shareholders as on the date of commencement of closure of share transfer books.

[For a specimen of the Board resolution for interim dividend on preference shares, please see Annexure II at the end of this Chapter].

5. In case of a listed company, immediately within 15 minutes of the conclusion of the Board meeting, but only after the close of the market hours, intimate the stock exchanges with regard to the Board’s decision about declaration and payment of interim dividend with the prescribed financial information is also required to be given to the concerned stock exchange(s) by a letter or telegram/telex. [Clause 20 of listing agreement]

6. In case of listed company, publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.

Further, :

(i) To give notice of book closure to the stock exchange at least 7 working days or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.

(ii) To send the copies of notice stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognised stock exchanges.

(iii) Time gap between two book closures and record date would be at least 30 days.

(iv) To declare and disclose the dividend on per share basis only.

7. Close the register of members and the share transfer register of the company.

8. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.

9. The Issuer will fix and notify stock exchanges, at least twenty-one days in advance, of the date on and from which the dividend on shares will be payable. [Clause 21 of listing agreement]

10. Round off the amount of interim dividend to the nearest rupee and where such amount contains part of a rupee consisting of paise then if such part is fifty paise or more, it should be increased to one rupee and if such part is less than fifty paise, it should be ignored.

11. Open the “Interim Dividend Account of ............ Ltd.” with the bank as resolved by the Board and deposit the amount of dividend payable in the account within five days of declaration and give a copy of the
Board resolution containing instructions regarding opening of the account and give the authority to Bank to honour the dividend warrants when presented.

12. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI & STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS) / RECS (Regional ECS) / NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its RTI & STA) shall maintain requisite bank details of its investors as under-

(a) For investors that hold securities in demat mode, company or its RTI & STA shall seek relevant bank details from the depositories. To this end, vide circular SEBI/MRD/DEP/Cir-3/06 dated February 21, 2006 and letter MRD/DEP/PP/123624/2008 dated April 23, 2008, depositories have been advised to ensure that correct account particulars of investors are available in the database of depositories.

(b) For investors that hold physical share / debenture certificates, company or its RTI & STA shall take necessary steps to maintain updated bank details of the investors at its end.

(c) In cases where either the bank details such as MICR (Magnetic Ink Character Recognition), IFSC (Indian Financial System Code), etc. that are required for making electronic payment are not available or the electronic payment instructions have failed or have been rejected by the bank, company or its RTI & STA may use physical payment instruments for making cash payments to the investors. Company shall mandatorily print the bank account details of the investors on such payment instruments.

(d) Depositories are directed to provide to companies (or to their RTI & STA) updated bank details of their investors. [Refer SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013]

13. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centers as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]

14. Prepare a statement of dividend in respect of each shareholder containing the following details:

(a) Name and address of the shareholder with ledger folio No.

(b) No. of shares held.

(c) Dividend payable.

15. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.

16. To have sufficient number of dividend warrants printed in consultation with the company’s banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.

17. No RBI approval is required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.

18. Prepare two copies of the list of members with names and addresses only for mailing purposes – one to cut and paste on envelopes which could even be printed on self-sticking labels and the other for securing receipt from the Post Office.

19. Where an instrument of transfer has been received by the company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called “Unpaid Dividend Account” opened unless the registered holder of these shares authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer.
20. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

21. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank for circulation to the branches where the dividend warrants will be payable at par.

22. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.

23. Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).

24. Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.

25. Arrange for transfer of unpaid or unclaimed dividend to a special account named “Unpaid dividend A/c” within 7 days after expiry of the period of 30 days of declaration of final dividend. [Section 124]

26. Confirm the interim dividend in the next Annual General Meeting.

27. Identify the unclaimed amounts as referred to in sub-section (2) of section 124 of the Act and, separately furnish and upload on company’s own website and also on the Ministry of Corporate Affairs’ website or any other website as may be specified by the Government, a statement or information through e-Form 5 INV of Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012, (the Declaration and Payment of Dividend Rules, 2014 specifies From DIV-5, which will be applicable when section 124 of the Companies Act, 2013 is notified) separately for each year, containing following information, namely:-

(a) the names and last known addresses of the persons entitled to receive the sum;
(b) the nature of amount;
(c) the amount to which each person is entitled;
(d) the due date for transfer into the Investor Education and Protection Fund; and
(e) such other information as considered relevant for the purpose;

Above information is required to be filed every year within a period of 90 days after the holding of Annual General Meeting or the date on which it should have been held and every year thereafter till completion of the seven years’ period. The information is to be filed in e-Form 5 – INV as per the above mentioned rules; and thereafter an excel sheet containing detailed investor wise details is to be filed separately. E-Form 5 – INV shall be duly verified and certified by a chartered accountant or a company secretary or a cost accountant practicing in India or by the statutory auditors of the company. The e-Form, the excel template and detailed steps are provided in the IEPF application link on the portal www.iepf.gov.in.

28. Transfer unpaid dividend amount to Investor Education and Protection Fund after the expiry of seven years from the date of transfer to unpaid dividend A/c. The company while effecting credit to the Fund, should separately furnish to ROC a statement in e-Form 1 INV of IEPF (Awareness and Protection of Investors) Rules, 2001 duly certified by chartered accountant or a company secretary or a cost accountant practising in India or by the statutory auditors of the company.
PROCEDURE FOR DECLARATION AND PAYMENT OF FINAL DIVIDEND

The following steps are required to be taken by a company in respect of declaration and payment of final dividend:

1. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. It must contain time, date and venue of the meeting and details of the business to be transacted thereat and must be sent to all the directors for the time being in India and to all other directors, at their usual address in India.

2. In case of listed companies notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of final dividend is to be considered. [Clause 19 of listing agreement]

3. Hold Board meeting for the purpose of passing the following resolutions:
   (a) approving the annual accounts (balance sheet and profit and loss account of the company for the year ended on 31st March .......);
   (b) recommending the quantum of final dividend to be declared at the next annual general meeting and the source of funds for the payment thereof, i.e.:
       (i) out of profits of the company after providing for depreciation for the current financial year and also for earlier years, if not already provided and amount to be transferred from the current profits to reserves; or
       (ii) out of reserves in accordance with the provisions of Rule 3 of the Companies (Declaration and Payment of Dividend), Rules, 2014.
   (c) fixing time, date and venue for holding the next annual general meeting of the company, inter alia, for declaration of dividend recommended by the Board;
   (d) approving notice for the annual general meeting and authorising the company secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
   (e) determining the date of closure of the register of members and the share transfer register of the company as per requirements of Section 91 of the Companies Act and the listing agreements (in the case of listed companies) signed by the company with the stock exchanges where the securities of the company are listed. In the case of listed companies, the date of commencement of closure of the transfer books should not be on a day following a holiday. The dates so fixed should also not clash with the clearance programme in the stock exchanges. It is advisable to consult in advance the regional stock exchange and then fix the dates for closure of books.

(A Specimen of Board resolution recommending dividend is given at Annexure IV)

5. The company may transfer to reserves such percentage as it consider appropriate of the current profits.

6. In case of a listed company, immediately within 15 minutes of the conclusion of the Board meeting, intimate the stock exchanges with regard to the Board’s decision about declaration and payment of dividend and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for the dividend, by way of a letter or telegram/fax [Clause 20 of listing agreement]

7. Publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.
In case of listed companies:

(i) To give notice of book closure to the stock exchange at least 7 working days or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.

(ii) To send the copies of notice stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognised stock exchanges.

(iii) Time gap between two book closures would be at least 30 days.

(iv) To declare and disclose the dividend on per share basis only. (Clause 16, 20A of listing agreement read with Section 51 of Companies Act, 2013).

8. Close the register of members and the share transfer register of the company.

9. The amount of dividend as recommended by the Board of directors shall be shown in the Directors’ Report as appropriation of profits for the financial year to which the Report relates. The same amount is shown in the Balance Sheet as at the end of the related financial year as “Proposed Dividend” under the head “Current Liabilities & Provisions”, Sub-head “Provisions”.

10. Hold a Board/committee meeting for approving registration of transfer/transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.

11. Hold the annual general meeting and pass an ordinary resolution declaring the payment of dividend to the shareholders of the company as per recommendation of the Board. The shareholders cannot declare the final dividend at a rate higher than the one recommended by the Board. However, they may declare the final dividend at a rate lower than the one recommended by the Board. The following should be noted in this regard:

(a) Once a company has declared a dividend for a financial year at an annual general meeting, it cannot declare further dividend at an extraordinary general meeting in relation to the same financial year; it is beyond the powers of the company to do so, although the Companies Act does not prohibit the declaration of a dividend at a general meeting other than an annual general meeting.

(b) Pro-rata means in proportion or proportionately, according to a certain rate. It denotes a method of dividing something between a number of participants in proportion to some factor. The profits of a company are shared, pro rata, among the shareholders, i.e. in proportion to the number of shares each shareholder holds.

(c) In the case of preference shares, dividend is always paid at a fixed rate. However, in the case of equity shares, a dividend must be declared and paid according to the amounts paid or credited as paid on the shares, i.e., according to the paid-up value of the shares.

(d) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly. [Schedule I, Table F, Article 83(3)].

12. Prepare a statement of dividend in respect of each shareholder containing the following details:
(a) Name and address of the shareholder with ledger folio no.
(b) No. of shares held.
(c) Dividend payable.

13. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.

14. The Issuer will fix and notify the stock exchanges, at least twenty-one days in advance, of the date on and from which the dividend on shares will be payable. [Clause 21 of listing agreement]

15. Round off the amount of interim dividend to the nearest rupee and where such amount contains part of a rupee consisting of paisa then if such part is fifty paisa or more it should be increased to one rupee and if such part is less than fifty paisa it should be ignored.

16. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.

17. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI & STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS)/ RECS (Regional ECS) / NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its RTI & STA) shall maintain requisite bank details of its investors as per SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013 in the manner as stated aforesaid under the procedure for declaration and payment of interim dividend.

18. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centers as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]

19. To have sufficient number of dividend warrants printed in consultation with the company’s banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.

20. No RBI approval required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.

21. Prepare two copies of the list of members with names and addresses only for mailing purposes – one to cut and paste on envelopes which could even be printed on self sticking labels and the other for securing receipt from the Post Office.

22. Where an instrument of transfer has been received by company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called “Unpaid Dividend Account” unless the registered holder of these shares, authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer. (Section 206A)

23. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

24. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank or circulation to the branches where the dividend warrants will be payable at par.

25. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.

26. Publish a Company notice in a newspaper circulating in the district in which the registered office of the
company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).

27. Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.

28. Arrange for transfer of unpaid or unclaimed dividend to a special account named “Unpaid dividend A/c” within 7 days after expiry of the period of 30 days of declaration of final dividend.

29. Identify the unclaimed amounts as referred to in section 124 of the Act and, separately furnish and upload on company’s own website and also on the Ministry of Corporate Affairs’ website or any other website as may be specified by the Government, a statement or information through e-Form 5 INV of Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012, separately for each year, in the manner as stated aforesaid under the procedure for declaration and payment of interim dividend.

30. Transfer unpaid dividend amount to Investor Education and Protection Fund after the expiry of seven years from the date of transfer to unpaid dividend A/c. The company when crediting to the account of the fund, should separately furnish to ROC a statement in e-Form 1 INV of IEPF (Awareness and Protection of Investors) Rules, 2001 duly certified by chartered accountant or a company secretary or a cost accountant practising in India or by the statutory auditors of the company.

**DECLARATION OF DIVIDEND OUT OF RESERVES**

Rule 3 of the Companies (Declaration and Payment of Dividend) Rules 2014 makes rules for declaration of dividend out of reserve.

In the event of adequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely:-

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

2. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

3. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

4. The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.

5. No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year.

The procedure is as follows:

1. Give notice to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company’s reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
(2) Ensure that the Companies (Declaration and Payment of Dividend) Rules 2014 are complied with.

(3) While calculating the profits of the previous years, take only the net profit after tax.

(4) Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.

(5) In the case of listed companies, inform the Stock Exchange with which the shares of the company are listed within 15 minutes of closure of Board meeting about decision to recommend declaration of dividend out of Company’s Reserves. [Clause 20 of listing agreement]

(6) Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.

(7) In the case of listed companies, forward three copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.

(8) Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.

(9) Issue dividend warrants within 30 days from the date of declaration of dividend. Rest of the procedural steps are same as in case of payment of final dividend.

CLAIMING OF UNCLAIMED/UNPAID DIVIDEND

In accordance with Section 124, a dividend which has been declared by a company but has not been paid, or claimed, within thirty days from the date of the declaration, to/by any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called “Unpaid Dividend Account of .......... Company Limited/Company (Private) Limited”.

Under the explanation, the expression “dividend which remains unpaid” means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. The person can claim this amount from company only within seven years of its transfer to Unpaid Dividend Account. After this period not only his dividend amount but also shares shall be transferred to the Investor Education and Protection Fund (IEPF).

PROCEDURE FOR TRANSFER OF UNPAID OR UNCLAIMED DIVIDEND TO THE INVESTOR EDUCATION AND PROTECTION FUND

The following procedure should be followed by the company:

(1) The company shall prepare a statement stating all sums to be transferred from the Unpaid Dividend Account to the Fund, the nature of the sum, the names and last known addresses of the persons entitled to receive the same, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(2) The procedure for transfer of the amount of unpaid dividend to Investor Education and Protection Fund is prescribed under the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. The company must transfer the amount of unpaid dividend, by depositing the same in any of the branches of the Punjab National Bank specified in Rule 3 of these Rules.
(3) The amount shall be tendered by the companies on behalf of the Central Government in such branches of Punjab National Bank along with Challan (in triplicate) and the Bank will return one copy duly stamped to the Company as token of having received the amount.

(4) Every Company shall file with the concerned Registrar of Companies one copy of the Challan referred to above evidencing deposit of the amount to the Fund. The Company shall fill in the full description and the nature of the amount tendered and its Head of Account.

(5) The Company, when effecting a credit to the account of the Fund, will separately furnish to the concerned Registrar of Companies a statement electronically in e-Form 1INV.

Each company shall keep a record relating to folio number, Certificate Number etc. in respect of persons to whom the amount of unpaid or unclaimed dividend, application money, matured deposit or debentures, interest accrued or payable, for a period of three years.

(6) The money must be deposited as aforesaid within 30 days from the end of seven years from the date on which it was required to be transferred to the special unpaid dividend account as required by section 124. [Rule 3]

(7) The form must be signed by the Managing Director or Director or Manager or Secretary of the Company.

(8) The e-form 1INV must also be certified by a
   - Chartered Accountant practising in India; or
   - Cost Accountant practising in India; or
   - Company Secretary practising in India; or
   - Statutory auditors of the company.

(9) Copy of challan evidencing deposit of the amount to the fund will be attached to the Form. It is desirable that the Company informs its shareholders by way of statement in the Annual Report that unpaid/unclaimed dividend has been transferred to a special bank account and that it would remain there for a period of seven years from the date of declaration thereof. The shareholders may claim the unpaid/unclaimed dividend from this account. It should also be brought to the notice of the shareholders that after the unpaid dividends are transferred to the Investor Education and Protection Fund at the end of seven years, no claim shall lie against the company in respect of the dividends so transferred will be entertained.

It is important to note that the Central Government has constituted a Committee consisting of persons of eminence to administer the Investor Education and Protection Fund and maintain other relevant records in respect of that fund in such form as may be prescribed, in consultation with the Comptroller and Auditor General of India. The Central Government has formulated the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. These Rules provide inter alia the details regarding the amounts to be credited to the fund, the manner of funds, the audit of the accounts of the fund and provisions regarding constitution, function and meetings, agenda and voting of the committee, minutes of the committee and condition for utilisation of the amount lying in the fund.

Further, the Central Government has also prescribed e-Form 5 INV for Statement of Unclaimed and Unpaid Amounts pursuant to Rule 3 of the Investor Education and Protection Fund (uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012. Under these Rules, companies are required to upload information concerning dividends payable to shareholders on a year to year basis until the completion of seven years. The said prescription is contained in Notification No. GSR 352(E ) dated 10-05-2012 and is available on the MCA portal at www.mca.gov.in. The summarized requirements are as under:
(i) Every Company (including Non-banking Financial Companies and Residuary Non-banking Companies) shall, within a period of 90 days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions the Act and every year thereafter till completion of the seven years period, identify the unclaimed amounts as referred to 124 of the Act, separately furnish and upload on its own website as also on the Ministry’s website or any other website as may be specified by the Government a statement or information through e-Form 5 INV, separately for each year, containing following information, namely:-

(a) the names and last known addresses of the persons entitled to receive the sum;
(b) the nature of amount;
(c) the amount to which each person is entitled;
(d) the due date for transfer into the Investor Education and Protection Fund; and
(e) such other information as considered relevant for the purpose;

(ii) The information referred to in Rule 3 shall be duly verified and certified by a chartered accountant or a company secretary or a cost accountant practicing in India or by the statutory auditors of the company.

(iii) If a company fails to furnish and upload information or furnishes and uploads false information on the website, the company, and every officer of the company who is in default, shall be liable and in such case the provisions of Section 124(7) of the Companies Act, 2013 shall be applicable.
ANNEXURES

SPECIMEN OF BOARD RESOLUTION FOR DECLARATION OF INTERIM DIVIDEND ON EQUITY SHARES

RESOLVED THAT –

(i) an interim dividend of Rs. 2 (Rupees two) only on each fully paid .......... no. of equity shares of Rs. 10 (Rupees ten) each of the company amounting to Rs................. be paid out of the profits of the company for the half year ended .............. 2014 to those members of the company whose names would appear on the register of members of the company on the .............. day of .............., 2014.

(ii) a bank account to be designated as “Interim Equity Dividend (2015) Account of ......................... Limited” be opened in the name of the company with .............. Bank at its Branch at .............. and a sum of Rs.................., being the total interim dividend amount, be deposited in the said account within five days.

(iii) Shri .............., Managing Director and Shri ..................., the Company Secretary be and are hereby authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within thirty days from the date of this resolution.

(iv) Shri ............., Managing director and Shri ..............., Company Secretary of the company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

SPECIMEN OF BOARD RESOLUTION FOR DECLARING INTERIM DIVIDEND ON PREFERENCE SHARES

RESOLVED THAT –

(i) dividend at the fixed rate of 8 per cent per annum on the (no. of shares) cumulative redeemable preference shares of Rs. 100 each of the company, for the six months commencing from July 1, ........ 2014 and ending on December 31, ........ 2014...... aggregating Rs. .............., be paid to the registered holders thereof whose names would appear on the register of holders of the said shares on the .............. 2014, the date of commencement of the closure of the share transfer books of the company.

(ii) a bank account to be designated as “Interim Preference Dividend (2015) Account of ......................... Limited” be opened in the name of the company with .............. Bank at its Branch at .............. and a sum of Rs. .............., being the total interim dividend amount, be deposited in the said account.

(iii) Shri ...................., Managing Director and the Company Secretary, Shri ................., be and is hereby authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within 30 days from the date of this resolution.

(iv) Shri.............., Managing director and Shri.........., Company Secretary of the company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.
NOTICE OF BOOK CLOSURE

Name of Company: ....................... 
Registered Office: ....................... 

Notice

Pursuant to Section 91 of the Companies Act, 2013 and the applicable clauses of the Listing Agreement, notice is hereby given that the register of members and the share transfer register of the company will remain closed, for the purpose of payment of interim dividend/final dividend, from the ...........th day of ................. (month), ............. 2014 to the .............th day of .................. 2015 (both days inclusive).

Members of the company are requested to intimate to the company at its registered office above, their latest postal addresses, where the interim dividend warrants may be sent by the company.

Place:.......................  
Date:....................... (............................)

For ....................... Limited  
Company Secretary

Note for publication

Messrs ....................... Advertising Agents,  
New Delhi-110 001.  

Please arrange for the publication of the above company notice in the earliest editions of ....................... English daily newspaper and ....................... Hindi daily newspaper, not later than the .............th day of ................., 2014. Kindly ensure that the Hindi newspaper must carry the notice in Hindi language after it is appropriately translated into Hindi.

For ....................... Limited  
Date:....................... (............................)

Company Secretary

SPECIMEN OF BOARD RESOLUTION RECOMMENDING PAYMENT OF DIVIDEND ON EQUITY SHARES OUT OF CURRENT PROFITS

“RESOLVED THAT in accordance with the provisions of Section 123 and other applicable provisions, if any, of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014, the Board of directors of the company do hereby recommend a dividend at the rate of Rs ................... per equity share out of the current profits of the company for the year ended on 31st March 2014 on the .................... fully paid equity shares of the company absorbing Rs. ................... out of the profits of the year and that, subject to the declaration by the members of the company at the ensuing annual general meeting, such dividend be paid to the registered holders of the equity shares whose names would appear on the register of members on ............. 2014.”

SPECIMEN EXTRACTS OF MINUTES CONTAINING THE BOARD RESOLUTION FOR RECOMMENDING DECLARATION OF DIVIDEND OUT OF RESERVES

The Chairman informed the meeting that the profits of the current year, i.e. the financial year ended on the 31st
March, 2014 are inadequate for payment of a reasonable amount of dividend to the members of the company. He further informed that the free reserves of the company do, however, permit the distribution of dividend not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

The directors considered the matter and passed the following resolution:

RESOLVED THAT the Board of directors of the company do hereby recommend to the members of the company, the declaration and payment of a dividend at the rate of ten per cent on all the fully paid equity shares of the company out of the free reserves of the company that stood in the books of the company on ............ 2014 absorbing a total of ₹ ............, with due compliance of the Companies (Declaration and Payment of Dividend) Rules, 2014, and that, subject to the declaration by the members at the forthcoming annual general meeting, to the holders of the equity shares whose names will appear on the register of members on ........... 2014.

LESSON ROUND-UP

- The amount of the dividend payment is determined by the Board of directors of a company, who decide the amount to be paid to shareholders and the amount of profit to be retained in the business; these amounts may vary from year to year. This is called ‘recommendation of dividend’.

- Dividend is calculated as a percentage of the nominal value of a share, which is fixed for holders of preference shares and fluctuating for holders of equity shares. The preference shareholders have the right to receive dividend before the ordinary shareholders.

- The Board recommends dividends on preference shares and equity shares by passing a resolution at a duly convened meeting at which Balance Sheet and Profit & Loss Account are approved.

- Dividend recommended by the Board must be ‘declared’ at the annual general meeting of the company. Declaration of dividend constitutes an item of ordinary business to be transacted at every annual general meeting. This declaration is done by passing at an annual general meeting an ordinary resolution (unless the articles of association of the company require a special resolution).

- The amount to be transferred to the General Reserves would be worked out in respect of the profits of the year in question and without bringing in the profits of the past years.

- The Investor Protection Fund has been instituted in the year 2001 with the object of promoting awareness among investors regarding matters which concern them and also for protection of their interests. The main sources of funds in this are dividends (including interim dividends), application moneys, matured deposits and debentures lying unclaimed for seven years. Additionally, it may receive grants from the government or institutions and also earn interest on and income out of investments made from the Fund.

- Once unclaimed dividends have been transferred to the Fund, the same cannot be claimed by a shareholder or by his legal heir.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Define the term ‘dividend’. State briefly the provisions in the Companies Act, 2013 for the declaration of dividend?

2. Draft a resolution for payment of dividend on preference shares.
3. Draft a notice for closure of the register of members and share transfer register.

4. What is the procedure for declaration of dividend out of company’s reserves.

5. Draft a resolution for recommending payment of dividend on equity shares out of current profits.

6. State the procedure for declaration and payment of final dividend.

7. State the procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection Fund.
Lesson 14
Charges

LESSON OUTLINE

- Definition and kinds of charge
- Distinction between charge, mortgage and pledge
- Registrable Charges
- Register of Charges
- Duty to register charges
- Verification of Charges
- Procedure for registration of creation/ modification satisfaction charge
- Necessary Resolutions
- Annexures – Specimen Resolution
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

According to section 77 of Companies Act, 2013 a charge base to be registered with 30 days of its creation. The Registrar has to power to condone the delay upto 300 days, and the Central Government condone beyond 300 days.

After reading this lesson you should be able to understand procedural aspects relating to creation, registration, modification and satisfaction of charges by the companies under Companies Act, 2013.
WHAT IS A CHARGE

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

Section 2(16) of the Companies Act, 2014 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

The following are the essential features of the charge which are as under:

1. There should be two parties to the transaction, the creator of the charge and the charge holder.
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.

A charge may be fixed or floating depending upon its nature.

“Charge” as defined in Transfer of Property Act, 1882

According to Section 100 of the Transfer of Property Act, 1882, where immovable property of one person is by act of parties or operation of law made security for the payment of money to another; and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge.

WHAT IS A MORTGAGE?

A mortgage is a legal process whereby a person borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and/or immovable property.

Mortgage as defined in Transfer of Property Act, 1882

According to Section 58 of the Transfer of Property Act, a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability.

CHARGE AND MORTGAGE DISTINGUISHED

There is a clear distinction between a mortgage and a charge, the former being a transfer of an interest in immoveable property as a security for the loan whereas the latter is not a transfer, though it is nonetheless a security for the payment of an amount.

A mortgage deed includes every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, one person transfers, or creates in favour of another, a right over a specified property.

CHARGE AND PLEDGE DISTINGUISHED

According to the generally accepted definition, a ‘pledge’ is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. It consists of a
delivery of goods by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge.

Unlike a pledge, a ‘charge’ is not a transfer of property of one to another. It is a right created in favour of one, referred to as “the lender” in the immovable property of another, referred to as “the borrower”, as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge.

Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

### NEED FOR CREATING A CHARGE ON COMPANY’S ASSETS

Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks.

The financial institutions/banks do not lend their monies unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/banks etc.

As a matter of convenience and practice, as and when more funds are required by companies, they approach the same institutions/banks or certain new institutions/banks and offer same assets as security for fresh loans. However, when the same assets are charged for a second and subsequent times, a very important question arises as to priority in respect of the charges in favour of different institutions. This situation is managed by securing consent of the earlier lending institutions to the creation of second and subsequent charges on the same assets. With their consents, the charges of all the lending institutions ranks pari passu, i.e. on the same footing.

However, the earlier lending institution may not give its consent to the creation of second charge on the ground that the realisable value of the asset charged in its favour is not adequate to cover its loan and as such it cannot share its right of charge with the lending institutions which seek second and subsequent charges.

The real question which alerts the lending institutions is how to ensure that the assets being offered as security for their proposed loans are not already encumbered.

### DUTY TO REGISTER CHARGE

Primarily, under section 77 of the Companies Act, 2013 every company creating a charge shall register the particulars of charge signed by the company and its charge – holder together with the instruments creating. Important points in the Act relating to charge creation:

- Any charge created within or outside India
- on property or assets or any of the company’s undertakings
- Whether tangible or otherwise, situated in or outside India
- Shall be registered.

Hence all types of charges are required under the Act to be registered whether created within or outside India.
**Time limit for registration of a Charge**

A charge created by a company is required to be registered with the Registrar within thirty days of its creation in such form and on payment of such fees as may be prescribed. According to Companies (Registration of Charges) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge is Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification).

**Condonation of delay by Registrar:** The Registrar may on an application by the company allow registration of charge within three hundred days of creation or modification of charge on payment of additional fee. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee. The application for delay shall be made in Form No.CHG-1 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

**Condonation of delay by the Central Government:** If company fails to register the charge even within this period of three hundred days, it may seek extension of time in accordance with Section 87 from the Central Government. The same has been discussed later in this chapter.

**Application for registration of charge by the charge-holder:** According to Section 78 where a company fails to register the charge within the period specified above, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge in Form No.CHG-1 or Form No.CHG-9, as the case may be, duly signed along with fee. The registrar may, on such application, give notice to the company about such application. The company may either itself register the charge or shows sufficient cause why such charge should not be registered. On failure on part of the company, the Registrar may allow registration of such charge within fourteen days after giving notice to the company. shall allow such registration.

Where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company, the amount of any fee or additional fees paid by him to the Registrar for the purpose of registration of charge.

**CERTIFICATE OF REGISTRATION OF CHARGE**

Where a charge is registered with the Registrar, Registrar shall issue a certificate of registration of charge in Form No.CHG-2 and for registration of modification of charge in Form No.CHG-3 to the company and to the person in whose favour the charge is created.

The certificate issued by the Registrar whether in case of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

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

**ACQUIRING PROPERTY UNDER CHARGE AND MODIFICATION OF CHARGE**

Section 79 of the Act makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.
It provides that the provisions of Section 77 relating to registration of charge shall apply to:

(a) A company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

The provisions relating to condonation of delay shall apply, *mutatis mutandis*, to the registration of charge on any property acquired subject to such charge and modification of charge under section 79 of the Act.

**VERIFICATION OF INSTRUMENTS**

According to the rules, a copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

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

(b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorized officer of the charge holder.

**SATISFACTION OF CHARGES**

According to section 82 read with the rules, the company shall give 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. Where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government, which is later discussed in this chapter.

On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling a show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under section 81 and shall inform the company. If the cause is shown to the registrar shall record a note to that effect in the register of charges and shall inform the company accordingly.

However the aforesaid notice shall not be sent, in case intimation to the registrar is in specified form and is signed by the holder of charge.

Power of Registrar to Make Entries Of Satisfaction in absence of intimation from the company:

There may be times where a company may fail to send intimation of satisfaction of charge to the Registrar but according to section 83 of the Act, registrar may on receipt of satisfactory evidence of satisfaction register memorandum of satisfaction. The evidences may be –

(a) The debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) Part of the property or undertaking charged has been released from the charge;

(c) Part of the property or undertaking ceased to form part of he company's property or undertaking.

The Registrar may enter in the register of charges a memorandum of satisfaction.

The Registrar shall inform affected parties within thirty days of making the entry in the registrar of charges.
Certificate of registration of satisfaction of charge: Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

NOTICE OF CHARGE

According to section 80, where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

REGISTER OF CHARGES MAINTAINED IN ROC’S OFFICE

In accordance with section 81 and the rules the Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.

This charge register shall be open to inspection by any person on payment of fee for each inspection.

INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

Section 84 provides that if any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Any person so appointed shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

The notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company shall be filed with the Registrar in Form No. CHG.6 along with fee.

COMPANY’S REGISTER OF CHARGES

Section 85 provides that every company shall keep at its registered office a register of charges in Form No. CHG.7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

Such register of charges shall contain the particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.
A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

**Inspection of Charges:** The register of charges and instrument of charges shall be kept open for inspection during business hours by members, creditors or any other person subject to reasonable restriction as the company by its article impose. The register of charges and the instrument of charges kept by the company shall be open for inspection - (a) by any member or creditor of the company without fees; (b) by any other person on payment of fee.

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**RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES / CONDONATION OF DELAY(SECTION 87)**

The Central Government on being satisfied that –

1. a. the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

   b. the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

   c. the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

2. on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

The section implies that the the Central Government has power to condone delay beyond a period of three hundred days. This section empowers Central Government to condone delay for registration of modification of particulars of any charge and for filing of intimation for satisfaction of charges. Further this section empowers central Government to rectify the omission or mis-statement in register of charges. The application may be filed by the company or any other person interested with the Central Government in Form No.CHG-8 along with the fee.

Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

The order passed by the Central Government under sub-section (1) of section 87 of the Act shall be required to be filed with the Registrar in Form No.INC.28 along with the fee as per the conditions stipulated in the said order.
GIST OF E-FILING UNDER CHARGE MANAGEMENT

<table>
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<tr>
<th>S.No.</th>
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<td>2</td>
<td>CHG-2</td>
<td>Certificate of registration</td>
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<td>4</td>
<td>CHG-4</td>
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<tr>
<td>8</td>
<td>CHG-9</td>
<td>Creating or modifying the charge in (for debentures including rectification)</td>
</tr>
</tbody>
</table>

CONSEQUENCES OF NON-REGISTRATION OF CHARGE

According to Section 77 of the Companies Act, 1956, all types of charges created by a company are to be registered by the ROC, where they are non-compliant and are not filed with the Registrar of Companies for registration, it shall be void as against the liquidator and any other creditor of the company. In the case of ONGC Ltd v. Official Liquidators of Ambica Mills Co Ltd (2006) 132 Comp Cas 606 (Guj), the ONGC had not been able to point out whether the so-called charge, on the basis of which it was claiming preference as a secured creditor, was registered or not. It was held that in the light of this failure, ONGC could not be treated as a secured creditor in view of specific provisions of section 125 and the statutory requirement under the said section. This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced.

**Void against the liquidator** means that the liquidator on winding up of the company can ignore the charge and can treat the concerned creditor as unsecured creditor. The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues.

**Void against any creditor** of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority. In other words, the latter charge holder can have the property sold in order to recover its money.

Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non-registration [Independent Automatic Sales Ltd. vs. Knowles & Foster 1962 32 Com. Cases].
PARTICULARS OF CHARGES

The following particulars in respect of each charge are required to be filed with the Registrar:

(a) date and description of instrument creating charge;
(b) total amount secured by the charge;
(c) date of the resolution authorising the creation of the charge; (in case of issue of secured debentures only);
(d) general description of the property charged;
(e) a copy of the deed/instrument containing the charge duly certified or if there is no such deed, any other document evidencing the creation of the charge to be enclosed;
(f) list of the terms and conditions of the loan; and
(g) name and address of the charge holder.

PROCEDURE FOR REGISTRATION OF CREATION/ MODIFICATION SATISFACTION OF CHARGE

If a company has passed special resolutions under Section 180(2) of the Companies Act, 2013, authorising its Board of directors to borrow funds for the requirements of the company and under Section 180(1)(a) of the Companies Act, 2013, authorising its Board of directors to create charge on the assets and properties of the company to provide security for repayment of the borrowings in favour of the financial institutions/banks or lenders and in exercise of that authority has signed the loan documents and now proposes to have the charge, created by it registration with the ROC, should follow the procedure detailed below:

1. Where the special resolution is passed as required under section 180 of the Companies Act, 2013, form MGT14 of the Companies (Management and Administration) Rules, 2014 is to be files with the registrar.

2. According to section 77 of the Companies Act, 2013 every company creating any charge created within or outside India on property or assets or any of the company’s undertakings whether tangible or otherwise, situated in or outside India shall have to be registered. For the purpose of creating/ modifying a charge file particulars of the charge with the concerned Registrar of Companies within thirty days of creating the Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification), as the case may be.

3. Attach the following documents with e-Form No. CHG-9 / CHG-1:
   A certified true copy of every instrument evidencing any creation or modification of charge.
   In case of joint charge and consortium finance, particulars of other chargeholders.
   Instrument(s) evidencing creation or modification of charge in case of acquisition of property which is already subject to charge together with the instrument evidencing such acquisitions.

3. Payment of fees can be made online in accordance with Annexure ‘B’ of Companies (Registration offices and fees) Rules, 2014. Electronic payments through internet can be made either by credit card or by internet banking facility.

4. If the particulars of charge cannot be filed within thirty days due to unavoidable reasons, then it may be filed within three hundred days of such creation after payment of such additional fee as prescribed in with Annexure ‘B’ of Companies (Registration offices and fees) Rules, 2014.

5. Such application for delay to the registrar shall be made in Form No.CHG-1 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.
6. Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge.

7. Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

8. Where a charge is registered with the Registrar obtain a certificate of registration of such charge in Form No. CHG-2. Where the particulars of modification of charge is registered the Registrar shall issue a certificate of modification of charge in Form No. CHG-3.

9. A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee as prescribed in with Annexure ‘B’ of Companies (Registration offices and fees) Rules, 2014.

10. Where the Registrar enters a memorandum of satisfaction of charge in full obtain a certificate of registration of satisfaction of charge in Form No. CHG-5.

11. Incorporate changes in relation to creation, modification and satisfaction of charge in the register of charges maintained by the company in Form No. CHG.7 and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. Such register is to be kept at its registered office of the company.

12. All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

13. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

14. Where the satisfaction of the charge is not filed with the Registrar within thirty days from the date on such payment of satisfaction, an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed in with Annexure ‘B’ of Companies (Registration offices and fees) Rules, 2014.

15. Where the instrument creating or modifying a charge is not filed with the Registrar within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed in with Annexure ‘B’ of Companies (Registration offices and fees) Rules, 2014.

16. The order passed by the Central Government shall be required to be filed with the Registrar in Form No. INC.28 along with the fee as per the conditions stipulated in the said order.

17. For all other matters other than condonation of delay, application shall be made to the Central government in Form No. CHG-8 along with the fee.
Specimen of special resolution under Section 180 (3) (c) authorising the Board to borrow for company’s business upto a limit beyond paid up capital and free reserves

Special resolution

To consider and, if thought fit, to pass with or without modification(s), the following resolution as Special Resolution:

“RESOLVED THAT pursuant to the provisions of Section 180(2) and other applicable provisions, if any, of the Companies Act, 2013, and subject to such approval as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sum of money as may not exceed Rs. .................................. (Rupees .................................. ), for the purpose of the business of the company, notwithstanding that the monies to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company’s bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of ‘....................................... (Rupees .....................................) at any one time.

Resolved further that the Board be and is hereby authorized to do all the acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution”

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on ................................, passed a special resolution under Section 180 (3) (c) for borrowing the maximum amount of Rupees .................................., upto which the Board of directors of the company could borrow funds from financial institutions and banks in excess of the company’s paid-up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of Rupees (............................) has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees one hundred crore.

Hence the proposed resolution for consideration and approval by the members of the company. None of the directors is concerned or interested in the proposed resolution.

Specimen of resolution under Section 180(1)(a) for creating charge on company’s assets and properties

1. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1) (a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, together with power to takeover the assets of the Company in certain events, to or in favour of Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) by way of first pari passu Charge to secure the Rupee Term Loans of ₹ 1000.00 lacs and ₹ 880.00 lacs respectively granted to the Company together with interest at the agreed rate(s), liquidated damages, front end fees, premia on prepayment, costs, charges, expenses and all other moneys payable by the Company under the Loan Agreements, Deeds of Hypothecation and other documents executed/to be executed by the Company in respect of the Term Loans of IDBI and IFCI.
RESOLVED FURTHERTHAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with IDBI and IFCI the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

2. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, in favour of State Bank of India, New Delhi the Company’s Bankers by way of Second Charge to secure the various fund based/non-fund based credit facilities granted/to be granted to the Company and the interest at the agreed rate, costs, charges, expenses and all other moneys payable by the Company under the Deed(s) of Hypothecation and other documents executed/to be executed by the Company in respect of credit facilities of State Bank of India, in such form and manner as may be acceptable to State Bank of India.

RESOLVED FURTHERTHAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with State Bank of India the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Explanatory Statement Item No. 1 & 2

Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFC) have sanctioned Term Loans of ₹1000.00 lacs and ₹880.00 lacs respectively to the company. These loans are to be secured by First Charge on immovable and movable properties of the Company, both present and future, in the manner, as may be required by IDBI and IFCI. Such mortgage/charge shall rank first pari passu Charge with the Charges already created/to be created in favour of the participating Institutions/Banks for their assistances.

State Bank of India, New Delhi has also agreed to grant, in principle, various fund based/non-fund based Cash Credit facilities to the Company. According to the conditions of granting such facilities to the Company, these facilities are required to be secured by a second charge by way of equitable and/or legal mortgage on all the immovable and movable properties of the Company, both present and future on such terms as may be agreed to between the Company, State Bank of India and other existing lenders.

Section 180(1)(a) of the Companies Act, 2013 provides, inter alia, that the Board of directors of a public company shall not, without the consent of a public company in general meeting, sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking(s) of the Company or where the Company owns more than one undertaking, of the whole or substantially the whole of any such undertaking. Mortgaging/charging of the immovable and movable properties of the Company as aforesaid to secure Rupee Term Loans and the various Cash Credit facilities may be regarded as disposal of the whole or substantially the whole of the said undertaking(s) of the Company and therefore requires consent of the Company pursuant to Section 180(1)(a) of the Companies Act, 2013.

The Directors recommend the resolutions for approval of the shareholders as ordinary resolutions under Section 180(1)(a) of the Companies Act, 2013.

None of the Directors are concerned or interested in the proposed resolutions.
Specimen of the Board Resolution under Section 179(3)(d) to borrow Moneys within the Authority of the Board.

The Chairman informed the Board that The Industrial Finance Corporation of India Ltd. (IFCI), New Delhi, has at the request of the company, sanctioned Rupee Term Loan of ’............................................... to meet a part of the cost of Modernisation-cum-Expansion scheme comprising replacement of the existing old stainless steel Distillation plant by copper Distillation Plant, installation of an additional MS Digester and construction of storage lagoons as stipulated by the Pollution Control Board at the Company’s existing factory at..............

A copy of the letter of sanction no................. dated ............... received from IFCI (a copy whereof duly signed by the Chairman for the purpose of identification was placed on the table of the meeting).

After some discussions, the following resolution was passed unanimously:-

(I) RESOLVED

1. That the Company do accept the offer of The Industrial Finance Corporation of India Ltd. (IFCI) vide their letter no.............. dated .................. to grant to the company rupee term loan of ’............ (Rupees...................... only) (hereinafter referred to as ‘the said Term Loan’) on the terms and conditions contained in the Letter of Intent no .............. dated .............. received from IFCI (copy whereof was placed on the table at the meeting).

2. That Shri......................... and Shri .................... be and are hereby authorised severally to convey to IFCI acceptance on behalf of the Company of the said offer for financial assistance on the terms and conditions contained in their Letter of Intent referred to above and agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to IFCI from time to time and to execute such deeds, documents and other writings as may be necessary or required for this purpose.

3. That the company do borrow from IFCI the said term loan of ‘................. (Rupees...................... only) on the terms and conditions set out in the General Conditions No. GC-1-99 applicable to assistance provided by IFCI (hereinafter referred to as ‘The General Conditions’) and in the Standard Form of Loan Agreement for rupee term loan in addition to the special terms and conditions mentioned in the Letter of Intent no.............. dated .............. received from IFCI (Copies whereof were placed on the table at the meeting) and also avail of interim disbursement(s) from time to time as may be allowed by IFCI.

4. That the IFCI will be at liberty to appoint and remove, at its sole discretion, Nominee Director(s) on the Board of directors of the Company from the date of the passing of this resolution and that the appointment of the Nominee director(s) shall not be construed as any commitment on the part of IFCI to grant/ disburse and sanctioned assistance.

5. That the aforesaid Standard Forms of Loan Agreement(s) be and are hereby approved and Shri......................... and Shri........................ be and are hereby severally authorised to accept on behalf of the Company such modifications therein as may be acceptable to IFCI and finalise the same.

6. That the Common Seal of the Company be affixed to the stamped engrossment(s) in duplicate of the loan agreement(s) (as per the standard form(s) with such modifications as may be agreed to between IFCI and the company) in the presence of one of the officers i.e. Shri ......................... and Shri ......................... who shall sign the same in token thereof.

7. That the Company shall execute the Loan Agreement(s) relating to the above facilities within the period stipulated by IFCI, the condition being that till such agreement being executed there is no binding obligation or commitment on the part of IFCI to advance any money or incur any obligation thereunder.

8. That the standard forms of the following documents namely:-
(i) Deed of Hypothecation

(ii) Undertaking for meeting shortfall/overrun

(iii) Undertaking regarding non-disposal of shareholdings

(iv) General Declaration and Undertaking(s) placed before the meeting be and are hereby approved and that Shri....................... of the Company be and are hereby severally authorised to finalise, on behalf of the company, the said documents and also to approve and finalise such other deeds, documents and writings as may be required by IFCI in connection with the above facilities.

9. That the Common Seal of the Company be affixed to the stamped engrossment(s) of the Deed of Hypothecation and to such other documents as may be required to be executed under the Common Seal of the company in favour of IFCI to secure the aforesaid facilities in the presence of one of the officers i.e. Shri ............................... and Shri........................... who shall sign the same in token thereof.

10. That Shri................................. and Shri................................ of the Company be and are hereby severally authorised to accept amendments to such executed loan agreement/deed of hypothecation and other documents as and when become necessary and to sign letter(s) of undertakings, declarations, agreements and other papers which the company may be required to sign for availing of the required facilities and, if so required, the Common Seal of the Company be affixed thereto in the presence of any one of the said officers, who shall sign the same in token thereof as required by the Articles of Association of the Company.

11. That the company do file the particulars of the charge(s) to be created in favour of the IFCI with the concerned Registrar of Companies within the time prescribed by law therefor.

12. That the copies of foregoing resolutions certified to be true copy by the Company Secretary be furnished to the IFCI and they be requested to act thereon.

LESSON ROUND-UP

– A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance. The power of the company to borrow includes the power to give security also.

– Mortgage is created by the act of parties whereas a charge may be created either through the act of parties or by operation of law.

– A company is required to file e-form CHG-1 or CHG-2 through MCA portal giving complete particulars together with the instrument creating charge within 30 days of creation of charge under Section 77 of the Companies Act, 2013.

– For intimating modification of charge, e-form CHG-1 or CHG-2 is required to be filed within 30 days of modification. A variation in the rate of interest payable on the loan amount by the borrowing company to the lending institution or the bank will constitute a modification of charge, unless the terms of variation are covered in the original charge.

– A registration of charge constitutes a notice to whosoever acquires a future interest in the charged assets.

– In e-governance era, there is a facility for inspection of charge through electronic means using internet.
The certificate issued by the Registrar whether in case of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

Every company is required to keep at its registered office a register of all charges as well as a copy of every instrument creating any charge.

Company may apply to Central Government for extension of time for filing particulars to ROC for creation, modification or satisfaction of charge in form CHG-8.

Company or any person interested in the charge can make an application to the Central Government for rectification of Register of charges in form CHG-8.

For intimating memorandum of satisfaction of charge to ROC, e-form CHG-5 is required to be filed within 30 days from the date of such satisfaction.

**SELF-TEST QUESTIONS**

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. What is a charge? State the procedure to be followed by a company for registration of a charge.
2. Draft a resolution to borrow for company’s business up to a limit beyond paid-up capital and free reserves.
3. State the procedure to be adopted by the company for satisfaction of a registered charge.
4. Draft resolution for creating a charge on the company’s assets and properties.
5. What are the consequences of non-registration of charge?
6. Distinguish between:
   (i) Charge and Mortgage
   (ii) Charge and Pledge.
7. E-governance is stakeholders friendly with respect to charges. Comment.
LEARNING OBJECTIVES

The Companies Act, 2013 has come up with a change in the concept of 'Loan and Investment by Company. The Act provides that inter-corporate investments not to be made through more than two layers of investment companies. Further, the Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

After going through this lesson, you should be able to understand the procedures relating to inter-corporate loans, investments, guarantees and security.
Introduction

The Companies Act, 2013 has come up with a change in the concept of ‘Loan and Investment by Company. The new Act provides that inter-corporate investments not to be made through more than two layers of investment companies.

Further, the 2013 Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

The exemption available from the provisions of section 372A of the 1956 Act to private companies as well as loans or investment given or made by a holding company to its subsidiary company are no longer available under the 2013 Act.

In pursuance to the provisions of Section 186(1) of the Act, a Company shall make investment through not more than two layers of investment companies.

‘Layer’ according to explanation (d) of Section 2(87) of the Act in relation to a holding Company means its subsidiary or subsidiaries.

‘Investment Company’ means a Company whose principal business is the acquisition of shares, debentures or other securities”

The provisions of Section 186(1) shall not have effect in the following cases:

– If a company acquires any company which is incorporated outside India and such company has investment subsidiaries beyond two layers as per the laws of such country.
– A subsidiary company from having any investment subsidiary for the purposes of meeting the requirement under any law/ rule/ regulation framed under any law for the time being in force.

Limits for Loans/Guarantee/Security/Investment [Sec-186(2)]

In pursuant to provisions of Section 186(2) of the Act, no company shall directly or indirectly

– give any loan to any person or other body corporate,
– give any guarantee or provide security in connection with a loan to any other body corporate or person and
– acquire by way of subscription, purchase or otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital plus free reserves plus securities premium account or 100% of its free reserves plus securities premium account, whichever is more.

Key Notes: Since Section 186(2)(c) provides for acquisition by way of subscription, purchase or otherwise, the securities of any other body corporate. It is not necessary that the target entity into which investment flows must be a company. It can be any type of body corporate. But it is to be kept in mind that the intermediary company through which investments are made must have to be a company. This section mandates a company to make investment only through two layers of investment companies. It is the investor company which shall be held liable in case of any violation of the section; therefore, It is prudent and advisable that the investee company to seek a declaration from the investor company whether the investment made by the investor is coming from more than two layers up.
Approval from Members [Section 186(3)]

Though the Section 186(2) makes restriction as above, Section 186(3), empowers a Company to give loan, guarantee or provide any security or acquisition beyond the limit but subject to prior approval of members by a special resolution passed at a general meeting.

Disclosure of Particulars of Loan, Guarantee given and Security Provided [Section 186(4)]

Section 186(4) of the Act provides that the Company shall disclose following details to the members in the financial statement.

- the full particulars of the loans given, investment made or guarantee given or security provided.
- the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

The notice of the general meeting for passing resolution shall indicate that

(a) The limits that will be required in excess of the prescribed limits involved in the proposal;
(b) The particulars of the body corporate in which the investment is proposed to be made or to which the loan or guarantee or security proposed to be given.
(c) The purpose of the investment, loan, guarantee or security;
(d) The source of funding for meeting the proposal; and
(e) Other details as may be specified.

Approval of Board and Public Financial Institution [Section 186(5)]

In pursuant to provisions of Section 186(5) of the Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security. In case of company has already taken loan etc., from any Public Financial Institutions, then it is mandatory to take prior approval from such Public Financial Institution.

Exception:

Provided that prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan instalments or interest thereon to the Public Financials Institution.

Companies Registered Under Securities Exchange Board of India (SEBI) [Section 186(6)]

Section 186(6) of the Act provides that those Companies which are registered under Section 12 of SEBI Act, 1992 and covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall can take inter-corporate loans or deposits exceeding the prescribed limit and shall furnish details of loans or deposit in their financial statements.

Rate of Interest on Loan [Section 186 (7)]

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

No Loan by Defaulter Company [Section 186 (8)]

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
Register of Loan [Section 186 (9 And 10)]

Section 186(9) of the Act mandates every Company to maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made. Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and entered therein separately, the particulars of loan and guarantee given, securities provided and acquisitions made as aforesaid.

This register shall be kept at registered office of the company and the register shall be preserved permanently and shall be kept in the custody of company secretary of the company or any person authorized by the Board for the purpose.

The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

The extracts of the register may be opened for inspection and copies may be furnished to members who demands for the same on payment of prescribed fee as mentioned in the Articles which shall not exceed ten rupees for each page.

Non-Applicability of Section 186

The Section 186 (except Sub-Section 1) of the Companies Act, 2013 does not apply to the following:

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition –
   (i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:
      Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
   (ii) made by a company whose principal business is the acquisition of securities;
   (iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

Penalty for contravention of Section 186

For Company:

Every Company which contravenes the provisions of this Section shall be liable to a penalty which shall not be less than Rupees twenty five thousand but which may extend to Rupees five lakhs.

For Officers:

Every officer of the Company who is default shall be punishable with imprisonment for a term which may extend to two years and fine which shall not be less than Rupees twenty five thousand but which may extend to Rupees One lakh.

Meaning of Investment: Investment for the purposes of section 186(1) would mean as used in section 186(2)(c) of the Act, 2013. Thus the following will be counted as “investments”:

- Subscription or purchase of shares
- Subscription or purchase of share warrants
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- Subscription or purchase of debentures bonds or similar debt securities

The following will not be counted as investments:

- Making of loans or advances
- Any other financial transactions such as leases, purchase of receivables, or other credit facilities

**PROCEDURES INVOLVED IN MAKING LOAN, GIVING GUARANTEE AND PROVIDING SECURITY**

Following procedures may be adopted by the company while giving loan to any other body corporate, providing guarantee or security in connection with a loan or acquisition by way of subscription, purchase the securities of any other body corporate.

1. It is to be kept in mind that a company can give any loan or give any guarantee or provide security and acquire securities of any Body corporate through Board resolution up to 60% of its paid up capital, free reserves and security premium account or 100% of its free reserves and security premium whichever is more.

2. On the basis of aforesaid conditions and requirements of the company meeting of Board of Directors is to be convened after giving proper notice and proposals of giving loan or giving guarantee or providing security etc. are to be discussed.

3. No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.

4. It is to be checked whether there is any existing loan from any public financial institution, if so, prior approval of that public financial institution is also required for any subsequent loan from any other source. However, prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan or interest thereon to the Public Financials Institution.

5. After deciding the source of fund and quantum of requirement, the Board may authorize one of the directors of the company or any other person to apply for the concerned public financial institutions for approval.

6. Arrange to convene a general meeting of shareholders after giving proper notice and to pass special resolution therein, where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified i.e 60% of its paid up capital, free reserves and security premium account or 100% of its reserves and security premium whichever is more.

7. File the copy of special resolution in Form No. MGT-14 along with the fee as provided in Companies (Registration of offices and fees) Rules, 2014 with the Registrar within 30 days of passing the resolution. Necessary documents are required to be attached as per the requirements of the form.

8. Registers are to be maintained in Form MBP-2 by every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration and the particulars of loan and guarantee given, securities provided and acquisition are to be entered therein.

9. Entries in the register shall be made chronologically in respect of each such transaction of making such loan or giving guarantee or providing security or making acquisition.

10. It is to be ensured that no loan shall be given at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.

11. The company shall disclose to the members in the financial statement the full particulars of the loans
given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.

