PROFESSIONAL PROGRAMME
STUDY MATERIAL

COMPANY
SECRETARIAL
PRACTICE

PART A
(COMPANY LAW PROCEDURE AND PRACTICES)

MODULE I - PAPER 1
TIMING OF HEADQUARTERS

Monday to Friday
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PROFESSIONAL PROGRAMME

COMPANY SECRETARIAL PRACTICE

This study material has been published to aid the students in preparing for the Company Secretarial Practice paper of the CS Professional Programme. Company Law has undergone radical changes over the past few years, so 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 various changes made upto 15th July, 2011 have been included 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 ‘Student Company Secretary’, Chartered Secretary and other publications for updation of study material. In the event of any doubt, students may contact the Directorate of Academics and Professional Development of the Institute for clarifications.

Although 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.

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 Student Company Secretary.
PROFESSIONAL PROGRAMME
SYLLABUS
FOR
COMPANY SECRETARIAL PRACTICE
(MODULE I - PAPER 1)

Level of knowledge: Expert knowledge.

Objective: To provide an in-depth understanding of the procedures under the Companies Act, Rules and Regulations made thereunder including understanding of international dimensions of company law.

Detailed contents:

1. E-governance (MCA – 21)

   Important Features of MCA-21 – CIN, DIN, DSC, CFC, SRN, etc; E-forms and on-line filing and inspection of documents.

2. Company Formation and Conversion

   Choice of form of business entity; conversion/re-conversion of one form of business entity into another.

   Procedure for incorporation of private/public companies, companies limited by guarantee and unlimited companies and their conversions/re-conversion/re-registration; obtaining certificate of commencement of business; obtaining certification of re-registration; commencement of new business and certification; filing of agreements with managerial personnel;

   Formation of associations not for profit and non profit companies; procedure relating to foreign companies carrying on business in India.

3. Alteration of Memorandum and Articles

   Procedure for alteration of various clauses of memorandum: name clause, situation of registered office clause, objects clause, capital clause and liability clause; procedure for alteration of articles; effect of alteration.

4. Issue and Allotment of Securities

   Procedure for public issue, rights issue and bonus shares; procedure for issue of securities at par/premium/discount; procedure for calls on shares; Issue of sweat equity shares, employees stock option scheme, shares with differential voting rights; issue and redemption of preference shares; issue of shares on preferential basis/private placement.

   Return of allotment and effect of irregular allotment; issue of certificates; alteration of share capital; procedure for forfeiture of shares and re-issue of forfeited shares; cancellation of shares; surrender of shares; conversion and re-conversion of shares into stock.
Procedure for issue of debentures including creation of security and debenture redemption reserve; drafting of debenture trust deed; conversion of and redemption of debentures.

5. **Membership and Transfer/Transmission**

Procedure for induction of members; nomination of shares; variation of shareholders’ rights; cessation of membership including dispute resolution.

Transfer/transmission/transposition; dematerialization/rematerialisation of securities.

6. **Directors and Managerial Personnel**

Procedure for appointment, reappointment, resignation, removal and varying terms of appointment/re-appointment of directors and managerial personnel.

Procedure for payment of remuneration to directors and managerial personnel and disclosures thereof; compensation for loss of office; waiver of recovery of remuneration; directors and officers liability insurance.

Procedure for making loans to directors, disclosure of interest by a director, holding of office or place of profit by a director/relative, etc. of a director.

*Company Secretary* – Appointment, resignation and removal of Company Secretary; role of the Company Secretary; functions and duties; relationship with chairman and directors; secretary as advisor to the chairman and the board.

*Company Secretary in Practice* – Functions; procedure for appointment, resignation and removal of company secretary in practice.

*Auditors*

Procedure for appointment/reappointment, resignation and removal of statutory auditors and branch auditors; appointment of cost auditors; special auditors; CAG audit.

7. **Decision-making Forums and Meetings**

*Collective decision making forums*: authority, accountability, delegation and responsibility.

*Board Meetings*: Convening and management of Board and Committee Meetings.

*General Meetings*: convening and management of statutory meeting, annual and extra-ordinary general meetings, class meetings; preparation of notices and agenda papers.

Procedure for passing of resolutions by postal ballot, conducting a poll and adjournment of a meeting.

Post-meeting formalities including preparation of minutes and dissemination of information and decisions including filing thereof.
8. Preparation & Presentation of Reports
Preparation of financial statements, auditors’ report, directors’ report and report on corporate governance.

9. Distribution of Profit
Procedure for ascertainment of divisible profits and declaration of dividend; payment of dividend; claiming of unclaimed/unpaid dividend; transfer of unpaid/unclaimed dividend to Investor Education and Protection Fund.

10. Charges
Procedure for creation/modification/satisfaction of charges and registration thereof; register of charges; inspection of charges.

11. Inter-corporate Loans, Investments, Guarantees and Security
Procedure for making inter-corporate loans, investments, giving of guarantees and providing of security.

12. Filling and Filing of Returns and Documents, etc.
Procedure for filling and filing of returns and documents:
(a) Annual filing, i.e., annual accounts, compliance certificate, annual return, etc.
(b) Event based filing.

13. Striking off Names of Companies – Law and Procedure

14. Best Practices - Secretarial Standards
Concept, scope and advantages; Secretarial Standards issued by the ICSI; Compliance of secretarial standards for good governance.

15. Insider Trading
Concept and rationale behind prohibition of insider trading; SEBI’s Insider Trading Regulations; major actions taken by SEBI so far; Role of Company Secretary in compliance requirements.

16. Global Developments in Company Law
Contemporary developments, distinguishing and evolving features of company law in other jurisdictions.
LIST OF RECOMMENDED BOOKS

COMPANY SECRETARIAL PRACTICE

Readings:

2. K.V. Shanbhogue : Company Law Procedure; Bharat Law House, New Delhi-34
4. A.M. Chakraborti, B.P. Bhargava : Company Notices, Meetings and Resolutions, Taxmann, New Delhi
5. A. Ramaiya : Guide to the Companies Act, Wadhwa & Company, Nagpur
6. R. Suryanarayanan : Company Notices, Meetings and Resolutions, Kamal Law House, Kolkata
7. D.K. Jain : E-filing of Forms & Returns
8. Taxmann : E-Company forms
9. V.K. Gaba : Depository Participants (Law & Practice)
10. Dr. K.R. Chandratre : Guide to Company directors
11. ICSI Publication : Meetings
12. B.K. Sengupta : Company Law

References:

2. Taxman : Company Law, Digest
Journals:

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

Note:
The latest edition of all the books referred to above should be read.
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SELF-TEST QUESTIONS

STUDY IV

ISSUE OF SECURITIES

Learning Objectives

Meaning of public issue of securities

Issue of equity Shares

Steps involved in issue of equity shares

Issue of shares at discount

Procedure for issue of shares at discount

Issue of shares at premium

Procedure for issue of shares at premium

Making calls on shares

Procedure to make calls on shares

Right issues

Steps involved in issue of right shares

Issue of bonus shares

Steps involved in issue of bonus shares

Procedure for bonus issue by an unlisted company

Procedure to issue shares with differential voting rights

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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.

After going through this Chapter, you will be able to understand:
- E-governance and MCA-21
- Scope
- Operational aspects of MCA-21
- General Structure of an E-Form and E-Filing Process
- Clarifications issued by MCA
- Substantial Benefits of MCA-21
- National Award for E-Governance (2007-08)

1. INTRODUCTION

With the advent of Information and Communication Technology in all sectors today, Governments across the globe are taking major initiatives to integrate IT in all their processes. These initiatives aimed at electronic governance, embrace policy changes, legal reforms, business process reengineering, change management and infrastructure creation. They are also realizing that public/private partnership is very critical to the success of any e-governance Project and are accordingly entering into partnerships with private IT companies to implement e-governance. It is being felt that IT enablement of various Government to Business processes along with Business Process Reengineering will not only improve efficiency and transparency of the government operations, but will also provide speedy transactions between the government and the businesses.

2. E-GOVERNANCE AND MCA-21

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).

In the words of Dr. Manmohan Singh, Hon'ble 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 TCS, is a fine example of public – private partnership, and is built on a BOOT (Built, Operate, Own and Transfer) model.

3. SCOPE

The present scope of this initiative includes services provided by the Regional Directors (RDs), twenty-two offices of Registrar of Companies (ROCs) and the Ministry Headquarter. At present, it does not include other offices of MCA like Official Liquidators, Company Law Board/Tribunal and Courts. However, in the second phase, the scope of this initiative will be extended to these offices also. 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. 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.

4. OPERATIONAL ASPECTS OF MCA-21

Launch of MCA-21

The Central Government amended the Companies (Central Government’s) 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’s office at Coimbatore. The first company was incorporated by e-filing at Coimbatore.

Notification of e-forms

As mentioned, MCA had vide notification No GSR 56(E) dated 10th February 2006, issued the Companies (Central Government's) General Rules & Forms
(Amendment) Rules 2006 and notified e-forms. The said forms are available at www.mca.gov.in. The old formats of the forms have been rendered redundant after 27th February 2006. (A table containing old forms as well as their new version is given as Annexure I at the end of the study briefing the additions/changes in the e-forms).

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.**

Companies (electronic filing and authentication of documents) Rules, 2006

To support the provisions of e-filing, the Central Government under section 610A and 610E of the Companies Act have enacted the Companies (electronic filing and authentication of documents) Rules, 2006 (For text of the rules, please see Annexure II at the end of the study)

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. Only a single DIN is required for an Individual irrespective of the number of directorships held by him.

Further every individual, who is intending to be appointed as designated partner of a limited liability partnership is required to make an application electronically in Form DIN – I to Central Government for obtaining Designated Partnership Identification Number (DPIN) under Limited Liability Partnership Act, 2008.

Further, if person holds both DIN and DPIN, his DPIN shall stand cancelled and DIN shall be sufficient for being appointed as Designated partner.

With effect from 9.7. 2011, the Ministry has integrated the DIN issued under the Companies Act, 1956 with DPIN issued under LLP Act, 2008. Hence, no fresh DPIN will be issued. Any person who desires to become a designated partner in a LLP, has to obtain DIN by filing e-form DIN-I.

* The e-forms which are relevant from students point of view are given in Part-B of the study namely Part-B – Company Secretarial Practice.
** The e-forms are being constantly revised to be compatible with the technical requirements. The updated forms are available at the website of MCA (www.mca.gov.in).
If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under LLP Act, 2008. If a person has been allotted DPIN, the said DPIN will also be used as DIN for all the purposes under the Companies Act, 1956.

DIN is a unique identification number and once obtained is valid for lifetime of a director. A single DIN is required to be obtained irrespective of the number of directorships.

Ministry of Corporate Affairs (MCA) had notified Companies (Director Identification Number) Rules, 2006 vide notification no. G.S.R 648 (E) dated 19.10.2006 (text of the rules is given as Annexure III at the end of the study).

For obtaining DIN, directors are required to submit an application in e-form DIN-1 online along with scanned photograph, identity proof and proof of residence through MCA portal. After payment of fees through online mode, the approved DIN shall be generated automatically except for cases where potential duplicates are identified. In such cases, provisional DIN is generated. With this procedure, it is expected to enable allotment of DIN on the same day. If there are any changes in the particulars of directors, these are required to be intimated to MCA within 30 days of changes in the prescribed form (DIN-4).

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].

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 one time activity on the MCA portal. For registration of DSC, steps are given on the MCA homepage.

Following are not required to register DSC on MCA portal:

— Attorney or pleader or advocate for the purpose of form 1.
— Authorised representative of a foreign Company.
— Charge-holder or assignee.
— Receiver or Manager in case of form 15 and form 36.
— Liquidator
— Person charged in case of form 1AA.
— Person filing form for a Company to be incorporated, for example form 1A, 1, 18, 24A, 32, 37, 39.
— Signatory of a section 25 Company

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.

**Pre-certification by professionals in whole time practice**

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.

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.

Action would be taken against such professionals on receipt of any complaint, for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956.
Role Check

‘Role Check’ functionality envisages that MCA21 System shall verify whether the digital signatures affixed on the eForm actually belong to signatory of the company and/or of a practising professional (if applicable).

Directors, Managers and Secretary of the Company and practising professionals i.e. CA, CS & CWA are required to register their DSC on MCA portal. On registration of DSC, MCA system will capture the details of the said persons’ DSC against their DIN/PAN, as the case may be. The MCA21 System verifies the credentials of the person(s) signing the eForm from the data-base of the companies created on the basis of DIN/PAN of Directors/Manager & Secretary submitted through Form DIN-3 by the companies. Similarly, particulars of professional certifying the form is verified from the data-base of ‘Practising Professionals’ created on the basis of data provided by Professional Institutes.

In case of mis-match, system will throw error message and the form will not be accepted. For ‘Role Check’ purpose, DIN 3 form must be filed by the company for all the signatories (director, manager, secretary) of the company. If the company has not filed Form DIN 3, the company will not be able to file any eForm on the MCA portal, as the system shall not have the details of the signatories of the company.

Front Office and Back Office

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 manned by MCA and TCS officials provides free of cost service in all aspects of MCA 21 e-governance projects.
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.

Hardware and Software Requirements under e-filing

The Minimum system requirements for e-filing are:
— P-4 computer with printer.
— Windows 2000/Windows XP/Windows Vista/Windows 7
— Internet Explorer 6.0 version and above.
— Adobe Reader V 9.4 and lower versions.
— Scanner (above 200 DPI) for converting the attachments in the PDF format; and
— Java Runtime Environment (JRE) 1.4.2. version.

Mode of payment

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]. In case a stakeholder chooses to pay through the off-line method (i.e. over the counter in a bank branch), it takes about two to three days time 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. 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. Ministry has decided to accept payments of value upto Rs. 50,000 for MCA 21 Services, only in electronic mode. However, in the following three cases, challan mode for payment is allowed to less than Rs. 50,000:

(a) Payment to Investor Education and Protection Fund through ‘Pay Misc. Fee’ functionally.
(b) Any payment made by users having category ‘Official Liquidator’ office
(c) Any payment made as MCA employed.

For the payments of value above Rs. 50,000, stakeholders would have the option to either make the payment in electronic mode or proper challan. However such payments would also be made in electronic mode i.e. 1st October 2011.

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.

Re-Submission

At times, MCA may ask for some changes before approving/ registering the eForm that have been submitted successfully. MCA will notify you about their requirements through email. You will have to make the changes and re-submit the eform. Re-submission does not require any payment, if done within prescribed time (30 days in case of form 1A and 60 days in case of other forms). The documents that were uploaded during submission of eForm will be again uploaded during re-submission.

Steps for eForm re-submission

1. Login to the MCA portal
2. Click on the Resubmission link under the Services tab. Alternatively, you can also click on eForm Upload button under eForms tab, for offline filing of eForm. The Offline eForm 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 eForm for resubmission. A progress bar shows the extent of uploading process.
5. The eForm 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.

Rectification of Mistakes

In accordance with Rule 20G of the Companies (central Government’s) General Rules and Forms, 1956, an application for rectification of mistakes may be made in Form No. 68 for mistakes made while filing form no. 1, Form No. 1A and Form No. 44 electronically on the MCA’s website. Such application is required to be made to the Registrar within a period of three hundred and sixty five days from the date of approval of Form No. 1, 1A and 44 by the Registrar.

This application in Form No. 68 shall be accompanied by fee of rupees one thousand for rectification of mistakes in Form No. 1 and Form No. 1A and rupees ten thousand for rectification of mistakes in Form No. 44 respectively.

The Registrar shall examine the said application based on the relevant documents filed and available on record and thereafter approve the application and intimate the mistakes rectified to the applicant within a period of sixty days from the date of filing of said application.
It is to be noted here that the rectification of mistakes shall be allowed only once in respect of one company.

(For specimen of e-form 68, see Part B of this study).

**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. Some 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**

Registrars of Companies have to ensure that proper stamp duty is paid on the instruments registered with their office. As of now, physical submission of documents is mandatory where stamp duty is levied in order to ascertain that applicable stamp duty has been paid.

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, 1956 and to remit the same directly to their accounts in accordance with the approved payment and accounting procedures. This process initially covered stamp duty payable on Form No. 1, Memorandum of Association, Articles of Association, Form No. 5 and Form No. 44.

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 States from whom the authorization is yet to be received, The company shall continue to pay stamp duty outside the MCA portal.

Out of twenty eight states and seven Union Territories, except state of Sikkim, where the Provisions of the Companies Act, 1956 are not extended, the Central Government has received authorization from only twenty nine State Governments and Union Territory authorizations. The remaining five states and union territories from whom authorization is yet to be received are Daman and Div, Dadra and Nagar Haveli, Goa, Jammu and Kashmir, and Nagaland.

The companies are not required to make physical submission of documents on which stamp duty is paid electronically through MCA portal. However, the documents on which stamp duty is not paid through MCA portal, the Companies are required in addition to their electronic filing, submit physical copies of such stamped documents with Registrar of Companies also. Simultaneously, the documents other than those specified above (Form No. 1, MoA, AoA, 5 and 44) which are not covered for payment of stamp duty through MCA portal and on which stamp duty payable is
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 clause (a) of sub-section (4) of Section 621A.

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 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. Example of STP forms are: Forms 20B, 23AC, 23ACA, 32 etc. Under Regulation 17 of Companies Regulations, 1956, these forms may be examined anytime by the Registrar.

**Regulation 17 of Companies Regulation, 1956**

The Registrar shall examine or cause to be examined, every application or e-Form or document required or authorised or filed by or under the Act and rules made there under, filed with or delivered to, in the electronic form, the Ministry of Corporate Affairs on its website www.mca.gov.in, for approval and registration or taking on record or rectification by the Registrar.

The Registrar shall not keep any document which are filed under Non-STP (Straight through Process) pending for approval and registration or for taking on record or for rejection or otherwise for more than one hundred twenty days, from the date of its filing excluding the cases in which an approval from the Central Government or Regional Director or Company Law Board or any other competent authority is required.

The e-Forms identified as informatory in nature and filed under Straight Through Process (STP) may be examined by the Registrar any time.

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 give an opportunity allowing thirty days time to such person or such company for furnishing in form 67 further information or for rectification of the defects or incompleteness or for re-submission of such application or e-Form or documents.

The Registrar shall allow fifteen days time only, for furnishing further information or for rectification of the defects or incompleteness or for re-submission of e-Form or documents filed under section 18(1)(a) and (b) of the Act.

In the event, such further information called for has not been provided or has been furnished partially or has not been provided to the satisfaction of the Registrar or defect or incompleteness has not been rectified or has been rectified partially or has not been rectified to the satisfaction of the Registrar, the Registrar shall either reject or treat and label such application or e-Form or document as the case may be as “invalid” in the electronic record, and shall not take on record such invalid application or e-Form or document and shall inform such person or company.

Where any document has been recorded as invalid by the Registrar, such document may be rectified by the company only through fresh filing with payment of fee and additional fee as applicable, without prejudice to any other liability under the Act.

For STP Documents

The Registrar, in case, finds any such e-Form or document filed under Straight Through Process (STP), as defective or incomplete in any respect, at any time, he shall treat and label such e-Form or document as “defective” in the electronic registry and shall issue a notice pointing out such defects or incompleteness in such e-Form or document at the last intimated e-mail address (if available) of the person or the company which has filed the document and in writing by post at the address of such person or registered office address of such company, calling upon such person or company to file such e-form or document afresh with fee and additional fee as applicable, after rectifying such defects or incompleteness within a period of thirty days from the date of such notice.

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.

Annual filing

As a part of annual filing, companies incorporated under the Companies Act, 1956 are required to file the following documents along with the 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>Balance Sheet</td>
<td>Form 23AC to be filed by all companies.</td>
</tr>
<tr>
<td>2.</td>
<td>Profit and Loss Account</td>
<td>Form 23ACA to be filed by all companies.</td>
</tr>
<tr>
<td>3.</td>
<td>Annual Return</td>
<td>Form 20B to be filed by companies having share capital.</td>
</tr>
<tr>
<td>4.</td>
<td>Annual Return</td>
<td>Form 21A to be filed by companies without share capital.</td>
</tr>
<tr>
<td>5.</td>
<td>Compliance Certificate</td>
<td>Form 66 to be filed by companies with paid up capital between Rs.10 lacs to Rs.5 crores.</td>
</tr>
</tbody>
</table>

5. GENERAL STRUCTURE OF AN E-FORM AND E-FILING PROCESS

An e-Form contains certain standardized features. Each e-Form contains the form reference and the description as well as the particular section of the Companies Act or the relevant rules or regulations under which it is required to be submitted. It starts with the Corporate Identity Number (CIN), which is an identification number of a company. By entering the number, the company details to the extent these are available in the database of MCA, are automatically filled in by using the pre-fill functionality.

— The e-Form contains a number of mandatory fields 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.
— An e-Form contains tool tips for context-sensitive help.
— An instruction kit is available for each e-Form, which contains details of the instructions for properly filling the e-Form.
— An e-Form may be filled in either online or offline. Online filling implies that the e-Form is filled while being still connected to MyMCA 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.
— 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.
— 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 are correct and complete.
— 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.
— 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.
— 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 creation or modification of charges.
Flowchart of eFiling

Filing eForm

MCA Website → Select eForm → Fill eForm

Login

Make attachment to eForm

Sign eForm and Submit it

Automated Prescrutiny

Digital Signature Validation
Field/Form Data Validation
Additional Rules

Select Payment Method

Online Payment → Send eForm for Approval
Challan Payment

eForm stored securely until Bank confirms receipt

Each Transaction uniquely identified by a Service Request Number (SRN)

(Source: website of MCA)
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.

When the “Submitted” button is pressed, the e-Form gets uploaded into the MCA central document repository.

Thereafter, the requisite fees as applicable for the e-Form should be paid either on-line or off-line.

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.

In the case of an e-Form, the authorized officer affixes his/her digital signature for registering/approving/rejecting the same.

After the processing of the e-Form is completed, an acknowledgement email is sent to the user regarding its approval/rejection.

In order to carry out e-filing on MCA21, there is a facility to download the eform and fill it in an offline mode. Every form has the facility to pre-fill the data available in MCA21 system. 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.

6. CLARIFICATIONS ISSUED BY MCA FROM TIME TO TIME

1. The filing will be done only through the portal MCA 21 and not through e-mail.

2. The transaction will be deemed as completed only after clearance of the payment by the bank.

3. The system will hold the application for five days till the payment is made.

4. Stamp duty will be paper based. It is proposed that the payment of stamp duty will also be made online in phases through banks in near future. Fifteen states have already authorized the Central Government in this regard (as stamp duty is a State subject) and authorization from the remaining states is expected.

5. Pre-certification of certain e-forms by CS/CA/CWA (in whole-time in practice is a mandatory requirement.

6. Digital Signature Certificate (DSC) is required for filing all the e-forms.
Therefore, the Directors and Company Secretary of the Company who are the authorized signatories for e-filing purpose, should obtain DSC.

7. Data in e-forms is required to be given as per the format. However, additional information, if any, which is not formatted can be given by way of an attachment to the form.

8. The forms may be filed online or offline after downloading. MCA recommends that the forms be filled offline and then submitted on the portal.

7. FREQUENTLY ASKED QUESTIONS

Important FAQs are given as Annexure IV at the end of this study.

8. 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 in better 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:

S. Website for Investor Education and Protection Fund: 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 by way Companies (Amendment) Act, 1999 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.

S. 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 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 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.

S. 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 is Corporate Governance initiative of Bombay Stock Exchange Limited and is conceptualized, designed and maintained by Prime Database.

This website is the world’s 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.

**Better supervision and monitoring of compliance**

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 & effective compliance of relevant law(s) and also in turn fosters corporate governance.

**Mutually beneficial system**

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.

**Speed, transparency and efficiency**

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.

**Effective due diligence**

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.

**Efficient services by professionals**

Professionals will be able to offer efficient services to their client companies.

**Environment Friendly**

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 6.3 lac companies for filing almost 75 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.


**ANNEXURE I**

**Details of Old Forms vs. New e-Forms**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Old Form No.</th>
<th>Corresponding revised e-Form No.</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Form 1</td>
<td>Form 1</td>
<td>Application and declaration for incorporation of a company</td>
</tr>
<tr>
<td>2</td>
<td>Form 1A</td>
<td>Form 1A</td>
<td>Application form for availability or change of name</td>
</tr>
<tr>
<td>3</td>
<td>Form 1AA, 1AC</td>
<td>Form 1AA</td>
<td>Particulars of person(s) or director(s) or charged or specified for the purpose of clause (f) or (g) of section 5</td>
</tr>
<tr>
<td>No.</td>
<td>Form</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Form 1AD</td>
<td>Application for confirmation by Regional Director for change of registered office of the company within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Form 1B (For Conversion of public company to private company)</td>
<td>Application for approval of the Central Government for change of name or conversion of a public company into a private company</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Form 2</td>
<td>Return of allotment</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Form 3</td>
<td>Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Form 4</td>
<td>Statement of amount or rate percent of the commission payable in respect of shares or debentures and the number of shares or debentures for which persons have agreed for a commission to subscribe for absolutely or conditionally</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Form 4C</td>
<td>Return in respect of buy back of securities</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Form 5</td>
<td>Notice of consolidation, division, etc. or increase in share capital or increase in number of members</td>
<td></td>
</tr>
<tr>
<td>11</td>
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Companies (Electronic Filing and Authentication of Documents) Rules, 2006

NOTIFICATION

New Delhi, the 14th September, 2006

G.S.R. 557(E).—In exercise of the powers conferred by clause (a) of Sub-section (1) of Sections 642 and 610B read with Sections 610A and 610E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules namely—

1. Short title and commencement.—(1) These rules may be called the Companies (Electronic Filing and Authentication of Documents) Rules, 2006.

(2) The Central Government hereby appoints the 16th day of September, 2006 as the date on which the provisions of these rules shall come into force.

2. Definitions.—In these rules, unless the context otherwise requires,

(a) “Act” means the Companies Act, 1956 (1 of 1956);

(b) “Certifying Authority” means a person who has been granted a licence to issue a Digital Signature Certificate under Section 24 of the Information Technology Act, 2000 (21 of 2000);

(c) “digital signature” means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3 of the Information Technology Act, 2000;

(d) “Digital Signature Certificate” means a Digital Signature Certificate issued under Sub-section (4) of Section 35 of the Information Technology Act, 2000;

(e) “e-Form” means a form in the electronic form as prescribed under the Act or rules made thereunder and notified by the Central Government under the Act;

(f) “electronic record” means electronic record as defined under clause (t) of Section 2 of the Information Technology Act, 2000;

(g) “electronic registry” means an electronic repository or storage system in which the information or documents are received, stored, protected and preserved in electronic form;

(h) “Electronic Mail (E-mail)” means messages sent, received or forwarded in digital form via a computer-based communication mechanism;

(i) “Registrar” means a registrar as defined under Sub-section (40) of Section 2 of the Companies Act, 1956;

(j) “Registrar’s Front Office” means an office maintained by the Central Government or an agency authorized by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;

(k) “web” means the world wide web, as defined in the Information Technology Act, 2000;
(l) “website” means a location connected to the Internet that maintains one or more web pages;

(m) words and expressions used in these rules and not defined shall have the meaning respectively assigned to them in the Companies Act, 1956 and the Information Technology Act, 2000 (21 of 2000).

3. Filing and Authentication in the electronic manner.—(1) Every e-form or application or document or declaration required to be filed or delivered under the 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:

Provided that where documents are required to be filed on Non-Judicial Stamp Paper, the company shall submit such documents accordingly in the physical form, in addition to their submission in electronic form.

“Provided further that if stamp duty on such documents is paid electronically through Ministry of Corporate Affairs portal www.mca.gov.in, in such case, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form:

Provided also that in respect of certain documents filed under the Companies Act, 1956 which are not covered for payment of stamp duty through Ministry of Corporate Affairs portal, and stamp duty payable on such documents in respective state is equal to or less than one hundred rupees, the company shall scan such stamped documents complete in all respects and shall file electronically for evidencing by the Registrar and shall not be required to submit such documents, except those which are required to be filed for compounding of offences under clause (a) of sub-section (4) of section 621A of the Companies Act, 1956, in the physical form separately:

Provided also that the company shall 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 respective State or Union territory or the Registrar”.

(2) Every managing director, director or secretary or person specified in the Act for authentication of e-form, documents or application etc., which are required to be filed or delivered under the Act or rules made thereunder, shall obtain a digital signature certificate from the Certifying Authority for the purpose of such authentication and such certificate shall not be valid unless it is of Class II or Class III specification under the Information Technology Act, 2000.

4. Maintenance of website.—The Central Government shall set up and maintain—

(i) a website or portal or provide access to the electronic registry; and

(ii) as many Registrar’s front Officers as may be necessary and at such places and for such time as Central Government may determine from time to time, for filing of application e-Forms, documents and applications, etc., viewing and inspection of documents in the electronic registry.
5. **Maintenance of Electronic Registry.**—(1) The Central Government shall set up and maintain a secure electronic registry in which all the documents filed electronically shall be stored. The electronic registry so set up shall enable public access and inspection of such documents as are required to be in the public domain under the Act on payment of the fees as prescribed under the Act or the rules made thereunder.

(2) Every document or application or certificate or notice etc., required to be signed by the Registrar or an officer of the Central Government under the Act or rules made thereunder, shall be authenticated through a valid digital signature of such person or a system generated digital signature.

(3) The Registrar or the Central Government, as the case may be, may send any communication either to the company or its authorized representative, directors or both in the electronic manner for which the company shall create and maintain at all times a valid electronic address (e.g. E-mail, user Identification etc.) capable of receiving and acknowledging the receipt of such communication, automated or otherwise.

6. **Issue of certificate, approval etc. in the electronic manner.**—The Registrar or the Central Government shall issue certificate, licence, receipt, approval or communicate endorsement or acknowledgement in the electronic manner:

Provided that where the Registrar or an officer of the Central Government, as the case may be, is not able to issue any certificate, licence, receipt, endorsement, acknowledgement or approval in electronic manner for the reasons to be recorded in writing, he may issue such certificate, licence, receipt, or communicate endorsement, acknowledgement or approval in the physical form under manual signature affixing seal of his office.

ANNEXURE III

**Companies (Director Identification Number) Rules, 2006**

**NOTIFICATION**

New Delhi, the 19th October, 2006

**G.S.R. 649(E).**—In exercise of the powers conferred by clause (a) and (b) of Sub-section (1) of Sections 642 read with Sections 266A, 266B and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules namely—

1. **Short title and commencement.**—(1) These rules may be called the Companies (Director Identification Number) Rules, 2006.

   (2) The Central Government hereby appoints the 1st day of November, 2006 as the date on which the provisions of these rules shall come into force.

2. **Definitions.**—In these rules, unless the context otherwise requires,

   (i) “Act” means the Companies Act, 1956 (1 of 1956);
(ii) “Director Identification Number” (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 the Limited Liability Partnership Act, 2008 and rules made thereunder.

(iii) “form” means the form annexed to these rules;

(iv) “Pre-fill” means and refers to the automated process of data input by the computer system out of the database maintained in electronic registry;

(v) “Provisional Director Identification Number” refers to the provisional identification number generated by the electronic system set up by the Ministry of Company Affairs for filing of documents, after the on-line application form is submitted through the portal on the website of the Ministry of Company Affairs (www.mca.gov.in);

(vi) “section” means the section of the Act.

3. Application and allotment of Director Identification Number:-

(1) Every individual, who is an existing director or intending to be appointed as director of a company shall make an application electronically to the Central Government for allotment of Director Identification Number in Form No DIN-I.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of Director Identification Number through a portal on the website of the Ministry.

(3)(a) The applicant shall download Form No. DIN-1 from the portal, fill-in the required particulars sought therein, scan and attach copies of the following documents, namely:-

(i) photograph;
(ii) proof of identity;
(iii) proof of residence; and
(iv) verification by the applicant for applying for allotment of DIN in the format as specified in Annexure 1 enclosed to the rules.

(b) the form shall be digitally signed by a Chartered Accountant or a Company Secretary or a Cost and Works Accountant holding a certificate of practice under the provisions of the Chartered Accountants Act, 1949, the Company Secretaries Act, 1980 and the Cost and Works Accountants Act, 1959 respectively;

(c) the form can also be digitally signed by a Company Secretary in full time employment of the company;

(4)(a) the applicant shall submit the Form No. DIN-1 on the portal and pay the requisite amount of fees as specified in rule 4 through online mode;

(b) after successful payment of fee, the system after processing, shall automatically generate the approved DIN, except for cases where potential duplicates are identified. In potential duplicate cases, the provisional DIN shall be generated by the system.
(5) The Central Government shall process the applications received for allotment of DIN under sub-rule (4), decide on the approval or rejection thereof and communicate the same along with the DIN allotted in the case of approval to the applicant 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:

Provided that 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) In case, where provisional DIN is allotted, 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 noticed electronically, by placing it on the website and by email to the applicant or the person who has filed such application, directing him to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days.

(7) The Central Government shall give an opportunity to the applicant or the person who has filed such application, for rectification of the defects or incompleteness by resubmitting the application within the aforesaid period.

(8) (a) In the event, such defect or incompleteness has not been rectified or has been rectified partially or has not been rectified to the satisfaction of the Central Government, despite opportunity provided under sub-rule (7), the Central Government shall either reject or treat and label such application as invalid in the electronic record and shall not take on record such invalid application and in such case, the provisional DIN shall be lapsed.

(b) the action taken under sub-rule (8) shall be informed to the applicant in such mode as specified in sub-rule (5).

(9) The Director Identification Number so allotted is valid for the life-time of such applicant and shall not be allotted to any other person during his life-time.

4. Fee:-

Each application made under sub-rule (5) of rule 3 shall entail a payment of a fee of Rupees one hundred only:

Provided that applicants making such application before 30th June 2007 shall be exempted from payment of fee under this rule.

5. Intimation of DIN to the Company:-

Every existing director shall, within one month of the receipt of the Director Identification Number from the Central Government under sub-rule (5) of rule 3, intimate his Director Identification Number to the company or all companies wherein he is a director, in Form No.DIN-2.

6. Intimation of DIN to the Registrar:-

Every company shall furnish the details of Director Identification Number within one week of the receipt of intimation from directors under rule 5, to the Registrar in
Form No. DIN-3 in electronic form along with fee as prescribed under Schedule X of the Act and duly certified by a Company Secretary in full time employment of the concerned company as required under section 383A of the Companies Act, 1956 or by a Company Secretary in full time practice.

Provided that the companies furnishing details of DIN under this rule on or before 30th June 2007 shall be exempted from payment of fee.

7. Duty of director to intimate changes of particulars:-

(1) Every director, in the event of any change in his particulars as stated in Form No. DIN-1, who has been allotted a Director Identification Number under these rules, shall intimate such change(s) to the Central Government within a period of 30 days of such change(s) in particulars by using Form No. DIN-4 made available by the Ministry on its website. The concerned director will also intimate such changes to the company or companies on which he is a director.

(2)(a) the director shall download Form No. DIN-4 from the portal and fill-in the relevant changes, scan and attach copy of the proof of the changed particulars in the format as specified in Annexure 2 enclosed to the rules;

(b) the form shall to be digitally signed by a Chartered Accountant or a Company Secretary or a Cost and Works Accountant holding a certificate of Practice under the provisions of the Chartered Accountants Act, 1949, the Company Secretaries Act, 1980 and the Cost and Works Accountants Act, 1959 respectively.

(c) the form can also be digitally signed by a Company Secretary in full time employment of the company.

(3) The Director shall submit the Form No. DIN-4 on the portal and there shall be no fee for intimating the changes in particulars in DIN-4.

(4) after successful uploading of Form No. DIN-4, the system after processing shall automatically incorporate the changes in the particulars of the Director in the DIN database maintained by the Ministry, except for the cases where potential duplicates are identified. In potential duplicate cases, the Central Government, shall examine the application as per procedure adopted in case of provisional DIN as given in rule 3, sub-rule 6,7 and 8.

8. Penal action against the applicant in case of false information:-

The provisions of section 628 shall be applicable in respect of any false information furnished by any person in the DIN application or changes thereof.

ANNEXURE IV

FREQUENTLY ASKED QUESTIONS

E-FILING

1. What are the steps for offline eFiling?

1. Select a category to download an eForm from the MyMCA portal (with or without the instruction kit.)
2. At any time, you can read the related instruction kit to familiarise yourself with the procedures (you can download the instruction kit with eform or view it under Help menu).

3. You have to fill the downloaded eForm.

4. You have to attach the necessary documents as attachments.

5. You can use the Prefill button in eForm to populate the greyed out portion by connecting to the Internet.

6. The applicant or a representative of the applicant needs to sign the document using a digital signature.

7. You need to click the Check Form button available in the eForm. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).

8. You need to upload the eForm for pre-scrutiny. The pre-scrutiny service is available under the Services tab or under the eForms tab by clicking the Upload eForm button. The system will verify (pre-scrutinise) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).

9. The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.

10. Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter through challan).

   (a) Electronic payments can be made at the Virtual Front Office (VFO) or at PFO

   (b) If the user selects the traditional payment option, the system will generate 3 copies of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorised for accepting challan payments.

11. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.

12. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).

13. MCA21 will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.

14. Filing will be complete only when the necessary payments are made.

15. In case of a rejection, helpful remedial tips will be provided to the applicant.

16. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.
2. What are the steps for online eFiling?

1. When the business or the registered users access the MyMCA portal, they enter their username and authentication details - Password/Digital Certificate.

2. The user will be shown a list of eForms category-wise under eForms tab.

3. At any time, the users can read the related instruction kit, available under Help menu, to familiarise themselves with the procedures.

4. The users can then fill the appropriate eForm for the service required. There is an option of pre-fill facility in the eForms, where the static details such as name and address of the company will be pre-filled by the system automatically on entering the Corporate Identity Number (CIN).

5. The users attach the necessary documents to the eForm.

6. The users may avail the pre-scrutiny service of the eForm. The documents will be verified (pre-scrutinised) by the system. In case of any inadequacies, for example, if a mandatory column in the eForm is not filled in, the user will be asked to rectify before the document is ready for execution (signature).

7. The applicant or a representative of the applicant will then submit the duly signed documents electronically.

8. The system will calculate the fee, including late payment fees, if applicable.

9. Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter).

   (a) Electronic payments can be made at the Virtual Front Office (VFO).

   (b) If the user selects the traditional payment option, the system will generate a pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorised for accepting challan payments.

10. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.

11. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).

12. MCA21 will provide a unique transaction number, which can be used by the applicant for enquiring status pertaining to that transaction.

13. Filing will be complete only when the necessary payments are made.

14. In case of a rejection, helpful remedial tips will be provided to the applicant.

15. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.
3. How can I apply for a Company Name?

File eForm1 A by logging in the portal along with a payment of fees of Rs.500/- and attaching the digital signature of the applicant proposing to incorporate the company. If proposed name is not available apply for a fresh name on the same application.

4. Can I apply for a Company Name Online?

Yes, You can avail this service at MCA portal.

5. What is the validity period of the Name approved?

With effect from 19th November, 2007, the approved name is valid for a period of 60 days from the date of approval. The Applicant can renew the approved name for another 30 days by submitting Form-1AR on MCA portal before the expiry of initial validity period along with the fees of Rs. 250/-.

However, names approved/renewed prior to 19th November, 2007 are valid for 6 months from the date of approval/renewal.

6. What is the minimum number of directors required to form a company?

Minimum no. of directors for Private Limited Company: Two. For Public Limited Company: Three.

7. What is the minimum number of subscribers required for registration of a company?

Minimum no. of subscribers for Private Limited Company: Two. For Public Limited Company: Seven.

8. What is the minimum Paid-up Capital at the time of registration of a company?

The minimum paid up capital for Private Limited Company: Rs.1,00,000/- For Public Limited Company: Rs.5,00,000/- This limit is not applicable to company having licence under section 25.

9. What should I do, if I fail to make payment of challan of Form 1 before expiry date?

In such a case, you need to file Form 1 again but same can be filed only after 15 days from the Challan Date. On attempting to file Form 1 before the expiry of above said period, the system will give an error message "Form 1 has already been filed corresponding to the form1A Reference Number".

10. What are the documents to be filed with RoC every year?

Invariably, the Balance Sheet and Annual Return have to be filed every year. Other documents such as, Return of Allotment (Form-2), Change of Registered office (Form-18), Change among the Directors (Form-32), Charges (Form-8, 10, 17, 13) etc., have to be filed within the due date from the events taking place in the company as per the Companies Act, 1956.
11. How do I find SRN for form 1A filed before MCA21 project?

You may find SRN by entering NIC issued name approval reference number in the “Name Approval Reference Number” service available after logging into MyMCA portal.

12. How do I find Charge ID of Charge registered before MCA21 project?

You may find Charge ID by entering the CIN or foreign company registration number of the company in the “View Index of Charges” service available after logging in MyMCA portal. System displays all active charges with date of charge creation and amount secured.

13. How do I find the country code required for filling in the eForm?

The application uses ISO Country codes and these are available under “help” tab of home page of MyMCA portal

14. What is an e-form?

An e-form is the electronic equivalent of the paper form. The Ministry of Company Affairs has recently launched a major e-governance initiative MCA 21. In the new system, it is envisaged that all company related documents would be filed electronically. The new e-forms have been devised and notified by the Ministry for this purpose.

15. I need assistance to file e-forms as I have no knowledge of operating a computer.

The process of e-filing is very simple. No prior knowledge of computer is required to file the e-form. If you need assistance, you may visit your nearest MCA21 Facilitation Centre for e-filing. The list of facilitation centres is given on the 'Facilitation Centres' link on the MCA portal. These Facilitation Centres have been opened by TATA CONSULTANCY SERVICES LTD. on behalf of The Ministry of Company Affairs to provide assistance in e-filing.

16. What is an Electronic or Digital Document? How is a physical document is converted into an electronic document?

An electronic document is the electronic equivalent of the physical/paper document. A physical document is converted into an electronic document through scanning. It can then be attached to an e-form. You can also convert the softcopy of a document to the PDF format for using it as an attachment to the e-form

17. What if I have paper attachments to file with the E-form?

You have to first get the paper attachments scanned and saved as a soft copy in PDF format.

18. I have scanned documents and want to upload/submit the same.

You can upload/submit the scanned documents by attaching the same with the e-form and submitting on the MCA Portal.

19. Can I have a copy of the filed e-form for my office records?

Yes, if you are carrying a pen drive. On your request, the Customer Services
Executive (CSE) will save a copy of the filed e-form on your pen drive. If you are filing the e-form from your office/home, you can save the copy of the form on your computer for future reference.

20. How are payments made electronically? What if I do not have a credit card or access to Internet Banking?

Currently, payments can be made electronically through credit card/draft or by cash at the Coimbatore Facilitation Centre. The Internet Banking facility will also be made available shortly. During the e-filing process, the system will prompt you to make payment. You can choose the mode of payment and make the payment accordingly. You can also make payment subsequently at the counter of an authorized bank through the pre-filled challan generated by the system after e-filing.

For the purpose of collection of payments more than 200 branches in all major cities and towns of the following five Banks have been authorized:

- State Bank of India
- Punjab National Bank
- Indian Bank
- ICICI Bank
- HDFC Bank

Details of the branches of the above banks offering this facility are given on 'Authorised Banks' link on the MCA portal.

21. Is it safe to make online payments?

Use of Credit cards and Internet Banking is widely prevalent. It is a completely secure process.

22. What about the privacy of data. Are the details/information submitted through Internet freely accessible to all?

The process of e-filing is completely secure. Online Inspection of documents is allowed strictly in accordance with the provisions of the Companies Act, 1956 on payment of a prescribed fee.

23. If, while browsing through the records of my own Company on the MCA portal, I find certain errors in the data, how do I intimate the same to MCA for correction?

To correct the master data of your company(s): Click on the "View Company Master Data" link under the 'Other Services' link on the homepage of the MCA portal. Take a print out of the master data and make the necessary corrections on the print out. Submit the same to the concerned RoC office along with valid proof for getting the corrections done.

24. How do I use the view public documents facility on the MCA portal. Which documents are available for public viewing?

You can register yourself on the MCA portal and click on the 'View Public Documents' link to view the documents of the specific companies available for
viewing to public pertaining to specific company(s). Once you select the company(s), you will be prompted to make the payment of Rs. 50/- per company. On receipt of the payment, the system will allow you to view the documents pertaining to the selected company from the 'My Documents' link after logging on to the portal. You will be able to view the documents for a period of three hours from the time you start viewing. Documents such as balance sheets, annual returns for the preceding two years and permanent documents like MoA and AoA are available in the digital form for the companies falling under ROC going live on the MCA portal.

25. How do I apply for certified copies of the documents? How will I receive the certified copies after I have applied for the same?

You can avail this service by using the Get Certified Copies service. Once you make the necessary payment, your request will be routed to the concerned ROC. You need to approach the concerned RoC office along with the stamp paper of the requisite amount for getting the certified copy of the documents.

26. Can Stamp duty be paid electronically?

Presently, the stamp duty cannot be paid electronically. However, the new amendments made in the Stamp Act are expected to help address this issue with the use of appropriate technology in the near future.

27. Is email ID mandatory for a company?

The email ID is required for the purpose of communication with the company/applicant. It has been made as a mandatory field for the following eforms:

— eForm 1A (email of applicant)
— eForm 18 (email of Indian company)
— eForm 44 (email of Foreign company)
— eForm 8 (email of charge holder)
— eForm 10 (email of charge holder)

28. How do I obtain more than one signature in the eForm, which requires multiple signatures?

In eForm with more than signature; it is suggested that the Authorised signatory of the company should first sign the eForm and then send the digitally signed eForm to the next person whose signature is required to be appended in the eForm either through mail or in a compact or floppy disc. Once the signatures of all the signatories are obtained, the eForm can then be uploaded in the system for submission.

For example, in eForm 8 first the authorised signatory of the company can sign; and then send the eForm through e-mail or on a compact or floppy disk to the Bank representative. It can then be forwarded for certification by a professional, in the same manner.

29. Whether filing of the eForm is required in triplicate?

You are required to submit only one copy of any eForm or any other document in case of electronic filing.
30. Can the form once submitted, be rectified by the company user?

The submitted documents cannot be rectified. You may however submit any additional information through the 'Addendum' functionality available under the 'Services' tab after logging on to the portal.

31. How do I provide necessary details, if the space given in the form is not sufficient?

You may enter the details in a separate sheet and make an optional attachment. You should mention the reference of the attachment in the relevant field in the eForm.

32. In case of challan payment what date will be taken as the date of filing?

The date of deposit of instrument (Cheque/DD/Cash) will be taken as date of filing, subject to realization of funds.

33. I am not able to upload eForm and the attachment(s) as the size is higher than prescribed limit.

In case, the size of the attachment is higher, you can file the form without some of the attachment(s). These attachments can be filed subsequently through the 'Addendum' functionality, available under the 'Services' tab after logging on to the MCA Portal. Provide the SRN in the 'Addendum' functionality and attach the necessary attachments.

34. When I download an eForm, the system displays the message that 'File is damaged, and it cannot be repaired'. What do I do?

You need to verify that you have Adobe 7.0.5 installed on your system. You should un-install the other versions of Adobe before installing Adobe 7.0.5.

35. Can I use Pvt., (P), Ltd., etc. in place of the words Private or Limited in the proposed name(s) of the company while filing eForm 1A?

You should use the words Private and/or Limited in full only.

36. The company I am incorporating is being promoted by a Foreign company. How do I give the details of the foreign company under 'Whether promoted by an existing company' in Form 1 as the foreign company does not have a CIN?

In the field 'Whether promoted by an existing company', details are to be given only where the company is being promoted by an Indian company. In your case, you should select 'No' as the company is being promoted by a foreign company.

37. How do I submit a stamped copy of Memorandum and Articles?

If you are doing the eFiling through VFO mode, you are required to submit the original stamped documents at RoC office. However, if you are doing the eFiling at the PFO, then these shall be collected at the PFO.

38. Whether Annual return in case of listed company requires certification by a professional?

Annual return as per Schedule V of the Companies Act, 1956 is required to be
attached with eForm 20B. Hence, all the existing legal provisions relating to Annual return such as signatory, certification are required to be complied. The scanned copy of duly signed and certified Annual Return has to be attached to eForm 20B.