12. Scrutinize the repayment history of the company with regards to repayment of any deposits or interest thereon. No company which is in default in the repayment of any deposits or in payment of interest thereon shall give any loan or give any guarantee or provide any security or make any investment through acquisition of another company till such default is subsisting.

ANNEXURES

SPECIMEN OF BOARD RESOLUTION TO PROVIDE CORPORATE GUARANTEE FOR AND ON BEHALF OF A SUBSIDIARY COMPANY SEEKING WORKING CAPITAL LOAN FROM ANY BANK.

“RESOLVED THAT in consideration of the STATE BANK OF PATIALA (SBP) having agreed to advance working capital facilities with an overall credit limit of Rs.50,00,00,000/- (Rupees Fifty Crore only) (hereinafter referred to as “the credit facilities”) in the manner and on the terms and conditions contained in the sanction letter no……...
dated ………………… to M/s ABC Pvt. Ltd., a company incorporated under companies Act, 2013 having registered office at ……………………………….. (hereinafter referred to as the borrower’), one of the subsidiaries of M/s XYZ Ltd. (the Company) and the company do execute a corporate guarantee guaranteeing the repayment of the credit facilities along with interest in favour of SBP for and on behalf of M/s ABC Pvt. Ltd., the subsidiary company.

FURTHER RESOLVED THAT the Board of Directors of the company consider and declare the following:

1. That the terms and conditions for providing corporate guarantee as annexed to the sanction letter no……..dated….communicated by the Bank to M/s ABC Pvt. Ltd. be and is hereby accepted as these are not prejudice to the interest of the company.

2. The Board considered that the corporate guarantee is for an amount of Rs. 50 crore being approved for tenure of 5 years subject to renewal by the Bank.

3. The Board confirm that the guarantee provided is not prejudicial to the interest of the company.

4. The Board further considered receiving counter guarantee from M/s ABC Pvt. Ltd. in favour of the company M/s XYZ Ltd. to protect the interest of the company.

RESOLVED FURTHER THAT the draft of the Guarantee Agreement received from SBP along with its sanction letter no…….dated…… (Copies whereof duly authenticated by the chairman of the Board have been circulated to the members of the Board) be and is hereby approved and the Mr. MD, Managing Director of the company be and is hereby authorised to accept on behalf of the company with such modification therein as may be acceptable to SBP.

RESOLVED FURTHER THAT the common seal of the company be affixed to the guarantee agreement (with such modifications as may be agreed) in the presence of Mr. MD, Managing Director who shall sign the same in token thereof, and Mr. ED, Executive Director who shall counter sign the same in token thereof.

FURTHER RESOLVED THAT an undertaking to that effect that the company is willing to provide its corporate guarantee and execution of the necessary guarantee agreement for the above said purposes be furnished to SBP by Mr. MD, Managing Director and/or Mr. ED, Executive Director for and on behalf of the company for providing corporate guarantee.

RESOLVED FURTHER THAT, a copy of the foregoing resolution duly certified as a true copy be submitted to the Bank under signature of any one of the director of the company and the Bank do act upon the same.”
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SPECIMEN OF BOARD RESOLUTION TO INVEST COMPANY’S FUNDS IN SHARES/DEBENTURES/BONDS OF ANOTHER COMPANY

“RESOLVED THAT pursuant to the provisions of Section 186 of the Companies Act, 2013, the unanimous consent of all the directors present at the meeting is be and is hereby given that the company to invest a sum not exceeding Rs. 50,00,00,000/- (Rupees Fifty Crore only) in the equity shares of M/s ABC Ltd.

RESOLVED FURTHER THAT Mr. MD, Managing Director of the company be and is hereby authorised to sign the share application form(s) and/or transfer deeds, as may be required and other necessary documents relating thereto.”

SPECIMEN OF BOARD RESOLUTION TO ACQUIRE SHARES OF ANOTHER COMPANY

“RESOLVED THAT pursuant to Section 186 of the Companies Act, 2013, the consent of the Board of Directors of the company be and is hereby accorded to make investments of Rs. 50,00,00,000/- (Rupees Fifty Crore only) for acquisition of 5,00,000 equity shares of Rs.100/- each fully paid up in M/s XYZ Ltd. from various existing shareholders of M/s XYZ Ltd.

RESOLVED FURTHER THAT Mr. MD, Managing Director of the company be and is hereby authorised to make payment of consideration to the transferors and to do all such necessary act as may be necessary for this act.”

SPECIMEN OF SPECIAL RESOLUTION TO GIVE AUTHORITY TO BOARD OF DIRECTORS TO MAKE INVESTMENT IN EXCESS OF THE PRESCRIBED LIMIT.

“RESOLVED THAT pursuant to the provisions of Section 186 of the Act and other applicable provisions, if any, the consent of the members of the company be and is hereby granted to make investments of a sum not exceeding Rs. 100 Crore by way of subscription and/or purchase of equity shares of M/s XYZ Ltd., notwithstanding that such investment or such investment together with the company’s existing investment in all other body corporate shall be in excess of the limits prescribed under section 186 of the Act.

RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorized to do all such acts, deeds, matters and things as, in its absolute discretion, may be considered necessary, expedient or desirable and to settle any question or doubt that may arise in relation thereto in order to give effect to the foregoing resolution or otherwise considered by the Board of directors to be in the interest of the company.”

Explanatory Statement

As on date the aggregate amount of the investments in shares/debentures, loans and guarantee(s)/security(ies) made, given, or provided by the company to other bodies corporate are within the limits provided in Section 186 of the Companies Act, 2013. Since the Board wants to invest in excess of the prescribed limit specified in Section 186 of the Act, approval of the shareholders of the company is required.

The Board of Directors in its meeting held on ———— decided to recommend the special resolution as set out in the notice for approval of the shareholders.

None of the directors save and except Mr. X and Mr. Y are concerned or interested in this resolution.
LESSON ROUND UP

− The Companies Act, 2013 has come up with a change in the concept of loan and investment by the company, the inter-corporate investments shall not be made through more than two layers of investment companies.

− According to section 186(5) of the companies Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security.

− The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

− Every company shall maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made.

− Every company which contravenes the provisions of section 186 shall be liable to a penalty which shall not be less than Rupees 25,000 but which may extend to Rupees 5,00,000.

SELF TEST QUESTIONS

1. Draft a resolution for making inter-corporate guarantee.

2. What are the particulars to be entered in the register maintained in respect of investments or loan made, guarantee given by the company?

3. Discuss the limits for making inter-corporate Loans/Guarantee/ Security/Investment.

4. “The company shall disclose the details related to loan/guarantee/security provided, to the members in financial statements”. Discuss.

5. Discuss the procedure adopted by the Board at its general meeting for making inter-corporate loans and investments.
LESSON OUTLINE

- E-governance and MCA-21
- Operational aspects of MCA-21
- Clarifications issued by MCA
- Substantial Benefits of MCA-21
- Scope of filing e-forms
- Adequate knowledge of substantive laws
- Important terms used in e-filing
- Guidelines for filling and filing e-forms
- Important aspects to be considered at the time of annual filing
- Filing of e-Form
- Pre-certification of e-Form
- XBRL filing
- Important aspects to be considered at the time of event based filing
- Pre-requisites for uploading an e-form
- Defective forms/documents
- Mode of payment of fees
- Condonation of delay
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

Keeping in tune with the e-governance initiatives the world over, Ministry of Corporate Affairs (MCA), Govt. of India has initiated the MCA-21 project, to enable an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals and of course, the public.

The significant changes brought about by the introduction of MCA-21 project and the e-filing has introduced a sea-change in the process of filing, storage of records and inspection of records of registered companies. Professionals associated with the corporate sector, the individual investors, the Investor Protection Groups and the Prosecuting Agencies of the Government now have easy access to vital data to regulate the affairs of the companies and can also launch prosecutions against the erring companies and their directors/board of management. It is envisaged that since all the relevant data about the concerned companies are filed on-line and these get stored as master database in the electronic repository, due attention should be given towards filling and filing of the e-forms.

This chapter covers all the important aspects relating to filling and filing the e-forms. The students may refer to mca.gov.in for the format of various e-From.
E-GOVERNANCE AND MCA-21

With the advent of Information and Communication Technology in all sectors today, Governments across the globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

MCA-21 is an ambitious e-governance initiative of Government of India that builds on the Government’s vision of National e-governance in the country. As part of the Government’s focus on governance norms to meet the expectations arising from globalization, MCA project was launched as a flagship initiative of Ministry of Corporate Affairs (MCA). MCA-21 has resulted in improved procedures for better delivery of services by the Ministry of Corporate Affairs. This reform of administration has not only improved efficiency and transparency in the government operations, but has also enabled the Ministry to concentrate more on policy matters.

In the words of Dr. Manmohan Singh, the then Honourable Prime Minister of India, E-Governance has the potential to transform governance and contribute to the reform of administration by enabling greater speed and efficiency in official transactions. The commissioning of the MCA-21 project is a landmark measure for advancing the cause of the national e-governance plan and implementing it.

The project was named MCA 21 as it aimed at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st Century. Rather than compelling the business community to physically travel to MCA offices, MCA services are made available at the place of their choice, be it their homes or offices.

This E-governance initiative, a flagship programme executed by MCA in partnership with Private Player, is a fine example of public private partnership, and is built on a BOOT (Built, Operate, Own and Transfer) model. Infosys is currently maintaining this project.

SCOPE OF E-GOVERNANCE

The present scope of this initiative includes services provided by the 7 Regional Directors (RDs), twenty-two offices of Registrar of Companies (ROCs) and the Ministry Headquarter. The Project was designed to fully automate all processes related to the proactive enforcement and compliance of the legal requirements under the Companies Act, 1956. Now, this system is transforming it for administration of the Companies Act, 2013.

OPERATIONAL ASPECTS OF MCA-21

Launch of MCA-21

The Central Government amended the Companies (Central Governments) General Rules and Forms 1956 vide Notification No. GSR 56(E) dated 10th February, 2006 and notified e-forms to enable electronic filing of documents. Rule 3 of Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006 provides that the forms prescribed in Annexure A of the Rules may be filed through electronic media or through any other computer readable media as referred under Section 610A of the Companies Act, 1956. MCA-21 was launched on 18th February 2006 by commencing the process of e-filing at ROC office at Coimbatore. The first company was incorporated by e-filing at Coimbatore.

Section 398 of the Companies Act 2013 has provision related to filing of applications, documents, inspections in electronic form.

Section 398(1) provides that notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that -
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(a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(b) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

Further section 398(2) states that the Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (1) through the electronic form.

E-forms

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always use latest e-forms from the MCA Portal.

Director Identification Number (DIN)

DIN means an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such and includes Designated Partnership Identification Number (DPIN) issued under section 7 of Limited Liability Partnership Act, 2008 and rules made thereunder.

All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Every individual, who is intending to be appointed as Director of a company or designated partner of a limited liability partnership is required to make an application electronically in Form DIR - 3 to Central Government for obtaining Director
Identification Number (DIN). DIN is a unique identification number and once obtained is valid for life time of a director. A single DIN is required to be obtained irrespective of the number of directorships.

**Corporate Identity Number (CIN)**

Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number].

Each Indian company (Listed or Unlisted) has a unique 21 Digit CIN. This is required to be quoted on all e-forms. Once this number is filled, company details are automatically filled in E-Forms issued by MCA by using pre-fill function.

As stated above, CIN is a unique and 21 digit number. First digit denotes the listing status of the company i.e. whether it is a listed company or an unlisted company. Next five digits denote industry code. Next two digits denote State. Next four digits denote year of incorporation. Next three digits denote ownership. Next six digits denote ROC registration number.

**Global Location Number (GLN)**

For foreign companies, Global Location Number (GLN) is allotted.

**Digital Signature Certificate (DSC)**

The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate. For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

A person requiring a Digital Signature Certificate can approach any of the Certifying authorities identified by the MCA for issuance of Digital Signature Certificate.

Registration of DSC is a onetime activity on the MCA portal. For registration of DSC, steps are given on the MCA Portal.

All companies (Public Company, Private Company, Company not having share capital, Company limited by share or guarantee, Unlimited Company) must comply with this requirement of registration of DSC by the director, manager and secretary.

Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of
Certifying Authorities is available on the MCA portal. The process of registration of DSC is same as applicable to others.

**Front Office and Back Office**

*K Front Office*

The major components involved in this comprehensive e-governance project are front office and back office. Front Office represents the interface of the corporate and public users with the MCA-21 system. This comprises of Virtual Front Office and Registrar’s Front Office.

*Virtual front office*

Virtual front office is one of the various channels available to stakeholders (companies and the professionals) to enable them to do the statutory filing with ROC Offices across the country. It merely represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet (www.mca.gov.in). It also presupposes availability of related facilities to convert documents into PDF format and scanning of documents wherever required.

*Registrar’s Front Office (RFO)*

To facilitate the change over from Physical Document Filing to Digital Document Filing, the Ministry started offices known as the Registrar Front Office. It is one of the various channels available to stakeholders to enable them to do the statutory filing with ROC Offices across the country. Registrar’s Front Offices are managed and operated by the operator. RFO has all facilities which are required for online filing like trained manpower, broadband connectivity, scanner, printer and related computer accessories. This office managed by MCA and TCS/Infosys officials provides free of cost service in all aspects of MCA 21 e-governance projects.

*K Back Office*

Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters and takes care of internal processing of the forms filed by the corporate user as per MCA norms and guidelines. The e-forms are routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-forms along with attachments are stored in the electronic depository, which the staff of MCA can view depending upon the access rights.

*Service Request Number (SRN)*

Each transaction under e-filing is uniquely identified by a Service Request Number (SRN). On filing of an e-form, the system generates and provides a Service Request Number (SRN). A user can check the status of the document/transaction, by entering the SRN.

*Payment of Stamp Duty*

Stamp duty is a state subject. It is payable on Memorandum and Articles of Association of every Company. In some states, duty is also payable on the authorized capital mentioned in the Memorandum of Association of the Company. States have authorized MCA to collect the stamp duty on their behalf and to remit the same to them.

*Introduction of e-stamping facility by MCA and dispensation of physical submission thereof*

For the purpose of making all transactions faster, improving service delivery and making office of the Registrar paperless, the process of physical submission of documents has been dispensed with. The Central Government shall initially collect the stamp duty on behalf of State Governments and Union Territories for specific purpose of e-filing of documents under the provisions of the Companies Act, 2013 and to remit the same directly to their accounts in accordance with the approved payment and accounting procedures.
At present, e-Forms to which e-Stamping is applicable are –

(i) Form INC - 2,
(ii) Form INC – 7
(iii) Form SH – 7
(iv) Form FC – 1
(v) Form 67 (Provisionally still available).

The procedure for collection of stamp duty came into force w.e.f. 13th day of September, 2009. w.e.f. 1st April 2010, companies are compulsorily required to make payment electronically for stamp duty in respect of all the States which have authorised to the Central Government to collect the Stamp duty on their behalf. In respect of the State from whom the authorization is yet to be received, The Company shall continue to pay stamp duty outside the MCA portal.

The companies are not required to make physical submission of documents on which stamp duty is paid electronically through MCA portal. However, in respect of the documents on which stamp duty is not paid through MCA portal, the Companies are required, in addition to their electronic filing, to submit physical copies of such stamped documents with Registrar of Companies also. Simultaneously, there are documents other than those specified above which are not covered for payment of stamp duty through MCA portal and on which stamp duty payable in the respective State is equal to or less than one hundred rupees. Such stamped documents are required to be scanned by the company and filed electronically for evidencing by the Registrar and need not be submitted physically except those required to be filed for compounding of offence under Section 441 of the Companies Act 2013.

The Companies are required to retain such documents duly stamped in original for a minimum period of three years from the date of filing of such documents and shall be required to produce the same as and when the same is required for inspection and verification by the competent authority being the collector of stamps of the respective State or Union Territory or the Registrar.

**STP Forms**

STP stands for “Straight Through Process”. Some e-forms are identified as informatory in nature. These forms are filed under Straight through process. It means the information given in the e-forms is being taken on file maintained by the Registrar of Companies through electronic mode on the basis of statement of correctness given by the filing Company and further verification by the practicing professionals.

**For Non-STP documents**

Where the Registrar, on examining any such application or e-Form or document, finds it necessary to call for further information or finds such application or e-Form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defect or incompleteness noticed electronically, by placing it on the website and by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-Form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document. In case the e-mail address of the person or company in question is not available, such intimation shall be given by the Registrar by post at the last intimated address or registered office of such person or company, as the case may be. The Registrar shall preserve the fact of such intimation in the electronic record.

The Registrar shall give an opportunity allowing thirty days time to such person or such company for furnishing in e-form 67 (new form in place of this may announce soon), further information or for rectification of the defects or incompleteness or for re-submission of such application or e-Form or document.
The Registrar shall take a decision on the application, e-form or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required. The Registrar shall allow fifteen days’ time to the person or company, which has filed the application or e-Form or document for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document. In case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the period allowed, the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or company, as the case may be. Where any document has been recorded as invalid by the Registrar, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Act. [Rule 10 of the Companies (Registration Offices and Fees) Rules 2014]

**For STP Documents**

In case the Registrar finds any e-form or document filed under Straight Through Process as defective or incomplete in any respect, at any time suo-motu or on receipt of information or compliant from any source at any time, he shall treat the e-form or document as defective in the electronic registry and shall also issue a notice pointing out the defects or incompleteness in the e-Form or document at the last intimated e-mail address of the person or the company which has filed the document, calling upon the person or company to file the e-Form or document afresh along with fee and additional fee, as applicable at the time of actual re-filing, after rectifying the defects or incompleteness within a period of thirty days from the date of the notice. [Rule 10 of the Companies (Registration Offices and Fees) Rules 2014]

**Online Inspection of Documents**

The documents filed online, once taken on record by ROC Offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include documents relating to incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by anyone so interested. For this purpose there is also an option to mention the number of pages in the document for which a certified copy is required as well as the number of copies required.

**SUBSTANTIAL BENEFITS OF MCA-21**

**Elimination of interface with the offices of ROCs, RDs and the MCA**

MCA-21 has been designed virtually to eliminate the physical interface between the companies and the offices of ROCs, RDs and even MCA. It has not only saved time and energy of the company representatives but also enabled them to focus on other creative tasks. Highly time consuming works of Chartered Accountants, Company Secretaries and Cost Accountants in practice i.e. the tasks of incorporation of new companies, conducting searches of important documents, obtaining certificates of creation, modification and satisfaction of charges, filing of statutory forms and returns etc. have now become very quick and easy.

The problem of becoming defaulter by the company for non-filing of Annual returns due to long queues at ROC offices is now eliminated with e-filing. Conducting search was very painful in physical maintenance of statutory records. E-filing is panacea to all these problems.

**Effective use of database**

With the help of database collected, the vital information has been collected, segregated in such a way that it can be used by various stakeholders for various purposes. It will help in transparency in operations and benefits to players in stock markets as well as easy and prominent exposure of defaulters.
The following websites are created:

- **Website for Investor Education and Protection Fund:** [http://iepf.gov.in](http://iepf.gov.in)

  Ministry of Corporate Affairs has set up the Investor Education and Protection Fund (IEPF) with the dedicated purpose of empowering investors through education and awareness building. It has been established under Section 205C of the Companies Act, 1956 and now under Section 125 of the Companies Act 2013 for promotion of investors awareness and protection of the interests of investors.

  There was no unified website providing information on all financial instruments. Moreover, almost all individual websites that exist provide information from their own respective perspectives and not what and how the small investors want it. This website would fulfill the need for an information resource for small investors on all aspects of the financial markets and would attempt to do it in the small investors language.

  It would provide information about IEPF and the various activities that have been undertaken/funded by it. It would also provide information relevant for investors, including about various instruments for investment, regulatory system and grievance redressal mechanism.

- **www.watchoutinvestors.com:**

  Over the years, thousands of unscrupulous entities have defrauded the investors. Investors have lost confidence in the market consequent to a series of mishaps. In many cases, though penal regulatory action has been taken against such entities, the information about such actions lies scattered and is in a difficult-to-access, difficult-to-use format. Absence of any organized database prevents regulators and investors from taking any pre-emptive action [www.watchoutinvestors.com](http://www.watchoutinvestors.com) alerts various entities and about persons with information that one should be aware of before investing. It is sponsored and aided by Investor education and protection fund and Securities and exchange board of India.

  [www.watchoutinvestors.com](http://www.watchoutinvestors.com) is a national web-based registry covering entities including companies and intermediaries and, wherever available the persons associated with such entities, who have been indicted for an economic default and/or for non-compliance of laws/guidelines and/or who are no longer in the specified activity.

- **www.directorsdatabase.com**

  It is important that investors, analysts, regulators and the market know not only about the directors who are at the helm of affairs of a company but more so about the independent directors who are supposed to bring better corporate governance and protect the interests of the minority shareholders.

  [www.directorsdatabase.com](http://www.directorsdatabase.com) is Corporate Governance initiative of Bombay Stock Exchange Limited and is conceptualized, designed and maintained by Prime Database.

  This website is the worlds first website providing not only a single point access to information on the board of directors of listed companies, but also a profile with age, qualification, experience and other directorships of each director. It also provides information about the independent directors on the board of a specific company. The information on the website is based on BSE listed companies who have filed information.

### Selection of independent directors and maintenance of databank of independent directors

Section 150 of the Companies Act, 2013 deals with manner of selection of independent directors and maintenance of databank of independent directors. Section 150(1) provides that subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by anybody, institute or association, as may by notified by the Central Government, having expertise in creation and
maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

Section 150(2) provides that the appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

As per Section 150(3) the data bank referred to in sub-section (f), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

Under Section 150(4) the Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

<table>
<thead>
<tr>
<th>Better supervision and monitoring of compliance</th>
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<tr>
<td>MCA-21 has ensured better supervision and control of the MCA over Companies with regard to compliance with the provisions of the Companies Act. Thus, enforcement of law has become easier and will ultimately benefit the investors, the stake holders and the concerned Regulatory bodies. With specific details of companies and their directors available in the electronic form, it ensures proactive &amp; effective compliance of relevant law(s) and also in turn fosters corporate governance.</td>
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<th>Mutually beneficial system</th>
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<td>The focus of the MCA-21 program is on bringing about a fine balance between trade facilitation on one hand and enforcement requirements on the other.</td>
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<th>Speed, transparency and efficiency</th>
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<tr>
<td>MCA-21 project aims to bring speed, transparency and efficiency in the delivery of the services rendered by the MCA to all the stakeholders through a set of pre-defined service levels.</td>
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<th>Effective due diligence</th>
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<tr>
<td>Banks and Financial Institutions can conduct a thorough scrutiny of the documents filed by the company before advancing loan(s) and other financial assistance to such a company.</td>
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<th>Efficient services by professionals</th>
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<tr>
<td>Professionals will be able to offer efficient services to their client companies.</td>
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<th>Environment Friendly</th>
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<td>MCA-21 will also prove to be environment friendly since paper work involved in filing of forms and documents would be totally eliminated. One can imagine the quantum of paper required by lakhs of companies for filing almost all forms with their attachments on an annual basis. Elimination of paper work will ensure cutting of lesser number of trees. Hence the ecological balance will be sustained.</td>
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<tr>
<th>FILLING AND FILING OF FORMS</th>
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<tr>
<td>Filling and filing of forms is an important part of the secretarial function of a company secretary. Normally, where company appoints a company secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations. Therefore, for any lapse in complying with the various provisions of</td>
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the Companies Act or such other legislations, for the compliance of which the company secretary has been made responsible, he becomes liable as “officer in default”.

Filing and filing of forms, returns and applications under various provisions demand intimate knowledge of substantive as well as procedural law. The Registrar of Companies (RoC) registers the documents filed with them within the prescribed time, if found in order. Often, a large number of documents filed with the RoC are not taken on record due to technical lapses which result in avoidable correspondence and frequent visits to the office of RoC. In order to avoid such errors, every care should be taken to ensure that the forms are properly filled and adequate documents are attached to them before filing.

Company Secretaries, under electronic filing system are required to be familiar with computer, internet, MCA 21 electronic filing system, pdf files and using digital signatures.

**SCOPE OF FILING E-FORMS**

An e-form is a notified document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance purpose or an application seeking approval from the MCA. The old formats of various forms have been rendered redundant after 27th February 2006 by the MCA when vide notification No GSR 56(E) dated 10th February 2006, it issued the Companies (Central Governments) General Rules & Forms (Amendment) Rules, 2006 and notified the applicable e-forms. The said forms are being revised from time to time and are available at www.mca.gov.in. The MCA21 Project has been designed to fully automate all processes related to the proactive enforcement and compliance of the legal requirements under the Companies Act, 1956 as well as Companies Act, 2013. E-filing facility includes incorporation of new companies, filing annual and other statutory returns, registration and verification of charges and processing of various approvals/clearances etc. applied on time.

Besides, inspection of company documents, request for certified copies is also facilitated through MCA portal.

**ADEQUATE KNOWLEDGE OF SUBSTANTIVE LAWS**

Without proper knowledge of the substantive laws, it is not possible to fill up the various forms properly and correctly. Correctness of filing has become more important these days with the advent of e-forms because once an e-form is filed, it cannot be changed in the office of RoC later on. At the most, additional form can be filed, which is termed as “Revised Filing”.

**PREREQUISITES FOR E-FILING ON MCA-21**

One also needs to get himself registered at the portal (www.mca.gov.in) and obtain a Director Identification Number (DIN) and a Digital Signature Certificate (DSC).

**Hardware and Software Requirements under e-filing**

The minimum system requirements for e-filing on MCA-21 are as under:

- P-4 computer with printer.
- Windows 2000/Windows XP/Windows Vista/Windows 7
- Internet Explorer 6.0 version and above, Google Chrome, Mozilla Firefox.
- Adobe Reader from version 9.4 to version 10.1.4
- Scanner (above 200 DPI) for converting the attachments in the PDF format; and
- Java Runtime Environment (JRE) 1.6 updated version 30.
Point need to know:-

All users using below mentioned services on MCA-21 are required to have Windows XP (SP3)/Windows Vista/Windows 7 and JDK 1.6 updated version 30 installed on their machine -

Any user logging on MCA21 using a DSC
Any existing user registering/updating a DSC
Any new user registering using a DSC

IMPORTANT TERMS USED IN E- FILING

Pre-fill

Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.

Attachment

An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file.

The objective of the attachment is to provide details relevant to the e-Form for processing. While some attachments are optional, some are mandatory in nature.

The attachments to an e-Form have to be in Adobe PDF format only and MyMCA portal has a facility to convert any document format to PDF format. MyMCA portal do not accept big attachments and the users are advised to keep the attachment size to minimum (Not exceeding 2.6 MB of the total size of the Form including attachments).

Modify

Once the user has done “Check Form” the form gets locked and it cannot be edited. If the user wishes to make any alteration, the form can be overwritten by clicking the “Modify” button.

If the user wants to modify the form after pre-scrutiny failure, the user can get the e-form and whichever fields have to be changed only those may be modified by using the “Modify” button.

Radio Button

Frequent use of radio buttons has been done in the e-Form. While filling the e-Form one is required to tick applicable button out of two or more radio buttons given against each point.

Check Box

Applicable Check box is required to ticked out of the two or more boxes wherever it appears in the e-Form.

Drop Down Box

Drop down box is a box wherein at the end, a downward arrow is provided. On clicking the arrow various applicable choices appear. One is required to highlight the applicable choice and that will be filled in the box.

Text box

Text box is meant to provide details on the relevant point by the person filling the e-form. Space provided is generally adequate for the text to be written. However, if the space is not sufficient for a particular matter, information can be given in the annexure to the form indicating the same in the box.
Country Code

Sometimes the applicant is required to fill up the country code in the e-Form. This is available in the instruction kit.

Stock Exchange Code

All the stock exchanges of the country have been divided into two categories A and B. Listed companies are required to mention the stock exchange where the shares are listed with the help of the code.

Check Form

By clicking “Check Form”, the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled-in. For example, if the user enters alphabets in “Date of Appointment of Director” field, he/she will be asked to correct the entered information.

If the size of e-Form including attachment is of bigger size then the attachment may be filed through an addendum.

If the size of attachment is even bigger in size then the details may be submitted in a floppy or compact disc at the ROC office.

Pre-Scrutiny

Pre-scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. The user has to make the necessary attachments in PDF format before submitting the e-Form for prescrutiny.

How to Affix Digital Signature?

The process of affixing digital signature is as follows:

(a) User clicks the provision provided (signature affixing icon) on the e-Form, against his role, to digitally sign it.

(b) Utility to sign the e-Form opens, where user selects the intended certificate to digitally sign the e-Form.

(c) After selecting the certificate, utility digitally signs the e-Form with the certificate and the certificate information gets embedded in the e-Form.

Submit

An e-Form can be submitted after it has been digitally signed. The process of submission of an e-Form in case of off-line filling is presented below:

(a) User logs in to MCA21 portal and uses e-Form upload service

(b) User browses the e-Form and clicks on “Submit” button

(c) User will be shown errors, if any

(d) If e-Form is successfully submitted, user will get confirmation message and will be lead to the fee payment screen.

The digital certificate is validated to ensure that the certificate has not expired and the current status of the same is valid and that the certificate has not been revoked or suspended.

Addendum to e-Form

The user may have to submit some additional supporting documents that are not submitted during the e-Form (application) filing but are required for the processing of the e-Form. MCA may also ask the applicant to provide some additional documents in support of the e-Form already filed so as to expedite the processing of the same.
The user can initiate this on their own by checking the track transaction status on My MCA portal or on being notified by MCA through email. Payment of fees is not required for filing an addendum.

The supporting documents that the applicant uploads, as an addendum, gets duly associated with the e-Form that was submitted earlier with the given SRN.

The normal process of filing an addendum is presented below:

(a) The applicant enters SRN for which document needs to be attached.

(b) The applicant attaches relevant document and clicks “Submit”.

(c) The system verifies that the status of entered SRN is “In Progress” and the submitted document gets accepted.

Re-submission of an e-Form

At times, MCA may ask for some changes before approving/ registering the e-form that have been submitted successfully. MCA will notify the concerned company about the requirements through email. The Company will have to make the changes and re-submit the e-form. Re-submission does not require any payment, if done within prescribed time of 15 days. If one fails to re-submit e-form within the prescribed period one will be required to file e-form afresh with payment of fee as applicable.

The documents that were uploaded during submission of e-form will be again uploaded during re-submission.

Steps for e-Form re-submission

1. Login to the MCA portal.
2. Click on the Resubmission link under the Services tab. Alternatively, one can also click on e-form Upload button under e-forms tab, for offline filing of e-Form. The Offline e-form filing screen appears. Click on the Re-submit button on this screen.
3. Enter the SRN against which resubmission is being made.
4. A new window will appear. Click on the Select file(s) button, to browse the local system, and select the e-form for resubmission. A progress bar shows the extent of uploading process.
5. The e-form will be uploaded and pre-scrutiny result will be displayed on the screen. In case there is any error a pop-up with error description is displayed.
6. Make necessary changes in the form to rectify.
7. After successful resubmission, a success message is shown. If no resubmission is required, error message shall be displayed.

Pre-certification of certain E-forms

Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar.

Ministry of Corporate Affairs has entrusted practicing professionals registered as Members of professional bodies namely ICAI, ICSI and ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode including filing of financial statements in XBRL mode.

This pre-certification is to be carried out by inter-alia, Company Secretaries in whole-time practice. The forms which has to be pre-certified by practising professionals include the following:
1. FORM No. INC-21 (Declaration prior to the commencement of business or exercising borrowing powers)

2. FORM No. INC-22 (Notice of situation or change of situation of registered office)

3. FORM No. INC-28 (Notice of Order of the Court or any other competent authority)

4. FORM No. MGT-7 (Annual Return)

5. FORM No. MGT-8 (Certificate by a Company Secretary in Practice)

6. FORM No. MGT-13 (Report of Scrutinizer(s))

7. FORM No. MGT-14 (Filing of Resolutions and agreements to the Registrar)

8. FORM No. MR-1 (Return of appointment of MD/WTD/Manager)

9. FORM No. MR-2 (Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors)

10. FORM No. URC-1 (Application by a company for registration under section 366)

11. FORM No. 1INV (Statement of amounts credited to investor education and protection fund)

12. FORM No. 5 INV (Statement of unclaimed and unpaid amounts)

13. FORM No. PAS-3 (Return of allotment)

14. FORM No. MSC-3 (Return of dormant companies)

15. FORM No. RD2 (Form for filing Application to Central Government (Regional Director))

16. FORM No. SH-7 (Notice to Registrar of any alteration of share capital)

17. FORM No. CHG-1 (Application for registration of creation, modification of charge (other than those related to debentures))

18. FORM No. CHG-4 (Particulars for satisfaction of charge thereof)

19. FORM No. CHG-9 (Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures)

20. FORM No. GNL-3 (Details of persons/directors/charged/specified)

**Necessity of Pre-certification**

Introduction of pre-certification by an independent professional in the e-Form aimed at reducing the work load of the Registrar of Companies. Once an e-Form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, ROC is entitled to take on record the e-Form. Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry. If a professional gives a false certificate or omits any material information
knowingly, he is liable to punishment under section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice.

GUIDELINES FOR FILLING AND FILING E-FORMS

While preparing the forms, documents, returns to be filed with the Registrar, the following points are to be kept in view:

(a) Each time we are required to file an e-Form, we should download the Form from the MCA site to avoid the wastage of time at a later stage because the forms are under revision and a slight change in the form will result in it not getting uploaded at the stage of submitting on the portal.

(b) An e-Form contains certain standardized features. It starts with the Corporate Identity Number (CIN), which works as a unique identifier of a company (in the case of an Indian Company). In the case of foreign company, the foreign company Registration Number is required to be filled-up. By entering the number, the company details to the extent these are available in static form in the database are automatically filled in by using the pre-fill functionality.

(c) The e-Form contains a number of mandatory fields, marked with the red color star (*) which are required to be filled in. Certain other fields are non-mandatory in nature, which may be filled in as may be relevant in any particular case.

(d) An e-Form contains tool tips for context sensitive help.

(e) An instruction kit is available for each e-Form, which contains details of the instructions for properly filling the e-Form. It is important to go through it before filing the e-form.

(f) An e-Form may be filled in either online or offline mode. Online filling implies that the e-Form is filled while being still connected to MCA portal through the Internet. Offline filling denotes that the e-Form is downloaded into the user's computer and filled later without being connected to the Internet.

(g) An e-Form may require certain mandatory attachments to be filed along with it. Optional attachments may also be filed with an e-Form. The list of such attachments is displayed in the e-Form.

(h) All documents/forms/returns, etc., are to be submitted in English or Hindi and where a document is in any language other than English and Hindi, a translation of that document or portion into either English or Hindi certified by a responsible officer of the company to be correct, shall be attached to each copy of the document which is furnished to the Registrar. All such documents shall be converted into pdf format.

(i) Next to attachment, there is a declaration that is sought from the person filing the e-Form to the effect that the information given in the e-Form and the attachments is correct and complete.

(j) Most of the e-Forms require the digital signature of the Managing Director or Director, Manager or Secretary of the company for successful filing/ submission.

(k) Scanned documents take more space and as far as possible MS-word file converted into pdf file is preferred.

(l) All electronic forms require, the date of board meeting to be specified under the head verification. In the said column, the date of the board meeting at which the person is authorised to sign and submit form shall be specified. Where it is mentioned in the form that it has to be signed by specific person, it should be so digitally signed.

(m) Further, the digital signature of a third party may also be required in certain cases. In the case of an e-
Form for creation or modification of charges, such digital signature is also required from the Bank or Financial Institution.

(n) In certain cases, a certificate from the Chartered Accountant or Cost Accountant or Company Secretary in whole-time practice is also required to authenticate the particulars contained in the e-Form. For example, this requirement is mandatory in the case of an e-Form for appointment of director, change in the situation of the registered office, etc.

(o) There are built-in facilities to check the filled in e-Form for requisite validations, to do pre-scrutiny and to modify the e-Form when the same is required to be re-submitted.

(p) Certain documents need physical filing in addition to e-filing. It needs to be noted that those should preferably be free from corrections and erasure. If there is any correction or erasure, it should be duly authenticated by the person signing the document or the return.

(q) After the filling part is complete, the e-Form is ready for submitting into the MCA central documentary repository and when the Submitted button is pressed, the e-Form gets uploaded into the MCA central document repository.

(r) Thereafter, the requisite fees as applicable for the e-Form should be paid either on-line or off-line.

(s) Once the e-Form has been accepted and payment of fees has been acknowledged, a work item is created and assigned to the appropriate MCA employee based on pre-defined assignment rules as part of MCA back office workflow automation.

(t) In the case of an e-Form, the authorized officer affixes his/her digital signature for registering/approving/rejecting the same.

(u) After the processing of the e-Form is completed, an acknowledgement email is sent to the user regarding its approval/rejection.

Once the e-form is filled, there would be need to validate the e-form using Pre-scrutiny button. Then the relevant digital signatures have to be affixed and the form be saved. Internet connection is required to carry out the pre-fill and pre-scrutiny functions. The filled up e-form as per relevant instruction kit needs to be uploaded on the MCA21 portal. On successful upload, the Service request number would be generated and it would be directed to make payment of the statutory fees. Once the payment has been made the status of payment made and filing status can be tracked on the MCA21 portal by using the “Track Your Payment Status” and “Track Your Transaction Status” link respectively.

**IMPORTANT ASPECTS TO BE CONSIDERED AT THE TIME OF ANNUAL FILING**

As a part of annual filing, each year companies incorporated under the Companies Act, 2013 are required to file the following documents along with the relevant e-forms with the Registrar of Companies:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Document</th>
<th>E-form</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Financial Statement</td>
<td>Form AOC – 4</td>
</tr>
<tr>
<td>2.</td>
<td>Annual Return</td>
<td>Form MGT - 7</td>
</tr>
</tbody>
</table>

MCA vide its General Circular No. 22/2014 dated 25th June, 2014 clarified that Form MGT-7 shall not apply to annual return in respect of Companies whose Financial Year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These Companies may file their returns in the relevant Forms available under the Companies Act, 1956.
MCA vide its Circular No. 8/2014 dated 4.4.2014 has clarified that Financial Statements/Auditor’s Report/Boards’ Report in respect of financial year earlier to an 1st April, 2014 shall be governed by Companies Act, 1956 and in respect of financial years commencing on or after 1st April, 2014, Companies Act, 2013 would apply. Accordingly for the financial ending March 31, 2014 the existing XBRL filing (Form 23AC & Form 23ACA would continue to apply)

**XBRL Filing**

The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (eXtensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or  
(ii) all companies having paid-up capital of Rupees five crore and above; or  
(iii) all companies having turnover of Rupees one hundred crore and above; or  
(iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies (NBFCs) are exempted from XBRL filing till further orders.

Key benefits of XBRL filing are as under:

Relevant data has tags and selective information can be fetched for specific purposes by various government and regulatory agencies  
It is in conformity with Global Reporting Standards, which helps in improved data mining and relevant information search.

**Steps for filing Financial Statements in XBRL mode**

1. **Creation of XBRL instance document**

Companies have the option to create their own XBRL documents in house or to engage a third party to convert their financial statements into XBRL form. The first step in creation of an instance document is to do tagging of the XBRL taxonomy elements with the various accounting heads in the books of accounts of the company.

This would create the mapping of the taxonomy elements with the accounting heads so that the accounting information can be converted into XBRL form.

Mapping is the process of comparing the concepts in the financial statements to the elements in the published taxonomy, assigning a taxonomy element to each accounting concept published by the company.

Selecting the appropriate elements for some financial statement elements may require a significant amount of judgment. For that reason those in the company who are most familiar with the financial statements should be associated with mapping of accounting concepts to taxonomy elements. The mapping should be reviewed before proceeding further as the complete reporting would be dependent on the mapping.

In case any information is present in the financial statements for which corresponding tag/element is not available in the taxonomy, then the same needs to be captured in the next-best-fit element in the taxonomy or should be included under the corresponding “Others” element. This should be followed only in case the relevant tag is not available in the taxonomy. It should not to be used generally.

Further, it is imperative to include footnote w.r.t. the same while preparing the instance document. For tagging or capturing the information which is often included in brackets in the labels in the company’s financial statements, can either be captured as footnote or if detailed tags are available, the same should be tagged with the detailed tags in the taxonomy.
The complete information as contained in the annual accounts and related documents; and the information required to be filed with the Registrar of Companies should be reported in the XBRL instance documents to be submitted with MCA. For preparing instance document, the taxonomy as applicable for the relevant financial year is to be used.

2. Download XBRL validation tool from MCA Portal
3. Load the instance document in the validation tool
4. Validate the instance document
5. Pre-scrutiny of the instance document
6. Convert to pdf and verify the contents of the instance document. (This step is essential to ensure that the disclosures contained in XBRL document are as per Audited Financial Statement adopted in the AGM and the textual information entered in the instance document are clearly viewable)
7. Attach instance document to the Form 23AC-XBRL and 23ACA-XBRL
8. Submitting the XBRL Form on the MCA portal

**Common Points for all the annual e-Forms**

- Balance sheet and Profit and Loss Account are to be filed as two separate documents with different eforms.
- Annual Return, Balance Sheet and Profit and Loss Account are filed as attachments because scanned images considerably increase the size of document, besides being more expensive.
- It is suggested that these e-Forms should be filled offline and got printed before filing as these forms are taken on record through electronic mode without any processing at the RoC office. The Company must ensure that the particulars filed are correct. Further, there is no provision of resubmission of these e-Forms.
- In case of a company having share capital, the authorized capital as on the date of filing of the e-form and in case of company without share capital, the number of members as on the date of filing of the form should be entered in the e-Forms.
- After filling, the e-form should be pre-scrutinised by clicking the Prescrutiny button or else, it shall be rejected at the time of uploading of form.
- No attachment can be submitted through the addendum service in respect of these e-forms.

E-Form for Annual Filing under the Companies Act, 2013 is yet to be made available; hence all information related to Forms under old forms is given here. This may be helpful for students.

**E-form 23AC - Form for filing Balance Sheet and other documents with the Registrar**

- Form 23AC is required for filing Balance Sheet. It includes Directors Report, Compliance Certificate being part of Directors’ Report, Auditors Report, Notes to the Accounts, Balance Sheet Abstract and other documents (other than Profit and Loss Account) forming part of Balance Sheet to be filed with the Registrar and must be submitted within 30 days from the date of annual general meeting or the last date on which the annual general meeting should have been held.
- The information to be provided in the e-form should be as on the date of the balance sheet and the figures should be as per the latest accounts of the company, attached with the e-form.
While entering the details of subsidiary companies, details of maximum 10 subsidiary companies, can be entered in the form and the rest can be provided as an optional attachment. For a foreign subsidiary, the name and country of origin of subsidiary company should be entered and in case of an Indian subsidiary company, the CIN should be entered (being a Prefill entry, details will be displayed automatically).

The number and details of auditor(s) who is signing the balance sheet, or, the details of Auditor’s firm(s) if the concerned auditor(s) is associated with firm(s) should be entered. A maximum of two auditor(s)/ Firm of Auditors can be provided in the e-form and the rest can be provided as an optional attachment.

If Schedule VI is not applicable to the company, the details of mobilization and deployment of funds are not required.

The attachments to be filed with the e-form are:
- copy of balance sheet duly authenticated as per Section 215 alongwith other documents (in Pdf converted format);
- Statement of the fact and reasons for not having adopted balance sheet in the annual general meeting (AGM);
- Statement of the fact and reasons for not holding the annual general meeting (AGM);
- Optional attachments- if any.

After the e-form has been filled, click the Prescrutiny button to prescrutinize the e-form. If the e-form is not pre-scrutinized, it shall be rejected when you attempt to upload the e-form.

This e-form shall be taken on record through electronic mode without any processing at the office of Registrar of Companies. Ensure that all particulars in the e-form are correct as per the balance sheet to be attached. There is no provision for resubmission of this e-form.

Balance sheet and other documents attached with the e-form shall be a copy of balance sheet authenticated as per the provisions of section 215 of the Companies Act, 1956. You are required to convert the soft copy of the balance sheet into PDF format and attach with the e-form. In the designation and date of signing it into PDF format, write name, documents by the auditor(s) and of directors/officers of the company in the same manner as signed and authenticated the original Balance Sheet and other documents and also write Sd- above such name, designation and date. Scanning of balance sheet is not recommended as comparatively it results into excessive size of PDF attachment.

If the file size of Form 23AC exceeds 2.5MB due to large size of attachments, use Additional Attachment Sheet at the time of uploading of e-form. Once the filing is done, no attachment can be submitted later through the “Addendum” service.

The e-form should be digitally signed by the managing director or director or manager or secretary of the company duly authorized by the Board of Directors. The DIN of director/managing director or the membership number of secretary should be duly entered.

The e-form should be pre-certified by practicing Chartered Accountant or Cost Accountant or Company Secretary.
E-form 23ACA - Form for filing profit and Loss account and other documents with the Registrar

- This Form is filed along with the Form 23AC and filing fee is not applicable to this form as it forms part of the Balance Sheet Filing.

- The information to be provided in the e-form should pertain to the financial year.

- If Schedule VI is not applicable to the company, the details of performance of the company need not be given.

- In the financial parameters, the figures to be given, should be as per the latest profit and loss account of the company.

- The value of any revenue item during the financial year for transaction with related parties should be entered as per AS-18.

- The attachments required to be filed with the form include:
  - Copy of Profit and Loss Account duly authenticated as per Section 215 (in pdf converted forms)
  - Statement of subsidiaries as per section 212, if applicable
  - Optional attachments- if any.

- Other documents to be filed with P & L A/c are relevant schedules, Notes to the Accounts, Auditors’ Report and Cash Flow Statement.

- The e-form should be digitally signed by the managing director, director, manager or secretary of the company, duly authorized by the board of directors.

- After the e-form has been filled, click the Prescrutiny button to prescrutinize the e-form. If the e-form is not pre-scrutinized, it shall be rejected when you attempt to upload the e-form.

- This e-form shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the e-form are correct as per the profit and loss account to be attached. There is no provision for resubmission of this e-form.

- Profit and loss account attached with the e-form shall be a copy of profit and loss authenticated under section 215. you are required to convert the soft copy of the profit and loss account into PDF format, write name, designation and date of signing of Profit and Loss Account and other documents by the auditor(s) and directors/officers of the company in the same manner as signed and authenticated the original Profit and Loss Account and other documents and also write Sd- above such name, recommended as comparatively it results into excessive size of PDF attachment.

- No attachment can be submitted through the addendum service in respect of this e-form.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

Professional certification in Form 23ACA includes

(i) verification of particulars filled in the forms from the records of the company as true and correct
(ii) verification that the balance sheet and profit and loss account and other documents attached with the forms are true. Copies of the original balance sheet and profit and loss account signed by the directors and auditors are correct and complete.

**E-form 23AC-XBRL- Form for filing XBRL document in respect of balance sheet and other documents with the Registrar**

- Form 23AC-XBRL is required to be filed for filing balance sheet and other documents in XBRL format.
- This e-form has to be filed pursuant to section 220 and Companies (Filing of documents and forms in eXtensible Business Reporting Language) Rules, 2011.
- The information to be provided in the e-form should be as on the date of the balance sheet.
- This form shall not be allowed to be filed in case schedule VI is not applicable. In case schedule VI is not applicable, you are required to file Form 23AC (non XBRL mode).
- In case consolidated balance sheet is also being filed along with the standalone balance sheet, then it is mandatory to attach XBRL document in respect of onsolidated balance sheet (i.e. to attach standalone balance sheet along with consolidated balance sheet)
- After the e-form has been filled, click the Prescrutiny button to pre-scrutinise the e-form. If the e-form is not pre-scrutinised, it shall be rejected when you attempt to upload the e-form.
- This e-form shall be taken on record through electronic mode without any processing at the office of Registrar of Companies. Ensure that all particulars in the e-form are correct as per the balance sheet to be attached. There is no provision for resubmission of this e-form
- The attachments to be filed with the e-form are:
  - XBRL document in respect of balance sheet and all documents required by the Companies Act, 1956 to be annexed to such a balance sheet (i.e. schedules, notes thereto, directors’ report and auditor’s report). This is a mandatory attachment.
  - XBRL document in respect of consolidated balance sheet and all documents required by the Companies Act, 1956 to be annexed to such a balance sheet (i.e. schedules, notes thereto, directors’ report and auditor’s report).
  - Statement of subsidiaries as per section 212 (To be attached in respect of foreign subsidiaries). (Please note in case of an Indian subsidiary, only SRN of balance sheet filed by the subsidiary company is required to be mentioned in the XBRL document. In such case, detailed statement of accounts of the subsidiary is not required to be attached.)
  - In case the balance sheet has not been adopted in the annual general meeting, attach a copy of statement of fact and reason for the same.
  - In case AGM has not been held by the company, attach a copy of statement of fact and reason for the same.
  - In case there is any extension in the AGM or financial year, attach a copy of approval letter for extension of financial year or AGM
  - In case any supplementary or test audit has been conducted under section 619(3) (b), attach the supplementary or test audit report.
  - Corporate governance report, Management discussion and analysis and any other document
  - Any other information can be provided as an optional attachment.
- The e-form should be digitally signed by the managing director, director, manager or secretary of the company duly authorised by the board of directors.

- The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form.

### E-form 23ACA-XBRL - Form for filing XBRL document in respect of Profit and Loss Account and other documents with the Registrar

- Form 23ACA-XBRL is required to be filed for filing profit and loss account and other documents in XBRL format. This e-form has to be filed pursuant to section 220 and Companies (Filing of documents and forms in eXtensible Business Reporting Language) Rules, 2011.

- Form shall not be allowed to be filed in case the annual accounts are not audited.

- The information to be provided in the e-form shall pertain to the financial year.

- This form shall not be allowed to be filed in case schedule VI is not applicable. In case schedule VI is not applicable, you are required to file Form 23ACA (non XBRL mode).

- In case, consolidated profit and loss account is also being filed along with the standalone profit and loss account. It is mandatory to attach XBRL document in respect of “Consolidated profit and loss account” (i.e. to attach standalone profit and loss account along with consolidated profit and loss account).

- After the e-form has been filled, click the Prescrutiny button to pre-scrutinise the e-form. If the e-form is not pre-scrutinised, it shall be rejected when you attempt to upload the e-form.

- This e-form shall be taken on record through electronic mode without any processing at the office of Registrar of Companies. Ensure that all particulars in the e-form are correct as per the balance sheet to be attached. There is no provision for resubmission of this e-form

- The attachments to be filed with the e-form are:
  - XBRL document in respect of profit and loss account and other documents (i.e. schedules and notes thereto) required by the Companies Act, 1956. This is a mandatory attachment.
  - XBRL document in respect of consolidated profit and loss account and other documents (i.e. Schedules and notes thereto) required by the Companies Act, 1956 Statement of subsidiaries as per section 212 (To be attached in respect of foreign subsidiaries). Please note in case of an Indian subsidiary, only SRN of balance sheet filed by the subsidiary company is required to be mentioned in the XBRL document. In such case, detailed statement of accounts of the subsidiary is not required to be attached.
  - Any other information can be provided as an optional attachment.

- The e-form should be digitally signed by the managing director, director, manager or secretary of the company duly authorised by the board of directors.

- The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form.

### E-form 20B - Form for filing annual return by a company having a share capital with the Registrar

- The information to be provided in the e-form should be up to the date of AGM. In case AGM is not held or AGM is held after the due date of AGM including extension of time granted, if any, then the information is to be provided up to the due date of AGM or due date of AGM after extension, as the case may be.

- After the e-form has been filled, click the Prescrutiny button to pre-scrutinize the e-form. If the e-form is not prescrutinised, it shall be rejected when you attempt to upload the e-form.
— This e-form shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the e-form are correct as per the annual return. There is no provision for resubmission of this e-form. No attachment is allowed to be submitted through the addendum service in respect of this e-form.

— Please ensure that all required attachments have been attached before uploading this e-form except, in case the size of the list of shareholders, debenture holders to be attached is large in size and the same cannot be attached completely to this Form due to constraint in size of the Form. However, in case the complete list of all the shareholder, debenture holders is not attached to the form then the same needs to be submitted in a CD separately with the office of Registrar of Companies (refer serial number 15 below for details)

— Attachments required for the e-form are:
  – Annual return prepared as per section 159 and Schedule V of the Companies Act, 1956 (In case, the number of shareholders/debenture holders exceeds 100, attach details of the top 100 shareholders/debenture holders in a CD separately).
  – If any extension is granted for the financial year or AGM; Approval letter for extension of financial year or annual general meeting.
  – Optional Attachments- if any.

— This e-Form is required to be digitally signed by the managing director, director or secretary of the company duly authorized by the board of directors.

— In case shares of the Company are listed on a recognized stock exchange, the stock exchange code is required to be entered. The stock exchange codes are given in the instruction kit of the e-Form. If a Company is listed at more than one exchange, the respective codes under the same category are required to be added to arrive at the total.

— In the Capital Structure column in nominal value field, total nominal value of the number of shares are required to be entered for each type of share (do not enter the value per share).

— Enter the AGM date/AGM due date/AGM extension date correctly

— This shall be compared with other Annual Filing Forms and can impact their filing. This has been illustrated through following example:

**Case I: Form 20B already Prescrutinised and Form 23AC being pre-scrutinised**

Following dates are entered in the prescrutinised Form 20B

— Financial Year – 31.03.2014
— Actual date of AGM – 30.11.2014
— Due date of AGM – 30.09.2014

Please note that Actual date of AGM entered in form 23AC (30.11.2014) is different from date entered in already pre-scrutinised form 20B (31.10.2014). At the time of Check form, following message is displayed-

“Please ensure that AGM date/AGM due date/AGM extension date entered in the annual filing forms (i.e. 20B, 23AC, 66) are same for the respective financial year. In case of discrepancy, the pre-scrutiny of other Annual Filing Forms shall be impacted and you may be required to pre-scrutinised those forms again.”

If you proceed and pre-scrutinize Form 23AC, the pre-scrutiny of Form 20B shall be rejected as it contained AGM date which is different from the AGM date entered in therefor being pre-scrutinised.
You will have to pre-scrutinise form 20B again with the correct date (As mentioned in Form 23AC) for the same financial year.

**Case II: Form 20B already uploaded & Form 23AC is being uploaded**

In case you have already uploaded pre-scrutinized Form 20B with the following dates:

- Financial Year – 31.03.2014
- Actual date of AGM – 31.10.2014
- Due date of AGM – 30.09.2014

At the time of uploading already pre-scrutinized Form 23AC with following dates:

- Financial Year – 21.03.2014
- Actual date of AGM – 30.11.2014
- Due date of AGM – 30.09.2014

System shall prompt you for discrepancy with a message that the AGM Date/Due date/Extended AGM Date filed in the form is different from that of filled in earlier uploaded annual filing form. Please do a revised filing of the same in order to file this form. Therefore, in this case you have to first do the revised filing of Form 20B with the correct date (As entered in Form 23AC).

The e Form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-Form. In case the professional is a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**E-form 21A- Particulars of annual return for the company not having share capital**

- E-form 21A is required to be filed within 60 days from the date of the annual general meeting, if AGM is held and within 60 days from the date on which the AGM ought to have been held, in case AGM is not held by a company not having share capital.

- The information to be provided in the e-Form should be up to the date of AGM. In case AGM is not held or AGM is held after the due date of AGM including extension of time granted if any, then the information is to be provided up to the due date of AGM or due date of AGM after extension, as the case maybe.

- After the e-form has been filled, click the Prescrutiny button to prescrutinise the e-form. If the e-form is not pre-scrutinised, it shall be rejected when you attempt to upload the e-form.

- This e-form shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the e-form are correct as per the records.

- No attachment can be submitted through the addendum service in respect of this e-form.

- Enter the AGM date/ AGM due date/ AGM extension date correctly

This shall be compared with other Annual Filing Forms and can impact their filing. This has been illustrated through following example.

**Case I: Form 21A already Pre-scrutinised & Form 23AC being pre-scrutinised**

Following dates are entered in the pre-scrutinised Form 21A

- Financial Year – 31.03.2014
If you pre-scrutinize Form 23AC with the following dates:
- Financial Year – 31.03.2014
- Actual date of AGM – 30.11.14
- Due date of AGM – 30.09.2014

Please note that Actual date of AGM entered in form 23AC (30.11.2014) is different from date entered in already pre-scrutinized Form 21A (31.10.2014). At the time of Check form, following message is displayed:

“Please ensure that the AGM date/AGM due date/AGM extension date entered in the annual filing forms (i.e. 20B, 23AC, 21A, 66) are same for the respective financial year. In case of discrepancy, the pre-scrutiny of other Annual Filing Forms shall be impacted and you may be required to prescrutinise those forms again”

If you proceed and pre-scrutinise Form 23AC, the pre scrutiny of Form 21A shall be rejected as it contained AGM date which is different from the AGM date entered in the form being prescrutinised.

You will have to pre-scrutinise Form 21A again with the correct date (As mentioned in Form 23AC) for the same financial year.

**Case II: Form 21A already uploaded & Form 23AC is being uploaded**

In case you have already uploaded pre-scrutinised Form 21A with following dates:
- Financial Year – 31.03.2014
- Actual date of AGM – 31.10.2014
- Due date of AGM – 30.09.2014

At the time of uploading already pre-scrutinised Form 23AC with following dates:
- Financial Year – 31.03.2014
- Actual date of AGM – 30.11.2014
- Due date of AGM – 30.09.2014

System shall prompt you for discrepancy with a message that the AGM Date/Due AGM Date/Extended AGM Date filled in the form is different from that of filled in earlier uploaded annual filing form. Please do a revised filing of the same in order to file this form. Therefore, in this case you have to first do the revised filing of Form 21A with the correct date (As entered in Form 23AC).

- Since there is no provision for resubmission of this e-form, it should be ensured that all particulars in the e-form are correct as per the records.
- Attachments required with the e-form are:
  - Details of particulars of the total amount of indebtedness of the company as on the date of annual general meeting
  - Details of past and present members in the format given below (See C). (It is not required if the company holds the license under section 25 of the Companies Act and is exempted from using the word limited as the last word of its name).
  - Optional attachments IV if any.
C. Format for the details of past and present members:

<table>
<thead>
<tr>
<th>Folio in Register of members</th>
<th>Name, Address and occupation, if any of member</th>
<th>Name of Father or Husband</th>
<th>Date on which they become members</th>
<th>Date on which they ceased to be members</th>
<th>Remarks, if any</th>
</tr>
</thead>
</table>

- This e-form is required to be digitally signed by minimum two persons, by manager, secretary or managing director and one director of the company. If there is no manager or secretary or managing director in the company then by two directors of the company. Signatories should be duly authorized by the board of directors.

- After the check form is successful, and required documents have been attached, the form should be mandatorily pre-scrutinized.

- The e-Form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. In case the professional is a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**E-form 66 - Form for submission of Compliance Certificate with the Registrar**

- The e-form is required to be submitted within 30 days of holding of Annual General Meeting (AGM), provided that where the AGM of such company for any year has not been held, there shall be filed with the Registrar such certificate within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of the Act.

- Since the e-form is not scrutinized at Registrar of Companies office and there is no provision for resubmission of this e-form, it is required to be ensured that particulars in the e-form are correct as per the Compliance Certificate attached.

- Attachments required with the e-Form are:
  - Optional attachment(s), if any.

- The e-form is required to be digitally signed by the Managing Directors/ Director/Manager or Secretary of the Company duly authorized by the Board of Directors.

- After the e-form has been filled, the form should be prescrutinised as otherwise it shall be rejected while being uploaded.

- This e-Form shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the e-Form are correct as per the compliance certificate to be attached. There is no provision for resubmission of this e-Form.

- No attachment can be submitted through the addendum service in respect of this e-Form.

**IMPORTANT ASPECTS TO BE CONSIDERED AT THE TIME OF E-FILING OF FORMS (EVENT BASED FILING)**

Now we will discuss, Forms made available for online filing as per Companies Act, 2013. Students may update themselves with study updates, MCA Portal etc.
Lesson 16 ▶ E-filing 515

Lesson 16

Form INC-1 – Application for reservation of name

- eForm INC-1 is required to be filed pursuant to Section 4(4) of the Companies Act, 2013 and Rule 8 & 9 of Companies (Incorporation) Rules, 2014.

- An applicant seeking reservation of name for a proposed company or an existing company seeking to change its name shall make an application to Registrar in which the registered office of the company is situated or to be situated. User may apply for reservation of name by filing eForm INC-1. In case of new company, the applicant can propose six names for the company.

- An existing company can also propose six names and change its name subject to special resolution and approval of Central Government. The proposed name applied should not be undesirable as per the relevant provisions of the Act and rules dealt with in this matter.

- The Registrar may on the basis of information and documents filed as an application in this eForm, reserve the name for a period of sixty days from the date of the application.

- In case you are filling the eForm for application for Incorporation of a new company, then you need to fill the Part A, B and C of the eForm.

- In case you are filling the eForm for change of name of an existing company, then you need to fill the Part B, C and D of the eForm.

- Enter an approved DIN in case the applicant has been allotted DIN else enter valid Income tax permanent account number (PAN) or passport number of the applicant.

PART – A Reservation of name for incorporation of a new company

- Select the class of the proposed company.

- Select the sub-category of proposed company.

- Select the state and office of the Registrar of Companies in which the proposed company is to be registered.

- Enter the number of promoter(s).

- In case the promoter is an Individual, enter either approved DIN or valid Income-tax PAN or passport number.

- In case promoter is a company or a foreign company under section 379, enter the corporate identity number (CIN) or foreign company registration number (FCRN) respectively.

PART – B

- Enter the proposed name (in order of preference).

- Please state the significance of the key or coined word used in the proposed name. It should mention why such word cannot be done without in the name.

- If the proposed name is or has used any word in any vernacular language eg: Hindi, Marathi, Tamil etc., then please mention the language.

- Enter appropriate response whether proposed name is in resemblance with any class of Trade Mark Rules, 2002.

- In case proposed name is similar to any existing company, user is required to specify CIN of such existing company and system will pre-fill the name of the company. In case of foreign holding company, name of the foreign holding company is required to be mentioned.
Part – C Names requiring Central Government approval

This form shall be treated as an application to the Central Govt. for approval where the proposed name includes such words or expressions like Board, Commission, Authority, Undertaking, National etc. for which the previous approval of Central Government is required.

Part – D Reservation of name for change of name by an existing Company

User is required to furnish a copy of certificate of change in objects in case change in name of existing company requires change in objects and ensure that eForm MGT-14/old eform23 must have been filed with RoC along with altered Memorandum of Association.

Attachments:

- In case of change of name of an existing company, a copy of Board resolution; a certified true copy of board resolution is required to be attached in case eForm is filed by an existing company.
- A copy of direction received from the Central Government for change of name is required to be attached.
- In case the proposed name(s) are based on a registered trademark or is a subject matter of an application pending for registration under the Trade Marks Act, 1999, the approval of the owner of the trademark or the applicant of such application for registration of Trademark;
- Copy of Central Government’s approval In case the proposed name contains such word(s) or expression(s) for which the approval of Central Government is required,
- Proof of relation is required to be attached if the proposed name(s) include(s) the name of relatives.
- Approval from IRDA, RBI, SEBI, MCA or any other needs to be attached in case proposed name includes the word such as Insurance, Bank, Stock Exchange, Venture Capital, Asset Management, Nidhi, or Mutual Fund etc.
- No objection certificate from the sole proprietor/partners/other associates needs to be attached if the promoters are carrying on any partnership firm, sole proprietary or unregistered entity in the name as applied for.
- In case the name is similar to any existing company or to the foreign holding company. Then, a certified true copy of No objection certificate by way of board resolution needs to be attached.
- If the proposed name including the phrase ‘Electoral trust’ Then, affidavit executed on non-judicial stamp paper as per rule 8(2) (b) (vi) needs to be attached.
- Resolution of unregistered companies in case of Chapter XXI (Part I) companies;
- Order of tribunal as required in Rule 8(8). Order of Tribunal in course of compromise, arrangement and amalgamation is required to be attached in case proposed name is the name released on change of name.
- In case the key word used in the proposed name is the name of a person other than the name(s) of the promoters or their close blood relatives, no objection from such other(s) is required to be attached.

Fees: Rs. 1,000/-

Form No. INC-2

One Person Company- Application for Incorporation

- eForm INC-2 is required to be filed pursuant to section 3(1) and 7(1) of the Companies Act, 2013 and Rule 4, 10, 12 and 15 of the Companies (Incorporation) Rules, 2014
Lesson 16 – E-filing

- eForm INC-2 deals with incorporating One Person Company. This eForm is accompanied by supporting documents such as annexure containing details of directors/subscribers, the Memorandum of Association and Articles of Association and evidence of payment of stamp duty. Once the eForm is processed and found complete, a company is registered and CIN is allocated.

- It is suggested that eForm DIR-12 should be filed together at the time of filing of eForm INC-2 if the member is not the sole director of the company.

- In case the address for correspondence is not the address of the registered office of the Company, user is required to file INC-22 within 30 days of its incorporation.

- Stamp duty on eForm INC-2, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through the MCA portal. Payment of stamp duty electronically is mandatory for certain States.

- User is required to scan the photograph of every subscriber with MOA and AOA.

- Enter the approved Service Request Number (SRN) of eForm INC-1 filed for reservation of name.

- The company can have its registered office from the date of incorporation or on and from the 15th day of its incorporation. Till the same is established and intimated to the RoC, company can have its correspondence address capable of receiving and acknowledging all communications and notices as may be addressed to it. Enter the details of registered office address of the company if the company is having its registered office from the date of its incorporation.

- Enter the valid email id of the company.

- Enter the details of the address of the police station under whose jurisdiction the registered office of the company is to be situated.

- Enter the details of authorized and subscribed share capital break up in case of a company having share capital.

- Based on the main objects of the company, please enter the main division of industrial activity as per National Industrial Classification (NIC)-2004

- Enter the details of promoter.

- Promoter to One Person company is always an Indian citizen and resident in India and promoter shall be eligible to incorporate only one OPC.

- Every One Person Company is required to indicate the name of other person as nominee to the sole member in the memorandum and nominee for the subscriber should be an individual who is an Indian citizen and resident in India.

- Where the Articles of Association of OPC contains provisions of entrenchment to the effect that specified provisions may be altered only if conditions or procedures as that are more restrictive than those applicable in case of a special resolution are complied with.

- System shall automatically display the state or union territory for which stamp duty is to be paid and also amount of stamp duty to be paid on eForm INC-2, MoA and AoA based on the state wise stamp rules.

- This eForm should be supported with a declaration given either by:
  - A person named in the articles is a subscriber and also a director. (This declaration is displayed to the user in case subscriber and director is the same person), Or
  - A person named in the articles as a director, manager or secretary of the company duly authorized by promoters. (This declaration is displayed to the user in case subscriber and director are not the same person)
Attachment:

- It is mandatory to attach Memorandum of Association, Articles of Association, proof of identity of the member and the nominee, residential proof of the member and the nominee, copy of PAN card of member and nominee, consent of nominee in Form INC-3 along with enclosures, affidavit from the subscriber and first director to the memorandum in Form No. INC-9.

- It is mandatory to attach Specimen Signature in Form INC-10 in case company is ‘Not having share capital’.

- It is mandatory to attach Entrenched Articles of association if any of the articles are entrenched.

- Proof of registered office address and copies of the utility bills not older than two months are required to be attached in case of address of correspondence is the address of registered office of the company.

- It is mandatory to attach proof that the company is permitted to use the address of the registered office of the company if the same is owned by director(any other entity/ Person (not taken on lease by company).

- It is mandatory to attach consent to act as a director in case subscriber and director are the same persons.

- List of all the companies (specifying their CIN) having the same registered office address, if any.

Fees:

1. Memorandum of Association (MOA) filing fee (in case of company having share capital)

<table>
<thead>
<tr>
<th>Nominal Share capital</th>
<th>Fee applicable</th>
<th>For every 10,000 or part thereof</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 10,00,000</td>
<td>2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>More than 10,00,000 up to 50,00,000</td>
<td>2,000 +</td>
<td>200</td>
</tr>
<tr>
<td>More than 50,00,000 up to 1,00,00,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>More than 1,00,00,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2. Fee for filing Articles of association (in case of company having share capital)

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
</tbody>
</table>

3. Fee for filing form INC-2 (in case of company have share capital)

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
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<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Form No. INC-3

One Person Company- Nominee consent form

- This form is required to be filed pursuant to section 3(1) of the Companies Act, 2013 and rule 4(2), (3), (4), (5) & (6) of Companies (Incorporation) Rules, 2014
- One Person Company is required to indicate the name of the other person as nominee in its memorandum with his prior written consent, who shall become the member of the company in case of subscriber’s/ member’s death or incapacity to contract and such consent of the nominee shall be submitted to Registrar in this eForm INC-3.
- Enter an approved SRN of Form INC-1 in case of a new company or valid CIN for a One Person Company (OPC).
- Enter the approved DIN/PAN of nominee.
- Nominee should be an Indian citizen and resident in India.
- Residential proof selected and provided should not be older than two months.
- User is required to provide previous residence address details in case the duration of stay is less than a year at the present address.
- User is required to take the printout of the form after clicking on the “Check Form” button and the same shall be manually signed by the Nominee thereafter.
- This is a non e-Form and User is required to fill the form electronically and then attach the printout of the duly signed copy along with all the enclosures with other eForms INC-2, INC-4 or INC-6 as the case may be.
- User is required to provide copy of residential proof not older than two months

Attachment:
- Copy of PAN card
- Proof of Identity
- Residential Proof

Form No. INC-4

One Person Company- Change in Member/Nominee

- eForm INC-4 is required to be filed pursuant to Section 3(1) of the Companies Act, 2013 and Rule 4(4), (5), (6) of Companies(Incorporation) Rules, 2014.
- Member of One Person Company is required to nominate a person, after obtaining his/her prior written consent, who will become the member of such OPC in the event of member’s death or incapacity to contract. This form is filed in case there is any change in the nominee of the OPC by personal withdrawal of consent by the nominee himself, or change in the nominee by the member, or in case of cessation of member due to various reasons.
- User needs to select any one option as the purpose of filing the form. Based on this selection, serial number 4-9 will be displayed in the eForm.
- In case “Notice of withdrawal of consent by the nominee of OPC” selected, then serial no 4, 7 and 8 will be required to be filled by the user.
In case “Intimation about change in the name of the nominee of OPC” selected, then serial no 5 and 8 will be required to be filled by the user.

In case “Intimation of cessation” selected, then serial no 6, 7, 8 and 9 will be required to be filled by the user.

**Part A: Notice of withdrawal of consent by the nominee of OPC**

System will populate the names of old nominee and member of OPC on the basis of CIN and user is required to mention the date of notice of withdrawal of consent of old nominee.

**Part B: Intimation about change in nomination**

- System will populate the name of member, old nominee and of OPC on the basis of CIN.
- User is required to enter full name of new nominee and date of intimation by member to OPC for change in nomination.

**Part C: Intimation of Cessation of member**

- System will populate the name of member and OPC and user is required to enter date of cessation of member.
- User needs to select who has become the sole member of the OPC.
- Transferee can only be selected if change in ownership is selected as the reason of cessation and his/her nominee can be selected in case death or incapacity to contract as a reason of cessation.
- In case of notice of withdrawal of consent by the nominee, name of the member shall be pre filled based on CIN and only member can be selected in the drop down.
- In case of intimation of cessation of member, name of the member is required to be entered and only ‘new member’ can be selected in the drop down.
- Enter the particulars of nominee and ensure that approved DIN, if allotted and valid PAN is mentioned.

**Attachment:**
- Consent of the nominee in signed Form INC-3 along with all the enclosures. (Mandatory)
- Certified copy of PAN card of the new nominee and/or new member. (Mandatory)
- Proof of identity of the new nominee and/or new member. (Mandatory)
- Residential proof of the new nominee and/or new member. (Mandatory)
- It is mandatory to attach notice of withdrawal of consent in case withdrawal is by nominee.
- It is mandatory to attach copy of intimation for change in nominee in case intimation about change in the name of the nominee.
- It is mandatory to attach proof of cessation of member in case of intimation of cessation of member.

**Fee (in case of company having share capital)**

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
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<tr>
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<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>
Form No. INC-5

One Person Company- Intimation of exceeding threshold

- eForm INC-5 is required to be filed pursuant to Rule 6(4) of the Companies (Incorporation) Rules, 2014.

- One Person Company is required to give an intimation to the Registrar in Form No INC-5 informing that it has ceased to be a One Person Company by exceeding the threshold limit by virtue of either increase in its paid up share capital beyond fifty lakh rupees or increase in its average annual turnover during the relevant period beyond two crore rupees. OPC shall file this intimation within sixty days from the date of exceeding threshold and it will take necessary steps to convert itself into a private company or a public company as the case may be.

- Enter a valid CIN of One Person Company (OPC).

- Enter the amount of paid up share capital in case ‘Paid up share capital’ is selected in field 4(a). OR Enter the amount of average annual turnover in case ‘Average annual turnover’ is selected in field 4(a).

- Amount entered should be more than 50 lakh rupees in case of paid up share capital and 2 crore rupees in case of average annual turnover.

Attachment:

- Certified true copy of board resolution where person giving notice has been authorized

- Copy of the duly attested latest financial statements

- Certificate from a Chartered Accountant in practice for calculation of average annual turnover during the relevant period – This certificate is mandatory to attach if the threshold limit is exceeded on account of average annual turnover

Fee (in case of company having share capital)

<table>
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Form No. INC-6

One Person Company- Application for Conversion

- eForm INC-6 is required to be filed pursuant to Section 18 of Companies Act, 2013 and Rule 7(4) of the Companies (Incorporation) Rules, 2014

- This eForm is required to be filed in case of conversion of OPC into private or public or conversion of private into OPC. In case paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall make an application in Form INC-6 within 6 months from the effective date on which the above threshold limit was exceeded.

- However if any One Person Company wants to convert itself into private/public company then also it can voluntarily apply through Form INC-6 after two years of its incorporation. A private company can
also make an application for conversion into One Person Company by filing Form INC-6.

– Please ensure eForm MGT-14 (in case of conversion of OPC) and eform INC-5 (in case of mandatory conversion of OPC) must have been filed and approved before filing this eForm.

– In case of Conversion of OPC into private company or Conversion of OPC into public company, user is required to fill Part A and B of the eForm.

– In case of Conversion of Private company into OPC option, user will be required to fill Part B and C of the eForm.

– Enter a valid CIN of the company.

**Part A**

– Serial No 5(b) & (c), 6 and 7 is required to be filled by the user in case conversion of OPC is mandatory by the provisions of the Companies Act, 2013

– Date of exceeding the threshold limit: Ensure that the date you enter in this form is same as the date on which the paid up share capital or average annual turnover of the company, as the case may be has exceeded the threshold limit.

– Amount so exceeded the threshold limit : Enter the amount (paid up capital or average annual turnover)by which the OPC has exceeded the threshold limit. User is required to make sure that the date and amount entered should be same as mentioned in eForm INC-5.

– Specify the relevant period (in case turnover selected): Enter the relevant period in short description of immediately preceding three consecutive financial years when the average annual turnover of the OPC has exceeded the threshold limit of two crore rupees. For example 01/04/2014 to 31/03/2017 may be entered as a format of relevant period.

**Part B**

– Enter the details of special resolution authorizing conversion of company.

– Enter the authorized and paid up capital of the company after conversion.

– Enter the maximum number of members of the company.

**Part C- This part is required to be filled in case of conversion of private company into OPC**

– Enter an approved DIN, if any of the sole member of the OPC subsequent upon conversion.

– Enter the proposed name of the company subsequent upon conversion (after deletion of the word ‘Private’ and addition of the word OPC).

– Enter the full name of the Nominee

– User should ensure that nominee should be an Indian citizen and resident in India and should not be nominee to more than one OPC.

**Attachment:**

– It is mandatory to attach following with this eForm in all the three purposes

  – Altered Memorandum of association

  – Altered Articles of association

  – Copy of the duly audited and certified latest financial statement.

  – Copy of board resolution authorizing giving of notice
– It is mandatory to attach a certificate from Chartered Accountant if the conversion is, because of exceeding average annual turnover

– In case of conversion of private company into OPC, following attachments are mandatory:
  – Affidavit
  – Certified true copy of minutes, list of creditors and list of members.
  – Copy of NOC of every creditor.
  – Consent of the nominee in Form No. INC-3 along with all enclosures
  – Copy of PAN card of the nominee and member.
  – Proof of identity of the nominee and member.
  – Residential proof of the nominee and member.

**Fee (in case of company having share capital)**

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</table>

**Form INC – 7:**

**Application for Incorporation of Company (Other than OPC)**

– eForm INC-7 is required to be filed pursuant to Section 7 (1) of the Companies Act, 2013 and pursuant to Rule 10, 12, 14 and 15 of Companies (Incorporation) Rules, 2014

– User is required to file eForm INC-7 for incorporation of Company other than OPC within sixty days from the date of application of reservation of name in eForm INC-1.

– It is suggested that eForm DIR-12 and eForm INC-22 should be filed together at the time of filing of eForm INC-7 when address for correspondence is the address of registered office of the company.

– In case the address for correspondence is not the address of the registered office of the Company, user is required to file INC-22 within 30 days of its incorporation.

– Stamp duty on eForm INC-7, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through the MCA portal and in such case submission of physical copies of the uploaded eForm INC-7, MoA and AoA to the office of RoC is not required.

– Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf.

– Now eStamp duty payment is to be done online through MCA portal for all the states.

– Refund of stamp duty, if any, will be processed by the respective state or union territory government in accordance with the rules and procedures as per the state or union territory stamp Act.

– User is required to scan the photograph of every subscriber with MOA and AOA.
– Enter the approved SRN of eForm INC-1 filed for reservation of name. Please note that in case of application for section 8 company, a license should have been issued against the name of the company. For incorporation of a company licensed under Section 8 of the Companies Act, 2013 obtain a license from the Regional Director (RD) by filing application in eForm (RD-1-attachment INC-12). The license number received from RD will be displayed based on the above mentioned SRN of eForm INC-1.

– The company can have its registered office from the date of incorporation or on and from the 15th day of its incorporation. Till the same is established and intimated to the RoC, company can have its correspondence address capable of receiving and acknowledging all communications and notices as may be addressed to it.

– User is required to file eForm INC-22 in case address of correspondence is same as address of registered office of the company. If not, enter the details in 3(d) for address for correspondence till the registered office is established.

– Enter the valid email id of the company. Ensure that this email ID is valid as intimation regarding processing of the eForms, important communication from RoC office shall also be communicated electronically at the email ID being mentioned here.

– Enter the details of authorized and subscribed share capital break up in case of a company having share capital. Minimum authorized share capital required for a private company having share capital is Rs.100000/- and in case of a public company having share capital is Rs. 500000/- . The subscriber to the Memorandum shall ensure that the payment for the total amount of shares subscribed by him is made to the company upon incorporation.

– Enter the number of shares, total amount of shares and nominal amount per share for each type of share. At least one type of share capital (Equity/ Preference) should be greater than zero.

– In case company has shares of multiple nominal amounts per share, then enter multiple nominal values per share separated by comma in the field **Nominal amount per share**.

– Enter the amount of subscribed capital. In case the Company is a private company, the amount of subscribed capital should be greater than or equal to Rs 1 lakh. In case the Company is a public company the value should be greater than or equal to Rs 5 lakh. The subscribed capital of the company has to be less than or equal to authorized capital of the company.

– Enter the details of number of members in case of a company not having share capital.

– Enter the maximum number of members and maximum number of members excluding proposed employee(s). Maximum number of members excluding proposed employee(s) should not be greater than 200 in case of a private company.

– Enter a valid main division code provided in categories and divisions (codes).

– Enter the number of promoters (proposed first subscribers to Memorandum of association (MoA)). Minimum number of promoters should be two in case of a Private company and seven in case of a Public company. Based on the number entered here, blocks for entering the details of promoters shall be displayed.

– Details of maximum seven promoter(s) can be filed through this eForm. If the total number is more than seven, then details of remaining person(s) can be provided through attachment ‘Annexure containing details of subscribers.

– Please ensure that the details of promoters entered are same as the details of promoters entered in corresponding eForm INC-1. In case details of any one or more of the promoters as entered in eForm INC-1 is not entered in this form, then it shall be mandatory to provide ‘No objection certificate’ from such promoter(s) as an attachment.
– Select the category of the promoter. In case the promoter is an individual, enter either DIN or Income-tax PAN or passport number. In case DIN is entered it should be an approved DIN. In case of Passport number, prefix the number with zero(s) (0) to make it a 12 digit number.

– In case promoter is a company or a foreign company under section.379, enter the corporate identity number (CIN) or foreign company registration number (FCRN) respectively. Status of CIN and FCRN should be Active.

– In case promoter is a company incorporated outside India or body corporate or others, enter the registration number of the promoter.

– Where the Articles of Association of the company contains provisions of entrenchment to the effect that specified provisions may be altered only upon the satisfaction of conditions or procedures as that are more restrictive than those applicable in case of a special resolution are complied with.

– Enter the details of such entrenched articles. Enter the number of articles to which provisions of entrenchment shall be applicable.

– System shall automatically display the state or union territory for which stamp duty is to be paid and also amount of stamp duty to be paid on Form INC-7, MoA and AoA based on the state wise stamp rules.

– Declaration: Select one of the option from the values –Director / Manager / Company Secretary for giving declaration. Also Select one of the practicing professionals (Chartered Accountant/ Company Secretary/ Cost Accountant/ Advocate) who is engaged in formation of the company and enter full name of such person.

Attachments:

– It is mandatory to attach Memorandum of Association, Articles of Association, declaration in form INC-8, affidavit from the subscriber to the memorandum in Form No. INC-9, proof of residential address which should not be older than two months, and proof of identity

– It is mandatory to attach Specimen Signature in Form INC-10.

– It is mandatory to attach entrenched Articles of association if any of the articles are entrenched.

– Copy of in principle approval granted by the Reserve Bank of India or any concerned authority in case proposed company shall be conducting NBFI activities

– NOC in case there is change in the promoters (first subscribers to Memorandum of Association)

– Proof of nationality in case the subscriber is a foreign national

– PAN card (in case of Indian national)

– Copy of certificate of incorporation of the foreign body corporate and proof of registered office address

– Certified true copy of board resolution/consent by all the partners authorizing to subscribe to MOA

Linked Filing:

– INC – 22
– DIR – 12
– URC – 1
Fees:

1. Memorandum of Association (MOA) filing fee (in case of company having share capital)

<table>
<thead>
<tr>
<th>Nominal Share capital</th>
<th>Other than OPCs and Small Companies</th>
<th>*Small Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fixed</td>
<td>For every 10,000 or part thereof</td>
</tr>
<tr>
<td>Up to 1,00,000</td>
<td>5,000</td>
<td>NA</td>
</tr>
<tr>
<td>More than 1,00,000 up to 5,00,000</td>
<td>5,000 +</td>
<td>400</td>
</tr>
<tr>
<td>More than 5,00,000 up to 10,00,000</td>
<td>21,000 +</td>
<td>300</td>
</tr>
<tr>
<td>More than 10,00,000 up to 50,00,000</td>
<td>36,000 +</td>
<td>300</td>
</tr>
<tr>
<td>More than 50,00,000 up to 1,00,00,000</td>
<td>1,56,000 +</td>
<td>100</td>
</tr>
<tr>
<td>More than 1,00,00,000</td>
<td>2,06,000 +</td>
<td>75</td>
</tr>
</tbody>
</table>

At the time of incorporation of the company, if fee payable on authorized capital is exceeding Rupees two crore and fifty lakhs then the fee applicable shall be limited to two crore and fifty lakhs only.

Memorandum of Association (MOA) filing fee (in case of company not having share capital)

<table>
<thead>
<tr>
<th>Number of members</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 20 members</td>
<td>2,000</td>
</tr>
<tr>
<td>More than 20 but up to 200 members</td>
<td>5,000</td>
</tr>
<tr>
<td>More than 200 members (If number of members not stated as unlimited in AOA)</td>
<td>5,000 + Rupees 10 for every member, after the first 200</td>
</tr>
</tbody>
</table>

The maximum fee payable to the Registrar for registration of a new company not having share capital is fixed at rupees 10,000.

2. Fee for filing Articles of association (in case of company having share capital)

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

Fee for filing Articles of association (in case of company not having share capital)

| Fee applicable | Rupees 200 per document |
3. Fee for filing form INC-7 (in case of company having share capital)

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

Fee for filing Form INC-7 (in case of company not having share capital)
Rupees 200 per document

**FORM No. INC-18:**
Application to Regional director for conversion of section 8 company into company of any other kind

- eForm INC-18 is required to be filed pursuant to Section 8 (4) (ii) of the Companies Act, 2013 and Rule 21(3) of Companies (Incorporation) Rules, 2014.
- An existing company registered under section 8 seeks to convert itself into a company of any other kind shall make an application to the Regional Director for conversion of its status. Once the approval is given by the Regional Director, the company shall cease to enjoy all the privileges/ concessions obtained by it on account of being a Section 8 company.
- Enter a valid CIN.
- Describe the proposed objects of the company after the conversion.
- Explain the changes in activities and operations of the company after conversion
- Explain the manner of application/ use of the company’s income and assets after the proposed conversion.
- Explain in detail the reason for converting the section 8 company into any other kind of company.
- Enter the SRN of eForm MGT-14 filed for special resolution authorizing conversion of section 8 company into any other kind.
- Enter DIN/ Income tax PAN of the director and KMP associated with CIN only.
- The company is required to attach the proof of payment for the difference amount between cost of acquisition and market price at the time of conversion to the government or such authority if it has acquired any immovable property free of cost or at concessional rate since incorporation.
- User is required to specify the balance amount of accumulated profit or unutilized income after payment of all outstanding statutory or other dues as the same is required to be transferred to IEPF by the company within 30 days of approval of conversion.
- The company is required to publish a notice in Form INC-19 in newspaper within a week from the date of this application and shall also send a copy of the notice along with application to the specified authorities as per rules of the state in which the registered office of the company is situated.
- User is required to file copy of publication of notice and also proof of serving such notice to the specified authorities.
- Select a professional (Chartered Accountant/ Company Secretary/ Cost Accountant) from the list of
drop down values who has been engaged for giving declaration for compliance of conditions for conversion of section 8 into any other kind.

Attachments:
- Memorandum of association
- Articles of association
- Certified true copy of board resolution(s) authorizing conversion
- Certified true copy of the special resolution passed for approval for conversion into any other kind and notice convening the general meeting along with the relevant explanatory statement annexed thereto
- Certificate from CA/CS/CWA (in practice) certifying that the conditions laid down in the Act and rules, have been complied with
- Statement of assets and liabilities of the company as on the date not earlier than thirty days of that date duly certified by the auditor
- Copy of valuation report by a registered valuer about the market value of assets
- Audited financial statements, the Board’s reports, annual returns and the audit reports for each of the two financial years immediately preceding the date of the application or, where the company has functioned only for one financial year, for such year
- NOC from all the creditors is mandatory in case yes is selected in field 7.

The following attachments are optional:
- Statement of financial position if applicable
- Full details of fixed assets alienated if any, during the preceding three financial years.
- Written consent of the lenders is mandatory if any loan is outstanding.
- NOC from the concerned authority in case special status is mandatory when the company has obtained any special status/ privilege
- Proof of payment of differential amount is mandatory if the company has acquired any immovable property through lease or otherwise from any Government or authority or body corporate or person since incorporation at concessional rate or free of cost.
- Details of donation/grant/benefit received since incorporation of company is mandatory if company has received any donation and/or grant/benefits from any person or authority since incorporation.
- Copy of NOC received from sectoral regulatory authority is mandatory if company is being regulated by any sectoral regulator.

Fees: Rs. 2000/-

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in wholetime practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.
Lesson 16 - E-filing 529

FORM No. INC-20

Intimation to Registrar of revocation/surrender of license issued under section 8

- eForm INC-20 is required to be filed pursuant to section 8 (4) & 8 (6) of the Companies Act, 2013 and Rule 23 of Companies (Incorporation) Rules, 2014.

- License granted to a company under section 8 may be revoked by the Central Government and on such revocation or the company itself wants to surrender the license granted, an intimation of such revocation or surrender of license shall be filed with the Registrar by the company in eForm INC-20. Registrar shall enter the word(s) “Limited” or “Private Limited” as the case may be at the end of the name of the company and the company shall cease to enjoy the exemptions/privileges granted to it under section 8 of the Act.

- User shall ensure that company filing the eForm is not defaulting in filing annual returns and financial statements for any year.

- User is required to select the options whether application is being filed voluntary or on directions of Central Government.

- Ensure that eForm INC-18 for conversion of section 8 company into any other kind must have been filed and approved in case voluntary option is selected by the user.

  Enter the details of the order (date of issue of order and due date for filing the order) issued by the Regional Director in case of surrender and details of order (date of issue of order and due date for filing the order) issued by Central Government in case of revocation.

- Enter the details of approved SRN of eForm INC-18 in case of surrender of license.

- Enter the reason for revocation/ surrender of such license.

- Enter the name of the company after revocation/ surrender of license with the addition of the word private limited or limited as the case maybe.

Attachments:

- Copy of Order of Central Government

- Certified true copy of altered memorandum and articles of association

- It is mandatory to attach declaration of directors for compliance of conditions in case of surrender of license

Fee: Rs. 2000/-

Form No. INC-21

Application for Declaration prior to the commencement of business or exercising borrowing powers

- This form is required to be filed pursuant to Section 11 (1) (a) of the Companies Act, 2013 and Rule 24 of the Companies (Incorporation and Incidental) Rules, 2014.

- Company having share capital can commence the business and exercise its borrowing powers only after filing a declaration in eForm INC-21 and particulars of the registered office address with the concerned RoC.

- Specify the name of the regulator

  - Enter the name of the sectoral regulator in case the affairs of the Company is regulated by any sectoral regulator (like RBI in case of NBFI activities, IRDA, SEBI or others.
– In case of others, specify the name of the regulator and mention the registration/letter number and also date of approval/registration.

– Particulars of the paid up capital

– Enter the details of the shares taken up and paid by the subscribers to the MOA.

– The subscribers to the Memorandum shall ensure that the payment for the total amount of shares subscribed by them is made to the company. The subscribed capital entered in the form will be updated as the paid up capital of the company in its master data.

– Enter the number of shares, total amount of shares and nominal amount per share for each type of share. At least one type of share capital (Equity/ Preference) should be greater than zero.

– In case company has shares of multiple nominal amounts per share, then enter multiple nominal values per share separated by comma in the field Nominal amount per equity/preference share.

– Ensure that the minimum paid up capital is one lakh rupees in case of private company or one person company and five lakh rupees in case of public company.

– Particulars of payment of stamp duty

– Enter the relevant details of stamp duty paid under the relevant stamp Act.

– Enter the state/union territory for which stamp duty is required to be paid. It should be the same state where the registered office of the company is situated.

– Enter the amount of stamp duty to be paid or already paid. In case stamp duty is not applicable, zero may be entered.

– Select the mode of payment.

– Enter the following details in case mode of payment is Manual

  – Name of the vendor selling stamp papers on behalf of the government

  – Serial number of stamp paper

  – Registration number of vendor

  – Date and place of purchase of stamp paper

  – Name of vendor, serial number of stamp paper and registration number of vendor is mandatory to enter if the amount of stamp duty is more than or equal to Rs 50/-

  – Enter the board resolution serial number and date of board meeting where director is authorized to sign and give a declaration under section 11(1) (a) of the Act.

Attachments

– Specimen signature of all the subscribers to MOA duly verified by respective bankers in form INC-10 is mandatory in all cases.

– Certificate of Registration issued by the Reserve Bank of India (Only in case of Non-Banking Financial Companies) /from other regulators. This is mandatory to attach in case the affairs of the Company is regulated by any sectoral regulator.

– Attach proof of payment of stamp duty in case the same is already paid.

Certificate by practicing professional

The e-form should be certified by a Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of professional and whether he or she is Associate or Fellow.
Form No.INC-22

**Notice of situation or change of situation of registered office**

- eForm INC-22 is required to be filed pursuant to Section 12 (2) & 12 (4) of the Companies Act, 2013 and Rule 25 & 27 of the Companies (Incorporation) Rules, 2014

- The company is required to furnish to the Registrar verification of its registered office in eForm INC-22 within a period of thirty days from the date of its incorporation. The company can also specify the address of registered office at the time of filing incorporation eForms. For this, the applicant shall upload eForm INC-22 as linked form to eForm INC-7. In case of One Person Company, the particulars of the registered office address can be filed in eForm INC-2 only.

In case of a new company:

- Enter an approved SRN of eForm INC-1 filed for name reservation in case of new company.

- Enter the date of establishing the registered office of the company. The company shall have its registered office on and from the fifteenth day of its incorporation. New company will select the option from the date of incorporation of the company.

- Select the type of ownership of the registered office.

- Enter the details of the address of the police station under whose jurisdiction the registered office of the company is situated.

- Select the utility services like telephone, gas, electricity or mobile as a proof of address of the registered office of the company from the drop down values.

**Attachments:**

- Proof of registered office address (Conveyance/ Lease deed/ Rent Agreement etc. along with the rent receipts is required to be attached).

- Copies of the utility bills (proof of evidence of any utility service like telephone, gas, electricity etc. depicting the address of the premises not older than two months is required to be attached).

- Proof that the company is permitted to use the address as the registered office of the Company ..........
  (Authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity/ person (not taken on lease by company).

In case of existing company

- In case the registered office of the company is shifted from the jurisdiction of one RoC office to another RoC office within the same state or otherwise then the company is required to file both eForm INC-23 for RD’s approval and eForm INC-28 (old Form 21) for notice of RD’s approval order and eForm INC-22 only once.

- Old RoC office shall process the eForm and forward the same to the new RoC office for registration. Please note that approval of such eForm INC-22 shall not be allowed in case there is any other eForm(s) pending for payment of fee or is under processing in respect of the company.

- Company shall be required to obtain the changed CIN and the Certificate for change of registered address from the RoC office, where the company is shifting (that is from the office of new RoC).

- Enter the SRN of relevant eForm 23/MGT-14 in case purpose of the eForm is other than ‘Change within local limits of city, town or village’.

- Enter the SRN of relevant eForm INC-28 (old Form 21) for notice of approval of RD’s order for shifting the registered office from one RoC to another within the same state or from one state to another.

- Enter the date of order of Regional Director case of change of registered office for shifting the registered office from one RoC to another within the same state or from one state to another.
Certificate by practicing professional:

- The eForm is required to be certified except filing by OPC, by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the eForm.
- Select the relevant category of the professional and whether he/she is an associate or fellow.
- Enter valid membership number and certificate of practice number of the practicing professionals.

Attachment:

- Proof of Registered Office address (Conveyance/Lease deed/ Rent Agreement etc. along with the rent receipts).
- Copies of the utility bills (proof of evidence of any utility service like telephone, gas, electricity etc. depicting the address of the premises not older than two months is required to be attached).
- Altered Memorandum of association. This is mandatory to attach in case of shifting of registered office from one state to another within the jurisdiction of same RoC or from one state to another outside the jurisdiction of existing RoC.
- A proof that the Company is permitted to use the address…… Authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity/person (not taken on lease by company).
- Certified copy of order of competent authority. It is mandatory to attach in case of shifting of registered office from one RoC to another within the same state or from one state to another within the jurisdiction of same RoC or from one state to another outside the jurisdiction of existing RoC.
- List of all the companies (specifying their CIN) having the same registered office address, if any.

Certificates

In case of change in registered office from one state to another, a new CIN shall be allocated to the company as per the new state code and a system generated certificate of shifting of registered office from one state to another state is issued by the new Registrar. A certificate of shifting of registered office from jurisdiction of one RoC to the other RoC within a State is also issued by new Registrar and sent to the user. These certificates are sent as an attachment to the email, after approval is granted.

Fees:

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

In case of company not having share capital
Rupees 200

Form No.INC-23

Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State

- eForm INC-23 is required to be filed pursuant to Section 12(5) & 13(4) of the Companies Act, 2013 and rule 28 & 30 of the Companies (Incorporation) Rules, 2014.
In order to shift the registered office of the company from one state to another or from jurisdiction of one Registrar of Companies to another, an application in eForm INC-23 has to be made to the Regional Director (Central Government) for his confirmation/ approval.

Select one of the options:
- one state to another state
- one Registrar of Companies to another Registrar of Companies within the state

Select the office of the Registrar of Companies from drop down values where the new registered office of the company will be situated.

Enter the details of the eForm MGT-14 filed with RoC for registration of special resolution passed for shifting of registered office of the company.

Enter the details of number of members and number of shares held by them. In case of companies not having share capital, zero may be entered as number of shares held.

Ensure that number of members voted against the resolution should not be more than one third of the total number of members present at the meeting.

User is required to give these details in case of shifting of registered office from one state to another and specify the date of service of application with all the annexures to Registrar and Chief secretary of the state in which the registered office of the company is situated.

User is required to publish the notice of application in newspaper in INC-26 and sent the copy of publication by registered post to every debenture holder and creditor of the company and also to Registrar and other regulatory body, if any. The notice is required to be published at least 14 days before hearing in case of shifting of registered office from one state to another and not less than one month before filing application in case shifting of registered office within the state.

**Declaration:**

Enter the serial number of the resolution and date of board meeting authorizing the signatory to sign and submit the application.

**Attachments:**

The following attachments are mandatory in all cases:
- Memorandum of Association and Articles of Association.
- Certified true copy of notice of the general meeting along with relevant explanatory statement.
- Certified true copy of special resolution sanctioning shifting of registered office.
- Certified true copy of the minutes of the general meeting authorizing such alteration.
- Proof of service of the application to the Registrar, Chief Secretary of the state, SEBI or any other regulatory authority, if applicable.

In case registered office is shifted from one state to another state the following attachments are mandatory:
- Power of attorney/vakalatnama/Board resolution.
- List of creditors and debenture holders.
- Affidavit from Directors in terms of rules.
- Affidavit verifying the application.
- Affidavit by the company secretary of the company and the directors in regards to the correctness of list of creditors and affairs of the company.
- Affidavit by directors about no retrenchment of employees.
- Affidavit verifying the list of creditors.
- It is mandatory to attach in case if there is any prosecution is pending against the company or if any inquiry, inspection or investigation is initiated against the company.
- Copy of newspaper advertisement for notice of shifting the registered office. It is mandatory to attach copy of newspaper publication in case if the registered office is shifting within the state.
- Copy of objections (if received any)

**Fees:**

**The Companies (Registration offices and fees) Rules, 2014**

<table>
<thead>
<tr>
<th>Application made</th>
<th>Other than OPC &amp; Small company</th>
<th>OPC &amp; Small company</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) By a company having an authorized share capital of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Up to Rupees 25,00,000</td>
<td>2,000</td>
<td>1,000</td>
</tr>
<tr>
<td>(b) Above Rupees 25,00,000 but up to Rupees 50,00,000</td>
<td>5,000</td>
<td>2,500</td>
</tr>
<tr>
<td>(c) Above Rupees 50,00,000 but up to Rupees 5,00,00,000</td>
<td>10,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(d) Above Rupees 5,00,00,000 but up to Rupees 10 crore</td>
<td>15,000</td>
<td>N/A</td>
</tr>
<tr>
<td>or more</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Above Rupees 10 crore</td>
<td>20,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(ii) By a company limited by guarantee but not having a share capital</td>
<td>2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(iii) By a company having a valid license issued under section 8 of the Act (Section 8 Company)</td>
<td>2,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Form No. INC-24**

**Application for approval of Central Government for change of name**

- This form is required to be filed pursuant to Section 13 (2) of the Companies Act, 2013 and rule 29(2) of the Companies (Incorporation) Rules, 2014.
- An existing company seeking for change of name shall apply to Central Government (RoC) by filing an application in eForm INC-24. For changing the name, company is required to have a name reserved by filing eForm INC-1 and shall have passed the special resolution.
- Enter an approved SRN of eForm INC-1
- User needs to file this eForm within 60 days from the date of applying for reservation of name by way of filing eForm INC-1
- Enter the reason(s) due to which the company wishes to apply for the change of name of the company.
- Enter the SRN of eForm MGT-14 filed for registration of special resolution passed for change of name.
- Enter the details of the number of members and the number of shares held by them.
- Ensure that number of members voted against the resolution for change of name should not be more than one third of the total number of members present at the meeting.

**Attachment(s):**

- Certified true copy of minutes of the general meeting of the members where the special resolution was passed for change of name of the company is required to be attached.
Copy of any approval order obtained from the concerned authorities (such as RBI, IRDA, SEBI etc.) or the concerned department.

If change of name is due to change in main activity of the company, a certificate from chartered accountant regarding turnover details from new activity should be enclosed.

Fees:

The Companies (Registration offices and fees) Rules, 2014

<table>
<thead>
<tr>
<th>Application made</th>
<th>Other than OPC &amp; Small company</th>
<th>OPC &amp; Small company</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) By a company having an authorized share capital of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Up to Rupees 25,00,000</td>
<td>2,000</td>
<td>1,000</td>
</tr>
<tr>
<td>(b) Above Rupees 25,00,000 but up to Rupees 50,00,000</td>
<td>5,000</td>
<td>2,500</td>
</tr>
<tr>
<td>(c) Above Rupees 50,00,000 but up to Rupees 5,00,00,000</td>
<td>10,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(d) Above Rupees 5,00,00,000 but up to Rupees 10 crore or more</td>
<td>15,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(e) Above Rupees 10 crore</td>
<td>20,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(ii) By a company limited by guarantee but not having a share capital</td>
<td>2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(iii) By a company having a valid license issued under section 8 of the Act (Section 8 Company)</td>
<td>2,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Form No. INC-27

Conversion of public company into private company or private company into public company

- eForm INC-27 is required to be filed pursuant to section 14 of the Companies Act, 2013 and rule 33 of Companies (Incorporation) Rules, 2014.
- Whenever an existing company needs to change its status from private to public or vice versa, it shall be required to file this eForm. For the purpose of conversion from private company to public company, a private company is required to pass special resolution and file an intimation of its conversion in eForm INC-27. A Public company can also get itself converted into a private company by filing eForm INC-27 subject to passing of the special resolution and approval of the competent authority.
- Describe the reason for conversion.
- Enter particulars of eForm MG-.14 filed for registration of resolution. Ensure that altered Memorandum and articles of association is filed as an attachment to eForm MGT-14, as applicable.
- Enter the details of number of members and number of shares held by them. In case of companies not having share capital, zero may be entered as number of shares held.

Attachments:

- It is mandatory to attach Minutes of the member’s meeting where approval was given for conversion and altered articles of association.
- It is mandatory to attach order of competent authority in case of conversion from public company to private company.
- It is also mandatory to attach certified copy of order for condonation of delay in case it is filed after due date of filing;
Certificate:

Fresh Certificate of incorporation consequent upon conversion from public company to private company or vice versa is generated and sent to the user as an attachment to the email.

Fees:

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

Fee (in case of company not having share capital)

Rupees 200

**Form No. INC-28**

**Notice of Order of the Court or any other competent authority**

- eForm INC-28 is required to be filed pursuant to Section 12(6), 13(7), 58(5), 87 & 111(5) of the Companies Act, 2013 and section 81(4), 102(1), 107(3), 167, 186, 391, 394, 396, 397, 398, 445, 481, 466, 518, 559 & 621A of the Companies Act, 1956.

- Registrar needs to be informed about the order of Court or Tribunal or any other competent authority for which the company or liquidator has to file eForm INC-28 with RoC informing about the order, which may take the form of approval or extension of time or condonation of non-compliance.

- In case filing is not done within due date, user is required to seek condonation of delay.

- Select the authority passing the order.

- Enter the name and location of the court or competent authority, of which the order is being filed through this eForm.

- Enter the petition or application number and the order number. In case the same is not applicable, then enter ‘Not Applicable’.

- Enter the date on which order is passed.

**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

In case of amalgamation, mention whether company filing the form is transferor or transferee:

- Select the Section of the Companies Act, 1956 or of Companies Act, 2013 under which the order has been passed.
If the order has been passed under a section other than the listed down sections then select ‘Others’ and specify the section under which order has been passed. Ensure that you select the correct section as the processing of this and/or other eForms by the RoC office shall be dependent upon the same.

In case the **order is in respect of amalgamation of companies in public interest** under section 396, then section **396** is to be selected.

In case the **order is in respect of amalgamation of companies** under section 394(1), then section **394(1) – Amalgamation** is to be selected.

In case the **order is in respect of demerger** of the company under section 394(1), then section **394(1) – Demerger** is to be selected.

In case the **order is in respect of amalgamation of companies** under any section other than section 394(1) or 396, then also section **394(1) – Amalgamation** is to be selected and the eForm is to be filed accordingly.

Please note that in case the **order is in respect of section 394 but is not in respect of amalgamation or demerger** then section **394(1)-Others** is to be selected.

Please note the following:

- In case section selected is 394, 396 or 445, status of company filing the eForm should be Active or Under Liquidation.
- In case section selected is 466, status of company filing the eForm should be Under Liquidation.
- In case section selected is 481, status of company filing the eForm should be Under Liquidation or Dissolved.
- Section 445, 466, 481, 559 shall not be allowed in case FCRN is entered and Section 396 can be selected only in case order is passed by ‘Central Government’.
- Enter the number of days within which order is to be filed with Registrar. This shall be entered in pursuance to aforesaid sections or in terms of court order or order of the competent authority, as the case may be. In case the section or Court order does not provide for the number of days within which order is to be filed, then the form should be filed at the earliest.
- Enter the date of application to court or CLB or the competent authority for issue of certified copy of order and the date of issue of certified copy of order.
- In case no application is required to be made; then enter the date of passing the order as the date of application.
- Ensure that you enter the correct details as based on the same, system will automatically display the due date by which order is to be filed with Registrar.
- In case the eForm is being filed after the due date, then in such case, it shall be required to get the delay condoned and thereafter file the order for condonation of delay in another eForm INC-28.
- Please note that this form cannot be approved unless an eForm INC-28 (filed for condonation of delay) having SRN of this eForm has been approved.
- In case the eForm is filed in respect of order for compounding of offence (section 621A), mention the SRN of eForm 61, if any, filed for application for compounding of offences. Maximum of three SRNs can be entered here. Details of any additional SRN can be provided as an optional attachment.

**In case of amalgamation, mention whether the company filing the form is transferor or transferee:**

- It is mandatory in case section selected is 394(1)-Amalgamation or 396 or Amalgamation- Other

**In case the company filing the eForm is the transferor company:**

- Enter the appointed date of amalgamation.
Please note that approval of the eForm shall not be allowed unless all other pending eForms in respect of the company are closed in the system.