39. Can I view a demo on the eFiling process?

Yes, you can view the demo through the 'Computer Based Training' link available on the homepage of the MCA portal.

40. I clicked Prefill button and got a message saying Acrobat is attempting to connect to site: http://www.mca.gov.in/DCAPortalWeb/services/PrefillService I clicked "Block". Now I am unable to prefill.

You need to click the "Allow" button in order to prefill data when you get the above message. In case you clicked "Block", please use the following steps in order to remove www.mca.gov.in from the list of blocked sites:

1. Open Adobe Reader.
2. On the Top Menu go to Edit -> Preferences -> Trust Manager -> Change Site Settings
3. Check if www.mca.gov.in is in the list of sites having status "Always Block". If yes, select the site www.mca.gov.in from the list and click the "Remove" Button.
   Please click "Allow" button in future.

41. I am unable to Pre-fill data on the eForm, what should I do?

Perform the following checks.

1. Verify that only ONE version of Adobe Reader is installed on your system.
   — Go to START > Control Panel > Add or remove Programs
   — The list of ‘Currently installed programs’ shall be displayed.
   — Check the version of Adobe Reader. We recommend the Version 7.0.5 (You can download the same by accessing the ‘Download Prerequisite s/w for e-filing’ link in the MCA portal)
   — Only the recommended version of Adobe Reader should be installed. In case there is any other version, REMOVE it.
2. Ensure that you are connected to the Internet. Enter the required data for prefill and click on the ‘PREFILL’ button.
3. You will get a Security Message with an option to ‘BLOCK’ or ‘ALLOW’. Select the ‘ALLOW’ button, the required details shall be prefilled.
4. In case the prefill doesn't happen and you don't get the Security Message, verify the following.
   — Open the Adobe Reader. Go to Edit > Preferences. In the Categories go to ‘Trust Manager’.
   — Click on the button ‘Reset List of allowed/disallowed file attachment types’
5. Still if the Prefill does not work, check whether you are able to open the MCA portal in the web browser. In case it does not open, contact your internet service provider or the local IT support person.

OTHER SERVICES

1. How do I view Public Documents?

The access to public records pertaining to a company is provided from MyMCA portal to any citizen who wishes to view the same. This feature is available after login. You will need to select the company and the documents available under each category will be shown. You may opt to make a payment and view the company documents thereafter. The documents can be viewed from anywhere without visiting the specific RoC office, using the ‘My Documents’ tab available after you log into the portal. After the payment is received by MCA, you can view the documents during the next 7 days for a maximum of 3 hours.

2. How do I view the signatory on the eForm displayed on MyMCA portal?

You have to click on the signature tab on the left hand side of the opened file.

3. How do I see the attachment on the eForm displayed on MyMCA portal?

You have to click on the attachment tab on the left hand side of the opened file.

4. How do I request for Certified Copies?

You can make a request for certified copies and make payments through the options given. After making the payment, you are shown the address of the RoC for collecting the certified copies.

5. How do I lodge a complaint against a company?

You have to file an investor complaint form with the complaint details and upload the eForm. You are provided a system generated Service Request Number (SRN) for future tracking.

6. How do I track the status of the filed complaint?

Using the SRN you can track the status of the complaint. You can track the status through the ‘Track Complaint Status’ link available under the ‘Investor Grievances’ on the MCA portal.

7. How do I find the CIN of the company against which I have a complaint?

You will require the Corporate Identification Number (CIN) of the company against which you are making a complaint. Use the ‘Find CIN/GLN’ service available under ‘Other Services’ link to find the CIN of the company.

8. Can I file multiple complaints against a company?

If you have multiple complaints against a company use separate forms for each complaint.
9. How do I check name availability for incorporating a company?

The applicant proposing to incorporate a new company can search for the name of the new company by using the **Check Company Name** service under **Other Services** tab on the homepage of MyMCA portal.

10. How do I find the CIN of the company?

You can find.

11. How do I enquire for fee on the portal?

The user can inquire the fees applicable for various eForms, certified copies or inspection of documents through the fee calculator provided under Other Services tab without logging in.

12. How do I track the status of my transaction?

On entering the Service Request Number (SRN), the user can track the status of the transactions made. In case you have done the filing through your own User ID, then you can track the status through the 'Track Transaction Status' link available on the homepage of the MCA portal.

13. How do I track the status of the transactions done at PFO?

In case you have done the filing through the PFO (Facilitation Centre), then you can track the status through the 'View Transaction Status PFO' link available under the 'Other Services' tab on the homepage of the MCA portal.

14. How do I know the payment submitted at a bank branch has been confirmed to MCA?

The user can track the status of payment made to MCA by entering the SRN in the 'Track Payment status' link.

**SYSTEM REQUIREMENTS**

1. What equipments (hardware and software) one must have for efiling through the MCA portal?

   Your must have the following -
   — Computer with Windows 2000/Windows XP
   — JRE (Java Runtime Environment)
   — Internet connection to access the MCA website
   — Acrobat Reader version 7.0.5, to download and fill the e-form
   — Scanner for scanning paper attachments
   — Printer for printing Bank Challan or Service fee payment receipt
   — Pop-ups from MCA21 Portal must be enabled in your browser

2. How to download the required software?

   You can download the required software from the System Prerequisites link on the MyMCA portal homepage.
3. Can I attach documents with formats other than PDF?
   It is required to have a common format of the documents and the eForm shall not be accepted if the format of attachment is other than PDF.

4. What if I have scanned attachments in a format other than PDF (for example, Word, Jpeg or Tiff format)?
   You have to convert the scanned attachments into PDF format using the software called PDF Converter.

5. How do I enable pop-ups from MCA 21 Portal?
   There are two solutions to this problem. You can follow any of these –
   **First Solution**
   - Add MCA21 portal in list of trusted sites. The steps to be followed are:
     1. Open the browser
     2. Choose Tools >> Internet Options.
     3. Click 'Security' tab and select 'Trusted Sites'.
     4. Click on 'Sites' button.
     5. Enter the url of the site 'http://www.mca.gov.in' in the textbox under 'Add this Web site to the zone:' and click 'Add' button.
     6. Click 'OK' button.
     7. Reopen the browser window
   **Second Solution**
   - Turn off Pop-up Blocker for pop-ups from MCA21 Portal. The steps to be followed are:
     1. Choose Tools >> Pop-Up Blocker >> Pop-up Blocker Settings in browser window. (Note that 'Pop-up Blocker Settings' option is enabled only when you select 'Turn-on Pop-up Blocker' under 'Pop-Up Blocker' option).
     2. Enter the url of the site 'http://www.mca.gov.in' in the textbox under 'Add this Web site to the zone:' and click 'Add' button.
     3. Click 'OK' button.
     4. Reopen the browser window

DIRECTOR IDENTIFICATION NUMBER (DIN)

1. What is Director Identification Number (DIN)?
   It is an unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A & 266B of the Companies Act, 1956 (as amended vide Act No 23 of 2006).

2. Who can file an application for allotment of DIN?
   Any individual who is an existing director of a company or intends to be appointed as director of any company.

3. Who will allot the DIN?
   Central Government (Office of Regional Director (Northern Region), Ministry of Corporate Affairs, NOIDA).
4. What is the procedure of obtaining DIN?

The process of obtaining DIN consists of seven steps:

**Step I. Obtain provisional DIN**

The applicant is required to fill-up and submit form DIN-1 online for obtaining provisional DIN. Form DIN-1 is available under 'Apply for DIN' tab on the left hand side panel under DIN' link on the homepage of MCA portal.

**Step II. Pay Din application fee**

The applicant is required to login to the MCA portal and click on ‘Pay Miscellaneous fee’ link available under the ‘Services’ tab. Select ‘DIN application fee’ option and enter the provisional DIN. Applicant can make the payment of fee by using any of three modes of payment available on MCA portal. Form DIN-1 will be processed only after the DIN application fee is paid.

**Step III. Dispatch of DIN application**

The applicant is required to take a print-out of Form DIN-1 (containing provisional DIN generated online). Fill the service Request Number (SRN) of the fee paid. Sign the DIN application form manually and paste a good resolution photograph in the space earmarked. Attach the photocopies of the ‘Proof of Identity’ (Attach additional proof, if ‘Father’s name and ‘Date of Birth’ is not indicated in the ‘Proof of Identity’) and the ‘Proof of Residence’ with DIN application form and tick the relevant checkbox against the document name. Get the photograph and the attached supporting documents attested from an approved authority as specified in form DIN-1. The certifying authority must mention its particulars such as Name, COP No. etc, and affix its seal/stamp.

Complete set of documents is required to be sent to MCA DIN Cell at Noida, by post, courier or hand delivery, as per convenience, within 60 days from the date of generation of provisional DIN online.

**Step IV. Processing of DIN application**

DIN application is received by MCA DIN Cell. DIN application form and attached supporting documents are scrutinized and if found in order, the provisional DIN is approved and activated in the system. If there is any defect in the DIN application, the provisional DIN is rejected. It takes about a week’s time to complete this process. DIN approval/rejection letter is generated and sent by post to the applicant. The status of application can also be tracked from the ‘DIN Approval status’ tab in the DIN corner.

**Step V. Intimate approved DIN to your Companies**

On approval of DIN, intimate your DIN to all the company(ies) (within a period of 30 days from the date of approval) in which you are a Director, in form DIN-2. Form DIN-2 can be downloaded and printed from the ‘DIN’ link on the homepage of MCA portal.
Step VI. Company to intimate your DIN to ROC

After the Director has intimated the DIN allotted to the company(ies), the Company(ies) is/are then required to intimate the DINs of its directors to the ROC in Form DIN-3 within a period of seven days of receiving form DIN-2.

Step VII. Post-approval changes in particulars of DIN-1

If there is any change in the particulars submitted in form DIN-1, File form DIN-4 for intimating the changes in the particulars within 30 days. For instance in the event of change of address of a director, he/she is required to intimate this change by submitting Form DIN-4 along with the required attested documents with MCA DIN Cell.

5. What things should be taken care of while filling form DIN-1?

No prefixes like Mr./Ms./Kumari/Shri etc should be used in filling the applicant’s name.

Enter the applicant’s name and father’s name in full and do not use abbreviations, even if the ID proof contains the name in abbreviated form. Abbreviations in the middle name may be accepted, if such abbreviated middle name is appearing in the enclosed identity proof.

The particulars filled in form DIN-1 should match with the details given in the supporting documents to be submitted along with DIN application. Any mis-match will lead to rejection of DIN application. Minor spelling deviations in the father’s name may be accepted, if such deviations do not materially impact the name.

6. Whether any fee is payable along with application for allotment of DIN?

Yes, DIN application fee of Rs. 100/- is payable w.e.f. 1st July, 2007.

7. How to make payment of DIN application fee?

Log in to MCA portal and click on ‘Pay Miscellaneous fee’ link under the Services tab. Select ‘DIN application fee’ option and enter the provisional DIN. Click submit button to make payment using any of the three modes of payment.

8. How to enquire about the status of the payment made for Form DIN-1?

Status of the payment made for Form DIN-1 can be enquired from ‘Track Payment Status’ link on the homepage of www.mca.gov.in.

9. What are the documents required to be filed for allotment of DIN?

— DIN Form-I (with provisional DIN generated) along with a high resolution photograph of the applicant and his signatures appended at the appropriate place;
— Proof of identity;
— Proof of residence;
— Certification of the photograph and the photocopies of proofs by an approved authority;
— The particulars of the certifying authority along with his seal must be clearly indicated.
10. What information should an ID proof contain?

ID proof must be currently valid and issued by the Central/State Government or Instrumentalities of state like PSUs, Public Sector Banks, Universities recognized under the UGC Act. It should contain following information:

— Applicant's name with photograph
— Father's Name
— Date of Birth

11. What things should be taken care of with regard to supporting documents?

Please ensure following before attaching supporting documents with DIN application:

— Documents submitted are currently valid and not expired.
— Documents issued by LIC may be enclosed as Date of Birth and Address proof.
— Bank Statements, Utility Bills like telephone, electricity bill etc furnished as residence proof are in the applicant's name only and not older than two months.
— All supporting documents attached with form DIN-1 must be duly attested by an authorized person/authority.

12. What things should be taken care of while attesting documents?

Attesting authority should indicate following while attesting documents:

— Signature
— Full name in capital letters
— Seal/Stamp containing name and designation of attesting authority
— Membership/Practicing certificate number (If the seal/stamp does not contain the membership/practicing certificate number, same may be recorded by hand.)

13. Address where application for allotment of regular DIN should be sent?

The Regional Director (Northern Region), PDIL Bhawan, Sector 1, Gautam Budh Nagar, NOIDA (UP),

or

MCA21 Post Box No. 3, NOIDA (U.P.), Pin 201 301

14. What is the validity period of provisional DIN generated on line by the applicant?

Sixty days from the date of generation of provisional DIN on-line.

15. Is the provisional DIN retained on approval?

Yes. The provisional DIN generated on-line is validated as a regular DIN after the process of scrutiny and approval.
16. How to apply for DIN as my name/my father’s name does not have a Last name?

The applicant may fill the first name of his/her father in the mandatory 'Last Name' field. An attested/notarized affidavit to this effect should also be submitted along with DIN application.

17. What are the additional information/documents required in case of a foreign national?

Details of a valid passport should be filled in form DIN-1 and a certified copy of same should be attached with DIN application. All supporting documents including photograph should be certified by the Indian Embassy or a notary in the home country of the applicant or by the Managing Director/CEO/Company Secretary of the company registered in India, in which applicant is a director.

18. What are the grounds for rejection of DIN application?

A provisional DIN is approved only after scrutiny of the documents attached with the application. Some of the common mistakes committed by applicants and on account of which the DIN application gets rejected are as under:- Non payment of DIN application fee.

- The DIN application fee is not paid

Non-submission of supporting documents
- The proof of identity of the applicant is not submitted.
- The proof of father’s name of the applicant is not submitted.
- The proof of date of birth of the applicant is not submitted.
- The proof of residential address of the applicant is not submitted.
- The Affidavit (for applicant or his/her father’s name being a single name) is not submitted.
- The copy of passport (for foreign nationals) is not submitted

Invalid Application/supporting Documents
- The supporting documents are invalid or expired.
- The proof of identity submitted has not been issued by a Government Agency.
- The application/enclosed evidence has handwritten entries.
- The submitted application is a duplicate DIN application and already one application of that applicant is pending or approved.
- The submitted application does not have photograph affixed.
- The signatures are not appended to the prescribed place.
- The applicant’s name filled in application form does not match with the name in the enclosed evidence.
- The applicant's father's name filled in application form does not match with the father's name in the enclosed evidence.
— The applicant’s date (DD/MM/YY) of birth filled in application form does not match with the date of birth in the enclosed evidence.
— The address details filled in the application do not match with those contained in the enclosed supporting evidence.
— The prefixes/suffixes like Mr./Ms./Kumari/Shri/Late/Ji etc. are used in the applicant’s name or applicant’s father’s name field in Form DIN-1.
— The gender is not entered correctly in Form DIN-1.
— Identification number entered in application does not match with the identity proof enclosed.
— The application does not contain the valid Service Request Number (SRN) through which the DIN application fee is paid.

Improper Attestation of documents
— The attesting authority has not put his signature.
— The documents have not been attested by authorized person.
— Applicant’s photograph has not been attested by an authorized person.
— The proof of identity has not been attested by an authorized person.
— The proof of father’s name has not been attested by an authorized person.
— The proof of date of birth of the applicant has not been attested by an authorized person.
— The proof of residential address has not been attested by an authorized person.
— The particulars of the attesting authority are incomplete (e.g. professional’s name, designation, membership number, stamp/seal).

19. My DIN application has been rejected. Am I required to obtain a fresh provisional DIN?

No. If the DIN application is rejected due to following reasons, you can submit additional documents for rectifying you DIN application, within a period of 60 days.
— Proof of Identity/residence is not enclosed or expired.
— Proof of Date of Birth is not enclosed.
— Supporting documents are not properly attested
— Non-submission of affidavit (if required).

On removal of reason for rejection, same DIN will be approved.

In case your DIN application is rejected for some other reason, please obtain a fresh provisional DIN and send a new DIN application to MCA DIN Cell.

20. What is the validity of regular DIN (say one year or two years)?

A regular DIN allotted by Regional Director (NR) NOIDA is valid for the Life-time of the individual and shall not be allotted to any other person during his life time.
21. Within what period a director is required to intimate the DIN to the company and is there any form prescribed for this?

Within 30 days from the date of receipt of DIN from Regional Director (NR) NOIDA. The prescribed form is DIN 2 which is available on MCA portal free of charge.

22. Whether DIN allotted prior to 1st November 2006 will also be taken as a valid DIN?

The DIN generated on-line is a provisional DIN and remains valid only for a period of 60 days during which period the person is required to submit his application for allotment of a regular DIN. If the application for a regular DIN is not made within a period of 60 days, the provisional DIN becomes invalid. However, once a regular DIN is allotted, it remains valid for the life-time of an individual.

23. Whether company or director himself is required to intimate ROC about allotment of DIN?

Only company is required to intimate DIN of its Directors to the ROC in Form DIN-3. Director is required to inform the company concerned in which he is director within 30 days of receipt of regular DIN from Central Govt.

24. Is there any last date fixed at present for filing DIN-2 and DIN-3?

Rules for allotment of DIN have been notified on 19th October 2006 and made effective from 01st November 2006 requiring Director to intimate his DIN (Form DIN-2) to the Company within a period of 30 days from the date of receipt of DIN from RD(NR) NOIDA. Company is required to file DIN-3 with Registrar of Companies within 7 days from the date of receipt of DIN-2 from its director(s). Directors who have obtained DIN prior to notification of rules, are required to intimate the company their DIN in Form DIN-2 within 30 days from the date of notification of DIN Rules (i.e. 01st November 2006) and company is required to file the said intimation with ROC in next 7 days.

25. Whether DIN-2 is required to be filed along with DIN-3 in original?

Yes (Scanned copy of original). In case the Director has not received the letter, he/she can get a print-out of status from MCA portal and attach.

26. Whether DIN Allotment letter issued by MCA is also required to be filed along with DIN-3 with ROC?

Yes, it is an attachment to form DIN-2.

27. DIN-2 is to be given within 30 days of receipt of intimation regarding approval of DIN. In this case what will be the date of approval because in many cases DINs have been approved but no intimation has been received so far.

In such cases time will start from the date of receipt of DIN from Central Government.

28. Whether DIN 2 can be given without receipt of intimation from MCA DIN Cell.

No. DIN 2 can only be given on receipt of intimation from Central Government.
29. Is there any filing fee for form DIN-3?

Yes, filing fee as prescribed under Schedule X of companies Act, 1956 is payable w.e.f. 1st July, 2007 with additional fee, if applicable.

30. In some cases, DIN of directors of a company have been taken at different times. In such cases can a company file DIN 3 separately for each director?

Yes. DIN-3 can be filed multiple times as it is required to be filed within seven days from the receipt of intimation from director. However, the company must mention the total number of Directors on its Board and the number of Directors in respect of whom the DIN is being filed. The DIN-3 filed in respect of Directors once should not be reiterated in the subsequent filings of DIN-3.

31. What procedure has to be followed, if there is any change in particulars of Director?

Director is required to fill up form DIN-4 with in a period of 30 days of such changes and intimate the Regional Director (NR) NOIDA as well as to the company(ies) in which he is a director. The requested change is taken into the system on verification of the proof enclosed with the application for change request.

32. What are the penal provisions for non compliance of provisions of the Act and rules?

Section 266G of the Companies Act, 1956 (Amended vide Companies (Amendment) Act, 2006) provides for penalty for default relating to non-compliance of section 266A or 266C or 266D or 266E of the Act. The penalty is in the form of a fine which may extend to Rs 5000/- and where the contravention is a continuing one, with further fine which may extend to Rs 500/- for every day after the first during which the contravention continues.

33. How long form DIN-3 is required to be filed?

In case of directors, managers or secretaries appointed till 30th June, 2007, filing of form DIN-3 is mandatory. However, for appointments made on or after 1st July, 2007, form DIN-3 is not required to be filed.

34. Whether form DIN-3 is also required to be filed in case of newly incorporated companies?

Yes, companies incorporated till 30th June, 2007 are required to file form DIN-3. However in case of companies incorporated on or after 1st July, 2007, form DIN-3 is not required to be filed.

35. Whether provisional DIN can be used for e-filing?

No, from 1st July

DIGITAL SIGNATURE CERTIFICATE

1. What is a Digital Signature Certificate?

Digital Signature Certificates (DSC) are the digital equivalent (that is electronic
format) of physical or paper certificates. Examples of physical certificates are drivers' licenses, passports or membership cards. Certificates serve as proof of identity of an individual for a certain purpose; for example, a driver's license identifies someone who can legally drive in a particular country. Likewise, a digital certificate can be presented electronically to prove your identity, to access information or services on the Internet or to sign certain documents digitally.

2. Why is Digital Signature Certificate (DSC) required?

Like physical documents are signed manually, electronic documents, for example e-forms are required to be signed digitally using a Digital Signature Certificate.

3. Who issues the Digital Signature Certificate?

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 IT-Act 2000.

The list of licensed CAs along with their contact information is available on the MCA portal (www.mca.gov.in).

4. What are the different types of Digital Signature Certificates valid for MCA21 program?

The different types of Digital Signature Certificates are: Class 2: Here, the identity of a person is verified against a trusted, pre-verified database.

Class 3: This is the highest level where the person needs to present himself or herself in front of a Registration Authority (RA) and prove his/her identity.

5. What type of Digital Signature Certificate (DSC) is to be obtained for eFiling on the MCA Portal?

DSC of Class 2 and Class 3 category issued by a licensed Certifying Authority (CA) needs to be obtained for efiling on the MCA Portal.

6. Is Director Identification Number (DIN) a pre-requisite to apply for DSC?

No.

7. What is the cost of obtaining a Digital Signature Certificate?

The cost of obtaining a digital signature certificate may vary as there are many entities issuing DSCs and their charges may differ.

8. How much time do CAs take to issue a DSC?

The time taken by CAs to issue a DSC may vary from three to seven days.

9. What is the validity period of a Digital Signature Certificate?

The Certifying Authorities are authorized to issue a Digital Signature Certificate with a validity of one or two years.
10. What is the legal status of a Digital Signature?

Digital Signatures are legally admissible in a Court of Law, as provided under the provisions of IT.

• After coming into force of e-governance initiative (i.e. MCA-21) of Ministry of Corporate Affairs, all the documents under the Companies Act, which were being filed physically shall be filed, on-line using the MCA portal.
• Important features under electronic filing are Director Identification Number, Corporate Identity Number, Digital Signature Certificate, Role Check and Service Request Number.
• MCA-21 system provides for the facility for payment of statutory fee through various modes like Internet Banking and Credits Cards etc. which are absolutely safe methods of payment. For electronic filing of e-forms, one needs to have a proper infrastructure supporting e-filing of documents.
• For e-filing of forms, one needs to log on to MCA portal and download the e-form required. After downloading the e-form, one should go through the instructions given for e-filing carefully.
• An e-form is an electronic form equivalent of the physical form.

SELF-TEST QUESTIONS

1. Explain the terms CIN and GLN.
2. What are the key benefits of MCA-21 project?
3. Write short notes on the following:
   (a) e-filing
   (b) e-form
   (c) DSC
   (d) SRN
(e) Role Check
(f) Re-submission
(g) STP forms.

4. Explain e-filing process and general structure of an e-form.
5. Write short note on ‘Rectification of mistakes’.

Suggested Readings:
(1) Guide to filing e-company—*Taxmann forms*
(2) E-filing of Forms and Returns—*D.K. Jain*
(3) Referencer on MCA-21—*ICSI’s Publication*
1. CHOICE OF FORM OF BUSINESS ENTITY

Selecting the form of business entity is one of the most significant decisions when starting a business. This is a decision which is required to be revisited periodically as the business develops. There are options for conversions and reconversions, as and when it seems appropriate. The choice amongst the various forms of business entities depends upon many aspects like objects of the proposed business, likely number of members, amount to be invested, advantages of one form of business on 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, partnerships 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 can 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, all members of HUF conduct business jointly under the control of the head of the family who is known as ‘Karta’. ‘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 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.

By virtue of Companies (Amendment) Act, 2002 effective from 6th February, 2003, a new Part IXA has been added to the Companies Act, 1956 in connection with ‘Producer Companies’, the incorporation of which has now become possible under the provisions of the Act. This part of the Act deals with the corporatisation of cooperative societies.

(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 very large and the risks need to be spread among a larger number of persons.

Forming a choice

Though there are a number of 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 trading is generally the object. Distinction between a limited company from a partnership firm, a Hindu Joint family business and a registered society has been discussed in detail in the study of Company Law of Module II of Executive Programme. It has also covered advantages and disadvantages of corporate form of business at length. Taking into account the requirement of the individual case and all the aspects of the various forms of Business entities, the decision of the right type of business entity should be taken.

2. 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, a “company means a company formed and registered under the Companies Act, 1956 or under the previous laws relating to companies” [Section 3(1)(ii)]. In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Companies Act, 1956 (the Act), in respect of registration, form an incorporated company, with or without limited liability [Section 12 of the Act].
Thus, Section 12 stipulates existence of the following ingredients for the incorporation of a company:

(i) Promoters of the company—at least seven in the case of a public company and at least two in the case of a private company;

(ii) Lawful purpose for which they should associate themselves;

(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, 1956 in respect of registration of the company.

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 or such higher paid-up capital as may be prescribed.

**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 execute the idea into a reality. They broach 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, 1956 in respect of registration of the company.

The Companies Act does not define the expression “promoter”. It is referred to in sub-section (6) of Section 62 of the Act. However, it is restricted to and is meant only for the purposes of a prospectus. It states that the expression “promoter means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.”

3. **PROCEDURE FOR INCORPORATION OF PUBLIC LIMITED COMPANY HAVING SHARE CAPITAL**

The following procedural steps are required to be taken by the promoters for the incorporation of a public limited company:

(1) **Selecting Name of the Company and Ascertaining its availability from ROC**

Promoters are required to select at least six names 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 e-form 1A as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, for the purpose, along with the prescribed application fee of Rs. 500/-. (For specimen of e-form No. 1A, application form for availability or change of names, please see Part B of this Study).

While applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect
that:

(i) 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.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) 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;

(iv) 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.

(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) he has gone through all the prescribed guidelines, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vii) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

There is an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that 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) approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.

Where e-form 1A has been certified by the professional, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.

The professional shall be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes in case of non-compliance with these guidelines.

Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

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.
Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

The Relevant Part of Name Availability Guidelines, 2011 is given at Annexure I at the end of Study.

(3) 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. A public company limited by shares need not necessarily prepare and get its articles of association registered along with its memorandum of association. In such a case, Table "A" of Schedule I to the Companies Act, 1956 shall apply. However, as a matter of practice, every company gets the articles prepared to suit its individual requirements, and registered along with the memorandum of association.

Before getting the memorandum and articles printed, it is advisable to have their drafts vetted by the concerned Registrar of Companies to avoid unnecessary expenditure of time and money in getting them printed and reprinted after incorporating modifications etc. that may be suggested by the Registrar. This would be specially desirable where promoters have no prior experience of company formation. After the vetting by Registrar, the memorandum and articles may be printed as required by Section 15 of the Act.

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.

(4) Stamping and Signing of Memorandum and Articles

The memorandum and articles should be got printed and stamped by the appropriate State Authority (Collector of Stamps) under the Indian Stamp Act. Thereafter, the memorandum and the articles should be signed by at least seven subscribers.

Each subscriber to the memorandum shall write in his/her own hand, his/her father/husband’s name, occupation, address and the number of shares subscribed for by him/her. The signatures of all the subscribers shall also be witnessed. The witness shall also sign and write in his own hand, his name, his father’s name, occupation and address.

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.
W.e.f. 1.04.2010 companies are required to make payment of stamp duty electronically in respect of those states which have authorised Central Govt. to collect stamp duty on their behalf.

(5) Dating of Memorandum and Articles of Association

The memorandum and articles are then dated, but the date must be a 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.

(6) Filing of Documents and Forms for Registration

e-form 1 is required to be filed as an application and declaration for incorporation of a company having Memorandum, Articles of Association, details of subscribers as attachments.

The following forms and documents, which are prescribed under the Companies Act, 1956 and the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006 are required to be prepared, signed and filed with the concerned Registrar of Companies for the purpose of getting the company incorporated:

Forms

(i) e-form 1 - Application and declaration for incorporation of a company filed pursuant to sections 33(1) and (2) of the Companies Act, 1956, containing the Service request number of form 1A (application for availability of name), Name of Company, Name of State in which company is to be registered, name of office of registrar, Capital Structure, details of number of members, main division of industrial activity of the company details of promoters, particulars of payment of stamp duty, Memorandum and articles of association (as attachments), details of subscribers (as attachment) along with the following declaration:

I ………., Son/daughter/wife of ……..do solemnly declare as under:

(i) That I am
— An advocate of the Supreme Court or a High Court who is engaged in the formation of the company; or
— An attorney or pleader entitled to appear before a high court who is engaged in the formation of the company; or
— A company secretary (in whole-time practice) in India who is engaged in the formation of the company; or
— A chartered accountant (in whole-time practice) in India who is engaged in the formation of the company; or
— A person named in the articles as a director, manager or secretary of
the company.

(ii) And I, further declare that the particulars given above are true to the best of my knowledge and belief;

(iii) Form 18 and 32 are also being filed simultaneously;

(iv) I further confirm that I am duly authorised to submit this application; and that all the particulars mentioned above are as provided in the articles of association as subscribed by the subscribers of the company;

(v) That all the requirements of the Companies Act, 1956 and rules there under in respect of all the matters precedent in the registration of the company and incidental thereto have been complied with and I make this solemn declaration conscientiously believing the same to be true;

(vi) That the company has paid correct stamp duty as per applicable Stamp Act.

(vii) That the subscribers have given declaration of details of his/her conviction by any court for any offence involving moral turpitude or economic or criminal offences or for any offences in connection with the promotion, formation or management of a company.

(viii) That the subscribers have given declaration that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other court.

(ii) e-form 18 relating to notice of situation or change of situation of Registered office filed pursuant to Section 146 of the Companies Act, 1956 contains notice of situation or of the change in situation of registered office of the company. This form is pre certified by any one of these professionals - company secretary or chartered accountant or cost accountant (in whole-time practice). (For specimen of e-form 18, notice of situation/change of situation of registered office, see Part B of this study).

(iii) e-form 32 filed pursuant to Section 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act. containing prescribed particulars of directors including managing/whole-time director/manager/secretary, if any and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares. E-Form 32 is also required to be pre-certified by company secretary or chartered accountant or cost accountant (in whole-time practice).

A written signed consent on a plain paper of every person who is being appointed as a director are also required to be attached with the e-form 32. [Prior to MCA21 regime, the consent to act as director was being given separately in Form No. 29]. (For specimen of e-form 32, see Part B of this study).

It is important to note that every person who is to be appointed as director must have “Director’s Identification Number (DIN)”. If the proposed director does not already have a DIN, he/she must obtain the same before filling up the e-form
32. This can be obtained by making an application on the MCA portal in form DIN-1.

**Documents**

(i) A physical copy of the printed memorandum and articles of association duly stamped, signed and dated is to be sent separately with ROC. It may be noted that in the case of a public limited company, registration of articles of association with the Registrar is optional, but in the case of a private limited company, registration of articles of association with the Registrar is compulsory [Refer Section 3(1)(iii)] of the Companies Act, 1956.

(ii) Any agreement that the company on incorporation proposes to enter into with any person for appointment as its managing director or whole-time director or manager, as an attachment (optional) with e-form 1.

(iii) General power of attorney on a non-judicial stamp paper of the appropriate value as applicable in the state signed by all the subscribers, in favour of one of them or any other person, for making alterations etc.; on their behalf, in the memorandum and articles of association and other documents/forms filed with the Registrar of Companies, if suggested by the Registrar. (Please see the Specimen at Annexure XVII).

(7) Pre-Certification

Form 18 and 32 are required to be pre-certified by a company secretary or chartered accountant or cost accountant in whole-time practice.

(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 Schedule X to the Companies Act, 1956. (Schedule X is given at Annexure II at the end of this study).

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 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, 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 No. If the Registrar finds any defect or deficiency in any of the documents or forms, the attorney will be called by a communication to visit his office to remove the defect or make up the deficiency, whereafter 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 through post. One may also take printout of the Certificate of Incorporation generated online. The date given by the Registrar in the Certificate of Incorporation will 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. (For specimen of Certificate of Incorporation, please see Annexure III at the end of this study).

(12) Certificate of Commencement of Business

On registration, a public company can’t commence business so long it does not obtain Certificate of Commencement of Business.

4. PROCEDURE FOR INCORPORATION OF PRIVATE LIMITED COMPANY HAVING SHARE CAPITAL

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

(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.

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

(iv) The provisions of Section 3(1)(iii) of the Companies Act, 1956 should be included while drawing up the memorandum and articles of association of a private limited company.

5. PROCEDURE FOR INCORPORATION OF COMPANY LIMITED BY GUARANTEE

A company having the liability of its members limited by the memorandum of association to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up, is known as company limited by guarantee.

The procedure for incorporation of a company limited by guarantee is the same as 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.
According to sub-section (2) of Section 13 of the Companies Act, 1956, the memorandum of association of a company limited by guarantee must state that the liability of its members is limited. The memorandum of association of a company limited by guarantee must also state that every member of the company undertakes to contribute 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 of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, not exceeding specified amount. [Refer to Sub-section (3) of Section 13 of the Companies Act, 1956].

Sub-section (2) of Section 27 of the Act lays down that the articles of a company limited by guarantee shall state the number of members with which the company is to be registered.

Section 37 (1) of the Act prohibits a company limited by guarantee and not having a share capital from inserting any provision in its memorandum or articles or in any resolution purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member.

Sub-section (2) of section 37 lays down that in the case of a company limited by guarantee, every provision in its memorandum or articles or in any resolution purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

In the memorandum of association of a guarantee company, however, a clause stating the amount of guarantee shall have to be inserted in addition to the other necessary conditions. Similarly, in the articles of association of such a company, an article stating the number of members with which the company is proposed to be registered must be included.

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**

   Make an application to the concerned Registrar of Companies in e-form 1A as
prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, for the purpose and also pay the prescribed application fee of Rs.500/- along with the application.

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.

Select at least six names. The names of the proposed company are to be given in e-form 1A in order of the promoters’ preference so that if the first name is not available, the Registrar may consider the second name and if the second name is also not available, the Registrar may consider the third name and the fourth name, so that time in referring back and forth, may be saved. The proposed names should not be identical with, or too closely resemble, the names by which a company in existence has been previously registered.

Before selecting the names, the promoters may be well advised to refer to the guiding instructions prescribed by Ministry of Corporate Affairs for making a name available for registration. It must also be ensured that the proposed names do not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950.

(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.

If the company does not propose to have a share capital and it is to be incorporated as a public company, Table C in Schedule I to the Act has to be taken into consideration while drafting the memorandum and articles of association. If the company proposes to have a share capital and it is to be incorporated as a public company, Table D in Schedule I to the Act has to be taken into consideration while drafting its memorandum and articles of association.

Before getting the memorandum and articles printed, it is advisable to have their drafts vetted by the Registrar of Companies to save time, money and effort.

(4) Stamping and Signing of Memorandum and Articles

Get the memorandum and articles stamped by the appropriate State authority (Collector of Stamps) under the Indian Stamp Act.

After being stamped, get the memorandum and articles signed by at least two subscribers in the case of a private company and by at least seven subscribers in the case of a public company. Each subscriber shall write in his/her own hand, his/her name, his/her father/husband’s name, occupation, address and the number of shares subscribed for by him/her, if the company has a share capital. At least one person shall witness the signatures of all the subscribers. The witness shall also sign and write in his/her own hand, his/her name, his/her father’s name, occupation and address.
Under the system of MCA21, payment of Stamp Duty through the portal of the Ministry of Corporate Affairs (MCA) is established in 24 states. This facility is in such states where system of payment of Stamp duty through the MCA portal is agreed to by the State Governments. For the remaining states, the MOA and the AOA are required to be printed, stamped and physically signed by all subscribers and submitted physically at ROC office. A scanned copy of the duly stamped and executed MOA and the AOA is also required to be attached with e-form 1 and submitted electronically.

(5) Dating of Memorandum and Articles

Thereafter the memorandum and articles will be dated. This date must be a 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

Forms:

File the following forms with the concerned Registrar of Companies which are prescribed under the Companies Act, 1956 and the Companies (Central Government’s) General Rules and Forms, 1956:

(i) e-form 18 containing notice of situation or change in situation of registered office of the company. (For specimen of e-form 18, notice of situation/change of situation of registered office, see Part B of this study).

(ii) e-from 32 containing prescribed particulars of directors including managing/whole-time director/manager/secretary, if any and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares. e-form 32 is also required to be pre certified by company secretary or chartered accountant or cost accountant (in whole-time practice). (For specimen of e-form 32, particulars of appointment of directors and manager and changes among them, see Part B of this study).

(iii) A statutory declaration in e-form 1 as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, executed by an advocate of the Supreme Court or of a High Court, an attorney or a pleader entitled to appear before a High Court, or a secretary, or a chartered accountant in whole-time practice in India, who is engaged in the formation of the company, or by a person named in the articles as a director, manager, or secretary of the company, that all the requirements of the Act and the rules thereunder have been complied with in respect of registration of the company and matters precedent and incidental thereto [Refer Section 33 (2)].

The original duly filled in and signed e-form 1 on stamp paper is required to be sent to concerned ROC office simultaneously, failing which the filing will not be considered and legal action will be taken. (For specimen of e-form 1, declaration of compliance with the requirements of the Companies Act, 1956, on application for registration of a company, see Part B of this study).
Documents:

Prepare, get signed and file the following documents with the Registrar of Companies for getting the proposed company registered, by way of e-filing:

(i) Stamped, signed and dated copy of the memorandum of association;
(ii) Stamped, signed and dated copy of the articles of association;
(iii) Any agreement, that the company on incorporation proposes to enter into with any person, for appointment as its managing director or whole-time director or manager.
(iv) General power of attorney on a non-judicial stamp paper of the appropriate value as applicable in the State, signed by all the subscribers, in favour of one of them or any other person, for making alterations etc., on their behalf, in the memorandum and articles of association and other documents/forms filed with the Registrar of Companies, if suggested by the Registrar.
(v) Copy of e-form 1A and name approval letter obtained from MCA. If name approval letter is not received then, Service Request Number of e-form 1A filed with the Registrar of Companies.

In case of documents which are required to be filed on non-judicial stamp paper/stamped documents, the company shall submit such documents accordingly in the physical form, in addition to their submission in electronic form.

(7) Registration and Filing Fee

Along with the above-detailed documents and Forms, pay the registration fee and filing fee for documents and forms as per the rates prescribed in Schedule X to the Companies Act, 1956.

The fees is to be paid electronically as per the mode of payment discussed earlier.

(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 No. If the Registrar finds any defect or deficiency in any of the documents or forms, he will call the attorney by a communication to visit his office and remove the defects or make up the deficiency.

Thereafter, 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 through post to the company concerned.

One may take printout of Certificate of Incorporation which is generated online.
The date given by the Registrar in the Certificate of Incorporation will 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.

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

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 25 of the Companies Act, 1956 and regulations 3 to 6 and 10 to 14 of the Companies Regulations, 1956 made by the Central Government under sections 25 (1) and 609 (2) of the Act.

Pursuant to the provisions of Section 25 (1) and the Regulations, 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 25 of the Companies Act, 1956 and for getting it registered under the Act:

1. To select at least six names in order of their preference, for obtaining availability of one of those names for adoption for 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 shall be in e-Form No. 1A as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006 and shall be accompanied by a fee of Rs. 500/- to be paid electronically.

3. Rule 4-A of the said Rules advises the Registrar of Companies to furnish the required information to the applicants, ordinarily within three days of the receipt of the application.

4. On receipt of name availability from the Registrar of Companies, to get the memorandum and articles of association for the proposed company suitably drafted. The memorandum shall be in the form specified in Annexure I to the Companies Regulations, 1956, or in a form as near thereto as the circumstances admit. Before getting these documents printed, it is advisable to have their drafts informally vetted by the Regional Director, Department of Company Affairs, at Mumbai, Kolkata, Noida or Chennai, in whose region the registered office of the proposed company is to be situated.

5. To make an application to the Regional Director, for the grant of a Licence under Section 25 of the Companies Act, 1956 in e-form 24A (Refer Regulation 3 of Companies Regulations, 1956).

Along with e-form 24A, in case of new association, for issue of licence u/s 25, the following documents are also required to be attached:

- Memorandum of association (MoA)
- Article of association (AoA)
- Declaration as per annexure of Companies Regulation Act, 1956
— Future annual income and expenditure estimates
— Assets and liabilities statement with their estimated value as on seven
days before making the application
— Declaration by advocate of Supreme Court or High Court, attorney or
pleader entitled to appear before a High Court, or a company secretary
or chartered accountant in whole time practice that the MoA and AoA
have been drawn in conformity with provisions of the Act
— Details of the promoters and of the proposed directors of the company
— A list of the names, addresses, descriptions and occupations of its
directors and of its managers or secretary, if any, together with the
names of companies, associations and other institutions, in which the
directors of the applicant company are directors or hold responsible
positions, if any, with the descriptions of the positions so held
— If association is already in existence, then last two years’ accounts,
balance sheet and report on working of the association as submitted to
the members of the association
— Statement of brief description of the work, if already done by the
association and the work proposed to be done
— Statement of the grounds on which application is made
— If any of the above documents not in English or Hindi, then a translation
of such document in English or Hindi
— Copy of agreement containing particulars of contract
— Copy of ordinary resolution
— Copy of board resolution
— Optional attachment(s) – if any

6. According to Section 25 of the Act, the applicants have to prove to the
satisfaction of the Regional Director that an association is already in
existence or is about to be formed as a limited company for promoting
commerce, art, science, religion, charity or any other useful object and that
the association intends to apply its profits, if any, or other income, for
promoting its objects and it prohibits the distribution of any dividend to its
members.

7. As required by regulation 4 of the said Regulations, the application to the
Regional Director shall be accompanied by the following attachments,
namely:

(i) the memorandum and articles of association of the proposed company;
(ii) a declaration on non-judicial Stamp Paper of the prescribed value (also
required to be submitted physically at the concerned regional director
office simultaneously of filing as attachment with application) by an
advocate of the Supreme Court, or of a High Court, an attorney or a
pleader authorised to appear before a High Court or a Secretary, or a
Chartered Accountant, in whole-time practice in India, to the effect that
the Memorandum and Articles of Association have been drawn up in
conformity with the provisions of the Act and that all the requirements of
the Act and the Rules made thereunder have been duly complied with in
respect of registration or matters incidental or supplemental thereto;

(iii) a list of the names, descriptions, addresses and occupations of the promoters (where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed Board of directors, managers or secretary together with the names of companies, associations and other institutions, in which such promoters, partners and members of the proposed Board of directors are directors or hold responsible positions, if any, with descriptions of the positions so held;

(iv) an estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure;

(v) a statement giving a brief description of the work, if any, already done by the association and of work proposed to be done by it after registration in pursuance of Section 25 of the Act;

(vi) a statement specifying briefly the grounds on which the application is made; and

(vii) a declaration on non-judicial Stamp Paper of the prescribed value (also required to be submitted physically at the concerned regional director office simultaneously of filing as attachment with application) by each of the persons making the application, in the Form set out in Annexure V to the Companies Regulations, 1956 or in a form as near thereto as the circumstances admit; and

(viii) a receipted treasury challan or any other electronic mode of payment as discussed earlier evidencing that the necessary fees has been deposited.

8. Regulation 9 of the said Regulations lays down that if any of the above-mentioned documents is not in English or in Hindi, a translation thereof either in English or in Hindi, certified to be correct by any director of the proposed company, shall be furnished to the Regional Director together with the documents.

9. Regulation 10 makes it mandatory that simultaneously with the application made to the Regional Director, the applicants shall furnish to the Registrar of Companies of the State in which the registered office of the proposed company or the company is to be or is situate, a copy of the application, and of each of the documents and translations annexed to the application.

10. Pursuant to Regulation 11 of the said Regulations, the applicants shall, within a week from the date of making the application to the Regional Director, publish at their own expense, a notice of the application made to the Regional director and a certified copy of that notice as published, shall be sent forthwith to the Regional Director.

11. The aforesaid notice shall be in the form set out in Annexure II to the said Regulations or in a form as near thereto as circumstances admit and shall be published at least once in a newspaper in a principal language of the district in which the registered office of the proposed company or the company is to be situate or is situate, and circulating in that district, and at least once in an English newspaper circulating in that district.
12. The Regional Director shall, after considering the objections, if any, received by it from the Registrar of Companies or from any other person in response to the published notice, within the time fixed therefor in the notice aforesaid, and after consulting any authority, Department or Ministry, as it may, in its discretion, decide, determine whether the licence should or should not be granted. (Regulation 12)

13. The Regional Director may direct the company to insert in its memorandum, or in its articles, or partly in the one and partly in the other, such conditions of the licence as may be specified by the Regional Director in this behalf. (Regulation 14)

14. The said Regulations permit a company, in respect of which a licence has been issued under Section 25 of the Companies Act, to amend its memorandum of association in accordance with law so as to enable the company to pay in good faith, with the previous approval of the Central Government, reasonable and proper remuneration to any of its members in return for any services, actually rendered to it, not as a member, and thereupon the licence issued to the said company shall stand modified accordingly.

15. On receipt of the copy of the application, the Registrar of Companies gets the application and the accompanying documents thoroughly scrutinised in his office to ensure that they are in conformity with the relevant provisions of the Act and the Regulations.

16. The Registrar of Companies may list out modifications, that he considers necessary in the draft Memorandum of Association and Articles of Association and forward the same to the Regional director. He may also recommend to the Regional director about the grant of the licence or otherwise of the proposed company based on his knowledge of the promoters of the proposed company.

17. The Registrar may also report to the Regional director whether there is any other company in existence with similar objects in or near the place where the registered office of the proposed company will be situated and whether the issue of a licence to the proposed company is really necessary.

18. The Regional Director may, suo moto, make a reference to the District Magistrate or the State Government and the public at large, and invite their objections, if any, to the issue of a licence to the proposed company.

19. Having received the views of the Registrar, the State Government and also objections from the public, if any, the Regional Director takes a decision whether or not the Licence, applied for, should be granted.

20. To publish a notice in the form set out in Annexure II of the Companies Regulations, 1956 or in the form as near thereto as circumstances admit, in the principal language of the district in which the Registered Office of the proposed company is to be situated and circulating in that district, and at least once in an English newspaper circulating in that district.

21. The Regional Director, being satisfied on all accounts, may, by a licence, direct that the association may be registered as a company with limited liability without the addition to its name, the word “Limited” or the words “Private Limited” [Sub-section (1) of Section 25].
22. The Regional director may also direct the company to insert in its memorandum or articles or partly in the one and partly in the other, such conditions of the Licence as may be specified by him in that behalf. The association may there upon be registered accordingly and on registration shall enjoy all the privileges and be subject to the provisions of the Act and shall also be subject to the obligations of limited companies.

23. After obtaining the Licence, to get the memorandum and articles, as approved by the Regional Director, printed and to ensure that the conditions of the Licence as directed by the Regional Director are incorporated therein.

24. File the following documents electronically with the Registrar of Companies for getting the proposed company registered:
   (a) Stamped copy of the memorandum and articles of association. It shall be printed and divided into paragraphs numbered consecutively and shall be signed by each subscriber, who shall add, his address, description and occupation, if any in the presence of at least one witness, who shall also sign and shall likewise add his address, description and occupation, if any (Section 15 of the Companies Act, 1956) (also required to be submitted physically at ROC simultaneously while filing electronically);
   (b) Stamped and signed copy of the Articles of Association (also required to be submitted physically at ROC simultaneously while filing electronically);
   (c) e-form 1 duly executed (also required to be submitted physically at ROC simultaneously while filing electronically);
   (d) e-form 18 (This form may be filed within thirty days of the incorporation);
   (e) e-from 32 (This form may also be filed within thirty days of incorporation);
   (f) Any agreement that the company on incorporation proposes to enter into with any person for appointment as its managing director or whole-time director or manager;
   (g) Copy of e-form 1A and name availability letter obtained from ROC;
   (h) Power of attorney on a non-judicial Stamp Paper of the requisite value signed and executed by all the subscribers in favour of one of them or any other person for making necessary corrections, on their behalf, in the memorandum and articles and other papers filed with the Registrar of Companies.