In case the company filing the eForm is the transferee company:

System shall automatically display the CIN and name of the transferee company based on the CIN entered.

Enter the appointed date of amalgamation in respect of the transferee company.

Enter the number of transferor company(s) for which the eForm is being filed. (Based on the number entered here, number of blocks shall be displayed for entering the details). Details of maximum twenty (20) transferor companies can be provided through this eForm. If the total number is more than twenty, then file another eForm INC-28 for the remaining transferor company(s).

Transferee company cannot be selected in case form is being filed by a foreign company.

Select the category of the transferor company. In case transferor company is an Indian company or a foreign company, enter the corporate identity number (CIN) or foreign company registration number (FCRN) respectively. In case transferor company is a company incorporated outside India or body corporate or others, enter the registration number.

Enter the appointed date of amalgamation in respect of transferor company. In case transferor company is an Indian company or a foreign company, enter SRN of eForm 21/INC-28 filed by the transferor company for amalgamation.

Separate SRNs to be mentioned for each transferor company. Please ensure that you enter the correct SRN of eForm 21/INC-28 filed by the transferor company, as approval of this eForm shall not be allowed in case the status of SRN of eForm 21/INC-28 filed by the transferor company is not approved.

Please note that approval of the eForm shall not be allowed unless all other pending eForms in respect of the company are closed in the system.

Ensure that you enter the correct amalgamation details.

Please note that upon approval of eForm INC-28 filed by transferee company, the status of the transferor company (s) shall be changed to ‘Amalgamated’ (in case transferor company is Indian company) or ‘Inactive’ (in case transferor company is a foreign company and the amalgamation details shall be updated in the system.

Date of commencement of winding up under section 445 of the Companies Act, 1956:

This field is displayed in case section 445 is selected by the user in respect of winding up order under section 445, enter the date of commencement of winding up. Enter the income-tax PAN, name and address of the liquidator.

Ensure that you enter the correct winding up details. Please note that upon approval of this eForm, the status of the company shall be changed to ‘Under liquidation’ and the winding up details shall be updated in the system. Please note that status of the company shall not be changed to ‘Under liquidation’ if there are any pending eForms in respect of the company.

In case the eForm is being filed in respect of order for staying of winding up proceedings under section 466, enter the date with effect from which winding up proceedings have been stayed. Ensure that you enter the correct details. Please note that upon approval of this eForm, the status of the company shall be changed from ‘Under Liquidation’ to ‘Active’ and the details shall be updated in the system. Please note: Upon change in status of the company to Active, details of active authorized signatories of the company existing in the system shall be deactivated. In such cases, the company shall be required to approach the concerned RoC office and get the details in respect of an authorized signatory of the company updated in the system (for role check purposes).
In case the eForm is being filed in respect of dissolution order under section 481, enter the date of dissolution. Ensure that you enter the correct dissolution details. Please note that upon approval of this eForm, the status of the company shall be changed to ‘Dissolved’ and the dissolution details shall be updated in the system. Please note that status of the company shall not be changed to ‘Dissolved’ if there are any pending eForms in respect of the company.

In case the eForm is being filed for order for declaring the dissolution as void under section 559, enter the date with effect from which dissolution has been declared as void.

In case the court order is in respect of company which has been dissolved under section 394.

Enter the CIN or FCRN of the transferor company whose dissolution has been declared as void. Status of CIN of the transferor company should be ‘Amalgamated’. In case FCRN is entered, its status should be ‘Inactive’. On clicking the Pre-fill button, system will automatically display the name of the transfer or company and the date of its amalgamation, if available. In case the date of amalgamation is not displayed, the same will need to be entered.

Approval of the eForm will not be allowed in case the name of transferor company has already been allotted to any other company or applicant. For such cases, approval of the form will be allowed only when such name is withdrawn by the concerned office of the registrar of companies (RoC) or the other company changes its name, as the case may be.

Ensure that you enter the correct details. Please note that upon approval of this eForm, the status of the transferor company will be changed to ‘Active’.

In case the court order is in respect of company which has been dissolved under section other than section 394:

Status of company filing the eForm should be Dissolved. Upon approval of this eForm, the status of the company filing the form will be changed to ‘Active’. Please note: Upon change in status of the company to Active, details of active authorized signatories of the company existing in the system shall be deactivated. In such cases, the company shall be required to approach the concerned RoC office and get the details in respect of an authorized signatory of the company updated in the system (for role check purposes).

Enter SRN of eForm 18/INC.22 in case the order being filed is in respect of section 13(7). This is required to be entered in case the relevant eForm 18/INC.22 has been filed before filing this eForm. Enter SRN of eForm 8, 10 or 17 or CHG-1 or CHG-4 or CHG-9; as applicable in case section 87 (condonation of delay in filing of charge form) is selected.

Ensure that you enter the correct SRN of the relevant charge eForm CHG-1/CHG-4/CHG-9 (condonation of delay case) as the same shall not be approved unless a corresponding eForm INC-28 has been filed for condonation of delay.

Enter SRN of Form 23/MGT-14 in case section 66(5) for reduction in capital is selected and enter the date of special resolution under section 66(5). Ensure that you enter the correct date as the same shall be displayed in the certificate to be issued by the RoC office. This shall be displayed in case section 66(5) is selected.

Enter SRN of Form 24AAA/INC.23/CHG-8, in case order being filed in respect of sections 13(7) or 87 or 188 selected in field 5 or you may enter ‘Z99999999’.

Select whether penalty is involved or not. If yes, then enter the SRN of payment of penalty.

Ensure the eForm is digitally signed by the Director, Managing director, Manager, Secretary, Liquidator or others in case of Indian Company. Liquidator shall be allowed to sign the eForm only in case the status of the company is ‘Under Liquidation’ or in case section for which form is filed is 252, 445, 466, 481, 559 or others. Ensure the eForm is digitally signed by authorised representative or others in case...
of Foreign Company. Enter the full name and designation of the person signing the eForm. In case
designation selected is “Others” then also enter the capacity in which the person is signing the eForm.

Attachment:
Copy of court order or NCLT or CLB or order by any other competent authority is a mandatory attachment.

Fees:

In case of company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

In case of company not having share capital

Rupees 200

In case of Foreign company

Rupees 6,000

Form No. PAS-3

Return of Allotment

– eForm PAS-3 is required to be filed pursuant to Section 39(4) and 42(9) of the Companies Act, 2013 and
  rule 12 and 14 Companies (Prospectus and Allotment of Securities) Rules, 2014.

– Whenever a company makes any allotment of shares or securities, it is required to file a return of
  allotment in eForm PAS-3 to Registrar within thirty days of such allotment including the complete list of
  allottees to whom the securities have been issued.

– You can file this form with different event dates (date of allotment) if these dates are within 30 days of the
  filing date. If any of the date(s) are beyond 30 days, then separate form is to be filed for every such event
  date.

– If it is required to file eForm MGT-14 in relation to the resolution passed for issue of shares; ensure that
  filing of eForm MGT-14 precedes filing of this eForm.

Securities allotted payable in cash

– Enter the details of securities allotted in cash.

– Enter the total number of allotments for which this eForm needs to be filed. Based on the number
  entered here, number of blocks shall be displayed for entering the details. Details of maximum five such
  allotments can be filed through this eForm. If the total number of allotments is more than five, then file
  another eForm PAS-3 for remaining such allotments.

– More than one option can be selected from equity with differential rights, equity without differential
  rights, debentures or preference shares in case more than one kind of security is allotted, otherwise
  select whichever is applicable.
Securities allotted for consideration otherwise than in cash

- Enter the details of securities allotted for consideration otherwise than in cash.
- Enter the total number of allotments for which this eForm needs to be filed. Based on the number entered here, number of blocks shall be displayed for entering the details. Details of maximum three such allotments can be filed through this eForm. If the total number of allotments is more than three, then file another eForm PAS-3 for remaining such allotments.
- More than one option can be selected from equity with differential rights, equity without differential rights, debentures or preference shares in case more than one kind of security is allotted, otherwise select whichever is applicable.
- Select whether an agreement or contract is executed in writing for allotting shares for consideration otherwise than in cash. In case any agreement or contract is not executed, then it is mandatory to attach stamped particulars of contract about the shares issued for consideration other than cash if such contract is not reduced to writing.

Bonus shares issued

- In case bonus shares are issued, enter the necessary details concerning such issue.

In respect of private placement

- Select the category to whom allotment is made in respect of private placement and it mandatory to select all checkboxes of (b) for declaration in case of private placement of offer is made by the company.

Capital structure of the company after taking into consideration

- Enter details for the authorized, issued, subscribed and paid up share capital break up after taking into consideration the allotments made.
- Enter the number of shares, total amount of shares and nominal amount per share for each type of share. In case the company having share capital, at least one type of share capital (Equity/ Preference) should be greater than zero. In case, the company is not having share capital, then the authorized share capital shall be zero.
- The paid up capital entered in the eform shall update the paid up capital of the company in master data.
- In case company has shares of multiple nominal amounts per share, then enter multiple nominal values per share separated by comma in the field Nominal amount per share.
- Enter the details of securities of the company after taking into consideration the allotment.
- In case the complete list is not attached, you need to submit the same in a CD separately with the office of concerned Registrar of Companies (RoC). Thereafter the said list would be uploaded in the system by the RoC office.

Format of the list of allottees:

Table A
Name of the company
Date of allotment
Type of securities allotted
Nominal Amount per security (in Rs.)
Premium/ (Discount) amount per security (in Rs.)
Total number of allottees
Brief particulars in respect of terms and condition, voting rights etc.
Table B (List of allottees, applicable in case of allotment of securities payable in cash)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name &amp; occupation of Allottee</th>
<th>Address of Allottee</th>
<th>Nationality of the Allottee</th>
<th>Number of shares allotted</th>
<th>Total amount paid (including premium) (in Rs.)</th>
<th>Total amount to be paid on calls (including premium) outstanding (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table C (List of allottees, applicable in case of allotment of securities for consideration otherwise than in cash)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name &amp; occupation of Allottee</th>
<th>Address of Allottee</th>
<th>Nationality of the Allottee</th>
<th>Number of securities allotted</th>
<th>Whether securities allotted as fully or partly paid up</th>
<th>If partly paid up amount outstanding (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table D (List of allottees, applicable in case of allotment of bonus shares)

<table>
<thead>
<tr>
<th>S.No</th>
<th>Name &amp; occupation of Allottee</th>
<th>Address of Allottee</th>
<th>Nationality of the Allottee</th>
<th>Number of shares allotted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

Attachment:

- List of allottees, separate list for each allotment is mandatory.
- Copy of Board or Shareholders’ resolution approving allotment of shares is mandatory in all cases
- Valuation Report from the registered valuer is mandatory in case obtained from valuer.
- Copy of Contract/Complete particulars of contract duly stamped is mandatory to attach in case securities are issued other than cash
- Complete record of private placement offers and acceptances in Form PAS-5 is mandatory in case of private placement
- Copy of the special resolution authorizing the issue of bonus shares is mandatory in case of bonus issue.

Fees:

In case of company have share capital
<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 1,000</td>
</tr>
</tbody>
</table>

In case of company does not have share capital
Rupees 200

**FORM No. SH-7**

**Notice to Registrar of any alteration of share capital**

- eForm SH-7 is required to be filed pursuant to Section 64 (1) of the Companies Act, 2013 and rule 15 of Companies (Share Capital & Debentures) Rules, 2014.
- Whenever a company alters its share capital/ number of members independently or increases the share capital by conversion of debentures/loans due to order of Central Government, then a return shall be filed with the registrar within 30 days of such alteration or increase. The return shall also be filed where the company redeems any redeemable preference shares.
- Stamp duty on eForm SH-7 can be paid electronically through the MCA portal.
- Payment of stamp duty electronically through MCA portal is mandatory in respect of the states which have authorized the Central Government to collect stamp duty on their behalf. Now eStamp duty payment is to be done online through MCA portal for all the states.
- Refund of stamp duty, if any, will be processed by the respective state/ union territory government in accordance with the rules and procedures as per the state/ union territory Stamp Act.
- If it is required to file eForm MGT-14 in relation to the resolution passed for change in capital structure and ensure that filing of eForm MGT-14 precedes filing of this eForm.
- Companies not limited by shares can change the status to company limited by shares by selecting the option for increase in share capital.
- Company not limited by shares cannot select the option for consolidation or division etc.
- Companies limited by shares cannot select the option for increase in number of members.

**Increase in share capital independently by company**

- Select the type of resolution and enter date of meeting in which the concerned resolution has been passed. Enter service request number (SRN) of eForm MGT-14, if any filed with RoC for the registration of the above resolution.
- Enter the revised authorized capital (after increase) of the company and amount of difference in authorized capital (addition).
- Enter the details for the break-up of the additional authorized capital for Equity shares and Preference shares and the conditions in respect of their issue.

**Increase in number of members**

- Select the type of resolution and enter date of meeting in which the concerned resolution has been
passed. Enter SRN of eForm MGT-14, if any filed with RoC for the registration of the above resolution.

- Enter the revised number of members (total maximum number of members after increase) of the company and difference in number of members (addition).

**Increase in share capital with Central Government order**

- Enter details in respect of the increase in authorized share capital. System will automatically display the existing authorized capital of the company. Enter the revised authorized capital (after increase) of the company and amount of difference in authorized capital (addition).

- Enter the date of the order of receiving the order by the company.

- Enter the details for the break-up of the additional authorized capital for Equity shares and Preference shares and the conditions in respect of their issue.

**Consolidation or division etc.**

- Enter the date on which the shares were consolidated or divided etc.

- Specify the details for the applicable option by selecting check box in (a) to (f)

**Redemption of redeemable preference shares**

- Enter the description of preference shares to be redeemed, date of issue of series of shares, date on which preference shares were fully paid up and its due date of redemption and other details with respect to redemption of preference shares.

**Revised capital structure after taking into consideration the changes**

- Enter details for the authorized, issued, subscribed and paid up share capital break up after taking into consideration the changes as entered in the eForm.

- Enter the number of shares, total amount of shares and nominal amount per share for each type of share. At least one type of share capital (Equity/ Preference) should be greater than zero.

- The authorized capital and paid up capital entered in the eForm shall update the authorized capital and the paid up capital, respectively of the company in master data.

- In case company has shares of multiple nominal amounts per share, then enter multiple nominal values per share separated by comma in the field **Nominal amount per share**.

- Select whether articles of association have been altered. In case articles have been altered then it shall be mandatory to attach copy of altered articles of association.

- System shall automatically display the amount of stamp duty to be paid on eForm SH-7 based on the state wise stamp rules.

**Attachment:**

- Certified true copy of the resolution for alteration of capital is mandatory in case of increase in share capital independently by company.

- Copy of order of central government is mandatory in case of increase in share capital with central Government order.

- Copy of the order of the tribunal is mandatory in case of increase in share capital with Central Government.

- Certified true copy of board resolution authorizing redemption of redeemable preference shares is displayed and mandatory in case of redemption of redeemable preference shares.

- Altered memorandum of association is mandatory in case of increase in share capital independently or by order of Central Government or increase in number of members.

- Altered articles of association is mandatory in case the same are altered.
– Working for calculations of ratios (in case of conversions) is mandatory in case of increase in share capital with central government order.

**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**Fees:**

Fee applicable in case purpose of form is:

– ‘Increase in Authorized Capital Independently’
– ‘Increase in Authorized Capital due to Central Government Order’

**MOA Registaration Fees**

<table>
<thead>
<tr>
<th>Nominal Share capital</th>
<th>Other than OPCs and Small Companies</th>
<th>OPC and *Small Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fixed</td>
<td>For every 10,000 or part thereof</td>
</tr>
<tr>
<td>Up to 1, 00, 000</td>
<td>5,000</td>
<td>NA</td>
</tr>
<tr>
<td>More than 1,00,000 up to 5,00,000</td>
<td>5,000 +</td>
<td>400</td>
</tr>
<tr>
<td>More than 5,00,000 up to 10,00,000</td>
<td>21,000 +</td>
<td>300</td>
</tr>
<tr>
<td>More than 10,00,000 up to 50,00,000</td>
<td>36,000 +</td>
<td>300</td>
</tr>
<tr>
<td>More than 50,00,000 up to 1,00,000</td>
<td>1,56,000 +</td>
<td>100</td>
</tr>
<tr>
<td>More than 1,00,00,000</td>
<td>2,06,000 +</td>
<td>75</td>
</tr>
</tbody>
</table>

At the time of increasing the authorized capital, if fee payable on increased authorized capital is exceeding Rupees two crore and fifty lakhs then the fee applicable shall be limited to two crore and fifty lakhs.

For increasing the authorized share capital, the difference between fee applicable on the increased share capital and fee applicable on existing authorized capital, at the rates prevailing on the date of filing the notice, shall be payable.

For this purpose, the rates will be same as specified above.

E.g. In case the authorized capital is increased by public company from Rupees 10,00,000 to Rupees 60,00,000, the fee payable will be calculated as:

Fees payable on Rupees 60,00,000 i.e. Rupees 166,000

(as per the rates prevailing on the date of filing)

**Less:** Fees payable on Rupees 10,00,000 i.e. 36,000

(as per the rates prevailing on the date of filing)
Fee payable will be Rupees 1,30,000.

Additional fee rules

<table>
<thead>
<tr>
<th>Delay up to 6 months</th>
<th>2.5% for the period of delay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay beyond 6 months</td>
<td>3% for the delay beyond 6 months</td>
</tr>
</tbody>
</table>

FORM No.SH-8

Letter of offer

- eForm SH-8 is required to be filed pursuant to Section 68 of the Companies Act 2013 rule 17(2) of the Companies (Share Capital & Debentures) Rules, 2014
- eForm SH-8 is required to be filled by the company for presenting letter of offer for buyback of its own shares or other securities. Letter of offer shall be filed by a company authorized by a special resolution for buyback of its own shares or other securities with the Registrar of Companies in eForm SH-8 before buy back.
- Enter the details of directors and key managerial personnel and the same shall be minimum three in case of public company and two in case of private company and one in case of OPC
- Present Capital structure of the company
- Enter the details of authorized and subscribed share capital which shall be minimum 1 lakh in case of private and OPC company and 5 lakh in case of a public company.
- Enter the date of Board of directors’ resolution approving or authorizing the buy back of securities.
- In case the buy back has been authorized by the members of the company, then enter the date of the special resolution of members. And also enter SRN of MGT-14 which is filed for such special resolution authorizing buy back.
- Enter the date of opening of offer.
- Enter the date of proposed completion of buy back which shall not exceed by more than twelve months from the date of special resolution or board resolution as the case may be.
- Enter the date of extinguishment of securities which shall not be more than seven days from the date of completion of buy back of securities.

Attachments:

- Details of the promoters of the company.
- Declaration by auditor(s).
- Certified true copy of the board resolution authorizing buy back.
- Copy of the notice of the general meeting issued under section 68(3) along with the explanatory Statement thereto,
- Audited financial statements of last three years.
- Buy back details of last three years is mandatory in case company has done any buy back in the last three years.
- Management discussion and analysis is mandatory in case of listed company.
- List of holding and subsidiary companies of the company if applicable
- Unaudited financial statements if applicable
- Statutory approvals received (if any)
- Details of the auditor, legal advisors, bankers and trustees (if any)
Fees:

In case of company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
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<tr>
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<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

FORM No. SH-11

Return in respect of buy-back of securities

- eForm SH-11 is required to be filed pursuant to Section 68(10) of the Companies Act 2013 and pursuant to rule 17(13) of the Companies (Share Capital and Debentures) Rules, 2014

- A company has to file return of buy back in eForm SH-11 to the Registrar within thirty days of completion of buy back containing the particulars of the buyback of shares and other securities.

- Enter the details with respect to name of stock exchange, date of listing and name of merchant banker appointed if the company is listed one.

- Enter the details of paid up capital of the company and same cannot be less than five lakhs in case of public company and one lakh in case of private company or OPC.

- Enter the date of board resolution approving or authorizing the buy back of shares or other securities. In case the buy back has been authorized by the members of the company, then enter the date of the special resolution of members passed in general meeting authorizing buy back of shares or securities.

- Enter the date of completion of buy back of securities and ensure that the buy back should be completed within twelve months from the date of special resolution passed in general meeting, if any or board resolution as the case may be.

- Enter service request number (SRN) of eForm MGT-14 relating to buy-back of securities.

- Enter approved SRN of eForm SH-9 in respect of filing of declaration of solvency.

Attachments:

- Description of shares or other specified securities bought back

- Particulars relating to holders of securities before buy-back

- Certified true copy of special resolution passed at the general meeting is mandatory in case date is entered in field 8(b)

- Certified true copy of board resolution authorizing buy back

- Balance Sheet of the company

- Compliance certificate for the buy-back rules as per the sub-rule (14)

Fees:

In case of company having share capital
FORM No. CHG-1

Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures

- eForm CHG-1 is required to be filed pursuant to Section 77, 78 and 79 and Section 384 and Rule 3(1) of the Companies Rules, 2014

- All the companies are required to file particulars for registration of charges created or modified within specified period to concerned Registrar of Companies. The charge can be created on various types of assets situated in or outside India and may be created in favor of lenders such as Banks or financial institutions. Every charge that is created or modified by the company is required to be filed in eForm CHG-1 to concerned RoC in case of Indian Company and RoC, Delhi in case of a foreign company.

- In case eForm is filed by the company within 300 days from the date of charge creation or modification (i.e. where condonation of delay is not required):
  - eForm shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the eForm are correct.
  - All following cases shall be processed by the office of Registrar of Companies:
    - In case eForm is filed by the charge holder beyond 30 and within 300 days from the date of charge creation or modification (i.e. where condonation of delay is not required and the company if having any concerns may contact the Registrar within 14 days. This eForm shall not be registered up to fifteen days from the date of filing); Or
    - In case eForm is filed by the company or the Charge-holder beyond 300 days from the date of charge creation or modification (i.e. where condonation of delay is required), then the application to Central Government for condonation of delay is required to be filed in eForm CHG-8 after filing this eForm and this eForm will be processed by the RoC office after order of Central Government for approval for condonation of delay in eForm INC.28 has been filed.
  - Select the purpose of the e-Form out of option available i.e. creation or modification of charge.
  - In case the eForm is to be filed for modification of charge, enter the charge identification number allotted at the time of registration of the charge.
  - Please note that charge ID entered for modification should be open charge ID and not satisfied.
  - Select whether the applicant is a company or a charge holder. Charge holder can file this eForm only after 30 days from the date of creation or modification of charges.
  - Condonation of delay is required for further extension of time from the Central Government in case the eForm is being filed beyond 300 days.
  - In case of modification of charge, select whether or not the charge is modified in favor of asset
reconstruction company (ARC) or assignee. In case ‘Yes’ selected, then attach debt assignment agreement as an optional attachment.

- In case of modification of charge if the charge has been modified in favor of asset reconstruction company (ARC) or assignee then select whether or not the charge holder is authorized to assign the charge as per the charge agreement.
- In case of creation of charge, enter the date of creation of charge. In case of modification of charge, enter the date of modification of charge
- In case of creation or modification of charge, enter the nature of the charge, a brief description of the instrument along with its particulars.
- In case the charge is created out of India and comprises solely of property situated outside India, then it shall be registered within 30 days of its creation and not from the date on which instrument creating the charge is received in India.
- Select whether consortium finance (i.e. If there are more than one charge holders) is applicable or not and specify the name of the lead banker if consortium finance is applicable.
- Enter the details of the charge holder. In case charge is modified in favor of ARC or assignee, enter the details of ARC or assignee.
- In case of consortium finance and/or joint charge, enter details of the lead charge holder only and provide the details of the other charge holder(s) as an attachment.
- Enter the total amount secured by the charge. In case the amount is in foreign currency, enter its rupee equivalent and mention details of the foreign currency. System shall automatically display the amount in words based on the amount entered by the user.
- Enter the details of creation or modification of the charge. In case of modification of charge, enter the particulars as applicable after such modification.

**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**Attachments:**

- Instrument(s) of creation or modification of charge is a mandatory attachment in all cases.
- Instrument(s) evidencing ...... which is already subject to charge ......such acquisitions. This attachment is mandatory in case if there is any acquisition of property which is already subjected to charge.
- Particulars of all joint charge holders. It is mandatory if number of charge holder is more than one.

**Fees:**

In case of company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>
In case company not having share capital
Rupees 200 per document

**In case of foreign company**
Rupees 6,000

**FORM No.CHG-4**

**Particulars for satisfaction of charge thereof**

- eForm CHG-4 is required to be filed pursuant to Section 82(1) of the Companies Act, 2013 and Rule 8(1) of Companies(Registration of Charges) Rules, 2014

- Every company shall intimate the RoC of the payment or satisfaction (in full) of any charge relating to the company within 30 days from the date of such payment or satisfaction. Indian companies will file eForm CHG-4 with their concerned RoC and the foreign companies will file eForm CHG-4 with the Delhi RoC.

- In case eForm is being filed beyond 30 days from the date of satisfaction of charge, then the application to Central Government for condonation of delay is required to be filed in eForm CHG-8 after filing this eForm and this eForm will be processed by the RoC office after filing order for approval for condonation of delay in eForm INC-28.

- Enter charge creation identification number obtained either after filing eForm CHG-1 or CHG-9 for the charge to be satisfied.

- With effect from 22nd July, 2012, role check in respect of the authorized signatory of the banks or financial institutions has been made applicable. It shall be validated that Digital Signature Certificate (DSC) applied is actually the digital signature of the authorized person of the bank or financial institution (FI) for which the role check is applicable.

- Select the name of bank or financial institution from the displayed list of banks or FIs.

- Select ‘Others’ if name of bank or financial institution is not available in the list for which DSC role check is applicable.

- Particulars relating to the charge will automatically be displayed based on the charge ID entered. In case there is any change in the particulars, then you can edit the details as displayed (except the Charge creation date). In case the amount is in foreign currency, mention details of the foreign currency.

- Enter the date of satisfaction of charge.

**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in wholetime practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in wholetime practice), enter the certificate of practice number.

**Attachments:**

Letter of the charge holder stating that the amount has been satisfied is a mandatory attachment in all cases.
Fees:

Fee in case of company have share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>In case of company other than OPC or Small company</th>
<th>In case of OPC or Small Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
<td>Rupees 100</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 400</td>
<td>Rupees 200</td>
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<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 600</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>25,00,000 or more</td>
<td>Rupees 1,000</td>
<td>Rupees 500</td>
</tr>
</tbody>
</table>

In case any ‘Small company’ or ‘One Person Company’ gets converted into any other class within one year from its incorporation, the exemptions given above shall be repaid at the time of conversion.

Fee in case of company not having share capital

<table>
<thead>
<tr>
<th>In case of company other than OPC or Small company</th>
<th>In case of OPC or Small Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rupees 500</td>
<td>Rupees 300</td>
</tr>
</tbody>
</table>

**FORM No. CHG-6**

**Notice of appointment or cessation of receiver or manager**

- eForm CHG-6 is required to be filed pursuant to section 84(1), 384 of the Companies Act, 2013 and Rule 9(1) of Companies (Registration of Charges) Rules, 2014

- Where any person obtains an order of the Court for appointment of any receiver or manager of the property of any company, subject to a charge or appoints such person or receiver under the power of any instrument, shall notify the RoC in eForm CHG-6 within 30 days of such order/appointment. The person appointed as receiver or manager shall also notify the RoC in eForm CHG-6 about the cessation of such appointment within 30 days of such cessation.

- Notice for appointment of receiver or manager is required to be filed by person having such power under the order of the court or any instrument and notice for cessation of such appointment can be filed by person himself who is appointed as receiver or manager.

- Enter the particulars of the receiver or manager. Enter income tax PAN number, name and present residential address of the receiver or manager.

- In case of cessation - Enter the income tax permanent account number of receiver or manager and click ‘Pre-fill’ button, name and address will automatically be displayed.

- Enter the date of appointment and date of cessation

- Enter the number of charges.

- In case appointment or cessation is in pursuance to an order of the court, then enter the court reference, date of court order and the charge ID and also the details whether appointment relates to the whole of the property or income arising out of whole of such property of the company.

- In case of appointment or cessation is in pursuance to an instrument, then enter the details describing the instrument, date of instrument and Charge ID

**Attachments**

- In case the appointment of receiver/manager is pursuant to an instrument then attach a copy of instrument.
In case the appointment of receiver/manager is in pursuant to a court order then attach a copy of court order.

- List of specified property of the company in case the appointment relates to specified property of the company
- List of specified property of the company in case the appointment relates to income arising from specified property of the company.

**Fees:**

In case of Indian company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
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<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,000,00 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

In case of Indian company not having share capital
Rupees 200

**In case of foreign company**
Rupees 6,000

**FORM No.CHG-9**

Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures

- eForm CHG-9 is required to be filed pursuant to Sections 71(3), 77, 78 & 79 and Section 384 of the Companies Act, 2013 and Rule 3 of Companies (Registration of Charges) Rules, 2014
- All the companies are required to file particulars for registration of charges created or modified for the purpose of securing debentures or rectification of particulars filed in respect of creation or modification of charge on debentures within specified period to concerned Registrar of Companies. Every charge that is created or modified by the company is required to be filed in eForm CHG-9 to concerned RoC in case of Indian Company and RoC, Delhi in case of a foreign company. EForm CHG-9 can also be filed by the company or any person interested in charge for rectifying any omission or misstatement done in any previous filing.
- In case eForm is filed by the company within 300 days from the date of charge creation or modification (i.e. where condonation of delay is not required):
  - eForm shall be taken on record through electronic mode without any processing at the Registrar of Companies office. Ensure that all particulars in the eForm are correct.
- In case eForm is filed by the charge holder beyond 30 and within 300 days from the date of charge creation or modification (i.e. where condonation of delay is not required and the company if having any concerns may contact the Registrar within 14 days. This eForm shall not be registered up to fifteen days from the date of filing), Or
In case eForm is filed by the company or the Chargeholder beyond 300 days from the date of charge creation or modification (i.e. where condonation of delay is required), then the application to Central Government for condonation of delay is required to be filed in eForm CHG-8 after filing this eForm and this eForm will be processed by the RoC office after order of Central Government for approval for condonation of delay in eForm INC-28 has been filed.

Or

In case eForm is filed by any person for rectification of charges: User is required to take the approval of Central Government in eForm CHG-8 and file the same in eForm INC-28 before filing of this eForm.

Select the purpose of the eForm out of the three options available i.e. creation of charge, modification of charge or rectification of charge.

Select the type of debenture for which the registration is being filed.

Enter the SRN of the eForm CHG-9 or old form 10 for which rectification is being filed. Please note that the SRN entered should be of an approved eForm CHG-9/Old Form 10.

In case the eForm is to be filed for modification or rectification of charge, enter the charge identification number allotted at the time of registration of the charge.

Please note that charge ID entered for modification and rectification should be open charge ID and not satisfied.

Ensure that user must have filed an application for approval of Central Government for rectification of charges in eForm CHG-8 before filing this eForm.

Enter the SRN of eForm INC-28 filed for intimation to Registrar for notice of order of Central Government for such rectification. Please note that the SRN should be an approved one.

Select one of the options for which rectification is required to be sought.

Select whether the applicant is a company or a charge holder. Charge holder can file this eForm only after 30 days from the date of creation or modification of charges.

Enter the number of trustee of debenture holder(s) or charge holder(s). In case charge is modified in favor of ARC or assignee and enter particulars of ARC or assignee and also attach the debt assignment agreement as an optional attachment.

Enter the date on which the charge/instrument is created. This is a mandatory field.

Enter the date of present issue of series and the amount secured by the charge. In case series of debentures is not applicable, enter the date of issue of debentures.

In case of modification of charge, enter the total amount secured by the charge after such modification. If there is no modification in the charge amount, then enter the amount secured by the charge prior to such modification.

Based on the amount entered, system shall automatically display the amount in words.

Enter the date of resolution authorizing the issue of the series. In case series of debentures is not applicable, enter the date of resolution authorizing the issue of debentures.

In case of modification of charge, describe the instrument modifying the charge and the date of modifying the charge.

In case of modification of charge, enter the particulars of the present modification. Ensure that correct particulars are entered as the same shall be displayed in the certificate of modification of charge.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in wholtime
practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**Attachments:**
- Certified true copy of resolution authorizing the issue of the debenture series is a mandatory in case of creation of charge.
- Instrument containing details of the charge created or modified is mandatory in all cases.
- Order of the Central Government is mandatory in case eForm is being filed for rectification of charges.

**Certificate**
Certificate of registration of charge and certificate of registration for modification of charge are generated and sent to the user as an attachment to the email.

**Fees:**
In case of Indian company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

In case of Indian company not having share capital
Rupees 200

In case of foreign company
Rupees 6,000

**FORM No. MGT-6**

**Persons not holding beneficial interest in shares**
- eForm MGT-6 is required to be filed pursuant to section 89(6) of the Companies Act, 2013.
- A company makes a declaration to the Registrar regarding persons whose name is in the register of members as a shareholder but they do not hold any beneficial interest in such shares. This form of return is filed within 30 days of receipt of declaration by the company by filing eForm MGT-6.
- Enter date on which declaration has been made by the person holding the beneficiary interest in the shares.
- Enter the date on which latest declaration has been received by the company.
- Enter the date of board resolution where signatory has been authorised to sign and submit the e-form.
**Lesson 16**  
**E-filing**  
555

**Attachments**
- Declaration by person who does not hold the beneficiary interest as per section 89 (1) is to be attached.
- Declaration by the person who holds the beneficiary interest 89 (2) is to be attached.
- Declaration by beneficial owner on any change in beneficial interest 89(3).

**Fees:**

In case of Indian company having share capital

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
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<tbody>
<tr>
<td>Less than 1,00,000</td>
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<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
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In case of Indian company not having share capital

Rupees 200

**FORM No.MGT-14**

**Filing of Resolutions and agreements to the Registrar**
- eForm MGT-14 is required to be filed pursuant to Section 94(1), 117(1) of the Companies Act, 2013 and Section 192 of the Companies Act, 1956
- A company or liquidator has to file with the concerned RoC certain resolutions and agreements. These are to be filed after being passed at the meeting of the Board / Shareholders / Creditors of the company. The particulars of such resolutions or / and agreement are to be filed through this eForm.
- The provisions of Section 94 and 117 are applicable regarding registration of certain resolutions and agreements with RoC. The eForm has to be filed with RoC within 30 days of passing of the resolution or of the making of the agreement.
- You can file this eForm with different event dates in respect of date of passing of resolution(s), date of passing of postal ballot resolution(s) and date of agreement if these dates are within 30 days of the filing date. If any of the date(s) are beyond 30 days, then separate form is to be filed for every such event date.
- In case date of passing of resolution or postal ballot resolution or date of agreement made is not within 300 days from the filing date then it shall be mandatory to enter the SRN of Form INC-28/Old Form 21 filed for condonation of delay. In such case, additional fees as applicable shall continue to be calculated.
- In case date of passing of resolution or postal ballot resolution is not within 30 days from the filing date and the purpose selected in any of the blocks is “Alteration in object clause” then it shall be mandatory to enter the SRN of Form INC-28/old Form 21 filed for condonation of delay
- Select the applicable purpose(s) for which the eForm is being filed.
- Enter the date of dispatch of notice and date of passing of resolution(s).
- In case of Postal ballot resolution(s) under section 110, enter the date of dispatch of notice and date of passing of postal ballot resolution(s).
Enter the total number of resolution(s) (including postal ballot resolution(s)) for which the form is being filed. (Based on the number entered here, number of blocks shall be displayed for entering the details). Details of maximum ten resolutions and postal ballot resolutions can be provided through this eForm.

If any resolution is linked with any other form such as change of name, conversion etc. company should file separate form MGT-14 of such resolutions.

The details of any more resolution can be provided as an optional attachment.

Enter the details of the resolution passed. Select the purpose of passing the resolution. Based on the purpose, system shall automatically display the section of the Companies Act, 1956 under which resolution is passed.

Ensure that you select the correct purpose as the processing by the RoC office shall be dependent upon the same.

In case of listed company, mention whether resolution is passed by postal ballot. Select the authority passing or agreeing to the resolution and the type of resolution.

Enter the section of the Companies Act, 2013 under which resolution passed.

Enter the section of Companies Act, 1956 under which resolution passed.

In case any of the resolution(s) is passed for alteration in object clause, select whether there is any change in industrial activity of the company. If yes, based on the altered main objects of the company, please enter the main division of industrial activity as per National Industrial Classification (NIC)-2004

In case any of the resolution(s) is passed for voluntary winding up under section 304, enter the details of winding up.

Select the mode of winding up. System shall display the date of commencement of winding up as the date of passing of the resolution entered in the form.

Enter the number of liquidator(s). Enter the income-tax PAN, name and address of the liquidator(s).

Details of maximum two liquidators can be provided through this eForm. The details of any more liquidators can be provided as an optional attachment.

Ensure that you enter the correct winding up details, as upon approval of this eForm, the status of the company shall be changed to ‘Under Liquidation’ and the winding up details shall be updated in the system. Please note that status of the company shall not be changed to ‘Under Liquidation’ unless all pending eForms in respect of the company are closed in the system.

Enter the details of the agreement entered into by the company. Details of only one agreement can be provided through this eForm. Please note that for each agreement separate eForm MGT-14 is required to be filed. Select the purpose of entering into the agreement. Based on the purpose, system shall automatically display the section of the Companies Act, 2013 under which agreement is made.

In case any of the resolution(s) is passed for alteration in object clause, and there is delay in filing of the form, this form cannot be filed unless eForm INC-28 for condonation of the delay has been filed. In such case, enter the service request number (SRN) of eForm INC-28 filed for condonation of delay.

The e-form shall be pre-certified by practising CA/CS/ICWA by digitally signing the form.

**Attachments:**

Certified true copy of resolution(s) along with copy of explanatory statement under section 102 (Mandatory in case resolution or postal ballot is selected at serial no 3).

Altered memorandum of association (Mandatory in case any change in MOA).
- Altered articles of association (Mandatory in case of any change in AOA).
- Copy of agreement (Mandatory in case agreement is selected at serial no 3).

Certificate:
- Certificate field should be described Certificate of registration of the Special Resolution confirming Alteration of Object Clause(s) shall be generated in case purpose selected in any of the blocks for details of resolution is ‘Alteration in object clause’. New CIN shall be displayed in the certificate of registration of the special resolution confirming alteration of object clause(s) in case industrial activity has been entered in the eForm.

Fees:
In case of Indian company having share capital

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<tr>
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In case of company not having share capital
Rupees 200

FORM No.DIR-3

Application for allotment of Director Identification Number
- eForm DIR-3 is required to be filed pursuant to Section 153 of the Companies Act, 2014 & Rule 9(1) of the Companies (Appointment and Qualification Of Directors) Rules, 2014.
- Any person intending to become the director in a company is required to make an application to MCA for allotment of a unique identification, namely, Director Identification Number (DIN) through this eForm.
- Every individual intending to be appointed as director of an Indian company or designated partner of a limited liability partnership or the existing director/ designated partner who has not taken a DIN is advised to make an application for allotment of Director Identification Number (DIN).
- DIN is a unique number, and is mandatory requirement for a company/ limited liability partnership (LLP) for filing certain eForms.
- There is a fixed fee of Rs 500 for this eForm and it can only be paid through online mode (credit card/ internet banking). All the necessary documents shall need to be scanned and attached in the eForm and submitted online.
- eForm DIR-3 is required to be signed by the applicant and by either practicing professional or company secretary in whole time employment/director of the existing company.
- If the eForm DIR-3 is signed by the practicing professional and it is not identified as potential duplicate, then the same shall be auto approved by the system (STP) and sent for verification to the DIN cell. The status of DIN shall be ‘Approved’.
- If verification is not passed, an email is sent to the director for filing DIR-6 for making the desired changes.
If the eForm is either signed by the practicing professional (identified as potential duplicate) or by company secretary/director of the existing company, then provisional DIN is allotted and same is sent for processing to the DIN cell. If the eForm is not approved, then status of provisional DIN allotted is ‘Lapsed’ on rejection or invalidation of the eForm as the case may be.

Enter full name of the applicant. Single alphabet is not allowed in field ‘First name’ and ‘last name’. Field ‘Middle Name’ is an optional field. You should enter it if a middle name exists on the evidence. Prefixes like Mr. / Ms. / Kumari / Shri etc. are not acceptable. The name should be filled exactly as given in the identity proof, including the spelling. Please ensure that you provide your first, middle and last name in the respective fields. It is mandatory to enter either applicant’s first name or applicant’s last name. However, in case of Indian nationals, single name shall be allowed only in case same single name is there in Income tax PAN. Please note that name as provided in the DIN application should be same as given in PAN and will be used for all correspondence with MCA.

Enter year father’s name.

It is mandatory to attach photograph giving front view of the full face of the applicant. To attach the photograph, click on the box provided. Latest photograph of the applicant in JPEG format only should be attached.

If the applicant is a citizen of India then nationality is displayed as ‘Indian’. Foreign nationals shall select the nationality as declared in the passport.

Select the current occupation and educational qualifications of the applicant from the drop down values given.

Enter date in DD/MM/YYYY format even if its proof contains date in any other format. Proof is mandatory and should be valid, clearly visible and duly attested. Person should be minimum 18 years of age while applying for this application.

Enter your Income tax permanent account number (Income tax PAN). Income tax PAN is mandatory for Indian nationals.

If Income tax PAN is entered, it is mandatory to click on ‘Verify income-tax PAN’ button. System shall verify the details based on PAN. Ensure that the name (first, middle and last name), father’s name (first, middle and last name) and date of birth is as per the income-tax PAN details.

Enter your passport number. Passport number is mandatory for foreign nationals. It is advisable to provide details of all the identity proofs you own/possess. Details entered should match exactly with the details of identity proof.

Enter driving licence number.

Enter aadhar number.

Enter the details matching exactly with the residence proof. In case, the country selected is other than India, and you do not have PIN Code, enter ‘NA’. In case of foreign nationals, state can be mentioned in address/ city. Enter your valid email ID.

Ensure the eForm is digitally signed by the same person i.e. applicant who is filing the application and by either of the following:

- chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice)
- company secretary in full time employment or director of the company in which the applicant is to be appointed as a director.
Attestation:

- If eForm is digitally signed by a Chartered Accountant (CA) or Cost Accountant (CWA) or Company Secretary (CS) (in whole time practice) then the supporting documents attached shall be self-attested by the applicant.

- If eForm is digitally signed by secretary (who is member of ICSI), in whole time employment or director of existing company then the supporting documents attached shall be either self-attested by the applicant or duly attested by either Public Notary or a Gazette Officer of a Government.

- The attesting authority must indicate the following while attesting the documents:- (i) Signatures; (ii) Name in full in Capitals; (iii) Registration No.; and (iv) Seal/ Stamp.

- In case, the director / designated partner is residing outside India, then the attached supporting documents should be attested by the Consulate of the Indian Embassy, Foreign public notary. In case of director, supporting documents can also be attested by Company secretary in full time employment / CEO / Managing director of the Indian company in which he / she proposed to be a director.

Attachments:

- The following are the mandatory attachments to be filed in all cases:
  
  - Proof of Identity of applicant
    
    - In case of Indian nationals, Income-tax PAN is a mandatory requirement for proof of identity.
    
    - In case of foreign nationals, passport is a mandatory requirement for proof of identity.
    
    - Proof of identity enclosed with eForm DIR-3 should also contain the date of birth of the applicant and the same should match the date of birth filled in the application form. In case the proof of identity does not indicate the Date of Birth then additional proof of Date of Birth, duly certified/ attested, should be attached.
  
  - Proof of residence of applicant
    
    - Address proofs like passport, election (voter identity) card, and ration card, driving license, electricity bill, telephone bill or aadhaar shall be attached and should be in the name of applicant only.
    
    - In case of Indian applicant, documents should not be older than 2 months from the date of filing of the eForm.
    
    - In case of foreign applicant, address proof should not be older than 1 year from the date of filing of the eForm.
  
    - Copy of verification by the applicant as per eForm No. DIR-4.

In case of proofs which are in languages other than Hindi / English, the proofs should be translated in Hindi / English from professional translator carrying his details (name, signature, address) and seal. In the case of foreign nationals, translation done by the notary of home country is also acceptable.

Fees:

- Rs. 500/-

Processing Type

The eForm will be processed by DIN cell depending on respective conditions:

- If eForm is certified by the practicing professional (CA/CS/CWA) (in whole time practice) and details of director have not been identified as a potential duplicate, then it shall be auto approved(STP) and in all other cases it will be processed by the DIN cell(NON STP).
**FORM No.DIR-6**

**Intimation of change in particulars of Director to be given to the Central Government**

- eForm DIR-6 is required to be filed pursuant to Rule 12(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014.

- A director having an approved DIN is required to intimate to MCA in case of change(s) in his particular(s) as stated in eForm DIR-3 /Old form DIN1 within a period of 30 days of any such change.

- In case of Indian nationals, Income-tax Permanent Account Name (Income-tax PAN) is mandatory in all cases even if there is no change in Income-tax PAN. In such cases, director/designated partner details should be as per Income-tax PAN. In case the details like name/father’s name/DOB as per Income-tax PAN are incorrect, director/designated partner is advised to first correct the details in Income-tax PAN before filing this eForm.

- Ensure that all particulars in the eForm are correct. However, if the contents specified in the eForm matches with an already filled DIR-3/DIN details, then the application shall be marked as a potential duplicate and shall then be processed by DIN Cell. EForm shall be allowed to be resubmitted only once in case of processing under this.

- If not identified as potential duplicate, DIN shall be auto approved by the system and will be sent to DIN cell for verification if verification is not passed, an email is sent to the director for correction of defects by filing eForm DIR-6.

- In case eForm is filed for updation of income-tax PAN in respect of Disabled DIN, then status of DIN shall be changed to ‘Approved’ consequent upon approval of the eForm.

- It shall be mandatory to enter e-mail ID and mobile number in all cases

- Select from the values below the type of change(s) made. In case a disabled DIN is entered it is mandatory to select Income tax permanent account number.

- Attach a latest passport size photograph in JPEG format. In case there is a change in the photograph of Director/Designated Partner it is mandatory to attach a photograph.

- In case Director’s/ Designated Partner’s name is to be corrected, enter the correct full name.

- Single alphabet is not allowed in field ‘first name’ and ‘last name’ in case director/ designated partner is Indian. “Middle Name” is an optional field. You should enter it only if a middle name exists.

- Prefixes like Mr. / Ms. / Kumari / Shri etc. are not acceptable. The name should be filled exactly as given in the identity proof including the spelling. Please ensure that you provide your first, middle and last name in the respective fields.

- It is mandatory to enter either applicant’s first name or applicant’s last name. However, in case of Indian nationals, single name shall be allowed only in case same single name is there in Income tax PAN.

- In case if there is any change in the Nationality of the director/ designated partner; select whether the director/ designated partner is a citizen of India or not.

- In case residential status of director/ designated partner is to be updated, select whether the director or designated partner is resident in India or not.

- In case of Indian national, it is mandatory to enter Income tax PAN in all cases even if there is no change in Income-tax PAN. In such case, it shall be mandatory to click on ‘Verify income-tax PAN’ button. Director’s/ Designated Partner’s name (first, middle and last name), Father’s name (first, middle and last name) and date of birth will be verified by the system from the income-tax PAN details.
– Enter valid aadhar number
– It is mandatory to enter mobile number in all cases.
– It is mandatory to enter email id of the applicant in all cases.
– If permanent address is to be corrected, enter the details matching exactly with the residence proof. In case, the country selected is other than India, and you do not have PIN Code, enter ‘NA’. In case of foreign nationals, state can be mentioned in address/city.
– In case present residential address to be corrected, enter the details matching exactly with the residence proof.

Certification

– The eForm should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the eForm.
– Select the relevant category of the professional and whether he/she is an associate or fellow.
– Enter valid membership number and certificate of practice number of the practicing professionals.
– The supporting documents attached shall be self-attested by the applicant.

Attachments:

– The following attachments are mandatory to be filed in all cases:
  – Proof of change in particulars
  – Copy of verification by the director in Form No. DIR-7
    – Proof of identity of director/designated partner
  – In case of Indian nationals, Income-tax PAN is a mandatory requirement for proof of identity.
  – In case of foreign nationals, passport is a mandatory requirement for proof of identity.
  – Proof of residence of director/designated partner
    – Address proofs like bank statements, electricity bill, telephone bill, utility bills etc. shall be attached. In case of Indian director/designated partner, documents should not be older than 2 months from the date of filing of the eForm.
    – In case of foreign director/designated partner, address proof should not be older than 1 year from the date of filing of the eForm.
    – Copy of verification by the director/designated partner is mandatory to attach if the eForm.
    – In case of proofs which are in languages other than Hindi/English, the proofs should be translated in Hindi/English from professional translator carrying his details (name, signature, address) and seal.

Fees:

No Fee.

FORM No.DIR-11

Notice of resignation of a director to the Registrar

– eForm DIR-11 is required to be filed pursuant to Section 168 (1) of the Companies Act, 2013 and Rule 16 of Companies (Appointment and Qualification of Directors) Rules, 2014
Director may resign from his office by giving a notice in writing to the company and he is also required to forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in eForm DIR-11.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

Enter the date of appointment of resigning director in the company.

In case of an alternate director, enter the DIN of the director to whom the appointee is alternate and click Pre-fill button. System will automatically display the name of the director to whom the appointee is alternate.

Enter the date of filing of resignation with the company and also effective date of resignation specified in the notice.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. And the same effective date is required to be mentioned above.

The effective date of resignation shall be same as the date of cessation entered in eForm DIR-12 if already filed by the company.

It is mandatory to specify the reasons for resignation from the company.

Attachments:
The following attachments are mandatory:

- Notice of resignation filed with the company
- Proof of dispatch
- Acknowledgement received from company, if any and is mandatory.

When a director files eForm DIR-11 for intimating about his resignation before the company files eForm DIR-12, an email will be sent to the company for filing the eForm DIR-12 and the status of the Director in the company will be changed to 'Resigned' against the selected designation. Once the company files the relevant eForm DIR-12, the status shall be changed as per the existing system.

Fees:

In case of company having share capital

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In case of company not having share capital

Rupees 200
Lesson 16  E-filing  563

**FORM No.DIR-12**

**Particulars of appointment of Directors and the key managerial personnel and the changes among them**

- e-Form DIR-12 is required to filed pursuant to section 7(1)(c), 168 and 170(2) of Companies Act, 2013 and Rule 17 of Companies (Incorporation) Rules, 2014 [Rule 18 of Companies (Appointment and Qualification of Directors) Rules, 2014.

- Every company, whether new or existing, is required to file an e-Form DIR-12 for particular of directors and key managerial personnel of the company with the Registrar, within 30 days from the date of appointment resignation and of any charge taking place their designation.

- You can file this eForm with different event dates (date of appointment, date of change in designation and date of cessation) only if these dates are within 30 days of the filing date. If any of the date(s) are beyond 30 days, then separate form is to be filed for every such event date.

- For filing of details of two or more events (for example, appointment and cessation) relating to the same person, you are required to file separate forms. These cannot be filed through the same eForm.

- It is advised that you file the eForm in the chronological order of events. It implies that before filing this eForm you should ensure that no Form DIR-12 is pending to be filed for the particular company where the date of event is earlier than the date(s) entered in this form.

- If number of directors is more than 15, addendum is required to be filed with eForm DIR12. Addendum shall be allowed to be filed only for those cases where eForm DIR-12 has been filed and corresponding Form DIR-12 Addendum is required to be filed. EForm DIR-12 Addendum shall be allowed to be resubmitted only for those cases where the eForm DIR-12 Addendum is pending for resubmission eForm DIR-12.

- CIN and DIN helps to pre – fill many details.

- Select whether the person is being appointed or is ceasing to be associated with the company or there is change in designation. In case of a new company, only appointment can be selected.

- Select the designation of the person from the drop down values. In case of change in designation, select the new designation. In case of cessation, select the same designation as at the time of appointment or change in designation. When an existing director becomes a Managing Director/Whole Time Director; or an existing Managing Director/Whole Time Director ceases to be so and only remains as a director, then also the option Change in Designation should be used to file the eForm.

- Select the category which is most appropriate. This is not required to be selected in case of cessation. Independent category can be selected only if company is a public company. Select one or more options that whether the director is Chairman, Executive or Non – Executive (Executive and Non – Executive director, both cannot be selected). It shall be mandatory to select either executive director or non – executive director if the option chairman is selected. Option 'Non – executive director' cannot be selected if designation selected is Whole-time director or Managing director. If ‘Independent’ is selected under category then ‘Executive director’ cannot be selected.

- In case of an alternate director, enter the DIN of the director to whom the appointee is alternate and click “Pre-fill” button. System will automatically display the name of the director to whom the appointee is alternate. This is not required to be entered in case of cessation and is mandatory in case designation selected is Alternate Director.
In case of appointment of a nominee director, enter the name of the company or institution whose nominee the appointee is. This is mandatory in case of nominee director and in case of appointment or change in designation.

In case of cessation:

- System will automatically select Director or Managing Director on the basis of the designation selected in the eForm.
- Enter the date of cessation and select the reason of cessation from the drop-down list.
- Nomination withdrawn by appointing authority can be selected only if the Designation entered is nominee director.
- Date of cessation entered should be same as date entered while disabling DIN in case of death.
- Vacation of office or Not been reappointed can be selected only if the designation entered is alternate director or additional director.

Interest in other entities is required to be mentioned in case of appointment only. User can enter the details of one such entity and if the number is more than one, then user is required to attach sheet separately for such details.

Enter the total number of manager(s), secretary(s) for which this e-Form needs to be filed.

Enter the particulars of manager, secretary, chief financial officer or chief executive officer of the company.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

Attachments:

- Letter of appointment is mandatory to attach in case of an appointment of a Director / Manager / Company Secretary / CEO / CFO.
- Declaration by first director in Form INC-9 is mandatory to attach in case of a new company.
- Declaration of the appointee director, managing director, in Form No. DIR-2 is mandatory to attach in case of appointment of a Director / Manager / Company Secretary / CEO / CFO.
- Notice of resignation is mandatory to attach in case cessation is due to resignation of a Director.
- Evidence of cessation is mandatory to attach in case of cessation of a Director / Manager / Company Secretary / CEO / CFO.
- Interest in other entities of director it is mandatory to attach in case number of entities entered is more than one.

Fee for filing e-Forms or documents in case of company have share capital:
Nominal Share Capital | Fee applicable
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Less than 1,00,000 | Rupees 200
1,00,000 to 4,99,999 | Rupees 300
5,00,000 to 24,99,999 | Rupees 400
25,00,000 to 99,99,999 | Rupees 500
1,00,00,000 or more | Rupees 600

Fee for filing e-Forms or documents in case of company not have share capital
- Rupees 200

**FORM No.MR-1**

Return of appointment of MD/WTD/Manager (i.e. key managerial personnel)

- eForm MR-1 is filed in pursuant to Section 196, 197, and Schedule V of the Companies Act, 2013 and Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014.
- In case the appointment of an key managerial personnel is made within the specified parameters (in accordance of schedule V of the Companies Act, 2013) then a return has to be filed in eForm MR-1 with RoC within 60 days from the date of such appointment. The provisions of section 196 are applicable to all the companies whether public or private and no company can appoint at the same time managing director and a manager.
- While the maximum term of Managing Director/ Whole Time Director & Manager has been fixed for 5 years at a time, it has been provided that no reappointment shall be made earlier than 1 year before the expiry of his term.
- Enter approved DIN or valid income tax PAN.
- Please provide DIN in case the designation is whole time director or managing director and PAN in case of manager.
- Enter the full name of the person who is being appointed.
- Enter the details of remuneration including salary, perquisites and others either per month or per annum.
- The field ‘total’ should be equal to the sum of salary, perquisites and others.
- Tenure of appointment
  - ‘From’ date should be the effective date of appointment of the appointee.
  - If the age of appointee is more than 70 years, then enter the date of passing of special resolution by the shareholders authorizing the appointment.
  - Enter a valid SRN of eForm MGT.14 filed for special resolution authorizing appointment where the age of appointee is more than seventy years of age.
  - If the appointee had been convicted or detained under any of the Acts mentioned in Part I of Schedule V, then enter the date of obtaining central government’s approval for the same.
  - Enter a valid SRN of eForm MGT.14 filed for registration of agreement or special resolution passed authorizing such appointment.
Certificate by practicing professional

– The eForm should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the eForm.
– Select the relevant category of the professional and whether he/ she is an associate or fellow.
– Enter valid membership number and certificate of practice number of the practicing professionals.

Attachments

The following attachments are mandatory in all the cases:

– Certified true copy of Board Resolution
– Copy of letter of consent to act as a managing director, whole time director, or manager
– Certified true copy of shareholders resolution along with explanatory statement is mandatory in case passed for such appointment
– Copy of central government approval is mandatory in case appointee is convicted or detained as per Schedule V.
– Copy of certificate by the Nomination and Remuneration Committee of the company, if any

Fee for filing e-Forms or documents in case of company have share capital:

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
<th>Fee applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,00,000</td>
<td>Rupees 200</td>
</tr>
<tr>
<td>1,00,000 to 4,99,999</td>
<td>Rupees 300</td>
</tr>
<tr>
<td>5,00,000 to 24,99,999</td>
<td>Rupees 400</td>
</tr>
<tr>
<td>25,00,000 to 99,99,999</td>
<td>Rupees 500</td>
</tr>
<tr>
<td>1,00,00,000 or more</td>
<td>Rupees 600</td>
</tr>
</tbody>
</table>

Fee for filing e-Forms or documents in case of company not have share capital

– Rupees 200

FORM No. MR-2

Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors

– EForm MR-2 is required to be filed pursuant to Section 196, 197, 200, 201(1) and 203(1) of the Companies Act, 2013 and rule 7 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
– In order to seek approval from Central Government for appointment, reappointment, payment of remuneration including increase in remuneration, waiver of excess remuneration to the managerial personnel (managing director or whole time director or manager) and payment of commission or remuneration to directors or modification in terms and conditions of appointment, company needs to file eForm MR-2.
– Form the purpose of form, select any one option for which application is made, user can select option 1 with 4 also, else only one option needs to be selected. If the user wants to apply for any other proposal also then file another eForm MR-2.
- EForm MR-2 is required to be filed within 90 days of appointment or reappointment. If the application is not filed in time, furnish application under relevant section of the Act with requisite fee along with this eForm.

- Enter the particulars of the proposed appointee or the person in whose respect the application is filed. Enter an approved DIN in case of Managing Director or Whole time Director. Enter an approved DIN or valid income tax PAN in case of manager.

- It is mandatory to enter effective date of appointment or reappointment in case of option 1 selected of field 4 a.

- Enter the details of resolution by the Board of directors in respect of the proposal. Enter the board resolution date, nomination and remuneration committee’s resolution date (if applicable), share holders’ resolution date.

- Enter details of net profit or loss as computed under section 198 of the Act.

- In case of profit under section 198, system shall automatically display 11% of such profits in the respective fields.

- Enter the details of remuneration paid by the company during the immediately preceding three financial years to its director or managing director or whole time director or manager. Enter the number of person(s) to whom remuneration has been paid.

- Based on the number entered here, blocks for entering the details shall be displayed. Details of maximum five person(s) can be filed through this eForm. If the total number is more than five, then details of remaining person(s) can be provided as an optional attachment.

- Details of all executive directors (if any) shall be provided first and thereafter details of non-executive directors shall be provided.

- Enter an approved DIN in case of director or DIN/ PAN in case of manager. On clicking the Pre-fill button, system will automatically display the name in DIN is entered. In case of Income-tax PAN, name is required to be entered. Enter the other relevant details like designation & whether director is executive or non-executive.

- It shall be validated that the person (whose DIN or income-tax PAN is entered) is associated with the company.

- Enter details of remuneration paid by the company during the immediately preceding three financial years by the company.

- In case of loss under section 198, zero should be entered in field for % of net profits u/s 198. In case Government approval is not obtained, enter the reasons for the same. Enter the details of remuneration being drawn from any other company by the appointee or person in whose respect application is filed.

- Enter the date of board resolution, date of remuneration committee’s and nomination committee’s resolution (if applicable) and date of shareholder’s resolution.

- In case of special resolution passed, enter the SRN of eForm MGT.14 associated with CIN.

- In case of payment of remuneration in excess of 11% of the Net Profit, field is mandatory in case of payment of remuneration exceeding 11 percent of Net Profit. Remuneration proposed should be greater than 11% of profit u/s 198 calculated.

- In case company has no profits or its profits are inadequate, field is required to be filled by the user in case of payment of remuneration in excess of the prescribed limits given in Schedule V of the Act.
Enter the amount in rupees for the effective capital of the company as per the latest audited balance sheet. The effective capital is defined as per Schedule V of the Companies Act, 2013.

[Effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.]

Also, attach the copy of the calculation sheet of effective capital as an attachment.

Enter the details of the proposed remuneration per annum of the appointee or of the person in whose respect application is filed. In case commission, bonus or performance linked incentive is in percentage, specify such percentage.

If the proposed remuneration given is for more than one year then provide for each year or part thereof for the total period of remuneration proposed.

In case of waiver of excess remuneration, enter the details of excess remuneration paid, total entitlement, excess remuneration to be waived off along with the circumstances under which such amount were paid in excess of the limits.

Certification:

Enter serial number of board resolution and date of board meeting where person signing the eForm is duly authorized by the board.

This e-form shall be pre-certified by practising CA/CS/ICWA.

Attachments:

1. Copy of the calculation sheet of effective capital ………..is mandatory in case Option 4 selected in field 4(a)
2. Certified true copy of the resolution of Board of directors is mandatory in all cases.
3. Copy of the resolution of nomination and remuneration committee………. is mandatory in case date entered in 10(b) or 14(b).
4. Certified true copy of resolution of shareholder(s) along with notice ……… is mandatory in case date entered in 10(c) or 14(c).
5. Certificate from the auditor or company secretary ……………………is mandatory in all cases.
6. Certificate of no-default in repayment of debts……………… if no selected in field 15.
7. No objection certificate from the financial institutions(s) or bank(s) …………… if no selected in field 15.
8. Copy of the order of BIFR or NCLT together with the copy of a scheme of revival or rehabilitation.
9. Copy of draft agreement between the company and the proposed….. is mandatory in case option 1 selected in 4(a).
10. Newspaper clipping in which notices ……… is mandatory in all cases.
11. Copy of employment visa/passport, in case the proposed appointee is a foreign citizen.
12. Copies of educational or professional qualification certificate.
13. Statement as per item (IV) of third proviso ……………… is mandatory in case option 4 selected in 4(a).
14. Projections of the Turnover and net profits for next three years.

15. Calculation of estimated profit under section 198 of the Act is mandatory in all cases except option 1 of 4(a).

16. Auditors Certificate pursuant to Section 164 of the Companies…… is mandatory in case option 1 selected in 4(a).

17. An application under Section 460 of the Act for condonation of delay…… is mandatory in case no selected in field 4(b).

18. Full and proper justification in favor of the proposal…………….is mandatory in all cases.

19. Documentary proof regarding compliance of the provisions …………… is mandatory in case option 1 selected in 4(a).

20. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile.

21. Details, if applicant company is a subsidiary of listed company.

22. Certificate from CA/CS in whole time practice along…… is mandatory in case option 3 selected in 4(a).

The eForm will be processed by the office of Headquarters (Non STP). When an eForm is approved/rejected by the authority concerned, an acknowledgement of approval/rejection letter along with related documents if there is any is sent to the user in the form of an email to the email id of the company. Where email is not possible, a printout is generated and sent to the applicant by regular mail. Once final decision is taken, Dealing Hand prepares formal approval/ rejection order as the case may be and sent to the user.

**Fees:**

<table>
<thead>
<tr>
<th>Application made</th>
<th>Other than OPC &amp; Small company</th>
<th>OPC &amp; Small company</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) By a company having an authorized share capital of :</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Up to Rupees 25,00,000</td>
<td>2,000</td>
<td>1,000</td>
</tr>
<tr>
<td>(b) Above Rupees 25,00,000 but up to Rupees 50,00,000</td>
<td>5,000</td>
<td>2,500</td>
</tr>
<tr>
<td>(c) Above Rupees 50,00,000 but up to Rupees 5,00,000,000</td>
<td>10,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(d) Above Rupees 5,00,00,000 but up to Rupees 10 crore or more</td>
<td>15,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(e) Above Rupees 10 crore</td>
<td>20,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(ii) By a company limited by guarantee but not having a share capital</td>
<td>2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(iii) By a company having a valid license issued under section 8 of the Act (Section 8 Company)</td>
<td>2,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**FORM No. URC – 1**

**Application by a company for registration under section 366**

- eForm URC-1 is required to be filed pursuant to Section 366 of the Companies Act, 2013 and Rule 3(2) of the Companies (Authorised to Registered) Rules, 2014
- Any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force consisting of seven or more members, may
at any time register itself under Companies Act, 2013 as a Part I Company. For this purpose, eForm URC-1 shall be filed along with eForm INC-7.

– The entity has to get the name reservation by applying in eForm INC-1 and file this eForm along with INC-7 within 60 days from the date of filing eForm INC-1.

– Please ensure that secured creditors have given their consent have given their consent for registration under this Part.

– Also ensure that prior to filing this eForm, a notice in newspaper about registration under this Part, one in English and in vernacular language seeking objections must be published. A copy of such notice is to be filed along with this eForm. The entity should address such objections, if any suitably.

– The entity after registration shall submit all necessary documents to registering authority for dissolution as the existing entity under relevant law.

– Enter registration number of the existing entity.

– Select type of entity from the drop down values and in case others selected, specify the entity in description box.

– Enter the name of the entity.

– Enter the number of members in the entity as on the date of application. The number should be greater than or equal to 7.

– Enter the date of the instrument and its description through which the existing company or joint stock company has been constituted.

– Enter the date of general meeting where resolution has been passed by members authorizing registration with limited liability.

– Select whether YES or NO, if the entity has any secured debt outstanding as on the date of application.

– Enter the total amount of secured debt outstanding of the entity. And consent/NOC of all such creditors must have been obtained for registration.

**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**Attachments**

**Mandatory:**

– Particulars of members/partners along with the details of shares held by them

– Declaration of two or more directors verifying the particulars of all members/ partners

– Affidavit from all the members/partners for dissolution of the entity

– Copy of the instrument constituting or regulating the entity

– Copy of certificate of registration of the entity
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– Copy of Newspaper advertisement

– Certificate from a CA/CS/CWA certifying the compliance with all the provisions of Stamp Act, to the extent applicable

Conditional:

– Consent of majority of members is mandatory to be attached in case company is limited by shares or Unlimited company.

– Consent of at least three-fourth of members agreeing for registration under this part is mandatory to be attached in case company is limited by guarantee.

– No objection certificate from the concerned Registrar of Firms or Registrar of Companies (LLP) is mandatory to be attached in case type of entity is Firms/ LLP.

– No objection certificate/Consent given by secured creditors is mandatory to be attached in case of any secured debt outstanding as on the date of application.

– Copy of the resolution declaring the amount of guarantee is mandatory in case company is limited by guarantee.

– Statement of accounts of the company, prepared not later than 6 days preceding the date of application duly certified by auditor, if applicable.

Fees:

<table>
<thead>
<tr>
<th>Nominal Share Capital</th>
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</table>

FORM No.FC-1

Information to be filed by foreign company

– eForm FC-1 is required to be filed pursuant to Section 380(1) (a) to (h) and Rule 3(3) of the Companies (Registration of Foreign Companies) Rules, 2014

– A foreign company shall file the particulars of the principal place of business in eform FC-1 within 30 days of establishment of place of business in India alongwith the required documents to RoC, Delhi. The Registrar of the corresponding state shall have access to these documents filed with the RoC, Delhi.

– Stamp duty on eForm FC-1 can be paid electronically through the MCA portal.

– Payment of stamp duty electronically through MCA portal is mandatory in respect of the states which have authorized the Central Government to collect stamp duty on their behalf.

– Now eStamp duty payment is to be done online through MCA portal for all the states.

– Refund of stamp duty, if any, will be processed by the respective state/ union territory government in accordance with the rules and procedures as per the state/ union territory Stamp Act.
User is required to enter the ISO code of the country where the foreign company is registered. System shall prefill the name of the country based on ISO code.

Enter the full & complete address of the registered office or principal office of the foreign company situated outside India.

Enter the date of establishment of principal place of business in India and select the type of office from the drop down values and describe the type of office in case others is selected by the user.

Enter the main division of business activity to be carried out in India as per National Industrial Classification (NIC)-2004. The main division should be selected based on relevant sub-class and description applicable to the company given in NIC-2004.

Enter the details of the other places of business in India and also give particulars of places established on earlier occasions in India even if the same is closed other than above. It is mandatory to enter the date of closure of such place of business and also FCRN of such office.

Maximum seven of such offices can be entered. If more than seven then details can be given in necessary attachment(s).

Enter the number of persons authorized in India on behalf of the company. Based on the number entered, blocks for entering particulars of persons authorized shall be displayed.

Details of maximum seven person authorized(s) can be filed through this eForm. If the total number is more than seven, then details of remaining person(s) can be provided as an optional attachment.

Enter the particulars of person authorized(s). Select whether the person authorized has been appointed through power of attorney or by passing the resolution.

Enter the number of person who holds the company’s not less than fifty percent paid up share capital (singly or in aggregate) as per section 379 of the Act.

Enter the particulars of such persons and system shall generate blocks up to seven. If more than seven persons are to be mentioned then attach the information in attachment no 5.

System shall automatically display the state or union territory for which stamp duty is to be paid on eForm FC-1 based on the state wise stamp rules. Amount of stamp duty is Rs 100.00 in case of Delhi and Rs 50.00 in case of other states. The state wise stamp rules are also available on MCA website.

Declaration:

Enter the full name of the authorised representative of the foreign company.

Enter serial number and date of board resolution where such person has been authorised to sign, give declaration and submit the eForm.

Attachments:

Certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company (Mandatory).

List of directors and secretary of the foreign company (Mandatory).

Power of attorney or board resolution in favor of the authorized representative(s) (Mandatory).

Reserve bank of India approval letter (It is mandatory to attach attested copy of such approval).

Copy of permission letter of other Authority(s)/Regulator(s), if any is required to be attached.

It is mandatory to attach following in case number entered is more than seven of respective field:
Lesson 16  E-filing  573

- Particulars of the persons covered u/s 379
- Details of the places of business other than principal place of business in India
- Details of the places of business established at any earlier occasion(s)
- Particulars of the authorized representatives
- Interest of authorized person(s) in other entities
- Particulars of subsidiary, holding or associate companies of the foreign company in India
- Particulars of related party of the foreign company

A system generated Certificate for establishment of place of business in India is issued by Registrar and sent to the user as an attachment to the email and Foreign Company Registration Number (FCRN) is generated consequent upon approval of eForm.

Fees:

Rupees 6,000

**FORM No. FC-2**

Return of alteration in the documents filed for registration by foreign company

- eForm FC-2 is required to be filed pursuant to Section 380(3) of the Companies Act, 2013 and Rule 3(4) of the Companies (Registration of Foreign Companies) Rules, 2014
- Every foreign company on alterations in the charter or statute or any other instrument governing the company, alterations in the particulars of Director/Secretaries of the foreign company, any change in the registered or principal office of the company in the country of incorporation, any change in the particulars of authorized representative(s) of the company and any change in other places of business in India of the company, has to file eForm FC-2 within 30 days of the alterations made. This eForm is required to be filed with Registrar of Companies and a copy is routed to concerned RoC of the respective state by the system. An alert is generated at the concerned RoC to inform of the filing done at RoC, Delhi.
- Enter the Foreign Company Registration Number (FCRN).
- Select options for the type of return. This eForm can be filled for more than one option also.
- Enter the date of board meeting where such alteration has been authorized by the board of directors of the company and user is required to enter the date as DD/MM/YYYY.
- Enter the date of general meeting, if any where such alteration has been authorized by the members of the company and user is required to enter the date as DD/MM/YYYY.

Part A: Alteration in charter, statute or memorandum of association or articles of association

- In case there is any change in name of the company, mention the changed name of the company.
- Ensure that the name entered is correct as the same shall be displayed in the certificate to be issued by the RoC office.
- Enter the details of new registered or principal office of the company where the foreign company was incorporated in case there is any alteration to the same.
- Enter the date and reasons of such alteration.
PART C : Alteration in the place of business in India of the company

– Enter the number of alterations and maximum seven fields can be regenerated and if alteration is more than seven then same can be attached in attachment no 5.

– Enter the details of alteration like if there is any principal place of business or other places of business or change in address of principal place of business in India, type of office and any approval required for such alteration, any change in business activities and also if there is any cessation of place of business in India.

– Ensure all the due filings from the opening of the principal office to closure of the principal office should have been done since company is no longer maintaining any place of business in India in case of cessation of place of business in India.

Part D : Alteration in the particulars of the directors or secretaries

– Enter the number of alterations and maximum seven fields can be regenerated and if alteration is more than seven then same can be attached in attachment no 6.

– Select the alteration is with respect to directors or secretaries.

– Enter the particulars of alteration like date of alteration, reasons and brief description of such alteration.

PART E : Alteration in particulars of company authorized representative

– Enter the number of representatives whose particulars are required to be changed and maximum seven fields can be regenerated and if alteration is more than seven then same can be attached in attachment no 7.

– Enter the type of alteration in particulars to authorized representative, effective date and reasons of such alteration.

– Enter approved DIN, if any and it is mandatory to enter valid income tax PAN in case of modified details of person to accept service of documents on behalf of the company.

– Select the option whether the authorized person has been appointed through power of attorney or board resolution.

Attachments

– Certified true copy of the Board resolution, if any

– Copy of the general meeting resolution

– Copy of approval letter (it is mandatory if any approval is required for such alteration).

– Translated version of the documents in English (in case documents attached are not in English).

– Particulars of alterations in the place of business in India of the company

– Particulars of alteration in details of the directors or secretaries

– Particulars of alterations in details of the company authorized representative

Certificate

A system generated certificate for Establishment of Place of Business in India consequent upon change of name and certificate for closure of place of business consequent upon cessation of principle place of business are issued by Registrar and is sent as an attachment to the email id of the company, after approval is granted.

Fees:

Rs. 6,000
FORM FC-3
Annual accounts along with the list of all principal places of business in India established by foreign company

- eForm FC-3 is required to be filed pursuant to Section 381 of the Companies Act, 2013 and Rule 4, 5 and 6 of Companies (Registration of Foreign Companies) Rules, 2014

- Every foreign company is required to prepare and file financial statements within a period of six months of the close of the financial year of the foreign company to which the financial statements relate to Delhi RoC in eForm number FC-3. It shall also prepare and file a list of places of business in India established by a foreign company as on date of the balance sheet in the same form.

- However, the Registrar can extend the said period to not more than three months on application made in writing.

- Enter the Foreign Company Registration Number (FCRN).

- Enter the details of the period for which annual accounts of the company are being filed.

- Enter the date of signing of report by the auditors on the annual accounts of the foreign company pertaining to its Indian operations.

PART A : Balance Sheet

- Enter the details of the current financial year for which annual accounts are being filed and

- Enter the details of the annual accounts of the foreign company like capital, reserves and surplus, secured loans, unsecured loans etc.

- Please ensure that the amount entered in the fields in this eForm should be in Indian rupees (Rs.) only.

PART B : Statement of Profit and Loss (in relation to business carried in India)

- Enter the details of profit and loss of the foreign company in relation to the business carried in India which may include revenue from Indian operations, other income, taxation etc.

- Enter the details of all principal place of business in India as on the date of balance sheet.

- Enter details like date of establishment, type of office, address and description of the business carried on at the principal place of business.

Attachments

- Copy of latest consolidated financial statement of parent company (Mandatory).

- Copy of balance sheet and profit and loss account duly authenticated under section 381(1) (Mandatory).

- Statement of related party transactions

- Statement of repatriation of profits

- Statement of transfer of funds

- Approval letter obtained for every establishment in India by a foreign company

- In case the document is in any other language other than English, certified translation in English language is mandatory

Fees:

Rs. 6,000
FORM No.FC-4

Annual Return of a Foreign Company

- eForm FC-4 is required to be filed pursuant to Section 384(2) of the Companies Act 2013 and Rule 7 of Companies (Registration of Foreign Companies) Rules, 2014

- Every foreign company shall prepare and file annual return of the company in e-Form FC-4 within 60 days from the close of financial year.

- Enter the Foreign Company Registration Number (FCRN)

- Enter the complete address of the place of the register of members or debentures kept in India.

- Enter the details of all the business activities of the company contributing 20% or more of the total turnover.

Summary of share capital, debentures and other securities

- Specify details for the authorized, subscribed and called up share capital, Indian Depository Receipts (IDRs) and debentures of the Company.

- Enter the particulars of authorized Indian Depository Receipts (IDRs) wherever applicable and also, specify number of shares of each class which are partly paid up for a consideration other than cash and also enter the paid up value per share.

- Enter number of shares for each class which are forfeited and also specify the amount paid on such shares.

- Enter the details of the shareholding pattern of the company at the beginning and end of the year and also percent change in shareholding.

- Enter the details of debentures like number, nominal value per debenture and total amount of debentures and also for other securities outstanding at the end of the year.

- Enter the details of the persons who is citizen of India including any company or body corporate incorporated in India having not less than 50 percent of shareholding in such foreign company.

- It is mandatory to enter Income tax PAN for individuals. System shall automatically display the details like name, father’s name, nationality, date of birth and permanent address in case DIN is entered and rest of the particulars are required to be provided by the user.

- For cases of company or body corporates, system will also automatically display the name of the company, address, email id, telephone number and fax number of the company in case CIN/LLPIN is entered by the user and for other cases, the same particulars are required to be given by the user.

- Enter the particulars of the indebtedness of the company for which charge has been created on the properties in India like name of property charged and amount secured by the charge with respect to indebtedness at the beginning of the year, charges created and satisfied during the year and total indebtedness at the end of the year.

- Enter the full name of authorised representative of the foreign company.

Attachments

- Details of Promoters, Directors and Key managerial personnel and changes therein since close of previous financial year. (Mandatory)

- Details of directors and key managerial personnel and their remuneration. (Mandatory)
Details of the meeting of the members or class thereof, board and its various committees along with attendance details. (Mandatory)

Particulars of members and debenture holders along with changes therein since the close of previous financial year. (Mandatory)

Particulars of holding, subsidiary and associate companies and firms. (Mandatory in case number of entities prescribed at serial no 6 is more than seven)

Details of Penalties / punishment/ Compounding of offences, if any. (optional)

Fees:

Rs. 6000

**FORM No. GNL-1**

Applications made to Registrar of Companies

- eForm GNL-1 is required to be filed pursuant to rule 12(2) of the Companies (Registration offices and Fees) Rules, 2014

- User can file application seeking approval from Registrar of Companies by filing application in eForm GNL-1 for different purposes under Companies Act, 2013.

- If it is required to file eForm MGT-14 in relation to the resolution passed for filing this application; ensure that filing of eForm MGT-14 precedes filing of this eForm.

- Select the category of the applicant out of company, foreign company and others. Category as ‘Foreign company’ can be selected only in case purpose of the application is ‘Compounding of offences’ or ‘Others’.

- Category as ‘Others’ can be selected only for ‘Compounding of offences’ or for withdrawal of approved application for name availability.

- In case of an Indian company, enter the ‘Corporate Identity Number’ (CIN).

- In case of a Foreign company, enter the ‘Foreign Company Registration Number (FCRN)’.

- You may find CIN by entering existing registration number or name of the company in the ‘Find CIN’ service under the menu MCA services on the MCA website.

- Enter the approved SRN of eForm INC-1 filed for reservation of name in case category of applicant is ‘Others’.

- Select the purpose of the application. In case category of applicant is Foreign company’ or ‘Others’, only ‘Compounding of offences’ or ‘Others’ can be selected.

- A dormant company desirous to regularize its filing can apply for normalizing by selecting the option for ‘Normalizing a dormant company’. After approval of the application, the company shall be provided 21 days to file all the annual return and balance sheets for the required financial years.

- In case all the required filings are done within 21 days, then the status of the company shall be changed to ‘Active’. However, in case, all the required filings are not done within 21 days, status of the company shall be changed back to ‘Dormant’.

- This eForm for normalizing a company should be filed by only those dormant companies which are desirous of getting back to Active status by filing the due annual returns and balance sheets.

- Enter the details of application. In case of application for compounding of offences, also mention the facts of the case mentioning nature of offence and period of default.
This is applicable for compounding of offences.

The application can be filed for Company, Director or Manager/Secretary or Others. Enter number of person(s) and their details excluding Company. Details of only 8 persons can be entered in the eForm. If number of persons is greater than 8, then additional details can be provided in optional attachment.

Select the category. In case the category is Director, enter an approved DIN. In case category is Manager/Secretary, enter Income-tax PAN.

In case category is Others, enter either income-tax PAN or passport number. In case of passport number, prefix the number with zero(s) (0) to make it a 12 digit number.

Enter the details of section violated. Also provide details of the section under which default is punishable along with the details of applicable penalty.

Enter the details as to how the default has been made good indicating the date on which the default has been made good, wherever applicable.

In case of application is made for extension of AGM or Annual Accounts, mention financial year end date in respect of which the application is being filed. Ensure that you enter the correct date as the extension by the concerned office shall be based on this date.

Enter total number of stamp duty payment(s) for which details are to be entered and for details of stamp duty to be paid.

Attachments:

– Board resolution passed for the purpose of making an application
– Scheme of arrangement, amalgamation if application is filed for amalgamation
– Detailed application is required to be attached in all the cases of filing
– Copy of notice received from RoC or any other competent authority
– Any other information can be provided as an optional attachment

In case of compounding of offence, the detailed application should contain the following details:

– Detailed application
– General profile and history of the company containing details such as name, date of incorporation, main objects of the company
– Facts of the case mentioning nature of offence and period of default
– Whether the offence is made good, if yes then how and when (i.e. the date where applicable)
– Prayer to compounding authority for compounding of offence

In case of extension of annual general meeting, the detailed application should contain the following details:

– Reasons of extension
– Period for which extension is required (Note: It should not exceed three months)

In case of extension of financial year, the detailed application should contain the following details:

– Reasons for extension of financial year
– Period for which extension is required (Note: It should not exceed three months)
– This e-form shall be pre-certified by practising CA/CS/ICWA.

Fees:

No fee applicable for two purposes- “Amalgamation- others” and “Declaring a defunct company”
1. **Amalgamation- Govt. Company, Normalizing a dormant company or others**

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<td>(d) Above Rupees 5,00,00,000 but up to Rupees 10 crore or more</td>
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</tr>
<tr>
<td>(e) Above Rupees 10 crore</td>
<td>20,000</td>
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<tr>
<td>(ii) By a company limited by guarantee but not having a share capital</td>
<td>2,000</td>
<td>N/A</td>
</tr>
<tr>
<td>(iii) By a company having a valid license issued under section 8 of the Act (Section 8 Company)</td>
<td>2,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2. **Compounding of offences, extending the period of annual accounts, extension of period of AGM**

In case of Company having share capital

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In case of Company not having share capital

Rupees 200 per document

**FORM No.GNL-2**

**Form for submission of documents with Registrar**

- eForm GNL-2 is required to be filed pursuant to the Companies Act, 2013 and the Companies Act, 1956.
- Company can file certain documents with the Registrar of Companies by filing this eForm GNL-2 and in case there is no eForm prescribed for filing any document with Registrar, then company or liquidator can file such documents through this eForm.
- If it is required to file eForm MGT-14 in relation to the resolution passed for filing this application; ensure that filing of eForm MGT-14 precedes filing of this eForm.
- Select any one option for the document being filed through this eForm.
- Enter details of eForm MGT.14 filed with registrar of companies with respect to the filing of Prospectus.
- Enter the Section(s) of the Companies Act under which the document is being filed by selecting the Others option in field 3.
– Enter details of document being filed. The details should contain the nature of document and purpose of filing of the document.
– In case of return of deposits, the date of event will automatically be displayed. This will be the end date of the financial year as to be filled in field 9.
– In case the date of passing of resolution is entered in form then it will automatically be displayed as date of event except the case purpose is ‘return of deposits’.
  – For Form 149, enter date of board resolution for winding up of the company
  – For Form 152, enter date of appointment of liquidator.
  – For Form 153, enter date of commencement of winding up.
  – For Form 154, enter date of commencement of winding up.
  – For Form 155, enter date of closure of winding up.
  – For Form 157, enter date of final winding up meeting.
  – For Form 158, enter date of final winding up meeting.
  – For Form 159, enter date of the completion of winding up.
– Enter the financial year start date and end date for which the document relates – ‘Return of deposits’.

Attachments
– Copy of prospectus or information memorandum or private placement offer letter or record of private to be kept by the company
– Form 149 or form 152 or form 153 or form 154 or form 156 or form 157 or form 158 or form 159 of the Companies (Court) Rules, 1959
– Form SH-9: Declaration of solvency
– Return of deposits or circular for inviting deposits or circular in the form of advertisement for inviting deposits

Fees:
In case of Company having share capital

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In case of Company not having share capital
Rupees 200 per document

FORM No.GNL-3
Particulars of person(s) or key managerial personnel charged or specified for the purpose of Section 2(60)(iii) or (iv)
– eForm GNL-3 is required to be filed pursuant to Section 2(60) of the Companies Act, 2013.
When a company charges any person with the responsibility of complying with the provisions of the Act, it has to file Form GNL-3, provided the person so charged has given his consent in this behalf to the Board. The consent of the charged person is taken on the same form. The withdrawal of the consent for the charged person is also filed through the same form. The purpose is to identify persons within the company for complying with the provisions of the Companies Act.

Enter the number of Key managerial personnel (s) or director(s) charged for which details are to be provided.

Details of maximum three persons can be provided in the eForm. If the total number is more than three, provide the details of the rest as an optional attachment.

Enter ‘Director Identification Number’ (DIN) in case of director and ‘Income tax permanent account number’ (PAN) in case of manager or secretary or others.

Enter the date of board resolution.

In case of ‘Acceptance’, system shall validate that the person charged is associated with the company as on the date of board resolution. This validation shall not be there in case designation of person charged is ‘Others’ or if the date of board resolution is before 01.07.2007.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

Attachments:

Copy of board resolution passed for appointment or revocation is a mandatory attachment.

Fees:

In case of Company having share capital

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Rupees 200 per document

FORM No.MSC-1

Application to Registrar for obtaining the status of dormant company

- eForm MSC-1 is required to be filed pursuant to sub-section (1) of Section 455 of the Companies Act, 2013 and Rule 3 of Companies (Miscellaneous) Rules, 2014
A company is formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years may make an application in eForm MSC-1 to the Registrar of Companies for obtaining the status of a dormant company.

User should ensure that eForm MGT-14 must have been filed before for special resolution authorizing for obtaining dormant status and the company must not be a listed company and also:

- no inspection, inquiry or investigation has been ordered or taken up or carried out against the company
- no prosecution has been initiated and pending against the company under any law
- neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
- not having any outstanding loan, whether secured or unsecured and if having consent must have been obtained before filing this eForm
- no dispute in the management or ownership of the company
- not having any outstanding statutory taxes, dues, duties etc. payable
- not defaulted in payment of workmen’s dues

Enter the date of board resolution and special resolution passed for authorization for application for dormant status of the company.

Enter SRN of eForm MGT-14 filed for registration of special resolution passed for obtaining dormant status.

Enter number of directors and their details by specifying DIN.

Ensure that minimum number of directors by the applicant company should be one in case of OPC, two in case of private company and three in case of public company.

Select the grounds on the basis of which application is being made.

If the company is formed and registered under the Companies Act, 2013 then please select from one of the options – any future project or holding as asset or intellectual property and also select the checkbox that the company did not have any significant transaction since incorporation.

If the company is not formed and registered under the Companies Act, 2013 then select at least one of the next three checkboxes:

- The company has not been carrying on any business..........................
- The company has not made any significant accounting transaction ..............
- The company has not filed financial statements............

Select whether the company have any assets/ liabilities or not.

Enter the date of financial year ending to which last financials belong and date of last annual filing was done.

Mention the reasons if no filing of annual return and financial statements is made in the last two financial years.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in wholetime
practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**Attachments**

- Certified true copy of board resolution authorizing making of this application.
- Certified true copy of special resolution authorizing for obtaining dormant status
- Auditor’s certificate
- Statement of affairs duly certified by Chartered Accountant or Auditor(s) of the company
- Copy of approval or no objection certificate (NOC) from the regulatory authority in case company is regulated by such authority
- Latest financial statement and annual return of the company is mandatory to attach in case the same is filed to Registrar
- Consent of the lender if any loan is outstanding
- Certificate regarding no dispute in the management or ownership;

**Certificate**

A system generated Certificate of status of a Dormant Company is issued by Registrar and sent to the user as an attachment to the email, after approval is granted. Once the form is approved the status of the company shall be changed to ‘Dormant under section 455’ after which company can only file eForm MSC-3 as annual return and eForm MSC-4 for changing the status to ‘Active’.

**Fees:**

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**FORM No. MSC-3**

Return of dormant companies

- eForm MSC-3 is required to be filed pursuant to Section 455 (5) of The Companies Act 2013, and Rule 7 of Companies Rules, 2014
A dormant company shall file a return annually in eForm No. MSC-3 along with the annual fee within thirty days from the end of each financial year.

Mention the principal business activities of the company.

Enter the number of directors on the board of the company and same shall be minimum one in case of OPC, two in case of private company and three in case of public company.

Enter the number of board meetings held during the year and fields shall be regenerated accordingly.

Enter the date on which the meeting was held, total number of directors as on the date of meeting and the number of directors present to attend the meeting.

Enter the number of changes in the management and accordingly the fields will be regenerated accordingly.

Enter date of change, names of key persons in the new management and the reasons of change.

Enter details for transactions like payments for maintenance of its office and records, payments made to fulfill the requirements of the Act and payment of fees to ROC.

Enter the details with respect to allotment of shares or securities if any done by the company like date of allotment of shares, purpose of allotment, number of shares allotted, face value per share and paid up value of such shares and the consideration received in cash or other than cash.

Enter the details of the annual fee to be paid along with this eForm. This fee is to be paid to retain the status of dormant.

Select whether any significant transaction is carried out during the year or not. If any transaction is carried out by the dormant company, then specify the details of such transaction.

Certification

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in wholetime practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

Attachments:

Certified true copy of Board resolution showing authorization given for filing this declaration. (Mandatory)

Duly audited statement of financial position by a chartered accountant in practice. (Mandatory)

Fees:

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In case of Company not having share capital

Rupees 200 per document

**FORM No. MSC – 4**

**Application for seeking status of active company**

- eForm MSC-4 is required to be filed pursuant to Section 455(5) of the Companies Act, 2013 and Rule 8 of Companies (Miscellaneous) Rules, 2014
- A dormant company can file an application to Registrar in eForm MSC-4 for seeking the status of an active company.
- Enter a valid SRN of eForm MSC-3 of last annual return filed by the dormant company.
- Enter the date of issue of certificate of dormant status to the company in this field.
- Enter the full name of the person applying for active status on behalf of the company and who is duly authorized by the board of directors of the company.

**Attachments:**

- Certified true copy of Board resolution authorizing for filing application is a mandatory attachment.

**Fees:**

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<td>2,000</td>
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**Certification**

The e-form should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the e-form. Select the relevant category of the professional and whether he/she is an associate or fellow.

In case the professional is a chartered accountant (in whole-time practice), or cost accountant (in whole-time practice), enter the membership number. In case the practicing professional is a company secretary (in whole-time practice), enter the certificate of practice number.

**PRE-REQUISITES FOR UPLOADING AN E-FORM**

Once the e-Form has been filled, it is to be uploaded on to the MCA portal. Pre-requisites for uploading are as under:
Role Check Requirement

“Role Check” functionality envisages that at the time of uploading of e-form on MCA portal, system shall verify that the digital signature(s) affixed on the e-form are of the Director, Manager or Secretary of the company as per Form DIR – 12 filed by the Company or a practicing professional (wherever applicable). The verification of signatures and other particulars of practicing professional is done by the system from the data base provided by the respective Institute i.e. ICSI, ICAI or ICWAI.

System shall also verify that the digital signature(s) affixed on the e-form is registered on the MCA portal.

In case “Role Check” validations fails, the e-form shall not be submitted.

“Role Check” function has been implemented from 1st July, 2007

Pre-requisite for Role Check

1. Approved DIN: Directors must have approved DIN to register their DSC on MCA portal.
2. DIN-3 Form: Database of “Signatories” of the companies will be created on the basis of DIN/PAN information submitted by the companies through DIR – 12.
3. Professionals database: Professional Institutes (ICAI, ICSI & ICWAI) have provided data of their members, which will be used for validation of particulars of professionals. Data will be updated on a regular basis.

Registration of DSC

Digital Signature Certificate of the “Signatories” of the companies and Practicing Professionals must be registered on the MCA portal.

(a) Signatories of the company and practicing professionals are required to register their DSC on the MCA portal.
(b) For directors, system shall validate the information from DIN database. Approved DIN is mandatory.
(c) For Manager and secretary, system shall validate the information from DIN 3 database. DIN-3 form must have been filed prior to registration of DSC.
(d) For Professionals, system shall validate the information from the membership data provided by the Professional Institutes.

New User Registration

Users have to self register at MCA portal to file an e-Form or to avail any paid service on MCA portal. You are first required to register yourself. After successful registration, the user will be able to login with the user ID and password or Digital certificate. In case user is a Company Director, or a Professional User, he will have to provide his Digital certificate instead of password during registration.

1. Filling up Self Registration Form

(a) Click on the New User Registration link.
Lesson 16  E-filing  587

(b) After clicking the New User link you will get the registration form.

(c) Select the User Category and User Role.

(i) User Role field is activated depending on the selection of User Category.

(ii) The Registered User category has one User Role named Individual User. A Registered User has access to the basic e-Services of MCA. All users under this category have a "Password" based login.

(iii) A Business User has access to certain specific functions, in addition to all the basic e-Services of MCA which are available to a Registered User. Users under this category primarily have a "DSC" based login and consists of Directors, practicing members of ICSI/ICAI/ICWAI and individuals associated with companies. The Business User category has the following User Roles:

(iv) Directors

(v) Company User - Others

(vi) Practicing Professional

(vii) Manager/Secretary

(d) Start filling up the fields one by one. Fields marked as mandatory. After entering a value in a field, either press the tab key to go to the next field or click the left mouse button on the next field.

(e) The second section requires the user to give their Personal Details such as name, gender and date of birth. To enter your date of birth click on the calendar icon ( ) associated with the Date of Birth field and then select the appropriate date from the calendar. You can also type the date in the Date of Birth field in the dd-mm-yyyy format.

(f) The third section requires the user to give their Contact Details such as address, telephone number and email address. In fields Country and State, click on the down arrow associated with the respective field and a list of appropriate options will appear. Select an option from that list by clicking on the option.

(g) The State field will be activated only after selecting the Country as India.

(h) Registered User and Business User having user role Company User - Others will be entered the following fields:

(a) User ID

(b) Password

(c) Confirm Password

(d) Hint Question

(e) Hint Answer

(f) Please type the letters shown here into the box below

(i) Business User having user role Authorized Signatory and Professional User will be entered the following fields:

(a) User ID

(b) Digital Certificate: Click on the Select Certificate button associated with the Digital Certificate field.

(c) Select the Digital Certificate and click on the OK button. The Digital Certificate details will be displayed in the Digital Certificate field.

(j) Please type the letters shown under Verify Your Registration field.
2. Terms and Condition

(a) Read the terms and conditions carefully.

(b) Click on the button “Create My Account” to submit details for registration.

3. Confirmation of User Creation

(a) On clicking the Create My Account button, you will see the message confirming the successful creation of a new user.

(b) If the user ID entered already exists in the system, a message stating the user already exists will be displayed in a new window. Click on the Close button and User Details screen will be displayed to you for entering a different User ID.

Uploading the duly filled up e-Form

(a) When the “Submit” button is pressed, the e-Form gets uploaded into the MCA central document repository.

(b) Thereafter, the requisite fees as applicable for the e-Form should be paid either on-line or offline.

(c) Time stamping of e-Forms from a trusted source provides evidence that the transaction has occurred at a particular point of time.

(d) Once the e-Form has been accepted and payment of fees has been acknowledged, a work item is created and assigned to the appropriate MCA employee based on pre-defined assignment rules as part of MCA back office workflow automation.

(e) For all the electronic forms only one copy is required to be filed.

(f) For every filing through MCA-21 portal, Service Request Number (SRN) is generated by the system. This SRN number is to be noted for future reference. SRN number can be found on Challan (offline payment method) and also on filing receipt (online payment method).

(g) In certain cases the Act requires copies of certain documents also to be filed with certain forms. (In case of e-filing, there is no need for any number of copies of document.)

(h) In the case of an e-Form, the authorized officer affixes his/her digital signature for registering/approving/rejecting the same.

(i) After the processing of the e-Form is completed, an acknowledgement e-mail is sent to the user regarding its approval/rejection.

DEFECTIVE FORMS/DOCUMENTS

A form or document is defective for any one of the following reasons:

(i) The form or document does not contain the necessary enclosures;

(ii) Certain important particulars in the document or form have been left unfilled;

(iii) Certain particulars apparent on the face of it seems false;

(iv) The document is not filed in time;

(v) The document is not properly signed or certified.

If a document is not found to be in order for any of the reasons stated above the Registrar will not register the document until the particulars left unfilled are filled or the error is rectified by the company. For this purpose, facility of resubmission is available under MCA-21 portal. However, resubmission can be made, only when the ROC requires that the company resubmit the form with corrections. If within the date document is required to be
corrected or rectified, the blank is not filled in or the apparent error is not corrected, then the Registrar is at liberty to launch prosecution against the company and its officers for default in filing the document.

**Penalty for Filing False Documents/Statements with the Registrar**

According to Section 448 of the Companies Act 2013, 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.

Further Section 447, Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

**MODE OF PAYMENT OF FEES**

MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e.

(i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/ Cash;

(ii) On-line payments through Internet Banking and Credit Cards [Master Card/ VISA].

**Off-line method of payment of fees**

In case a stakeholder chooses to pay through the off-line method (i.e. over the counter in a authorised bank branch through the pre-filled challan generated by the system after e-filing), it normally takes about two to three days for the bank to intimate the realisation of payment to the MCA-21 system and the transaction gets passed on to the back office for processing only after payment is recognised by the banking system. On the other hand, the on-line payment through Internet banking/Credit Card is instant.

**Online method of payment of fees**

Electronic payments through Internet can be made either by credit card or by Internet banking facility.

**Credit Card Payment Process**

The credit card payment process is as follows:

(a) The user selects credit card option for payment;

(b) MCA-21 system provides SRN and amount to third party (payment gateway);

(c) User is re-directed to third party providing internet payment gateway services. The user enters card information (card number, expiry date, etc.) as requested by the payment gateway server to process the payment;

(d) On success, following payment authorization information is provided by the payment gateway - SRN, date and time of transaction, amount paid, Authorization/Reference ID (generated by payment gateway), Credit Authorization reference (VISA, MASTERCARD, etc.);
(e) The payment status is updated as “Paid” for the corresponding SRN;

(f) In case of failure in payment (due to incorrect card number, card expiration, etc.), user is displayed the error page with appropriate error message (if received from payment gateway) along with payment options to restart the payment process.

**Internet Banking Payment Process**

Payments shall be made through Internet banking facility provided by designated banks namely, HDFC Bank, ICICI Bank, Indian Bank, Punjab National Bank and State Bank of India. The Internet banking payment process is as follows:

1. MCA-21 system redirects the user to the bank’s Internet banking portal URL (as provided by the banking portal beforehand) and passes the necessary information such as SRN and amount;

2. User interacts with the bank portal and provides relevant information for payment processing;

3. After the payment processing is done, the response is sent by the bank¡¯s Internet banking portal to MCA portal;

4. On success, following payment authorization information is provided by bank portal:
   - (i) SRN;
   - (ii) Date & time of transaction;
   - (iii) Amount paid;
   - (iv) Authorization/Reference ID generated by bank’s portal;
   - (v) Credit Authorization reference (VISA, MASTERCARD, etc.)

5. SRN, date and time of transaction, Amount paid and Authorization/ Reference ID (generated by bank’s portal) MCA portal. Payment authorization information as received is updated in the database and the payment status is updated as “Paid” for the corresponding SRN Internet banking service is not provided by some of the banks 24 hours, and 7 days in a week. In case the user opts for Internet banking option for payment, when the service is not online, request for payment will be accepted by the bank portal to be processed offline.

**Online Payments Using NEFT**

A new mode i.e. NEFT (National Electronic Fund Transfer) mode has been introduced in addition to already existing payment modes vide circular dated March 9th, 2011, with a view to improving service delivery time. With the introduction of National Electronic Funds Transfer mode of payment (NEFT), companies having a bank account in any bank can make e-payments by using the NEFT facility. In the interest of the stakeholders, the Ministry has decided to accept payments of value upto ₹ 50,000 for MCA 21 Services, only in electronic mode w.e.f. March 27, 2011. However, in the following three cases, challan mode for payment is allowed to less than ₹ 50,000:

(a) Payment to Investor Education and Protection Fund through “Pay Misc. Fee” functionality.

(b) Any payment made by users having category “Official Liquidator” (OL) office

(c) Any payment made by users having category “MCA employee”

For the payments of value above ₹ 50,000, stakeholders would have the option to either make the payment in electronic mode or paper challan. However such payments would also be made in electronic mode w.e.f. 1st October 2011.
Key benefits of NEFT are: (i) Reduces Payee’s effort (branch visit is not required) (ii) Reduces time for funds transfer (2-5 hours) (iii) Reduces dependency on limited number of banks.

Ministry has simplified the payment of MCA fees via NEFT (National Electronic Fund Transfer) mode. The simplified process was made public on 11.06.2012. This process is as under:-

Process flow of payment of MCA21 fees using NEFT:

(i) User uploads e-form, selects “NEFT” as payment option, generates a SRN and an eChallan which contains the procedure for conducting the NEFT transfer.

(ii) User transfers funds to the MCA21 account via internet banking facility offered by their bank in which they hold an account. User may quote SRN in the remark column. Users should pay only via Internet banking and not via cash at branch counters. It may not be possible to link payments made through cash at branch counters.

(iii) User’s bank provides a unique transaction number (UTN) for the NEFT transfer.

(iv) Banks will inform MCA21 system in four to five working hours about the payment along with the UTN.

(v) User logs in to MCA21 and link UTN and SRN. For verification purpose, user will have to provide account number from which the transfer was carried out and the amount. If the payment has been notified to MCA21 system and the details are matching, then the linking will be successful and MCA21 will create work item for further processing.

(vi) If details of payment for the SRN are still not received from banks, an information message is displayed to user to link SRN & UTN at a later time. If details don’t match an error message is shown to the user.

(vii) It should be noted that for transactions involving stamp duty, there will be two SRNs (one for filing fee & another for stamp duty). Payment for both SRNs should be made into the same account.

(viii) If the payment is not linked within the specified duration (currently it is 2 days since banks report the transactions), the amount will be returned to the originating account.

**CONDONATION OF DELAY**

According to Section 460, Notwithstanding anything contained in this Act,—

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

The Company Secretary should follow the procedure as laid below:

(1) Convene a Board Meeting and pass a resolution for seeking condonation of delay in filing the document.

(2) Submit an application to the Central Government, in pdf format, to this effect indicating alongwith the reasons for such delay. The application should be accompanied by a copy of the Board Resolution seeking condonation of delay, latest audited balance sheet and profit and loss account, certified copy of the memorandum and articles of association and filing fees.

(3) The Central Government may for reasons to be recorded in writing, condone the delay.
LESSON ROUND UP

- With the advent of Information and Communication Technology in all sectors today, Governments across the globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

- Filling and filing of forms is an important part of the secretarial function of a company secretary. Normally, where company appoints a company secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations. Therefore, for any lapse in complying with the various provisions of the Companies Act or such other legislations, for the compliance of which the company secretary has been made responsible, he becomes liable as “officer in default”.

- Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice.

- An applicant seeking reservation of name for a proposed company or an existing company seeking to change its name shall make an application to Registrar in which the registered office of the company is situated or to be situated. User may apply for reservation of name by filing eForm INC-1. In case of new company, the applicant can propose six names for the company.

- eForm INC-2 deals with incorporating One Person Company. This eForm is accompanied by supporting documents such as details of directors/subscribers, the Memorandum of Association and Articles of Association and evidence of payment of stamp duty. Once the eForm is processed and found complete, a company is registered and CIN is allocated.

- eForm INC-7 is required to be filed pursuant to Section 7 (1) of the Companies Act, 2013 and pursuant to Rule 10, 12, 14 and 15 of Companies (Incorporation) Rules, 2014 for incorporation of Company other than OPC within sixty days from the date of application of reservation of name in eForm INC-1.

- An existing company registered under section 8 seeks to convert itself into a company of any other kind shall make an application to the Regional Director for conversion of its status. Once the approval is given by the Regional Director, the company shall cease to enjoy all the privileges/ concessions obtained by it on account of being a Section 8 company.

- In order to shift the registered office of the company from one state to another or from jurisdiction of one Registrar of Companies to another, an application in eForm INC-23 has to be made to the Regional Director (Central Government) for his confirmation/ approval.

- Whenever an existing company needs to change its status from private to public or vice versa, it shall be required to file this eForm. For the purpose of conversion from private company to public company, a private company is required to pass special resolution and file an intimation of its conversion in eForm INC-27. A Public company can also get itself converted into a private company by filing eForm INC-27 subject to passing of the special resolution and approval of the competent authority.

- Whenever a company makes any allotment of shares or securities, it is required to file a return of allotment in eForm PAS-3 to Registrar within thirty days of such allotment including the complete list of allotees to whom the securities have been issued.

- In case the appointment of an key managerial personnel is made within the specified parameters (in
accordance of schedule V of the Companies Act, 2013) then a return has to be filed in eForm MR-1 with RoC within 60 days from the date of such appointment.

– Any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force consisting of seven or more members, may at any time register itself under Companies Act, 2013 as a Part I Company. For this purpose, eForm URC-1 shall be filed along with eForm INC-7.

– A foreign company file the particulars of the principal place of business in eform FC-1 within 30 days of establishment of place of business in India alongwith the required documents to RoC, Delhi. The Registrar of the corresponding state shall have access to these documents filed with the RoC, Delhi.