25. Along with the above-detailed documents, to pay the documents filing fee as per the rates prescribed in Schedule X to the Companies Act, 1956 and as per the mode of payment discussed earlier.

26. The Registrar of Companies will thereupon scrutinise the documents filed for registration and if they are found in order (in the event of there being any defect, the joint attorney will be called by a communication to visit the Registrar’s Office to remove the defect), the Registrar will register the company and allot CIN.

27. A Certificate of Incorporation will be issued by the Registrar under his hand and Seal of his Office and sent to the company through post. A printout may
be taken of the online generated Certificate of Incorporation. The date given by the Registrar in the Certificate will 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.

7. PROCEDURE FOR INCORPORATION OF EXISTING ASSOCIATION AS LIMITED COMPANY WITHOUT ADDITION TO NAME THE WORDS “LIMITED” OR “PRIVATE LIMITED”

As mentioned earlier the issue of licence and incorporation of companies with limited liability without the addition to its name of the word “Limited” or the words “Private Limited” are regulated by Section 25 of the Companies Act, 1956 and regulations 3 to 6 and 10 to 14 of the Companies Regulations, 1956.

Regulation 3 of the Companies Regulations, 1956, lays down that any association (hereinafter referred to as “the association” or as “the proposed company”), which is 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 make an application in writing to the Registrar of Companies at Mumbai/Kolkata/ Noida/Chennai for a licence under Section 25 of the Companies Act, 1956.

According to regulation 4 of the said Regulations, the application shall be accompanied by the following documents, namely,

(i) the Memorandum and Articles of Association of the proposed company;

(ii) a declaration on non-judicial Stamp Paper of the prescribed (also required to be submitted physically at the concerned regional director office simultaneously of filing as attachment with application) value by an advocate of the Supreme Court, or of a High Court, an attorney or a pleader authorised to appear before a High Court or a Secretary, or a Chartered Accountant, in whole-time practice in India, to the effect that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the Rules made thereunder have been duly complied with in respect of registration and matters incidental or supplemental thereto;

(iii) a list of the names, descriptions, addresses and occupations of the promoters (where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed Board of directors, together with the names of companies, associations and other institutions, in which such promoters, partners and members of the proposed Board of directors are directors or hold responsible positions, if any, with descriptions of the positions so held;

(iv) as the association is one which is already in existence, the following documents submitted by the management thereof to its members, for each of the two complete financial years immediately preceding the date of the application, or where the association has functioned only for one such financial year, for such year:

(a) the accounts;

(b) the balance sheets; and
(c) the reports on the working of the association as submitted to the members of the association;

(v) a statement showing in detail the assets (with estimated value thereof) and the liabilities of the association, as on the date of the application or within seven days of that date;

(vi) an estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure;

(vii) a statement giving a brief description of the work, if any, already done by the association and of work proposed to be done by it after registration in pursuance of Section 25;

(viii) a statement specifying briefly the grounds on which the application is made; and

(ix) a declaration on non-judicial stamp paper of the prescribed value (also required to be submitted physically at the concerned regional director office simultaneously of filing as attachment with application) by each of the persons making the application, in the form set out in Annexure V to the Companies Regulations, 1956 or in a form as near thereto as the circumstances admit.

(x) Treasury challan or any other electronic mode of payment showing payment of the fee.

If any of the aforesaid documents in (i) to (ix) is not in English or in Hindi, a translation of that document in English or in Hindi certified to be correct by any promoter or proposed director, or in the case of an association which is already in existence, by any member of its executive or governing body, shall be furnished to the Regional Director together with the document.

Form of Memorandum of Association of the Proposed Company

The memorandum of association of the proposed company shall be in the form specified in Annexure 1 to the said Regulations, or in a form as near thereto as circumstances admit.

Furnishing of Copy of Application to Registrar

Regulation 10 of the said Regulations lays down that simultaneously with the application made as above, the applicants shall furnish to the Registrar of Companies of the State in which the registered office of the proposed company is to be situated, a copy of the application and of each of the documents and translations.

Publication of Notice of Application

Regulation 11 of the said Regulations require that the applicants shall, within a week from the date of making the application to the Regional Director, publish a notice of the application made to the Regional Director and a certified copy of that notice as published, shall be sent forthwith to the Regional Director. The said notice:

(a) shall be in the form set out in Annexure II to the Companies Regulations, 1956, or in a form as near thereto as circumstances may admit; and
shall be published at least once in a newspaper in the principal language of
the district in which the registered office of the proposed company is to be
situated, and circulating in that district and at least once in an English
newspaper circulating in that district.

Issue of Licence by Registrar of Companies

After considering the objections, if any received within the period stipulated in the
notice, and after consulting the concerned authorities, the Department of Company
Affairs, etc. the Registrar of Companies shall determine whether the licence applied
for should or should not be granted. The Registrar of Companies may issue licence
and may direct the company to incorporate in its memorandum or articles of
association or in both, such conditions of the licence as may be specified by the
Registrar of Companies.

8. PROCEDURE FOR ISSUE OF LICENCE UNDER SECTION 25 TO A
COMPANY ALREADY REGISTERED

According to Regulation 7 of the said Regulations, any company registered
under the Act as limited company, which is desirous of being incorporated without
the addition to its name of the word “Limited” or the words “Private Limited”, shall
make an application in writing to the Registrar of Companies at Mumbai/Kolkata/
Noida/Chennai for a licence under Section 25 of the Companies Act, 1956.

According to Regulation 8 of the said Regulations, the application shall be
accompanied by the following documents, as attachment, namely,

(i) the Memorandum and Articles of Association of the proposed company;
(ii) a list of the names, descriptions, addresses and occupations of its directors,
and its manager or secretary, if any, together with the names of companies,
associations and other institutions, in which the directors of the applicant
company are directors or hold responsible positions, if any, with descriptions
of the positions so held;
(iii) following documents submitted to the company in general meeting 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:
(a) the profit and loss account;
(b) the balance sheets;
(c) the annual report of the Board of directors; and
(d) the audit reports;
(iv) a statement showing in detail the assets (with estimated value thereof) and
the liabilities of the company, as on the date of the application or seven
days before making the application;
(v) an estimate of the future annual income and expenditure of the proposed
company, specifying the sources of the income and the objects of the
expenditure;
(vi) a statement giving a brief description of the work, if any, already done by the
company and of the work proposed to be done by it after registration in
pursuance of Section 25;
(vii) a statement specifying briefly the grounds on which the application is made; and

(viii) a declaration on non-judicial Stamp Paper of the prescribed value (also required to be submitted physically at the concerned regional director office simultaneously of filing as attachment with application) by each of the persons making the application, in the form set out in Annexure V to the Companies Regulations, 1956, or in a form as near thereto as the circumstances admit.

(ix) Treasury challan or any other electronic mode of payment showing the payment of fee.

If any of the aforesaid documents in (i) to (ix) is not in English or in Hindi, a translation of that document in English or in Hindi certified to be correct by any promoter or proposed director, or in the case of an association which is already in existence, by any member of its executive or governing body, shall be furnished to the Registrar of Companies together with the document.

Form of Memorandum of Association of the Proposed Company

The memorandum of association of the proposed company shall be in the form specified in Annexure 1 to the said Regulations, or in a form as near thereto as circumstances admit.

Furnishing of Copy of Application to Registrar

Regulation 10 of the said Regulations lays down that simultaneously with the application made as above, the applicants shall furnish to the Registrar of Companies of the State in which the registered office of the proposed company is to be situated, a copy of the application and of each of the documents and translations.

9. PROCEDURE FOR INCORPORATION OF A COMPANY AS SUBSIDIARY OF AN EXISTING COMPANY

As per provisions of Section 4 of the Companies Act, 1956, a company shall be deemed to be a subsidiary of another company if, but only if,

(a) that other controls the composition of its Board of directors; or

(b) that other:

(i) where the first-mentioned company exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company holds more than half in nominal value of its equity share capital; or

(c) that first-mentioned company is a subsidiary of any company which is that other’s subsidiary.

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 voting power in CD Ltd. or it must hold more than half of nominal value of the equity share capital of CD Ltd.

In other words, the articles of association of CD Ltd. must contain the following
provisions:

— AB Ltd. shall have the power to appoint, remove, replace majority of the directors in the proposed subsidiary company; or

— AB Ltd. shall hold majority of the shares, having voting rights, in CD Ltd. and the aforementioned provisions in the articles of association of CD Ltd. shall not be altered.

Keeping the above provisions in view, the existing company AB Limited will be required to follow the same procedure for the formation and registration of a company as discussed earlier.

10. UNLIMITED COMPANIES

By virtue of Section 12(2)(c) 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 26 provides that an unlimited company must have Articles of Association prescribing regulations for the Company and Section 27 provides that these Articles shall state the number of members with which the company is to be registered and if the Company has a share capital, the amount of the share capital.

The Articles of an unlimited company shall be in the Form in Table E of Schedule I to the Act.

As per the provisions of Section 32, an unlimited company may convert itself to a limited company, subject to the condition that all its debts, liabilities, obligations or contracts incurred before the conversion would not be affected by its change of status.

The procedure for incorporation of such companies is same as in case of companies with limited liability.

11. PRODUCER COMPANIES*

Section 581A(L) defines Producer Company as a body corporate having objects or activities specified in Section 581B and registered as Producer Company under this Act.

The objectives for which producer companies may be formed are laid down in Section 581B. [These are explained in study 30 of Study Company Law of Executive Programme].

Procedure for Incorporation of a Producer Company

Section 581C of the Act lays down the provision relating to formation and

* Introduced by the Companies (Amendment) Act, 2002 w.e.f. 06.02.2003.
registration of a producer company. Any ten or more individuals, each of them being a producer, or any two or more producer institutions or a combination of ten or more individuals and producer institutions, desirous of forming a producer company having its objects, specified in Section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated company as Producer Company under this Act.

A Producer Company can be incorporated only for the objects as enumerated in Section 581B of the Companies Act, 1956 and for no other purpose, whether directly or indirectly.

The following steps shall be involved in the formation of producer company:

(1) Select few suitable names which should indicate as far as possible the main object of the proposed producer company with “Producer Company Limited” as the last words of the name of such company. Ascertain the availability of name from the Registrar of Companies by making an application electronically in e-form 1A for the purpose along with the prescribed application fee of Rs. 500/- as per the mode of payment earlier described. The application shall be made to the Registrar of the State in which the registered office of the producer company is proposed to be situated.

The provisions as regard the selection of name, as are applicable in terms of Section 20 of the Act read with Emblems and Names (Prevention of Improper Use) Act, 1950 shall mutatis mutandis apply to producer companies.

(2) On receipt of communication from the Registrar of Companies intimating that the name applied for is available, get the Memorandum and Articles of Association of the company drafted and printed. The Memorandum and Articles of Association should be prepared in accordance with Section 581F and 581G respectively.

(3) Stamping and Signing of Memorandum and Articles: The memorandum and articles of association should be got printed and stamped by the appropriate State Authority (Collector of Stamps) in accordance with the requirement of the Indian Stamp Act, 1899. Thereafter, the memorandum and the articles should be signed by the requisite subscribers, i.e., ten or more individuals, each of whom being a producer or any two or more producer institutions or a combination of ten or more of such producers and producer institutions.

Each subscriber to the memorandum shall write in his/her own hand, his/her father/husband’s name, occupation, address and the number of shares subscribed for by him/her. The signatures of all the subscribers shall also be witnessed. The witness shall also sign and write in his own hand, his name, his father’s name, occupation and address.

(4) Dating of Memorandum and Articles: The memorandum and articles are then dated. The date must be a date of stamping or later than the date of their stamping and not a date prior to the date of their stamping.

(5) Objects of the Producer Company: The object clause of the memorandum of association of the producer company must specify all or any of the matters specified in Section 581B.

(6) Appointment of first directors: The first director of the producer company be
named in the articles of the Company who will hold office till directors are appointed within a period of ninety days of the registration of the producer company. However in case of an inter-state co-operative society which has been registered as Producer Company under Section 581J(4) the words ‘ninety days’ shall be substituted by “three hundred and sixty five days”. The number of directors shall not be less than five (Sections 581O and 581P).

(7) Filing of Documents and Forms for Registration (electronically as attachment with e-form 1):

**Documents**

(i) Memorandum and articles of association duly stamped, signed and dated.

(ii) Power of Attorney, duly stamped and executed by all the subscribers, authorising any one of them or any other person to follow up the matter with the Registrar of Companies. [See Annexure XVI at the end of Study].

(iii) Copy of e-form 1A and name availability letter received from MCA. If name approval letter is not received then Service Request Number of e-form 1A filed with Registrar of Companies for name availability.

**Forms (to be filed electronically)**

(i) A statutory declaration in e-form No. 1 (on Stamp Paper) as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, declaring compliance of all and incidental matters regarding formation of companies [Section 33(2)].

(ii) e-form No. 18 containing notice of situation or change of situation of registered office of the company. (For specimen of e-form No. 18, notice of situation/change of situation of registered office, see Part B of this study).

(iii) e-form No. 32 containing prescribed particulars of directors including managing/whole-time director/manager/secretary, if any and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares. e-Form 32 is also required to be pre certified by company secretary or chartered accountant or cost accountant (in whole-time practice). (For specimen of e-form No. 32, particulars of appointment of directors and manager and changes among them, see Part B of this study).

**Note:** Stamp duty on eForm 1, 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 1, 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. In respect of the States from whom the authorization is yet to be received, the
company will continue to pay stamp duty outside the MCA portal. List of states/union territories for which stamp duty cannot be paid electronically is available on the website of MCA.

- In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of RoC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956.

- 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.

(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 Schedule X to the Companies Act, 1956. The fees is to be paid electronically as per the mode of payment discussed earlier.

(9) Certificate of Incorporation: After the Registrar is fully satisfied, that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall within thirty days of the receipt of the documents required for registration, register the memorandum, articles and other documents, if any, and issue a certificate of incorporation under this Act.

The Registrar shall issue the certificate of incorporation (COI) bearing a Corporate Identity Number (CIN) consisting of 21 digits within 30 days of the receipt of the document required for registration and send it through post. One may also take printout of the online generated COI.

(10) Reimbursement of promotional expenses: The producer company may reimburse to its promoters associated with the promotion and registration of the company, all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of the memorandum and articles of association and the payment thereof shall be subject to the approval at its first general meeting of the members.

On registration, the producer company shall become a body corporate as if it is a private limited company. The liability of its members shall be limited by the memorandum to the amount, if any, unpaid on the shares respectively held by the members.

For the purpose of application of the Companies Act, it shall be deemed as if it is a private company but the limit to the number of members as is applicable to private company shall not apply to the producer company. [Section 581C(5)].

12. PROCEDURE TO REGISTER A FOREIGN COMPANY IN INDIA

In order to speed up and simplify the process of incorporation of companies and establishment of principal place of business in India by Foreign Companies for reduction in time taken by Registrar of Companies, the Ministry vide circular no.

Only Form-1 shall be approved by ROC office. Form 18 and 32 shall be processed by the system online.

The Category Incorporation Forms (Form 1A, 37, 39, 44 and 681 would have highest priority for approval.

(1) Foreign companies which, establish a place of business within India are required to deliver the e-form 44 (for specimen form see Part B of this study) along with the following documents as attachments, to the Registrar of Companies within thirty days of the establishment of the place of business, for registration—

— Charter, statutes or memorandum and articles of association or other instrument constituting or defining the constitution of the company is to be attached. If the same is not in English language then it should be translated copy in English language.

— Details of individuals’ directors are to be attached. Details should contain name, surname, former name- if any, residential address, occupation and other directorship, if any.

— Approval letter from Reserve Bank of India for the setting up of business in India is to be attached,

— Power of attorney or board resolution in favour of the authorised representatives is to be attached.

— Director’s details—in case of body corporate, details containing name and complete address of body corporate.

— Secretary details—if any.

The form will be digitally signed by the authorized representative of the foreign company

(2) The details of directors, Secretary and body corporate should contain the following particulars, that is to say:

(a) with respect to each director—

(i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, if different from that nationality of each of its directors;

(b) with respect to the secretary, or where there are joint secretaries with respect to each of them—

(i) in the case of an individual, his present name and surname, any former
(ii) in the case of a body corporate, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b) of this sub-section.

**Regulatory provisions under FEM (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.

**13. CONVERSION OF COMPANIES**

A company can be converted from one type to another. The procedures are given hereunder with respect to conversion of:

(a) Private Company into Public Company;  
(b) Public Company into Private Company;  
(c) Sole Proprietor Concern into Limited Company;  
(d) Partnership Firm into a Limited Company;  
(e) Private Company into Public Company;  
(f) Conversion of Company into Limited Liability Partnership,  
(g) Inter-state Cooperative Society into a Producer Company.

**Re-registration of Companies**

Under UK Companies Act, 2006, a company can be converted from one type to another by re-registration within the terms of the Act.

It provides for the procedures for re-registration from:

(a) private to public Company (Sections 90 to 96)  
(b) a public company to a private company (Sections 97 to 101)  
(c) a private limited company to an unlimited company (Section 102 to 104)
14. CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY

Section 44 of the Companies Act, 1956 lays down that if a private company alters its articles in such a manner that they no longer contain the provisions which, under clause (iii) of Sub-section (1) of Section 3 of the Act, are required to be included in its articles in order to constitute it a private company, it shall, as on the date of the alteration, cease to be a private company. For such a conversion, the private company is required to take the following procedural steps:

1. Hold a meeting of the Board of directors of the company to pass resolutions—
   (i) for approving proposal for conversion of the company into a public company;
   (ii) for fixing time, date and venue for holding a general meeting of the company for passing the required special resolution for conversion of the company into a public company;
   (iii) for approving notice for the general meeting along with the explanatory statement as required under Section 173 (2) of the Companies Act, 1956. The notice shall contain texts of the special resolutions which will be required to be passed at the meeting; and
   (iv) 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) Special resolution altering articles under Section 31 of the Act, converting a private company into public company.
      (For specimen of the special resolution altering articles converting a private company into public company, please see Annexure IV at the end of this Study).
   (ii) Special resolution for changing the name of the company as per proviso to Section 21 of the Act.
      (For specimen of the special resolution changing name of the company, please see Annexure V at the end of this Study).
   (iii) Special resolution for altering the memorandum of association (name clause) of the company in accordance with section 16 of the Act.
      (For specimen of the special resolution altering memorandum of association (name clause) of the company, please see Annexure VI at the end of this study).

*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 (iii) of Sub-section (1) of Section 3 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.

3. Within thirty days of passing of the special resolutions, file the following documents electronically:
   (i) e-form No. 23 with copy of resolution, along with explanatory statement under Section 173 and amended copy of Articles of Association and Memorandum of Association as attachment.
   (ii) A prospectus as attachment with e-form 62 pursuant to Section 44 of Companies Act, 1956 stating the matters specified in Part I of Schedule II to the Companies Act, 1956 and setting out reports specified in Part II of that Schedule. The said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule OR a statement in lieu of prospectus which should be in the form and contain the particulars set out in Part I of Schedule IV to the Act and in cases mentioned in Part II of that Schedule, it should set out the reports specified therein as attachment. The said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule [Refer Section 44(2)].

4. If the number of members of the company is below seven, appropriate steps should be taken to increase the number to at least seven (Refer Section 12).

5. If the number of directors of the company is two, the number of directors should be increased to at least three (Refer Section 252).

6. Surrender the original Certificate of Incorporation and obtain from the Registrar of Companies, Fresh Certificate of Incorporation consequent upon conversion of the company into a public limited company.

7. Have fresh copies of memorandum and articles of association printed or to change of 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.

8. Issue 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 ...............

   (For specimen of the general notice of the company becoming a public company, for publication in newspapers, please see Annexure VII at the end of this study)

9. 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 the 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.

10. 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.

11. 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.

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

It is important to note that the company becomes a public limited company with effect from the date of passing the special resolution to that effect but the change of name of the company consequent upon deletion of the word “Private” shall be effective from the date of issue of the fresh Certificate of Incorporation by the Registrar of Companies.

It is to be noted that no new company comes into existence by conversion. Only an already existing company is converted from private to public or vice versa. [All India Reporter v. Ram Chandra, AIR 1961 Bom. 292].

Status of Deemed Public Company after commencement of Companies (Amendment) Act, 2000

Earlier, a private company could convert itself into a public company by operation of law under Section 43A. With the addition of Sub-section (11) to Section 43A the concept of deemed public company has been done away with. Hence, after the commencement of the Companies (Amendment) Act, 2000, a private company cannot automatically become a public company on account of Section 43A.

Accordingly, if a company which had become deemed public company by virtue of Section 43A of the Act, decides to become a private company after the commencement of the Amendment Act, such company shall pass an ordinary resolution for change in its name in the memorandum of association. Further, it shall pass a special resolution for alteration of its Articles of Association to contain provisions as per Section 3(1)(iii) including the newly inserted clause (d) pertaining to prohibition on invitation and acceptance of deposits. Thereafter, the company shall inform the ROC that it has become a private company and Registrar shall substitute the words “Private Company” for the words “Public Company” in the name of the company and make necessary alterations in the certificate of incorporation within four weeks from the date of the application.

Alternatively, if the company (i.e. deemed public company) decides to remain a public company then such deemed public company shall have to increase its number of directors to at least three, and its members at least upto seven and alter its articles of association as applicable to a public company.

Further, pursuant to sub-clause (c) of clause (iv) of Section 3(1) of the Act as amended vide Companies (Amendment) Act, 2000, a private company which is a subsidiary of a company which is not a private company shall become a public company on and from the commencement of the Amendment Act i.e. 13th
Therefore, a private company which is subsidiary of a public company shall be a public company.

Consequences of Non-compliance of Section 3(1)(iii) of the Companies Act, 1956

Where the provisions, under clause (iii) of Sub-section (1) of Section 3 of the Companies Act, 1956, are required to be included in the articles of a company in order to constitute a private company, but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies, by or under the Act and the Act shall apply to the company as if it was not a private company [Refer Section 43]. However the Central Government, on being satisfied that the infringement of these conditions was accidental or due to inadvertence or that on other grounds, it is just and equitable to grant relief, to the company, it may relieve the company from consequences of such default.

15. CONVERSION OF PUBLIC COMPANY INTO A PRIVATE COMPANY

Section 3(1)(iii) of the Companies Act, 1956 defines a “private company” as a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles of association:

(a) restricts the right to transfer its shares, if any;
(b) limits the number of its members to fifty 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
(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company.
(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

In view of the above provisions of the Companies Act, 1956, a public company may become a private company whose membership is within the limits in sub-clause (b) of clause (iii) of Sub-section (1) of Section 3 of the Act, as mentioned above. Such a company is required to take the following procedural steps:

1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.
   (For specimen of notice of the Board meeting, please see Annexure VIII at the end of this study).
   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 173 (2) 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 31 of the Companies Act, 1956, so as to include therein restrictions, limitation and prohibition specified in Section 3(1)(iii) of the Act converting the public company into a private company.

(For specimen of special resolution for alteration of articles of the company to include restriction, limitation and prohibition, please see Annexure IX at the end of this study).

(b) special resolution for changing the name of the company as required under proviso to Section 21 of the Act. (See Annexure V)

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

(iv) To authorise the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board. (Specimen of Board resolution for calling a general meeting is given at Annexure X).

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

3. Within thirty days of passing of the special resolutions, file e-form 23 with copy of resolution along with explanatory statement under Section 173 and amended copy of Articles of Association as attachment along with prescribed filing fee payable in the mode described earlier.

(For specimen of e-form 23, registration and resolutions and agreements, please see Part B of this Study).

4. If the number of members of the company is above fifty, appropriate steps should be taken to reduce the number to fifty 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 proviso to Sub-section (1) of Section 31 of the Companies Act, 1956, 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. Thereafter, an application in e-form 1B 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 [Rule 4(B)].
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 62 within one month of the date of receipt of the order of approval [Refer Section 31(2A)].

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 [Refer Section 23(1)].

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. 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 ...............

(For specimen of the general notice for publication in newspapers that the company has become private company, please see Annexure XI at the end of this study).

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 31 of the Companies Act, 1956, 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.

16. CONVERSION OF SOLE PROPRIETOR CONCERN INTO LIMITED COMPANY

After the company is incorporated, it may acquire the assets and liabilities of any
running business as per terms and conditions of an agreement that may be entered into by and between the company and the seller of the existing business.

In a sole proprietary concern, it is the sole proprietor, who is the sole owner of the business of his proprietary concern. Therefore, he owns all the assets, movable and immovable, of the concern and he is liable to satisfy all the liabilities of his sole proprietary concern. He has the absolute discretion, either to continue running his business or sell the same to another person or to a company.

Since the sole proprietor of a sole proprietary concern is only one person, who constitutes the sole proprietary concern, he alone cannot form either a private limited company, which requires at least two persons to subscribe to its memorandum of association, nor can he form a public limited company, which requires at least seven persons to subscribe to its memorandum of association, as required under Section 12 of the Companies Act, 1956.

However, if and when the sole proprietor of a sole proprietary concern proposes to be a part of a private limited company or a public limited company, he has to propose and sell his project and idea relating thereto to other persons, in the case of a private limited company, to at least one more person and in the case of a public limited company, to at least six other persons. When he is in a position to muster the association of the required number of persons and he has a viable project to be executed by the proposed company, he may proceed to form a limited company as per procedure laid down in Section 12 of the Companies Act, 1956. The persons, who take steps for the formation of a company, are known as promoters of the company in their capacity as subscribers to the memorandum of association of the company.

After having done the aforesaid exercise, the sole proprietor along with his associates should take the procedural steps enumerated later, for the formation and registration of the company.

17. CONVERSION OF A PARTNERSHIP FIRM INTO A LIMITED COMPANY

The company may acquire the assets and liabilities of any running business, which may belong to an individual, or to a sole proprietary concern, or to a partnership firm, or for that matter, to a limited company, in accordance with the terms and conditions of an agreement that may be entered into by and between the company and the seller(s) of the existing business.

Such an agreement may be made, before the incorporation of the company, by the promoters of the company with the seller of the business, which, on incorporation, may be ratified by the company through its authorised agent or representative. However, the promoters are duty bound to ensure that such pre-incorporation agreements are fair and in the interest of the company, and if the promoters make any profit or take any undue advantage from such agreements, they are liable to compensate the company to the extent the company suffers any loss.

If a particular partnership firm has the required number of persons, who may form a limited company as per the requirements of the Companies Act, they may become subscribers to the memorandum and also the promoters of the company.
The assets and liabilities of the firm can be taken over by the company on incorporation on the basis of their valuation done by experts and the promoters or the erstwhile partners of the firm are allotted shares in the company according to the value of their shares in the firm.

On incorporation of the company, the assets and liabilities of the partnership firm may be taken over by the company, as per terms and conditions of the agreement executed by and between the promoters of the company, which is ratified by the company on its incorporation or by and between the company after its incorporation and the partners of the firm, in their capacity as partners of the firm and not in their capacity as subscribers to the memorandum of association of the company or as members of the company.

After all the assets and liabilities of the partnership firm have been taken over by the company and the partners have been paid by the company either in cash or in the form of shares in the company, the existence of the firm comes to an end.

The company is a separate legal entity, which is quite distinct and independent of its members. Members of a company may come and go but the company continues to exist till it is wound up or is declared defunct by the Registrar of Companies, according to due process of law. The mere fact that the assets and liabilities of a partnership firm have been taken over by a company and its partners have either been paid in cash or have been allotted shares in the company does not by itself mean that the company retains its character of partnership. [Official Liquidator v. Ram Swarup (1997) 26CLA 90 (All)].

If and when the partners of a partnership firm propose to form a private limited company or a public limited company, they have to ensure that their number is sufficient to form such a company as per provisions of Section 12 of the Companies Act, 1956. After having mustered the required number, they may proceed to form a limited company as per procedure laid down in Section 12 of the Companies Act, 1956.

The persons, who take steps for the formation of a company, are known as promoters of the company. They subscribe to the memorandum of association of the company and on incorporation, their names are entered in the register of members of the company as they shall be deemed to have agreed to become members of the company as per provisions of Section 41(1) of the Companies Act, 1956.

After having decided to form a company to take over the business of their partnership firm, the partners should take the following procedural steps for the formation and registration of the company:

18. PROCEDURE FOR CONVERSION OF A SOLE PROPRIETOR CONCERN OR PARTNERSHIP FIRM INTO A LIMITED COMPANY

(A) An existing business (that is sole proprietorship or partnership) can be converted into a company in any of the following ways:

(a) by outright sale;

(b) by making partners of the firm the only shareholders of the newly incorporated company;

(c) a company becoming a partner of the firm which will be dissolved thereafter;
PP-CSP-2

(d) by amalgamation under Sections 391 to 394 of the Companies Act, 1956;
(e) by registration of existing joint stock companies under the Companies Act (Section 567).

(B) In cases of items (a), (b) and (c), following procedure should be followed:

1. The existing business should be converted into a partnership firm and the newly incorporated company be admitted as its partner.

2. At the time of forming the new company, it should be ensured that the proprietor of the existing business and any other individual are the subscribers to that company’s memorandum of association, thereupon that other individual must also be admitted as a partner of the converted firm.

3. Distribution of all assets and liabilities of the firm to one of the partners who will pay the difference to other partners must be provided in the partnership deed.

4. It must be ensured that the memorandum of association of the newly formed company includes a clause permitting the company to acquire the undertakings of an existing business.

5. It must also be ensured that the articles of association of the newly formed company gives power to its directors to enter into agreement facilitating the acquisition of business.

6. An agreement with the directors of the newly formed company for facilitating the acquisition of the partnership firm must be entered into.

7. A copy of the agreement must be filed with the Registrar within 30 days of entering into the agreement (Section 192), after paying the requisite fee as prescribed under Schedule X to the Companies Act, 1956.

8. Thereupon a Board resolution for allotment of shares to the other partners of the firm as consideration of such acquisition should be passed.

9. A return of allotment in e-form 2 along with the attachments (see Part B of this Study) should be filed with the Registrar within 30 days of making the allotment (Section 75).

10. If the partnership firm being a joint stock company within the meaning of Section 566 wants to be registered as a company, then all the following documents should be delivered to the Registrar of Companies:

   (i) an application in electronic form No. 37 (See Part B of this Study) of the Companies (Central Government’s) General Rules and Forms, 1956;

   (ii) a list showing the names, addresses and occupations of all persons who on a day not more than 6 clear days before the day of registration were members of the company and the shares or stock held by each one of them respectively, distinguishing each share by its number in case the shares are numbered;

   (iii) a copy of the partnership deed;

   (iv) a statement containing the following particulars:

      (a) the nominal share capital of the company and the number of shares
into which it is divided or the amount of stock of which it consists;
(b) the number of shares taken and the amount paid on each share;
(c) the name of the company and the addition of the word ‘Limited’ or ‘Private Limited’ as its last words;
(d) a copy of the resolution declaring the amount of guarantee if you want to register it as a guarantee company (Section 567).

CONVERSION OF COMPANY INTO LIMITED LIABILITY PARTNERSHIP

In accordance with Section 56 and 57 of Limited Liability Partnership Act, 2008, a private company and an unlisted public company may convert into a limited liability partnership (LLP) in accordance with the provisions of Chapter X and complying with Third Schedule and fourth schedule respectively.

The Registrar on satisfying that Private Company or an unlisted public company has complied with the provisions, shall register the documents submitted and issue a certificate of registration the limited liability partnership is, on and from, the date specified in the ‘Certificate’, registered under the Act.

LLP is required to inform the concerned Registrar of Companies about the conversion and of the particulars of the LLP in form No. 14 within 15 days of the date of registration. (For specimen of e-form 14, see Part B of this study.

20. CONVERSION OF AN INTER-STATE COOPERATIVE SOCIETY INTO A PRODUCER COMPANY

An ‘Inter-State Co-operative Society’ means a Multi-State Co-operative Society as defined in Section 3(p) of Multi-State Co-operative Societies Act, 2002 and includes a national co-operative society and a federal co-operative.

Section 581J explains the provisions relating to conversion of an existing co-operative society into a Producer Company.

Accordingly, any inter-state co-operative society with objects not confined to one state may make an application to the Registrar for registration as Producer Company. The eligibility for making an application for conversion of inter-state co-operative society is as follows:

(i) Inter State Co-operative Society with objects not confined to one state may make an application to Registrar for registration as producer company under Part IX-A of Act.
(ii) A Co-operative Society formed by producers, by Federation or Union of Co-operative Societies of producers or Co-operatives of producers, registered under any law for the time being in force which has extended its objects outside state, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation of Unions of such Co-operatives, which has so extended any of its objects or activities outside the State, may make an application for registration as a Producer Company.

The procedure for conversion is as follows:

(1) Every application for conversion shall be accompanied by:

(a) a copy of the special resolution of not less than two third of total
members of inter-State co-operative society, for its incorporation as a producer company under this Act.

(b) a statement showing—

(i) names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called.

(ii) list of members of such Inter State Co-operative Society.

(c) a statement indicating that the inter-State Co-operative Society is engaged in any one or more of the objects specified in Section 581B.

(d) a declaration by two or more directors of the inter-State Co-operative Society certifying that particulars given in clause (a) to (c) are correct.

(2) On compliance with the requirements for conversion, the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the Inter State Co-operative Society applying for registration is registered and thereby incorporated as a Producer Company under Part IXA.

(3) When an Inter State Co-operative Society is registered as a Producer Company, the words “Producer Company Limited” shall form part of its name with any word or expression to show its identity preceding it.

(4) Upon registration the Inter-State Co-operative Society shall stand transformed into a Producer Company, and thereafter shall be governed by the provisions of Part IXA to the exclusion of the law by which it was earlier governed, save in so far as anything done or omitted to be done before its registration as a producer company and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

(5) The Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-state co-operative society was earlier registered for appropriate deletion of society from its register.

21. RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY [SECTION 581ZS]

Any producer company, being an erstwhile Inter-State Co-operative Society, may make an application to the High Court of the State or Union Territory in which the registered office of the company is situated, for its reconversion to the inter-State Co-operative Society:

(a) after passing a resolution in general meeting by not less than two third of its members present and voting, or

(b) on request by its creditors representing three-fourth value of its total creditors.

On receipt of application, the High Court shall direct holding meeting of its members or such creditors, as the case may be, to be conducted in such manner as it may deem necessary.

If a majority in number representing three fourth in value of the creditors or members, as the case may be, present and voting in person at such meeting agree
for reconversion, the High Court if sanction such reconversion, then such reconversion will be binding on all members and all the creditors, as the case may be, and also on the company which is being converted.

No order sanctioning reconversion shall be made by the High Court unless the Court is satisfied that the company or any other person making the application has disclosed to the Court all material facts relating to the company, such as the latest financial position of the company, the latest auditor’s report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under Sections 235 to 251, and the like.

An order of the High Court sanctioning the reconversion shall have no effect until a certified copy of the order has been filed with the Registrar. A copy of every order made by the Court shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued to the instrument constituting or defining the constitution of the company.

The High Court may, at any time, after an application for reconversion has been made to it, stay the commencement or continuation of any suit or proceeding against the company on such terms as it thinks fit.

Every Producer Company which has been sanctioned reconversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 2002 or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society. Such application shall be made within 6 months of order of sanction by the High Court.

The Registrar of Companies shall thereafter, strike off the name of the Producer Company from its register.

22. STRIKE OFF NAME OF PRODUCER COMPANY

Section 581ZP of the Companies Act, 1956 states that the Registrar can after making an inquiry strike off the name of a company where the company:
(i) has failed to commence its business within one year of its registration
(ii) ceases to transact business
(iii) is no longer carrying on its objectives
(iv) is not following the mutual assistance principles.

The Registrar shall, before passing the order, issue a show cause notice to the company with a copy to the directors and give a reasonable opportunity of being heard. Any member of Producer Company aggrieved by an order may make an appeal within sixty days of passing the order. The said appeal shall be made before CLB.

23. FILING OF AGREEMENTS WITH MANAGERIAL PERSONNEL

The Companies with paid-up capital of Rs.5 crores and above are required to compulsorily appoint managerial personnel i.e. managing or whole-time director or a manager in accordance with Section 269 of the Companies Act.

The appointment requires approval from Central Government if the conditions specified in Parts I and II of Schedule XIII are not satisfied. Further, if the conditions are satisfied, then the appointment is guided by articles of association of the company.
If articles of association provide for the appointment be made at a general meeting, then appointment should be made at a general meeting through a resolution. Else, the appointment is required to be made at duly convened Board meeting with consent of all directors present at meeting.

E-form 25C is required to be filed electronically with the Registrar within 90 days from the date on which a resolution was passed by the Board.

Before filing e-form 25C, it is to be ensured that e-form 23 has already been filed for registration of agreement entered with managing director. In e-from 25C, the service request number of related e-form 23 which was filed for registration agreement for setting out the terms and conditions of employment is required to be given.

From the definition of Managing Director in clause (26) of section 2, it is clear that the managing director may derive his substantial powers of management to act for and on behalf of the company on the basis of an agreement or by virtue of a resolution passed at the general meeting or by the Board of Directors or by virtue of the memorandum of association or the articles of association of the 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. A model agreement at Annexure XII at the end of the study.

**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 XIII at the end of the study.

**24. COMMENCEMENT OF BUSINESS**

**I. Commencement of Business by a Company**

Section 149 of the Companies Act, 1956 imposes certain restrictions on the commencement of business by a public company having a share capital.
Sub-section (7) exempts private companies from the provisions of this section, which means that a private company may commence business and exercise borrowing powers immediately on its incorporation.

The restrictions contained in Section 149 are applicable only to companies having share capital. A company not having a share capital may commence business and exercise borrowing powers immediately on incorporation.

When a private company is converted into a public company, it need not obtain a certificate of commencement of business on its conversion because the company had already commenced business on its incorporation as a private company.

Commencing business refers not only to business for which the company was incorporated but also to any transaction including sale or purchase.

A. Procedure for Commencement of Business, where the Company has issued prospectus
1. Issue the prospectus.
2. Minimum subscription
   2.1. Minimum subscription amount mentioned in the prospectus should have been received in cash.
   2.2. In order that a transaction between a company and allottee of shares may amount to "payment in cash" each party must have an actual demand on the other for present payment.
3. The directors who have applied or contracted to take up shares should pay the amount they are liable to pay in cash, at least a proportion equal to the proportion payable on application and allotment of shares offered for public subscription.
4. Listing: Where the shares are to be quoted on the stock exchange necessary application must be submitted to it and approval obtained within the prescribed time.
5. Shares issued for cash to the public should be allotted.
6. Declaration: File e-Form 19 of the Companies (Central Government's) General Rules and Forms, 1956 on the stamp paper of requisite value as required by the Stamp Act of the respective states with the Registrar. This form is regarding a declaration of compliance with the provisions of section 149 clauses (a), (b) and (c) of sub section (1). The form is to be filed electronically as well as physically. (for specimen of e-form 19, please see Part B of this Study).
7. Obtain the certificate for commencement of business from the Registrar. The certificate is conclusive evidence that the company is entitled to commence business.

B. Procedure for Commencement of Business, where the Company has not issued any Prospectus
1. Directors must pay on the shares taken up or contracted against cash payment, or have paid a proportion equal to the proportion payable on application and allotment.
2. Statement in lieu of prospectus:
File a statement in lieu of the prospectus. The statement shall be in the prescribed form and contain particulars given in Part I of Schedule III to the Act. The statement will be accompanied by reports specified in Part II of Schedule III.

File the statement at least 3 days before the first allotment.

3. Declaration: File a declaration in e-Form 20 on the stamp paper of requisite value as required by the Stamp Act of the respective states, with the Registrar. This form is regarding declaration that clause (b) of sub-section (2) of section 149 has been complied with. The form is to be filed electronically as well as physically. (for specimen of e-form 20, please see Part B of this Study).

4. The company will then obtain the certificate for commencement of business from the Registrar. (For specimen of Certificate of Commencement of Business, please see Annexure XIV at the end of the study).

II. Commencement of New Business by an Existing Company

New business defined

According to a clarification issued by the Ministry of Corporate Affairs (the then Department of Company Affairs), “new business” means a business which is not germane to the existing business carried on by the company.

Every company has, therefore, to judge with the standard laid down by the Ministry of Corporate Affairs (the then Department of Company Affairs), whether the business it proposes to commence falls within the meaning of the term “germane”.

In accordance with the provisions of Section 13(1) of the Companies Act, 1956, every company shall state in its memorandum of association,

(i) the name of the company;
(ii) state in which the registered office of the company is to be situate;
(iii) liability of its members is limited;
(iv) objects of the company; and
(v) the States to which the objects of the company extend.

According to Sub-clause (ii) of clause (d) of Sub-section (1) of Section 13 of the Act, the objects of the company are classified as—

(i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects; and
(ii) other objects of the company not included in sub-clause (i).

A company is entitled to carry on any of the businesses incorporated in the “main objects and objects incidental or ancillary to the attainment of the main objects”.

Commencement of new business

However, if and when the company decides to commence a “new business” i.e. a business included in the sub-clause “other objects” or any other business not
incorporated in the objects clause of the memorandum of the company, it has to comply with the requirements of clause (b) of Sub-section (2A) of Section 149 of the Act, which lays down that the company must—

(i) approve the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and

(ii) file with the Registrar duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice, in the prescribed form, that clause (i), or as the case may be, Sub-section (2B) has been complied with.

If no such resolution has been passed but the votes cast in favour of the proposal to commence such business contained in the resolution moved in that general meeting, including the casting vote, if any, of the chairman, by members who, being entitled so to do, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Central Government may, on an application made to it by the Board of directors of the company in this behalf, allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting [Refer Sub-section (2B)].

**Procedure for Commencement of Business**

If the proposed business is not germane to the existing business of the company, the company has to follow the procedure laid down in Section 149 of the Act, which, in brief is as under—

1. The Board of directors of the company has to thoroughly scan the objects clause of the company's memorandum of association, and if the Board comes to the conclusion that the proposed new business is not germane to the existing business carried on by the company, the memorandum has to be altered so as to include the new business.

   However, if the proposed new business is already there in the sub-clause titled as "other objects", the same be shifted from there to the sub-clause titled as "the main objects of the company to be pursued by the company on its incorporation" by altering the objects clause in the memorandum accordingly.

2. The Board should then hold a meeting to—

   (i) resolve that the proposed new business be commenced in accordance with Section 149 and other applicable provisions of the Companies Act, 1956;

   (for specimen of Board resolution, please see Annexure XV at the end of this study).

   (ii) resolve that general meeting of the company be called and held for passing the required special resolution required for the purpose and to fix time, date and venue for holding the same; and

   (for specimen of Board resolution for calling the general meeting, please see Annexure X at the end of this study).

   (iii) approve notice of the general meeting along with the explanatory state-
ment required to be annexed to the notice as per requirement of Section 173(2) of the Act. The notice must contain the text of the special resolution; and

(iv) authorise the company secretary or one of the directors to issue the notice for the general meeting.

3. Company secretary or director authorised to issue notice of the general meeting.

4. If the securities of the company are listed on one or more recognised stock exchanges, send simultaneously to the stock exchanges, copy of the notice of the general meeting.

5. Hold the general meeting and have the special resolution passed.

(Specimen of special resolution for commencement of new business, please see Annexure XVI at the end of this study).

Central Government’s approval

According to section 149(2B), if a special resolution could not be passed but instead a resolution by a simple majority of votes, in lieu of a special resolution is passed apply to the Ministry of Corporate Affairs, Shastri Bhavan, New Delhi-110001 for its approval. No form has been prescribed. The application should give all relevant information including justification and reasons for commencement of the new business as well as reasons for the special resolution not having been passed, and must be accompanied by

— A certified true copy of the notice of the meeting and the explanatory statement;
— A certified true copy of the resolution actually passed at the meeting;
— A certified true copy of the memorandum and articles of association;
— Particulars as to the number of members who attended the meeting either in person or by proxies, manner of voting, the number of votes cast in favour and against the resolution.
— A demand draft or challan for the fees paid under the Companies (Fees on Applications) Rules, 1999.

6. File, within thirty days of the passing of the special resolution, with the Registrar of Companies e-form No. 23 along with a certified copy of the special resolution together with a copy of the explanatory statement under Section 173 annexed to the notice of the general meeting along with the prescribed filing fee.

7. File, within thirty days of the passing of the special resolution or before commencement of business, whichever is earlier, a declaration duly verified and signed by one of the directors or the secretary, duly authorised by the Board, in the e-form 20A prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006. The original duly filled in and signed e-form 20A on stamp paper are required to be sent to the concerned ROC office simultaneously, failing which the filing will not be considered and legal action will be taken.
8. Send to the stock exchanges, six copies, including one certified copy, of the amendment to the memorandum of association of the company as soon as the same has been approved by the company in general meeting.

9. Send to the stock exchanges, three copies of proceedings of the general meeting at which the special resolution was passed.

10. No certificate to commence new business is required under sub-section (2A). The company may commence business at any time after the filing of the declaration.

ANNEXURES

ANNEXURE I

NAME AVAILABILITY GUIDELINES, 2011 (Relevant Part)

In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(iii) The plural version of any of the words appearing in the name;

(iv) The type and case of letters, spacing between letters and punctuation marks;

(v) Joining words together or separating the words, as this does not make a name distinguishable from a name that uses the similar, separated or joined words. Such as Ram Nath Enterprises Pvt. Ltd. will be considered as similar to Ramnath Enterprises Pvt. Ltd.;

(vi) The use of a different tense or number of the same word, as this does not distinguish one name from another. Such as, Excellent Industries will be similar to Excellence Industries and similarly Teen Murti Exports Pvt. Ltd. will be to Three Murti Exports Pvt. Ltd.;

(vii) Using different phonetic spellings or spelling variations, as this does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, esemblance shall be checked with ‘Three’ also;

(viii) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN, as this does not make a name distinguishable from another, even where (.) is written as ‘dot’;

(ix) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc., as this does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed. For example, ‘Unique Marbles Delhi Limited’ can not be allowed if ‘Unique Marbles Limited’ is already existing;

Such names may be allowed only if no objection from the existing company
by way of Board resolution is produced/ submitted;

(x) Different combination of the same words, as this does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of “Builders and Contractors Limited”, the name “Contractors and Builders Limited” should not be allowed;

(xi) Exact Hindi translation of the name of an existing company in English especially an existing company with a reputation. For example, Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name ‘Hindustan Ispat Udyog Limited’;

In addition to above, the user shall also adhere to following guidelines: --

(i) It is not necessary that the proposed name should be indicative of the main object.;

(ii) If the Company’s main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: cooperative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as ‘BERD limited’ or ‘23K limited’ cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956. Further, if the name is only a general one like Cotton Textile Mills Ltd., or Silk Manufacturing Ltd., and not specific like Calcutta Cotton Textiles Mills Limited or Lakshmi Silk Manufacturing Company Limited, the same shall not be allowed;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as ‘Insurance’, ‘Bank’, ‘Stock Exchange’, ‘Venture Capital’, ‘Asset Management’, ‘Nidhi’, ‘Mutual fund’ etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective Act/ regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;
(vii) If the proposed name includes the word “State”, the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia Limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(viii) If the proposed name contains any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central or any State Government under any law for the time in force, unless the previous approval of Central Government has been obtained for the use of any such word or expression;

(ix) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(x) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

ANNEXURE II

SCHEDULE X

(See Sections 574 and 611)

TABLE OF FEES TO BE PAID TO THE REGISTRAR

I. In respect of a company having a share capital:

<table>
<thead>
<tr>
<th>Amount of fees to be paid (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. For registration of a company whose nominal share capital does not exceed Rs. 1,00,000</td>
</tr>
</tbody>
</table>

2. For registration of a company whose nominal share capital exceeds Rs. 1,00,000, the above fee of Rs. 4,000 with the following additional fees regulated according to the amount of nominal capital:

   a. for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1,00,000 upto Rs. 5,00,000 | 300 |
   b. for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 5,00,000 upto Rs. 50,00,000 | 200 |
   c. for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 upto Rs. 1 crore | 100 |
   d. for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore | 50 |

Provided that where the additional fees, regulated according to the amount of the nominal capital of a company, exceeds a sum of rupees two crores, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crores.
3. For filing a notice of any increase in the nominal share capital of a company, the difference between the fees payable on the increased share capital on the date of filing the notice for registration of company and the fees payable on existing authorised capital, at the rates prevailing on the date of filing the notice.