– A company is formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years may make an application in eForm MSC-1 to the Registrar of Companies for obtaining the status of a dormant company.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not be submitted for evaluation)

1. Discuss E-Governance and MCA-21.

2. State the check points with reference to Form No. INC-2 and Form-7.

3. What are the modes of payment under filing of forms under Companies Act, 2013?

4. State the check points with reference to Form No. PAS-3.

5. State the check points with reference to Form No. FC-4.
Lesson 17
Striking Off Names of Companies

**LESSON OUTLINE**

- Introduction
- Meaning of defunct company
- Important provisions of law on strike off
- Power of ROC to strike off defunct companies
- Position of company's creditors
- Court's power to wind a company even after dissolved u/s 560
- Restoration of company within 20 years
- Procedure involved in striking off names of companies
- Rights of person aggrieved by company having been struck off
- Effect of restoration of name
- Relevant Case Laws on Striking off/ Restoration of Name
- Dormant company
- Procedure for obtaining status of Dormant company
- Procedure for obtaining status of active company
- ANNEXURES
- LESSON ROUND UP
- SELF TEST QUESTIONS

**LEARNING OBJECTIVES**

The provisions relating to striking off names from the Register under Companies Act, 2013 has not yet enforced and the provisions of Act 1956 has been dealt in this chapter. Section 560 of the Companies Act, 1956 prescribes the law and procedure for striking off the names of defunct companies which are not carrying on any business, from the register of companies maintained by the Registrar. This is an alternative to winding up of a company subject to statutory criterion specified under the section.

Provisions relating to Dormant Company have already been notified under Companies Act 2013 and the procedural aspects have been dealt in this chapter.

After reading this chapter you will be able to understand the procedural aspects relating to striking off names of companies, and the procedure to obtain the status of dormant company and the status of active company.
INTRODUCTION

On incorporation of a company under the Companies Act, the Registrar of Companies (ROC) issues a Certificate of Incorporation to the Company certifying that the company named in the Certificate has come into existence from the date of issue of the Certificate and its name has been entered in the Register of Companies maintained by the ROC. Every company so registered is assigned a unique identification number in one consecutive series called Corporate Identification Number (CIN). A private company can take steps to start business enumerated in the object clause of the memorandum and a public company is required to obtain certificate of commencement of business before it commences business or exercises borrowing powers.

Once registered, the name of the company cannot be removed from the Register unless it is dissolved by the process of law, either as a result of its winding up or upon its amalgamation with another company. However, in case the company is a defunct company, the Companies Act provides a short-cut to the winding up process, namely striking the name of the Company off the Register of Companies by the ROC under Section 560 of Companies Act, 1956. Thus it is an alternative mode of dissolution to the winding-up of a company provided the company does not have adequate realizable assets or has such assets as would not be sufficient to meet the costs of liquidation.

MEANING OF DEFUNCT COMPANY

The expression “defunct company” for the purposes of Section 560, means a company which is not operating or functioning; not carrying on any business or in operation. Generally it is evident from the latest available balance sheet of a company. Again, if a company is not filing its balance sheet for many years then also the concerned Registrar of Companies (ROC) has reasonable cause to believe that the company is not in operation.

A company which is in the course of being wound-up voluntarily is still in operation within the meaning of the section [Langlagate Proprietary Co. (1912) 28 TLR 529]. A company, although not carrying on business, may be in operation. [Central India Mining Co. v. Society Coloniale (1920) 1 KB 753] A company if it is operating as a company for doing something in relation to its past obligations or to avoid future pecuniary liability will be deemed to be in operation. Such companies cannot be dissolved by following the procedure mentioned in Sec. 560 of the Act.

IMPORTANT PROVISIONS OF LAW ON STRIKING OFF

(i) Power of ROC to strike off

(ii) Position of company’s creditors

(iii) Court’s power to wind up a company even after it is dissolved u/s. 560

(iv) Restoration of company within 20 years

POWER OF REGISTRAR TO STRIKE OFF NAMES OF DEFUNCT COMPANIES

Under section 560, the Registrar of Companies has been empowered to strike off names of those companies who are not carrying on any business or are not in operation after following the prescribed procedure given in the section. Once satisfied, the ROC shall strike the name of the company off the Register, and shall publish notice thereof in the Official Gazette and the company stands dissolved.

The Registrar is not bound to remove a company from the register, even though an application has been made for the purpose, and it has come to his notice that the company is not functioning or that its members have been
reduced to less than seven. Where the object of the application to the Registrar under this section is to avoid liability on a suit pending against the company, the application must be rejected.

Under two circumstances ROC has been empowered to strike off the names of companies under liquidation. Firstly, where a company is being wound up and the ROC has reasonable cause to believe that no liquidator is acting. Secondly, if he finds that the affairs of the company have been completely wound up, and the required returns are not forthcoming from the liquidator appointed for a period of six consecutive months. In these two circumstances as mentioned above, the ROC pursuant to Section 560(4) has to send a notice by registered post about striking off its name from the Register to the company, if no liquidator is acting and to the liquidator, if the required returns are not forthcoming from him.

POSITION OF COMPANY’S CREDITORS AFTER STRIKING OFF

The striking off the name of a company does not materially affect the creditors of the company, because such creditors may-

(i) enforce their claims against every director, secretaries and treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; the liability being limited to the one existing prior to the dissolution of the company. The liability is not enhanced such as making them personally liable when they were not so liable before. Shrikishen Dhoot v. Kamalapurkar, (1965) 1 Comp LJ 233; or

(ii) apply to the court for the winding-up of the company whose name has been struck off; or

(iii) apply to the court, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of Companies and on such application being made, court may order the name of the company to be restored to the register.

COURT’S POWER TO WIND UP THE COMPANY EVEN AFTER DISSOLUTION UNDER SECTION 560(5) OF COMPANIES ACT 1956

By virtue of the powers given by the proviso (b) to the Section 560(5), the Court can order winding up of a company, even without the company being first restored. Normal course for winding up of a dissolved company would have been that the company's name be first restored and then the winding up order by the court is made.

RESTORATION OF COMPANY WITHIN 20 YEARS

A company dissolved under section 560 can be restored on the Register of Companies by a Court order and while restoring, the Court may, by the order, give such directions and make such provisions as seen just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

An application for restoration can only be made by the company, member or creditor. It must be shown that at the date when the company was dissolved, the petitioner was a member or creditor thereof, and anyone, whether in ignorance of the dissolution or not, who purported to become a member or creditor afterwards, was not so qualified. One, who acquires shares or a debt of a company whose name has been struck off the register, and who at the time of acquisition has knowledge of that fact, is not a ‘person aggrieved’ within this sub-section.

A third party unless he is a creditor has no locus standi to apply. The expressions “member” or “creditor” used in sub-section (6) of Section 560 includes the personal representatives of a deceased member or creditor.

When a suit is actually pending against a company and is being contested by it at the time of removal of its name from the register, it is proper to direct the restoration of the name of the company, particularly when the directors were aware of the fact of the contested litigation and were actually taking part in it.
Section 560 prescribes the procedure for striking off the name of defunct companies which are not carrying on any business, from the register of companies maintained by the Registrar. The Registrar’s satisfaction that the company is not carrying on business is to be based on the records available with him, particularly in respect of the companies which have not filed the prescribed returns/documents, e.g., annual return and balance-sheets for the past years. The name of a company can also be struck off by the ROC at the instance of the company under this section.

(i) Striking off by Registrar on his own motion

To strike a company off the Register of Companies under section 560, by the Registrar of his own motion, the following procedure is followed:

(1) Letter of enquiry: Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation; he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. The company should be given one month time to reply.

(2) Notice threatening striking-off: If the Registrar does not within one month of sending the letter mentioned above receive any answer thereto, send to the company second letter referring to the first letter, and stating that –

- No answer to the first letter has been received; and
- If an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

This second letter should be sent within fourteen days after the expiry of one month after sending the first letter and it should be sent by registered post.

(3) Final notice of removal: If, in response to the second letter, the Registrar –

- Either receives an answer from the company to the effect that it is not carrying on business or in operation, or
- does not within one month after sending the second letter receive any answer, he may proceed to strike the company off the Register of Companies. This will be done by taking two steps:

(a) Sending for publishing in the Official Gazette, a notice to the effect that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved; and

(b) Sending to the company as well as to the income-tax authorities the above-mentioned notice by registered post. Similar procedure of publication of the notice in official Gazette shall be adopted by the Registrar in case of a company in liquidation, where the Registrar is satisfied that either no liquidator is acting or that the affairs of the company have been completely wound up and the returns required to be filed by the liquidator have not been filed for a period of six months. A copy of such notice shall also be forwarded to the company or the liquidator, as applicable, by registered post.

(4) Notification and removal of the company: At the expiry of three months from the date of the notice mentioned above, the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette. On the publication in the Official Gazette of this notice, the company shall stand dissolved. A model notification published in the Official Gazette is set out below.
(ii) Striking-off on company’s application

The Registrar can exercise the power conferred on him by section 560, when an application is received by him from the company for striking it off the register on the ground that it is a defunct company, i.e. it is not carrying on business or in operation. The following procedure should be followed:

(1) Board resolution: Although section 560 does not so stipulate, it would be advisable to pass a resolution by the Board of Directors of the company to the effect that an application be made to the Registrar of Companies to have the company struck off the Register of Companies under section 560. Model Board resolution is placed on Annexure I at the end of the study.

(2) Application to Registrar: A application shall be made to the Registrar in e-form no. 61 in electronic mode for striking the company off the Register and declaring it as a defunct company, pursuant to the Board resolution. The application in e-form 61 should be accompanied by:

(a) Copy of Board Resolution;
(b) Detailed application (A specimen of application form is placed as Annexure II at the end of this study);
(c) Nil balance sheets;
(d) an affidavit by at least two directors (including managing or whole-time director) to the effect that the company has no assets or liabilities and that it has not been carrying on any business or operation, should be filed with the Registrar of Companies duly supported by the latest balance sheet. (A specimen of affidavit is placed as Annexure III at the end of this study.);
(e) An indemnity bond by two directors (at least one of them should be managing or whole-time director) to the effect that liabilities of the company, if any, will be met by them, even after the name of the company is struck off from the register under section 560 of the Companies. (A specimen of indemnity bond is placed as Annexure IV at the end of this study.);
(f) Any other information can be provided as an optional attachment.

(3) Any further information called for in respect of this application should be filed electronically with the ROC in Form No. 67 as an addendum.

(4) Notification and striking-off: On receipt of the application, the Registrar, if satisfied about the correctness of the application as regards the basic condition stipulated in section 560 and the DCA’s (now Ministry of Corporate Affairs) guidelines for striking companies off, may proceed to strike the name of company off the Register, and shall publish notice thereof in the Official Gazette.

THE RIGHTS OF PERSON AGGRIEVED BY THE COMPANY HAVING BEEN STRUCK OFF THE REGISTER [SECTION 560(6)]

The company having been struck off the register or any member or creditor of such company may make an application to the High Court if the company or the member or creditor feels aggrieved by the company having been struck off, for the restoration of the company to the register. Such an application must be made before the expiry of 20 years from the publication in the Official Gazette of the notice of the striking-off.

The High Court may order the name of the company to be restored to the register, if it is satisfied that-

– The company was, at the time of the striking off, carrying on business or in operation; or
– It is just that the company be restored to the register.

The procedure for making application to the High Court under section 560 (6) is as under:-
1. Make an application by way of a petition to the concerned High Court before the expiry of twenty years from the date of the publication in the Official Gazette of the notice of striking the name of your company from the register. [Section 560(6)].

2. There is no prescribed form given in the Companies (Court) Rules, 1959, but rule 17 provides that the forms set out in Appendix 1 to the said Rules shall be used with such variations as circumstances may require.

3. Annex the following documents along with the petition:
   
   (a) An affidavit in Form No. 3 of the Companies (Court) Rules, 1959, verifying the petition. [Rule 21];

   (b) A certified true copy of the Gazette notification striking out the company's name from the concerned ROC. [Annexure 11, Sr. No. 10 to the Companies (Court) Rules, 1959]

4. Serve the above petition on the concerned ROC and on such other persons as the High Court may direct not less than fourteen days before the date fixed for the hearing of the petition. [Rule 92 of the Companies (Court) Rules, 1959].

5. Within fourteen days of the receipt of the order of the High Court, deliver a certified copy of the order to the concerned ROC for registration. The company shall be deemed to have continued in existence as if its name had not been struck off from the Register of Companies. [Section 560(7) and Rule 93 of the Companies (Court) Rules 1959].

One of the reasons for exercising the High Court's direction in favor of restoring a company must be that after restoration the company will be in a position to carry on the business of the company. High Court would not exercise discretion when there is no evidence of substantial benefit to member or creditors.

In such a case the court may, by the order, give such directions and make such provision as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

The company must file electronically with the Registrar a certified true copy of the order passed by the Court, along with e-form-21. Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

**EFFECT OF RESTORATION**

The effect of an order of restoration of the name of a company under this section is to place the company whose name was struck off by the Registrar in the same position as if the name of the company had never been struck off during the interregnum. If a court of competent jurisdiction directs restoration of the name of the company, it shall be deemed to have continued throughout.

The effect of the provision in sub-section (6) that the company should be “deemed to have continued in existence as if its name had not been struck off” was not only that the corporate existence of the company was preserved, but was also retrospective, so that at the date of the hearing of the application the company was to be regarded as never having been dissolved.

Another consequence was that the rights of all parties would be as though there had been no cessation or interruption in the existence of the company on account of the striking off and subsequent restoration.

Company Law Board has no power to restore the company in terms of Section 560(6), as the powers under that section were vested in the High Court.
1. Where at the time of striking off, the company was flourishing but accounts and returns could not be filed with ROC due to the negligence of Secretary, restoration was ordered subject to the payment of costs, and the completion of other formalities, including payment of late fee or other charges. [Vats Association P. Ltd. v. ROC, (2010) 102 SCL 397 (Del)]

2. Due to clerical negligence there was non-filing of returns/accounts. Restoration was ordered subject to fulfillment of applicable formalities. [Himalaya Packaging & Printing P. Ltd. v. ROC, (2010) 101 SCL 6 (Del)]

3. A company was incorporated for manufacturing certain products. Such manufacture required government sanction which the company failed to obtain. The managing director (petitioner) by a letter informed the Registrar that the company could not commence business and requested that the name be struck off the register and to treat the company as defunct. Thereafter, the petitioner received complaints along with the summons from the Special Court of Chief Judicial Magistrate (Economic Offences) directing him to appear in court. The Registrar did not submit any explanation why he had not struck off the company as requested. He was directed to pass an appropriate order on the company’s request invoking power under section 560 (1). [S. M. Thaj v. ROC, (2010) 97 SCL 192 (Ker)]

4. The name of the company was struck off on an application under section 560. Thereafter, the management of the company changed. The new management brought forth a proposal for the revival of the company. Their application of the restoration of the company was accepted. There was no objection from the Registrar. [Radima Exports P. Ltd. v. ROC, (2009) 148 Com Cases 473.]

5. The name of a company was struck off on an application under “Simplified Exit Scheme.” The shareholders subsequently sought to revive the company because of the favorable market conditions. The court directed restoration of the company’s name. [VI Brij Fiscal Services P. Ltd. vs. Registrar of Companies (2010) 155 Com Cases 157 (MP)]

6. The company’s name was struck off after issue of notice under section 560 (1) & (2) for failure to file balance sheets and annual returns. It was found that the notice under section 560 (2) was issued beyond the prescribed period of limitation and notice under section 560 (3) was not served at all. The company filed the necessary documents before the issue of second notice. The court declared that the company had remained in operation since its inception. [Aakankcha Security Service & Co. P. Ltd. v. Union of India, (2009) 148 Com Cases 430 (Pat)]

7. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances, as per Sections159 and 200 of the Companies Act, 1956, remains that of the management. The plea that responsibility of default vests on the relevant officer/professional is not acceptable to the court. But the plea that the company continued in business is certainly a mitigating factor and this cannot be ignored by the court. Therefore on fully satisfying itself that the company did exist and continued in business, it would be proper for the court to allow restoration as the objective of Companies Act is to allow company form of business to operate in the society in public interest but in a regulated manner. The courts in most cases have allowed restoration after satisfying that the company did not cease to operate but there was a compliance failure (whosoever may be responsible) and the compliance failure needs to be punished. Accordingly, the court while allowing restoration has imposed exemplary punishment in the form of penalties, costs, late fee etc. on company and setting it as the condition for curing the compliance defaults. [M/S Auto Kashyap India Private Ltd. vs. ROC [2010] 100 SCL 418 (Del)], [Vats Associates Pvt. Ltd. vs. ROC [2010] 102 SCL 397 (Del)]
GUIDELINES FOR FAST TRACK EXIT MODE FOR DEFUNCT COMPANIES UNDER SECTION 560 OF THE COMPANIES ACT, 1956

There are a number of companies, which are registered under the Companies Act, 1956, but due to various reasons they are inoperative since incorporation or commenced business but became inoperative or defunct later on. Such companies may be desirous of getting their names strike off from the Register of Companies maintained by Registrar of Companies.

As per section 560 of the Companies Act, 1956, Registrar of Companies may strike off the name of companies on satisfying the conditions therein. As per present practice, a company desirous of getting its name struck off has to apply to Registrar of companies in e-form-61. All pending statutory returns are required to be filed along with e-form-61.

In order to give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to modify the existing route through e-form – 61 and has prescribed the new Guidelines vide its circular General Circular No. 36/2011 dated June 07, 2011. These guidelines are called as the “Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956” and are enclosed as Annexure VII at the end of this study. These Guidelines have been implemented w.e.f. 3rd July, 2011.

DORMANT COMPANY UNDER SECTION 455 OF COMPANIES ACT 2013

According to section 455 of Companies Act, 2013 Dormant Company is an inactive company which has not been carrying any business or has not made any significant accounting transaction in the last two financial years.

Such company may make an application to the Registrar for obtaining the status of a dormant company. Concurrently, the Registrar may also suo motu direct such a company for the status of a dormant company. The Registrar on consideration of the application allow the status of a dormant company to the applicant and issue a certificate in Form MSC-1&2 to that effect. The Registrar shall maintain a register of Dormant Companies under the portal maintained by the Ministry of Corporate Affairs.

A company, once identified as dormant, will need to maintain only a minimum number of Directors and pay some annual fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

Such companies could be restarted at a later stage, without actually going through the administrative process of closing down the existing company by making an application. The dormant companies can become active by, making an application.

If the Dormant Company fails to comply with the requirements of the Section 455 of the Companies Act, 2013 the Registrar shall have the power to strike off its name.

CONDITIONS FOR OBTAINING STATUS OF DORMANT COMPANY

A company shall be eligible to apply for status of dormant company only, if-

(i) No inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

(ii) No prosecution has been initiated and pending against the company under any law.

(iii) The company is neither having any public deposits which are outstanding nor is the company in default in payment thereof or interest thereon.

(iv) The company is not having any outstanding loan, whether secured or unsecured. If there is any outstanding unsecured loan, the company may apply after obtaining concurrence of the lender and enclosing the same with Form MSC-1.
(v) There is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1.

(vi) The company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.

(vii) The company has not defaulted in the payment of workmen’s dues.

(viii) The securities of the company are not listed on any stock exchange within or outside India.

**PROCEDURE FOR OBTAINING STATUS OF DORMANT COMPANY**

1. A company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

2. The Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.

3. The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

4. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company. The provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

5. A dormant company shall file a “Return of Dormant Company” annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of 30 days from the end of each financial year:

6. The company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

7. An application, for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

8. The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

9. The Registrar shall, after considering the application filed issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

10. When a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application, for obtaining the status of an active company.

11. Where the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the
proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

APPLICATION SEEKING STATUS OF AN ACTIVE COMPANY

(1) An application, under section 455, for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

(2) The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

(3) The Registrar shall, after considering the application filed, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

(4) When a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, for obtaining the status of an active company.

(5) When the Registrar has reasonable cause to believe that any company registered as ‘Dormant Company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

ANNEXURE

Board Resolution for Getting the Company Struck Off

“RESOLVED THAT consequent to the company not carrying on any business or not being in operation and since it does not intend to carry on any business in future, an application be made to the Registrar of Companies, …………………for striking off its name under section 560 of the Companies Act, 1956 and the guidelines issued by the Ministry of Corporate Affairs in this regard, and that Mr./Ms.………., Director and Mr./Mrs.………., Director be and are hereby jointly and severally authorized to to make an application to the Registrar of Companies, …………………and to do everything that may be necessary or incidental, for striking off Company under section 560 of the Companies Act 1956 and the guidelines issued by the Ministry of Corporate Affairs in this regard.”

Application form for striking off name of company under Section 560 of the Companies Act, 1956

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No. of Company

[Name of the Company:

Address of the Company:
To

The Registrar of Companies,

(Name of the State)

Sir,

The Company after carefully considering all aspects has duly resolved in the Board meeting held on………………… to make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956.

(1) We, the directors of the company make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956.

(2) I/We furnish the following details and documents for considering my/our application:

(i) Audited Financial Statements for the year ending………………… showing no assets and liabilities.

Or

A Statement of Account for the period from…………… to…………… being the latest period applicable for the company. It is declared that due to…………… (Give here reasons) the Balance Sheet and Profit and Loss Account cannot be prepared; hence a Statement of Accounts is submitted. (Specimen of Statement of Account is placed as Annexure VI).

(ii) Affidavits as per Annexure B of this Circular No. 17/78/2001-CL.V, dated 28-1-2005 of D/o Company Affairs. (Now, M/o Corporate Affairs)


(iv) Demand Draft/Pay Order/Banker’s Cheque No…………… dated…………… drawn in favour of “Registrar of Companies………………… (Name of State in which registered office of the company is situated)” payable at……………

(v) NOC from RBI/SEBI as the case may be, in case an NBFC/Collective Investment Management Company is registered with RBI/SEBI.

(vi) Copy of Board Resolution and/or other document showing authorization given to us for filing of this application.

(3) Now, therefore, the undersigned request you to strike off the name of the company from the Register.

(4) I shall be liable under section 628 of the Companies Act, 1956 and under relevant provisions of the Indian Penal Code if I make any statement pursuant to this circular:

(a) Which is false in any material particular, knowing it to be false; or

(b) Which omits any material fact knowing it to be material.

(5) Ours is a Collective Investment Management Company (CIMC)/NBFC registered/not registered with SEBI/RBI.

For CIMC/NBFC

(6) (a) Ours is a CIMC/NBFC company registered with SEBI/RBI. Our registration number with SEBI/RBI is………………… and we had Head Office at………………… and branches at (indicate places of Branch Offices).

We have been issued a “No Objection Certificate” by SEBI/RBI to exit from the Register of Companies.
(b) Ours is a CIMC/NBFC company not registered with SEBI/RBI. We declare that we had not commenced business or carried out any business or operations or commercial activity at any time.

Yours faithfully,

Names and addresses of Applicants

1. Signature

Date:

2. Signature

**Affidavit**

*(To be given individually by applicant)*

I, Director of ……………………… Private/Limited, (hereinafter called “the Company”), incorporated on …………………/ …………………/ ………………… under the Companies Act, 1956 having its Registered Office at ………………… and having PAN No: ………………… do solemnly affirm and state as under:

1. I …………………, S/o D/o. Shri …………………, holder of Passport No: …………………/ PAN ………………… (copy of Passport/PAN duly attested by Gazetted Officer is enclosed) am Director of the company stated above since …………………

2. My present residential address is ………………… (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)

3. My permanent address is ………………… (Copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed).

4. The Company was incorporated on ………………… with the object to carry on the business of …………………

5. The company maintains/does not maintain any bank account as on date.

6. The Company has been inoperative from the date of its incorporation. The company commenced business/operations/commercial activity after incorporation but has been inoperative for the past ………………… year(s) due to following reasons.* (give the reasons here)

7. As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/Banks and Financial Institutions; any other Central or State Government Departments/Authorities or any Local Authorities.

8. Strike out whichever is not applicable:
   
   (i) There is no litigation pending against or involving the company.
   
   (ii) There are litigations pending against the company which are mentioned as under:–

   (give brief particulars of litigation and state the authority, with address, where it is pending, along with case number).

   (iii) The litigation under Companies Act, 1956 or other Act (specify the name of the Act) pertains to an offence which is compoundable and the compounding application has been filed with the appropriate authority. (A copy of compounding application to be enclosed).

9. I have been authorised to file this application by Board resolution dated ………………… (Copy of resolution is annexed).

10. That an application is hereby filed for action under section 560 of the Companies Act, 1956, before the Registrar of Companies with necessary fees and required Financial Statement/Statement of Account
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(Refer Annexure VI)/declaration* signed by me.

*Strike out whichever is not applicable.

11. In case of any loss (es) to any person or any valid claim arising from any person after the striking off of the name of the Company from the Register of Companies…………………., I the applicant, undertake to indemnify any person for such losses and the indemnity bond to this effect is enclosed and submitted.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature: ........................
(Deponent)

Verification

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place: ........................  Signature: ........................
Date: ........................  (Deponent)

Indemnity Bond

(To be given individually by Applicant)

To

The Registrar of Companies

I, the director of………………. Private/Limited, (hereinafter called “the Company”), incorporated on………………../………………../……………….under the Companies Act, 1956, having its Registered Office at …………………., and having PAN Number………………..., do hereby declare that:

1. (a)(i) I………………., S/o D/o Shri………………., am holder of passport/ PAN………………...etc.
(cop[y of Passport/PAN duly attested by Gazetted Officer is enclosed)

(ii) I am Director of this company since………………...

(iii) My present residential address is……………….. (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(iv) My permanent address is………………... (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(b) That I have made an affidavit dated the………………., duly sworn before Magistrate/Executive Magistrate/Oath Commissioner/Notary affirming that the Company……………….. Private/Limited, has no assets and no liabilities.

(c) Further, the Company has been inoperative from the date of its incorporation. The company commenced business/operations/commercial activity after incorporation but has been inoperative for the past year(s)*.

And the company is not intending to do any business or commercial activity. Thus, the Company is defunct and I request the Registrar of Companies, to strike off the name of the Company from the Register of Companies under Section 560 of the Companies Act, 1956.

*Strike out whichever is not applicable.
2. I, do hereby undertake and indemnify in writing:

(a) To pay and settle all lawful claims arising in future after the striking off the name of the Company.

(b) To indemnify any person for any losses that may arise pursuant to striking off the name of the Company.

(c) to settle all lawful claims and liabilities which have not come to our notice upto this stage, even after the name of the Company has been struck off in terms of Section 560 of the Companies Act, 1956.

Signature:

Place:

Name:

Date:

Witnesses:

1. Signature
   Name:
   Father's name:
   Address:
   Occupation:

2. Signature
   Name:
   Father's name:
   Address:
   Occupation:

Accepted

Registrar of Companies

Notification Published in the Official Gazette to strike a company off the register

In the matter of the Companies Act, 1956 and of M/s…………………Limited New Delhi 110003, the …………………. 2001-03-27 No…………………. Notice is hereby given pursuant to sub-section (3) of section 560 of the Companies Act, 1956 that at the expiration of three months from the date hereof the name of M/ s………………….Limited unless cause is shown to the contrary will be struck off from the Register of Companies and the said company shall be dissolved.

Registrar of Companies

[Please refer Annexure III]

Statement of Account*

(Para l(b) of circular)

Name of the Company:

Year to which the Statement of Account pertains:
Lesson 17  Striking Off Names of Companies  609

Part A

Particulars:

I. Sources of Funds
(Brief break up in respect of each item needs to be given).

(1) Capital
(2) Reserves & Surplus (including balance in Profit and Loss Account)
(3) Loan Funds
  Total of (1) to (3)

II. Application of Funds
(Brief break up in respect of each item needs to be given).

(1) Fixed Assets
(2) Investments
(3) (i) Current Assets, loans and Advances

Less: (ii) Current Liabilities and provisions

Net Current assets (i) - (ii)
(4) Miscellaneous expenditure to the extent not written off or adjusted
(5) Profit & Loss Account (Debit balance)
  Total of 1 to 5

Part B

Particulars
(Brief break up in respect of each item needs to be given).

I. Income
II. Expenditure
III. Profit/Loss before Tax (MI)
IV. Appropriation in case of profit

Date:
Place:  Signature (Secretary/Applicant*)

*Applicable only if there is MD/Secretary.

Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956

1. For Fast Track Exit mode (FTE), it is stated as under:-

(a) Any company will be called as “defunct company” for the purpose of these guidelines, which has nil asset and liability and

(i) Has not commenced any business activity or operation since incorporation; or
Is not carrying over any business activity or operation for last one year before making application under FTE.

(b) Any defunct company which has active status or identified as dormant by the Ministry of Corporate Affairs, may apply for getting its name strike off from the Register of Companies;

(c) Any defunct company which is a Government Company shall submit ‘No Objection Certificate’ issued by the concerned Administrative Ministry or Department or State Government along with the application;

(d) The decision of the Registrar of Companies in respect of striking off the name of company shall be final.

(e) The fast track exit mode is not being extended to the following companies namely:-

(i) listed companies;

(ii) Companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws,

(iii) Companies registered under section 25 of the Companies Act, 1956;

(iv) Vanishing companies;

(v) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;

(vi) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;

(vii) companies against which prosecution for a non- compoundable offence is pending in court;

(viii) Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;

(ix) Company having secured loan;

(x) Company having management dispute;

(xi) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;

(xii) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

Explanation: “vanishing company” means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

(f) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form FTE, annexed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in accompanied by filing fee of ₹ 5,000/-;

(g) In case, the application in Form FTE, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director
authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

(h) In all cases, the Form FTE, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;

(i) In case, the applicant name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice alongwith their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.

(j) The company shall disclose pending litigations if any, involving the company while applying under FTE;

(k) If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Companies Act, 1956, such application may be accepted provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.

(l) The Form FTE shall be accompanied by an affidavit annexed at Annexure- A, which should be sworn by each of the existing director(s) of the company before First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations, as the case may be;

(m) Form FTE shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

(n) In case of foreign nationals and NRIs, Indemnity Bond and Affidavit may be notarized as per their respective country’s law.

(o) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

(p) In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form FTE and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.

2 Procedure to be adopted by Registrar of Companies in this matter:-

(a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its email address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;

(b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under fast track exit mode, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar; (c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of
Companies, at the end of every week, shall send intimation of such companies availing fast track exit mode during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing fast track exit mode during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

Explanation: (1) “Non-Banking Financial Company” means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934.

(2) “Collective Investment Management Company” means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999

(d) The Registrar of Companies immediately after passing of time given in sub-paragraphs (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company shall stand dissolved from the date of publication of the notice in the Official Gazette.

LESSON ROUND-UP

- A defunct company is a company which is not carrying on any business or in operation. It may be struck off from the register of companies under Section 560 of the Companies Act, 1956.
- The Registrar may on its own motion proceed to strike off a company, if he has reasonable cause to believe that a company is not carrying on business.
- The Registrar can exercise the power to strike off on receiving an application for the same under Section 560.
- A company or a member or a creditor may make an application to the court for restoration of company to the register, if they feel aggrieved by such decision of striking off.
- The effect of the order of restoration of the name of the company is to place the company in same position as if the name had never been struck off.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Define Defunct Company.
2. Explain the procedure for striking off the company by Registrar on his own motion.
3. Draft a Board resolution for getting the company struck off.
4. What do you mean by restoration of name of the company? State its effects.
5. What are the rights of company aggrieved by the company having been struck off under Section 560(6)?
6. Discuss the procedure for obtaining status of a dormant company under Companies Act, 2013.
Lesson 18
Recent Trends and Developments in Company Law

LESSON OUTLINE

– Extension of Corporate Activity Beyond National Frontiers
– Growth of Multinationals And Transnationals
– Regulation of Multinationals
– Modernization Of Company Law For Global Competitiveness
– Distinguishing features of Company Law in various countries
– LESSON ROUND UP
– SELF TEST QUESTIONS

LEARNING OBJECTIVES

The governments the world over recognized the importance of companies as an engine for economic growth. It is widely acknowledged that companies have become the centre of or even the driving force behind the emergence and growth of modern global economy. Therefore, to ensure that companies continue to play their role as an engine for economic growth, there is an international drive to review, reconstruct and recognize the law governing companies. Several countries are also aiming to ensure that corporate activities function within a modern, and forward looking regulatory frame work that supports and sustains their economic growth. This lesson covers salient features of company law emerged/emerging in the following countries:

– United Kingdom
– The United States of America
– Australia
– Canada
– Hongkong
– Singapore
– India
1. THE EXTENSION OF CORPORATE ACTIVITY BEYOND NATIONAL FRONTIERS

The origin of trade associations referred to as companies can be traced back to the sixteenth century, where they existed as merchants’ guild formed for the purpose of monopolies over certain commodities. A century later, joint stock companies emerged, which shared some of the characteristics of the modern company, except that they did not include limited liability for their members. This meant that their private assets could be taken by the company’s creditors in order to pay their debts.

There were many companies carrying on trade outside the British Islands and those companies were given a number of privileges by the British Government. In course of time, these companies became rulers of colonies/territories.

The formation of the South Sea company and its historic collapse six months after it was formed in 1711 induced legislation of the Bubble Act, 1720, which made incorporation of a company difficult; acting as a corporation without the sanction of an Act of Parliament or a Charter was made a criminal offence. To have transferable shares was also a criminal offence. With the result, the development of company law was sluggish. It was not until 1825 that this Act was repealed and a gradual improvement was effected in enabling businesses to form companies.

From the late nineteenth to the twentieth century, most foreign direct investment (FDI) was focused on the development of natural resources, with some spin off growth of ancillary services. Latin America and Asia were particularly notable recipients of this investment. FDI in manufacturing expanded slowly through the early twentieth century and more dramatically in the period after World War II, and the geographic center for such investment shifted to Western Europe. This trend in turn was overtaken by developments in the service sector (particularly in finance) in the past two decades, with East Asia and Western Europe, along with the United States, as major areas of investment activity.

Although there have been periods of single-country dominance in outward investment (the United Kingdom between the 1880s and 1914, and the United States in the 1950s and 1960s), perhaps more significant has been the consistent growth of multinational operations over the past century. During the pre-World War I era, investment flows were tied to some extent to the “imperial” territories of various European nations (with regions such as Latin America becoming a battleground for European and American investors), and occurred through a peculiar (and primarily British) form called “free-standing companies” (local enterprises owned by foreign syndicates).

2. GROWTH OF MULTINATIONALS AND TRANSNATIONALS

The terms multinational and transnational company broadly cover any company, which carries on directly or indirectly business in more than one country. The parent company in a multinational group will necessarily be registered in a particular country and the group headquarters and a preponderance of shareholders may also be located there. The profit and income flows that they generate are part of the foreign capital flows moving between countries. As local markets throughout the world are being deregulated and liberalized, foreign firms are looking to locate part of the production process in other countries where there are cost advantages. These might be cheaper sources of labour, raw materials and components or have preferential Government regulation.

This kind of activity is not new. Some of the earliest trading companies such as the East India Company, which started business in India as far back as 1600 A.D. were set up for this purpose. In more recent times, modern companies such as ICI and General Electric (GE) have set up a large number of subsidiaries to carry out such operations.

In the interwar period, as national Governments imposed a variety of constraints on international trade and capital flows, international cartels flourished, in part as a means of circumventing them. The rapid growth of
multinationals in Europe since 1945 can be attributed to the recovery of the European economy, the greater political stability, the return of European currencies to convertibility and the formation of the European Community.

During the 1960s multinational enterprises emerged as a focus of interest both for economists and for the general public. Economists tended to treat multinationals as byproducts of Post-World War II, international financial integration and improvements in communications and transport technologies. To the broader public, in the United States and elsewhere, they were associated with U.S. economic expansion and indeed were perceived as reflecting a particularly “American” form of business organization.

In the period since the 1970s, a new form of “strategic partnership” among firms of different nationalities has emerged, reflecting both the diverse origins of enterprises in global markets and the effects of financial integration coupled with the growth of regional trade blocs. In each era, businesses have altered their forms of operation to suit contemporary conditions, while sustaining a general trend towards growth and integration.

Since that era, the international economy has changed dramatically, multinational enterprises became truly “multinational” as East Asian and European firms expanded in global markets and new cross-national “strategic partnerships” of firms emerged. The period since 1971 resulted in the continuity of growth of international business with shifts in external factors (“the business environment,” encompassing the impact of wars, shifts in global trade and monetary arrangements, nationalizations and other Governmental regulatory measures) and consequent changes in the strategies of firms.

Improvements in technology (enhancing the internal management of firms in international markets) and financial integration, accompanied by nationalistic trade policies, have helped in shaping a business environment congenial to multinationals.

3. REGULATION OF MULTINATIONALS

The extension of corporate activity beyond the frontiers of the country of incorporation has sometimes given rise to complex problems of international law. As Wolfgang Friedman wrote 'It is the complexity of its legal structure, or rather of the interplay of legal entities and relationships constituting that structure, no less than the size of its resources or the scale of its operations, which makes its power so elusive and so formidable a challenge to the political order and rule of law. It is therefore inherent in the nature of the multinational corporation that there is no simple solution for the problem of its relationship to states, the world of states, or an organized world community…'

Thus, while IBM and General Motors are thought of as American and Unilever and Shell as British, companies as large and diverse as these plan their operations on a global scale in their own interests. In terms of sheer size, they are sometimes bigger than the countries in which they operate. Clearly, controlling such organizations is beyond the regulatory capacity of national governments. The ability of such companies to transfer investments from countries in which the regulatory environment threatens to become uncongenial and the damage to international competitiveness that may result if domestic industry is subject to a more stringent regulatory regime than rival firms abroad, are liable to ‘circumscribe’ the capacity of national Governments to establish an appropriate control framework. Purely national solutions to problems of corporate control are therefore, of no avail. However, the mechanisms and processes by which such companies are governed become a matter of vital importance to nations. If the companies in which wealth is accumulated are poorly governed, their resources are poorly used, or the power of management becomes channeled in a way which conflicts with the company’s interests, all the stakeholders and society will suffer and not just the owners of the enterprise. It is therefore, important that within every company, there are means of ensuring that the resources are used efficiently and in a manner that ensures the achievement of the company’s objective and its ability to contribute to the common good.

4. MODERNIZATION OF COMPANY LAW FOR GLOBAL COMPETITIVENESS

Most of the countries in the world today including UK, Hong Kong, Singapore, Australia and Canada are in the various stages of modernizing their company law. A fair modern and effective framework of company law is
crucial to the performance of any economy and society. To achieve competitiveness, it is essential that while the law must balance the needs of many interests, for example, shareholders, directors, employees, creditors and customers, it must also avoid unnecessary burdens.

In the current national and international scenario of complex business operations, there is a need for simplifying corporate laws so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth. It is also being recognised that the framework for regulation of corporate entities has not only to be in tune with the emerging economic scenario, it must also encourage good corporate governance and enable protection of the interests of investors and other stakeholders.

Growing emphasis on good corporate governance, corporate social responsibility and good corporate citizenship is predominantly influencing company law reforms the world over. Modernization of company law has in fact become a part of the drive to facilitate enterprise, enhance the attractiveness of the country as a preferred destination to do business and foster business competitiveness. The overall objective is to achieve a simple, consolidated and accessible company law. Simultaneously, worldwide the Company Law reforms are focusing on transparency through enhanced disclosures and increased accountability on the part of corporate owners while at the same time providing a flexible regime for small and medium businesses. Additionally, the reforms aim at cutting back on overly regulatory intervention thus providing companies operating flexibility to tune in conformity with changing environment.

The litmus test lies in the harmonization of company law with that of global standards, the process which has been started about a decade ago in most countries, so as to achieve global competitiveness.

5. DISTINGUISHING FEATURES OF COMPANY LAW IN VARIOUS COUNTRIES

A. United Kingdom (U.K.)

Company Law in U.K. has undergone major reform under the Company Law Review (CLR), the objective of which was to modernize the legal framework in which companies operate. In 1998, the Government commissioned an independent Company Law Review Group, comprising experts, practitioners and business people to take a long-term fundamental look at core company law and to see how it could be brought up to date. The CLR conducted a thorough review and assessment and provided the essential blue print in the form of a Report in 2001. As a response to the final Report of the Company Law Review, the Government brought out White Paper on Company Law 2002, introducing which the then Competition Minister, Melanie Johnson stated “Our current company law is creaking with age and needs to modernize and reform. A thorough overhaul is needed to make the law clear and accessible”.

The White Paper 2002 evoked huge response. Considering the suggestions received, the Department of Trade and Industry again released the UK White Paper on Company Law, 2005 which contained draft of the Companies Bill, and invited views. Consequently, New Company Law Reform Bill was introduced in Parliament in May, 2006 for discussion and approval.

The UK Companies Act, 2006 received Royal Assent on 8th November 2006. The Act will effectively replace existing companies’ legislation with the exception of provisions relating to company investigations and community interest companies.

Salient features of Company Law in U.K. (Companies Act, 2006)

Mode of forming incorporated company (Section 7)

Any one or more persons associated for a lawful purpose may, by subscribing their names to the memorandum of association and otherwise complying with the requirement of the Act in respect of registration, form an incorporated company, with or without limited liability. A company may not be so formed for an unlawful purpose.
Minimum Authorized capital (public companies) (Section 763)

The amount of share capital with which the public company is proposed to be registered, must not be less than the authorized minimum (£ 50,000 or the prescribed euro equivalent or such other sum as the Secretary of State may by order specify).

Minimum membership (for carrying on business)

If a company, other than a private company limited by shares or by guarantee, carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months (a) is a member of the company and (b) knows that it is carrying on business with only one member, is liable (jointly and severally with the company) for the payment of the company’s debts contracted during the period or, as the case may be, that part of it. For the purpose of the said provision, references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.

Power of directors to bind the company

In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorize others to do so, shall be deemed to be free of any limitation under the company’s constitution. For this purpose, a person deals with a company if he is a party to any transaction or other act to which the company is a party; a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company’s constitution; and a person shall be presumed to have acted in good faith unless contrary to be proved.

The references above to limitations on the directors' powers under the company’s constitution include limitations deriving from a resolution of the company in general meeting or a meeting of any class of shareholders, or from any agreement between the members of the company or of any class of shareholders.

Treasury Shares (Section 724)

Where qualifying shares are purchased by a company out of distributable profits, the company may (a) hold shares (or any of them) or (b) deal with any of them, at any time, in accordance with the prescribed procedure for disposal and cancellation of treasury shares. When shares are held under (a) above, then the name of the company must be entered in the register as the member holding those shares. For the purpose of the Act, references to a company holding shares as treasury shares are references to the company holding shares which (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and (b) have been held by the company continuously since they were so purchased.

Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent of the nominal value of the issued share capital of the company at that time.

Directors (Section 154)

Every public company shall have at least two directors and every private company is required to have at least one director.

- A person may not be appointed a director of a company unless he has attained the age of 16 years (Clause 157)

Appointment of directors of public company to be voted on individually (Section 160)

A motion for the appointment of two or more persons as directors of the company by a single resolution at a general meeting of a public company cannot be made. It can be done, if a resolution in this regard has first been agreed to by the meeting without any vote being given against it.
Validity of acts of directors (Section 161)

The acts of a person acting as a director are valid even if it is afterwards discovered —

(a) that there was a defect in his appointment;
(b) that he was disqualified from holding office;
(c) that he had ceased to hold office;
(d) that he was not entitled to vote on the matter in question.

Register of directors (Section 162, 163, 164, 165)

Every company must keep a register of its directors. The register must contain the following particulars of each person who is a director of the company:

– in the case of an individual–
  name and any former name; the usual residential address; a service address; the country or state (or part of the United Kingdom) in which he is usually resident; nationality; business occupation (if any); date of birth.
– in the case of a body corporate, or a firm that is a legal person under the law by which it is governed–
  corporate or firm name; registered or principal office;
  (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and (ii) the registration number in that register;
  (iii) the legal form of the company or firm and the law by which it is governed, and if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

The register must be kept available for inspection –

(a) at the company’s registered office, or
(b) at a place specified in regulations

The company must give notice to the registrar of the place at which the register is kept available for inspection, and of any change in that place, unless it has at all times been kept at the company’s registered office.

The register must be open to the inspection of any member of the company without charge, and of any other person on payment of such fee as may be prescribed.

Resolution to remove director (Section 168)

A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.

Special notice is required of a resolution to remove a director or to appoint somebody instead of a director so removed at the meeting at which he is removed.

A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
Duty of directors (Section 171)
A director of a company must—

(a) act in accordance with the company’s constitution, and
(b) only exercise powers for the purposes for which they are conferred.

– A director is under duty to promote the success of the Company. (Section 172)
– A director is under duty to exercise independent judgment. (Section 173)
– A director is under duty to exercise reasonable care, skill and diligence. (Section 174)
– A director is under duty to avoid conflicts of interest. (Section 175)
– A director is under duty not to accept benefits from third parties. (Section 176)
– A director is under duty to declare interest in proposed transaction or arrangement. (Section 177)

Duty to prepare directors’ remuneration report (Section 420 & 422)
The directors of a quoted company shall for each financial year prepare a directors’ remuneration report which shall contain the information specified in the Schedule to Act and comply with any requirement of that Schedule as to how the information is to be set out in the report. The directors’ remuneration report shall be approved by the Board of directors and signed on behalf of the Board by a director or the secretary of the company. Every copy of the said report which is laid before the company in general meeting or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the Board. The copy of the directors’ remuneration report which is delivered to the registrar shall be signed on behalf of the Board by a director or the secretary of the company.

Members’ approval of directors’ remuneration report
The company must, prior to the meeting, give to the members of the company notice of the resolution to be moved at the meeting, as an ordinary resolution for approving the directors’ remuneration report for the financial year. Notice shall be given to each such member in any manner permitted for the service on him of notice of the meeting. The business that may be dealt with at the meeting shall include the resolution. The existing directors must ensure that the resolution is put to vote at the meeting. No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made. If the resolution is not put to the vote at the meeting, each existing director is guilty of an offence and liable to a fine.

Secretary (Section 271, 273)
A Private Company is not required to have a Secretary. A public Company shall have a secretary.

It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company—

(a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and
(b) has one or more of the following qualifications.

The qualifications are—

(a) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;
(b) that he is a member of any of the bodies specified as below—
(a) the Institute of Chartered Accountants in England and Wales;
(b) the Institute of Chartered Accountants of Scotland;
(c) the Association of Chartered Certified Accountants;
(d) the Institute of Chartered Accountants in Ireland;
(e) the Institute of Chartered Secretaries and Administrators;
(f) the Chartered Institute of Management Accountants;
(g) the Chartered Institute of Public Finance and Accountancy.

(c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
(d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company.

**Duty to keep register of secretaries (Section 275)**

1. A company must keep a register of its secretaries.
2. The register must contain the required particulars of the person who is, or persons who are, the secretary or joint secretaries of the company.
3. The register must be kept available for inspection—
   (a) at the company’s registered office, or
   (b) at a place specified in regulations
4. The company must give notice to the registrar—
   (a) of the place at which the register is kept available for inspection, and
   (b) of any change in that place, unless it has at all times been kept at the company’s registered office.
5. The register must be open to the inspection—
   (a) of any member of the company without charge, and
   (b) of any other person on payment of such fee as may be prescribed.

**Duty to notify registrar of changes (Section 276)**

A company must, within the period of 14 days from—

(a) a person becoming or ceasing to be its secretary or one of its joint secretaries, or
(b) the occurrence of any change in the particulars contained in its register of secretaries, give notice to the registrar of the change and of the date on which it occurred.

Notice of a person having become secretary, or one of joint secretaries, of the company must be accompanied by a consent by that person to act in the relevant capacity.

If default is made in complying with this section, an offence is committed by every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

**Duty to keep accounting records (Section 386)**

Every company must keep adequate accounting records.
Adequate accounting records means records that are sufficient—

(a) to show and explain the company’s transactions,

(b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

Accounting records must, in particular, contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.

If the company’s business involves dealing in goods, the accounting records must contain—

(a) statements of stock held by the company at the end of each financial year of the company,

(b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

Where and for how long records to be kept (Section 388)

A company’s accounting records—

(a) must be kept at its registered office or such other place as the directors think fit, and

(b) must at all times be open to inspection by the company’s officers.

If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection.

The accounts and returns to be sent to the United Kingdom must be such as to—

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and

(b) enable the directors to ensure that the accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

Accounting records that a company is required to keep must be preserved by it—

(a) in the case of a private company, for three years from the date on which they are made;

(b) in the case of a public company, for six years from the date on which they are made.

A company’s financial year (Section 390)

A company’s financial year is determined as follows.

Its first financial year—

(a) begins with the first day of its first accounting reference period, and

(b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
Subsequent financial years—

(a) begin with the day immediately following the end of the company's previous financial year, and
(b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

In relation to an undertaking that is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.

The directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company’s own financial year.

**Accounts to give true and fair view (Section 393)**

The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss—

(a) in the case of the company's individual accounts, of the company;
(b) in the case of the company's group accounts, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

The auditor of a company in carrying out his functions under this Act in relation to the company’s annual accounts must have regard to the directors’ duty under sub-section (1).

**Duty to prepare individual accounts (Section 394)**

The directors of every company must prepare accounts for the company for each of its financial years. Those accounts are referred to as the company’s “individual accounts”.

**Approval and signing of accounts (Section 414)**

A company’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.

The signature must be on the company’s balance sheet.

If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.

Every copy of the balance sheet which is laid before the company in general meeting or which otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the Board.

The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the Board by a director of the company.

If annual accounts are approved that do not comply with the requirements of this Act, every director of the company who—

(a) knew that they did not comply, or was reckless as to whether they complied, and
(b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved, commits an offence.

A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.

**Approval and signing of directors’ report (Section 419)**

(1) The directors’ report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) If in preparing the report, advantage is taken of the small companies exemption, it must contain a statement to that effect in a prominent position above the signature.

(3) If a directors’ report is approved that does not comply with the requirements of this Act, every director of the company who—

   (a) knew that it did not comply, or was reckless as to whether it complied, and

   (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved, commits an offence.

(4) A person guilty of an offence under this section is liable—

   (a) on conviction on indictment, to a fine;

   (b) on summary conviction, to a fine not exceeding the statutory maximum.

**Duty to file accounts and reports with the registrar (Section 441)**

The directors of a company must deliver to the registrar for each financial year the accounts and reports required by—

- section 444 (filing obligations of companies subject to small companies regime), section 445 (filing obligations of medium-sized companies),

- section 446 (filing obligations of unquoted companies), or

- section 447 (filing obligations of quoted companies).

This is subject to section 448 (unlimited companies exempt from filing obligations).

**Period allowed for laying and delivering accounts and reports (Section 442)**

This section specifies the period allowed for directors of a company to comply with their obligation under Section 441 to deliver accounts and reports for a financial year to the Registrar. This is referred to in the Companies Acts as the “period for filing” those accounts and reports.

The period allowed for laying and delivering accounts and reports is for a private company, 9 months after the end of the relevant accounting reference period, and for a public company, 6 months after the end of that period. If the relevant accounting reference period is the company’s first and is a period of more than 12 months, the period allowed is (a) 9 months or 6 months, as the case may be, from the first anniversary of the incorporation of the company, or (b) 3 months after the end of the accounting reference period, whichever last expires.

The ‘relevant accounting reference period’ means the accounting reference period by reference to which the financial year for the accounts in question was determined.

**Requirement for audited accounts (Section 475)**

A company’s annual accounts for a financial year must be audited in accordance with this Part unless the company—

(a) is exempt from audit under section 477 (small companies), or section 480 (dormant companies); or

(b) is exempt from the requirements of this Part under section 482 (nonprofit-making companies subject to public sector audit).
A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

A company is not entitled to exemption under any of the provisions mentioned in sub-section (1)(a) unless its balance sheet contains a statement by the directors to the effect that—

(a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and

(b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.

The statement required by sub-section (2) or (3) must appear on the balance sheet above the signature required by section 414.

**Right of members to require audit (Section 476)**

The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year.

The notice must be given by—

(a) members representing not less in total than 10% in nominal value of the company’s issued share capital, or any class of it, or

(b) if the company does not have a share capital, not less than 10% in number of the members of the company.

The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.

**Duties of auditor (Section 498)**

(1) A company’s auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to—

(a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and

(b) whether the company’s individual accounts are in agreement with the accounting records and returns, and

(c) in the case of a quoted company, whether the auditable part of the company’s directors’ remuneration report is in agreement with the accounting records and returns.

(2) If the auditor is of the opinion—

(a) that adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches not visited by him, or

(b) that the company’s individual accounts are not in agreement with the accounting records and returns, or

(c) in the case of a quoted company, that the auditable part of its directors’ remuneration report is not in agreement with the accounting records and returns, the auditor shall state that fact in his report.

(3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

(4) If—
(a) the requirements of regulations under section 412 (disclosure of directors’ benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or

(b) in the case of a quoted company, the requirements of regulations under section 421 as to information forming the auditable part of the directors’ remuneration report are not complied with in that report, the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars.

(5) If the directors of the company have prepared accounts and reports in accordance with the small companies regime and in the auditor’s opinion they were not entitled so to do, the auditor shall state that fact in his report.

Resolution removing auditor from office (Section 510)

(1) The members of a company may remove an auditor from office at any time.

(2) This power is exercisable only—

(a) by ordinary resolution at a meeting, and

(b) in accordance with section 511 (special notice of resolution to remove auditor).

(3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination—

(a) of his appointment as auditor, or

(b) of any appointment terminating with that as auditor.