4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.

5. For filing, registering or recording any document by this Act required or authorised to be filed, registered or recorded—
   
   (a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.  
   
   (b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000.  
   
   (c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000.  
   
   (d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more

6. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar—
   
   (a) in respect of a company having a nominal share capital of less than Rs. 1,00,000
   
   (b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000
   
   (c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000
   
   (d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more

II. In respect of a company not having a share capital:

7. For registration of a company whose number of members as stated in the articles of association, does not exceed 20

8. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100
9. For registration of a company whose number of members as stated in the articles of association, exceeds 100 but is not stated to be unlimited, the above fee of Rs. 2,500 with an additional Rs. 10 for every 50 members, or less number than 50 members, after the first 100.

10. For registration of a company in which the number of members is stated in the articles of association to be unlimited.

11. For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration:

Provided that no company shall be liable to pay on the whole a greater fee than Rs. 5,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.

12. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

13. For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar.

14. For making a record of or registering any facts by this Act required or authorised to be recorded or registered by the Registrar.

ANNEXURE III

SPECIMEN OF CERTIFICATE OF INCORPORATION

FORM I
[See Regulation 16(1)]

Certificate of incorporation

No............................ of 20 ....

I hereby certify that..................... is this day incorporated under the Companies Act, 1956 * (and that the company is limited).
Given under my hand at............... this............... day of............... Two thousand and ..................

SEAL Registrar of Companies

State

*To be omitted in respect of unlimited companies.

ANNEXURE IV

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, 1956, 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 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 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 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.

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

SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY AS PER PROVISO TO SECTION 21 OF THE ACT

“RESOLVED THAT pursuant to the proviso to Section 21 of the Companies Act, 1956, 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.

ANNEXURE VI

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY IN ACCORDANCE WITH SECTION 16 OF THE ACT

“RESOLVED THAT pursuant to section 16 of the Companies Act, 1956, 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.

ANNEXURE VII

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: .............
Date: .............

Company Secretary

NOT TO BE PUBLISHED

For publication in the .........., ........, .........., and .......... editions of the English
daily and .........., Hindi Daily, ....... for ........ Limited

Company Secretary

ANNEXURE VIII

SPECIMEN OF NOTICE FOR THE BOARD MEETING FOR CONVENING
GENERAL MEETING FOR ALTERATION OF ARTICLES TO CONVERT 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 leave of absence to those directors who would not be able to attend
   the meeting and who would have asked for leave.

2. To confirm the minutes of the last Board Meeting held on .......... and the
   chairman to sign the same.

3. Directors to make disclosure of their interest, 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 171 of the Companies Act, 1956 along with the Explanatory Statement as required under Section 173(2) 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

ANNEXURE IX

SPECIMEN OF SPECIAL RESOLUTION ALTERING ARTICLES OF THE COMPANY SO AS TO INCLUDE RESTRICTION, LIMITATION AND PROHIBITION, SPECIFIED IN SECTION 3(1)(iii) OF THE ACT, CONVERTING A PUBLIC COMPANY INTO A PRIVATE COMPANY

"RESOLVED THAT —

(i) pursuant to proviso to Sub-section (1) of Section 31 of the Companies Act, 1956 and subject to the approval of the Central Government, 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 fifty 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 shares in, or debentures 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

(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

(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 e-form No. 1B as prescribed in the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 1956, along with the prescribed enclosures and the prescribed application fee, to the concerned Registrar of Companies within three months from the date of passing of the this resolution, for alteration of the articles of the company, for obtaining Central Government’s approval of the alteration of the articles of the company.

Explanatory Statement:

At the time of incorporation of the company as a private company, the directors had the intention to get the company converted into a public company at an appropriate time. Since the activities of the company have increased manifold, the company is in dire need of funds for maintaining a regular flow of business.

The company, in the prevailing circumstances, has no option but to raise funds in the form of equity from directors, their relatives, friends and associates and members of the company by private subscription for equity shares, there is no point in retaining the public character of the company, which hinders raising funds at reasonable rate of interest. The Board of directors of the company, at its meeting held on ............ resolved to convert the company into a private company.

Therefore, the proposed resolution for conversion of the company into a private company.

A copy of the memorandum and articles of association of the company 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.

ANNEXURE X

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 31 of the Companies Act, 1956;

(ii) for change of name of the company in accordance with Section 21 of the Companies Act, 1956;

(iii) for alteration of articles of association of the company so as to include, if they are not contained in the articles of the company, the required restrictions, limitation and prohibition specified in Section 3(1)(iii) of the Companies Act, 1956 Act, and delete all provisions that are inconsistent therewith in accordance with Section 31 read with Section 3(1)(iii) of the Companies Act, 1956; and

(iv) for alteration of the name clause in the memorandum of association of the company in accordance with the provision of Section 16 of the Act.”

ANNEXURE XI

SPECIMEN OF GENERAL NOTICE OF THE COMPANY BECOMING A PRIVATE 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 “.................... 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 continues to be situated at .................

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

............... Company Secretary

NOT TO BE PUBLISHED

For publication in the ............... editions of the English daily and ..............., Hindi Daily; ........... Limited

............... Company Secretary
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, 1956 and has its Registered Office at .........

(2) Mr ........ aged years, an Indian resident, currently living at ..........

(3) The Board of Directors of the Company 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

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 ........

(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**

Rs............ (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 Rs.... per annum per child.

(f) Personal accident insurance, premium whereof does not exceed Rs. ... 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
(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 198, 309 and Schedule XIII to the Companies Act, 1956.

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 Rs. ...... per annum or Rs. ...... per month in terms of SECTION II of Part II of Schedule XIII to the Companies Act, 1956 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

<table>
<thead>
<tr>
<th>SIGNED, SEALED AND DELIVERED by the above named Shri................ the Director of the company in the presence of Shri..................</th>
<th>SIGNED, SEALED AND DELIVERED by the within named Shri ................ the Managing Director in the presence of Shri ..................</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>Managing Director</td>
</tr>
<tr>
<td>COUNTERSIGNED BY Shri........ the Company Secretary in the presence of Shri .................................................</td>
<td></td>
</tr>
<tr>
<td>Company Secretary</td>
<td></td>
</tr>
</tbody>
</table>

ANNEXURE XIII

SPECIMEN 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 3 of the Companies Act, 1956 (the Act) and having its registered office at ................ in the State of ............. in India (“the Company”).

(1) The Company presently carries on business of the manufacture and sale of..................

(2) The Company has appointed Mr........... as its managing director.

(3) 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, 1956 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 ................. to purchase, pay for, acquire, either on lease or by purchase, or otherwise, re-purchase, import, exchange, capital assets, properties, buildings, lands, premises, machinery, plants, etc. for factories, workshops, offices, showrooms, stores, etc. of the company whether for cash or credit and either present or future delivery.
(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 292 of the Companies Act, 1956, 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, 1956 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.

(33) And all the actions, matters and things taken or done or caused to be taken and done on behalf of the company by the said Attorney during the period from ................ to the date of execution of this power of Attorney, in capacity as the Managing Director of the company are ratified and approved.

IN WITNESS WHEREOF the company has caused its Common Seal to be affixed hereto at ................ this ........... day of ........................

The Common Seal of ......................, was hereunto affixed pursuant to a resolution of the Board of Directors of the company, dated ......................, in the presence of ......................

Countersigned by Shri ..................... Company Secretary ......................
ANNEXURE XIV

CERTIFICATE OF COMMENCEMENT OF BUSINESS

Emblem of the Central Government
Certificate of Commencement of Business

[Pursuant to Section 149(3) of the Companies Act, 1956]

I hereby certify that.....................Limited, which was incorporated under
the Companies Act, 1956 on the...............day of......................(month), 200.....
and which has filed a duly verified declaration in the prescribed form that the
conditions of Section 149(1)(a) to (d) of the said Act have been complied with, is
entitled to commence business.

Given under my hand at.......on this......day of......(month), Two thousand and Six.

Seal of the
Registrar of Companies

Sd/-
(......................)
Registrar of Companies,

ANNEXURE XV

SPECIMEN OF BOARD RESOLUTION PROPOSING COMMENCEMENT
OF NEW BUSINESS SPECIFIED IN OTHER OBJECTS

RESOLVED that, subject to the approval of the Company in general meeting by
special resolution in accordance with section 149(2A) of the Companies Act 1956, the
commencing of all or any of the businesses specified in sub-clause ...... of clause
.......of the Memorandum of Association of the Company be and are hereby
approved. The Board of Directors is authorized for the purpose.

ANNEXURE XVI

SPECIMEN OF SPECIAL RESOLUTION APPROVING COMMENCEMENT
OF NEW BUSINESS BY A COMPANY

RESOLVED THAT—

(i) pursuant to sub-clause (ii) of clause (b) of Sub-section (2A) of Section 149 of
the Companies Act, 1956, the company be and is hereby approves the
commencement of the business of export of various marine products
including fish and fish products.

(ii) the following sub-clause be and is hereby added at the end of sub-clause (a)
of clause III titled as “Main objects to be pursued by the company on its
incorporation” as sub-clause ..... of the memorandum of association of the
company:
“Sub-clause .......: To carry on the business of export of various marine products including fish and fish products.”

(iii) Shri.................., secretary of the company, be and is hereby authorised to file, pursuant to sub-clause (ii) of clause (b) Sub-section (2A) of Section 149 of the Companies Act, 1956,........, a duly verified declaration in e-Form No. 20A* prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, within the prescribed period of time.

Explanatory Statement

Section 149(2A) of the Companies Act, 1956, requires that the members of the company should approve, by a special resolution, the commencement of any new business by the company which is not germane to the business which it was carrying on, on that date.

As the Board is actively thinking of diversifying the activities of the company, the Board of directors feels that the proposed activity will prove to be useful and beneficial to the company and, therefore, commend the proposed special resolution for the members’ approval.

The company’s amended memorandum of association is open for inspection at the company’s registered office during usual business hours on any working day.

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

ANNEXURE XVII

MODEL GENERAL POWER OF ATTORNEY

(On Stamp Paper of Requisite Value)

The Registrar of Companies

............................................

............................................

I/We, the undersigned, subscribers to the Memorandum of Association, ............................................ do hereby authorise Shri............................................ son of............................................ resident of............................................ to make corrections as may be necessary 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.

Accepted.

Place:   Subscriber(s) to the Memorandum
Date:  

* The original duly filled in a signed e-form 20A on stamp paper is required to be sent to the concerned ROC office simultaneously, failing which the filing will not be considered and legal action will be taken.
Before starting a business, one needs to select the form of business entity. For taking this decision, one needs to look into advantages of one form of business on another; amount to be invested, objects of the business etc.

For incorporation of a public limited company having share capital, e-forms 1, 18 and 32 are required to be filed with the Registrar of Companies through MCA portal. Along with e-form 1, Memorandum of articles, Articles of Association, name approval letter are required to be attached.

The procedure for incorporation of Private limited companies is same as that of a public limited company with some exceptions as to minimum paid up capital; number of subscribers; inclusion of provisions of section 3(1)(iii) in the MOA and AOA of the Company.

Procedure for incorporation of Company limited by Guarantee, for Company regulated by Section 25, for existing association as limited company without addition to the name the words 'limited' or 'private limited', for incorporation of a company as subsidiary of an existing Company, unlimited companies, producer companies is dealt with in the Chapter in detail.

During the continuity of business, it may be found beneficial to convert the form of entity into another form of business entity. Companies Act provides the scope to convert one form of entity into another for 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; Sole Proprietor Concern into Limited Company; Partnership Firm into a Limited Company; Sole proprietor Concern or Partnership firm into a Limited Company; Inter-state Cooperative Society into a Producer Company.

Re-registration in UK Companies Act, 2006 is what the conversion in Companies Act, 1956.

It is common to enter into agreements between the companies and Managerial Personnel entrusting the powers of management to them.

Public Companies cannot commence business unless these get the certificate of commencement of business in accordance with the provisions under the Act.
SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. State the procedure for incorporation of Producer Company.

2. State the procedure for incorporation of Company for charitable and other public utility purposes without addition to name the words 'limited' or 'private limited'.

3. Describe the procedure for conversion of a private company into a public company by voluntary action on the part of the company.

4. Describe the procedure for conversion of Inter State Co-operative Society into a Producer Company.

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

6. Describe the procedure for commencement of business.

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

8. Draft a Board resolution for calling a general meeting.

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. In accordance with the definition of alteration as given in section 2(1A), 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 17 (alteration of memorandum) or section 31 (alteration of articles).

The scheme of the present 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.

After going through this chapter, you will be able to understand procedure for alteration in the clauses of Memorandum and Articles of Association of the Company viz.:

- Procedure for change of name of the company
- Procedure for change of objects of the company
- Procedure for change of registered office of the company
- Procedure for change in share capital of the company
- Procedure for liability of directors to be made unlimited
- Alteration of Articles of Association of the Company
- Procedure for changing the financial year of the company

I. ALTERATION OF CLAUSES OF MEMORANDUM OF ASSOCIATION OF A 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 21 of the Companies Act, 1956. 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 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 therefrom, 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 21 of the Act, the company has to take the following procedural steps:

1. Issue notice in writing to every director of the company for the time being in
India and at his usual address in India to every other director as per the provisions of Section 286 of the Act. 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 to —

(i) consider and approve the proposed name by passing a resolution. Considering that the proposed name may not be made available by the concerned Registrar of Companies (ROC), the Board must consider and decide at least 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 e-form 1A, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, 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) to authorise the Company Secretary/Director to make the required application to the Registrar of Companies in e-form 1A for seeking availability of the proposed name and pay the prescribed application fee of Rs.500/-. [For specimen, please see Annexure I(a)]

3. The application in e-Form 1A, accompanied by a fee of rupees five hundred to the Registrar of Companies should have the following documents as attachment:

1. In case of change of name of an existing company, a copy of Board resolution;
2. Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment;
3. If change is due to a direction received from the Central Government, then a copy of such direction;
4. Optional attachment(s) - if any.

The Registrar is required to inform the applicant, about the availability or otherwise of the name applied for, within three days of the receipt of the application vide rule 4A(1).

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 vide rule 4A(2)(a). The applicant may apply for extension for retention of such name for a further period of thirty days on payment of fifty per cent of the fee prescribed for the application at the initial stage, no further extension will be granted after expiry of ninety days from the date the name is allowed in the first instance. The name allowed shall lapse after expiry of sixty or ninety days, as the case may be, from the date it is allowed first.

On filing e-form 1A, 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 meetings, 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 required under Section 21 of the Act for changing the name of the company; and

(For specimen of special resolution for change of name of the company, please see *Annexure I(b)* at the end of this study).

(b) for passing another special resolution under Section 16 of the Act for altering clause I (name clause) in the memorandum of association of the company in accordance with Section 16 of the Act.

[For specimen of special resolution for altering the memorandum (name clause) of the company, please see *Annexure II* at the end of this study].

(iii) To approve notice of the general meeting and the explanatory statement to be annexed to the notice under Section 173 (2) of the Act 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 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 exchanges, a copy of the proceedings of the general meeting in case shares of the company are listed (Refer clause 33 of the Listing Agreement).

11. File with the ROC e-form 23 with a certified true copy of each special resolution passed at the general meeting along with the explanatory
statement under Section 173 and altered copy of Memorandum of Association and Articles of Association and prescribed filing fee.

12. Make an application to the concerned Registrar of Companies alongwith the prescribed application fee, for obtaining Central Government’s approval to the change of name of the company. New e-form 1B has been prescribed for this purpose. The attachments with e-form 1B are as below:

1. Minutes of the members’ meeting;
2. Certified copy of the order for condonation of delay;
3. Optional attachment(s) - if any.

*Note:* Following particulars will be filled up in the form itself:

(a) Reasons for change of name (Column 5 of the Form).
(b) Particulars of filing e-form 23 (Column 6 of the Form).
(c) Name of the Company at the time of Incorporation (Column 7 of the Form).
(d) Number of members present, numbers voted in favour and number voted against (Column 8 of the Form).

(For specimen of the e-form 1B for obtaining Central Government’s approval to the change of name of the company, please see Part B of this Study).

13. On receipt of the Central Government’s approval to the change of name, the company should surrender to the ROC, the existing Certificate of Incorporation with a request for the issue of a Fresh Certificate of Incorporation consequent upon change of name of the company.

14. Issue a general notice in newspapers informing all concerned, about the change of name of the company.

15. Inform all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., 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.

16. 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.

17. 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.

18. Get the new name of the Company painted on all the signboards wherever they are displayed.
19. Correct all records, registers including the Register of Members, share certificates, every copy of Memorandum and Articles of Association.

**Effect of change of name of a Company**

1. **Generally:** Sub-section (3) of section 23 of the Act provides for the effect of a change of name of a company. According to this section, the 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 by or against the company and pending in the old name; they may continue in the old name.

   Sub-section (3) 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 21 permits a company to change its name in the manner as prescribed. Sub-section (3) expressly provides that the change of name will not affect any right or obligation of the company and that legal proceeding in the old name will not be rendered defective but will be continued by or against the company in its new name. The expression used in the section is "the company" and not "old company", or "new company", or "dissolved company". There are further indications that despite change of name, the entity continues.

   Section 21 enables a company to change its name by a given method, viz., by a special resolution and with the approval of the Central Government signified in writing. It does not provide for altering the entity but only the name. This is also made quite clear by the provisions of section 23. Sub-section (1) of section 23 states that where a company changes its name in pursuance of section 21 or section 22, the Registrar shall enter the new name on the register in the place of the former 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 21 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 Comp Cas 260 (P&H)*)


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 Comp Cas 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]

The first part of sub-section (3) protects the rights and obligations of the company, already acquired before the change of its name and also protects legal proceedings by or against it. The second part of the sub-section authorises the continuation of a pending legal proceeding, which was commenced by the company in its former name. The second part provides that legal proceedings commenced by or against the company in its former name, may be continued by the company after the change of its name. Nothing in this sub-section authorised 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 Comp Cas 337 (Cal): AIR 1973 Cal 78]

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 Comp Cas (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 Comp Cas 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 Comp Cas 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 Comp Cas 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 17, 18 and 19 and any other applicable provisions, if any, of the Companies Act, 1956.

Section 17 of the Act lays down that a company may, by special resolution, alter the provisions of its memorandum with respect to its objects so far as may be required to enable it –

(a) to carry on its business more economically or more efficiently; or
(b) to attain its main purpose by new or improved means; or
(c) to enlarge or change the local area of its operations; or
(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
(e) to restrict or abandon any of the objects specified in the memorandum; or
(f) to sell or dispose of the whole or any part of the undertaking or of any of the undertakings, of the company; or
(g) to amalgamate with any other company or body of persons.

Section 18 (1) of the Act requires such a company to file with the Registrar a copy of the special resolution passed by the company in relation to clauses (a) to (g) of Sub-section (1) of Section 17, within one month from the date of such resolution together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such documents.

Sub-section (2) of Section 18 states that the certificate shall be conclusive evidence that all the requirements of the Act with respect to the alteration have been complied with and henceforth the memorandum so altered shall be the memorandum of the company.

Section 19 of the Act lays down that no such alteration made under Section 17 of the Act shall have any effect until it has been duly registered in accordance with the provisions of Section 18.

Sub-section (2) of Section 19 states that if the documents required to be filed with the ROC under Section 18 are not filed within the time allowed under that section such alteration made under Section 17 and all proceedings connected therewith, shall, on the expiry of such period, become void and inoperative.

Alteration of Memorandum of Producer Company

A producer company may alter its objects specified in its Memorandum of Association by passing a special resolution. Such alteration must not be inconsistent
with Section 581B. This authority is available to the producer company notwithstanding the provisions contained in Section 17 of the Act.

A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within 30 days from the date of adoption of special resolution.

In case of transfer of registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of special resolution certified by two directors shall be filed with both the Registrars within thirty days and each Registrar shall record the same and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to other Registrar all documents relating to Producer Company. The alteration of provisions of memorandum of Producer company relating to the change of place of its registered office from one state to another shall not take effect unless it is confirmed by CLB* on petition.

**Procedure for changing objects of a company**

In the light of the above provisions of Sections 17, 18 and 19 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 for a Board meeting in writing to every director of the company for the time being in India and at his usual address in India to every other director [Refer Section 286 of the Act]. 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 17 of the Act for change of objects clause of the memorandum of association of the company.
   (iii) approve notice for the general meeting and the explanatory statement to be annexed to the notice under Section 173 (2) of the Act 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.

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

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* It shall be substituted by NCLT on the commencement of Companies (Second Amendment) Act, 2002.
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 33 of the Listing Agreement).

8. File with the Registrar of Companies, e-form 23 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 one month 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. Once the request reaches the concerned MCA official, the official will takeout the printouts of the documents and sign it with seal and deliver the same in physical form.

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.

(The specimen resolutions for changing the objects clause of a company are given at Annexures III(a) and III(b) at the end of this Study).

3. Change of Registered Office of a Company

Section 146(1) of the Companies Act, 1956 lays down that every company shall have a registered office from the day it begins to carry on business or from the thirtieth day after the date of its incorporation, whichever is earlier, to which all communications and notices may be addressed.

Sub-section (2) of the section makes it obligatory on the part of every company to send to the concerned Registrar of Companies, notice of the situation of its registered office, and of every change therein, in the prescribed e-Form No. 18, within thirty days after the date of its incorporation or after the date of the change, as the case may be. At present, this notice is to be given in e-form 18.

The proviso to the Sub-section (2) lays down that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed outside the local limits of any city, town or village where such office is situated.

The Companies Act, 1956 contains a number of Sections relating to the registered office of a company. Some of the important provisions in this respect are:

(i) Section 143 of the Act lays down that every company shall keep at its registered office a Register of Charges and enter therein all the charges specifically affecting property of the company, and all floating charges on the undertaking or on any property of the company giving, in each case, short description of the property charged, amount of the charge and the names of the persons entitled to the charge.

(ii) Section 163 of the Act requires a company to keep its register of members, index of members, register and index of debentureholders and copies of all annual returns under Sections 159 and 160 together with enclosures, at its registered office.
(iii) Section 303 of the Act requires a company to keep at its registered office, a
register of its directors, managing director, manager and secretary containing
with respect to each of them, the prescribed particulars.

(iv) Section 209 lays down that every company shall keep at its registered office
proper books of accounts.

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) 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.

   (For specimen of Board resolution shifting the registered office of the
   company to another place within local limits, please see Annexure IV at the
   end of this Study. For e-form 18, please see Part B of this Study.)

2. Within thirty days of the passing of the Board resolution, the company must
file with the concerned Registrar of Companies, e-form 18 prescribed in the
Companies (Central Government's) General Rules and Forms (Amendment)
Rules, 2006 and in compliance with the provision of Sub-section (2) of
Section 146 of the Companies Act and also pay with the Form, filing fee as
prescribed in Schedule X to the Companies Act along with a copy of the
Board resolution.

3. Issue 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 registered office of the company must also be amended 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 the proviso to Sub-section (2) of Section 146 of the Companies Act,
1956, a company cannot, except on the authority of a special resolution passed in
general meeting, remove 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 fixing time, date and venue for holding general meeting of the company for passing a special resolution pursuant to the proviso to Sub-section (2) of Section 146 of the Companies Act, 1956;
   (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 173(2) of the Companies Act; and
       (For specimen of the Board resolution approving notice of the general meeting, please see Annexure V at the end of this Study).
   (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.
       (For specimen of the Board resolution authorising the company secretary to issue notice of the general meeting, please see Annexure VI at the end of this Study).

1A. If the company is a listed company, then ensure that the Special Resolution as aforesaid is passed only through postal ballot.

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. A general 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.
   (For specimen of the special resolution shifting the registered office of the company to another place outside the local limits, please see Annexure VII at the end of this Study).

   The transfer of registered office of a Producer Company from the jurisdiction of one Registrar of Companies to another can be made by adopting special resolution to that effect.

6. Send to each stock exchange, a copy of the proceedings of the general meeting in case of a listed company (Refer clause 33 of the Listing Agreement).
7. File with ROC within thirty days of passing of the special resolution-
   (a) e-form 23 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) e-form 18, containing notice of change of registered office, along with the filing fee and copy of the special resolution.
   (c) Certified copy of the special resolution certified by two directors and the explanatory statement annexed to the notice of the general meeting (in case of Producer Company).

8. Issue a general 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 painted new address of the registered office of the company 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 Section 17A inserted by the Companies (Amendment) Act, 2000 a company can not 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 Registrars 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. After holding general meeting (annual or extra ordinary) and having passed special resolution to this effect the company should make application to the Regional Director in the prescribed e-Form 1AD (Specimen of e-form 1AD is given in Part B of this Study) for confirmation along with a fee of Rs. 500/-. (For specimen resolution please see Annexure VIII at the end of this Study).

   The attachments prescribed along with e-form 1AD are:
   (a) Copy of the minutes of the meeting
   (b) Copy of the newspaper advertisement
(c) Particulars of investor grievances, if any
(d) Any attachment to support the details of the prosecution filed against the company and its officers in default, if any

2. The Regional Director shall pass an order in writing confirming the change after giving necessary opportunity of being heard to the parties, within four weeks from the date of receipt of application.

3. The company shall file with the concerned Registrar of Companies, a certified copy of the confirmation order of the Regional Director within two months from the date of confirmation order alongwith e-form 21 (Specimen of e-form 21 is given in Part B of this Study).

4. The company should obtain a certificate of registration of the confirmation order from the Registrar of Companies who shall certify under his hand within one month from the date of filing of such confirmation order.

5. Such certificate shall be conclusive evidence that all the requirements of this Act for the alteration and confirmation have been complied with and henceforth the memorandum of association so altered shall be the memorandum of association of the company.

6. The Registrar shall make necessary changes in the register and transfer the records to the Registrar of Companies under whose jurisdiction the company has shifted its registered office.

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

Sections 17, 18 and 19 of the Companies Act, 1956 lay down the procedure for changing the place of registered office of a company from one State to another.

Section 17 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. Sub-section (2) of said Section further provides that 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 Company Law Board* on petition.

Consideration before CLB* while confirming the special resolution

In exercising its discretionary jurisdiction under Section 17 of the Companies Act and confirming the special resolution passed by a company for shifting the place of its registered office from one State to another, the Company Law Board* takes into consideration the interest of the shareholders who could not attend the general meetings and annual general meetings in particular when the special resolution was passed, the interest of the creditors and public interest but does not try to superimpose its own views over those of the shareholders - K.G. Khosla Compressors Ltd., In re. (1997) 27 CLA 139 (CLB).

In Kwality Ice Creams (India) P. Ltd., In re. [(2009) 148 Comp Cas 631 (CLB)], the Petitioner Company sought confirmation of the alteration to the situation clause in the memorandum of association for shifting the registered office u/s 17 from one

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
State to another as approved by a special resolution passed in accordance with Section 189 of the Act. The ex-employees of the company raised objections on the ground that they would be prejudicially affected by such transfer as the court proceedings initiated by them against the company were pending.

According to the Hon'ble Judge, the decision to shift the registered office of the company to another State being a domestic matter, it rests with the shareholders and the company is the best judge of how to run its business more economically or conveniently or where to locate the registered office for efficient functioning of the business.

A special resolution had been passed unanimously by the members of the company at the annual general body meeting and the Registrar of Companies had no objection to the proposed alteration. There was no restraint order from any court against the proposal alteration of situation nor was the Board restrained from proceeding with the petition filed under Section 17 of the Act. Objection of ex-employees of the company on the ground to stall the shifting of the registered office of the company as such transfer would not adversely affect the proceedings of court cases. Having regard to the rights and interests of the members of the company as well as the rights and interests of the creditors it was held to be just and proper to allow the petition subject to the condition that the interest of none of the employees at the registered office be prejudiced by retrenchment or otherwise.

According to Section 18(1) of the Act, such a company has to file with the Registrar of Companies of both the States, a certified copy of the order of the Company Law Board* made under Sub-section (5) of Section 17 confirming the alteration within three months from the date of the order, a printed copy of the memorandum and e-form 21 (duly filled in and signed) as prescribed in the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006. The Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such documents. Besides, the transfer of the Company's records from the office of one Registrar to the other Registrar of Companies is also an important function and it should be attended on priority basis.

In Forbes Finance Limited (CLB) In re: C.A. No. 96/19/CB/2008 in CP. No. 792/17/SRB/2007, the applicant company shifted its registered office and altered its MoA which was confirmed by the CLB. The company filed the copy of the order of CLB with ROC at Mumbai and at Chennai. However, due to certain defects made while filling Form 21 and filing it electronically, the filed forms were not taken on record by the ROC. The Electronic system does not permit rectification of errors in the forms. Therefore, the validity of the CLB order became redundant. The company moved the present application to revive the order so that fresh filings with ROC could be made.

The issue is whether the order made on 09.01.2008 in CP. No. 792/17/SRB/2007 under Section 17 of the Act is to be revived in the facts of the present case. The Company undisputedly has filed with the ROC Chennai, a certified copy of the CLB order dated 09.01.2008 along with Form No. 21, within the stipulated time. Form No. 21 is admittedly defective, which is only a procedural lapse and mere technicalities

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
cannot defeat the legal rights of the Company, especially when, there is substantial compliance with the requirement of Section 18(1)(b), by filing with the registrar, a certified copy of the CLB order within the time specified in Section 18(1)(b) of the Act. Having found that the certified copy of the CLB order dated 09.01.2008 has been filed with the Registrar in compliance with Section 18; the order of the CLB shall not become void and inoperative under Section 19(2).

At the same time, Form No. 21 filed under SRN A35181734 has been registered by the ROC Chennai on 21.05.2008 beyond one month from the date of filing of the document by the Company, and therefore, it has not been duly registered in accordance with the provisions of Section 18(1)(b), in which event any such alteration to situation clause of the memorandum of association already approved by the members of the Company under Section 189 and confirmed by the CLB, under Section 17 shall not have any effect, in view of the embargo contained in Section 19(1) of the Act. In view of the defective Form 21, the computer system is not allowing the authorizing officer to approve a form 18. Against this piquant situation, the prejudices faced by the Company can be remedied only when it is permitted to file afresh the documents required to be filed with the Registrar under Section 18, however after condoning the delay, in exercise of the powers under Regulation 44, in order to meet the ends of justice and accordingly. The order dated 09.01.2008 made by CLB was revised. The Company will file a copy of the order with the Registrar within one month from the date of its receipt.

(For specimen of e-form 21, please see Part B of this Study).

The certificate issued by the ROC shall be conclusive evidence that all the requirements of the Act with respect to the alteration have been complied with and henceforth the memorandum so altered shall be the memorandum of the company [Refer Sub-section (2) of Section 18].

**Extension of time by CLB* for filing documents with Registrar**

According to Sub-section (4) of Section 18 of the Act, the Company Law Board may, at any time, by order, extend the time for filing the documents for registration of the alteration under Section 18 by such period as it thinks proper.

In re. *Webfit Ltd.* (1990) 4 CLA 264 (CLB) the Registrar had declined to register the alteration on the ground that CLB’s order had not been filed before him within the time allowed under Section 18. The CLB, which was moved for condonation of delay, directed the Registrar to register the order.

However, if once the resolution altering the memorandum of association of a company so as to change the place of its registered office from one State to another becomes void by operation of law, even the CLB* cannot grant extension of time - *Ganga Textiles Ltd.* v. *ROC* (1998) 29 CLA 467 (CLB).

In another case, where certified copy of the order of the CLB confirming special resolution passed by the company was not filed for registration with the Registrar, it was held that the CLB was not competent to revive its order and validate alteration which had become void and inoperative by reason of more than four months’ delay—*Shivalik Steels & Alloys Pvt. Ltd.* v. *ROC* (1991) 6 CLA 147 (CLB).

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
Sub-section (3) of Section 18 further provides that where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in its office.

Section 19(1) of the Act lays down that no such alteration made under Section 17 of the Act shall have any effect until it has been duly registered in accordance with the provisions of Section 18 of the Act.

Sub-section (2) of Section 19 further states that if the documents required to be filed with the ROC under Section 18 are not filed within the time allowed under that section, such alteration and the order of the Company Law Board* made under Sub-section (5) of Section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative.

In accordance with the abovementioned provisions of Sections 17, 18 and 19 of the Companies Act, a company proposing to shift its registered office from the State where it is presently situated to another State, it has to follow the following procedure:

*Note*: The procedure outlined below is based on the Company Law Board Regulations, 1991. After the National Company Law Tribunal becomes functional, these Regulations will change accordingly:-

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 Company Law Board pursuant to the provisions of Sub-section (2) of Section 17 of the Companies Act, 1956 and also for authorising the company secretary to make a petition under Sub-section (2) of Section 17 of the Act to the Company Law Board seeking confirmation of the alteration of the memorandum of association of the company.

   (For specimen of the Board resolution for altering the memorandum of association of the company so as to change the situation of its registered office to another State, please see Annexure IX at the end of this Study).

   (iii) to approve notice of the general meeting alongwith the explanatory statement which is to be annexed to the notice of the meeting as per requirement of Section 173 (2) of the Companies Act; 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.

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
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 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. [For Specimen of Special Resolution, please see Annexure X].

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.

8. File with the ROC within thirty days of passing of the resolution, e-form 23 along with a certified true copy of the special resolution passed at the general meeting alongwith explanatory statement annexed to the notice of the general meeting and the prescribed filing fee.

9. Not less than one month before filing of the petition under Section 17(2) of the Companies Act with the Company Law Board for confirmation of the alteration to the memorandum, the company is required to—

   (i) publish a general notice, at least once, in the district in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated, and circulating in that district clearly indicating the substance of the petition and stating that any person whose interest is likely to be affected by the proposed alteration to the memorandum may intimate to the Bench Officer within twenty-one days of the date of publication of that notice the nature of interest and grounds of opposition [Refer Regulation 36(1)(i) of the Company Law Board Regulations, 1991]; and

   (ii) serve, by certificate of posting, individual notice(s) to the effect set out in clause (i) above on each debenture holder and creditor of the company, unless otherwise required by the Bench to be sent by registered post. [Regulation 36(1)]

10. After the expiry of thirty days of the general notice as aforementioned, as authorised by the company in general meeting, the company secretary shall make the required petition to the Company Law Board in accordance with the procedure laid down in Regulations 11, 12, 13 and 14 and other applicable Regulations, if any, of the Company Law Board Regulations, 1991.

11. A copy of the petition shall also be served on the concerned Registrar of Companies having jurisdiction over the company alongwith e-form 61 (format given in Part B of this Study) and there shall be attached to the petition, an acknowledgement from the office of the Registrar of Companies as a token of his having received copy of the petition.
12. The petition shall contain information relating to the number of creditors and the total amount due to them up to the latest practicable date preceding the date of filing the petition and, in any case, the date to which the list referred to in Sub-regulation (8) is made up, shall not precede the date of filing the petition by more than two months. A list of creditors and debenture holders shall also be filed along with the petition [Refer Regulation 36(6)].

13. Sub-regulation (8) of Regulation 36 lays down that a duly authenticated copy of the list of creditors and debenture holders showing their names, addresses and the amounts due to each of them 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 rupees ten to the company.

14. The contents of the petition should be according to the provisions of Regulation 17 of the said Regulations.

15. The petition should be accompanied by documents as detailed in Regulation 18 of the said Regulations.

16. The company secretary must enclose with the petition, memorandum of his appearance before the Bench as and when summoned by the CLB and the same should be accompanied by a certified copy of the resolution authorising him to make the petition on behalf of the company and also to appear before the Bench and represent the company in all proceedings related to the petition of the company before the CLB and any other agency [Refer Regulation 19].

17. Prescribed fees for the petition shall be deposited and a proof of having paid the same is required to be attached to the petition.

18. To serve notice of the petition together with a copy of the petition by registered post on the Chief Secretary to the Government of the State in which the registered office of the petitioner company is situated [Refer Regulation 36(2) of the Company Law Board Regulations, 1991].

The purpose of this notice is to give a chance to the State Government to oppose the petition on certain cogent grounds. However, only probable loss of revenue to the State on account of shifting of the registered office of the company is not a valid ground for refusing to confirm the alteration to the memorandum so as to change the registered office of the company.

19. To prove the despatch, publication and service of notice(s) by an affidavit and such affidavit shall be enclosed with the petition.

20. On receipt of the order of the Company Law Board confirming the alteration, the company should file e-form 21 of the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, along with copy of the order of the CLB, within three months from the date of the order. The Registrar shall register the same and certify the registration under his hand within one month from the date of filing of copy of the order [Refer clause (b) of Sub-section (1) of Section 18].
Note: Original certified copy of the order of CLB should be submitted to the concerned office of the Registrar of Companies, simultaneously, failing which the filing will not be considered and legal action will be taken.

(For e-form 21, please see Part B of this Study).

21. The certificate shall be conclusive evidence that all the requirements of the Act with respect to the alteration and the confirmation thereof have been complied with and henceforth the memorandum so altered shall be the memorandum of the company [Refer Sub-section (2) of Section 18].

22. Since the alteration involves transfer of registered office of the company from one State to another, the company shall file a certified copy of the order confirming the alteration with the Registrar of each State, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office [Refer Sub-section (3) of Section 18].

23. 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.

24. Within thirty days from the date when the change becomes effective, the company should file with the Registrar of the State where the registered office has been shifted, notice of change in e-form 18 along with the prescribed filing fee.

25. 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.

26. 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.

27. 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.

28. 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.

4. Alteration of Share Capital of a Company

Sections 94, 95, 96, 97 and 100 of the Companies Act, 1956 lay down the procedure for alteration of share capital of companies. According to Sub-section (1) of Section 94 of the Companies Act, a limited company, having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum so as to change its share capital, as follows, that is to say, it may—

(a) increase its share capital by such amount as it thinks expedient by issuing new shares;
(b) consolidate all or any of its share capital into shares of larger amount than its existing shares;
(c) convert all or any of its fully paid-up shares into stock, and reconver 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, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
(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.

Sub-section (2) of Section 94 lays down that the powers conferred by this section shall be exercised by the company in general meeting and shall not be required to be confirmed by the Court.

A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of the Companies Act. Infact, this is known as dimunition of share capital [Section 94(3)].

Filing of (e-form 5) notice of change in share capital with ROC

Section 95 of the Act makes it obligatory on the part of a limited company having share capital, which has consolidated, sub-divided, converted, re-converted, redeemed any redeemable preference shares, or cancelled any shares otherwise than in connection with a reduction of share capital under Sections 100 to 104, to give notice thereof to the Registrar in the prescribed e-form 5, within thirty days of the passing of the resolution, specifying the shares consolidated, converted, re-converted, sub-divided, redeemed or cancelled and the Registrar shall record the same in the memorandum of the company. This e-form is required to be pre-certified by a professional i.e. Company Secretary/Chartered Accountant/Cost Accountant in whole time practice.

(For specimen of e-form 5, notice of consolidation, division etc. increase in share capital/increase in number of members, please see Part B of this Study).

The attachments alongwith e-form 5 are:
1. Proof of receipt of Central Government order
2. Altered memorandum of association
3. Altered articles of association
4. Optional attachment(s) - if any

Note:

— Stamp duty on e-Form 1, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through MCA portal and in such case submission of physical copies of the uploaded e-Form 1, MoA and AoA to the office of the 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. In respect of the States from whom the
authorization is yet to be received, the company will continue to pay stamp
duty outside the MCA portal. List of states/union territories for which stamp
duty cannot be paid electronically is available on the website of MCA.

— In case stamp duty is not paid electronically through MCA portal, it is
required to deliver simultaneously the original stamped physical copies of the
uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the
concerned office of RoC failing which such eForm shall be put into “Waiting
for user clarification” in term of Regulation 17 of the Companies Regulations,
1956.

— 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.

4(i) Procedure for increasing share capital

The following procedure has to be followed by a limited company having a share
capital, for increasing its authorised share capital:

1. The company has to make sure that its articles of association contain a
provision 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 31 of the
Companies Act, 1956, so as to provide for increase in the share capital of
the company before increasing its authorised share capital.

2. Issue notice in accordance with the provisions of Section 286 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 an ordinary resolution for increasing the authorised share capital
of the company [Refer Section 94(2)];
       (For specimen of ordinary resolution for increasing the authorised share
capital of the company, please see Annexure XI at the end of this Study).
   (iii) to approve notice, agenda and explanatory statement to be annexed to
       the notice of the general meeting as per Section 173(2) of the Act;
   (iv) to authorise the company secretary to issue, on behalf of the Board,
       notice of the general meeting as approved by the Board.

4. 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.

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 ordinary/special resolution the resolution for increasing the authorised share capital of the company [Refer Section 94(2)];

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

9. File with the Registrar within thirty days of passing of the resolution, if it is a special resolution, e-form 23 with a certified true copy of the special resolution passed at the general meeting along with a copy of the explanatory statement annexed to the notice of the general meeting, copy of altered Memorandum of Association and Articles of Association, and the prescribed filing fee.

10. File with ROC, e-form 5 along with the registration fee on increased authorised capital as per rates prescribed under Schedule X to the Act within 30 days of the passing of the resolution.

The mandatory attachments alongwith e-form 5 are:
(a) Altered memorandum of association
(b) Altered articles of association
(c) Proof of receipt of Central Government order, if any for increase of authorized share capital.

Note:

— Stamp duty on e-Form 1, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through MCA portal and in such case submission of physical copies of the uploaded e-Form 1, MoA and AoA to the office of the 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. In respect of the States from whom the authorization is yet to be received, the company will continue to pay stamp duty outside the MCA portal. List of states/union territories for which stamp duty cannot be paid electronically is available on the website of MCA.

— In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of RoC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956

— 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 copies (one of them certified) of the amendment to the memorandum 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 in the office of the company so that no unaltered copy thereof be issued to any person.
4(ii) Procedure for consolidation of share capital

For consolidation of its share capital, a company is required to take the following procedural steps:

1. It must make sure that its articles of association contain provisions authorising it to consolidate its shares. If there is no such provision then the articles have to be altered in accordance with the provisions of Section 31 of the Companies Act, 1956, before attempting consolidation of its shares.

2. Give twenty-one days' notice of the proposed consolidation of the shares of the company to the stock exchanges on which the securities of the company are listed.

3. Make an application to the stock exchanges on which the securities of the company are listed and any other stock exchange on which the 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 an ordinary resolution or a special resolution, if so required by the articles for this purpose [Refer Section 94(2)];
   (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;
   (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. 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. Forward three copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges as per the Listing Agreement.

8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
   (For specimen of the resolution for consolidation of shares, please see Annexure XII at the end of this study).

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

10. If the resolution passed is a special resolution, file with the ROC, e-form 23 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.
11. Give notice in compliance with the provisions of section 95 of the Companies Act, 1956, of the consolidation of the shares of the company, to the Registrar in e-form 5, 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 [Refer Section 97].

The mandatory attachments along with e-form 5 are:
(a) Altered memorandum of association
(b) Altered articles of association
(c) Proof of receipt of Central Government order, if any for increase of authorized share capital

Note:
— Stamp duty on e-Form 1, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through MCA portal and in such case submission of physical copies of the uploaded e-Form 1, MoA and AoA to the office of the 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. In respect of the States from whom the authorization is yet to be received, the company will continue to pay stamp duty outside the MCA portal. List of states/union territories for which stamp duty cannot be paid electronically is available on the website of MCA.
— In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of RoC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956
— 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.

12. 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.

4(iii) 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 make sure 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 31 of the Companies Act, 1956, before proceeding to sub-divide its shares.

2. Give twenty-one 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. Make an application to the stock exchanges on which the securities of the company are listed and any other stock exchange on which the company proposes for getting its sub-divided shares listed.

4. 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 an ordinary resolution or a special resolution, if so required by the articles for this purpose [Refer Section 94(2)];
   (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;
   (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. Forward three copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges as per the Listing Agreement.

8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
   (For specimen of the resolution for sub-division of shares, please see Annexure XIII at the end of this Study)

9. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges in case of a listed company.

10. If the resolution passed is a special resolution, file with the ROC, e-form 23 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.
11. Give notice in compliance with the provision of Section 95 of the Companies Act, 1956, of the sub-division of the shares of the company, to the Registrar in e-form 5, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares sub-divided. The Registrar will record the alteration in the memorandum of the company [Refer Section 97].

The mandatory attachments along with e-form 5 are:
(a) Altered memorandum of association
(b) Altered articles of association
(c) Proof of receipt of Central Government order, if any for increase of authorized share capital

Note:
— Stamp duty on e-Form 1, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through MCA portal and in such case submission of physical copies of the uploaded e-Form 1, MoA and AoA to the office of the 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. In respect of the States from whom the authorization is yet to be received, the company will continue to pay stamp duty outside the MCA portal. List of states/union territories for which stamp duty cannot be paid electronically is available on the website of MCA.
— In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of RoC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956
— 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.

12. 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.

4(iv) Procedure for Conversion of Fully Paid Shares into Stock

Stock is the aggregate of fully paid shares consolidated in accordance with the provisions of the Companies Act, 1956. 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 company limited by shares or by guarantee having a share capital, if so authorised by its articles, may alter the conditions of 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.

Section 94(1)(c) authorises a limited company, having a share capital, if so authorised by its articles, to alter the conditions of its memorandum, that is to say, it may convert all or any of its fully paid-up shares into stock.

Sub-section (2) of Section 94 lays down that the power conferred by the section shall be exercised by the company in general meeting and shall not require confirmation by Court.

Section 95 of the Act makes it obligatory on the part of a limited company having share capital, which has converted any of its shares, to give notice thereof to the Registrar, within thirty days of the passing of the resolution, specifying the shares converted into stock and the Registrar shall record the same in the memorandum of association of the company.

A forged transfer of stock does not affect the title of the stockholder [Davies v. Bank of England (1824) 2 being 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 then the articles have to be altered in accordance with the provisions of Section 31 of the Companies Act, 1956, before attempting conversion of its fully paid shares into stock.

2. Give the stock exchanges twenty-one 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 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 an ordinary resolution or a special resolution, if so required by the articles for this purpose [Refer Section 94(2)].
(iii) Approve notice and explanatory statement to be annexed to the notice of the general meeting as per Section 173(2) of the Act.

(iv) Authorise the company secretary to issue notice of the general meeting as approved by the Board.

5. 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. Also 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 have the resolution (ordinary or special, as the case may be) passed.

(For specimen of the resolution for conversion of fully paid shares into stock, please see Annexure XIV at the end of this Study).

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

9. If the resolution passed is a special resolution, file with the ROC, e-form 23 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 passing of the resolution along with the prescribed filing fee.

10. In compliance with the provisions of Section 95(1) of the Companies Act, 1956, the company should give notice of conversion of fully paid shares into stock to the Registrar in e-form 5, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the fully paid shares converted into stock of the company and the Registrar will record the same in the memorandum of the company [Refer Section 97].

The mandatory attachments alongwith e-form 5 are:
(a) Altered memorandum of association
(b) Altered articles of association
(c) Proof of receipt of Central Government order, if any for increase of authorized share capital

Note:
— Stamp duty on e-Form 1, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through MCA portal and in such case submission of physical copies of the uploaded e-Form 1, MoA and AoA to the office of the 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. In respect of the States from whom the authorization is yet to be received, the company will continue to pay
stamp duty outside the MCA portal. List of states/union territories for which stamp duty cannot be paid electronically is available on the website of MCA.

- In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of RoC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956

- 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. 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 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.

**4(v) Procedure for Re-conversion of Stock into Fully Paid Shares**

According to Section 94(1)(c), a limited company, having a share capital, if so authorised by its articles, may alter the conditions of its memorandum, that is to say, it may re-convert any stock into fully paid-up shares of any denomination. Sub-section (2) of the Section lays down that the power conferred by this section shall be exercised by the company in general meeting and shall not require confirmation by Court.

Section 95 of the Act makes it obligatory on the part of a limited company having share capital, which has re-converted any of its stock into fully paid shares, to give notice thereof to the Registrar, within thirty days of the passing of the resolution, specifying the stock re-converted into fully paid shares and the Registrar shall record the same in the memorandum of association of the company.
Broadly the procedural steps are same as discussed in conversion of shares into stock.

(For specimen of the resolution, for re-conversion of stock into shares, please refer Annexure XV).

4(vi) 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—

(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 analysing 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*.

In Elpro International Ltd., In re [(2009) 149 Comp Cas 646 (Bom)], the brief facts of the case are 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 Rs.183 per equity share of Rs.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 shareholders 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

* It shall be substituted by the National Company Law Tribunal on the commencement of Companies (Second Amendment) Act, 2002.
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 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 the record provided data of the share price movements. The price of Rs.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 validity passed. Moreover, there was no objection from any of the shareholders to the proposed reduction.

**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. Make sure that its articles of association contain a provision authorising it to reduce its share capital. If there is no such provision then the articles have to be altered in accordance with the provisions of Section 31 of the Companies Act, 1956, before attempting a reduction in its share capital, in any way.

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;
   
   (For specimen of the special resolution for reduction of share capital, please see Annexure XVI at the end of this study).

* It shall be substituted by NCLT on the commencement of Companies (Second Amendment) Act, 2002.
(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) authorise the company secretary or some officer 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 Comp Cas 469 (Del)], reduction of capital
was discussed are that the petitioner-company proposed to reduce its share
capital to an amount of Rs. 24, 63, 86, 251 by canceling its equity share
capital of Rs. 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 frame work 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 were 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].

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 authorising 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;

* It shall be substituted by NCLT on the commencement of Companies (Second Amendment) Act, 2002.
(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 despatch 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.


(For e-form 21, notice of court’s/CLB’s Order, please see Annexure XI at the end of this study).

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 the original copy of the order on which 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 minute 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, all copies of the memorandum and articles of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

29. Take all other steps that may be required in accordance with the scheme of reduction of share capital of the company, e.g. to pay-up share capital which is in excess of the wants of the company.

* It shall be substituted by NCLT on the commencement of Companies (Second Amendment) Act, 2002.
* It shall be substituted by Tribunal on the commencement of Companies (Second Amendment) Act, 2002.
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.

5. Liability of Directors etc. to be made Unlimited

A limited company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director or manager [Refer Sub-section (1) of Section 323 of the Act].

Sub-section (2) of Section 323 lays down that upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum;

Provided that no alteration of the memorandum making the liability of any of the officers referred to above, unlimited shall apply to such officer, if he was holding the office before the date of the alteration, until the expiry of his the term, unless he has accorded his consent to his liability becoming unlimited.

The liability clause of Producer Company cannot be altered, as the liability of a Producer Company is, essentially, always intended to be limited.

In case of Producer company, when the directors vote for a resolution or approve by any other means, any thing done in contravention of the provisions of this Act or any other law for the time being in force, or the articles, they shall be jointly and severally liable to the company to make good any loss or damage suffered by the Producer company.

Where as a result of the above, such director has made any profit, the Producer company shall have the right to recover an amount equal to the profit from the director.

The liability imposed shall in addition and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

Section 32(1) of the Companies Act, 1956 lays down that a company registered as unlimited may register under the Act as a limited company.

Sub-section (2) of Section 32 provides that on registration in pursuance of Sub-section (1), the Registrar shall close the former registration of the company and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but the registration shall take place in the same manner and shall have effect, as if it were the first registration of the company under the Act.

The registration of an unlimited company as a limited company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in the manner provided by Part IX of the Act in the case of a company registered in pursuance of that part [Refer Sub-section (3) of Section 32].
For getting an unlimited company registered as a limited company, the Board of directors of the unlimited company will be required to follow the whole procedure which is required to be followed for the formation and incorporation of a new limited company, e.g., (i) name availability will have to be obtained from the concerned Registrar of Companies by making an application in the prescribed e-form 1A and paying the prescribed fee of Rs.500/-; and (ii) on receipt of name availability intimation from the Registrar, to have the memorandum and articles of the proposed company drafted, stamped, signed and filed with the Registrar for getting the same incorporated under the Act. On incorporation of the limited company, the assets and liabilities of the erstwhile unlimited company may be taken over by the limited company and the members of the unlimited company be paid either in cash or in the form of shares in the share capital of the limited company. The unlimited company shall be declared defunct with due process of law.

II. ALTERATION OF ARTICLES OF ASSOCIATION OF A COMPANY

Section 31 of the Companies Act, 1956 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;

Provided no alteration made in the articles under this sub-section, which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.

Sub-section (2) of Section 31 states that any alteration so made shall, subject to the provisions of the Act, be as valid as if originally contained in the articles and be subject, in like manner, to alteration by special resolution.

Where any alteration such as is referred to in the proviso to Sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.

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.

1. 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 changed/ 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 31 of the Companies Act, 1956.

(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.

(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.

While deciding on alteration of the articles, the Board of directors of the company must make sure that none of the proposed alterations increases the liability of any member who has become so before the alteration so as to oblige him to contribute to the share capital of, or otherwise to pay money to, the company, nor should any alteration provide for expulsion of a member by the company.

The Board must also ensure that none of the proposed alterations converts a public company into a private company, in which case, the company shall have to obtain approval of the Central Government to such alteration [Refer to proviso to Sub-section (1) of Section 31].

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.

(For specimens of the special resolution for altering the articles of association of the company in different ways, please see Annexures XVII, XVIII, XIX and XX at the end of this study).

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, e-form 23 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 thirty 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 so that no unaltered copy is issued to any person.

Note:

(i) A company, which has been granted a license under section 25 of the Act, must submit a draft of the proposed alterations to the Regional Director before convening a general meeting for passing a special resolution to approve the alterations.
(ii) If a proposed alteration requires the leave of the CLB granting approval under section 404(1) of the Act, the company should make an application to the Principal Bench of the CLB for an order granting leave.

A copy of the order of the CLB granting leave under section 404(1) to alter the articles as an attachment to e-Form No. 21 prescribed under the Companies (Central Government's) General Rules & Forms, 1956, is required to be filed electronically with the Registrar within 30 days of receipt of the order and also simultaneously a certified copy of the order in physical form is required to be filed.

2. Procedure for Alteration of Articles of Producer Company

(1) The amendment of articles shall be proposed by not less than two third of the elected directors or by not less than one third of the members of the Producer Company.

[The Procedure for holding Board and General meeting is same as mentioned earlier].

(2) Members shall adopt the amendment by a special resolution.

(3) File with the Registrar of Companies, e-Form No. 23 along with the copy of special resolution and amended articles, both duly certified by two directors and the explanatory statement annexed to the notice of the general meeting and a copy of the Articles of Association within 30 days from the date of passing the special resolution.

(4) Make necessary changes in all the copies of the articles of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

3. Financial Year of a Company

The term “financial year” has been defined in Section 2(17) of the Companies Act, 1956. It says “financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not.

Section 210(1) of the Act lays down that at every annual general meeting of a company held in pursuance of Section 166 of the Act, the Board of directors of the company shall lay before the company—

(a) a balance sheet as at the end of the period specified in Sub-section (3), and
(b) a profit and loss account for that period.

Sub-section (4) of the Section lays down that the period to which the account aforesaid relates is referred to in this Act as a “financial year”; and it may be less or more than a calendar year, but it shall not exceed fifteen months. Beyond 15 months and up to 18 months, it can be extended with the special permission of the Registrar of Companies.

The regulations in Table A of Schedule I to the Companies Act, 1956 do not contain any provision as to the manner of determination of financial year immediately after the incorporation of a company nor do they contain any regulation conferring
authority on Board or putting some restrictions on the Board of the company altering the financial year of the company.

**Authority to determine and alter financial year of a company**

Section 291 of the Companies Act entitles the Board of directors of a company to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. The Board of directors of a company may accordingly fix the financial year of the company at the company’s first meeting immediately after incorporation. The Board is also authorised to alter the financial year of the company at any point of time, provided such an alteration is in accordance with the provisions of Section 210 of the Companies Act and is effected by the Board only in the interest of the company.

The determination of financial year of a company and its alteration thereafter at any point of time is not a matter which is required to be exercised or done by the company in general meeting.

**Procedure for Changing the Financial Year of the Company**

1. Convene a Board meeting after giving notice of the meeting in writing to every director of the company for the time being in India and at his usual address in India to every other director [Refer section 286 of the Act].

2. The notice must contain time, date and venue for the meeting and detailed agenda of the business to be transacted thereat.
   
   Among other items of business proposed to be transacted at the meeting, the chairman and/or the managing director must give in precise terms the proposal for the determination of the company’s financial year in the case of the first meeting of the Board after incorporation of the company, or for changing the period of the financial year in the case of any subsequent meeting of the Board giving reasons for the change.

3. Hold the Board meeting and get the required resolution passed.

4. If the financial year is extended beyond a period of twelve calendar months and the company requires more time to finalise the accounts, the company should apply to the Registrar of Companies for obtaining extension of time for holding the annual general meeting of the company, pursuant to the second proviso to Sub-section (1) of Section 166 of the Companies Act, 1956.

5. The application should be made in e-form 61 (specimen in *Annexure IIIA*) alongwith :
   
   (a) Board resolution
   (b) Reasons for extension of financial year
   (c) Period for which extension is required.
   (d) Detailed application

6. The consent of the Assessing Officer of the Income Tax department is also required to be obtained by the company.

7. Due information to all concerned is also required to be given by the company.
ANNEXURES

ANNEXURE I(a)

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 21 of the Companies Act, 1956, the name of the Company be and is hereby changed from ‘….. Ltd’ to ‘….. Ltd’;

(b) the Company Secretary be and is hereby authorised to make the application in e-form 1A to the Registrar of Companies for ascertaining the availability of the proposed name 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.

ANNEXURE I(b)

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 21 of the Companies Act, 1956, 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 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” 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.

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

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.
ANNEXURE II

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

RESOLVED THAT pursuant to Section 16 of the Companies Act, 1956, 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 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" 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.

ANNEXURE III(a)

SPECIMEN OF BOARD RESOLUTION FOR ALTERATION OF OBJECTS CLAUSE OF MEMORANDUM

"RESOLVED THAT

(a) subject to the approval of the members of the Company, by a special resolution at a general meeting and such other approvals as may be necessary, the objects clause of the memorandum of the company be and is hereby altered by inserting new clauses in Clause____ thereof as set out below:

(i) ----------------------------------------------------;

(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, in accordance with the provisions of Companies Act, 1956, and the articles of association of the company”.

ANNEXURE III(b)

SPECIMEN OF SPECIAL RESOLUTION FOR AMENDING THE OBJECTS CLAUSE OF THE MEMORANDUM OF ASSOCIATION

"RESOLVED that pursuant to the provisions of Section 17 of the Companies Act, 1956, 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.

(iii) 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 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.

ANNEXURE IV

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 situation at ..............................................to................................................................., a place falling under the jurisdiction of .................................. police station and within the local limits of the town where the registered office of the company is presently situated; and
(ii) the Company Secretary, Shri...............be and is hereby authorised to file with the concerned Registrar of Companies, the prescribed e-Form No. 18 containing notice of change in the situation of the registered office of the company.”

ANNEXURE V

SPECIMEN OF BOARD RESOLUTION APPROVING NOTICE OF THE EXTRAORDINARY GENERAL MEETING

“RESOLVED THAT the notice, together with the explanatory statement required to be annexed to the notice under Section 173(2) of the Companies Act, 1956, of the extraordinary general meeting of the company to be held at ..........(time) ..............
(date) ................ (month) 200........, for passing the special resolution as required under Sub-section (2) of Section 146 of the Companies Act, 1956 for shifting the registered office of the company from its present situation at ................................................................................. to .................................................., a place falling under the jurisdiction of ........................................ police station and outside the local limits of the town where the registered office of the company is presently situated, a draft whereof was placed before the meeting and was initialled by the chairman of the meeting for the purpose of identification, be and is hereby approved.”

ANNEXURE VI

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

“RESOLVED THAT the Company secretary, Shri ............................, be and is hereby authorised to issue, on behalf of the Board of directors of the company, the notice and the explanatory statement required to be annexed to the notice under section 173(2) of the Companies Act, 1956, as approved by the Board, of the extraordinary general meeting of the company to be held at ............ Hrs. on...........(date).............(month) 200....... for passing the special resolution under Section 146(2) of the Companies Act, for shifting the registered office of the company from its present situation to a place of ................. falling under the jurisdiction of ......................... police station which is outside the local limits of the city where it is presently situated.”

ANNEXURE VII

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

“RESOLVED THAT - (i) pursuant to the proviso to Sub-section (2) of Section 146 and other applicable provisions, if any, of the Companies Act, 1956, 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 situated outside the local limits of the town where it is presently situated, but which is situated within the same State; and

(ii) the Company Secretary, Shri ............., be and is hereby authorised to file with the concerned Registrar of Companies, the prescribed e-Form No. 18 containing notice of change in the situation 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 in accordance with Section 166 of the Companies Act, 1956, 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, commends the proposed 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.

ANNEXURE VIII

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 the proposal for passing special resolution for the purpose. No Director is interested or concerned in this resolution.

ANNEXURE IX

SPECIMEN OF BOARD RESOLUTION FOR SHIFTING THE REGISTERED OFFICE

RESOLVED THAT

(a) subject to the approval of members of the Company by a special resolution at a general meeting and confirmation of the CLB under section 17 of the Companies Act, 1956 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/Practising Company Secretary/Secretary of the Company be and is hereby authorised to appear and represent the Company before the CLB Bench, in the matter of the petition to be filed with the Bench for their confirmation to the proposed alteration of the Objects Clause, of the memorandum 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;

(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.

ANNEXURE X

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 17(1) and other applicable provisions, if any, of the Companies Act, 1956 and subject to confirmation by the Company Law Board*, as prescribed in Sub-section (2) 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) the company secretary, Shri ................ be and is hereby authorised—

(i) to make, on behalf of the company, the petition under Sub-section (2) of Section 17 of the Act to the Company Law Board* 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 file, along with the petition, his memorandum of appearance before the concerned Bench of the Company Law Board* as and when summoned to do so and represent the company in all hearings concerning the petition of the company; and

(iii) to appoint, on behalf of the company, Company Secretaries in Practice, advocates, lawyers, counsels and other consultants, if and when required, to represent the company and plead on its behalf before the concerned Bench of the Company Law Board* and or any other agency in all matters connected with the petition of the company.

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
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 would 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 17(2) of the Companies Act, 1956, to the Company Law Board* 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. Therefore, the proposed resolution also seeks authority to the company secretary to make the said petition to the Company Law Board* on behalf of the company.

The Board commends 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.

ANNEXURE XI

SPECIMEN OF ORDINARY RESOLUTION FOR INCREASING THE AUTHORISED SHARE CAPITAL OF THE COMPANY

“RESOLVED THAT pursuant to Section 94 and other applicable provisions, if any, of the Companies Act, 1956 and Article ... of the Articles of Association of the company, the Authorised Share capital of the company be and is hereby increased from Rs. 50,00,000 (Rupees fifty lakh) divided into 5,00,000 (five lakh) equity shares of Rs.10 each to Rs.5,00,00,000/- (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of Rs.10 (Rupees ten) each by creation of 45,00,000 equity shares of Rs. 10 each ranking pari passu in all respect with the existing equity shares.”

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

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
authorised share capital of the company is only Rs.50,00,000 (Rupees fifty lakhs) divided into 5,00,000 (five lakh) equity shares of Rs.10/- (Rupees ten) each and the entire authorised share capital has already been issued, subscribed and paid up. The Board, therefore, decided that the authorised share capital of the company be increased to Rs. 5,00,00,000 (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of Rs.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.

ANNEXURE XII

SPECIMEN OF THE RESOLUTION FOR CONSOLIDATION OF SHARES

(1) Ordinary Resolution

"RESOLVED THAT—

(i) pursuant to Section 94(1)(b) and other applicable provisions, if any, of the Companies Act, 1956, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of Rs.5 (Rupees five) each of the company be and the same be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of Rs.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 Rs. 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of Rs. 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, 1956 and those of the Companies (Issue of Share Certificates) Rules, 1960."

(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 Rs. 25,00,00,000 (Rupees twenty-five crore) divided into two crore and fifty lakh (2,50,00,000) equity shares of Rs. 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 Rs. 5/- (Rupees five) each into shares of Rs.10/- (Rupees ten) each.
Therefore, the proposed resolution 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.

ANNEXURE XIII

SPECIMEN OF THE RESOLUTION FOR SUBDIVISION OF SHARES

(1) Ordinary Resolution

"RESOLVED THAT—

(i) pursuant to Section 94(1)(d) and other applicable provisions, if any, of the Companies Act, 1956, and Article... of Articles of Association of the company, all the 5,00,000 (five lakh) equity shares of Rs. 100 (Rupees hundred) each of the company be and the same be and are hereby sub-divided into fifty lakh (50,00,000) equity shares of Rs. 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 Rs. 100 (Rupees hundred) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of Rs. 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 Rs. 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, 1956 and those of the Companies (Issue of Share Certificates) Rules, 1960."

(2) Special Resolution

"RESOLVED THAT as a consequence of subdivison 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 Rs. 5,00,00,000 (Rupees five crore) divided into fifty lakh (50,00,000) equity shares of Rs. 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 Rs. 100/- (Rupees hundred) each into shares of Rs.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 94(1)(c) and other applicable provisions, if any, of the
Companies Act, 1956, and Article ................ of Articles of Association of the
company, 10,00,000 (ten lakh) fully paid equity shares of Rs.10 (Rupees ten)
each of the company bearing distinctive Nos. 1 to 10,00,000 (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, 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, 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 Rs. 10,00,00,000 (Rupees ten
crore) divided into ninety lakh (90,00,000) equity shares of Rs.10/- (Rupees ten) each
and stock of the aggregate value of Rs.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 paper work 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.

ANNEXURE XV

SPECIMEN OF THE RESOLUTION FOR RE-CONVERSION OF STOCK INTO SHARES

(1) Ordinary Resolution

“RESOLVED THAT—

(i) pursuant to Section 94(1)(c) and other applicable provisions, if any, of the Companies Act, 1956, and article ............... of articles of association of the company, stock of the aggregate value of Rs.1,00,00,000/- (Rupees one crore) be and is hereby converted into 10,00,000 (ten lakh) fully paid equity shares of Rs.10 (Rupees ten) each of the company bearing distinctive Nos. 1 to 10,00,000 (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 Rs.10/- (Rupees ten) each and deleting the stock of the aggregate value of Rs.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 Rs.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 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, 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 Rs.10,00,00,000 (Rupees ten crore) divided into one crore (One crore) equity shares of Rs.10/- (Rupees ten) each”
Explanatory Statement

On .......... the company had issued stock of the aggregate value of Rs.1,00,00,000/- (Rupees one crore) to the shareholders who had held 10,00,000 (ten lakh) fully paid equity shares of Rs.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 Rs.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.

ANNEXURE XVI

SPECIMEN OF THE SPECIAL RESOLUTION FOR REDUCTION OF SHARE CAPITAL OF A COMPANY

"RESOLVED THAT—

(i) pursuant to Section 100 and other applicable provisions, if any, of the Companies Act, 1956, article ............... of articles of association of the company and subject to confirmation by the High Court* 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 Rs. 50,00,00,000 (Rupees fifty crore) divided into 5,00,00,000 (Five crore) equity shares of Rs.10 each to Rs. 25,00,00,000 (Rupees twenty-five crore) divided into 5,00,00,000 (Five crore) equity shares of Rs. 5 each, and the surplus amount, i.e., Rs. 25,00,00,000 (Rupees twenty-five crore) be refunded to shareholders of the company as per this resolution."

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

* It shall be substituted by Tribunal on the commencement of Companies (Second Amendment) Act, 2002.
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.

**ANNEXURE XVII**

**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, 1956.

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 must also be in conformity with modern secretarial practices and must also comply 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 of the existing Articles of Association of the company.

None of the directors is interested in the proposed resolution.

**ANNEXURES XVIII**

**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 they 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 Rs............ 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 255 of the Companies Act, 1956. 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.

ANNEXURES XIX

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.”

Explanatory Statement

Article ............ of the articles of association of the company relates to the appointment of managing agents or secretaries. Section 324A of the Companies Act, 1956 lays down that 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 then. Your directors have now thought it fit to forthwith delete this articles which is no longer in conformity with the provisions of the Companies Act, 1956.

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 adding at the end of Article No.13 of the Articles of Association of the company “and the Companies (Issue of Share Certificates) Rules, 1960 and the provisions of the listing agreements of the stock exchanges.”

Explanatory Statement

The existing article 13 makes mention of Section 113 of the Companies Act, 1956 only. Subsequent to the enactment of the Act, the Central Government framed the Companies (Issue of Share Certificates) Rules, 1960 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 addition of a few words and the proposed alteration be put before the company in general meeting for approval. Hence the proposed resolution is recommended to the shareholders for their consideration and 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 addition

“and the Companies (Issue of Share Certificates) Rules, 1960 and the provisions of the listing agreements of the stock exchanges.”

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 prescribes the matters that must be stated in the memorandum of every company, and so far as these matters are concerned, no alteration in the memorandum can be made except in accordance with the provisions of the Act dealing with the alteration of those matters.
- Alteration of any matter stated in the memorandum, other than those required to be stated by section 13 or any other provision of the Act, is made by a special resolution, unless any provision of the Act stipulates any other method for the alteration of such matter. Such matters are treated on par with the articles for the purposes of those provisions of the Act which refer to articles.
• Section 21 of the Companies Act provides that a company may, by a special resolution and with the approval of the Central Government signified in writing, change its name. For any change of name of a company involving the deletion or addition, as the case may be, of the word 'Private' as a result of its conversion from a private limited company into a public limited company or vice versa, the approval of the Central Government should be obtained under section 21. Central Government has delegated its powers under section 21 to the Registrars of Companies. Hence the application for change of name be made to Registrar of Companies in e-Form 1A.

• Since a company is required to pass a special resolution and obtain approval of the Central Government for the change of its name, the change in the name of the company cannot be effected merely on the scheme of amalgamation becoming effective. Approval to a scheme cannot be granted to give effect to change in name.[Govind Rubber Ltd. In re, (1995) 83 Comp Cas 556 (Bom); (1992) 8 CLA 149]

• Section 17 deals with the alteration of a memorandum of association by any company, and the procedure in connection therewith in respect of the alteration of two conditions contained in the memorandum: (i) objects; and (ii) the place of the registered office when it is intended to be shifted from one State to another.

• Alteration of the memorandum with respect to both the objects and the registered office requires approval of the company by a special resolution. The alteration of the memorandum with respect to the place of the registered office, however, also requires Company Law Board confirmation.

• The section also stipulates, in the seven clauses of sub-section (1), the criteria for the alteration of the memorandum with respect to the objects of a company or as to change the place of the registered office from one State to another. It also lays down certain guiding principles to be followed by the Company Law Board in the matter of confirmation of the alteration

• In Re, Motilal Hirabhai Spg, Wvg & Mfg Co Ltd, (1970) 40 Comp Cas 1216 (Guj); (1970) 2 Comp LJ 263D A Desai, J said: "The scheme of section 17 indicates that a company may alter the objects clause of its memorandum of association but the proposed alteration must be such as would fall within one or other clauses of section 17(1). Therefore, when the court is called upon to confirm the proposed alteration in the objects clause, it should examine the petition to find out if the proposed alteration falls within one or the other clauses of section 17(1)".

• Section 94 deals with different modes of alteration of share capital of a company as specified in clauses (a) to (e) of sub-section (1). Any of these modes of alteration of share capital must be authorised by the articles of the company. In the absence of an express provision in the articles, 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.

• Every company has power, by virtue of Section 31, to alter its Articles of Association. This power is vested in the company to be exercised by it by a special resolution passed at a general meeting of its members.
SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation please).

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, 1956 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? State the procedure for reduction of share capital of a company.

4. Briefly explain the procedure for altering the article of association of a Producer company.

5. PQR Ltd. wants to change the period of its financial year. Can it do so? If yes, then state the procedure to be followed by the company.
For raising the capital from the public by the issue of securities, a public company has to comply with the provisions of Companies Act, the Securities Contracts (Regulation) Act, 1956, SEBI Regulations and instructions issued by concerned Government authorities, stock exchanges, etc. Issue of Securities is administered by Securities and Exchange Board of India in accordance with the provisions of Section 55A of the Companies Act, 1956. This chapter deals with the detailed procedural aspects for issue of securities by the Company.

After going through this chapter, you will be able to understand:

- Meaning of Public Issue of securities
- Procedure for Issue of Equity Shares
- Procedure for Issue of Shares at discount
- Procedure for Issue of Shares at premium
- Procedure to make calls on shares
- Procedure for making rights issue
- Procedure for issuing Bonus Shares
- Procedure to issue shares with differential voting rights
- Procedure for issue of shares on preferential basis/private placement
- Employees Stock options
- Sweat Equity Shares
- Issue and Redemption of Preference shares

1. MEANING OF PUBLIC ISSUE OF SECURITIES

An offer to subscribe to shares or debentures to the public at large or to any section of the public would be treated as a public offer, if it is intended to invite anybody or it is made in such a way that anybody who wishes to invest can do so.

Section 67 of the Companies Act, 1956 provides an aid for answering the question as to what amounts to "public offer" or "public invitation". Sub-section (1) of section 67 deals with the former and sub-section (2) with the latter. Sub-section (3) seeks to explain what is not to be treated as public offer or public invitation, and sub-section (4) excludes certain invitations from the purview of sub-section (2) i.e. public invitation.
The word "public" has been given very wide connotation by sub-section (1) by bringing in its fold "any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner". The provision contained in sub-section (1), thus, extends the meaning of an offer "to the public" beyond the ordinary popular meaning of that phrase.

In all cases the determination of the question of an offer being made to the public depends upon the facts and language of the notice on the particular circumstances of each case.

The wide scope of sub-section (1) of section 67 has been limited by sub-section (3) according to which an offer or invitation would not deemed to have been made to 'public' if it is regarded in all circumstances:

(i) as not being calculated to remit directly or indirectly in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(ii) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. [Section 67(3)]

(iii) However, an offer made to fifty persons or more will be considered to have been made to the public. [Proviso to 67(3)]

An offer by a promoter to a few of his friends, relatives and customers was held not to be offer to the public. The test is not who receives a circular offering shares but who can accept the offer put forward. Prospectus is that document through which capital is offered to the public and upon the basis of which the applicant has actually subscribed.

An offer or invitation for subscription to shares or debentures by any company shall be regarded as a public offer if it has been made to 50 or more persons. (proviso to Section 67)

The proviso cannot, however, take away an exemption which is otherwise available regardless of the number of persons to whom the offer has been given. Accordingly, for example, even if a company offers shares on rights basis to more than 50 persons who are its existing members, it cannot be said to be an offer not falling within the purview of the substantive provision of sub-section (3), just because it falls within the purview of the proviso.

2. ISSUE OF EQUITY SHARES

For raising capital from the public by the issue of shares, a public company has to comply with the provisions of the Companies Act, the Securities Contracts (Regulation) Act, 1956 including the Rules made there under and the guidelines and instructions issued by the concerned Government authorities, the Stock Exchanges and SEBI etc. Management of a public issue involves coordination of activities and cooperation of a number of agencies such as managers to the issue, underwriters, brokers, registrar to the issue; solicitors/legal advisors, printers, publicity and advertising agents, financial institutions, auditors and other Government/Statutory agencies such as Registrar of Companies, Reserve Bank of India, SEBI etc.
The whole process of issue of shares can be divided into two parts (i) pre-issue activities and (ii) post issue activities. All activities beginning with the planning of capital issue till the opening of the subscription list are pre-issue activities while all activities subsequent to the opening of the subscription list may be called post issue activities.

**Steps involved in issue of equity shares**

A company proposing to raise resources by a public issue should first select the type of securities i.e. shares and/or debentures to be issued by it. In case the company has applied for financial assistance to any of the financial/investment institutions, the requirement of the funds to be raised from the public is to be decided in consultation with the said institution while appraising the project of the company. The decision regarding the issue of shares to be made at par or premium should be taken. The various steps involved in public issue of shares are enumerated below:

1. Before making any issue of capital, it is to be ensured that the proposed issue complies with the eligibility norms and other provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

2. A general meeting of the shareholders (annual or extraordinary) is to be convened for obtaining their consent to the proposed issue of shares if the articles so require. In case the proposed issue requires any increase in authorised share capital (Section 94), alteration in capital clause of the Memorandum of Association (Section 16), alteration of the articles of association (Section 31) etc., these approvals should also be obtained at the General Meeting.

3. A copy of the Memorandum and Articles of Association of the company is to be sent to the Stock Exchanges where the shares are to be enlisted, for approval [Section 73(1)].

4. Appoint one or more Merchant Bankers to act as managers to the public issue. The company should enter into a memorandum of understanding with the managers to the issue and decide the fees payable to them. If more than one Merchant Bankers are associated with the issue, the inter-se allocation of responsibility of each of them, shall be disclosed in the offer document.

5. The company should in consultation with the Managers to the issue, decide upon the appointment of the following other agencies (holding a valid certificate of registration, wherever compulsory):

   (a) Registrars to the Issue; (b) Collecting bankers to the Issue; (c) Advisors to the Issue; (d) Underwriters to the Issue; (e) Brokers to the Issue; (f) Printers; (g) Advertising Agents etc.

   Consent of the aforesaid persons should be obtained in writing for acting in their respective capacities for filing, with the Registrar of Companies along with the prospectus.

6. To draft a prospectus in accordance with Schedule II of the Companies Act and an abridged prospectus as required under Section 56(3) of the Act. The prospectus should contain the disclosures as required by Part A of Schedule VIII, subject to the provisions of Part B and C of SEBI Regulations.
7. The draft prospectus alongwith the application form for issue of shares is required to be approved by the solicitors/legal advisors of the company to ensure that it contains all disclosures and information as required by various statutes, rules, notifications, etc. The managers to the issue should also verify and approve the draft prospectus. The financial institutions providing loan facilities generally stipulate that the prospectus should be got approved by them. The company should in such a case, forward a copy of the draft prospectus for their verification and approval as well. The approval of underwriters should also be taken if they so require.

A copy of the draft prospectus is also to be forwarded to the Registrar of Companies for its scrutiny and approval.

8. Submit draft prospectus complete in all respects alongwith the Due Diligence Certificate, inter-se allocation of Responsibilities Certificate and a copy of Memorandum of Understanding to SEBI at least 30 days prior to the registering the prospectus with Registrar of Companies.

9. The issuer shall, simultaneously while registering the prospectus with the Registrar of Companies file a copy thereof with the Board through the lead merchant banker.

10. The draft offer document filed with the Board shall be made public, for comments, if any, for a period of at least twenty one days from the date of such filing, by hosting it on the websites of the Board, recognized stock exchanges where specified securities are proposed to be listed and merchant bankers associated with the issue.

11. The lead merchant bankers shall, after expiry of the period stipulated in sub-regulation (1), file with the Board a statement giving information of the comments received by them or the issuer on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.

12. Check that the particulars as per audited statements contained in the prospectus are not more than six months old from the issue opening date.

13. However, in case of a Government company auditors’ report in the prospectus shall not be more than six months from the date of filing the prospectus with the ROC or stock exchanges as the case may be.

14. The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:

(a) the date of receipt of the draft offer document under sub-regulation (1) of Regulation 6; or

(b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or

(c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

(d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges
15. If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange.

16. Check that the two copies of final printed copy of the final offer document have been sent to dealing offices of SEBI at least within three days of filing offer document with Registrar of Companies/Stock Exchange as the case may be.

17. Check that lead merchant banker has also submitted one final printed copy of the final offer document along with the computer floppy containing the final prospectus/letter of offer to Primary Market Department, SEBI, Mittal Court, A Wing, Ground Floor, Nariman Point, Mumbai.

18. Check that the public issue offer documents and other issue material has been despatched to the various stock exchanges, brokers, underwriters, bankers to the issue etc. in advance as agreed upon.

19. Check that 20 copies of the prospectus and application form has been despatched in advance of the issue opening date to various Investor Associations.

20. Check that the following details about themselves have been included by the lead merchant bankers in all the forwarding letters of offer document filed with any Department/office of SEBI.

(i) Registration number

(ii) Date of Registration/Renewal of Registration

(iii) Date of expiry of registration

(iv) If applied for renewal, date of application

(v) Any communication from the Board prohibiting from acting as a merchant banker

(vi) Any inquiry/investigation being conducted by the Board.

21. After the concerned parties/agencies have approved the draft prospectus and the application form, the board of directors of the company are required to approve the final draft before filing with the Registrar of Companies. The company should, therefore, hold the meeting of the board of directors to transact the following business:

(a) to approve and accept consent letters received from various parties agencies to act in their respective capacities;

(b) to approve and accept appointment of underwriters, brokers bankers to the issue registrar to the issue, solicitors and advocates to the issue, etc.

(c) to accept the Auditors’ Report for inclusion in the prospectus;

(d) to approve the date of opening of subscription list as also earliest and latest dates for closing of subscription list with the authority in favour of any director for earlier closing if necessary.
(e) to approve draft prospectus/draft abridged prospectus and the draft share application form.

(f) to authorise filing of the prospectus signed by all the directors or their constituted attorneys with the Registrar of Companies.

(g) to authorise any officer of the company to deliver the prospectus for registration with the Registrar of Companies and to carry out the corrections, if any, at the office of the Registrar of Companies.

(h) to approve the format of the statutory announcement.

22. Before filing prospectus with the Registrar of Companies, the company should submit an application(s) to the Stock Exchange(s) for enlistment of securities offered to the public by the said issue [Section 73(1)]. The fact that an application(s) has/have been made to the Stock Exchange(s) must be stated in the prospectus.

23. After receipt of the intimation from Registrar of Companies regarding registration of prospectus, the company should take steps to issue the prospectus within 90 days of its registration with ROC [Section 64(4) of Companies Act]. For the purpose, the first step is to get adequate number of prospectuses and application forms printed. The provisions of Section 56(3) of the Companies Act should be kept in view in this regard which provide that no one shall issue any form of application for shares in or debenture of a company unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed. The Department has prescribed Form 2A as the memorandum containing salient features of prospectus. This means the share application form should be accompanied by Form 2A containing the abridged prospectus being attached to it along a perforated line. The then Department of Company Affairs (Ministry of Corporate Affairs) had issued two circulars on this bearing Nos. 1/92 dated 9.1.1992 and 3/92 dated 10.4.1992 and had allowed companies to print two application forms accompanying the abridged prospectus being attached to it along the perforated line bearing separate printed number.

24. All listed companies whose equity shares are listed on a stock exchange and unlisted companies eligible to make a public issue and desirous of getting its securities listed on a recognized stock exchange pursuant to a public issue, may freely price its equity shares or any securities convertible at a later date into equity shares.

25. Underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them.

The issuers have the option to have a public issue underwritten by the underwriter.

26. The Guidelines require a minimum number of collection centres for an issue of capital to be at the four metropolitan centre viz. Mumbai, Delhi, Kolkata and Chennai and at all such centres where the stock exchanges are located in the region in which the registered office of the company is situated.
However the issuer company is free to appoint as many collection centres as it may deem fit in addition to the above minimum requirement.

27. Issue must be kept open for at least 3 working days and not more than 10 working days. The date of opening and closing of the subscription list should be intimated to all the collecting and controlling branches of the bank with whom the company has entered into an agreement for the collection of application forms. Further, the company should ensure that a separate bank account is opened for the purpose of collecting the proceeds of the issues as required by Section 73 of the Companies Act and furnish to the controlling branches the resolution passed by the Board of directors for opening bank account.

28. Minimum subscription
   
   For Non-underwritten Public Issues

   If the company does not receive the minimum subscription of 90% of the issued amount on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company would refund the entire subscription amount received within 15 days of the closure of the issue. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company is required to pay interest as per Section 73 of the Companies Act 1956.

   For Underwritten Public Issues

   If the company does not receive the minimum subscription of 90% of the net offer to public including devolvement of Underwriters within 60 days from the date of closure of the issue, the company would refund the entire subscription amount received within 70 days of the closure of the issue. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company is required to pay interest prescribed under Section 73 of the Companies Act 1956.

29. A return of allotment in e-Form No. 2 of the Companies (Central Government’s) General Rules and Forms, 1956 should be filed with the Registrar of Companies within 30 days of the date of allotment along with the fees as prescribed in Schedule X of the Act.

30. (i) Along with e-Form No. 2, e-Form No. 3 showing particulars of contracts relating to shares has also to be filed, where a company allots shares for consideration other than cash without entering into any written agreement.

   (ii) e-Form No. 4 containing the statement of the amount or rate percentage of the commission payable on shares together with a copy of the contract for payment of commission, if any, should be filed with the Registrar before such commission is paid.

31. The refund orders for an amount exceeding Rs. 1,500 should be sent to the applicants by registered post only, whereas those below Rs. 1,500 can be sent Under Certificate of Posting (Deprt.’s Circular 1/93 dated 16.3.1993).
32. As per Section 113, the company should deliver the share certificates within
3 months after the allotment of shares.

3. ISSUE OF SHARES AT DISCOUNT

When a company issues a share at a price lower than its nominal or par value,
the shares are said to have been issued at a discount. According to sub-section (1)
of section 79, if any company proposes to issue any shares at a discount, it can do
so only if the conditions stipulated in this section are fulfilled. The said conditions are
as follows:

1. The shares to be issued are of a class which has already been issued by the
company. Therefore, the first issue of shares of a company cannot be at a
discount.

2. The issue is authorised by an ordinary resolution passed by the company at
a general meeting.

3. The Company Law Board has sanctioned the issue.

4. The ordinary resolution specifies the maximum rate of a discount at which
the shares are to be issued. [Company Law Board shall not sanction a
discount of more than ten per cent unless it is of the opinion that a higher
percentage of a discount is justified in the special circumstances of the case].

5. The issue is made after one year from the date on which the company
became entitled to commence business. [In the case of a private company,
the date of incorporation of the company will be taken as the date of
commencement of business].

6. The shares are issued within two months of the sanction by Company Law
Board or within such extended time as it may allow.

Procedure for Issue of Shares at Discount

1. Verify the following points before taking the decision of issuing shares at a
discount:—
   (i) Not less than one year has elapsed since the date the company was
       entitled to commence business. [Section 79(2)(iii)];
   (ii) Shares to be issued at a discount are of a class already issued. [Section
        79(2)]

2. Hold a Board Meeting after giving notice to all the directors of the company
as per Section 286 to decide the number of shares to be issued at a
discount, the rate of discount and to fix up the date, time, place and agenda
of the General Meeting, to pass an ordinary resolution subject to the sanction
of the Company Law Board (see note above). (for specimen of the board
resolution, see Annexure I)

3. Immediately within 15 minutes of the closure of the Board Meeting intimate to

Note: Power of Company Law Board has been transferred to the Central Government by the
Companies (Second Amendment) Act, 2002. However, the same has not yet been brought into force.
Till that date the existing procedure is to be followed.
the Stock Exchange at which the securities of the Company are listed by
letter or fax or by telegram short particulars of issue of shares at discount.

4. Forward promptly to the Stock Exchange six copies of all notices, resolutions
and circulars relating to new issue of capital prior to their despatch to the
shareholders

5. Issue notices in writing at least twenty-one days before the date of the
General Meeting proposing the Ordinary Resolution subject to the sanction
of the Company Law Board along with suitable Explanatory Statement.
[Section 171(1) read with section 173(2)].

6. Hold the General Meeting and pass the Ordinary Resolution giving authority
to issue shares at a discount by simple majority. (for specimen of the
resolution, see Annexure II)

7. Ensure that the resolution specifies the maximum rate of discount at which
shares are to be issued.

8. If the company is listed, forward promptly to the Stock Exchange three
copies of the notice and a copy of the proceedings of the General Meeting.

9. Make an application pursuant to Section 79 to the concerned Bench of the
Company Law Board in the form of a petition in Form No. 1 in Annexure II to
the Company Law Board Regulations, 1991 together with the documents
specified.

10. Ensure that a fee of Rs. 1,000/- is paid on the petition in accordance with the
Company Law Board (Fees on Applications and Petitions) Rules, 1991 by
way of demand draft favouring "Pay and Accounts Officer, Department of
Company Affairs, New Delhi" or "Mumbai" or "Kolkata" or "Chennai"
depending on the Regional Bench of the Company Law Board with which the
aforesaid petition is filed.

11. Send the petition along with the following documents:—
   (i) Certified true copy of the Memorandum and Articles of Association of
       your company;
   (ii) Certified true copy of the notice calling for the General Meeting with Ex-
        planatory Statement of the resolution sanctioning issue;
   (iii) Certified true copy of the minutes of the meeting at which the resolution
        was passed;
   (iv) Certified true copy of the last three years' audited balance sheets, profit
        and loss accounts, auditors' report and directors' report;
   (v) Affidavit verifying the petition;
   (vi) Demand draft evidencing payment of fee of Rs. 1,000/-;
   (vii) Memorandum of appearance (in Form No. 5 of Annexure I to the Regula-
        tions) with copy of the Board Resolution or the executed Vakalatnama,
        as the case may be.

12. Ensure that the aforesaid affidavit is prepared on non- judicial stamp paper
of the requisite value and after obtaining the signature of the Deponent
thereon, have the said affidavit either notarised by the Notary Public with notarial stamps affixed on it or have it sworn before the Oath Commissioner.

13. Affix court fee stamps of the requisite value on the petition before filing.

14. On receipt of the copy of the order of the Company Law Board, give notice of the order to the ROC in e-Form No. 21 along with a certified copy of the order to the ROC for registration within one month from the date of the order after payment of requisite filing fee in cash or demand draft as per Schedule X.

15. Keep in mind that time taken in supplying a copy of the order by the Company Law Board will be excluded in computing the period of one month. [Section 640A].

16. If a Prospectus is to be issued, then issue it on receipt of the Company Law Board's order.

17. Ensure that the Prospectus contains particulars of the discount allowed on the issue of shares or of so much of that discount as has not been written off at the date of the issue of the Prospectus.

18. If a Prospectus is issued, then deliver a copy of it to the ROC for registration. [Section 60]. If no Prospectus is issued, then deliver a statement in lieu of Prospectus at least three days before the allotment of shares. [Section 70(1)].

19. If the company wants to have these shares to be quoted on a recognised Stock Exchange, then make an application for listing to the Stock Exchange.

20. File with the ROC, a return in e-Form No. 2 within thirty days of allotment of shares issued at a discount along with the following documents:—

   (i) a certified true copy of the resolution of the General Meeting authorising such issue;

   (ii) a certified true copy of the order of the Company Law Board sanctioning the issue; and

   (iii) a demand draft evidencing the payment of requisite fee prescribed under Schedule X to the Act, and in accordance with rule 22(1) of the Companies General Rules & Forms, 1956. [Section 75(l)(c)(ii)].

21. Ensure that every prospectus if issued relating to the issue of shares at a discount contains particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. [Section 79(4)].

4. 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.

In accordance with sub-section (1) of section 78, where a company issues
shares at a premium, whether for cash or otherwise, a sum equal to the aggregate
amount or value of the premiums on those shares shall be transferred to an account,
to be called, "the share premium account". This section specifies the items where the
amount received as share premium on issue of shares may be applied.

**Procedure for Issue of Shares at Premium**

1. Please note that the following companies only can issue shares to the public
at a premium if:—

   (a) it has net tangible assets of at least three crore rupees in each of the
   preceding three full years (of twelve months each), of which not more
   than fifty per cent. are held in monetary assets:

   Provided that if more than fifty per cent. of the net tangible assets are
   held in monetary assets, the issuer has made firm commitments to utilise
   such excess monetary assets in its business or project;

   (b) it has a track record of distributable profits in terms of section 205 of the
   Companies Act, 1956, for at least three out of the immediately preceding
   five years:

   Provided that extraordinary items shall not be considered for calculating
distributable profits;

   (c) it has a net worth of at least one crore rupees in each of the preceding
   three full years (of twelve months each);

   (d) the aggregate of the proposed issue and all previous issues made in the
   same financial year in terms of issue size does not exceed five times its
   pre-issue net worth as per the audited balance sheet of the preceding
   financial year;

   (e) if it has changed its name within the last one year, at least fifty per cent.
   of the revenue for the preceding one full year has been earned by it from
   the activity indicated by the new name

2. Check up whether the company falls under any of the categories mentioned
above.

3. Note that the company is allowed to mention a price band of 20% (that is the
ceiling or cap price should not be more than 20% of the (floor price) in the
draft offer document required to be submitted to SEBI.

4. Include suitable explanatory notes indicating the financial implications if the
price were to be fixed at different levels within the price band approved by
the Board of Directors or General Body of Shareholders.

5. Remember that if the Board of Directors has been authorised to determine
the offer price within a specified price band, such price should be
determined by a resolution to be passed by the Board of Directors at a meeting of the Board, for which 48 hours notice has been given to the Stock Exchange.

6. Determine the actual price at the time of filing the final offer document with ROC/Stock Exchange, ensuring that such actual price is within the price band.

7. Ensure that the final offer document indicates only one price (that is the actual price determined as per 6 above) and one set of financial projections.

8. Determine the premium in consultation with the Lead Merchant Banker to the public/rights issue.

9. Mention in the offer document that the company and the Lead Merchant Banker with whose consultation the premium was decided, are of the opinion that the premium is justified.

10. Indicate in the offer document full justification and parameters for fixation of the premium amount, and disclose precisely how the amount of premium has been arrived at.

11. Ensure the basic financial information and the basis of arriving at the premium amount are clearly spelt out, and avoid giving vague statements relating to promoters’ background, industry’s future prospects, etc.


13. Mention in the offer documents specifically whether the future projections are based on own estimates or on an independent appraisal made by financial institutions, banks, etc.

14. Disclose the market prices immediately before the issue to enable the investors to ascertain whether prices are fair or rigged market prices.

15. Indicate for the above purpose the net asset value and ‘High’, ‘Low’ and ‘Average’ market prices of shares for the last three years, and also monthly ‘High’ and ‘Low’ prices for the last 6 months prior to the date of filing of the offer document with ROC/concerned Stock Exchange.

16. Also disclose volume of trading in the shares on the day(s) when the ‘High’ and ‘Low’ prices were recorded during the aforesaid period of 6 months. Some abridged prospectuses disclose volume of trading under the following heads:

<table>
<thead>
<tr>
<th>Settlement ending (Dates)</th>
<th>No. of Deals</th>
<th>No. of Shares</th>
<th>Value (Rs. Lakhs)</th>
</tr>
</thead>
</table>

17. Also state that the company is eligible to make an issue at premium as per the Guidelines and that the premium has been decided in consultation with the Lead Merchant Banker of the issue who are of the opinion that the premium is justified and reasonable.
18. Indicate the financial performance of the company for the last five years as also the projections as appraised by the lead financial institutions for the next three/five years under the above heads. [For a new company, the parameters can be suitably modified indicating projections for the next three/five years.]

19. Hold a Board Meeting after issuing notices to all the directors of the company as per section 286 and pass a resolution approving the proposal for issue of securities at a premium, specifying the number and nominal value of shares, amount of premium and the terms and conditions for issue of the shares and to approve the draft notice fixing the date, time, venue and agenda for the general meeting to pass the special resolution. (for specimen of the board resolution, see Annexure III)

20. Inform about the decision for issue of securities at premium to the stock exchange immediately after the Board meeting.

21. Send the notice of the general meeting along with the explanatory statement to the members entitled to receive the notice of the meeting and the auditors of the company. Also, forward 3 (three) copies of the Notice along with the explanatory statement to each of the Stock exchanges on which the shares of the company are listed.