(4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

Part 24 of the Companies Act 2006 of UK relates to a Company’s Annual Return

**Annual Return**

As per Section 854, every company must deliver to the registrar which is made up to a date not later than the date that is the Company’s return date.

The Company’s return date is the anniversary of the Company’s incorporation or if the Company’s last return delivered in accordance with this part was made up to a different date, then the anniversary of that date.

**Contents of annual return**

- General – address, type of company, particulars of directors, secretary etc.;
- Information about share capital
- Information about shareholders

**B. THE UNITED STATES OF AMERICA (USA)**

The United States is undoubtedly one of the richest source of legislation, case laws and debate about corporations. There is no federal corporations statute as such. Each state has its own corporate law regime which resulted in competition among states to attract incorporations. State incorporation has produced a wide diversity of legislation and experimentation in the corporate form. The situation is, however not as chaotic as might be implied by the existence of nearly fifty different corporate laws operating in the same country. There are several mitigating factors promoting harmonisation, cooperation and, in some cases, uniformity across the United States.

The first is the federal Constitution. Although there is no express federal jurisdiction to govern incorporations,
the various clauses of interstate commerce provides a myriad of federal legislative provisions which apply to state incorporated entities. In this way, uniformity of standards and treatment in certain areas is assured i.e. anti-trust, bankruptcy, securities, among others. In addition, the court structure is such that the so-called “diversity jurisdiction” of the federal court system may catch commercial litigation, thus developing a body of federal case law applicable to corporations.

The most significant of these federal laws applicable to corporations is the federal securities regime. The United States has a long tradition of individual ownership of securities. It began with the bonds of railroads and other enterprises as they developed early in the history of the country and particularly during the post-civil war period. This wide dispersion of ownership resulted in the separation of ownership and control; the predominance of individual ownership is reflected in the federal securities laws adopted in 1933 and 1934 (in reaction to the stock market crash of 1929) in the interests of public investor protection. The agency created to administer this legislation, the Securities and Exchange Commission (SEC), has grown to be one of the most powerful administrative agencies in the world. Although there have been jurisdictional battles between the SEC and state legislatures over where the lines are drawn between corporate law matters and securities law matters (in the realm of take-overs, for example, during the 1980s), it remains the case that many areas of overlap respecting shareholders have been pre-empted by SEC action. Thus many matters characterised as “company law” elsewhere have been characterised in the United States as securities law and taken out of the orbit of the state legislatures.

A second harmonising factor has been the existence of model statutes. These serve variously as uniform acts or as drafting guides which may be customised by each individual state. A Uniform Business Corporation Act was sponsored in 1928 and adopted by a few states. It was renamed the Model Business Corporation Act in 1943 and then withdrawn in 1958. It was supplanted in 1946 by the American Bar Association Model Business Corporations Act (MBCA) which was revised almost annually after that. During the 1960s, the “march of American state corporation law became a march toward uniformity”. By 1977, 34 of the 50 states had adopted MBCA statutes. In 1984, the Model Business Corporation Act was itself supplanted by the Revised Model Business Corporation Act (RMBCA) (the “revised” was recently dropped but is retained here to distinguish it from its predecessor). A large number of states adhere to one or the other Model Acts, with the RMBCA gaining adherents.

<table>
<thead>
<tr>
<th>Salient features of RMBCA of U.S. Corporations</th>
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<tr>
<td>A Business Corporation Act is the collection of laws in each state that governs corporations.</td>
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<tr>
<td>A model corporation statute compiled by the American Bar Association has been adopted in whole or in part by, or has influenced the statutes of many states.</td>
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**Secretary (1.40)**

(20) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under section 8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

**Required Officers (Section 8.40)**

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors’ and shareholders’ meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.
Duties of Officers (Section 8.41)

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Standards of Conduct for Officers (Section 8.42)

(a) An officer, when performing in such capacity, shall act:

(1) in good faith;

(2) with the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) in a manner the officer reasonably believes to be in the best interests of the corporation.

(b) In discharging those duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on:

(1) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person’s professional or expert competence or (ii) as to which the particular person merits confidence.

(c) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of Section 8.31 that have relevance.

Resignation and Removal of Officers (Section 8.43)

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by: (i) the board of directors; (ii) the officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, “appointing officer” means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

Incorporators (Section 2.01)

One or more individuals may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Incorporation (Section 2.03)

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.
**Purposes (Section 3.01)**

(a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

**Corporate Name (Section 4.01)**

(a) A corporate name:

(1) must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by relevant section and its articles of incorporation.

(b) Except as authorized by sub-sections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under the Act;

(3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one or more of the names described in sub-section (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This Act does not control the use of fictitious names.

**Annual Meeting (Section 7.01)**

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
(b) Annual shareholders’ meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation’s principal office.

**Special Meeting (Section 7.02)**

(a) A corporation shall hold a special meeting of shareholders:

1. on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. if the holders of at least 10 percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

**Court-Ordered Meeting (Section 7.03)**

(a) The court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

1. on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting; or

2. on application of a shareholder who signed a demand for a special meeting valid, if:

   (i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation’s secretary; or

   (ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

**Quorum and Voting Requirements for Voting Groups (Section 7.25)**

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this Act provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this Act require a greater number of affirmative votes.
Voting Trusts (Section 7.30)

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name. A voting trust is valid for not more than 10 years after its effective date unless extended under sub-section (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation’s principal office. An extension agreement binds only those parties signing it.

Requirement for and Duties of Board of Directors (Section 8.01)

(a) Except as provided in section 7.32, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 7.32.

Qualifications of Directors (Section 8.02)

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Number and Election of Directors (Section 8.03)

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The member of directors may be increased or decreased from time to time by amendment to or in the manner provided in, the articles or incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders’ meeting and at each annual meeting thereafter unless their terms are staggered under section 8.06.

Resignation of Directors (Section 8.07)

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Meetings (Section 8.20)

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.
Dissolution by Incorporators or Initial Directors (Section 14.01)

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state of state for filing articles of dissolution that set forth:

1. the name of the corporation;
2. the date of its incorporation;
3. either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
4. that no debt of the corporation remains unpaid;
5. that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
6. that a majority of the incorporators or initial directors authorized the dissolution.

Dissolution by Board of Directors and Shareholders (Section 14.02)

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

1. the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders; and
2. the shareholders entitled to vote must approve the proposal to dissolve as provided in sub-section (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to sub-section (c) require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

Corporate Records (Section 16.01)

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and street addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
(e) A corporation shall keep a copy of the following records at its principal office:

1. its articles or restated articles of incorporation and all amendments to them currently in effect;
2. its bylaws or restated bylaws and all amendments to them currently in effect;
3. resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
4. the minutes of all shareholders’ meetings, and records of all action taken by shareholders without a meeting, for the past three years
5. all written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 16.20;
6. a list of the names and business addresses of its current directors and officers; and
7. its most recent annual report delivered to the secretary of state under section 16.22.

C. AUSTRALIA

Legislative history

In Australia, prior to the adoption of the U.K. Joint Stock Companies Act, 1844, by the various colonies, private companies generally operated as unincorporated deed-of-settlement joint-stock companies.

Public utility companies were either incorporated by Royal Charter, or were conferred with powers to sue and be sued in the name of an officer by private act. Most of the colonies passed legislation based on the British Companies Act, 1862, which was subsequently modified over the years.

The “no liability” mining company was developed in 1871, while compulsory auditing and financial information provisions were enacted as early as 1896. However, these provisions applied only to publicly traded companies; private companies, to which the new requirements did not apply, were defined as proprietary companies, which are still a viable form of business organisation today.

The no liability company was developed in the speculative area of mining investment. It was first provided for in the Mining Companies Act, 1871. At the time, mining concerns, which formed companies limited by shares, sometimes found it difficult to recover unpaid calls of share capital. Shareholders often bought their stakes under fictitious names and would simply abandon their holdings if the venture proved less fruitful. The noteworthy aspect of the no liability company is that a member who does not pay calls is liable to the forfeiture of his shares. Although the memorandum of association of a no liability company had to state that acceptance of shares did not constitute a contract to pay calls or contribute towards the payment of the company’s debts, a no liability company could nevertheless contract around this.

Corporations Law

In Australia corporations are registered and regulated by the Commonwealth Government. Corporations law has been largely codified in the Corporations Act 2001. The Act is the result of a successful High Court of Australia challenge in New South Wales v Commonwealth (1990) 169 CLR 482 (‘The Corporations Act Case’). The Commonwealth was found to have insufficient power to legislate in relation to the formation of companies. Section 51(XX) of the Australian Constitution was found to provide sufficient power for legislation applicable to foreign corporations and corporations already formed within the Commonwealth. To some extent, the Act was an outcome of the resolve of the Federal Parliament to establish modern national laws to govern corporations and the securities market so as to establish the governing rules and to provide a pyramid of graduated responses where the law was shown to have been broken.
The Corporations Act, 2001, sometimes referred to just as the Corporations Act is presently the largest corporations statute in the world. It is an act of the Commonwealth of Australia. This Act sets out the laws dealing with business entities in Australia at federal and interstate level. Although the focus of the Act is primarily on companies, it also covers some laws relating to other entities such as partnerships and managed investment schemes. All states have adopted the Act.

The Corporations Act is the principal legislation regulating companies in Australia. It regulates matters such as the formation and operation of companies (in conjunction with a constitution that may be adopted by a company), duties of officers, takeovers and fund raising.

The Act gives statutory force to many common law principles and imposes a number of additional fiduciary duties on directors of incorporated bodies. Breach of statutory duties draws penalties under the Act which range up to $220,000. Under both the common law and the Corporations Act 2001, officers may also be required to pay compensation or to account for profits. In some cases directors may also be disqualified from office.

The Corporation Regulations 2001 contains all the regulations made under the Corporations Act, 2001.

**Salient features of Australian Corporations Act**

**Structure and functions of the Board**

Under the Corporations Act, a proprietary company must have at least one director. That director must ordinarily reside in Australia. For this purpose, a proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under the Chapter of the Act (except in limited circumstances).

Further a public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in Australia. Only an individual who is at least 18 may be appointed as a director of a company. A person who is disqualified from managing corporations may only be appointed as director of a company if the appointment is made with permission granted by Australian Securities and Investments Commission under the leave granted by the Court.

The business of a company is to be managed by or under the direction of the directors. The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. For example, the directors may issue shares, borrow money and issue debentures. The directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.

The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director. For example, the director may issue shares, borrow money and issue debentures. The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

**Appointment of Directors**

There are special rules for appointment of directors of public company and the appointment of directors for
single director/single shareholder proprietary companies. A resolution passed at a general meeting of a public company appointing or confirming the appointment of 2 or more directors is void unless:

(a) the meeting has resolved that the appointments or confirmations may be voted on together; and

(b) no votes were cast against the resolution.

The aforesaid requirement does not affect (a) a resolution to appoint directors by an amendment to the company's constitution (if any); or (b) a ballot or poll to elect two or more directors if the ballot or poll does not require members voting for one candidate to vote for another candidate.

For aforesaid purposes, a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.

The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record. If a person who is the only director and the only shareholder of a proprietary company dies; or cannot manage the company because of the person’s mental incapacity; and a personal representative or trustee is appointed to administer the person’s estate or property, the personal representative or trustee may appoint a person as the director of the company.

If the office of the director of a proprietary company is vacated because of the bankruptcy of the director; and the person is the only director and the only shareholder of the company; and a trustee in bankruptcy is appointed to the person’s property; the trustee may appoint a person as the director of the company. A person who has a power of appointment as aforesaid may appoint themselves as directors. A person appointed as a director of a company as aforesaid holds office as if they had been appointed in the usual way.

**Remuneration of Directors (Section 1468)**

The directors of a company are to be paid the remuneration that the company determines by resolution. The company may also pay the directors’ travelling and other expenses that they properly incur: (a) in attending directors’ meetings or any meetings of committees of directors; and (b) in attending any general meetings of the company; and (c) in connection with the company’s business.

A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by: (a) members with at least 5% of the votes that may be cast at a general meeting of the company; or (b) at least 100 members who are entitled to vote at a general meeting of the company. The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

The company must comply with the direction as soon as practicable by (a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and (b) having the statement audited; and (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director’s travelling and other expenses properly incurred by the director in connection with the company’s business.

**Company secretaries**

A company other than a proprietary company must have a company secretary. However, a proprietary company may choose to have a company secretary. The directors appoint the company secretary. A company secretary must be at least eighteen years old. If a company has only one company secretary, they must ordinarily reside in Australia. If a company has more than one company secretary, at least 1 of them must ordinarily reside in Australia.
A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify ASIC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. A company secretary who resigns may notify ASIC of the resignation. If the company secretary does not do so, the company must notify ASIC of the company secretary’s resignation.

The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Act on company officers.

The company secretary has specific responsibilities under the Corporations Act, including responsibility for ensuring that the company:

- notifies ASIC about changes to the identities, names and addresses of the company’s directors and company secretaries; and
- notifies ASIC about changes to the register of members; and
- notifies ASIC about changes to any ultimate holding company; and
- responds, if necessary, to an extract of particulars that it receives and that it responds to any return of particulars that it receives.

A company secretary's obligations may continue even after the company has been deregistered.

**Auditors**

The following may be appointed as auditor of a company for the purposes of the Act:

(a) an individual;
(b) a firm;
(c) a company.

In case of Proprietary company, the directors may appoint an auditor for the company if an auditor has not been appointed by the company in general meeting.

The company may have more than one auditor. The appointment of a firm as auditor of a company is taken to be an appointment of all persons who, at the date of the appointment, are (a) members of the firm; and (b) registered company auditors. This is so whether or not those persons are resident in Australia.

The appointment of the members of a firm as auditors of a company or registered scheme, that is taken to have been made because of the appointment of the firm as auditor of the company or scheme, is not affected by the dissolution of the firm.

A report or notice that purports to be made or given by a firm appointed as auditor of a company is not taken to be duly made or given unless it is signed by a member of the firm who is a registered company auditor both:

(a) in the firm name; and
(b) in his or her own name.

A notice required or permitted to be given to an audit firm under the Corporations legislation may be given to the firm by giving the notice to a member of the firm.

For the purposes of criminal proceedings under this Act against a member of an audit firm, an act or omission by:
(a) a member of the firm; or
(b) an employee or agent of the audit firm;
acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is also to be attributed to the audit firm.

The directors of a public company must appoint an auditor of the company within one month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.

A public company must appoint an auditor of the company at its first AGM and appoint an auditor of the company to fill any vacancy in the office of auditor at each subsequent AGM.

An auditor holds office until the auditor dies; or is removed, or resigns, from office; or ceases to be capable of acting as auditor; or ceases to be auditor.

D. CANADA

Like the United States and Australia, Canada is a federal state with a multiplicity of corporate statutes. Unlike the United States, there is a federal corporations statute, the Canada Business Corporations Act (CBCA), as well as corporate legislation in each of the 10 provinces. Upon implementation of the CBCA in 1975, a deliberate and fairly successful effort was made to harmonize the provincial statutes to the new federal regime in Canada.

Again, unlike the United States, there is no federal securities regulator in Canada. Although Canada has adopted securities regimes which are very much American in concept and approach, each province has its own securities law regime.

Over the last two decades, regional variations have crept back into the harmonized provincial corporate statutes but overall they remain similar to the CBCA in general structure and detail. Some provincial legislatures have been more responsive to change than others and have renewed their corporate statutes with greater regularity than the federal government. This has resulted in some divergence in detail.

The CBCA, and the Dickerson Report which preceded it, continue to influence reforms in jurisdictions as diverse as South Africa, Singapore, Australia and New Zealand where concepts introduced by the CBCA and time-tested in Canada are now making their appearance. The CBCA has been complemented over the last twenty years by a broad range of judicial decisions.

Legislative History

Canada’s first general Act of incorporation came in 1850. It covered “any kind of Manufacturing, Ship Building, Mining, Mechanical or Chemical Business”. This statute was an early example of the Canadian legislative tendency to learn from American experience in business matters. General incorporation Acts had spread through the United States since 1811, following the lead of New York, where incorporation was obtained by filing with a public official a charter prepared, within legislated limits, to the organizer’s own specifications. This easy method of incorporation was copied by Canada, in preference to the complex procedures under the English Joint Stock Companies Act of 1844.

The predominant form of incorporation in Canada for over one hundred years was to be “a throwback to the English system prior to 1720”, the discretionary letters patent model.

The winds of change began blowing in Canada in 1967, when Ontario completely reformulated its corporate law, discarding the letters patent model. In doing so it did not look to existing U.K. law. “The English model, then 125 years old, was rejected as being outdated as well. An entirely new type of corporate constitution was created, combining the American-model statute with some innovative statutory remedies”. Among other things, letters patent incorporation was replaced by U.S.-style incorporation by registration, one-person corporations were
permitted, the ultra vires doctrine became virtually irrelevant, pre-incorporation contracts were regularized, directors’ duties partially codified, insider trading regulated and statutory derivative actions permitted. The work begun in Ontario was continued and refined by the Dickerson Committee which proposed the federal CBCA a few years later. The sources of the CBCA were for the most part American. The most important contribution of U.K. law was the oppression remedy (based on s.210 of the U.K. Companies Act 1948).

In 1994, Industry Canada, the governmental ministry responsible for the CBCA, initiated the first comprehensive review of the CBCA since its implementation in 1975. The duties and liabilities of directors, in Canada as elsewhere, were the subject of intensive debate. Corporate governance came into the spotlight with a report of The Toronto Stock Exchange (the Dey Report) following on the heels of the well-known Cadbury Report in the United Kingdom.

**Salient features of Canada Business Corporations Act**

**Structure and functions of the board**

Under the Business Corporation Act, the articles of incorporation are to set out the number of directors or the minimum and maximum number of directors of the corporation. A Corporation may have one or more directors but if any of its issued securities are or were part of a distribution to the public and remain outstanding and are held by more than one person, the corporation is to have at least three directors, at least two of whom are not to be officers or employees of the corporation or its affiliates.

The Act provided that subject to the articles or bye-laws, a majority of the directors or of the minimum number of directors required by the articles constitutes a quorum and notwithstanding any vacancy, the directors in office so long as they constitute a quorum, may exercise all the powers of the directors.

Subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation. In addition to the general authority, the Act gives to the directors the power by resolution, to make, amend or repeal and byelaws that regulate the business or affairs of the corporation. However, it must be noted that any bye-law or amendment or repeal is required to be submitted to the shareholders at the next meeting of shareholders and the shareholders may confirm, reject or amend the bye-law in question.

In the case of a corporation incorporated by the memorandum and articles, where the latter provide that the management of the business of the corporation shall be vested in the directors and delegate to them power to do every thing which may be done by the corporation except in general meeting, such delegation is not limited to the management of the business of the corporation. *Campbell v. Rote* (1933) A.C. 91. As the powers of the management are given to the directors, the management of the business cannot (in the absence of statutory provision or a unanimous shareholder agreement) be exercised by the shareholders, nor can the director be overruled or controlled by the shareholders.

Where directors of a corporation act within their powers they can bind the corporation under a contract without authorization by the shareholders. If the shareholders are dissatisfied with acts of the directors they can appoint a new board at the next election of director, or appeal to the courts if the directors are committing a breach of trust. See *Taylor v. Chichester Railway* (1867) L.R. 2 Ex. 356.

The powers of the directors are vested in them collectively and must be exercised at the regular meetings of the board, or as provided by the bye-laws, and not by the directors acting individually. *Schmidt v. M. Beatty & Sons Ltd.* (1916).

The directors are under duty of care in exercising their powers and discharging their duties. It means they should act honestly and in good faith with a view to best interests of the corporation.

**Election of Directors**

The Act requires the board of directors be elected by the shareholders. It would be permissible for the articles to provide for different classes of directors to be elected by different classes of shareholders, similar to provisions in a shareholders’ agreement in that regard. Unless the election is pursuant to a resolution in writing signed by
all the shareholders, the election must take place at a general meeting which by virtue of the Act must be held within Canada as provided in the bye-laws or in the absence of such provisions as determined by the directors. A meeting may be held outside Canada if all shareholders entitled so agree and the shareholder who attends such a meeting is deemed to have agreed to its being held outside Canada, except where his attendance is for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Directors may be elected for a term expiring not later than the close of the third annual meeting of shareholders following the election and not all directors elected at a meeting of shareholders need hold office for the same term. If a director is not elected for an expressly stated term, he ceases to hold office at the close of the first annual meeting of the shareholders following his election.

The Articles of Corporation may provide for cumulative voting in the election of directors, that is, that every shareholder will have for this purpose the number of votes attached to his shares multiplied by the number of directors to be elected and that such votes may be cast for one candidate or distributed amongst several candidates. Where cumulative voting is provided for in the articles, a fixed number of directors must be provided for rather than a minimum and a maximum.

Where no election of directors has effectively been made at the proper time which will be ordinarily be at the annual meeting, such election may take place at a subsequent special meeting of the shareholders called for that purpose. If there is no quorum of directors or if there has been a failure to elect the minimum number of directors required by the articles, the directors then in office are to forthwith call a special meeting of shareholders to fill the vacancy. If they fail to do so, or if there are no directors then in office, the meeting may be called by any shareholder.

It must be noted that where directors are not elected at the proper time the retiring directors shall continue in office until their successors are elected. Accordingly directors, who would retire in the event a new election was duly proceeded with, will remain in office notwithstanding that their term of office has expired and that the shareholders have failed to elect a new board. Apart from statute or byelaw it would seem to be implied that the directors of the corporation should hold office until their successors are duly elected and qualified.

**One Director Meeting**

Where a corporation has only one director, that director may constitute a meeting.

**Remuneration of Directors**

The Act provides that subject to the Articles, the byelaws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

Where a person has accepted the office of director of a corporation and has acted as such, there may be inferred an agreement between him and corporation, on his part that he will serve the corporation on the terms as to qualification and otherwise contained in the articles of association and on the part of the corporation that he shall receive the remuneration and benefits provided by the articles for the directors. Re. Anglo Austrian Co.: Isaac’s Case (1892) 2 Ch. 518.

The subject of remuneration of directors is usually dealt with in the bye-laws; a standard provision is that such remuneration may be set from time to time by the board of directors and such remuneration is in addition to the salary paid to an employee of the corporation who is also a member of the board of directors; the board of directors may also award special remuneration to any director undertaking special services on the corporation’s behalf other than the routine work ordinarily required of a director by the corporation and the confirmation of any such resolution or resolutions by the shareholders is not required. The standard provision in the byelaws also provides that a director is entitled to be paid his travelling and other expenses properly incurred by him on behalf of the corporation.
Annual Financial Statements

The directors of a corporation shall place before the shareholders at every annual meeting

(a) Comparative financial statements as prescribed relating separately to

   (i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

   (ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

It may be noted that the financial statements referred to in subparagraph (a)(ii) above may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

Further, the Director may, on application of a corporation, authorize the corporation to omit from its financial statements any item prescribed, or to dispense with the publication of any particular financial statement prescribed, and the Director may, if the Director reasonably believes that disclosure of the information contained in the statements would be detrimental to the corporation, permit the omission on any reasonable conditions that the Director thinks fit.

Auditors

Directors are to appoint an auditor to hold office until the first annual meeting of shareholders. Thereafter the shareholders of the corporation by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, are to appoint an auditor to hold office until the close of the next annual meeting. An auditor is disqualified from being appointed as such if he is not independent of the corporation, its affiliates or the directors or officers of such corporation or its affiliates.

Independence is a question of fact and that a person is deemed not to be independent if he or his business partner is a business partner, director, officer or employee of the corporation or any of its affiliates or a business partner of any director, officer, employee of any such corporation or any of its affiliates or beneficially owns or controls, directly or indirectly, a material interest in the securities of the corporation or any of its affiliates or has been a Receiver, Receiver-Manager, Liquidator or Trustee in bankruptcy of the corporation or any of its affiliates within two years of his proposed appointment as auditor of the corporation; if an auditor becomes disqualified, he is to resign forthwith after becoming aware of his disqualification and an interested person may apply to a court for an order declaring an auditor to be disqualified and the office of auditor to be vacant. However an interested person may apply to a Court for an order exempting an auditor from disqualification and the Court may if its satisfied that an exemption will not unfairly prejudice the shareholder, make an exemption order under such terms as it thinks fit which order may have retrospective effect.

If a corporation does not have an auditor, the Court may, on the application of a shareholder or the Director, appoint and fix the remuneration of an auditor who holds office until an auditor is appointed by the shareholders.

If an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until a successor is appointed.

The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or if not so fixed, may be fixed by the directors.
Registered office

19. (1) A corporation shall at all times have a registered office in the province in Canada specified in its articles.

Shares

24. (1) Shares of a corporation shall be in registered form and shall be without nominal or par value.

Appointing proxyholder

148. (1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternate proxyholders who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

Meeting

Meeting held by electronic means

(5) If the directors or the shareholders of a corporation call a meeting of shareholders pursuant to this Act, those directors or shareholders, as the case may be, may determine that the meeting shall be held, in accordance with the regulations, if any, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

Calling annual meetings

133. (1) The directors of a corporation shall call an annual meeting of shareholders

(a) not later than eighteen months after the corporation comes into existence; and

(b) subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation's preceding financial year.

Calling special meetings

(2) The directors of a corporation may at any time call a special meeting of shareholders.

SHAREHOLDERS

Place of meetings

132. (1) Meetings of shareholders of a corporation shall be held at the place within Canada provided in the by-laws or, in the absence of such provision, at the place within Canada that the directors determine.

Registered office

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Shares

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SHAREHOLDERS

Place of meetings

132. (1) Meetings of shareholders of a corporation shall be held at the place within Canada provided in the by-laws or, in the absence of such provision, at the place within Canada that the directors determine.

Meeting outside Canada

(2) Despite sub-section (1), a meeting of shareholders of a corporation may be held at a place outside Canada if the place is specified in the articles or all the shareholders entitled to vote at the meeting agree that the meeting is to be held at that place.

Exception

(3) A shareholder who attends a meeting of shareholders held outside Canada is deemed to have agreed to it being held outside Canada except when the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Participation in meeting by electronic means

(4) Unless the by-laws otherwise provide, any person entitled to attend a meeting of shareholders may participate in the meeting, in accordance with the regulations, if any, by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the corporation makes available such a communication facility. A person participating in a meeting by such means is deemed for the purposes of this Act to be present at the meeting.

Remuneration

125. Subject to the articles, the by-laws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

Duty of care of directors and officers

122. (1) Every director and officer of a corporation in exercising their powers and discharging their duties shall

   (a) act honestly and in good faith with a view to the best interests of the corporation; and

   (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.
Notice of directors

106. (1) At the time of sending articles of incorporation, the incorporators shall send to the Director a notice of directors in the form that the Director fixes, and the Director shall file the notice.

Term of office

(2) Each director named in the notice referred to in sub-section (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

Election of directors

(3) Subject to paragraph 107(b), shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election.

Staggered terms

(4) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

No stated terms

(5) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following the director’s election.

Incumbent directors

(6) Notwithstanding sub-sections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

Vacancy among candidates

(7) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the lack of consent, disqualification, incapacity or death of any candidates, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

Appointment of directors

(8) The directors may, if the articles of the corporation so provide, appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of shareholders.

Election or appointment as director

(9) An individual who is elected or appointed to hold office as a director is not a director and is deemed not to have been elected or appointed to hold office as a director unless

(a) he or she was present at the meeting when the election or appointment took place and he or she did not refuse to hold office as a director; or

(b) he or she was not present at the meeting when the election or appointment took place and

(i) he or she consented to hold office as a director in writing before the election or appointment or within ten days after it, or

(ii) he or she has acted as a director pursuant to the election or appointment.
Cumulative voting

107. Where the articles provide for cumulative voting,

(a) the articles shall require a fixed number and not a minimum and maximum number of directors;

(b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and may cast all of those votes in favour of one candidate or distribute them among the candidates in any manner;

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;

(d) if a shareholder has voted for more than one candidate without specifying the distribution of votes, the shareholder is deemed to have distributed the votes equally among those candidates;

(e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

(f) each director ceases to hold office at the close of the first annual meeting of shareholders following the director’s election;

(g) a director may be removed from office only if the number of votes cast in favour of the director’s removal is greater than the product of the number of directors required by the articles and the number of votes cast against the motion; and

(h) the number of directors required by the articles may be decreased only if the votes cast in favour of the motion to decrease the number of directors is greater than the product of the number of directors required by the articles and the number of votes cast against the motion.

Ceasing to hold office

108. (1) A director of a corporation ceases to hold office when the director

(a) dies or resigns;

(b) is removed in accordance with section 109; or

(c) becomes disqualified under sub-section 105(1).

Effective date of resignation

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of directors

109. (1) Subject to paragraph 107(g), the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

Exception

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

Vacancy

(3) Subject to paragraphs 107(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 111.
Resignation (or removal)

(4) If all of the directors have resigned or have been removed without replacement, a person who manages or supervises the management of the business and affairs of the corporation is deemed to be a director for the purposes of this Act.

Exception

(5) Sub-section (4) does not apply to

(a) an officer who manages the business or affairs of the corporation under the direction or control of a shareholder or other person;

(b) a lawyer, notary, accountant or other professional who participates in the management of the corporation solely for the purpose of providing professional services; or

(c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purpose of the realization of security or the administration of a bankrupt’s estate, in the case of a trustee in bankruptcy.

Prohibition of short sale

130. (1) An insider shall not knowingly sell, directly or indirectly, a security of a distributing corporation or any of its affiliates if the insider selling the security does not own or has not fully paid for the security to be sold.

Calls and puts

(2) An insider shall not knowingly, directly or indirectly, sell a call or buy a put in respect of a security of the corporation or any of its affiliates.

Exception

(3) Despite sub-section (1), an insider may sell a security they do not own if they own another security convertible into the security sold or an option or right to acquire the security sold and, within ten days after the sale, they

(a) exercise the conversion privilege, option or right and deliver the security so acquired to the purchaser; or

(b) transfer the convertible security, option or right to the purchaser.

Definitions

131. (1) In this section, “insider” means, with respect to a corporation,

(a) the corporation;

(b) an affiliate of the corporation;

(c) a director or an officer of the corporation or of any person described in paragraph (b), (d) or (f);

(d) a person who beneficially owns, directly or indirectly, shares of the corporation or who exercises control or direction over shares of the corporation, or who has a combination of any such ownership, control and direction, carrying more than the prescribed percentage of voting rights attached to all of the outstanding shares of the corporation not including shares held by the person as underwriter while those shares are in the course of a distribution to the public;

(e) a person, other than a person described in paragraph (f), employed or retained by the corporation or by a person described in paragraph (f);

(f) a person who engages in or proposes to engage in any business or professional activity with or on behalf of the corporation;
(g) a person who received, while they were a person described in any of paragraphs (a) to (f), material confidential information concerning the corporation;

(h) a person who receives material confidential information from a person described in this sub-section or in sub-section (3) or (3.1), including a person described in this paragraph, and who knows or who ought reasonably to have known that the person giving the information is a person described in this sub-section or in sub-section (3) or (3.1), including a person described in this paragraph; and

(i) a prescribed person.

Expanded definition of “security”

(2) For the purposes of this section, the following are deemed to be a security of the corporation:

(a) a put, call, option or other right or obligation to purchase or sell a security of the corporation; and

(b) a security of another entity, the market price of which varies materially with the market price of the securities of the corporation.

Deemed insiders

(3) For the purposes of this section, a person who proposes to make a take-over bid (as defined in the regulations) for securities of a corporation, or to enter into a business combination with a corporation, is an insider of the corporation with respect to material confidential information obtained from the corporation and is an insider of the corporation for the purposes of sub-section (6).

Deemed insiders

(3.1) An insider of a person referred to in sub-section (3), and an affiliate or associate of such a person, is an insider of the corporation referred to in that sub-section. Paragraphs (1)(b) to (i) apply in determining whether a person is such an insider except that references to “corporation” in those paragraphs are to be read as references to “person described in sub-section (3)”.

Insider trading – compensation to persons

(4) An insider who purchases or sells a security of the corporation with knowledge of confidential information that, if generally known, might reasonably be expected to affect materially the value of any of the securities of the corporation is liable to compensate the seller of the security or the purchaser of the security, as the case may be, for any damages suffered by the seller or purchaser as a result of the purchase or sale, unless the insider establishes that

(a) the insider reasonably believed that the information had been generally disclosed;

(b) the information was known, or ought reasonably to have been known, by the seller or purchaser; or

(c) the purchase or sale of the security took place in the prescribed circumstances.

E. HONGKONG

Hong Kong has a significant trading economy and is a center for both multinational and local companies operating in Asia. Hong Kong companies can easily carrying out business in the Peoples Republic of China and throughout Asia. Hong Kong incorporated companies are increasingly becoming the chosen entities for conducting trading activities in Asia as they benefit from a tax friendly environment and business friendly legal system. Hong Kong Companies are guided by the Hong Kong Companies Ordinance.

Hong Kong Companies Ordinance is enforced by the Company Registry of Hong Kong. The primary functions of the Hong Kong Company Registry include the incorporation of local companies; the registration of oversea companies; the registration of documents required to be submitted by registered companies; the deregistration of defunct, solvent private companies; the prosecution of companies and their officers for breaches of the
various regulatory provisions of the Hong Kong Companies Ordinance; the provision of facilities to inspect and obtain company information; and advising the Government on policy and legislative issues regarding company law and related legislation, including the Overall Review of the Hong Kong Companies Ordinance.

### Salient features of Hong Kong Companies Ordinance

#### Mode of forming incorporated company (Section 4)

Any one or more persons may, for any lawful purpose, by subscribing his or their name or names to a memorandum of association (which must be printed in the English or Chinese language) and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability. Such a company may be either-

(a) a company having, or deemed by virtue of sub-section (3) to have, the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed a company limited by shares); or (Amended 6 of 1984 s. 4)

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed a company limited by guarantee); or

(c) a company not having any limit on the liability of its members (in this Ordinance termed an unlimited company).

#### Statutory forms of memorandum and articles (Section 14)

The form of—

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.

#### Registration of memorandum and articles (Section 15)

The memorandum and the articles, if any, shall be delivered to the Registrar and the Registrar shall retain and register them.

#### Effect of registration (Section 16)

On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.
**Conclusiveness of certificate of incorporation (Section 18)**

A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.

A statutory declaration by a solicitor of the High Court, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

**Restriction on registration of companies by certain names (Section 20)**

A company shall not be registered by a name—

(a) which is the same as a name appearing in the Registrar’s index of company names;

(b) which is the same as that of a body corporate incorporated or established under an Ordinance;

(c) the use of which by the company would, in the opinion of the Governor, constitute a criminal offence; or

(d) which, in the opinion of the Governor, is offensive or otherwise contrary to the public interest.

Except with the consent of the Governor no company shall be registered by a name which—

(a) in the opinion of the Governor, would be likely to give the impression that the company is connected in any way with Her Majesty’s Government or the Government of Hong Kong or any department of either Government; or

(b) includes any word or expression for the time being specified in an order made under section 22B.

In determining for the purposes of sub-section (1)(a) or (b) whether one name is the same as another—

(a) the following shall be disregarded—

(i) the definite article, where it is the first word of the name;

(ii) the following words and expressions where they appear at the end of the name, that is to say—

(A) “company”;

(B) “and company”;

(C) “company limited”;

(D) “and company limited”;

(E) “limited”;

(F) “unlimited”; and

(G) “public limited company”;

(iii) abbreviations of any of the words or expressions referred to in subparagraph (ii) where they appear at the end of the name; and

(iv) type and case of letters, accents, spaces between letters and punctuation marks;

(b) “and” and “&”, “Hong Kong”, “Hongkong” and “HK”, and “Far East” and “FE” are respectively to be taken as the same; and

(c) two different Chinese characters shall be regarded as the same if the Registrar is satisfied that having regard to the usage of the two Chinese characters in Hong Kong, they can reasonably be used interchangeably.
Definition of member (Section 28)

The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Membership of holding company (Section 28A)

Subject to the provisions of this section, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

Meaning of private company (Section 29)

For the purposes of this Ordinance, the expression “private company” means a company which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Power to issue shares at a discount (Section 50)

Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

(a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the court;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) not less than 1 year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(d) the shares to be issued at a discount must be issued within 1 month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

Nature of shares (Section 65)

The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

Registered office of company (Section 92)

A company shall, as from the day on which it begins to carry on business or as from the 14th day after the date of its incorporation, whichever is earlier, have a registered office in Hong Kong to which all communications and notices may be addressed.

Notwithstanding that the memorandum of a company provides that its registered office shall be situated in a particular place in Hong Kong, the company may have its registered office in that place or in any other place in Hong Kong.

Annual general meeting (Section 111)

Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15
months, or such longer period as the Registrar may in any particular case authorize in writing, shall elapse between the date of one annual general meeting of the company and the next:

Provided that, so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

**Minutes of proceedings of meetings and directors (Section 119)**

Every company shall cause minutes of all proceedings at general meetings and at meetings of its directors to be entered in books kept for that purpose.

Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings thereat to have been duly held, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

**Keeping of books of account (Section 121)**

Every company shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

For the purposes of sub-section (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Hong Kong there shall be sent to, and kept at a place in, Hong Kong and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with this Ordinance the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Ordinance and is thereby allowed to be so given.

Any books of account which a company is required by this section to keep shall be preserved by it for 7 years from the end of the financial year to which the last entry made or matter recorded therein relates.

**Profit and loss account and balance sheet (Section 122)**

Subject to sub-section (1B), the directors of every company shall lay before the company at its annual general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account. The accounts referred to in sub-section (1) shall be made up to a date falling not more than 6 months, or, in the case of a private company (other than a private company which at any time during the period to which the said accounts relate was a member of a group of companies of which a company other than a private company was a member) and a company limited by guarantee not more than 9 months, before the date of the meeting.
The court, if for any reason it thinks fit so to do, may in the case of any company and with respect to any year—

(a) substitute for the requirement in sub-section (1) to lay a profit and loss account or (as the case may be) an income and expenditure account before the company at its annual general meeting a requirement to lay such account before the company at such other general meeting of the company as the court may specify; and

(b) extend the periods of 6 and 9 months referred to in sub-section (1A).

The directors shall cause to be made out in every calendar year, and to be laid before the company at its annual general meeting or at such other general meeting of the company as may be specified by the court under sub-section (1B), a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up.

**Financial year of holding company and subsidiary (Section 127)**

A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

Where a holding company or a holding company's subsidiary wishes to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Registrar may on the application of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of a general meeting in order to comply with section 111(1), or the making of an annual return shall not be required in the earlier of the said calendar years.

**Signing of balance sheet (Section 129B)**

Every balance sheet of a company shall be approved by the board of directors of the company and signed on behalf of the board by 2 of the directors, or in the case of a private company having only one director, by the sole director.

In the case of a company carrying on banking business, the balance sheet shall be signed by the secretary or manager, if any, and where there are more than 3 directors of the company by at least 3 of those directors, and where there are not more than 3 directors by all the directors.

If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine.

**Accounts to be annexed and auditors' report to be attached, to balance sheet (Section 129C)**

The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine.

**Appointment and removal of auditors (Section 131)**

Every company shall at each annual general meeting of the company appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the company.
Where at an annual general meeting of a company no auditors are appointed or reappointed, the court may, on the application of any member of the company, appoint a person to fill the vacancy.

The first auditors of a company may be appointed by the directors at any time before the first annual general meeting of the company, and auditors so appointed shall hold office until the conclusion of that meeting.

**Disqualifications for appointment as auditor (Section 140)**

A person shall not be appointed as auditor of a company unless-

(a) he is qualified for appointment as such auditor under the Professional Accountants Ordinance (Cap. 50); and

(b) he is not disqualified under sub-section (2).

None of the following persons shall be qualified for appointment as auditor of a company-

(a) an officer or servant of the company;

(b) a person who is a partner of or in the employment of an officer or servant of the company;

(c) a body corporate;

(d) a person who is, by virtue of paragraph (a), (b) or (c), disqualified for appointment as auditor of any other body corporate which is the company’s subsidiary or holding company or a subsidiary of the company’s holding company, or would be so disqualified if the body corporate were a company,

and references in this sub-section to an officer or servant shall be construed as not including references to an auditor.

**Resignation of auditor [Section 140 (1)]**

An auditor of a company may resign his office by depositing a notice in writing to that effect at the registered office of the company; and any such notice shall operate to bring his term of office to an end on the date on which the notice is deposited or on such later date as may be specified therein.

An auditor’s notice of resignation shall not be effective unless it contains either-

(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement of any such circumstances as aforesaid.

Where a notice having effect under this section is deposited at a company’s registered office, the company shall within 14 days send a copy of the notice-

(a) except in the case of a private company, to the Registrar; and

(b) if the notice contained a statement under sub-section (2)(b), to every person who under section 129G(1) is entitled to be sent copies of the documents there mentioned.

**Directors (Section 153)**

Every company (not being a private company) shall have at least 2 directors.

If a company (not being a private company) has not at any time sent to the Registrar under section 158 a return containing the names of at least 2 directors of the company and one or more individuals are named as subscribers in the list of subscribers to the memorandum of the company, each of the following shall, until the return is so sent, be deemed to be a director of the company-

(a) where one individual only is so named in the memorandum, that individual; or
(b) where 2 or more individuals are so named in the memorandum, the first 2 individuals so named in the order in which the names appear in the memorandum.

Secretary (Section 154)

Every company shall have a secretary. (1A) Subject to sub-sections (1B) and (4), a director of a company may be the secretary of the company. The director of a private company having only one director shall not also be the secretary of the company.

The secretary of a company shall-

(a) if an individual, ordinarily reside in Hong Kong;

(b) if a body corporate, have its registered office or a place of business in Hong Kong.

Qualification of director (Section 155)

It shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.

Appointment of directors to be voted on individually (Section 157A)

At a general meeting of a company other than a private company or a company not having a share capital, a motion for the appointment of 2 or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:

Provided that-

(a) this sub-section shall not be taken as excluding the operation of section 157; and

(b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

Minimum age limit for directors (Section 157C)

No person shall be capable of being appointed a director of a company on or after the commencement of the Companies (Amendment) Ordinance 1984 unless at the time of his appointment he has attained the age of 18 years.

Resignation of director or secretary (Section 157D)

A director or secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign his office at any time.

Notification of the resignation of a director or secretary of a company shall, subject to sub-section (3)(c), be given by the company to the Registrar in like manner as a notification of any change among its directors is required to be given by section 158(4):

Provided that where there are reasonable grounds for believing that the company will not give such notification, such notification shall be given in the specified form by the person resigning and shall state whether the person resigning is required by the articles of the company or by any agreement with the company to give notice of his resignation to the company, and, if such notice is so required, whether such notice has been given in accordance with such requirement.
Where notice of the resignation of a director or secretary of a company is required to be given by the articles of the company or by any agreement with the company, the following shall apply to the person resigning-

(a) the resignation shall not have effect unless he gives notice in writing thereof either in accordance with such requirement or by sending it by post to, or by leaving it at, the registered office of the company;

(b) he shall deliver a copy of such notice to the Registrar not later than 3 days after it is given to the company and shall endorse thereon a certificate stating whether the original has been posted to, or, as the case may be, left at, the registered office of the company and specifying the date on which it was so posted or left;

(c) any notification required by sub-section (2) to be given to the Registrar shall be given not later than 7 days after the expiration of such notice.

**Modes of winding up (Section 169)**

The winding up of a company may be either-

(a) by the court; or

(b) voluntary.

In mid-2006, the Government launched a major and comprehensive exercise to rewrite the Companies Ordinance (“CO”). By updating and modernising the CO, the aim is to make it more user-friendly and facilitate the conduct of business to enhance Hong Kong’s competitiveness and attractiveness as a major international business and financial centre.

Some key milestones of the rewrite exercise include:

- Topical public consultations on key and complex subjects in 2007 and 2008;
- Public consultation on the draft clauses of the Companies Bill in two phases, with the first phase commenced in December 2009 and ended in March 2010. Consultation Conclusions for the first phase consultation were issued on 27 August 2010;
- The second phase consultation commenced in May 2010 and ended in August 2010. The Consultation Conclusions for the second phase consultation were issued on 25 October 2010.
- The Companies Bill was gazetted on 14 January 2011.
- The Companies Bill was introduced into the Legislative Council on 26 January 2011.

**Salient features of Companies Bill are:**

- It contains 21 parts having 909 clauses and ten schedules;
- Clause 2:
  - company secretary includes any person occupying the position of company secretary (by whatever name called);
  - founder member (a) in relation to a company formed and registered under this ordinance, means a person who signs on the company’s articles for the purposes of section 2(1)(a); or (b) in relation to an existing company, means a person who subscribed to or signed on the company’s memorandum of association;
  - listed company means a company that has any of its shares listed on a recognized stock market;
  - listing rules means the rules made under section23 of the Securities and Futures Ordinance (Cap.
571) by a recognized exchange company that govern the listing of securities on a stock market it operates;

- officer, in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

- shadow director, in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

- Clauses 6 to 15 provides for limited company, limited by shares, limited by guarantee, unlimited company, private company and public company, Holding Company and Subsidiary, and Parent Undertaking and Subsidiary Undertaking

- Clause 61 provides for following types of companies which may be formed:
  
  (a) a public company limited by shares;
  
  (b) a private company limited by shares;
  
  (c) a public unlimited company with a share capital;
  
  (d) a private unlimited company with a share capital;
  
  (e) a company limited by guarantee without a share capital.

- Clause 62 provides that any one or more persons may form a company only for a lawful purpose by –
  
  (a) signing the articles of the company intended to be formed;
  
  (b) delivering to the Registrar for registration–
    
    (i) an incorporation form in the specified form; and
    
    (ii) a copy of the articles; and
  
  (c) paying the Registrar a fee as prescribed.

- Clause 363 provides that a company’s first financial year after the coming into operation of this section begins on the first day of its first accounting reference period and ends on the last day of that period or on any other date, not more than 7 days before or after that last day, that the directors think fit.

Every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined, or on any other date, not more than 7 days before or after that last day, that the directors think fit.

Further, a company’s directors must secure that the financial year of each of its subsidiary undertakings coincides with the company’s financial year unless, in the directors’ opinion, there are good reasons against those financial years coinciding with each other.

- Clause 369 provides that a Company must keep accounting records. The accounting records must be sufficient, to show and explain the company’s transactions; to disclose with reasonable accuracy, at any time, the company’s financial position and financial performance; and to enable the directors to ensure that the financial statements comply with this Ordinance. In particular, the accounting records must contain daily entries of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and a record of the company’s assets and liabilities.

- Clause 370 provides that a company’s accounting records must be kept at its registered office or any
other place that the directors think fit; and must be open to inspection by the directors at all times without charge. If a company’s accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records (a) must be sent to, and kept at, a place in Hong Kong; and (b) must be open to inspection by the directors at all times without charge. Those accounts and returns must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months.

– Clause 377 provides that subsidiary undertakings to be included in annual consolidated financial statements. The annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.

– Clause 379 provides that statement of financial position that forms part of any financial statements must be approved by the directors; and must be signed by 2 directors on the directors’ behalf; or in the case of a company having only one director, by the director.

380. Directors must prepare directors’ report

(1) A company’s directors must prepare for each financial year a report

381. Contents of directors’ report: general

(1) A directors’ report for a financial year must contain—

(a) the name of every person who was a director of the company?
   (i) during the financial year; or
   (ii) during the period beginning with the end of the financial year and ending on the date of the report; and

(b) the principal activities of the company in the course of the financial year.

(2) A directors’ report must contain particulars of any other matter—

(a) that is material for the members’ appreciation of the state of the company’s affairs; and

(b) the disclosure of which will not, in the directors’ opinion, be harmful to the business of the company.

382. Directors’ report to be approved and signed

(1) A directors’ report—

(a) must be approved by the directors; and

(b) must be signed on the directors’ behalf by a director or by the company secretary.

465. Company required to have company secretary

(1) A company must have a company secretary.

(2) With effect from the date of incorporation of a company, the first company secretary of the company is the person named as the company secretary in the incorporation form delivered to the Registrar under section 62(1).

(3) If the name of a firm is specified in the incorporation form under section 5(1)(c) of Schedule 2, all partners of the firm as at the date of the incorporation form are the first joint company secretaries of the company.

(4) A company secretary of a company must—

(a) if a natural person, ordinarily reside in Hong Kong; and

(b) if a body corporate, have its registered office or a place of business in Hong Kong.
466. Circumstances under which director may not be company secretary

(1) Subject to sub-sections (2) and (3), a director of a company may be a company secretary of the company.

(2) The director of a private company having only one director must not also be a company secretary of the company.

(3) No private company having only one director may have as company secretary of the company a body corporate the sole director of which is the sole director of the private company.

468. Resignation of company secretary

(1) A company secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as company secretary at any time.

(2) If a company secretary of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 643(2).

(3) Despite sub-section (2), if the company secretary resigning has reasonable grounds for believing that the company will not deliver the notice, the company secretary resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.

(4) The notice required to be delivered under sub-section (3) must state—

   (a) whether the company secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and

   (b) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a company secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the company secretary gives notice in writing of the resignation—

   (a) in accordance with the requirement;

   (b) by leaving it at the registered office of the company; or

   (c) by sending it to the company in hard copy form or in electronic form.

472. Minutes of directors’ meetings

(1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) A company must keep the records under sub-section (1) for at least 20 years from the date of the meeting.

553. Ordinary resolution

(1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.

(2) A resolution passed at a general meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of—

   (a) the members who (being entitled to do so) vote in person on the resolution; and

   (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) Anything that may be done by an ordinary resolution may also be done by a special resolution.
554. Special resolution

(1) A special resolution of the members (or of a class of members) of a company means a resolution that is passed by a majority of at least 75%.

(2) A resolution passed at a general meeting on a show of hands is passed by a majority of at least 75% if it is passed by at least 75% of—

(a) the members who (being entitled to do so) vote in person on the resolution; and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a majority of at least 75% if it is passed by members representing at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) If a resolution is passed at a general meeting—

(a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and

(b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

(5) A reference to an extraordinary resolution of a company or of a meeting of any class of members of a company—

(a) contained in any Ordinance that was enacted or document that existed before 31 August 1984; and

(b) deemed, in relation to a resolution passed or to be passed on or after that date, to be a special resolution of the company or meeting under section 116(5) of the predecessor Ordinance, continues to be deemed to be such a special resolution of the company or meeting.

575. Quorum at meeting

(1) If a company has only one member, that member present in person or by proxy is a quorum of a general meeting of the company.

(2) If that member of the company is a body corporate, that member present by its corporate representative is also a quorum of a general meeting of the company.

(3) Subject to sub-section (1) and the provisions of a company’s articles, 2 members present in person or by proxy is a quorum of a general meeting of the company.

(4) If a member of the company is a body corporate, that member present by its corporate representative counts towards a quorum of a general meeting of the company.

(5) In this section—

Corporate representative means a person authorized under section 96 to act as the representative of the body corporate.

653. Requirement to deliver annual return

(1) A private company must in respect of every year (except the year of its incorporation) deliver to the Registrar for registration an annual return specified in sub-section (5) within 42 days after the company’s return date.

(2) The company’s return date mentioned in sub-section (1) is, in respect of a particular year, the anniversary of the date of the company’s incorporation in that year.

(3) A public company or a company limited by guarantee must in respect of every financial year deliver to the
Registrar for registration an annual return specified in sub-section (5) within 42 days after the company’s return date.

(4) The company’s return date mentioned in sub-section (3) is, in respect of a particular financial year—

(a) if the company is a public company, the date that is 6 months after the end of its accounting reference period; and

(b) if the company is a company limited by guarantee, the date that is 9 months after the end of its accounting reference period.

**F. SINGAPORE**

The Companies Act of Singapore was first enacted in 1967. It has been subjected to numerous piecemeal amending legislations effected from time to time. In view of technological advancements, globalisation and the regional economies undergoing massive changes, the Government saw that a major revamp of the Companies Act was due.

Hence, the Company Legislation and Regulatory Framework Committee (CLRFC) was formed in December 1999. It was asked to modernise Singapore’s company and business regulatory framework and to recommend one which will promote a competitive economy.

The Committee delivered its final report in early October 2002 and all its 77 recommendations were accepted by the Government. Since then the Singapore Companies Act has been amended three times to give effect to the recommendations of the CLRFC, the major being Amendment Acts of 2004 and 2005.

**Salient Features of Singapore Companies Act**

*Formation of companies*

Any person may, whether alone or together with another person, by subscribing his name or their names to a memorandum and complying with the requirements as to registration, form an incorporated company.

A company may be –

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) an unlimited company.

Any company, association or partnership consisting of more than 20 persons cannot be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other written law in Singapore or letters patent.

*Minimum of one member*

A company must have at least one member.

*No par value shares*

All shares, whether issued before, on or after 30th January 2006 have no par value. The concept of ‘authorised capital’ is also abolished.

Division 7A of the Act deals with The Central Depository System – a book entry or scripless system for the transfer of securities.
Treasury shares (76H)

Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with the provisions of the Act, the company may –

(a) hold the shares or stocks (or any of them); or
(b) deal with any of them, at any time, as provided hereunder.

Where shares are held as treasury shares, a company may at any time –

(a) sell the shares (or any of them) for cash;
(b) transfer the shares (or any of them) for the purposes of or pursuant to an employees’ share scheme;
(c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;
(d) cancel the shares (or any of them); or
(e) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

Treasury shares: maximum holdings (Section 76I.)

Where a company has shares of only one class, the aggregate number of shares held as treasury shares shall not at any time exceed 10% of the total number of shares of the company at that time.

Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares shall not at any time exceed 10% of the total number of the shares in that class at that time.

Treasury shares: voting and other rights (Section 76J.)

The company shall not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

The above said right include any right to attend or vote at meetings and for the purposes of this Act, the company shall be treated as having no right to vote and the treasury shares shall be treated as having no voting rights.

No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

Nothing in this section is to be taken as preventing –

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or
(b) the subdivision or consolidation of any treasury share into treasury shares of a smaller amount, if the total value of the treasury shares after the subdivision or consolidation is the same as the total value of the treasury share before the subdivision or consolidation, as the case may be.

Company may have duplicate common seal

A company may, if authorised by its articles, have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

Power to entrench provisions of memorandum and articles of company

(1) An entrenching provision may –
(a) be included in the memorandum or articles with which a company is formed; and
(b) at any time be inserted in the memorandum or articles of a company only if all the members of the company agree.

(2) An entrenching provision may be removed or altered only if all the members of the company agree.

(3) The provisions of this Act relating to the alteration of the memorandum or articles of a company are subject to any entrenching provision in the memorandum or articles of a company.

(4) In this section, “entrenching provision” means a provision of the memorandum or articles of a company to the effect that other specified provisions of the memorandum or articles —
(a) may not be altered in the manner provided by this Act; or
(b) may not be so altered except —
   (i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or
   (ii) where other specified conditions are met.

**Company auditors**

A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company —
(a) if he is not a public accountant;
(b) if he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of section 6 in an amount exceeding $2,500;
(c) if he is —
   (i) an officer of the company;
   (ii) a partner, employer or employee of an officer of the company; or
   (iii) a partner or employee of an employee of an officer of the company;
(d) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of holders of debentures of the company.

An accounting firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if any partner of the firm (whether or not he is a public accountant) is a person described in (b), (c) or (d).

An accounting corporation shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if —
(a) any director of the corporation (whether or not he is a public accountant); or
(b) any employee of the corporation, who is a public accountant and practising as such in that corporation, is a person described in sub-section(b), (c) or (d).

**Directors**

Every company must have at least one director who is ordinarily resident in Singapore. And, where the company has only one member, that sole director may also be the sole member of the company.
As to the duty and liability of officers (Section 157)

A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office. An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

Powers of directors (Section 157A.)

The business of a company shall be managed by or under the direction of the directors. The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

Secretary

Every company shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore. In case of companies having one director and one member, the director and the company secretary cannot be the same person.

It shall be the duty of the directors of a company to take all reasonable steps to secure that each secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

In addition, it shall be the duty of the directors of a public company to take all reasonable steps to secure that each secretary of the company is a person who –

- for at least 3 years in the period of 5 years immediately preceding his appointment as secretary, held the office of secretary of a company;
- is a qualified person under the Legal Profession Act, a public accountant, a member of the Singapore Association of the Institute of Chartered Secretaries and Administrators, or a member of such other professional association as may be prescribed; or
- is, by virtue of such academic or professional qualifications as may be prescribed, capable of discharging the functions of secretary of the company.

The Registrar may require a private company to appoint a person who satisfies either of above as its secretary if he is satisfied that the company has failed to comply with any provision of this Act with respect to the keeping of any register or other record.

Any person who is appointed by the directors of a company as a secretary shall, at the time of his appointment, by himself or through a prescribed person authorised by him, file with the Registrar a declaration in the prescribed form that he consents to act as secretary and providing the prescribed particulars.

Where a director is the sole director of a company, he shall not act or be appointed as the secretary of the company.

Annual general meeting (Section 175.)

A general meeting of every company to be called the “annual general meeting” shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

A private company may, by resolution passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting, dispense with the holding of annual general meetings.
Audit committees. (Section 201B)

Every listed company shall have an audit committee.

An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of 3 or more members of whom a majority shall not be –

(a) executive directors of the company or any related corporation;

(b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or

(c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

The functions of an audit committee shall be –

(a) to review –

(i) with the auditor, the audit plan;

(ii) with the auditor, his evaluation of the system of internal accounting controls;

(iii) with the auditor, his audit report;

(iv) the assistance given by the company’s officers to the auditor;

(v) the scope and results of the internal audit procedures; and

(vi) the balance-sheet and profit and loss account of the company and, if it is a holding company, the consolidated balance-sheet and profit and loss account, submitted to it by the company or the holding company, and thereafter to submit them to the directors of the company or the holding company; and

(b) to nominate a person or persons as auditor, together with such other functions as may be agreed to by the audit committee and the board of directors.

Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders.

G. India

The Companies Act, 2013 has incorporated a framework which is based on self-regulation but with enhanced disclosures and accountability on the part of companies and their management.

The Act has 470 sections as against 658 Sections in the existing Companies Act, 1956. The entire Act has been divided into 29 chapters. Many new chapters have been introduced, viz., Registered Valuers (ch.17); Government companies (ch. 23); Companies to furnish information or statistics (ch. 25); Nidhis (ch. 26); National Company Law Tribunal & Appellate Tribunal (ch. 27); Special Courts (ch. 28).

Let us recapitulate The salient and unique features of the Act are as under:

New definitions

– New definitions are introduced in the Act, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc.
– Definition of private company changed – the limit on maximum number of members increased from 50 to 200.

– “foreign company” means any company or body corporate incorporated outside India which, –
  (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
  (b) conducts any business activity in India in any other manner.

– “Key Managerial Personnel (KMP), in relation to a company, means –
  (i) the Chief Executive Officer or the Managing Director or the Manager,
  (ii) the Company Secretary;
  (iii) the whole-time director;
  (iv) the Chief Financial Officer; and
  (v) such other officer as may be prescribed

– “officer who is in default”, means any of the following officers of a company, namely:—
  (i) whole-time director;
  (ii) key managerial personnel;
  (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
  (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

– Act defines the term ‘promoter’ to mean a person -
  (a) who has been named as such in a prospectus or is identified by the company in the annual return, or
  (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
  (c) in accordance with whose advice, directions or instructions the Board of Directors is accustomed to act. Provided that nothing in sub-Section (c) shall apply to a person who is acting merely in a professional capacity.

– Definition of subsidiary company in relation to any other company (that is holding company), changed to
mean a company in which the holding company –

• Controls the composition of the Board of Directors; or

• Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

– **Small company has been defined** as a company other than a public company having a paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [Section 2(85)].

– **The number of persons in any association or partnership not to exceed such number of persons** as may be prescribed (not exceeding one hundred). The restriction not to apply to an association or partnership, constituted by professionals who are governed by special Acts. (Section 464)

**Classification & Registration**

– **Concept of One Person Company (OPC limited) introduced** [Section 2(62)].

– **Concept of Small companies have been introduced which shall be** subjected to a lesser stringent regulatory framework [Section 2(85)].

– **Provision for Conversion of Companies already registered** has been introduced [Section 18].

– Registration process has been made faster and compatible with e-governance.

– For the first time, articles may contain provisions for entrenchment [Section 5(3)].

– **A declaration, in the prescribed form,** required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company. (Section 7)

**Registered office**

– A company shall, on and from the 15th day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

– Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.

– Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

– Notice of change, verified in the manner prescribed, shall be given to the Registrar, within 15 days of the change, who shall record the same.

**Commencement of business**

– A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
- Paid-up capital is not less than Rs. five lakh/one lakh
  - the company has filed with the Registrar the verification of its registered office.

**Prospectus and Allotment of Securities**

- This chapter is divided into two parts. Part I relates to ‘Public offer’ and Part II relates to ‘Private Placement’
- “Public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.’
- The term ‘private placement’ has been defined to bring clarity. “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 this section.
- Detailed disclosures are provided in the Act itself. It includes disclosures about sources of promoter’s contribution.
- In case of variation in the terms of contract referred to in the prospectus or objects for which the prospectus was issued, the dissenting shareholders shall be given exit opportunity by promoters or controlling shareholders.

**Punishment for fraudulently inducing persons to invest money (Section 36)**

- Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.

**Share Capital and Debentures**

- Where any depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud. [Section56(7)]
- Security Premium Account may also be applied for the purchase of its own shares or other securities. [Section 52(2)(e)]
- A company cannot issue share at a discount. [Section(53)]
- A company limited by shares cannot issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.
- A company may issue preference shares for a period exceeding twenty years for infrastructural projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Section 55].
- Every company shall deliver debenture certificate within six months of allotment. [Section 56(4)(d)].
- Reduction of share capital to be made subject to confirmation by the Tribunal. The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government, Registrar and to the SEBI and consider the representations received in this behalf. (Section 66)
e-governance

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company’s website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

Board and Governance

- **Number of directors:**
  - Minimum : Public company -3 Private -2, OPC-1.
  - Maximum : limit increased to 15 from 12.

  More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required.

- **Woman director**

  At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

  - As per Rule, the prescribed class means, ‘every listed company and every 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.

- **Resident Director**

  Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [Section 149(2)].

- **Appointment of Key Managerial Personnel [Section 203(1)]**

  Every company belonging to such class or classes of companies as may be prescribed shall have the whole-time key managerial personnel.

  Unless the articles of a company provide otherwise, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Section 203(1)]

  - **Every Company Secretary being a KMP shall be appointed by a resolution of the Board** which shall contain the terms and conditions of appointment including the remuneration. If any vacancy in the office of KMP is created, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy [Section 203 (2) & (4)].

  - If a company does not appoint a Key Managerial Personnel, the penalty proposed is –
    - On company – one lakh rupees which may extend to five lakh rupees.
    - On every director and KMP who is in default – 50,000 rupees and 1,000 rupees per day if contravention continues.
Independent Directors

- Concept of **independent directors** has been introduced for the first time in Company Law: [Section 149(5)]
  - All listed companies shall have **at least one-third of the Board** as independent directors.
  - Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
  - The independent director has been clearly defined in the Act.
  - **Nominee director nominated by any financial institution, or in pursuance of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director.**
  - An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
  - An Independent director shall not be entitled to any stock option.
  - Only an independent director can be appointed as alternate director to an independent director. [Section 161(2)].

**Person other than retiring director**

- If a person other than retiring director stands for directorship but fails to get appointed, he or the member intending to propose him as a director, as the case may be, shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total valid votes [Section 160(1)].

**Resignation of director**

- A director may **resign from** his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent general meeting of the company. [Section 168(1)]. The director shall also forward a copy of resignation along with detailed reasons for the resignation to the Registrar.

  The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. [Section 168(2)].

- If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting [Section 168(3)].

**Participation of directors through video-conferencing**

- Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [Section 173(2)].

  The Central Government may however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [Section 173(2)]
Notice of Board Meeting

- At least seven days’ notice is required to be given for a Board meeting. The notice may be sent by electronic means to every director at his address registered with the company. [Section 173(3)].

A Board Meeting may be called at shorter notice subject to the condition that at least one independent director, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [Section 173(3)].

Duties of directors (Section 166)

For the first time, duties of directors have been defined in the Act. A director of a company shall:

- act in accordance with the articles of the company.
- act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- not assign his office and any assignment so made shall be void.

Penalty

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Board Committees

- Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [Section 178(1)].

- The Audit committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members including its Chairperson shall be persons with ability to read and understand the financial statement. [Section 177(2)].

- The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees [Section 178(3)].

- The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors. [Section 178(1)].

- Where the combined membership of the shareholders, debenture holders, deposit holders and any other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders Relationship Committee. [Section 178(5)].
Managerial Remuneration [Section 197]

- Provisions relating to limits on remuneration provided in the Companies Act, 1956 being included in the Companies Act, 2013. Maximum limit of 11% (of net profits) being retained.

- For companies with no profits or inadequate profits remuneration shall be payable in accordance with Schedule of Remuneration (Schedule V) and in case a company is not able to comply with Schedule V, approval of Central Government would be necessary.

Certain Insurance Premium not to be treated as part of the remuneration

- The premium paid on any insurance taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, shall not be treated as part of the remuneration payable to any such personnel. [Section 197 (13)]

Disclosures

Annual return [Section 92]

- Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding;

  (i) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

  (ii) its shares, debentures and other securities and shareholding pattern;

  (iii) its indebtedness;

  (iv) its members and debenture-holders along with changes therein since the close of the previous financial year;

  (v) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;

  (vi) meetings of members or a class thereof, Board and its various committees along with attendance details;

  (vii) remuneration of directors and key managerial personnel;

  (viii) penalties imposed on the company, its directors or officers and details of compounding of offences;

  (ix) matters related to certification of compliances, disclosures as may be prescribed;

  (x) details in respect of shares held by foreign institutional investors; and

  (xi) such other matters as may be prescribed.

The prescribed disclosures under the Annual Return shows significant transformation in non financial annual disclosures and reporting by companies.

Similar to the compliance certificate as stipulated under section 383A of Companies Act, 1956 certification of compliances has been prescribed under Section 92(1)(ix).

- Annual Return is required to be signed by :

  (i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.
It means that now in respect of all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

(ii) in addition to the above, the annual return, filed by a listed company or by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice that the annual return discloses the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

(iii) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

**Penalty**

In case a Company Secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Changes in shareholding of promoters and top ten shareholders

- A return to be filed with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders (to ensure audit trail of ownership) by a listed company.

**Board’s report (Section 134)**

- Board’s Report has been made more informative and includes extensive disclosures like –
  
  (i) extract of annual return in the prescribed form;

  (ii) company’s policy on director’s appointment and remuneration including the criteria for determining qualifications, positive attributes, independence of a director etc. ;

  (iii) a statement of declaration by independent directors;

  (iv) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;

  (v) particulars of loans, guarantees, or investments made;

  (vi) particulars of contracts or arrangements entered into;

  (vii) the conservation of energy, technology absorption, foreign exchange earnings and outgo in the prescribed manner;

  (viii) statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

  (ix) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year
(x) in case of listed companies and other prescribed class of companies, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of committees and individual directors.

- The Directors’ Responsibility Statement shall also include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. (Section 134).

**Related Party Transactions**

- Every contract or arrangement entered into with a related party shall be referred to in the Board’s Report along with the justification for entering into such contract or arrangement [Section 188(2)].

- Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Section 192].

- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes (Section 193).

**Corporate Social Responsibility (Section 135)**

Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

- The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.

- The Board of every company shall ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.

- Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to ‘comply or explain’.

- The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

**Deposits (Section 73)**

- A company may, subject to the passing of a resolution in general meeting and subject to the prescribed rules, accept deposits from its members subject to fulfillment of the following specified conditions:
  
  i. passing of resolution in a general meeting.
  
  ii. issue of circular to members including therein a statement showing the financial position of the company, the credit ratings obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
iii. filing a copy of the circular along with such statement with the registrar within 30 days before the
date of issue of the circular.

iv. Providing deposit insurance.

v. Certification by the company that it has not defaulted in the repayment of deposits.

vi. Provision of security in respect of deposit and interest and creation of charge on company’s properties
and assets. An amount of not less than 15% of the deposits maturing during a financial year shall be
deposited in deposit repayment reserve account.

A public company having prescribed net worth or turnover may accept deposits from persons
other than its members subject to compliance of rules as may be prescribed by Central Government
in consultation by Reserve Bank of India. (Section 76).

The penalty for failure to repay deposit has been made extremely stringent. Where a company fails
to repay the deposit and it is proved that the deposits had been accepted with intent to defraud the
depositors or for any fraudulent purpose, every officer of the company who was responsible for the
acceptance of such deposit shall, without prejudice to liability under section 447 i.e. punishment for
fraud), be personally responsible, without any limitation of liability, for all or any of the losses or damages
that may have been incurred by the depositors (Section 75).

Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration.
(Section 127)

Investment (Section 186)

- A company can make investment through not more than two layers of investment companies, unless
otherwise prescribed.

- This shall not affect
  - a company from acquiring any other company incorporated in a country outside India if such other
    company has investment subsidiaries beyond two layers as per the laws of such country;
  - a subsidiary company from having any investment subsidiary for the purposes of meeting the
    requirements under any law or under any rule or regulation framed under any law for the time being
    in force.

- The restriction on the number of step-down subsidiary companies has been introduced to prevent the
abuse of diversion of funds through many step-down subsidiaries.

Company Secretary

Functions of Company Secretary (Section 205)

- The functions of the company secretary shall include-
  - to report to the Board about compliance with the provisions of this Act, the rules made there
    under and other laws applicable to the company;
  - to ensure that the company complies with the applicable secretarial standards;
  - to discharge such other duties as may be prescribed.

Secretarial Audit (Section 204)

- Every listed company and a company belonging to other class of companies as may be prescribed
shall annex with its Board’s report a Secretarial Audit Report, given by a Company Secretary in
Practice, in such form as may be prescribed.
• 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 related records of the company.

• The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the **Company Secretary in Practice** in his report.

• If a company or any officer of the company or the **Company Secretary in Practice**, contravenes the provisions of this section, the company, every officer of the company or the **Company Secretary in Practice**, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

### Secretarial Standards Introduced [Section 118(10) & 205]

- For the first time, the **Secretarial Standards** has been introduced and provided statutory recognition

- **Section 118(10)** reads as:

  “Every company shall observe Secretarial Standards with respect General and Board Meetings specified 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 205** casts duty on the **Company Secretary** to ensure that the company complies with the applicable Secretarial Standards.

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

### General Meetings

- To encourage wider participation of shareholders at General Meetings, the **Central Government** may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [Section 108].

- One person companies have been given the option to dispense with the requirement of holding an AGM. [Section 96(1)].

### Report on annual general meeting [Section 121]

- Every listed company shall prepare a **Report on each Annual General Meeting** including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

### Auditors

- A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of **sixth annual general meeting**.

- However, the company shall place the matter relating to such appointment for ratification by members at **every annual general meeting**.

- No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint –

  (a) an individual as auditor for more than **one term** of five consecutive years; and

  (b) an audit firm as auditor for more than **two terms** of five consecutive years:
Provided that –

(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

- **Members of a company may resolve** to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.

- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (Section 141)

- Auditor **cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:**
  - Accounting and book-keeping service
  - Internal audit
  - Design and implementation of any financial information system
  - Actuarial services
  - Investment advisory services
  - Investment banking services
  - Rendering of outsourced financial services
  - Management services
  - Other prescribed services

**Internal Audit**

- **Internal audit** may be made mandatory for prescribed companies (Section 138)

**Cost Audit (Section 148)**

- The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.

- If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

- ‘cost auditing standards’ have been mandated.

**Financial Statement (Section 2(40))**

- For the first time, the term ‘financial statement’ has been defined to include:-
  
  (i) a balance sheet as at the end of the financial year;

  (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

  (iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

– the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

**Signing of financial statement (Section 134)**

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of directors before they are signed on behalf of the Board *at least by the Chairperson of the company authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director,* for submission to the auditor for his report thereon.

**National Financial Reporting Authority (NFRA)**

(Section 132)

– The Central Government may be notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.

– Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall –

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

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

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

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

– Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall –

(a) have the power to investigate, either *suo moto* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.

(c) where professional or other misconduct is proved, have the power to make order for –

(A) imposing penalty of –
not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(B) debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

- Any person aggrieved by any order of the National Financial Reporting Authority, may prefer an appeal before the Appellate Authority constituted by the Central Government.

**INVESTOR PROTECTION MEASURES**

- **Issue and transfer** of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations. (Section 24)

- An **act of fraudulent inducement** of persons to invest money is **punishable with imprisonment** for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud. (Section 36)

- A **suit may be filed by a person who is affected by any misleading statement** or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement. (Section 37).

**Class action suits**

- For the first time, a provision has been made for class action suits. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.

- Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

- The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (Section 245)

**Serious Fraud Investigation Office (Section 211)**

Statutory status to SFIO. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Act which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant Section of the Act.

**Stringent penalty provided for fraud related offences.**

**Fraud defined (Section 447)**

- The term “Fraud” has for the first time been defined in the Act. 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.

Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

**Prohibition of insider trading**

New Section has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [Section 195].

**Prohibition on Forward dealings**

Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company. (Section 194)

**Inspection, Enquiry and Investigation**

- A new section has been added to provide that where in connection with enquiry or investigation into the affairs of the company or reference by the Central Government, or on complaint by specified number of members or creditors or any other person having a reasonable any person that the transfer or disposal of funds, properties or assets is likely to take place which is prejudicial to the interest of the company, then the Tribunal may order for the freezing of such transfer, removal or disposal of assets for a period of three years. [section 221]

- Another new section seeks to provide that the provisions of inspection or investigation applicable to Indian companies shall also apply mutatis-mutandis to inspection or investigation of foreign companies. (section 228).

**Restructuring and Liquidation**

- The entire rehabilitation and liquidation process has been made time bound.

- Winding up is to be resorted to only when revival is not feasible. (section 258).

- The Tribunal may appoint an interim administrator or a company administrator from the panel of Company Secretaries, CAs, CWAs, etc. maintained by the Central Government. [section 259(1)].

- The Company Administrator shall prepare a scheme of revival and rehabilitation. [section 261(1)].

- If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (section 258).

- No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (section 268).

**Company Liquidators (Section 275)**

The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants.

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

**Professional assistance to Company Liquidator (SECTION 291)**

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including
Company Secretaries to assist him in the performance of his duties and functions under the Act.

Compounding of Certain Offences (Section 441)

This section provides for the compounding of certain offences by Tribunal or regional director in certain cases before the investigation has been initiated or is pending under this Act. It further provides the procedure followed for compounding of offence. It section also provides penalty for any officer or other employee of the company who fails to comply with the order of Tribunal or Regional Director.

National Company Law Tribunal and Appellate Tribunal (Section 408 and 410)

The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

Special Courts

- For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (section 435).
- All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned. (section 436)
- The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years, although it may order for the regular trial. (section 436).

Mediation and Conciliation Panel (Section 442)

- The Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Cross Border Mergers (Section 234)

- The Act has allowed cross border mergers with any foreign company;
- The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

Registered Valuers (Section 247)

- A new chapter has been inserted in relation to registered valuers.
- Valuation in respect of any property, stock, shares, debentures, securities, goodwill, networth or assets of a company shall be valued by a person registered as a valuer.
- The Central Government shall maintain a register of valuers.

The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed.

Power to Exempt Class or Classes of Companies from Provisions of this Act (Section 462)

- The Central Government may in the public interest, by notification direct that any provisions of this Act:
  1. shall not apply to such class or classes of companies; or
2. shall apply to class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

- The notification in draft to be laid in both the Houses of Parliament for a period of 30 days.
- Houses may disapprove or modify.

**Adjudication of Penalty (Section 454)**

The Central government may by an order publish in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudicating penalty under the provisions of this Act in the manner as may be prescribed.

**LESSON ROUND-UP**

- It is increasingly being recognized that the framework for regulation of corporate entities must facilitate companies to operate in a national and global context, encourage good corporate governance and enable protection of interests of investors, employees, creditors as well as boost economy as a whole. In the competitive and technology driven business environment, while corporates require greater autonomy of operation and opportunity for self-regulation with optimum compliance costs, there also is a need to bring about transparency through better disclosures and greater responsibility on the part of corporates and managements for improved compliance.

- In recognition of the fact that the primary purpose of any law is to facilitate the public and bearing in mind the current international style of legal drafting, an ideal law for the corporate sector should be clear, concise and comprehensible. It is desirable that the law is a “core company law” i.e. regulating the “entity” (irrespective of its corporate structure and size) rather than its “activity” and providing the basic principles governing all aspects of the operation of corporate entities within a single, comprehensive framework.

- It is in this context that countries across the world are modernizing and harmonizing their company law with global standards.

**SELF-TEST QUESTIONS**

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. Define multinational and transnational company.

2. The extension of corporate activity beyond the frontiers of the country has given rise to complex problems. Discuss.

3. Discuss the essential ingredients of a good system of company law.

4. The ultimate control of the company lies with the majority of shareholders. Discuss.

5. Discuss, in brief, distinguishing features of company law in United Kingdom.

6. Discuss the requirements relating to audit of financial statements in United States of America.

7. Enumerate brief provisions regarding formation of companies under the Singapore Companies Act.

**SUGGESTED READINGS:**


(2) Law of Corporations – Harry G. Henn
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The Constitution of India explicitly recognises a number of rights to freedom. Article 19 gives right “to freedom to form associations or unions”. ‘Societies’ is a subject under the State list (Entry 32), whereas ‘Trust’ is in the Concurrent list (Entry 10). “Charities and charitable institutions” are also covered under the concurrent list (Entry 28) of the Seventh Schedule of the Constitution. Various legal provisions pertaining to Societies, Trust derived its origin and strength from the aforesaid Article of the Constitution. Non-Profit / Voluntary Organisations in our country operate on a wide variety of issues covering almost all aspects of socio-economic development and polity. There are separate laws under which Societies, Trusts, charitable institutions, Non-Profit Organisations etc. operate.

Further section 8 of the Companies Act, 2013 provides for grant of license by the Central Government for formation of ‘non-profit companies’.

In India, there are enabling legal provisions which permit any group wanting to commence a non-profit, voluntary or charitable work to organize themselves into a legal entity by registering themselves under a specified Act. From the date of registration they are treated as a legal entity, the organisation acquires legal status to sue and/or be sued as a separate and distinct “person” but with no physical existence.
India has a set of statutory laws governing various types of registration/incorporation of Non-profit organizations. Non-profit organizations in India may be registered/ incorporated under any of the following main laws. They are as under:

- The Indian Trusts Act, 1882
- The Societies Registration Act, 1860
- Section 8 of the Indian Companies Act, 2013
- Public Charitable Trust Act(s) of various States
- The Co-operative Societies Act, 1912

The Societies Registration Act, 1860; the Indian Trusts Act, 1882; and Section 8 of the Indian Companies Act, 2013 are the three enactments which seem to fulfil requirements of non profit organizations created for the larger public good.

Advantages of Registration

Some of the advantages of registration are as follows:

- Registration gives legal rights to the members to hold property in a common name.
- It enables the non-profit organization to open bank account(s) against its registered identity.
- The legal entity can sue and be sued in its own name.
- Get benefits of tax-exemptions, and other benefits
- Registration under the Foreign Contribution Regulation Act (FCRA), 2010 and Income Tax Act, 1961, is more easily granted if the non-profit organization is registered and incorporated.
- Affords recognition to the non-profit organization at all forums and before all authorities.

TRUSTS

Trust is a special form of organisation. The first law on Trusts came into force in India in 1882 known as the Indian Trusts Act, 1882. The major laws governing Trusts are “The Indian Trust Act, 1882. Trusts may be divided into public and private. The former is constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. Unlike private trusts, they are of a permanent and indefinite character and not confined to any certain limits prescribed in a settlement.

Definition of Trust

Section 3 of the Indian Trust Act, 1882 defines the term ‘trust’ as (i) an obligation annexed to the ownership of property and (ii) arising out of confidence reposed in and (iii) accepted by the owner or declared and accepted by him, (iv) for the benefit of another or of another and the owner.

The person who reposes or declares the confidence is called the ‘author of the trust’, the person who accepts the confidence is called the ‘trustee’, the person for whose benefit the confidence is accepted is called the ‘beneficiary’; the subject matter of the trust is called ‘trust property’ or ‘trusts money’; the ‘beneficial interest’ is beneficiary’s right against the trustee as owner of the trust property; and the instrument declaring the trust is called the ‘instrument of trust’.

The word ‘trust’ in its legal sense has a technical and definite meaning which is very much different from the
sense in which this word is used in daily parlance. Trust connotes a legal concept or relationship similarly as other relationships created by law, e.g., Contract, Agency.

**CLASSIFICATION OF TRUSTS**

Trusts are divisible into several classes according to the mode of their creation. Some of the important classes are as follows:

**Simple and Special Trusts**

Where the trustee is merely to hold the estate without having any active duties to perform, it is called a simple trust. Where, however, the trust has been created for a particular object or purpose, there is a special trust. Thus, in a simple trust, the trustee is merely to hold the property for the benefit of the beneficiary and in a special trust, the trustee has duties to perform.

**Oral and Written Trusts**

A trust may be declared either orally or through an instrument in writing. However, a trust in relation of movable property can be declared orally by transferring the possession of the property with a direction that the property be held in trust. In regard to a private trust for immovable properties, a written trust deed is pre-requisite.

**Charitable or Religious Trust**

In order to determine whether a deed of trust is a valid public or charitable trust, it is necessary to see what is the dominant intention of the testator, namely, who are the real objects of his bequest and secondly whether the class indicated as the object of charity forms at least a section of the public. Where the main and paramount intention of the settler was to benefit the members of his family and thereafter the members of his caste who might need assistance from such funds, there could be no public or charitable trust created.

It is one of the cardinal rules governing execution of charitable trusts that the intention of the donor must be observed. This principle has been evolved as an auxiliary to this rule and is never allowed to defeat it. If the charity can be administered according to the directions of the founder, the law requires that it should be so administered. The Courts will not allow any departure from them on the grounds of expediency.

**Express and Implied Trusts**

Express trusts are created by the act of parties either in words or in writing, while an implied trust is one which is deduced from the conduct of the parties and the circumstances of the transactions.

**Public and Private Trusts**

The criterion for deciding whether a particular trust is or is not of a private nature, is whether the said trust is or is not for the benefit of individuals. Where the intention of the founder, as shown by the recitals in his Will, was that the property was to be dedicated for the benefit of idols, the trust is undoubtedly of a public nature and not for the benefit of the individual members of his family.

The essential difference between a private and a public trust is that in the former, the beneficiaries are definite and ascertained individuals or individuals who within definite time can be definitely ascertained, but in the latter, the beneficial interest must be vested in an uncertain and fluctuating body of persons either the public at large or some considerable portion of it answering a particular description.

**Revocable and Irrevocable Trusts**

A revocable trust is one which is revocable when it is created by a non-testamentary instrument or orally and a power of revocation has been expressly reserved by the settler. A trust may be revoked by the consent of all the beneficiaries who are competent to contract.
All other trusts are irrevocable. Besides if a trust is created for charitable or religious purposes, such a trust cannot be revoked.

**Public-cum-Private Trust**

A Public-cum-Private Trust is one in which a religious trust is created for the immovable property like a Temple, Durgah etc. in the nature of a public trust but there is a direction for use of income through offerings or otherwise for public purposes and also a part thereof to person(s) in charge of the Temple, Durgah etc. A public-cum-private trust may become a fully public trust when the private beneficiary(ies) renounces his/their rights to which they are entitled.

**Constructive Trust**

A constructive trust is one which is not created by the express or implied act of the settler, but which is deemed by operation of law or arises by construction of law. A constructive trust is a relationship with respect to a property subjecting the person by whom the title to the property is held by an equitable duty to convey it to another on the ground that his acquisition or retention of the property would be wrongful and that he would be unjustly enriched if he were permitted to retain the property.

**Resulting Trust**

A resulting trust is one, which is implied in favour of the settler or his representative. It comes into existence where the property is incompletely conveyed or where on a conveyance, the beneficial interest in the property is not completely disposed of and the property or the undistributed beneficial interest in it reverts back to the settler.

**Executed and Executory Trust**

An executed trust is one in which the limitation of the estate and the beneficiaries are prescribed by the settler in the trust deed itself and no further instrument is required.

An executory trust is not complete in itself and its execution is left to the judgement of the trustees. Here, the settler instead of expressing exactly what he means, tells the trustees to do their best to carry out his intentions.

**Procedure of Registration of a Trust**

The application for registration of a trust shall contain the following particulars:

- Particulars of documents creating the trust;
- Particulars other than documents about creation;
- Objects of the trust;
- Sources of income of the trust;
- Particulars of encumbrances, if any, on trust property;
- Particulars of the scheme, if any, relating to the trust;
- Particulars of title deeds pertaining to trust’s property
- The name and addresses of the Trustees and managers;

**Extinction of a Trust**

A trust is extinguished:

(a) When its purpose is completely fulfilled; or
(b) When its purpose becomes unlawful; or
(c) When the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
(d) When the trust being revocable, is revoked.

### Revocation of a Trust

If a trust is created by a Will, it may be revoked by the revocation of the Will. A trust which has been created otherwise, by an instrument other than a Will or orally, can be revoked only:

(a) with the consent of all the beneficiaries competent to contract;
(b) by the exercise of power of revocation expressly reserved by the author of the trust (in cases of trusts declared orally or by non-testamentary instruments); or
(c) where the trust is created for the payment of debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

A trust is generally irrevocable unless a power of revocation is expressly reserved.

### SOCIETIES

The preamble of the Societies Registration Act, 1860 states that it is an Act for the registration of literary, scientific and charitable societies.

Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes.

The Societies Registration Act of 1860 is an all India Act but many States, while applying the Act to themselves have enacted their own Societies Registration Act. Hence, a Society can be registered either under the central Act or the respective State Act.

### Registration

A society can be registered by minimum of seven individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes, as specified in Section 20 of the main Act as under:-

(i) Grant of charitable assistance.
(ii) Creation of military orphan funds.
(iii) Societies established at the several Presidencies of India.
(iv) Promotion of –
   - Science
   - Literature
   - Fine Arts
   - Instructions or diffusion of useful knowledge
   - Diffusion of political education
   - Foundation or maintenance of libraries or reading rooms for general use among the members or open to the public
   - Public museums and galleries of paintings & other works of art
Various States have added other objects like social welfare, sports & games, environment, compassion of living creatures, recreation, athletics, cultural activities, research work, welfare of physically handicapped etc.

**Points to be kept in mind while forming a society**

(1) The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use of any name, emblems, official seal etc. as specified in the Act without previous permission of competent authority. It also prohibits the use of the name of national heroes and other names etc. mentioned in the Act. The Societies intending to seek registration are advised to consult this Act also before proposing the name etc. for registration.

(2) If the proposed name is identical with that name by which any other society has been registered or resembles such name which is likely to deceive the public or the member of society, such name may be avoided.

**Procedure for Registration**

The following documents are required to be filed with the Registrar of Societies for registration of a society under the main Act or corresponding Acts of various State Governments:

1. Covering letter requesting for registration stating various documents annexed to it addressed to the registering authority and signed by all the subscribers to the Memorandum or by a person authorised by all of them.

2. Memorandum of Association (in duplicate) containing (a) name of the society; (b) the objects of the society; (c) the names, addresses and occupation of the members of the governing body; (d) the place of registered office of the Society, and (e) the names, addresses and full signatures of the seven or more persons subscribing their names to the memorandum of Association. Their signatures should be witnessed and attested.

3. Rules & Regulations/Bye-laws (in duplicate) duly signed and certified to be a correct copy by atleast three members of the governing body.

4. Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.

5. Documentary proof such as rent receipt or property tax receipt in respect of the Registered office of the Society or no-objection of the owner of the premises.

6. Registration fee in cash or by demand draft.

The formalities and requirements may differ from State to State. Hence, it is advised that the applicant should contact the registering authority of the State in advance besides being conversant with the respective State Act and the Rules framed thereunder.

The Registering authority shall satisfy itself about the compliance of the provisions of the Act and correctness of the documents and only thereafter certify under its hand that the Society is registered under the main Act or the corresponding Act of the State. On registration, the society becomes a legal entity or a judicial person.

**Rules & Regulations**

The Rules & Regulations help and guide the members and management of the society in carrying out its objects. They also bind members of the society. The Rules that are inconsistent with the provisions of the Act are
inoperative although registered with the Registrar of Societies. The Rules & Regulations of a society may provide for—

(i) the conditions of admissions of members,
(ii) the liability of members for fines, forfeitures under certain circumstances,
(iii) the consequences of non-payment of any subscription or fine registration and expulsion of members,
(iv) the appointment and removal of trustees and their powers,
(v) the manner of appointing and removing the governing body,
(vi) the manner in which the notice of meetings may be given,
(vii) the quorum necessary for the transactions of business at meetings of the society,
(viii) the manner of making, altering and rescinding regulations,
(ix) the investment of funds, keeping of accounts and for annual or periodical audit of accounts,
(x) the manner of dissolving the society,
(xi) the determination upon the dissolution that the property be utilised by the Government or others in particular manner,
(xii) matters to be provided in bye-laws and the manner in which they shall be made,
(xiii) such other matters as may be thought expedient having reference to the nature and objects of the society.

Society may make bye-laws

A society can make its bye-laws in accordance with the Rules and Regulations of the society. If the rules do not provide for the making of bye-laws, bye-laws can be made at a general meeting of the society at which concurrent votes of three-fifths of the members present shall be necessary. If any penalty is imposed for the breach of any rule or bye-law of the society, such penalty can be recovered through the Court.

The bye-laws of a society may provide for:

(a) The business hours of the society;
(b) The objects of the society;
(c) The activities of the society in furtherance of its objects;
(d) The name of the person or officer, if any, authorised to sue or to be sued on behalf of the society;
(e) The name of other person or officer who is empowered to give directions in regard to the business of the society;
(f) Enrolment of members—
   (i) Qualifications for membership, classification, restrictions and conditions, if any, therefor,
   (ii) The entrance and other fee, or subscription, if any, to be collected from members,
   (iii) The dates prescribed for payment of the amount specified in sub-clause (ii) above and levy of penalties or fine, if any, imposed on defaulting members.
(g) Removal of members, the circumstances under which members could be removed from the rolls and the procedure for such removal and appeal, if any, against such removal;
(h) Rights, applications, privileges of members;

(i) The manner in which the society shall transact its business;

(j) The constitution of the Committee and qualifications of the members of the Committee, their term of office and the procedure for their appointment and reappointment;

(k) The preparation and filing with the concerned Registrar, of records, annual lists or other statements;

(l) Audit of accounts and the balance-sheet for the financial year;

(m) The supply of copies of bye-laws, the receipt and expenditure account and of the balance sheet to the members on application and the fee payable for the same;

(n) Imposition of fine, if any, for breach of the provisions of the bye-laws by any member or officer;

(o) The mode of custody, application and investment of the funds of the society and the extent and conditions of such investment;

(p) Funds earmarked specifically for the purpose of making provisions for dependent of a deceased or disabled member and the quantum of payment to be made thereof;

(q) Arrangements for transactions of day-to-day business of the society, the expenditure to be incurred therefor, the staff to be employed and condition of services of such employees;

(r)(i) Conduct of annual general meetings and procedure therefor,

(ii) Conduct of extraordinary general meetings and procedure therefor and the number of members required for making a requisition in writing, calling for such a meeting,

(s) Exhibition of the Register of Members, the books containing minutes and the books of accounts at the registered office of the society during business hours for inspection by its members free of charge.

The bye-laws may also deal with such other matters incidental to the organisation and working of the society and the management of its business as may be deemed necessary.

**Working and Management of Society**

As the society is a legal person having no physical existence, its governing body is its brain. Its activities are managed, executed and supervised by the governing body. It has to work within the objects of the society in accordance with the rules, regulations and bye-laws and to carry out the statutory duties under the main Act or the corresponding State Act. The governing body shall also be constituted in accordance with the rules and regulations of the society. The property of the society vests in the governing body and not in the members. The filing and defending of the suits by the society shall continue in the original form and the changes in the governing body shall not affect.

There should be minimum three members of the governing body. Its members are either elected or nominated as per the rules and regulations of the society. The term of office of members is three years and members can enjoy two terms. However, the term, retirement, expulsion are governed by the rules and regulations of the society.

The members of the governing body are the trustees of the properties of the society. They have to look after and manage the properties of the society. Here, property means both movable and immovable property. The properties of the society vest in the trustees and when there is no trustee, in the governing body. A trustee is a man who is the owner of the property and deals with it as principal owner and master subject only to an equitable obligation to account to some person to whom he stands in relation of trust and who is *cestui que trust*.

**The members of the governing body is collectively responsible and accountable to comply with the statutory provisions of the Act for carrying out the functions of the society to achieve its objective(s) for which it is set up. The duties are detailed hereunder:-**
1. To hold annual general meeting as per the rules and regulations of the society for laying before such meeting the statement of activities, Income & Expenditure Account and other information as provided in the rules and regulations for the purpose;

2. A list of the names, addresses and occupations of the governors, council, directors, committee or other governing body to which the management of the society is entrusted, is to be filed with the Registrar or such authority as prescribed once in a year either within 14 days of the date of holding such meeting or in the month of January every year.

3. To hold extra-ordinary general meeting to transact some special business, which is of urgent nature and cannot be deferred till the holding of the annual general meeting. The purposes of such meeting may be to amend, alter or change in name or address or extensions of operation etc.

4. To report changes or alterations made in the managing, governing body or in the rules of the society to the Registrar.

5. To file notice of situation of the registered office of the society and of any change therein with the Registrar.

6. To register amendment in Memorandum of Association or Bye-laws with the Registrar by way of an application with a copy of the special resolution of the amendment with filing fee.

7. To supply copies of the Bye-laws, the Receipts/Incomes & Expenditure Account and Balance Sheet to the members of the society on their application with the fees, if any, prescribed by the society.

8. To invest and apply the funds and properties of the society in a manner as a prudent man will apply his own funds.

9. To keep and maintain a register of members of the society in accordance with the rules and regulations of the society.

10. To display the name of the society prominently at its registered office and other places of business.

11. To produce or submit periodical statement of Receipts Incomes & Expenditure A/c, Assets & Liabilities of the society.

12. To file a certified copy of every special resolution duly signed by an authorised officer of the society with the Registrar within the prescribed time.

13. To keep and maintain minutes of the meetings of the governing body and general body correctly and truly at the registered office of the society.

14. To retain all the important documents permanently.

15. To prepare periodical Accounts of the society and get them audited and to file Income-Tax Return, and

16. To attend all other duties as may be provided in the rules and regulations of the society.

**Dissolution of Society**

Under Section 13 of the Act, a society can be dissolved. Dissolution of a society becomes necessary where the objects for which it is formed, has been fulfilled or where the purposes for which it is formed, have become irrelevant, invalid or inoperative or by passing of a resolution by 3/5th majority of the members present at a meeting to dissolve the society for utilisation of its assets for some other better use. A society may be dissolved forthwith or within the agreed time. The following steps are to be taken for dissolution of a society:

1. Decision of the governing body;
2. Convene a special general meeting of the members by giving a requisite notice for consideration and passing resolution by 3/5th majority of the members present thereat;

3. Decision as to dissolve it forthwith or at a later time agreed upon by them.

4. Decision for the actions to be taken for disposal of properties and settlement of claims and liabilities as per the rules and regulations of the society; and

5. Delegate authority to the person(s) of the governing body to comply with the decisions accordingly.

Where any Government is a member of the society or has contributed the funds to the society or is otherwise interested therein, the society shall have to obtain prior consent of such Government for the purpose.

Where any dispute arises on dissolution of a society relating to adjustment of its affairs, it should be referred to the principal Court of the original civil jurisdiction of the District where the chief building of the society is situated. The District Civil Court has the jurisdiction to decide the dispute of a society.

The main Act does not provide for dissolution of societies by the Registrar. Various States, of course, have made provisions for dissolution by the Registrar under the following circumstances –

(1) Where the office of the society has ceased to be in the State of registration, or

(2) Where the society has shifted its office from the State of registration to some other State, or

(3) Where the activities of the society are considered subversive, or

(4) Where it is carrying on any unlawful activity, or

(5) Where it has allowed any unlawful activity to be carried on within any premises under its control,

(6) Where the registered society has contravened any of the provisions of the Act or the rules made thereunder, or

(7) Where the registered society is insolvent or must necessarily become so, or

(8) Where the business of such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum of the society, or

(9) Where the society has contravened any provision of any other law for the time being in force, or

(10) Where the number of members of the society is reduced below seven, or

(11) Where the society has ceased to function for more than three years, or

(12) Where the society is unable to pay its debts or meet its liability, or

(13) Where the registration of the society has been cancelled on the ground that its activities or proposed activities have been or will be opposed to public policy.

The Registrar normally inquires or investigates into the activities of the society and calls upon the society to show cause why it should not be dissolved. The Registrar may move the Court for making an order for dissolution of the society, if the cause shown by the society is not satisfactory.

Similarly, the main Act does not provide for dissolution by the Court. But in some States, the Court may order for dissolution of a society on application by 10% of its members or the Registrar on having been satisfied that any one or more of the following circumstances exist:–

(1) If there is any contravention by the society of the provisions of the Act, or

(2) If the number of members is less than seven, or

(3) If the society has ceased to function for more than three years, or
(4) If the society is unable to pay its debts or meet its liabilities, or
(5) If it is proper that the society has to be cancelled on the ground of its activities or
(6) If proposed activities have been or will be opposed to the public policy.
(7) If the activities of the society constitute a public nuisance,
(8) If the activities of the society are otherwise opposed to public policy.

The Government may by written order containing detailed reasons, dissolve a society. Before passing such order an opportunity has to be given to the society for representation against dissolution. Any order of withdrawal of registration without notice or opportunity to the society for representation in the matter shall be against the rule of natural justice.

**Consequences of Dissolution**

Dissolution of a society results in cessation of its activities. Its liabilities are to be settled suitably and its surplus assets are to be given to another society or the Government in terms of its rules and regulations. If the rules do not provide for the same, the governing body of the society shall take appropriate steps with requisite majority vote or as directed by the Registrar or the Court. But in no circumstances, the surplus assets of the dissolved society can be paid or distributed amongst its members or any of them.

*NON PROFIT ORGANISATION UNDER SECTION 8 OF THE COMPANIES ACT, 2013*

Section 8 of Companies Act, 2013 empowers Central Government to register a special type of company as limited company having charitable objects to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment, etc., without adding to its name the words ‘Limited’, ‘Private Limited’.

Such company intends to apply its profits or any income of the company for promoting the objects of the company and intends to prohibit the payment of dividend to members. The Central Government shall issue licence on such terms and conditions prescribed in the Rule 19 & 20 of Companies (Incorporation) Rules, 2014. [As discussed earlier in LESSON 1]

For the companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Chambers, Confederation, Council, Electoral trust and the like etc. Every company incorporate as a “Nidhi” shall have the last words “Nidhi Limited” as part of its name.

The company registered under Section 8 shall enjoy all the privileges and subject to all the obligations of limited companies. It shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. Further a company registered under this section may convert itself into company of any other kind only after complying with such conditions as prescribed under Rule 21 & 22 of Companies (Incorporation) Rules, 2014. [As discussed earlier in LESSON 1]

Sub-Section 3 of section 8 permits a firm may be a member of the company registered under section 8. An OPC cannot be incorporated or converted into a company under section 8 of the Act.

*all the procedural aspects have been covered earlier in Lesson 1*
The Constitution of India explicitly recognises a number of rights to freedom. Article 19 gives right “to freedom to form associations or unions”. ‘Societies’ is a subject under the State list (Entry 32), whereas ‘Trust’ is in the Concurrent list (Entry 10).

The Societies Registration Act, 1860, the Indian Trusts Act, 1882 and the Section 8 of the Indian Companies Act, 2013 are the three enactments which seem to fulfil requirements of non profit organizations created for the larger public good.

The major laws governing Trusts are “The Indian Trust Act, 1882.” Trusts may be divided into public and private. The former is constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. Unlike private trusts, they are of a permanent and indefinite character and not confined to any certain limits prescribed in a settlement.

The preamble of the Societies Registration Act, 1860 states that it is an Act for the registration of literary, scientific and charitable societies. Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes.

A society can be registered by minimum seven individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes, as specified in Section 20 of the Societies Registration Act, 1860.

Section 8 of Companies Act, 2013 provides for granting of license by the Central Government for formation of ‘non-profit companies’ and also provides for a mechanism through which an Association can be registered as a Company with a limited liability, if such association is formed for promoting commerce, art, science, religion or any other useful object and intends to apply its profits/income in promoting its objects.

**SELF-TEST QUESTIONS**

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Distinguish between the following:-
   
   (a) Public trust and private trust
   
   (b) Oral trust and written trust

2. Explain the procedure for registration of societies under the Societies Registration Act, 1860.

3. Write short notes on the following:-

   (i) Extinction of a trust
   
   (ii) Consequences of dissolution of a society
A Guide to CS Students
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It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

“27. Suspension and cancellation of examination results or registration
In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation - Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute”.

PROFESSIONAL PROGRAMME

ADVANCED COMPANY LAW AND PRACTICE

TEST PAPER 1

(This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/answers to this test paper to the Institute.)

Time Allowed : 3 Hours

Maximum Marks : 100

NOTE : 1. Answer All Questions
2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

1. Draft Notices with respect to the following:
   (a) General notice of the company on becoming a public company and consequent change of name of the company.
   (b) Notice under Section 139 for the appointment of auditors of the company.
   (c) Notice in News paper for closure of Register of Members.
   (d) Notice of postponement of Annual General Meeting

   Attempt all parts of either Q. No. 2 or Q. No. 2A

   (5 marks each)

2. Distinguish between the following:
   (a) One Person Company and small company
   (b) Reduction of Capital and buy back of shares
   (c) Resident Director and Independent Director
   (d) Time limit for issue of share certificates

   OR (Alternate question to Q. No. 2)

   (4 marks each)

2A. Write notes on any four of the following:
   (a) CSR Committee
   (b) Cost Audit
   (c) Board disclosure
   (d) Director Identification Number (DIN)

   Attempt all parts of either Q. No. 3 or Q. No. 3A

   (4 marks each)

3. (a) Explain briefly Management Discussion and Analysis Report (MDAR) in case of listed companies.

   (4 marks)

(b) Write down the procedure for voting by electronic means.

   (4 marks)

(c) Write the procedure for conducting business through postal ballot.

   (4 marks)

(d) Briefly describe the procedure for declaration of dividend out of reserves

   (4 marks)
OR (Alternate question to Q. No. 3)

3A. (a) “Section 73 of the Companies Act 2013 prohibits acceptance of deposits by the companies with some exceptions”. Discuss. (4 marks)

(b) Write a short note on transfer and transmission of securities. (4 marks)

(c) What are the duties of a Company Secretary prescribed under Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014? (4 marks)

(e) Write a short note on remuneration of auditors. (4 marks)

4. (a) Enumerate the important aspects to be considered at the issue of shares with differential voting rights. (4 marks)

(b) What is the procedure for appointment of managing director in a company? (4 marks)

(c) What are the particulars to be entered in the register maintained by companies for inter-corporate loans and investments? (4 marks)

(d) What is the procedure involved in conversion of private limited company into a public limited company? (4 marks)

5. (a) Write the procedure for conduct of Annual General Meeting of a company. (4 marks)

(b) What is the procedure for alteration of capital clause of memorandum of association of a company? (4 marks)

(c) What is the procedure for issue of sweat equity shares? (4 marks)

(d) Write a note on ‘e-filling’. (4 marks)

6. (a) Write the detailed procedure for registration of creation and modification of charges. (8 marks)

(b) Who are deposit trustees? Write the procedure for appointment of trustee for depositors also mention the duties of trustees prescribed under the companies (Acceptance of Deposit) Rules, 2014. (8 marks)
TEST PAPER 2

(This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/answers to this test paper to the Institute.)

Time Allowed : 3 Hours Maximum Marks : 100

NOTE : 1. Answer All Questions
   2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

1. Draft Resolutions with respect to the following:
   (a) Resolution in respect of conversion of a company registered under section 8 into a company of any other kind.
   (b) Resolution in respect of alterations to be made in articles of association of the company.
   (c) Resolution for reappointment of independent director after the term of 5 consecutive years.
   (d) Resolution to issue sweats equity shares. (5 marks each)

   Attempt all parts of either Q. No. 2 or Q. No. 2A

2. Distinguish between the following:
   (a) Bonus shares and Sweat Equity shares
   (b) Shelf prospectus and Red herring prospectus
   (c) Resident Director and Small shareholder director
   (d) Audit Report and Directors Report (4 marks each)

   OR (Alternate question to Q. No. 2)

2A. Write notes on any four of the following:
   (a) Extraordinary general meeting
   (b) Proxy
   (c) Inspection
   (d) Key managerial personnel (4 marks each)

   Attempt all parts of either Q. No. 3 or Q. No. 3A

3. (a) Who are the scrutineers for poll? Discuss the manner in which the chairman of meeting shall get the poll process scrutinised and report thereon. (4 marks)
   (b) Write the procedure for convening and conducting the Board meetings through video conferencing or other audio visual means. (4 marks)
   (c) Define internal audit. Discuss the provisions of Companies Act 2013 regarding appointment of internal auditors or a firm of internal auditors. (4 marks)
   (d) Discuss the information that should be mentioned in report by board of directors. (4 marks)

   OR (Alternate question to Q. No. 3)

3A. (a) “Discuss the civil liability for mis-statement in prospectus. (4 marks)
(b) Write the procedure to make offer or invitation of subscription of securities on private placement basis. (4 marks)

(c) Write down a brief procedure for issue and redemption of debentures. (4 marks)

(e) Write down the procedure of removal and resignation of auditor in case of Government Company. (4 marks)

4. (a) Enumerate the important aspects relating to prohibition of Buy-Back in certain circumstances. (4 marks)

(b) Write down the procedure for Redemption of Preference shares (4 marks)

(c) What are the matters that should be stated in in the explanatory statement of a resolution approving an ESOP Scheme? (4 marks)

(e) What is the procedure involved in declaration of dividend out of reserves? (4 marks)

5. (a) Write the procedure for shifting of registered office from one state or union territory to another state. (4 marks)

(b) What is the procedure for alteration of object clause of memorandum of association of a company? (4 marks)

(c) What are the Board Committees prescribed under Companies Act, 2013? (4 marks)

(d) Write a note on ‘Investor Education and Protection Fund’ (4 marks)

6. (a) Write procedure for obtaining licence under Section 8 of Companies Act, 2013. (8 marks)

(b) Briefly describe the procedure for Incorporation of One Person Company (8 marks)