22. Hold the General meeting and pass the special resolution for the issue of shares at a premium.

23. Forward the proceedings of the general meeting to each of the Stock exchanges on which the shares of the company are listed.

24. File the special resolution electronically within 30 days from the date of the general meeting along with e-Form No. 23 of the Companies (Central Government's) General Rules and Forms, 1956 with the Registrar of Companies along with the filing fees.

25. Proceed to allot the shares so issued at a premium at a duly convened Board meeting. Allotment of shares to non residents should be made only after the receipt of RBI approval.

26. In case of a listed company, give intimation to the Stock Exchange(s) of the allotment as approved by the Board.

27. The premium so received should be transferred to the “Securities Premium Account”.

28. File e-Form No. 2 of the Companies (Central Government's) General Rules and Forms, 1956 with the Registrar of Companies along with the filing fee.


30. Make necessary entries with regard to particulars of allotment in the Register of Members of the Company.

31. Complete the necessary formalities and arrangements for listing of the securities on the Stock Exchange(s).
5. MAKING CALLS ON SHARES

The power to make calls can be exercised only by the Board by means of a resolution passed at a duly convened Board meeting. The power cannot be delegated to Committee of directors. [Section 292]. A call may be revoked or postponed at the discretion of the Board. [Regulation 13]. This power of making a call vested in the directors is a fiduciary power to be exercised for the benefit of the company.

A call must be made in accordance with the provisions contained in the company's articles. Where the articles require that the resolution of the directors should indicate the time, amount, place and person to whom the amount of the call should be paid, every requirement should be strictly complied with.

Procedure to Make Calls on Shares

1. Convene a Board Meeting after giving notice to all the directors of the company as per Section 286 and pass a resolution calling whole or any portion of the unpaid amount on the shares of the company stating, inter-alia, the time, the place, the amount of call and the last date of making the payment. (for specimen of the board resolution, see Annexure IV)

2. The call should be uniform on the same class of shares on which the same amounts have been paid. [Section 91]

3. Comply with any condition imposed in the Articles of Association of the company in this regard.

4. If the company's Articles of Association provide as in Table A to Schedule I to the Companies Act, 1956, then no call should exceed one-fourth of the nominal value of the share or payable at less than one month from the date fixed for the payment of the last preceding call (applicable to subsequent calls).

5. Issue call letters and send necessary reminders until the call is fully paid or the shares are forfeited.

6. Make necessary entries in various registers on the share certificates.

7. If any amount is paid in advance of calls on any shares, then stipulate that such amount may carry interest but shall not in respect thereof confer a right to dividend or to participate in profits.

8. If the shares of the company are listed on a recognised Stock Exchange, then:

   (i) approval of the call notice by the Stock Exchange is required;

   (ii) Intimate about the decision of the meeting within 15 minutes of the closure of the said meeting to the Stock Exchange;

   (iii) Forward promptly to the said Stock Exchange three copies of the call letters.

   (iv) Ensure that the calls are structured in such a manner that the entire subscription money is called within 12 months from the date of allotment.
9. Take note of Regulations 13 to 18 of Table A of Schedule I to the Act also.

10. Particulars in respect of amount called up and unpaid call must be disclosed in the Balance Sheet as required by Schedule VI.

6. RIGHT ISSUES

Shares offered to the existing shareholders of a company are called 'rights shares'. Section 81 of the Companies Act contains provisions on "further issue of capital", and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company.

In the rights shares, the shareholders of a company have a pre-emptive right to subscribe to these shares. Where a company proposes to increase the subscribed capital of a company by issuing further shares, the shares are offered for subscription to the existing shareholders of the company in a certain proportion. This is a privilege given to shareholders of a company to subscribe pro rata to a new issue of securities. It is a statutory right of shareholders to have offered the new shares, and to subscribe to them. The shareholders, who receive offers for subscribing to the rights shares, are also entitled to renounce this right.

Articles of association usually contain regulations on rights issue.

Provisions of Section 81 are mandatory for all public companies, listed as well as unlisted, but optional for private companies. In case, a private company wants to have such provision, articles of association of the company must specifically provide for it.

This section does apply to the issue of preference shares, but it does not apply to the issue of debentures or bonds.

For issue of shares on rights basis under section 81, following conditions must be fulfilled:

(1) A period of two years from the incorporation of the company or one year from the date of first allotment, whichever is earlier has expired at the time of the rights issue;

(2) The rights shares are offered to the members in proportions, as nearly as circumstances admit, to the capital paid-up on those shares at that date, i.e. pro rata;

(3) The shares are offered by a letter of offer specifying the number of shares offered and other information;

(4) At least 15 days period is given to the members to enable the shareholders to subscribe to those shares;

(5) Unless the articles of association of the company specifically provides for not giving the members the right of renunciation, the offer of rights shares provides them with that right.

An eligible company shall be free to make public or rights issue of equity shares
in any denomination determined by it in accordance with Sub-section (4) of Section 13 of the Companies Act, 1956 and in compliance with the following and other norms as may be specified by SEBI from time to time.

In case of rights issue, the promoters shall disclose their existing shareholding and the extent to which they are participating in the proposed issue, in the offer document.

As per SEBI Regulations, no listed issuer company will make a rights issue where the aggregate value of securities, including premium, exceeds Rs. 50 lakhs unless the draft letter of offer is filed with SEBI through Merchant Banker atleast 30 days prior to filing of letter of offer with Designated Stock Exchange.

In a rights issue, the abridged letter of offer should be dispatched to all shareholders atleast one week before the date of opening of issue except where a specific request for letter of offer is received from any shareholder.

The minimum subscription in case of rights issue should be ensured as under:

For Non-underwritten Rights Issue

(i) If the Company does not receive the minimum subscription of 90% of the issue, the entire subscription shall be refunded to the applicants within fifteen days from the date of closure of the issue.

(ii) If there is delay in the refund of subscription by more than 8 days after the company becomes liable to pay the subscription amount (i.e. fifteen days after closure of the issue), the company will pay interest for the delayed period, at rates prescribed under sub-sections (2) and (2A) of Section 73 of the Companies Act, 1956.

For Underwritten Rights Issue

(i) If the Company does not receive minimum subscription of 90% of the issue including devolvement of underwriters, the entire subscription shall be refunded to the applicants within fifteen days from the date of closure of the issue.

(ii) If there is delay in the refund of subscription by more than 8 days after the company becomes liable to pay the subscription amount (i.e., fifteen days) after closure of the issue, the company will pay interest for the delayed period, at prescribed rates in sub-sections (2) and (2A) of Section 73 of the Companies Act, 1956.

Steps involved in issue of Rights Shares

The various steps involved for issue of rights share are enumerated below:

1. Check whether the rights issue is within the authorised share capital of the company. If not, steps should be taken to increase the authorised share capital of the Company.

No company shall make any further issue of capital during the period commencing from the submission of offer document to the Board on behalf
of the company for rights issues, till the securities referred to in the said offer document have been listed or application moneys refunded on account of non-listing or under subscription etc. unless full disclosures regarding the total capital to be raised from such further issues are made in the draft offer document.

The issuer company may utilise funds collected against rights issues after satisfying designated stock exchange that minimum 90% subscription has been received.

2. In case of a listed company, notify the stock exchange concerned the date of Board Meeting at which the rights issue is proposed to be considered at least 2 days in advance of the meeting.

A company cannot make a right issue unless:

(a) it enters into an agreement with depository for dematerialization of securities already issued or proposed to be issued to the existing shareholders; and

(b) the company gives an option to the subscribers/shareholders to receive the certificate or hold securities in dematerialized form with a depository.

3. Rights issue shall be kept open for subscription at least 15 days and not more than 30 days.

A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue.

The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue:

Provided that the letter of offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.

4. Convene the Board meeting and pass the resolution for proposal for rights issue. (for specimen of the board resolution, see Annexure V)

5. The Board should decide on the following matters:

(i) Quantum of issue and the proportion of rights shares.

(ii) Alteration of share capital, if necessary, and offering shares to persons other than existing holders of shares in terms of Section 81(1A).

(iii) Fixation of record date.

(iv) Appointment of merchant bankers and underwriters (if necessary).

(v) Approval of draft letter of offer or authorisation of managing director/company secretary to finalise the letter of offer in consultation with the managers to the issue, the stock exchange and SEBI.

(vi) To approve a draft application forms (for subscribing to the rights shares, additional shares, splitting the rights renunciation)

(vii) To authorise Company Secretary or other officer to send the Letter of
Offer to the member and to do such acts, deeds and things as may be necessary to give effect to the Board's decision.

(viii) To convene a general meeting for passing necessary resolutions, if any; to fix date, time and place of the general meeting and to authorise the Company Secretary or other officer to issue notice of the meeting.

6. Immediately after the Board Meeting, notify the concerned Stock Exchanges about particulars of Board's decision.

7. If it is proposed to offer shares to persons other than the shareholders of the company, a General Meeting has to be convened and a resolution is to be passed for the purpose in terms of Section 81(1A) of the Companies Act.

8. Forward 6 sets of letter of offer to concerned Stock Exchange(s).

9. Check that an advertisement giving date of completion of despatch of letter of offer has been released in at least an English National Daily, one Hindi National Paper and a Regional Language Daily where registered office of the issuer company is situated.

10. Check that the advertisement contains the list of centres where shareholders or persons entitled to rights may obtain duplicate copies of composite application forms in case they do not receive original application form along with the prescribed format on which application may be made.

11. Open an account with the designated bankers to the issue for acceptance of applications in accordance with the SEBI Regulations and in consultation with the Regional Stock Exchange.

12. Deposit with the Regional Stock Exchange an amount equal to 1% of the total issue amount as per Clause 42 of the Listing Agreement. Alternatively, 50% of the requisite amount may be deposited in cash and the balance 50% by way of a bank guarantee.

13. After the last date for making the application, collect the application forms received and scrutinise them in all respects. Sort the valid applications and defective applications.

14. Convene a meeting of the Board/Allotment Committee and pass a resolution for allotment and file Return of Allotment with the Registrar of Companies.

15. Prepare and despatch Letters of Allotment. Alternatively, prepare and despatch Share Certificates to the allottees. In any case, Share Certificates should be despatched within 3 months from the date of allotment.

16. Simultaneously, prepare and despatch regret letters and refund orders to the applicants to whom no shares have been allotted. Clause 44 of the Listing Agreement provides that, if allotment of securities offered in a rights issue is not made within 30 days of the closure of the rights issue, the company should pay interest at the rate of 15% from the 31st day if the application money is not refunded within 30 days.

No company shall make any further issue of capital during the period
commencing from the submission of offer document to the Board on behalf of the company for rights issues, till the securities referred to in the said offer document have been listed or application moneys refunded on account of non-listing or under subscription etc. unless full disclosures regarding the total capital to be raised from such further issues are made in the draft offer document.

The issuer company may utilise funds collected against rights issues after satisfying designated stock exchange that minimum 90% subscription has been received.

17. Immediately after the allotment, enter the particulars of the allottees in the Register of Members.

18. Make applications to all the Stock Exchanges where the company's shares are listed, for their permission for the listing of the rights shares allotted.

19. The Lead Merchant Banker shall submit post issue reports to the bank as per Regulation 65.

7. ISSUE OF BONUS SHARES

No dividend can be paid by a company except in cash. However, the prohibition against payment of dividend otherwise than in cash, is not deemed to prohibit the capitalization of profits or reserves. [Section 205(3)]. The declaration of bonus issue in lieu of dividend is not permitted. There is, however, no prohibition against reducing the amount of dividend as against previous year.

If there are any partly paid-up shares, these shares should be made fully paid-up before the bonus issue is made.

A company in paying up unissued shares to be issued as fully paid bonus shares may apply securities premium account. [Section 78(2)(a)].

Capital redemption reserve amount may be applied in paying up unissued shares of the company to be issued as fully paid bonus shares [Section 80(5)]. The bonus issue is to be made out of free reserves built out of the genuine profits or securities premium collected in cash only. When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it may issue bonus shares to its shareholders. Such an issue would not place any fresh funds in the hands of the company.

Regulations 96 and 97 of Table A authorize a company to capitalize its profits and reserves and issue bonus shares.

The company which has made default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof, and has sufficient reason to believe that it has defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc, cannot make a bonus issue.

A company which announces bonus issue after the approval of board of directors and does not require shareholders’ approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, shall implement bonus
issue within fifteen days from the date of approval of the issue by the board of directors of the company and shall not have the option of changing the decision.

However, where the company is required to seek shareholders’ approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, the bonus issue shall be implemented within two months from the date of the meeting of the board of directors wherein the decision to announce bonus was taken subject to shareholders’ approval.

The articles of association should have provision for capitalization of reserves, etc, and if not, the company shall pass a Resolution at its General Body Meeting making provisions in the Articles of Association for capitalization.

There are no guidelines on issuing bonus shares by private or unlisted companies. However, SEBI has issued guidelines for Bonus Issue which are contained in Chapter XV of SEBI (Disclosure and Investor Protection) Guidelines, 2000 with regard to bonus issues by listed companies. A certificate duly signed by the issuer company and counter signed by statutory auditor or by Company Secretary in practice to the effect that all the provisions have been complied with shall be forwarded to the SEBI.

The following conditions must be satisfied before issuing bonus shares:

(a) There must be a provision for issue of bonus shares in the articles of the company. Such a provision is generally there in articles of almost all the companies as they adopt Table A of Schedule 1 of the Act (Regulation 96).

(b) Bonus Issue must be sanctioned by shareholders in general meeting on recommendation of the Board of directors of the company.

(c) SEBI Guidelines in this regard must be complied with.

(d) Authorised Capital must be increased, wherever required.

**Steps involved in Issue of Bonus Shares**

A company issuing bonus shares should ensure that the issue is in conformity with the guidelines for bonus issue laid down under Chapter IX of SEBI (Disclosures and Investor Protection) Guidelines, 2000.

The procedure for issue of bonus shares by a listed company is enumerated below:

1. Ensure that bonus issue has been made out of free reserves built out of the genuine profits or securities premium collected in cash only.

2. Ensure that reserves created by revaluation of fixed assets are not capitalised.

3. Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof or in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.
4. Ensure that the bonus issue is not made in lieu of dividend.

5. There should be a provision in the articles of association of the company permitting issue of bonus shares; if not, steps should be taken to alter the articles suitably.

6. The share capital as increased by the proposed bonus issue should be well within the authorised capital of the company; if not, necessary steps have to be taken to increase the authorised capital.

7. Fix the date for the Board Meeting for considering the following matters:
   — To approve the bonus issue;
   — To approve the resolution to be passed at a general meeting;
   — To approve requisite resolution for increase of the capital and consequential alteration of the memorandum and the articles (if necessary)
   — To decide (or authorise managing director/secretary or some other officer of the company to decide) the dates for fixing a record date.

   (for specimen of the board resolution, see Annexure VI)

8. 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.

9. The date of the Board Meeting at which the proposal for bonus issue is proposed to be considered should be notified to the Stock Exchange(s) where the company’s shares are listed.

10. Hold the Board Meeting and get the proposal approved by the Board.

11. Intimate the decision taken at the board meeting to the Stock Exchange(s)

12. A company which announces bonus issue after the approval of board of directors and does not require shareholders’ approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, shall implement bonus issue within fifteen days from the date of approval of the issue by the board of directors of the company and shall not have the option of changing the decision

   However, where the company is required to seek shareholders’ approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, the bonus issue shall be implemented within two months from the date of the meeting of the board of directors wherein the decision to announce bonus was taken subject to shareholders’ approval.

13. Arrangements for convening the general meeting should then be made keeping in view the requirements of the Companies Act, with regard to length of notice, explanatory statement etc. Also three copies of the notice should be sent to the Stock Exchange(s) concerned.

14. Approvals of banks, financial institutions, debenture trustees, etc, if required under the related agreements, shall be obtained before the general meeting.

15. Hold the general meeting and get the resolution for issue of bonus shares
passed by the members. A copy of the proceedings of the meeting is to be forwarded to the concerned Stock Exchange(s). (for specimen of the resolution, see *Annexure VII*)

16. Within 30 days of the date of the general meeting, file the necessary returns in the prescribed forms e.g. e-Form Nos. 5, 23 to the Registrar of Companies.

17. Fix the date for closure of register of members or record date and get the same approved by the Board of directors. Issue a general notice under Section 154 of Companies Act in respect of the fixation of the record date in two newspapers one in English language and other in the language of the region in which the Registered Office of the company is situated.

18. Give 30 days notice to the Stock Exchange(s) concerned before the date of book closure/record date.

19. After the record date process the transfers received and prepare a list of members entitled to bonus shares on the basis of the register of members as updated. This list of allottees is to be approved by the Board or any Committee thereof.

20. File return of allotment with the Registrar of Companies within 30 days of allotment (Section 75 of the Companies Act). Also intimate Stock Exchange(s) concerned regarding the allotments made.

21. Get the share certificates printed, prepared and issued to the allottees as per the provisions of Companies (Issue of Share Certificates) Rules, 1960.

22. Submit an application to the Stock Exchange(s) concerned for listing the bonus shares allotted.

**Procedure for bonus issue by an unlisted company**

1. At the Board meeting resolutions for the following purposes will be passed:
   — To approve the proposal for the bonus issue
   — To Approve the resolution to be passed at a general meeting
   — To approve requisite resolution for increase of the capital and consequential alteration of the memorandum and the articles (if necessary)
   — To decide on fixing a record date

2. A general meeting will be convened to pass necessary resolution/s. (for specimen of the resolution, see *Annexure VIII*)

3. Within 30 days of the general meeting, file the necessary returns in the prescribed forms e.g. e-Form Nos. 5, 23, etc. to the Registrar of Companies.

4. After the record date, prepare a list of members entitled to the bonus shares on the basis of the register of members as updated.

5. Convene Board meeting (or of a meeting of committee of directors) for the allotment of bonus shares and allot the bonus shares.
Under section 206A where any instrument of transfer of shares has been delivered to a company for registration and the transfer of such shares has not been registered by the company, it shall keep in abeyance issue of fully paid-up bonus shares in relation to such shares in pursuance of sub-section (3) of section 205.

6. File a return of allotment with the Registrar within 30 days of the allotment.

7. Prepare and dispatch the share certificates relating to the bonus shares allotted within three months of the date of allotment and make entries of the shares allotted in the register of members.

8. PROCEDURE TO ISSUE SHARES WITH DIFFERENTIAL VOTING RIGHTS

As per section 86(a)(ii), share capital of a company limited by shares can consist of equity share capital with differential rights as to dividend, voting or otherwise in accordance with the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

1. Check whether the Articles of Association of the company permit issue of bonus shares with differential rights and if not then alter the Articles of association of the Company.

2. Check whether the expanded capital after the issue is within the authorised share capital of the company. If not, complete proceedings to increase the authorised share capital suitably.

3. Before issuing shares with differential rights as to dividend, voting or otherwise, ensure the following:
   (i) company must be a company limited by shares;
   (ii) Company must have distributable profits in terms of section 205 for the three financial years preceding the year in which it decides to issue such shares;
   (iii) As per newly inserted clause 28A under Equity Listing Agreement, the company agrees that it shall not issue shares in any manner which may confer on any person, superior rights as to voting or dividend vis-à-vis the rights on equity shares that are already listed.

   It puts a bar on the company to issue any class of shares with rights superior (in terms of dividend and voting rights) in comparison to the shares of the same class, which are already listed.

   For example, Class A shares of XYZ Limited are already listed on the Stock Exchange, then XYZ Limited cannot make further issue of shares of Class A with superior rights in comparison to those Class A shares which are already listed.

   (iv) Company has not defaulted in filing annual accounts and annual returns for the three financial years immediately preceding the financial year in which it decides to issue such shares;
(v) Company has not failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend;

(vi) Company has not been convicted of any offence arising under the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Foreign Exchange Management Act, 1999;

(vii) Company has not defaulted in meeting investors grievances.

(viii) Shares to be issued with such differential rights must be equity shares only.

4. Before issue of bonus shares with differential voting rights, ensure that there is no default in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, wages, including minimum wages, compensation to workmen, contract labour payments etc.

5. Also ensure strict compliance with the following financial parameters for determining the quantum of the issue of bonus shares with differential voting rights:

(a) that the bonus issue of shares with differential voting rights is made out of free reserves of your company built out of the genuine profits or share premium collected in cash only;

(b) that reserves created by revaluation of fixed assets are not utilised for this purpose.

6. Convene a Board Meeting after issuing notices to the directors of the company as per Section 286 to decide about the issue of bonus shares with differential rights as to voting, dividend or otherwise and to fix up the date, time, place and agenda for convening a General Meeting and to pass an Ordinary or Special Resolution as the case may be for the same. (for specimen of the board resolution, see Annexure IX)

7. If the shares of the company are listed with any of the recognised 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.

8. Note that the bonus issue of shares with differential voting rights should be made within a period of 6 months from the date of approval of company's Board of Directors.

9. Issue notices of closure of register of members in at least one English newspaper and one in the principal language of the district/region in which the company's registered office is situated.

10. Keep in mind that permission of RBI if any required under section 6(3)(b) of FEMA 1999, should be obtained to allot bonus shares with differential voting rights to Non-Resident Indians.

11. Issue notices in writing at least twenty-one days before the date of the General Meeting [Section 171(1)] with suitable Explanatory Statement.
12. If the company is a listed then ensure that it obtains the approval of its shareholders through postal ballot.

13. Ensure that the aforesaid notice of the General Meeting at which the resolution is proposed to be passed is accompanied by an Explanatory Statement stating in particular the following:

(a) the rate of voting which the equity share capital with differential voting right shall carry;

(b) the scale in proportion to which the voting rights of such class or type of shares will vary;

(c) the company shall not convert its equity share capital with voting rights into equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;

(d) the shares with differential voting rights shall not exceed 25% of the total share capital issued;

(e) that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, rights shares of the same class;

(f) the holders of the equity shares with differential voting rights shall enjoy all other rights to which the holder is entitled to excepting right to vote as indicated in (a) above.

14. Hold the General Meeting and pass the Ordinary Resolution by simple majority or the Special Resolution by three fourths majority [Section 189] as the case may be.

15. If the shares of the company are listed with any of the recognised Stock Exchange, then forward three copies of the notice and a copy of the proceedings of the General Meeting to the Stock Exchange.

16. File the Special Resolution with the Explanatory Statement with the concerned ROC in e-Form No.23 within thirty days of the General Meeting.

17. Publish a notice of Record Date for the purpose of determining the eligibility of members for bonus shares with differential voting rights.

18. If the shares of the company are listed with any of the recognised Stock Exchange, then give notice to the Stock Exchange 21 days in advance (fifteen days in case of such securities which are announced by SEBI from time to time for compulsory delivery in dematerialized form by all investors), stating the dates of closure of its Transfer Books (or, when the Transfer Books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the Transfer Books are to be closed (or the record is to be taken).

19. Convene another Board Meeting by giving notice to all the directors of the company as per section 286 and complete proceeding regarding allotment of the shares in the proportion and in the manner as mentioned in the resolution and as approved by the Stock Exchange.
20. Complete all other proceedings for the issue of certificates of shares with differential voting rights making necessary entries in various registers.

21. Make necessary changes in every copy of the Memorandum and Articles of Association and in all other papers and documents immediately after the paid-up share capital is increased.

22. Maintain a register as required under section 150 containing the particulars of differential rights to which the holder is entitled.

9. ISSUE OF SHARES ON PREFERENTIAL BASIS/PRIVATE PLACEMENT

In certain situations, it may not be desirable to issue shares to the public at large. Since issuing shares to the public is a very detailed and expensive exercise. It may be avoided where the issue size is small which can be fully subscribed by the directors and existing shareholders. Even where the issue size exceeds the resources that can be raised from directors and existing shareholders, there is a possibility of placing shares privately with friends, associates, financial institutions, mutual funds, etc. There could also be a situation where the company has not posted good results and hence hesitates to float a public issue. Depressed primary market conditions, disappointing financial performance or adverse business developments may also deter companies from raising funds from the public. In these situations, company may opt for issue of shares by private placement.

Procedure for issue of shares by private placement

**Note:** Please note that offer or invitation to subscribe for shares or debentures made by companies (other than NBFCs or PFIs) to 50 persons or more will be treated as 'public issue' [Proviso to sub-sec. (3) of sec. 67].

1. To ensure that the issue is within the authorized share capital of the company; otherwise to increase the same by following the proper procedure.

2. If the company is an unlisted public company, then follow the provisions of Unlisted Public Companies ( Preferential Allotment) Rules, 2003.

3. Call a Board Meeting after giving notice to all the directors of the company as per section 286 to fix up the date, time, place and agenda for a General Meeting to pass an Ordinary or Special Resolution as the case may be.

4. In case of a public company, a Special Resolution or an Ordinary Resolution followed by the Central Government's approval under Section 81 should be passed unless the allotment is made within two years from the formation of company or within one year from the allotment of shares made for the first time after formation, whichever is earlier.

5. In case of first allotment, the provisions of Section 70 should also be complied with.

6. In case of a private company, to pass an Ordinary or a Special Resolution, if the Articles so require; otherwise the Board can issue the shares.
7. Issue notices in writing at least twenty-one days before the date of the General Meeting proposing the Special or Ordinary Resolution as the case may be with suitable Explanatory Statement.

The explanatory statement to the notice for the general meeting in terms of Section 173 of the Companies Act, 1956 shall contain:

(i) the object/s of the issue through preferential offer,
(ii) intention of promoters/ directors/ key management persons to subscribe to the offer,
(iii) shareholding pattern before and after the offer,
(iv) proposed time within which the allotment shall be complete
(v) the identity of the proposed allottees and the percentage of post preferential issue capital that may be held by them.
(vi) in case of a preferential allotment requirements specified in these regulation.

A listed company shall not make any preferential issue of equity shares, Fully Convertible Debentures, Partly Convertible Debentures or any other instrument which may be converted into or exchanged with equity shares at a latter date if the same is not in compliance with the conditions for continuous listing.

A listed company shall not make any preferential allotment of equity shares, FCDs, PCDs or any other financial instrument which may be converted into or exchanged with equity shares at a later date unless it has obtained the Permanent Account Number of the proposed allottees.

8. Hold the General Meeting and pass the resolutions. If an Ordinary Resolution under Section 81 is passed, proceed to obtain the Central Government's approval in accordance with that section.

9. If any Special Resolution is passed, file the same with the concerned ROC in e-Form No. 23 within thirty days of the passing after paying the requisite fee prescribed under Schedule X to the Act.

Action on any resolution passed at a meeting of shareholders of a company granting consent for preferential issue of any financial instrument shall be completed within a period of 15 days from the date of passing of the resolution. If such resolution is not acted upon within the said period, a fresh consent of the shareholders will have to be obtained.

10. Receive applications by private negotiations and complete proceedings regarding allotment of shares.

11. If shares are to be allotted on direct/private placement to Central/ State Government, their agencies, public financial institutions and Mutual Funds, obtain their agreement to the proposed investment.

12. Proceed to complete other formalities such as issue of allotment letters, share certificates, filing of allotment return, making entries in various registers etc.
13. File return of allotment in e-Form No. 2 within thirty days from the date of allotment with necessary details and enclosures with the concerned ROC after paying the requisite fee as prescribed under Schedule X to the Act.

14. Send allotment letters or share certificates as the case may be within three months from the date of allotment to the allottees.

15. If the company is a listed company then in addition to the aforesaid requirements, the provisions of Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 are also required to be followed.

**Lock-in period as per SEBI Guidelines**

The instruments allotted on preferential basis and the shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to any person other than the promoter / promoter group of the issuer shall be locked-in for a period of one year from the date of their allotment.

The lock-in on shares acquired by conversion of the convertible instrument other than warrants shall be reduced to the extent the convertible instrument other than warrants have already been locked-in.

No listed company shall make preferential issue of equity shares / warrants / convertible instruments to any person unless the entire shareholding of such persons in the company, if any, is held by him in dematerialized form.

**Certificate by Statutory Auditor**

In case of every issue of shares/warrants/FCDs /or other financial instruments, the statutory auditors of the issuer company must certify that the issue of said instruments is being made in accordance with the requirements contained in the SEBI guidelines.

**10. EMPLOYEE STOCK OPTIONS**

The term ‘Employee Stock Option’ (ESOP) has been defined under Sub-section (15A) of Section 2 of the Companies Act, 1956, according to which ‘employee stock option’ means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price.

Section 77A of the Companies Act, 1956, provided for buy-back of its own securities by a company, subject to safeguard specified therein. The provisions apply to buy-back of shares and other specified securities. In terms of explanation (a) to the section, specified securities includes shares issued under employees stock option scheme.

Clause (d) of Sub-section (5) of Section 77A allows buy-back by a company of shares issued to employees under stock option scheme or sweat equity.
Sub-section (8) of Section 77A prohibits a company which has made a buy-back of its shares or other specified securities from making further issue of the same kind of shares or other specified securities within a period of 24 months. However, the prohibition does not apply to further issue under employee stock option scheme or sweat equity.

SEBI has issued SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 according to which Employee Stock Option Scheme means a scheme under which the company grants option to its employees and option means a right but not an obligation granted to an employee in pursuance of ESOS to apply for shares of the company at a pre-determined price.

An employee shall be eligible to participate in ESOS of the company.

Explanation: Where such employee is a director nominated by an institution as its representative on the Board of Directors of the company –

(i) the contract/agreement entered into between the institution nominating its employee as the director of a company and the director so appointed shall, *inter alia*, specify the following:
   (a) whether options granted by the company under its ESOS can be accepted by the said employee in his capacity as director of the company;
   (b) that options, if granted to the director, shall not be renounced in favour of the nominating institution; and
   (c) the conditions subject to which fees, commissions, ESOSs, other incentives, etc. can be accepted by the director from the company.

(ii) the institution nominating its employee as a director of a company shall file a copy of the contract/agreement with the said company, which shall, in turn, file the copy with all the stock exchanges on which its shares are listed.

(iii) the director so appointed shall furnish a copy of the contract/agreement at the first Board meeting of the company attended by him after his nomination.

An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESOS.

A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

The issue of ESOPs is subject to approval by shareholders through a special resolution. In the cases, where employees are offered more than 1% shares, a specific disclosure and approval is necessary at the annual general meeting.

A minimum period of one year between grant of options and its vesting has been prescribed. After one year, the period during which the option can be exercised would be determined by the company.

The operation of the ESOP Scheme would have to be under the superintendence and direction of a Compensation Committee of the Board of directors in which there would be a majority of independent directors. With the
specific approval of the shareholders, the scheme would be allowed to cover the employees of a subsidiary or a holding company.

Directors' report shall contain the following disclosures:
   (i) the total number of shares covered by the ESOP as approved by the shareholders;
   (ii) the pricing formula;
   (iii) options granted, options vested, options exercised, options forfeited, extinguishment or modification of options, money realised by exercise of options, total number of options in force, employee-wise details of options granted to senior managerial personnel and to any other employee who receive a grant in any one year of options amounting to 5% or more of options granted during that year.
   (iv) Fully diluted earning per share (EPS) computed in accordance with International Accounting Standards.

Articles of Association must contain the provisions for Employees Stock Options. If it does not have such provision, then alteration of the articles needs to be done. For the specimen resolution to alter the Articles of Association, see Annexure X.

Procedure for issue of securities to employees through "Employees Stock Option Scheme" Or Employees Stock Purchase Scheme

I. Employees Stock Option Scheme

   1. Ensure that securities are not issued to promoters under the Employees Stock Option Scheme (ESOS) even if the promoters are employees of the company or belong to the promoters group of the company.

   2. A director who is not a promoter but is an employee is entitled to receive securities under the scheme provided that he either by himself or through his relative or through any body corporate directly or indirectly does not hold more than 10% of the outstanding equity shares of the company.

   3. Under ESOS an employee means a permanent employee of the company working in India or out of India or a director of the company whether a whole-time director or not or a permanent employee or a director of a subsidiary in India or out of India or of a holding company of the company.

   4. Constitute a Compensation Committee for administrative and superintendence of the ESOS which should be a Committee of the Board of Directors consisting of a majority of independent directors by passing a Board Resolution. (for specimen of the board resolution for constitution of the Committee, see Annexure XI)

   5. Before offering ESOS, disclosures as specified in Schedule IV are required to be made by the company to the prospective option grantees.

   6. Ensure that the said compensation formulates the detailed terms and conditions of the ESOS (for specimen of the Employees Stock Option Scheme, see Annexure XII) including:

      (a) the quantum of option to be granted under an ESOS per employee and in aggregate;
(b) the conditions under which option vested in employees may lapse in case of termination of employment for misconduct;

(c) the exercise period within which the employee should exercise the option and that option would lapse on failure to exercise the option within the exercise period;

(d) the specified time period within which the employee shall exercise the vested options in the event of termination or resignation of an employee;

(e) the right of an employee to exercise all the options vested in him at one time or at various points of time within the exercise period;

(f) the procedure for making a fair and reasonable adjustment to the number of options and to the exercise price in case of corporate actions such as rights issue, bonus issues, merger, sale of division and others. In this regard the following should be taken into consideration by the compensation committee—

(i) the number and the price of ESOS shall be adjusted in a manner such that total value of the ESOS remains the same after the corporate action;

(ii) for this purpose global best practices in this area including the procedures followed by the derivative markets in India and abroad shall be considered.

(iii) the vesting period and the life of the options shall be left unaltered as far as possible to protect the rights of the option holders.

(g) the grant, vest and exercise of option in case of employees who are on long leave; and

(h) the procedure for cashless exercise of options.

7. Further ensure that the said Compensation Committee frames suitable policies and systems to ensure that there is no violation of the SEBI (Insider Trading) Regulations, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 by any employee.

8. The company has freedom to determine the exercise price subject to adherence to the accounting policies. In case the company calculates the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, is required to be disclosed in the Directors report and also the impact of this difference on profits and on Earning Per Share of the company shall also be disclosed in the Directors' report.

9. There should exist a minimum period of one year between the grant of options and vesting of options.

10. The company has the freedom to specify the lock-in-period for the shares issued pursuant to exercise of option.
11. The employee does not have the right to receive any dividend or to vote or in any manner enjoys the benefits of a shareholder in respect of option granted to him, till shares are issued on exercise of option.

12. Convene a Board Meeting after giving notice to all the directors of the company as per section 286 to fix the date, time, place and agenda of the General Meeting to pass a special resolution under section 81(1A).

13. Prepare the Explanatory Statement to be accompanied with the notice of the General Meeting and ensure that it contains the following information:—

(a) the total number of options to be granted;
(b) identification of classes of employees entitled to participate in the ESOS;
(c) requirements of vesting and period of vesting;
(d) maximum period within which the options shall be vested;
(e) exercise price or pricing formula;
(f) exercise period and process of exercise;
(g) the appraisal process for determining the eligibility of employees to the ESOS;
(h) maximum number of options to be issued per employee and in aggregate;
(i) a statement to the effect that the company shall conform to the accounting policies as specified in Schedule I to the ESOS.
(j) the method which the company shall use to value its options whether fair value or intrinsic value.

(k) In case the company calculates the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed in the Directors report and also the impact of this difference on profits and on EPS of the company shall also be disclosed in the Directors' report.

14. Issue notices at least twenty-one days before the date of the General Meeting proposing the Special Resolution with suitable Explanatory statement. [Section 171(1) read with section 173 (2)].

15. obtain approval of shareholders by way of separate resolution in case of grant of option to employees of subsidiary or holding company and also in case of grant of option to identified employees, during any one year, equal to or exceeding 1 % of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

16. Hold the General Meeting and pass the Special Resolution by three fourths majority under section 81(1A) authorising issue of securities to employees under the Scheme spelling out the terms of the issue. (for specimen of the board and special resolution, see Annexure XIII)
17. Send three copies of the notice and a copy of the proceedings of the General Meeting to the Stock Exchange.

18. File with the concerned ROC a certified true copy of the Special Resolution with Explanatory Statement in e-Form No. 23 within thirty days of passing of the resolution [Section 192] after paying the requisite fees prescribed under Schedule X to the Act.

19. File with the concerned ROC a return of allotment in e-Form No. 2 within thirty days of passing of the Special Resolution [Section 75] after paying the requisite fee as above.

20. Note the following:—

(i) there will be no restriction on the maximum number of shares to be issued to a single employee, but if an employee is offered more than 1% share, specific disclosure and approval would be necessary in the annual general meeting by passing a special resolution.

(ii) companies can issue share to their permanent employees at a discount to the market price and this will not be covered by the pricing policy of SEBI’s preferential allotment guidelines.

21. The company may by passing a special resolution again in a general meeting vary the terms of ESOS offered pursuant to an earlier resolution of a general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the option holders.

22. Ensure that the notice for passing the special resolution for variation of terms of ESOS discloses full details of the variation, the rationale therefor and the details of the employees who are beneficiary of such variation.

23. A company may reprice the options which are not exercised if ESOSs were rendered unattractive due to fall in the price of the shares in the market. Provided that the company ensures that such re-pricing shall not be detrimental to the interest of employees and approval of shareholders in General Meeting has been obtained for such re-pricing.

24. Forfeit the amount payable by the employee if any, at the time of grant of option if the option is not exercised by the employee within the exercise period.

25. Refund the amount to the employee if the options are not vested due to non-fulfilment of condition relating to vesting of option as per the ESOS.

26. Please note that:—

(i) the option granted to an employee is not transferable to any person.

(ii) no person other than the employee to whom the option is granted is entitled to exercise the option.

(iii) the option granted to the employee is not pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

(iv) in case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation are vested in him on that day.
(v) in the event of resignation or termination of the employee, all options which have not vested as on that day expire.

27. Note that under the cashless system of exercise the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which is to be adjusted against the sale proceeds of some or all the shares, subject to the provision of the Act.

28. Ensure that in the event of the death of employee while in employment, all the options granted to him till such date are vested in the legal heirs or nominees of the deceased employee.

29. The options granted to a director, who is an employee of an institution and has been nominated by the said institution, shall not be renounced in favour of the institution nominating him.

30. Ensure that the Board of Directors, discloses either, in the Directors Report or in the Annexure to the Directors’ Report, the following details of ESOS:

(a) options granted;
(b) the pricing formula;
(c) options vested;
(d) options exercised;
(e) the total number of shares arising as a result of exercise of option;
(f) options lapsed;
(g) variation of terms of options;
(h) money realised by exercise of options;
(i) total number of options in force;
(j) employee-wise details of options granted to—
   (i) senior managerial personnel;
   (ii) any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year;
   (iii) identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.

(k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance with Accounting Standard 20 ‘Earning Per Share’.

(l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognised if it had used the fair value of the options, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.
(m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.

(n) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted average information:

1. risk-free interest rate,
2. expected life,
3. expected volatility,
4. expected dividends, and
5. the price of the underlying share in market at the time of option grant.

31. Until all options granted in the three years prior to the IPO have been exercised or have lapsed, disclosure shall be made either in the Directors’ Report or in an Annexure thereto of the impact on the profits and on the EPS of the company if the company had followed the accounting policies specified in Schedule I of the Guidelines.

In the case of every company that has passed a resolution for an ESOS, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme has been implemented in accordance with these guidelines and in accordance with the resolution of the company in the general meeting.

32. Further ensure that the Board of Directors of the company place before the shareholders of each annual general meeting, a certificate from the auditors of company that the Scheme has been implemented in accordance with these guidelines and in accordance with the resolution passed at company’s general meeting.

33. Ensure that if any option is outstanding at the time of an initial public offering by the company the promoters’ contribution is calculated with reference to the enlarged capital which would arise on exercise of all vested options.

34. If any options granted to employees in pursuance of pre-IPO ESOS are outstanding at the time of IPO, the IPO document of the company shall disclose all the information as specified and also the following information:

(a) The impact on the profits and on the EPS of the last three years if the company had followed the accounting policies specified in Schedule I in respect of options granted in the last three years.

(b) The intention of the holders of shares allotted on exercise of option granted under ESOS or allotted under ESPS, to sell their shares within three (3) months after the date of listing of shares in such IPO.
(aggregate number of shares intended to be sold by option holders), if any, has to be disclosed. In case of ESOS the same shall be disclosed regardless of whether the shares arise out of options exercised before or after the IPO.

(c) Specific disclosures about the intention to sell shares arising out of ESOS or allotted under ESPS within three (3) months after the date of listing, by directors, senior managerial personnel and employees having ESOS or ESPS shares amounting to more than 1% of the issued capital (excluding outstanding warrants and conversions), which inter-alia shall include name, designation and quantum of ESOS or ESPS shares and quantum they intend to sell within three (3) months.

(d) A disclosure regarding all the options/shares issued in last three (3) years (separately for each year) and on a cumulative basis for all the options/shares issued prior to date of the prospectus

II. Employees Stock Purchase Scheme (ESPS)

1. There is an eligibility criteria to participate in the scheme:

   (i) An employee eligible to participate in the scheme should be:

      (a) a permanent employee of the company working in India or out of India; or

      (b) a director of the company, whether a whole time director or not;

      (c) an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company.

   (ii) The employee should neither be a promoter nor belongs to the promoter group.

   (iii) A director who either by himself or through his relatives or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company can not participate, as he is not eligible to participate in the scheme.

2. Make arrangements for holding the general Meeting to approve the Scheme by passing a special resolution.

3. The explanatory statement to the notice is required to be sent to the shareholders and it should specify the following—

   (a) the price of the shares and also the number of shares to be offered to each employee;

   (b) the appraisal for determining the eligibility of employee for the scheme;

   (c) total number of shares to be issued.

4. The number of shares offered may be different for different categories of employees.
5. The special resolution must state that the company should conform to the accounting policies as specified in schedule II of SEBI (Employee Stock Option Scheme and Stock Purchase Scheme) Guidelines, 1999.

6. Approval of shareholders must be obtained by way of separate resolution in the general meeting in case of —
   (a) allotment of shares to employees of subsidiary or holding company and;
   (b) allotment of shares to identified employees, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of allotment of shares.

7. The Pricing and Lock-in-Period requirements are as follows:
   (i) The company has the freedom to determine price of shares to be issued under an ESPS, provided they comply with the accounting policies specified.
   (ii) The shares issued under an ESPS are subject to lock-in for a minimum period of one year from the date of allotment.
       Provided that in a case where shares are allotted by a company under a ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in required under this clause.
   (iii) If the scheme is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees under the scheme are not subject to any lock-in-period.

8. The Director’s Report or Annexure thereto should contain, inter alia, the following disclosures:
   (a) the details of the number of shares issued in the scheme;
   (b) the price at which such shares are issued;
   (c) employee-wise details of the shares issued to:
       (i) senior managerial personnel;
       (ii) any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;
       (iii) identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;
   (d) diluted Earning Per Share (EPS) pursuant to issuance of shares under the scheme; and
   (e) consideration received against the issuance of shares.
9. Every company passing a resolution for the scheme must comply with the accounting policies as specified in Schedule II to SEBI (Employee Stock Option Scheme and Employee Stock Purchase) Guidelines, 1999.

10. Nothing in the guidelines applies to shares issued to employees in compliance with the Securities and Exchange Board of India Guidelines on Preferential Allotment.

11. The shares arising pursuant to an ESOS and shares issued under an ESPS are required to be listed immediately upon exercise in any recognized stock exchange where the securities of the company are listed subject to compliance of the following:

(a) The ESOS/ESPS is in accordance with these Guidelines.

(b) In case of an ESOS the company has also filed with the concerned stock exchanges, before the exercise of option, a statement as per Schedule V and has obtained in-principle approval from such Stock Exchanges.

(c) As and when ESOS/ESPS are exercised the company has notified the concerned Stock Exchanges as per the statement as per Schedule VI.

12. The shares arising after the IPO, out of options granted under any ESOS framed prior to its IPO shall be listed immediately upon exercise in all the recognised stock exchanges where the equity shares of the company are listed subject to compliance with Point no. 33 of ESOS discussed earlier and, where applicable, under mentioned point.

13. (1) No listed company shall make any fresh grant of options under any ESOS framed prior to its IPO and prior to the listing of its equity shares (hereinafter in this clause referred to as 'pre-IPO scheme') unless:

(i) such pre-IPO scheme is in conformity with these guidelines; and,

(ii) such pre-IPO scheme is ratified by its shareholders in general meeting subsequent to the IPO.

Provided that the ratification under item (ii) may be done any time prior to grant of new options under such pre-IPO scheme.

(2) No change shall be made in the terms of options issued under such pre-IPO schemes, whether by repricing, change in vesting period or maturity or otherwise, unless prior approval of the shareholders is taken for such change. Provided that nothing in this sub-clause shall apply to any adjustments for corporate actions made in accordance with these guidelines.

14. For listing of shares issued pursuant to ESOS or ESPS the company is required to make application to the Central Listing Authority as per SEBI (Central Listing Authority) Regulations, 2003 and obtain the in-principle approval from Stock Exchanges where it proposes to list the said shares.

15. The provisions relating to lock-in of pre-IPO shares specified in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall not be
applicable to the shares allotted to employees other than promoters before the IPO under a pre-IPO ESOS/ESPS.

16. The ESOP/ESPS share held by the promoters prior to Initial Public Offering shall be subject to lock-in as per the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

17. The listed companies is required to file the ESOS or ESPS Schemes through EDIFAR filing.

18. When holding company issues ESOS/ESPS to the employee of its subsidiary, the cost incurred by the holding company for issuing such options/shares is required to be disclosed in the 'notes to accounts' of the financial statements of the subsidiary company.

19. The company is required to appoint a registered Merchant Banker for the implementation of ESOS and ESPS as per these guidelines.

**ESOS/ESPS Through Trust Route**

In case ESOS/ESPS are administered through a Trust Route, the accounts of the company shall be prepared as if the company itself is administering the ESOS/ESPS.

**11. SWEAT EQUITY SHARES**

The provisions relating to Sweat Equity shares are dealt in section 79A of the Companies Act, 1956. In respect of the companies which are already listed or those companies which propose to obtain listing, issue of Sweat Equity Shares is administered by SEBI. In respect of other companies, it is administered by the Central Government.

The term 'sweat equity' in literal sense denotes an interest in a property earned by a talent in return by labour towards upkeep or restoration (The New Oxford Dictionary of English). The expression "sweat equity shares" as defined in explanation II to Section 79A means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for 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 than shares issued by a company under Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).

Section 79A of the Companies Act enables companies to reward their employees by way of sweat equity. These shares are not different from the other shares issued by the company. Sweat equity may be issued by companies formed under the Companies Act as well as subsidiaries of such companies. Foreign companies and
bodies corporate as defined under section 2(7) are excluded from the ambit of this section.

In accordance with sub-section (1) of section 79A, a company means the company incorporated, formed and registered under the Companies Act, 1956 and includes its subsidiary company incorporated in a country outside India. Sweat equity can be issued only of a class of shares already issued. Companies Act permits sweat equity to be issued to employees or directors.

Companies may price the shares freely and may offer any discount. However, in the case of issue of shares at a discount, an ordinary resolution authorizing sweat equity shares must specify the maximum rate of discount. The consideration for the shares may be cash or for any consideration other than cash. Since the issue of sweat equity by a company to its directors and employees is a non-rights issue under section 81 of the Act, the authorization by a special resolution in terms of sub-section (1A) of section 81 will be required.

According to clause (c) of sub-section (1), sweat equity shares can be issued only after one year has elapsed from the date on which the company was entitled to commence business. All limitations, restrictions and provisions relating to equity shares will be applicable to such Sweat Equity Shares issued under sub-section (1) of section 79A. [Section 79A(2)]

For listed Companies, the sweat equity shares are issued in accordance with the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002. The unlisted companies can issue such shares in accordance with the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003.

Procedure to Issue Sweat Equity Shares (In case of Listed Companies) [Section 79A]

1. Ensure that at least 1 year has elapsed since the date on which the company was entitled to commence business.

2. Decide before convening a Board Meeting, the number of shares, their current market price and consideration, if any, and the class or classes of directors or employees to whom such of Sweat Equity Shares are proposed to be issued.

3. Convene a Board Meeting after giving notice to the directors of your company as per section 286 to consider the proposal of issue of Sweat Equity Shares and to fix up the date, time, place and agenda for the General Meeting and to pass an Special Resolution for the same. (for specimen of the board resolution, see Annexure XIV)

4. Issue notices in writing at least twenty one days before the date of the meeting for the General Meeting with suitable explanatory statement.

5. The proposed Special Resolution must specify the number of shares, their current market price and consideration, if any and the class or classes of directors or employees to whom such Sweat Equity Shares are to be issued.
6. The Explanatory Statement to the notice and the resolution for approving the issuance of sweat equity should *inter alia* contain the following information:

   (i) the total amount of shares to be issued as sweat equity;

   (ii) the current market price of the shares of the company.

7. Listed companies must pass the special resolution in its general meeting, for issue of sweat equity shares to employees and directors.

8. If the sweat equity shares are to be issued by a listed company to its promoters, as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, obtain the approval of shareholders:

   (a) by *simple majority* in general meeting; and

   (b) also through postal ballot as specified under the Companies (Passing of Resolution by Postal Ballot) Rules, 2001

9. Hold the General Meeting and pass the Special Resolution by three fourths majority.

10. File the Special Resolution with the concerned ROC with explanatory statement in e-Form No. 23 within thirty days.

11. 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 to the Stock Exchange.

12. If the shares of the company are listed with any of the recognised Stock Exchange, then issue the Sweat Equity Shares in accordance with the Securities Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.

13. If the company's equity shares are not listed on any recognised Stock Exchange then issue the Sweat Equity Shares in accordance with the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003.

**Procedure to Issue Sweat Equity Shares (in case of unlisted companies) [Section 79A]**

1. Explanatory statement annexed to the Special Resolution should contain particulars:

   (i) the date of the meeting at which the proposal for issue of sweat equity shares was approved by the Board of Directors of the company;

   (ii) the reasons/justification for the issue;

   (iii) the number of shares, consideration for such shares and the class or classes of persons to whom such equity shares are to be issued;

   (iv) the value of the sweat equity shares along with valuation report/basis of valuation and the price at which the sweat equity shares will be issued;

   (v) the names of persons to whom the equity will be issued and the person's relationship with the company;
(vi) ceiling on managerial remuneration, if any, which will be affected by issuance of such equity;

(vii) a statement to the effect that the company shall conform to the accounting policies specified by the Central Government; and

(viii) diluted earning per share pursuant to the issue of securities to be calculated in accordance with the Accounting Standard issued by ICAI.

2. Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of grant of shares to identified employees and promoters, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversion) of the company at the time of grant of the sweat equity shares.


4. The company should not issue sweat equity shares for more than 15% of total paid up equity share capital in a year or shares of the value of 5 crores of rupees, whichever is higher except with the prior approval of the Central Government.

5. The following details of issue of sweat equity shares are required to be disclosed either in the Director's Report or in the annexure to the Director's Report,:

(a) Number of shares to be issued to the employees or the directors;

(b) conditions for issue of sweat equity shares;

(c) the pricing formula;

(d) the total number of shares arising as a result of issue of sweat equity shares;

(e) money realised or benefit accrued to the company from the issue of sweat equity shares;

(f) diluted Earnings Per Shares (EPS) pursuant to issuance of sweat equity shares.

6. The price of sweat equity shares to be issued to employees and directors shall be at a fair price calculated by an independent valuer.

7. If the company proposes to issue sweat equity shares for consideration other than cash, it shall comply with following:

(a) The valuation of the intellectual property or of the know-how provided or other value addition to consideration at which sweat equity capital is issued, shall be carried out by a valuer;

(b) the valuer shall consult such experts, as he may deem fit, having regard to the nature of the industry and the nature of the property or the value addition;

(c) the valuer shall submit a valuation report to the company giving justification for the valuation;
(d) a copy of the valuation report of the valuer shall be sent to the shareholders with the notice of the general meeting;

(e) the company shall give justification for issue of sweat equity shares for consideration other than cash, which shall form part of the notice sent for the general meeting; and

(f) the amount of Sweat Equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 198, 309, 310, 311 and 387 of the Companies Act, 1956 if the following conditions are fulfilled:

(i) the Sweat Equity shares are issued to any director or manager; and

(ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

8. There shall be Lock in for a period of 3 year from the date of allotment of sweat equity shares issued to employees or directors.

9. A certificate is required to be placed at the annual general meeting from the auditors of the company or from a practising company secretary stating that sweat equity shares have been allotted in accordance with the resolution of the company in the general meeting and the said Rules.

12. ISSUE AND REDEMPTION OF PREFERENCE SHARES

Section 80 of the Companies Act enables a company limited by shares to issue redeemable preference shares, if so authorised by the articles of association of the company. Preference shares can be either cumulative or non-cumulative. A Redeemable preference share is one of the types of preference shares. To redeem means to buy or pay off; clear by payment; to buy-back. These shares are issued subject to the condition that they will or may be redeemed, that is, bought back (at the option of the shareholder or the company) by the company.

Redemption of redeemable preference shares does not amount to reduction of share capital. A company can issue redeemable preference shares with a tenure of not exceeding 20 years. No company can issue irredeemable preference shares.

The articles must authorize the company to issue redeemable preference shares. If the articles do not contain a regulation authorising the issue of such shares, then for issuing such shares, articles must be amended to insert therein a provision authorising the company to issue such shares.

The redemption of redeemable preference shares may be effected on such terms and in such manner as is provided in the articles of the company. If the articles do not contain any provisions in this regard, the terms and conditions for redemption may be inserted in the articles by amending the articles by a special resolution. The following conditions must be fulfilled for redemption of redeemable preference shares:

— The shares to be redeemed must be fully paid up;

— Redemption can be effected only out of profits which would otherwise have been available for dividend, or out of the proceeds of a fresh issue of shares made for the purpose of redemption;
The premium payable, if any, on the redemption shall be provided for out of the profits of the company or out of the company's securities premium account. Such provision shall be made before the shares are redeemed;

If the redemption is out of the proceeds of a fresh issue of shares, the issue shall have been made specifically or inter-alia for the purpose of the redemption;

If the redemption is out of distributable profits, the profits equivalent to the nominal amount of the shares redeemed must be transferred to capital redemption reserve account.

Unless the terms of the issue provide for conversion of preference shares into equity shares, the preference shares have to be redeemed only in cash.

The sanction of the court under section 100 of the Act would be necessary where preference shares are to be redeemed out of capital redemption reserve account created out of the profits of the company.

Two independent procedures are available to a company for redemption of preference shares. It may redeem the shares by following the procedure laid down under section 80 of the Act which is a special provision meant for redemption of preference shares or it may take recourse to the general provision under section 100 of the Act which is applicable for reduction of any capital including preference capital, in any manner. [Birla Global Finance, in re (2005) 126 Comp Cas 647 (Bom)]

**Procedure to issue Redeemable Preference Shares Under Section 80**

1. Articles of Association of the Company must authorise issue of redeemable preference shares; if not, steps should be taken to alter them accordingly.

2. Obtain 'credit rating' from any of the approved credit rating agencies.

3. Call a Board Meeting by giving notice to all the directors of the company as per section 286 and take the decision of issuing redeemable preference shares and fix up the date, time, place and agenda for calling a General Meeting to pass an Ordinary Resolution (Special Resolution, if the Articles so require) for such issue. (for specimen of the board resolution, see Annexure XV)

4. Issue notices in writing at least twenty-one days before the date of the General Meeting proposing the resolution with suitable Explanatory Statement.

5. Inform the Stock Exchange at which the securities of the Company are listed about such proposed issue of redeemable preference shares.

6. Hold the General Meeting and pass the resolution (if it is made on private placement basis, pass special resolution under section 81(1A) and if the issue is made on right basis, comply with section 81(1). [for specimen of the resolution, see Annexure XV]

7. If the resolution passed is a Special Resolution, file the same with the ROC in e-Form No. 23 within thirty days of its passing.

8. If the issue of redeemable preference shares is to be made by issue of Prospectus, then prepare a draft Prospectus in consultation with the Lead
Manager responsible for such drafting. Follow the procedure for Public Issue of Shares.

9. Make allotment by passing a resolution at a duly convened Board Meeting.

10. File a return of allotment in e-form 2 with ROC.

Procedure to redeem Redeemable Preference Shares

(a) Preference shares must be fully paid-up. The premium, if any, on such redemption, must be provided out of the profits or out of the security premium account of the company, before the shares are redeemed.

(b) If these are redeemed out of distributable profits of the company, then, before such redemption, transfer a sum equal to the nominal amount of shares to be so redeemed to a reserve fund called the "Capital Redemption Reserve Account" from the distributable profits of the company.

(c) Hold a Board Meeting by giving notice to all the directors of the company as per section 286. Decide about the number of preference shares to be redeemed, and the date of such redemption. Pass a resolution approving the redemption of redeemable preference shares.

(d) If the redemption is to be made out of the proceeds of a fresh issue of shares, then:—

   (i) Hold a Board Meeting by giving noticed to all the directors of the company as per section 286 and approve the issue of fresh shares up to the nominal amount of the shares to be redeemed by passing a resolution;

   (ii) Pass another resolution approving the redemption of preference shares out of the proceeds of a fresh issue of shares;

   (iii) Pass another Board resolution to issue fresh shares to the existing shareholders;

   (iv) Redeem the preference shares within one month of the issue of the new shares.

(e) Carry out the redemption of preference shares in both the cases on such terms and in such manner as provided in the Articles of your company.

(f) If the company’s shares are listed on a recognized Stock Exchange, inform it about such redemption at least 21 days in advance and forward a copy of the Board resolution to them.

(g) Inform the preference shareholders individually and also through a public notice in the newspapers about the proposed redemption.

ANNEXURE I

BOARD RESOLUTION REGARDING ISSUE OF SHARES AT A DISCOUNT

RESOLVED THAT

(a) subject to the approval of the Company at a general meeting by an ordinary resolution, of the Company Law Board and such other approvals as may be
necessary, the Board of Directors of the Company be and is hereby authorized to issue 5,00,000 equity shares of Rs. 10 each out of the unissued share capital of the company at a discount not exceeding Rs. 3 per share i.e. 30 per cent or such other lesser discount as may be approved by the Company in general meeting or by the Company Law Board;

(b) an extraordinary general meeting of the Company be convened on ..... [date], at ..... [time] ..... at ..... [place] ..... to transact the business set out in the draft notice produced to this meeting and the Company Secretary be and is hereby authorised to issue the notice to the mm of the Company;

(c) the Company Secretary be and is hereby authorised to make a petition to the Company Law Board, ........ Region Bench, for its approval to the issue of shares at a discount as aforesaid and to do such other acts, things and deeds as may be necessary or expedient to do to implement this resolution.

ANNEXURE II

ORDINARY RESOLUTION TO BE PASSED AT A GENERAL MEETING REGARDING ISSUE OF SHARES AT A DISCOUNT

RESOLVED THAT subject to the approval of the Company Law Board, the Board of Directors be and is hereby authorised to issue 5,00,000 equity shares of Rs. 10 each in the capital of the company at a discount not exceeding Rs. 3 per share i.e. 30 per cent or such other lesser discount as may be approved by the Company Law Board.

ANNEXURE III

SPECIMEN OF BOARD RESOLUTION FOR ISSUE OF SHARES AT A PREMIUM UNDER SECTION 78(2)(A)

"RESOLVED that pursuant to section 78 of the Companies Act, 1956 and subject to such modifications and conditions as the Securities and Exchange Board of India may impose, the Directors of the Company be and are, hereby authorised to issue 100,00,000 equity shares of Rs. 5/- each at such premium not exceeding Rs. 80/- per share in consultation with the lead managers to the issue."

"RESOLVED that pursuant to the provisions of section 78 of the Companies Act, 1956, the sum of Rs. 4 lakhs being the aggregate amount of the premium received on the issue and allotment of 500,000 equity shares of Rs. 10/- each be and is hereby transferred to "the Share Premium Account" of the Company maintained with the State Bank of India, Sansad Marg, New Delhi."

ANNEXURE IV

SPECIMEN BOARD RESOLUTION FOR MAKING CALLS ON SHARES

"RESOLVED that the first and final call of Rs. 5/- per share of the Company be made upon 200,50,000 equity shares of Rs. 10/-each and that the said call be made payable on or before 31st July, 2005.

RESOLVED FURTHER that the Indian Overseas Bank, Mumbai with its main
offices at Agra, Ahmedabad, Allahabad, Bangalore, Baroda, Calcutta, Chandigarh, Dehradun, Kanpur, Hyderabad, Lucknow, Chennai, Nagpur and New Delhi and State Bank of India with its main offices at Indore and Ghaziabad be and are hereby appointed as bankers of the Company for the purpose of collection of allotment and call moneys on the aforesaid shares.

RESOLVED FURTHER that Industrial Investment Trust Limited, Mumbai, Company's Issue House be and are hereby authorised to issue call notices on behalf of the Company.

RESOLVED FURTHER that the aforesaid accounts be and are hereby operated on behalf of the Company by Shri SKM Managing Director of the Company.

ANNEXURE V

SPECIMEN OF BOARD RESOLUTION FOR FURTHER ISSUE OF CAPITAL

"RESOLVED that in terms of section 81(1A) and other applicable provisions, if any, of the Companies Act, 1956 and in accordance with the provisions of Articles of Association of the Company and subject to the consent of the Securities and Exchange Board of India (SEBI) and all other concerned authorities and Departments, if and to the extent necessary, and such other approvals, permissions and sanctions as may be necessary and subject to such conditions and modifications as may be prescribed in granting such approvals, permissions and sanctions which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "The Board" which term shall be deemed to include any committee of the Board), at its sole discretion, the consent of the company be and is hereby accorded to the Board to create, offer and issue to such persons as are set out hereunder, such number of equity shares of the company of the face value of Rs. 10/- each not exceeding in number may be required for subscription for cash at such premium per share as may be fixed and determined by the Board prior to the issue and offer thereof to such category of persons in consultation with SEBI or such other Authorities as may be prescribed or in accordance with such guidelines or other provisions of law as may be prevailing at that time and otherwise earning pan passu except for payment of dividend pro rata from the date of allotment with the equity shares of the Company as then issued and to retain oversubscription if any in respect of such issue to such extent as may be then permissible, and at such time or times as the Board at its absolute discretion and in the best interest of the company may deem fit:—

(i) the public such number of equity shares of Rs. 10/-each as the Board may decide on such terms and conditions as may be decided by the Board in this respect;

(ii) the permanent employees of the Company (including any Indian Working Directors) on an equitable basis such number of equity shares of Rs. 10/-each as would not exceed ten per cent of the number of equity shares and with such conditions of non-transferability lock-in-period as may be specified in the prevailing guidelines and with the provisions that any unsubscribed portion from such category shall not lapse but shall at the absolute discretion of the Board be available for allotment by offering the same to Mutual Funds, Banks, financial institutions or Business Associates or any other person as
the Board may deem fit and thereafter for meeting any oversubscription in the category referred to in (i) above; and

(iii) the promoters, directors and their relatives and friends, such number of equity shares of Rs. 10/- each with such minimum subscription and with such conditions of non-transferability guidelines lock-in-period as may be specified in the then prevailing guidelines—

RESOLVED FURTHER that for the purpose of giving effect to this resolution the Board of Directors of the Company be and is hereby authorised to take such steps and to do all such acts, deeds, matters and things and accept any alterations or modification(s) as they may deem fit and proper and give such directions as may be necessary to settle any question or difficulty that may arise in regard to the issue and allotment of the said equity shares including the power to allot the unsubscribed equity shares, if any, in such manner as may appear to the Board of Directors to be most beneficial to the Company."

ANNEXURE VI

SPECIMEN RESOLUTION TO BE PASSED AT THE BOARD MEETING FOR ISSUE OF BONUS SHARES UNDER SECTION 81 OF THE COMPANIES ACT, 1956

"RESOLVED that pursuant to Article.................. of the Articles of Association of the Company and subject to the consent of the members in general meeting, and in accordance with the guidelines of the Securities and Exchange Board of India, the Board of Directors of the Company do hereby recommend that a sum of Rs.................. be capitalised out of general reserve and set free for distribution amongst the equity shareholders by issue of.................................................. equity shares of Rs. 10/-each credited as fully paid to the equity shareholders in the proportion of.................................. equity share for every.................................. equity shares held by them on the record date to be decided by the Board and that such new shares, as and when issued and fully paid, shall rank pari passu with the existing equity shares.

RESOLVED FURTHER that for the purpose of giving effect to this resolution, an Extraordinary General Meeting of members of the Company be convened to consider the proposed capitalisation of profits and issue of bonus shares and that the secretary of the Company be and is hereby authorised to issue notice of the said meeting to the shareholders alongwith relevant explanatory statement as per drafts thereof submitted to this meeting and initialled by the Chairman for the purpose of identification."

ANNEXURE VII

SPECIMEN RESOLUTION TO BE PASSED AT A GENERAL MEETING OF A LISTED COMPANY FOR APPROVAL TO BONUS ISSUE

Subject to the guidelines issued by the Securities and Exchange Board of India and subject to the Foreign Exchange Management Act, 1999 for allotment and issue of new equity shares to the non-resident members and subject to the consents of financial institutions, as may be applicable, and also subject to such terms,
conditions, alterations, modifications, changes and variations as may be specified while according such approval which the Board of Directors of the company ("the Board"), is authorised to accept, if it thinks fit, the Company approves capitalization the entire amount standing to the credit of General Reserve and...... Reserve and part of the amount standing to the credit of Share Premium Account in the books of the company as on ..... for an aggregate amount of Rs. ..... and such sum be set free for distribution among the holders of existing fully paid equity shares of Rs. 10 each of the company, whose names will appear in the register of members of the company on a date to be decided by the Board in that behalf as Record Date, as an increase of the amount of share capital of the company held by each such member and not as income or in lieu of dividend credited as....... fully paid-up equity shares as bonus shares in the proportion of... new equity shares for every.... existing fully paid equity shares held, subject to the following terms and conditions:

(a) The new equity shares to be allotted as bonus shares will be allotted subject to the terms of the Memorandum and Articles of Association of the company;

(b) The new equity shares shall rank pari passu in all respects with and carry the same rights as the existing fully paid-up equity shares of the company and notwithstanding the date or dates of allotment thereof shall be entitled to participate in full in any dividend to be declared in respect of the financial year in which the allotment of the new equity shares pursuant to this Resolution is made;

(c) No letter of allotment will be issued by the company in respect of the new equity shares. However, the equity share certificates in respect thereof will be ready for delivery to the allottees within 3 months from the date of allotment thereof;

(d) If as a result of implementation of this resolution, any member becomes entitled to a fraction of new equity shares to be allotted as bonus shares the company shall not issue any certificate or coupon in respect of such fractional shares but the total number of such new equity shares representing such fractions shall be allotted by the Board to a nominee to be selected by the Board who would hold them as trustee for the equity shareholders who would have been entitled to such fractions, in case the same were issued. Such nominee will as soon as possible sell such equity shares allotted to him at the prevailing market rate and the net sale proceeds of such shares after adjusting the cost and expenses in respect thereof be distributed among such members who are entitled to such fractions in the proportion of their respective holding and allotment of fractions thereof; and

(e) No allotment of bonus shares or distribution of proceeds in respect of fractions to the non-resident Indian members unless the provisions of the Foreign Exchange Management Act, 1999 have been complied by the company.

The Company authorizes, for the purpose of giving effect to this resolution, the Board:

(a) to do all such acts, matters and things whatsoever including settling any question, doubt or difficulty that may arise with regard to or in relation to the issue or allotment of the bonus shares;

(b) to accept on behalf of the company any conditions, modifications relating to
the issue of bonus shares prescribed by the Reserve Bank of India or any other authority and which the Board in its discretion thinks fit and proper.

ANNEXURE VIII

SPECIMEN RESOLUTION TO BE PASSED AT A GENERAL MEETING OF AN UNLISTED COMPANY FOR APPROVAL TO BONUS ISSUE

Subject to the Foreign Exchange Management Act, 1999 for allotment and issue of new equity shares to the non-resident members and subject to the consents of financial institutions, as may be applicable, and also subject to such terms, conditions, alterations, modifications, changes and variations as may be specified while according such approval which the Board of Directors of the company (“the Board”), is authorised to accept, if it thinks fit, the Company approves capitalization the entire amount standing to the credit of General Reserve and...... Reserve and part of the amount standing to the credit of Share Premium Account in the books of the company as on ..... for an aggregate amount of Rs. ..... and such sum be set free for distribution among the holders of existing fully paid equity shares of Rs. 10 each of the company, whose names will appear in the register of members of the company on a date to be decided by the Board in that behalf, as an increase of the amount of share capital of the company held by each such member and not as income or in lieu of dividend credited as....... fully paid-up equity shares as bonus shares in the proportion of... new equity shares for every.... existing fully paid equity shares held, subject to the following terms and conditions:

(a) The new equity shares to be allotted as bonus shares will be allotted subject to the terms of the Memorandum and Articles of Association of the company;

(b) The new equity shares shall rank pari passu in all respects with and carry the same rights as the existing fully paid-up equity shares of the company and notwithstanding the date or dates of allotment thereof shall be entitled to participate in full in any dividend to be declared in respect of the financial year in which the allotment of the new equity shares pursuant to this Resolution is made;

(c) No letter of allotment will be issued by the company in respect of the new equity shares. However, the equity share certificates in respect thereof will be ready for delivery to the allottees within 3 months from the date of allotment thereof;

(d) If as a result of implementation of this resolution, any member becomes entitled to a fraction of new equity shares to be allotted as bonus shares the company shall not issue any certificate or coupon in respect of such fractional shares but the total number of such new equity shares representing such fractions shall be allotted by the Board to a nominee to be selected by the Board who would hold them as trustee for the equity shareholders who would have been entitled to such fractions, in case the same were issued. Such nominee will as soon as possible sell such equity shares allotted to him at the prevailing market rate and the net sale proceeds of such shares after adjusting the cost and expenses in respect thereof be distributed among such members who are entitled to such fractions in the proportion of their respective holding and allotment of fractions thereof; and
(e) No allotment of bonus shares or distribution of proceeds in respect of fractions to the non-resident Indian members unless the provisions of the Foreign Exchange Management Act, 1999 have been complied by the company.

The Company authorizes, for the purpose of giving effect to this resolution, the Board:

(a) to do all such acts, matters and things whatsoever including settling any question, doubt or difficulty that may arise with regard to or in relation to the issue or allotment of the bonus shares;

(b) to accept on behalf of the company any conditions, modifications relating to the issue of bonus shares prescribed by the Reserve Bank of India or any other authority and which the Board in its discretion thinks fit and proper.

ANNEXURE IX

SPECIMEN OF BOARD RESOLUTION FOR ISSUE OF BONUS SHARES WITH DIFFERENTIAL VOTING RIGHTS

"RESOLVED that pursuant to Article of the Articles……….. of Association of the Company and subject to the consent of the members of the Company in general meeting, and in accordance with the Rules, Regulations, or Guidelines made therefor, the Board of Directors of the Company do hereby recommend that a sum of Rs………… be capitalised out of the general reserve of the Company for distribution amongst the equity shareholders by issue of equity shares with differential voting rights of Rs. 10/- each credited as fully paid to the equity shareholders in the proportion of.......................... equity share for every equity shares held by them on the record date to be decided by the Board of Directors and that such new equity shares, as and when issued as fully paid shall have differential voting rights as to dividend voting or otherwise in accordance with such Rules and subject to such conditions as prescribed by the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 and as determined by the Board of Directors of the Company.

RESOLVED FURTHER that for the purpose of giving effect to this resolution, an Extraordinary General Meeting of the members of the Company be convened to consider the proposed capitalisation of profits and issue of bonus shares with differential rights and that the secretary of the company be and is hereby authorised to issue the notice of the said meeting to the members with the relevant explanatory statement as per the drafts placed before this meeting and intialled by the chairman for the purpose of identification.

ANNEXURE X

SPECIAL RESOLUTION TO ALTER ARTICLES OF ASSOCIATION OF THE COMPANY TO PROVIDE FOR EMPLOYEES STOCK OPTION

"RESOLVED THAT pursuant to section 31 and other applicable provisions, if any, of the Companies Act, 1956, the Articles of Association of the Company be and
are hereby altered in the following manner:

Insert a new Article …… immediately after Article …….

Provisions for Employees' Stock Option:

Subject to the provisions of section 81(1A) and other applicable provisions, if any, of the Act and subject to the Articles of Association, the Board may, from time to time, create, offer and issue to or for the benefit of the Company's employees including the Executive chairman, the Managing Directors and the Whole time Directors such number of equity shares of the Company of the face value of Rs. 10 each not exceeding in number at any time in the aggregate …. % of the capital after expansion, for subscription on such terms and conditions as may be determined by the Board prior to the issue and offer, in consultation with the authorities concerned and in accordance with such guidelines or other provisions of law as may be prevalent at that time but ranking pari passu with the existing equity shares of the Company:

1. The issue price of such shares shall be determined by the Board in accordance with the laws prevalent at the time of the issue.

2. In the alternative to equity shares, mentioned hereinabove, the Board may also issue bonds, equity warrants or other securities convertible or non-convertible into equity shares, as may be permitted in law, from time to time.

All such issues as above are to be made in pursuance of Employees' Stock Option (ESOP) Scheme to be drawn up and approved by the Board.

ANNEXURE XI

BOARD RESOLUTION FOR CONSTITUTING COMPENSATION COMMITTEE

"RESOLVED THAT the Compensation Committee constituted by the Board at its meeting held on …… be and is hereby authorised to perform the following function in addition to formulating and recommending to the Board, from time to time, compensation structure for whole-time members of the Board:

(a) To formulate, from time to time, an Employee Stock Option Scheme for the employees of the Company and its associate companies; and

(b) to decide the terms and conditions of the Scheme."

ANNEXURE XII

MODEL EMPLOYEES STOCK OPTION SCHEME

........................ Limited

THE EMPLOYEES STOCK OPTION (ESOP)

1. Introduction. This document sets out the terms and conditions of the ESOP the duties and responsibilities of the awardee as also the benefits and the procedures to be followed.
2. Objective of the ESOP. The purpose of this ESOP is to provide an ongoing mechanism for rewarding Executives of ------ Limited (hereinafter referred as "the Company") for their continued and valuable services and the ESOP is merit for a selected category of employees of the Company as decided from time to time by the management of the Company. The ESOP has been so designed as to reward continued association of an individual with the Company for the given future period. The ESOP will be implemented on a yearly basis.

3. Administration of the ESOP. The Company would create an Employees Welfare Trust for implementing the ESOP and allot to the trust ............... equity shares so as to constitute ........... % of the post issue paid up Equity Share Capital. The Trust in turn has a right to issue warrant to the employees of the Company. Each warrant carries with it the right to apply for and be allotted one equity share of, the Company at the exercise price. The trust is to hold the Warrants for and on behalf of the employees and transfer the same to them as and when advised. The Company has constituted a Compensation Committee to choose eligible employees for grant of warrants. The trust would issue warrants to the employees on the basis of the advise of the Compensation Committee.

4. Employees. Only bona fide full time employees of the Company in confirmed service are eligible under this ESOP. The selection shall be based upon the performance appraisal, minimum period of services the status of the employees in the Company and the present and potential, contribution, of the employee to the success, of the Company and other factor deemed relevant by the Compensation Committee. The promoter directors are not eligible to participate in this ESOP.

At the discretion of the Board of directors of the Company, employees of the holding Company/subsidiary Company may also be deemed to be employees for the purpose of this ESOP.

5. Government regulations. This ESOP shall be subject to all applicable laws, rules, regulations and to such approvals by any governmental agencies as may be required. The grant of warrants/shares under this ESOP shall entitle the company to require the employee to comply with such requirements of law or, may be necessary in the opinion of the Company.

6. General risks. Participation, in this ESOP shall not be construed as any guarantee of return on the equity investment. Any loss due to this investment and the risks associated with the investment are that of the employee alone.

7. Warrants

7.1 Issue of Warrants:

(a) The warrants shall be issued to the employees in lots of 100 in consideration of the payment to the trust of a sum of Re. 1 per warrant or such other sum as the trust may, decide from time to time. Such transfer shall be made upon the specific recommendation of the Compensation Committee.

(b) The warrant shall not be Transferable by the employee except back to the trust on the happening of certain events as mentioned in the following clauses 7.1(c) and 7.1(d).
(c) In the event of the employee ceasing to be an employee of the Company by reason of resignation, dismissal or severance of employment due to reasons of non-performance or otherwise the warrants held by the employee shall forthwith be caused to be transferred to the trust at the same consideration as mentioned in Clause 7.1(a).

(d) In the event of the employee dying in harness or attaining the age of superannuation while in service the rights and obligations under the warrants shall accrue to his legal heirs or continue in his hands as the case may be.

7.2 Exercise of Warrant. Each warrant entitles the holder thereof to apply for and be allotted one equity share of the nominal value of each on the payment of the exercise price at any time during the exercise period.

7.3 Exercise Price. The exercise price of the warrant shall be declared at the time of issue of such warrant.

7.4 Exercise Period:

(a) The option to apply for conversion of the warrants shall be exercisable as per a vesting schedule as follows:

— On Completion of months from the date of the issue of the warrants: one-third;

— On Completion of months from the date of issue the warrants: one-third;

— On Completion of months from the date of issue the warrants: last one-third;

— On Vesting, the option will have to be exercised within one month of the vesting.

(b) In case the warrants are not exercised by the employee within the exercise period they will lapse and no rights will accrue after that date. The amount paid on the warrant of Re. 1 shall in that event be forfeited by the company.

(c) The employee can opt for conversion of his warrants on the exercise date by applying to the Company's Employees Welfare Trust.

7.5 Bonus Issue. In the event of a bonus issue of securities being made by the Company during the period of issue of the warrants and exercise of the option by the warrant holders, the holder of the warrant would be entitled to apply for and be allotted proportionately higher number of shares for each warrant held.

7.6 Option for Conversion

(a) The warrant holder may at his discretion opt for conversion during the exercise period on the exercise date of all the warrants that he has some of the warrants.

(b) However, the exercise shall be made in lots of 100 warrants each.

7.7 Transfer of Warrants

(a) The warrants held by the employee are not transferable except to the trust during the life of the warrant. During this period the said warrants cannot be
pledged/hypothecated/charged/mortgaged/assigned or in any other manner alienated or disposed off.

(b) However, on the happening of any of the events mentioned in clause 7.1(c) the employee shall forthwith transfer/cause to be transferred all the warrants held by him back to the trust.

The employee shall enter into a specific agreement with the trust for the purpose.

7.8 Safe Custody
(a) The employee in whose name the warrants are transferred by the trust shall enter into an agreement with the trust for keeping these warrants in the safe custody of the trust during the life of the warrant.

(b) At the end of every financial year during the period of custody the Trust shall issue a statement showing the number of warrants held in trust on behalf of the employee.

8. Shares
8.1 Issue of shares. After the warrants are converted into shares, the shares so converted shall be subject to the terms and conditions as mentioned below.

8.2 Ranking of shares
(a) The shares arising on the conversion of the warrants shall rank pari passu with all the other existing outstanding equity shares of the Company.

(b) However, any right attached to such shares shall be with reference to a date subsequent to the date of allotment.

8.3 Loans for purchase of shares. In the event of the employee obtaining loans for the purchase/conversion of the shares either from the Company or from the trust he shall comply with the terms and conditions of the agreement granting the loans.

9. Tax liability
(a) In the event of any tax liability arising on account of the issue of the warrants/ conversion into shares/transfer of shares to the employee the liability shall be that of the employee alone.

(b) In the event of any tax liability arising on account of the ESOP to the trust, it shall have the right to cause the shares held by the trust under this ESOP to be sold otherwise, alienated to meet the liability on behalf of the employee.

10. Change in the terms and conditions of the ESOP. The Board of Directors may at any time at its discretion change the terms and condition of the ESOP. However, the change shall not be to the detriment of the warrant holder or the employee allotted/ transferred shares under the ESOP.

11. Confidentiality
(a) The employee who holds any warrants/shares under the ESOP, shall not divulge the details of the ESOP and his holding to any person except with the prior permission of the trust obtained in writing.

(b) The employee shall enter into such agreement as the Company/trust may desire from time to time to more fully and effectively implement this ESOP.
12. Contract of employment

(a) This shall not form part of any contract of employment between the Company and the employee. The rights and obligations of any individual under the terms of his office or employment with the Company shall not be affected by his participation in this ESOP or any right which he may have to participate in it.

(b) Nothing in this ESOP shall be construed as affording such an individual any additional rights as to compensation or damages in consequence of the termination of such office or employment for any reason.

(c) This ESOP shall not confer on any person any legal or equitable rights against the Company either directly or indirectly or give rise to any cause of action in law or equity against the Company.

(d) This ESOP is purely at the discretion of the Company.

ANNEXURE XIII

SPECIMEN BOARD RESOLUTION FOR EMPLOYEES STOCK OPTION SCHEME

Resolved that pursuant to the provisions of Section 79A, 81 of the Companies Act, 1956, and all other applicable provisions, if any, and subject to the consent of the shareholders in a General Meeting and further subject to Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, the Employee Stock Option Scheme/Employee Stock Purchase Scheme as per the draft placed on the table, which is initiated by the Chairman for the purpose of identification, be and is hereby approved.

Resolved further that (Number of) share option (each option conferring on the employee a right to get one equity share of Rs. 10 each of the Company) be offered to eligible employees (including Whole-time directors) of the Company identified from time to time by the Compensation Committee of the Board of Directors, provided however, that an employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the abovementioned Scheme. Resolved further that a director who either himself or through his relatives or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall also not be eligible to participate in the Scheme. "Resolved further that the share options shall entitle the eligible employees to apply for equity shares at the market price prevailing on the date of this meeting, i.e., 2000 ('Grant Date'). The closing market price on the ----- (Name of Exchange) Stock Exchange on the Grant Date was Rs. – per share.

SPECIAL RESOLUTION FOR EMPLOYEES STOCK OPTION SCHEME

"RESOLVED THAT pursuant and subject to section 81 and other applicable provisions, if any, of the Companies Act, 1956, the relevant Articles of the Articles of Association of the Company and the provisions of the Securities and Exchange Board of India (Employee Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999 ("the Guidelines") (including any statutory modification(s) or re-enactment of the Act or the Guidelines, for the time being in force) and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions and modifications as may be prescribed or imposed while granting such
approvals, permissions and sanctions which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "the Board" which term shall be deemed to include any Committee including ESOP Compensation Committee which the Board may constitute to exercise its powers, including the powers conferred by this resolution), consent of the Company be and is hereby accorded to the Board to create, offer, issue and allot at any time to or for the benefit of such person(s) who are in permanent employment of the Company, including Directors of the Company, whether whole-time or otherwise, under a Scheme titled "Employees Stock Option Plan" (hereinafter referred to as the "ESOP" or "Scheme" or "Plan") such number of equity shares and/or equity linked instruments (including Options), equity shares issued through Global Depository Receipts ("GDRs") and/or any other instruments or securities (hereinafter collectively referred to as "Securities") of the Company which could give rise to the issue of equity shares not exceeding 5% of the issued Equity Share Capital of the Company on 31st March, 2000, at such price, in one or more tranches and on such terms and conditions as may be fixed or determined by the Board in accordance with the Guidelines or other provisions of the law or guidelines issued by the relevant Authority or as may be prevailing at that time.

RESOLVED FURTHER THAT the said Securities may be allotted directly to such employees/Directors or in accordance with a Scheme framed in that behalf through a trust which may be set up by the Board of Directors in any permissible manner and that the scheme may also envisage for providing any financial assistance to the trust to enable the employee/trust to acquire, purchase or subscribe to the securities of the Company.

RESOLVED FURTHER THAT the new Equity Shares to be issued and allotted by the Company in the manner aforesaid shall rank pari passu in all respects with the then existing Equity Shares of the Company except that they shall be entitled to dividend on pro-rata basis from the date of allotment till the end of the relevant financial year in which the new Equity Shares are allotted.

RESOLVED FURTHER THAT for the purpose of giving effect to any creation, offer, issue, allotment or listing of Securities, the Board be and is hereby authorized on behalf of the Company to evolve, decide upon and bring into effect the Scheme and make any modifications, changes, variations or revisions in the said Scheme from time to time or to suspend, withdraw or revive the Scheme from time to time as may be specified by any statutory authority and to do all such acts, deeds, matters and things as it may in its absolute discretion deem fit or necessary or desirable for such purpose and with power on behalf of the Company to settle any questions, difficulties, or doubts that may arise in this regard without requiring the Board to secure any further consent or approval of the members of the Company."

**Explanatory Statement**

The Company has drawn a Corporate Plan, which has chalked out the strategy of the Company up to the year 2010 for achieving faster growth in all core areas of its business. In consonance with the said Plan drawn in 1995, the Company in the last 5 years has emerged as a fully integrated and leading power utility. The Company heavily draws on the dedicated and committed contribution of its sincere team of employees in pursuing growth with excellence in performance. To motivate the
employees and to enable them to participate in the long-term growth and financial success of the Company, with the common objective of maximizing the shareholder value, it is proposed to introduce an Employees Stock Option Plan (ESOP). The ESOP would not only enable the Company to attract and motivate employees by rewarding performance as also retain the best talents but also enable the employees to develop a sense of ownership with the Company by aligning their interest with that of the Company and its shareholders.

Recognizing the need to reward the employees through stock options, the Securities and Exchange Board of India (SEBI) has introduced the SEBI (Employees’ Stock Option Scheme and Employees’ Stock Purchase Scheme) Guidelines, 1999. With greater clarity with regard to taxation of stock options and comprehensive Guidelines in place, it is proposed to introduce the following stock option scheme for the benefit of the permanent employees and directors of the Company.

As the Scheme provides for issue of shares to be offered to persons other than existing shareholders of the company, consent of the members is sought pursuant to the provisions of section 81(1A) and all other applicable provisions, if any, of the Act, and as per the requirement of Clause 6 of the Guidelines.

None of the Directors of the Company, in any way, concerned or interested in the resolution, except to the extent of the securities that may be offered to them under the Scheme.

Your Directors, therefore, recommend the proposed resolution to be passed as a Special Resolution by the Members at the forthcoming Annual General Meeting.

ANNEXURE XIV

SPECIMEN OF BOARD RESOLUTION FOR ISSUE OF SWEAT EQUITY SHARES UNDER SECTION 79A

RESOLOVED that subject to the authorisation by the Company in the general meeting and pursuant to section 79A of the Companies Act 1956 number of shares of Rs…. be and are hereby issued at a discount of 10% to number of employees a list of which is placed before this meeting and initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER that the said shares be issued in accordance with the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003/SEBI (Issue of Sweat Equity) Regulations, 2002 made in this behalf.

RESOLVED FURTHER that an Extraordinary General Meeting of the Company be called and held for the aforesaid purpose on at as per the draft notice and the explanatory statement placed before the meeting and initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER that the Secretary of the Company be directed to issue the notice to all the members of the Company and take every step needed in connection therewith or ancillary or incidental thereto.

"RESOLVED that pursuant to section 80 (4) of the Companies Act, 1956, 70,000 ten per cent redeemable preference shares of Rs. 100/-each be issued by the Company upon such terms and conditions and are set out in the statement
submitted to this meeting and the proceeds of this new issue be utilised for the purpose of redeeming the existing 70,000 ten per cent redeemable preference shares of Rs. 100/- each by the Company."

ANNEXURE XV

SPECIMEN OF BOARD RESOLUTION FOR ISSUE OF NEW REDEEMABLE PREFERENCE SHARES FOR REDEMPTION OF UNREDEEMED PREFERENCE SHARES

RESOLVED THAT

(a) subject to the approval of the Company in general meeting, of the Company Law Board and such other approvals as may be necessary the company do issue ---[number]--- Redeemable Cumulative Preference Shares of Rs. ---[face value of one share]--- each to be issued in cash at par and offered to the existing equity shareholders in the proportion of one new Preference Share for every ---[number]--- equity shares held;

(b) these Redeemable Cumulative Preference Shares be offered to each equity shareholder whose name appears on the Register of Members of the Company on ---[date]--- by a notice specifying the number of new Preference Shares to which he is entitled with an option to apply for additional new shares, the allotment of which shall be at the absolute discretion of the Directors and limiting the time within which the offer if not accepted shall be deemed to be declined and containing such terms as to payment of the value of the shares as the Directors may determine;

(c) the Directors be and are hereby authorised to allot the said Preference Shares that may be surplus, on account of no fractional entitlement being given for the said shares as aforesaid and also any of the Preference Shares offered not taken by the shareholders of the existing equity shares or remaining undisposed be allotted to the underwriters or disposed off to any other party or parties upon such terms and conditions and in such manner as the Directors may think fit.

(d) the Preference Shares shall carry a dividend of ...% per annum and the same shall accrue from the date of allotment thereof to each shareholder;

(e) the company shall be entitled to redeem the said preference shares out of its profits by three equal instalments commencing from the ..... year ... [the number of the year/s]... from the date of issue.

ANNEXURE XVI

SPECIMEN OF ORDINARY RESOLUTION TO BE PASSED AT A GENERAL MEETING FOR ISSUE OF REDEEMABLE PREFERENCE SHARES ON RIGHTS BASIS

RESOLVED THAT

(a) the company do issue ..... [number] ..... Redeemable Cumulative Preference Shares of Rs. ..... [face value of one share] ..... each to be issued in cash at par and offered to the existing equity shareholders in the proportion of one new Preference Share for every ..... [number] ..... equity shares held;
(b) the said Redeemable Cumulative Preference Shares be offered to each equity shareholder whose name appears on the Register of Members of the Company on ..... [date] ..... by a notice specifying the number of new Preference Shares to which he is entitled with an option to apply for additional new shares, the allotment of which shall be at the absolute discretion of the Directors and limiting the time within which the offer if not accepted shall be deemed to be declined and containing such terms as to payment of the value of the shares as the Directors may determine;

(c) the Directors be and are hereby authorised to allot the said Preference Shares that may be surplus, on account of no fractional entitlement being given for the said shares as aforesaid and also any of the Preference Shares offered not taken by the shareholders of the existing equity shares or remaining undisposed be allotted to the underwriters or disposed off to any other party or parties upon such terms and conditions and in such manner as the Directors may think fit;

(d) the Preference Shares shall carry a dividend of ...% per annum and the same shall accrue from the date of allotment thereof to each shareholder. That the company shall be entitled to redeem the said preference shares out of its profits by three equal instalments commencing from the ...., year .... [the number of the year/s] ..... from the date of issue.

**LESSON ROUND-UP**

- Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus.
- All listed companies whose equity shares are listed on a stock exchange and unlisted companies eligible to make a public issue and desirous of getting its securities listed on a recognised stock exchange pursuant to a public issue, may freely price its equity shares or any securities convertible at a later date into equity shares.
- Underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them.
- A merchant banker holding a valid certificate of registration is required to be appointed to manage the issue.
- When a company issues a share at a price lower than its nominal or par value, the shares are said to have been issued at a discount. The provisions are contained in Section 79(1).
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.

The power to make calls can be exercised only by the Board by means of a resolution passed at a duly convened Board meeting. The power cannot be delegated to Committee of directors. [Section 292].

Section 81 of the Companies Act contains provisions on "further issue of capital", and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company.

No dividend can be paid by a company except in cash. However, the prohibition against payment of dividend otherwise than in cash, is not deemed to prohibit the capitalization of profits or reserves. [Section 205(3)].

There are no guidelines on issuing bonus shares by private or unlisted companies. However, SEBI has issued guidelines for Bonus Issue which are contained in Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 with regard to bonus issues by listed companies.

As per section 86(a)(ii), share capital of a company limited by shares can consists of equity share capital with differential rights as to dividend, voting or otherwise in accordance with the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

In case of an unlisted public company, the provisions of Unlisted Public Companies (Preferential Allotment) Rules, 2003 are applicable.

If the company is a listed company then the provisions of Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 are required to be followed in case of preferential allotment.

The term 'Employee Stock Option' (ESOP) has been defined under Sub-section (15A) of Section 2 of the Companies Act, 1956, according to which 'employee stock option' means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price.

SEBI has issued SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

The provisions relating to Sweat Equity shares are dealt in section 79A of the Companies Act, 1956. In respect of the companies which are already listed or those companies which propose to obtain listing, issue of Sweat Equity Shares is administered by SEBI.

Section 80 of the Companies Act enables a company limited by shares to issue redeemable preference shares, if so authorised by the articles of association of the company.
SELF-TEST QUESTIONS

(Two are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Explain the various legal provisions to be complied with for further issue of capital.

2. Write a note on the work involved in making an issue of share open to the public.

3. State the guidelines relating to Issue of Bonus Shares.

4. Write the procedure for preferential allotment of equity shares in case of unlisted public companies.

5. Write short notes on—
   (a) Minimum subscription
   (b) Abridged prospectus
   (c) Minimum promoters’ contribution and lock-in-period
   (d) Preferential allotment
   (e) Green Shoe Option
   (f) Employee Stock Option Scheme
   (g) Employers Stock Purchase Scheme.

6. Write down the provisions for issue of Sweat Equity Shares.
LEARNING OBJECTIVES

Allotment of shares is the acceptance by the company of the offer to take shares by the applicant. That offer is accepted by the allotment either of the total number mentioned in the offer or a less number, to be taken by the person who made the offer. This chapter relates to the allotment of securities. After going through this chapter, you will be able to understand:

- Meaning of Allotment of shares
- Different aspects of Allotment of shares
- Allotment procedure
- Issue of share certificates
- Cancellation of shares
- Forfeiture of shares
- Surrender of shares
- Conversion of shares into stock

1. MEANING OF ALLOTMENT

The term “allotment” has not been defined anywhere in the Companies Act, 1956. Its dictionary meaning is “to distribute or parcel out in parts or portions”. Allotment of shares means division, distribution or appropriation of shares in a company. It is a method of distributing previously unissued shares in a company having a share capital from out of the authorised share capital in exchange for a contribution of capital, in response to an application for such shares.

As per Section 581ZB of the Act, a Producer company’s share capital shall consist of equity shares only and the shares held by members shall be in proportion to the patronage of that company.

In Sri Gopal Jalan and Co. v. Calcutta Stock Exchange Association (1963) 33 Com. Cases 862: AIR 1964 SC 250, the Supreme Court held that “allotment” means the appropriation out of the previously unappropriated share capital of a company, of a certain number of shares to a certain person. Till such allotment, the shares do not exist as such. It is on allotment in this sense that the shares come into existence.
Allotment is the acceptance by the company of the offer to take shares by the applicant. That offer is accepted by the allotment either of the total number mentioned in the offer or a less number, to be taken by the person who made the offer. This constitutes a binding contract to make that number according to the offer and acceptance.

Under the Companies Act, a company having a share capital is required to state in its memorandum of association the amount of the capital and the division thereof into shares of a fixed amount. This is what is called the authorised capital of the company. Then the company proceeds to issue the shares depending on the condition of the market. That only means inviting applications for these shares. When the applications are received, it accepts them and this is what is generally called allotment. Allotment means the appropriation out of the previously unappropriated capital of a company, of a certain number of shares to a person. Till such allotment, the shares do not exist as such. It is on allotment in this sense that the shares come into existence.

The company accepts the application by allotting the shares in full or in part. Then it communicates to the allottee by dispatching a letter of allotment to the applicant stating how many shares he has been allotted; he then has an unconditional right to be entered in the register of members in respect of those shares. If the number of shares applied for exceeds the number available (oversubscription), allotment is made by a random draw or by a proportional allocation. If an applicant has been allotted fewer shares than he has applied for, he receives a cheque or warrant for the refund of the application money in respect of the unallotted balance.

2. ALLOTMENT OF SHARES

Sub-section (3A) of Section 73 directs that application moneys standing to the credit of the separate bank account shall not be utilised for any purpose other than the following purposes, namely:

(a) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange(s) specified in the prospectus; or

(b) repayment of moneys received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or, where the company is for any other reason unable to make the allotment of shares.

Section 75(1) makes it obligatory on the part of every company allotting shares to file with the concerned Registrar of Companies, return of allotment of the shares within thirty days of the allotment along with the prescribed filing fee. The return should not show any shares as having been allotted for cash if cash has not actually been received in respect of such allotment. The return of allotment of shares is required to be sent in e-form 2 as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006 along with the prescribed filing fee (For specimen of e-form 2, please see Part B of this study).
Sub-section (2) of Section 75 lays down that in the case of shares allotted as fully or partly paid up otherwise than in cash, the company is required to produce before the ROC for inspection and examination, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or a contact for services or other considerations in respect of which that allotment was made. The company is required to file along with the return of allotment, copies of such contracts verified by an affidavit of a responsible officer of the company stating that they are true copies, as prescribed in Rule 5 of the Companies (Central Government’s) General Rules and Forms, 1956. If the contracts are not reduced in writing, prescribed particulars of contract in e-form 3 duly stamped along with copy of board resolution approving allotment of shares otherwise than in cash are to be filed with the ROC within 30 days of the allotment. The original duly filled in and signed e-form 3 on stamp paper, in physical form are required to be sent to the concerned ROC office simultaneously, failing which the filing will not be considered and legal action will be taken.

(For specimen of e-form 3, please see Part B of this study).

Return of Allotment of Bonus Shares

In the case of allotment of bonus shares, the company is required to attach to the return of allotment, a certified copy of the ordinary resolution of the general meeting authorising the issue of such shares. [Refer Section 75(a)(c)(i)].

Return of Allotment of Shares Issued at Discount

The company is required to attach to the return of allotment, a certified copy of the resolution passed by the company for the issue of shares at a discount together a copy of the order of the Company Law Board* sanctioning the issue and where the minimum rate of discount exceeds ten percent, a copy of the order of the Central Government permitting the issue at a higher percentage.

Disposal of Forfeited Shares – No Allotment Return to be Filed

According to Section 75(1) of the Companies Act, a company is required to file a return of allotment of shares and not for re-issue of forfeited shares. Allotment, as we have seen above, is appropriation of the previously unappropriated capital of a company, of a certain number of shares to a certain person. Till such allotment, the shares do not exist as such. However, in the case of forfeited shares, they had already been allotted and they had come into existence at the time of their allotment and their forfeiture is a proof of their existence. Therefore, no return of allotment is required to be filed with the ROC by a company at the time of re-issue or disposal of forfeited shares [Sri Gopal Jalan and Co. v. Calcutta Stock Exchange Association (1963) 33 Com. Cases 862: AIR 1964 SC 250].

Return of Allotment to be Filed in Respect of Every Allotment

The duty of a company to file a return of allotment is not confined to the first

* It shall be substituted by NCLT on the commencement of Companies (Second Amendment) Act, 2002.
alotment. The company has to file the return of allotment whenever it makes any allotment of shares.

**Allotment of Fractional Shares**

The issue of coupons for fractional shares cannot be said to be allotment of any shares till the holders are issued letter of allotment in respect of any shares from the company in their names in exchange of the coupons. Any dividend declared in the meantime in respect of the capital represented by such coupons should not be treated as dividend declared in favour of any particular holder of a share as such, but dividend is kept earmarked for whoever may be allotted full shares in exchange of the coupons (Departments' clarification vide F.No. 8/31(75)63-PR dated 27th March, 1963).

**Share Application Form**

The process of allotment of shares of or debentures in a company commences with an application, which is an offer made by a prospective investor to the company to accept the shares of the company. The company may or may not accept the offer, which means that the company has the discretion to accept in full or in part or to reject in toto, the offer of the applicant or the offeror. The offeror may revoke his offer till it is accepted by the company, i.e. till the shares are allotted in response to the offer.

Sub-section (3) of Section 56 of the Companies Act, 1956 lays down that no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features as may be prescribed, which complies with the requirements of the section.

The second proviso to the Sub-section (3) lays down that the sub-section shall not apply if it is shown that the share application form was issued - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public.

The Government has instructed that share application form should be a part of the abridged prospectus, being attached to it along a perforated line. The abridged prospectus and the share application form should bear the same printed serial number. The investor may detach the share application form along with the perforated line after he had an opportunity to study the contents of the abridged prospectus, before submitting the same to the company or to its designated banker. The Central Government later allowed companies and their merchant bankers to print application forms, accompanying one abridged prospectus, being attached to it, along the perforated line, bearing separate printed numbers.

The same procedure should also be followed while making available copies of the prospectus under Section 56 of the Act.

In this connection, it may be pointed that contravention of the provisions of Section 56(3) is punishable with fine which may extend to Rs. 50,000.

**Partial Allotment**

Although the company, in consultation with the manager to the issue and adviser
to the issue, must have included an appropriate clause in its share application form to
the effect that partial allotment, if made by the company, would be binding on the
applicant, yet no provision of any law can be circumvented in such a manner so as to
deprive any person of his right, which has been conferred upon him by virtue of that
provision.

Under the law of contract as applicable in India, an application for allotment of
shares in a company is only an offer to accept shares that may be allotted to the
applicant. An applicant may refuse to accept fewer than applied for shares, if he so
wishes. Because an offer, if accepted in part, does not constitute acceptance of the
offer and is not binding on the offeror under the Indian Contract Act. However, if he
chooses to accept the quantity of the shares offered, then his acceptance turns the
deal into a contract binding on both the applicant and the company under the
Contract Act and is justifiable in a Court of law.

Time limit for allotment

An allotment should be made within a reasonable time and an applicant is not
bound to accept an allotment after the lapse of a reasonable time. A delay of one
year is unreasonable. Indian Co-operative Navigation & Trading Co. Ltd. v.
Padamsey Premji (1934) 4 Comp Cas 110 (Bom).

Irregular Allotments

Sections 69, 70, 72 and 73 of the Companies Act, 1956 prescribe conditions of
valid allotment. Violation of any one of those conditions would result into defective or
irregular allotment. An irregular allotment may be void or it may be voidable. A void
allotment is no allotment whereas a voidable allotment may be one which may be
avoided by the allottee. Where the allotment is defective for the reason that it was
made before the expiry of the fifth day after the publication of prospectus issued by
the company generally or such other later day specified in the prospectus, the
allotment is valid, but the company and every officer of the company who is in default
shall be punishable with fine which may extend to fifty thousand rupees as per Sub-
section (3) of Section 72 of the Act.

Voidable Allotment

According to Section 71 of the Companies Act, 1956, an allotment made by a
company to an applicant in contravention of the provisions of Section 69, which
prohibits allotment unless minimum subscription has been received by the company
or in contravention of the provisions of Section 70, which prohibits allotment in certain
cases unless statement in lieu of prospectus has been delivered to the Registrar, is
irregular allotment and shall be voidable at the instance of the applicant—

(a) within two months after the holding of the statutory meeting of the company,
and not later, or

(b) in any case where the company is not required to hold a statutory meeting or
where the allotment is made after holding of the statutory meeting, within
two months after the date of the allotment, and not later.
The allotment shall be voidable, notwithstanding that the company is in course of being wound-up.

**Void Allotment and its Effects**

According to Sub-section (1A) of Section 73, where a prospectus states that an application has been made for permission for the shares or debentures offered thereby to be dealt in one or more designated stock exchanges, such prospectus shall state the name(s) of the stock exchange(s) and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription list.

However, where an appeal against the decision of any stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred to Securities Appellate Tribunal under Section 22A of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.

As is clear from the wording of Sub-section (1A) as highlighted above, even if a single stock exchange refuses to grant permission to the shares of the company to be dealt in on it, the entire allotment becomes void, unless the company succeeds in appeal against the decision of such stock exchange [Rich Paints Ltd. v. Vadodara Stock Exchange Ltd. (1998) 28 CLA 276 (Raj.)].

Sub-section (2) of Section 73 provides that where the permission has not been applied for or such permission having been applied for, has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company, who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money [Refer Sub-section (2) of Section 73].

Sub-section (2A) of Section 73 lays down that where permission has been granted by the recognised stock exchange or stock exchanges for dealing in any shares or debentures in such stock exchange or each such stock exchange and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest and if such money is not repaid within eight days from the day the company becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.
In Raymond Synthetics Ltd. v. Union of India (1992) 73 Com. Cases 1 (1991) 3 Comp L.J 1 (Bombay DB), the decision of the Division Bench of the Bombay High Court was to the effect that liability to refund excess amounts would begin from the date of allotment if completed earlier than ten weeks because the excess amount having become known, there was no point in withholding its refund up to the expiry of ten weeks.

All moneys received from applicants for shares must be kept in a separate account maintained with a scheduled bank and they shall not be utilised for any purpose other than adjustment against allotment of shares or for repayment to the applicants [Refer Sub-section (3) of Section 73].

**Allotment Procedure**

After the closure of the issue, the Registrar to the issue, in active collaboration with the company, must make all efforts to collect from the bankers to the issue, all the share applications along with their branch/city/town-wise schedules containing details in respect of each application, e.g., serial number allotted to each application, name(s) of the applicant(s), number of shares for which the application money has been received by the bank, amount of money received along with each application and any other detail that has been asked for by the managers and/or Registrar to the issue.

After all the applications along with their schedules have been received from the bankers to the issue, the Registrar to the issue, in consultation with the company, should prepare basis of allotment. If the issue is fully subscribed or under-subscribed, preparing basis of allotment poses no problem. However, if the issue is over-subscribed, the shares have to be allotted on proportionate basis and a little more effort is required to be made by the Registrar to the issue to make allotment in accordance with the SEBI (Disclosure and Investor Protection) Guidelines, 2000.

After the basis of allotment has been finalised by the Registrar to the issue, the same is communicated jointly by the secretary of the company and a representative of the Registrar to the issue, to the regional stock exchange (SE), where the shares are proposed to be listed, for its approval.

The stock exchange scans the basis of allotment presented to it along with all the relevant papers, e.g.

(i) applications along with statements containing details of the applications,
(ii) their bank-branch-wise and city, town village-wise schedules,
(iii) break-up statements prepared by the registrar to the issue stating the number of applicants in various categories e.g., applicants for upto 200 shares, applicants for between 201 and 500 shares, applicants for between 501 and 1000 shares and so on upto the category of applicants for the maximum number of shares,
(iv) consent letters of and agreements with the underwriters, brokers, bankers, and adviser to the issue and other market intermediaries, who are connected with the issue, and
(v) all the material contracts, documents etc. which have been listed in the prospectus.
The stock exchange approves the basis of allotment, with or without modification.

Immediately on receipt of the approved basis of allotment, get it published in newspapers and send copies of the same to the Securities and Exchange Board of India (SEBI) and all other stock exchanges where the shares are proposed to be listed. It is a common practice that all other stock exchanges agree with and accept the approval of the basis of allotment by the regional stock exchange.

After the basis of allotment has been approved by the regional stock exchange and copies thereof have been forwarded to SEBI and other stock exchanges, the Company Secretary should immediately obtain from the Registrar to the Issue, the register of share applications and allotment containing, in respect of each applicant, the following particulars:

1. Application No.
2. Register of members’ folio number
3. Name(s) of the applicant(s)
4. Name of the applicant’s father/husband
5. Occupation
6. No. of shares applied for
7. Amount received along with the share application
8. No. of shares allotted

Thereafter, the company secretary, in consultation with the chairman of the Board meetings and/or the managing director, if there is one, fix time, date and venue for holding a meeting of the Board of directors, for allotment of shares, and for transacting any other business which is required to be transacted at that meeting.

The Board of directors of the company to hold its meeting and allot shares to the applicants as per entries in the register of share applications and allotment of shares, which has been prepared by the Registrar to the issue according to the approved basis of allotment. The allotment of shares must be made by passing a Board resolution.

[For specimens of Board resolutions allotting shares:
(i) when part of the nominal value of the shares has been received by the company;
(ii) when full nominal value of the shares has been received by the company;
(iii) when the issue is over-subscribed; and
(iv) allotment of shares for a consideration other than cash,
please see Annexures I, II, III and IV respectively, at the end of this study].

Within thirty days of the allotment of shares, the company should, in compliance with the provisions of Section 75 of the Companies Act, 1956, file with the concerned
Registrar of Companies, a return of allotment in the e-form 2, prescribed in the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share. The company should not mention in the Return, any shares as having been allotted for cash, if cash has not actually been received in respect of such allotment.

Thereafter, share certificates should be prepared, got stamped, signed, sealed as per the authority of the Board of directors of the company and the articles of association of the company and delivered to the allottees of the shares within three months after the allotment, as per Section 113 of the Companies Act and the Companies (Issue of Share Certificate) Rules, 1960.

However, in the case of the applicants opting for demat mode (not to receive certificates for securities allotted), the Registrar should prepare the details of such applicants with their client Identification Number and depository participant nos. and intimate the details of such allottees as beneficial owner for the number of securities allotted. In such cases, the certificates shall not be issued. Pursuant to Section 152A, Register and Index or Beneficial owners should be prepared.

At this stage the company should, in pursuance of Sections 150 and 151 of the Companies Act, prepare a register and index of its members, enter all the relevant details therein and keep the same always in updated form at the registered office of the company. In this work, the Registrar to the issue may render some assistance. He can prepare the register and the index of members with ease as he has all the data in his computer network.

The company should cut off specimen signatures of the allottees from their application forms and have them pasted in the Members' specimen signatures register for tallying the same at any point of time in future. The specimen signature can also be scanned and kept on specially designed software for tallying purposes.

3. ISSUE OF SHARE CERTIFICATES

A share certificate is a document of title to the shares in a company. It is issued by a company to its members in whose names shares are registered in the register of members of the company.

A share certificates certifies the —

(i) nature of the shares, i.e. equity or preference.

(ii) member(s) in whose name(s) it is issued is(are) the rightful owner(s) of the shares, with distinctive numbers, as detailed therein; and

(iii) amount paid to the company by the shareholder on each share at various stages, i.e., on application, on allotment, as first call, as the second and final call.
All blank forms to be used for issue of share certificate shall be printed and printing shall be done only on the authority of a resolution of the Board. The blank forms shall be consecutively machine numbered and the forms and the blocks, engravings fascimiles etc. shall be kept in safe custody of the Secretary or the person authorised by the Board.

A share certificate is issued by a company under the signatures of at least two of its directors, one of whom should be a person the managing director, if there is one in the company, and the company secretary or an Authorised Signatory.

A share certificate is issued under the common seal of the company, which is affixed in the presence of directors/secretary authorised signatory, according to the provisions contained in the articles of association of the company and the companies (Issue of Share Certificates) Rules 1960. However, the director(s) may sign a share certificate by affixing his signature thereon by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, but not by means of a rubber stamp provided that the director shall be responsible for the safe custody of such machine, equipment or other material used for the purpose. However, the Secretary or Authorised Signatory should sign share certificate by his hand.

The issue of share certificates by a company is regulated by:

(i) The Companies Act, 1956;
(ii) The Companies (Issue of Shares Certificate) Rules, 1960;
(iii) Listing Agreements entered by the company with recognised stock exchanges;
(iv) SEBI rules and regulations; and
(v) Articles of Association of the company.

According to Section 113 of the Companies Act, 1956, every company shall, within three months after the allotment of any of its shares and within two months after the application for the registration of transfer of any such shares, deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares allotted or transferred. The Act, however, confers power on the Company Law Board* to extend the aforesaid periods of three months and two months within which the debenture certificates or debenture stock certificates allotted or transferred shall be delivered, to a further period not exceeding nine months, if it is satisfied on an application that it is not possible for the company to deliver such certificates within the said periods.

It may also be noted that those companies, whose shares have been dematerialised and a depository is the registered owner of their shares, are required to intimate the depository immediately on allotment of shares and the depository is required to immediately enter in its electronic records, the names of owners of the shares, as beneficials.

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002.
Procedure for Issue of Share Certificates

Issue of Original Share Certificates

1. The resolution for allotment of share certificates will be passed at the duly convened Board Meeting.

2. The Board will approve of the number of share certificates and authorise by resolution the printing of share certificates.

3. Where the shares are listed on a recognised stock exchange, the forms of certificate will be approved in advance by the stock exchange before printing.

4. All blank forms consecutively numbered, blocks, engravings, etc., will be in the custody of the Secretary or other person appointed by the Board.

5. Every certificate will specify the name(s) of the person(s) in whose favour it is issued, the shares/debentures to which it relates, the distinctive number and the amount paid up thereon.

6. In the resolution passed for issue of share certificates, the Board will also specify that the common seal of the company will be affixed in the presence of at least two directors of the company or their duly constituted attorneys and the Secretary or any person appointed by the Board who will sign the share certificate.

7. The depository shall be informed immediately after the shares are issued in case there exists an arrangement with a depository.

8. Particulars of share certificates issued will be entered in the register of members in respect of each member. The Register will be in the form prescribed in the Rules.

9. The share certificates will be delivered within the time specified in section 113.

Issue of Duplicate Share Certificates

A company should issue share certificates to the existing members of the company, who request for the issue of duplicate share certificates in the event of their original share certificates having been misplaced, lost, destroyed, mutilated, defaced or no more cages are left on the reverse of their share certificates for further transfer endorsements.

If the share certificates are to be issued in lieu of misplaced, lost, destroyed share certificates, then the company need not insist on the surrender of the original certificates. However, mutilated share certificates have to be surrendered to the company before the Board can consider issuing duplicates in lieu thereof.

No share certificates should be issued without the authority of the Board, which should be accorded by means of a Board resolution which is required to be passed at a duly convened and held meeting of the Board of directors of the company.
(For specimen of Board resolution authorising the issue of share certificates and duplicate certificates, please see Annexures V and VI at the end of this study).

**Issue of Share Certificates on Surrender of Letters of Allotment**

A company, which has issued Letters of Allotment to the allottees at the time of allotment, should not issue a share certificate to any allottee unless he has paid the allotment money and has also surrendered the Letter of Allotment to the company. In the event of loss or misplacement of the Letter of Allotment, the Board of directors of the company may issue share certificates, at its absolute discretion and on compliance of certain reasonable conditions that may be imposed by the Board and on furnishing of certain documents, e.g. affidavit, letter of indemnity and on payment of certain reasonable charges that the company may have to incur or might have incurred.

1. After the conclusion of the Board meeting, the company secretary should draft and have the minutes of the Board meeting approved, entered in the minutes book kept for the purpose and signed by the chairman of the Board meeting. Thereafter, he should have the share certificates prepared, stamped with the stamps of appropriate value, have them signed by the directors in addition to his own signature, as per the authorisation granted to them by the Board at its meeting, affix the common seal of the company in the presence of the signing directors and himself and arrange for their delivery to the concerned shareholders. The share certificates must be despatched by registered post with acknowledgement due, after making their entries in the register of members, register of renewed and duplicate certificates, as the case may be, and also the despatch register of the company.

2. The expenditure incurred by the company on the issue and mailing of original share certificates has to be borne by the company. However, the company may, if its articles permit, charge a reasonable fee for the issue of duplicate share certificates, not exceeding two rupees for each duplicate share certificate. However, the cost of public notice of loss of share certificates has to be borne by the member who has lost, destroyed or misplaced his share certificates.

3. The company has to ensure that the share certificates of those shares belonging to promoters, their relatives, friends and business associates, which are under a lock-in period, must bear rubber stamp clearly indicating that the shares are not transferable before a particular date and that endorsement must be subscribed on the Share Certificates and initialled by the company secretary or by any other responsible officer of the company.

4. The secretary has also to stamp all the duplicate share certificates before they are mailed. The stamp should clearly state that the share certificate has been “Issued in lieu of share certificate No.......”

**Share Certificates Issued on Splitting or Consolidation**

In some cases, the shareholders request for the issue of split or consolidated share
certificates. In all such cases, the old share certificates must be surrendered to the company before the Board may be requested to consider the issue of new share certificates after split or consolidation. All the defaced and mutilated share certificates should be stamped with a rubber stamp bearing in bold letters the endorsements: “CANCELLED” “DUPLICATE SHARE CERTIFICATE NO...... DATED......ISSUED IN LIEU”.

The company is required to keep a separate “register of renewed and duplicate certificates” which must contain all the relevant details of the old and the new share certificates.

4. CANCELLATION OF SHARES

According to clause (e) of Sub-section (1) of Section 94 of the Companies Act, 1956, 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 94 of the section lays down that the powers conferred by this section shall be exercised by the company in general meeting and shall not require confirmation by court.

A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of the Companies Act. Infact, this is known as diminution of share capital. [Refer Section 94(3)].

Here the cancellation of shares means cancellation of shares of a particular unissued class of shares and not the paid up share capital.

Section 95(1) 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 and the Registrar shall record the same in the memorandum of the company. Sub-section (2) of this section says that the Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company’s memorandum or articles or both.

Procedure for Cancellation of Shares

1. To make sure 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 31 of the Companies Act, 1956.

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 173(2) 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. 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.

Also 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.

5. To hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.

(For specimen of the resolution for cancellation of shares, please see Annexure VII at the end of this study)

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

7. If the resolution passed is a special resolution, file with the ROC, e-form 23 along with a certified copy of the resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed, within thirty days of the passing of the resolution along with the prescribed filing fee, for registration of the resolution as per Section 192.

8. In compliance with the provision of Section 95(1) of the Companies Act, 1956, the company should give notice of cancellation of shares to the Registrar in e-form 5, within thirty days of the passing of the resolution, along with an amended copy of the Memorandum & Articles of Association of the Company and the prescribed filing fee specifying the shares cancelled. In compliance with the provision of Sub-section (2) of Section 95, the Registrar shall record the notice and make any alterations which may be necessary in the company's memorandum or articles or both. (Specimen e-form 5 along with mandatory attachments given in Part B of this study)

The company shall submit the original stamped copy of e-form 5 at the ROC Office for registration together with the amended copy of the Memorandum and Articles of Association.

9. 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.
10. 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.

5. FORFEITURE OF SHARES

To forfeit means to lose the right to, be deprived of; to lose or become liable to lose, as in consequence of fault or breach of promise or contract. It is a penalty for a breach of contract or neglect; a fine that is imposed for not complying with the stipulated condition, obligation or duty. For example, in the case of shares of a company, if a call money payable on a partly-paid share is not paid by a shareholder, the company can forfeit the shares for the obligation of paying the call money not being fulfilled by the shareholder.

A forfeited share is a partly paid share in a company that the shareholder has to forfeit because he 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.

The Companies Act, 1956 does not contain any provision in respect of forfeiture of shares in a company. However, articles of association of almost all the companies contain detailed provisions regulating forfeiture of shares. These provisions are based on the regulations 29 to 35 in Table A of Schedule I to the Companies Act, 1956 or recast based on the regulations.

Table A of Schedule I to the Companies Act contains the following regulations in this respect:

Notice for Payment of Call on Defaulting Members

Regulation 29 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 30 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 31 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.
**Effect of forfeiture**

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 money 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 and all such moneys in respect of the shares. [Regulation 33 of Table A].

The only effect of the forfeiture of shares is that the shares pass out of the hands of the holder; the liability incurred prior to forfeiture of shares to pay the allotment and call money still remains.

**Procedure for forfeiture of shares**

1. A forfeiture of any share must be done on the authority of the Board of Directors or, of a Committee of the Board if authorised by articles of association for the purpose, by its resolution. The resolution should provide for a notice to be given to the shareholder concerned before the forfeiture is actually effected in pursuance of the resolution, requiring payment of so much of the call as is unpaid, together with any interest which may have accrued. (for specimen of the Board Resolution for serving of notice on defaulting members, please see Annexure VIII)

2. The notice threatening forfeiture in pursuance of the Board resolution must be given in accordance with the provisions of the articles. 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.

3. 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. (for specimen of the notice to defaulting member to pay unpaid call or installment, please see Annexure IX).
4. The notice threatening forfeiture as contemplated in regulation 29 of Table A must be served in accordance with the provisions of section 53 of the Companies Act.

5. 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. (for specimen of the Board Resolution forfeiting shares, please see Annexure X & XI)

6. It is common practice to 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.

7. A further notice after the shares are forfeited is not necessary. However, it is advisable and a common practice to give a notice of the shares having been forfeited to the concerned shareholders by registered post. For model notice, see below.

8. Regulation 34 of Table A 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. The accidental non-receipt of notice of forfeiture by the defaulter is not a ground for relief against forfeiture regularly effected.

9. 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.

10. Notify the Stock Exchange at which the securities of the Company are listed about such forfeiture of shares.

Sale etc. of Forfeited Shares

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board may resolve.

(For specimen of the Board resolution approving sale of the forfeited shares, please see Annexure XII at the end of this study).

However, at any time before sale or disposal of the forfeited shares, the Board may, at its absolute discretion, pass a resolution cancelling or rescinding the forfeiture of the shares on such terms as it thinks fit [Refer Regulation 32].

Regulation 33 lays down 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 moneys 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 moneys in respect of the shares.
6. 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 A in the First Schedule 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. For specimen of article, please see Annexure XIII at the end of the Study.

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 the 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. One is voluntary and the other 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 and 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 a 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.

Also there is a difference between surrender of shares and purchasing by a company 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 were 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.

As noted earlier, section 77(1) prohibits a public company or a private company which is a subsidiary company from 'buying' its own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402. Purchase by a public company or a private company which is a subsidiary of a public company, of its own shares is a reduction of capital, and is, therefore unlawful, unless the provisions applicable to the reduction are complied with, unless the case falls within the purview of section 77A. A valid surrender of shares would not amount to buying by a company of its own shares.

7. CONVERSION OF SHARES INTO STOCK

Section 96 of the Companies Act provides that 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 as to so much of the share capital as is converted into stock. Where shares have been fully paid-up, they may be turned into stock and notice of this must be given to the Registrar [section 95].

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.

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.

Only fully paid shares can be converted into stock. The issue of a partly paid-up stock is void.

The power to convert shares into stock and reconvert stock into shares is conferred on a company by section 94, if authorised by the articles, which power should be exercised by an ordinary resolution. A specimen resolution for conversion of shares into stock is given at Annexure XIV at the end of this study.

In either case a notice must be given to the Registrar in e-form No. 5 within thirty days after doing so.

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.

The convenience of having stock, besides its divisibility, is that it becomes no longer necessary in a transfer, to specify all the numbers of various shares comprised in the transfer: "a transfer is made of so much stock".

ANNEXURES

ANNEXURE I

BOARD RESOLUTION ALLOTTING SHARES WHEN PART OF THE NOMINAL VALUE OF EACH SHARE HAS BEEN RECEIVED AND ALLOTMENT MONEY HAS TO BE CALLED FOR

“RESOLVED THAT —

(i) ................. equity shares of Rs....... each in the share capital of the company be and are hereby allotted to the applicants, whose names, addresses and other relevant details including the number of shares allotted to each one of them, have been entered in the Applications and Allotment Register on page numbers......to...... (both inclusive), which was laid on the table of the meeting and was initialled by the chairman of the meeting for the purpose of identification; and

(ii) the letters of allotment be forwarded to each allottee and that the sum of Rs........per share due on allotment be made payable on or before the......day of...... 20....; and
(iii) the Company Secretary, Shri ......................, be and is hereby entrusted with responsibility to file in the e-form 2, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, the return of allotment in respect of the shares allotted aforesaid, with the Registrar of Companies along with the prescribed filing fee, within thirty days of the passing of this resolution.”

ANNEXURE II

SPECIMEN OF BOARD RESOLUTION ALLOTTING SHARES, WHEN FULL NOMINAL VALUE OF EACH SHARE HAS BEEN RECEIVED

“RESOLVED THAT—

(i) .................... equity shares of Rs....... each in the share capital of the company be and are hereby allotted to the applicants, whose names, addresses and other relevant details including the number of shares allotted to each one of them, have been entered in the Applications and Allotment Register on page numbers......to...... (both inclusive), which was laid on the table of the meeting and was initialled by the chairman of the meeting for the purpose of identification; and

(ii) the share certificate for the allotted .............. equity shares of Rs. .......... each fully paid to be issued to the allottees in accordance with the lots of shares permitted by the Regional Stock Exchange and the provisions of Section 113 of the Companies Act, 1956 and executed in accordance with the Companies (Issue of Share Certificates) Rules, 1960 under the signatures of Shri................, managing director, Shri.................., director and Shri........................ Company Secretary and under the common seal of the company, which shall be affixed in the presence of all the signatories.

(iii) the Company Secretary, Shri ......................, be and is hereby authorised to file in the e-form 2, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, the return of allotment in respect of the shares allotted aforesaid, with the Registrar of Companies along with the prescribed filing fee, within thirty days of the passing of this resolution.”

ANNEXURE III

SPECIMEN OF BOARD RESOLUTION ALLOTTING SHARES IN THE EVENT OF OVERSUBSCRIPTION OF THE ISSUE

“RESOLVED THAT —

(i) ..............fully paid equity shares of Rs.................... each in the capital of the company be and are hereby allotted to the allottees as per the basis of
allotment approved by the Regional Stock Exchange at.........................., to the applicants whose names, addresses and other relevant details have been entered in the applications and allotment register including the number of shares allotted to each allottee, which was laid on the table of the meeting and initialled by the chairman of the meeting for the purpose of identification;

(ii) the Company Secretary, Shri .................. be and is hereby advised to file with the Registrar of Companies, the Return of Allotment in the e-form 2, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, of the shares along with the prescribed filing fee within thirty days of the passing of this resolution; and

(iii) the share certificates for the allotted................ equity shares be issued to the allottee(s) in accordance with the provisions of Section 113 of the Companies Act, 1956 and the Companies (Issue of Share Certificates) Rules, 1960 under the signatures of Shri............... Managing Director, Shri............... Director and Shri............... Company Secretary, under the common seal of the company, which shall be affixed in the presence of all the signatories.”

ANNEXURE IV

SPECIMEN OF BOARD RESOLUTION ALLOTTING SHARES FOR A CONSIDERATION OTHERWISE THAN IN CASH

“RESOLVED THAT—

(i) in terms of the agreement dated ......., 20.... entered into by and between the company and Shri................ for the issue of..........fully paid equity shares of Rs...... each of the company for Rs..........., which is not paid in cash but in full satisfaction of the amount which the company owed to the said Shri............... as purchase price of the piece of land situated at.................. sold by the said Shri.................. to the company for the purpose of constructing the company’s manufacturing unit, details whereof have been incorporated in the agreement, be and are hereby allotted to the said Shri...................................;

(ii) the Company Secretary, Shri ................., be and is hereby advised to file with the Registrar of Companies, the Return of Allotment of the shares in e-form 2 and 3 as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, along with a certified copy of the said agreement in accordance with Section 75(1)(b) of the Companies Act, 1956 and the prescribed filing fee, within thirty days of the passing of this resolution; and

(iii) the share certificate(s) for the allotted ................ fully paid equity shares be issued to the allottee(s) in accordance with Section 113 of the Companies
Act, 1956 and the Companies (Issue of Share Certificates) Rules, 1960 under the signatures of Shri............... Managing Director, Shri............... Director, and Shri............... Company Secretary, under the common seal of the company, which shall be affixed in the presence of all the authorised signatories.”

ANNEXURE V

SPECIMEN OF BOARD RESOLUTION AUTHORISING THE ISSUE OF SHARE CERTIFICATES

“RESOLVED THAT —

(i) pursuant to Section 113 of the Companies Act, 1956, and the Companies (Issue of Share Certificates) Rules, 1960, letter of permission of the stock exchange at............... the listing agreement and the rules and regulations issued by the Securities and Exchange Board of India in this respect, share certificates bearing distinctive Nos............... to............ (both inclusive) be and are hereby and are hereby issued to the registered members of the company, whose names are set out below:

<table>
<thead>
<tr>
<th>Name of the shareholder certificate(s)</th>
<th>Certificate Nos.</th>
<th>Number of shares</th>
<th>Distinctive Nos. From To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

(ii) the share certificates be issued within the prescribed period of time, under the signatures of the Shri............... Managing Director, Shri............... Director, and the Shri............... Company Secretary, and under the common seal of the company, which shall be affixed thereto in the presence of the directors and the Company Secretary as per provisions of article........... of the articles of association of the company and they shall sign the same.”

ANNEXURE VI

SPECIMEN OF BOARD RESOLUTION AUTHORISING THE ISSUE OF DUPLICATE SHARE CERTIFICATES

The chairman informed the meeting that—

(i) the company had received from Shri ................., a request for the issue of a duplicate share certificate in lieu of original certificate No..........., which was reported to have been lost by him;
(ii) the said shareholder had executed an affidavit and an indemnity bond in favour of the company and a notice of such loss was published in the Hindustan Times dated ...........; and

(iii) a duplicate share certificate for ........ fully paid equity shares of Rs........ each bearing distinctive numbers ........ to ........ (both inclusive) was required be issued to the said member in lieu of original share certificate No........

The directors considered the request of the member and passed the following resolution:

“RESOLVED THAT a equity share certificate No. for............... fully paid equity shares of Rs........ each of the company bearing distinctive numbers........ to............... (both inclusive) after stating on the face thereof the words “Duplicate issued in lieu of share certificate No...............” be and is hereby issued in the name of Shri............... in lieu of original share certificate No........ reported to have been lost by him, under the signatures of the Shri............ Managing Director, Shri............ Director, and the Shri.......... Company Secretary, under the common seal of the company to be affixed thereto in the presence of the directors and the Company Secretary, who shall sign the share certificate.”

ANNEXURE VII

SPECIMEN OF THE SPECIAL RESOLUTION FOR CANCELLATION OF SHARES

“RESOLVED THAT pursuant to Section 94(1)(e) and other applicable provisions, if any, of the Companies Act, 1956, and article........ of the articles of association of the company, the authorised share capital of the company be and is hereby reduced from Rs. 20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of Rs.10/- (Rupes ten) each to Rs.10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of Rs.10/- (Rupees ten) each by cancelling one crore (1,00,00,000) equity shares of Rs.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 Rs.10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of Rs.10/- (Rupees ten) each.”

Explanatory Statement

The company was incorporated on ........ with an authorised share capital of Rs.20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of Rs.10/- (Rupes ten) each. The present issued, subscribed and paid-up share capital of the company is Rs.7,00,00,000/- (Rupees seven crore) divided into 70,00,000 (Seventy lakh) equity shares of Rs.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 the shares which have not been taken by any person.

Therefore, the proposed 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.

ANNEXURE VIII

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 on the list placed on the table and initialled by the chairman of the meeting for the purpose of identification of equity shares held by them in the company till the ..... day of ........ 2008...., which date was fixed and notified for payment of the call, calling them to pay such call amount on or before the ........ day of ........ 2008 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) the Company Secretary, Shri ......................, be and is hereby authorised to service, 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.

ANNEXURE IX

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 Rs............ per share due on equity shares of the company allotted to you.

Pursuant to Articles ............and ...... of the Articles of Association of the company, notice is hereby given to you requiring you to pay the second call of Rs...... on all partly paid equity shares of the company, which was made by the company, on the authority of the resolution of the Board of directors of the company passed at its meeting held on..........., on you and all other members of the company and was payable by the members by on or before the ........ day of......2008.., but which 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 Rs........... 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)

ANNEXURE X

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 Rs............ per share payable on or before.... 2008, of which due notice was served upon the defaulting members on ........ 2008 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>


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 21.10.2007 Final Notice for payment of Allotment Money dated 21.10.2007 (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 Rs. 120/- each and 5,50,909 Rights equity shares. The 2431 shareholders 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 21.11.2007 fixed for the purpose and even till 31.12.2007. 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>Capital Rs.</th>
<th>Premium Rs.</th>
<th>Total Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>487</td>
<td>69,032</td>
<td>3,35,520.00</td>
<td>6,71,040.00</td>
<td>10,06,560.00</td>
</tr>
<tr>
<td>1,944</td>
<td>5,45,589</td>
<td>27,26,401.00</td>
<td>40,89,601.50</td>
<td>68,16,002.50</td>
</tr>
<tr>
<td>2,431</td>
<td>6,14,621</td>
<td>30,61,921.00</td>
<td>47,60,641.50</td>
<td>78,22,562.50</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 67 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 68, 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 75, 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 21.10.2007 sent under registered post i.e. not remitted the Allotment Money due on such equity shares together with interest on or before 21.11.2004, the last
date fixed for payment, the 69,032 equity shares of Rs. 10/- each allotted on 23rd
July, 2005 and 23rd January, 2006 on conversion of 14% Secured Fully Convertible
Debentures of Rs. 120/- each in terms of the prospectus dated 28.10.2007 and the
5,45,589 equity shares of Rs. 10/- each allotted on 23.7.2005 on Rights basis in
terms of the Letter of Offer dated 29.4.2004 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, deeds and things in connection therewith or incidental thereto.”

ANNEXURE XII

SPECIMEN OF BOARD RESOLUTION APPROVING SALE OF FORFEITED
SHARES

“RESOLVED THAT ........ equity shares of Rs........ each bearing Distinctive
Nos........ to .........., both inclusive, previously registered in the name of Shri.............
and forfeited on............... as per declaration duly signed by Company Secretary
placed on the table, be and are hereby sold to Shri............... for Rs.............. per
share and that, upon payment of that sum, a equity share certificate of equity shares
credited with Rs.............. paid-up per share be issued to the said
Shri......................... accordingly.”

ANNEXURE XIII

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.
ANNEXURE XIV

A SPECIMEN RESOLUTION FOR CONVERSION OF SHARES INTO STOCK

“RESOLVED THAT approval be and is given for the conversion of 1,00,000 equity shares of Rs. 10 each into stock of Rs. 10,00,000.”

LESSON ROUND-UP

- In accordance with section 75, every company allotting shares is required to file a return of allotment in e-form 2 within thirty days of the allotment.
- If the conditions of valid allotment specified in sections 69, 70, 72 and 73 of the Companies Act, 1956 are not complied with, it results in irregular allotment.
- An irregular allotment may be void or voidable.
- Companies are required to maintain the register of members under section 150 and enter therein the details of members.
- After allotment of shares, share certificates are issued to the members in accordance with the provisions of the Companies Act and Companies (Issue of share certificates) Rules, 1960.
- A limited company having a share capital may, if authorized by articles, cancel the shares. Cancellation of shares means cancellation of shares of a particular unissued class and not the paid up share capital.
- 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.
- 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.
- 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.
- 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.
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 Meetings for:
   (a) allotting shares when the issue is over-subscribed
   (b) for consolidation of shares
   (c) for forfeiture of shares

2. Explain the procedure for issue of duplicate share certificates.

3. Explain the procedure for cancellation of shares.

4. Draft a board resolution for sale of forfeited shares.

5. What is irregular allotment and what are the legal effects of an irregular allotment?

6. Write short note on information memorandum.
There is a fundamental difference between the capital made available to a company by issue of shares and by the money obtained by a company under a loan or issue of debentures. Respective incidences and consequences of issuing a share and borrowing money on loan or on a debenture are different and distinctive. A debenture holder as a creditor has a right to sue the company, whereas a shareholder has no such right. A debenture, in the widest definition, is an acknowledgment of an existing debt. A debenture-holder as such is not a member, but a creditor of the company.

After going through this study, you will be able to understand:

- Meaning of debenture
- Kinds of debentures
- Debenture trust deed and its drafting
- Appointment and duties of debenture trustees
- Liability of company to create security and Debenture Redemption Reserve
- Debenture Redemption Reserve
- Issue of Debentures
- Important Aspects under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 which relates to non-convertible debenture
- Regulations for Issue of Fully/Partly Convertible Debentures or Loans which contained in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- Private placement of debt securities
- SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008

1. DEBENTURES

Section 2(12) of the Companies Act, 1956 defines debenture as follows:

Debenture includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture.
The important features of a debenture are:

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

Debentures are issued in the following forms:

(a) Naked or unsecured debentures.
(b) Secured debentures.
(c) Redeemable debentures.
(d) Perpetual debentures.
(e) Bearer debentures.
(f) Registered debentures.

Their features are as follows:

(a) Naked or unsecured debentures: Debentures of this kind 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.

(b) 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.

(c) Redeemable debentures: Debentures that are redeemable on expiry of certain period are called redeemable debentures. Such debentures after redemption can be reissued in accordance with the provisions of Section 121.

(d) Perpetual debentures: If the debentures are issued subject to redemption on the happening of specified events which may not happen for an indefinite period, e.g. winding up, they are called perpetual debentures.

(e) Bearer debentures: Such debentures are payable to bearer and are transferable by mere delivery. The name of the debenture holder is not registered in the books of the company, but the holder is entitled to claim interest and principal as and when due. A bonafide transferee for value is not affected by the defect in the title of the transferor.

(f) Registered debentures: Such debentures are payable to the registered holders whose names appear on the debenture certificate/letter of allotment and is registered on the Company’s register of debentureholders maintained as per Section 152 of the Act.
Kinds of Debentures

Debentures may be of different kinds which are as follows:

1. **Redeemable Debentures**: Debentures are generally redeemable, that is to say, they are issued on the terms that the company is bound to repay the amount of the debenture, either at a fixed date, or upon demand, or after notice, or under a system of periodical drawings. Redeemable debentures can be re-issued. This power is expressly given by Section 121. This section provides that unless any contrary provision is contained in the articles or in the conditions of issue or unless there is a resolution showing an intention to cancel the redeemed debentures, the company has power to re-issue the same debentures or issue other debentures in their place. The person who has been re-issued the debentures shall have the same rights and priorities as if the debentures had never been redeemed.

2. **Perpetual or Irredeemable Debentures**: A Debenture in which no time is fixed for the company to pay back the money, although it may pay back at any time it chooses, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation.

3. **Registered and Bearer Debentures**: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 108 of the Act. Bearer debentures, on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred become a “holder in due course” and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon. [Calcutta Safe Deposit Co. Ltd. v. Ranjit Mathuradas Sampat (1971) 41 Comp. Cas 1063].

4. **Secured and unsecured or Naked Debentures**: Where debentures are secured by a mortgage or a charge on the property of the company, they are called secured 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.

5. **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.

Based on convertibility, debentures can be classified under three categories:

1. Fully Convertible Debentures (FCDs).
2. Non Convertible Debentures (NCDs).
3. Partly Convertible Debentures (PCDs).
1. **Fully Convertible Debentures (FCDs):** These are converted 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. If the conversion is to take place at or after eighteen months from the date of allotment but before 36 months, the conversion is optional on the part of the debenture holders in terms of SEBI Guidelines. Interest will be payable on these debentures up to the date of conversion as per the transfer issue.

2. **Non Convertible Debentures (NCDs):** These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods.

3. **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.

The distinctions between fully convertible and partly convertible debentures are—

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Partly convertible debentures</th>
<th>Fully convertible debentures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Suitability</strong></td>
<td>Better suited for companies with established track record</td>
<td>Better suited for companies without established track record</td>
</tr>
<tr>
<td><strong>Capital base</strong></td>
<td>Relatively lower equity capital on conversion of debentures</td>
<td>Higher equity capital on conversion of debentures</td>
</tr>
<tr>
<td><strong>Flexibility in financing</strong></td>
<td>Favourable debt equity ratio</td>
<td>Highly favourable debt equity ratio</td>
</tr>
<tr>
<td><strong>Classification for debt-equity ratio computation</strong></td>
<td>Convertible portion classified as 'equity' and non-convertible portion as 'debt'</td>
<td>Classified as equity for debt-equity computation</td>
</tr>
<tr>
<td><strong>Popularity</strong></td>
<td>Not so popular with investors</td>
<td>Highly popular with investors</td>
</tr>
<tr>
<td><strong>Servicing of equity</strong></td>
<td>Relatively lesser burden of equity servicing</td>
<td>Higher burden of servicing of equity</td>
</tr>
</tbody>
</table>

Public Companies (Terms of issue of Debentures and of Raising of Loans with Option to Convert such Debentures or Loans into Shares) Rules, 1977 are given as Annexure II at the end of the study.
2. DEBENTURE TRUST DEED AND ITS DRAFTING

Trust is an arrangement enabling property to be held by a person or persons (the trustees) for the benefit of some other person or persons (the beneficiaries). The trustee is the legal owner of the property but the beneficiary has an equitable interest in it. 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. The debenture holders can, through the trustees, enter and sell the property comprised in the security.

Section 117A* of the Companies Act, 1956, provides that

1. A trust deed for securing any issue of debentures shall be in such form and shall be executed within such period as may be prescribed.

2. A copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed.

3. If a copy of the trust deed is not made available for inspection or is not given to on demand by, any member or debentureholder, the company and the officer of the company who is in default shall be punishable for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues.

A trust deed is one of several instruments required to be executed to secure redemption of debentures and payment of interest on due dates. The trust deed should be in the form and be executed within such period as may be prescribed. Besides, the SEBI (Debenture Trustees) Regulations, 1993 are applicable to the listed companies. The aforesaid Regulations provide that a debenture trustee should be registered with SEBI by obtaining a certificate of registration in accordance with the conditions provided therein. The aforesaid Regulations ‘inter alia’ provide procedure for registration, responsibilities and obligations of debenture trustees and also prescribe contents of trust deed.

Under Section 119 of the Act, trustees of the trust deed for debentureholders are made liable for breach of trust where they do not exercise due care and diligence required of them as trustees. Therefore, any term in the trust deed which exempts the trustee from his liability to indemnify for breach of trust is void and has no legal effect.

Contents of a debenture trust deed

The trust deed lays down exactly what the consequences of certain events are, e.g. appointment of a receiver and the trustees, who are usually also given direct powers of interference, if the security is in jeopardy, powers such as the right to

appoint a receiver to look after the property, to enter into possession and to carry on
the business of the company. There is usually an agreement called Trustee
Agreement. Specimen Debenture trust deed is placed as Annexure III at the end of
the study.

Under Companies Act, the main terms of the trust deed are:

(a) an undertaking by the company to pay the debenture holders' principal and
interest;

(b) clauses giving the trustees of the deed a legal mortgage over the company's
freehold and leasehold (as has been agreed) property and a floating charge
over the rest of the company's undertaking and property;

(c) clauses specifying the events which will cause the security to be
enforceable, usually such events as default in payment of principal or
interest, a winding-up petition presented or ordered, appointment of a
receiver, breach of any undertaking by the company, *de facto* cessation of
business;

(d) a clause giving trustees the power to take possession of the property
charged when the security becomes enforceable. This is usually
accompanied by powers to carry on the business or sell the property
charged and distribute any proceeds to the debenture holders in settlement
of any outstanding debts and remit any remainder to the company. Powers
are usually included in the deed permitting the trustees to enter into
arrangements regarding the property with the company;

(e) Registers of debenture holders, meetings of debenture holders and such
administrative matters are also usually included in the deed.

Under SEBI Regulations, the main terms of the trust deed are:

According to regulation 14 of the Securities and Exchange Board of India
(Debenture Trustees) Regulations, 1993, a debenture trust deed should contain,
amongst others, the matters specified in Schedule IV to the Regulations namely:

(a) Preamble

(b) Description of instruments

(c) Details of Charged Securities (Existing or future)
   — Nature of charge, examination of title.
   — Rank of charge of assets viz. first, second, pari passu, residual, etc.
   — Charging of future assets.
   — Time limit within which the future security for the issue of debentures
     shall be created as specified in SEBI (Disclosure and Investor
   — Enforceability of securities, events under which security becomes
     enforceable.
   — Obligation of company not to create further charge or encumbrance of
     the trust property without prior approval of the trustee.
— Minimum security cover required.
— Provision for subsequent valuation.
— Circumstances when the security will become enforceable.
— Method and mode of preservation of assets charged as security for debenture holders.
— Circumstances specifying when the security may be disposed off or leased out with the approval of trustees.
— Procedure for allowing inspection of charged assets, books of accounts, by debenture trustee or any person or persons authorised by it.

(c) Events of defaults
(d) Rights of debenture trustees
(e) Obligations of body corporates
(f) Miscellaneous
— Procedure for appointment and removal of trustee including appointment of new trustees.
— Provision that the debenture trustee shall not relinquish from its assignment unless another debenture trustee has been appointed.
— Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by atleast 75% of the total debenture holders of a body corporate.
— Provisions for redressal of grievances of debenture holders.

Execution of trust deed and stamp duty

The following provisions of the Registration Act and the Stamp Act are relevant:

(a) In the case of English Mortgage, the mortgage deed or the trust deed will attract 'ad valorem' stamp duty. After execution, such deeds will also have to be registered with the Sub-registrar of Assurances. Therefore, in addition to the stamp duty, registration charges will also have to be paid.

(b) Under section 30(2) of the Registration Act, 1908, the Registrar of Delhi District has been empowered, at his discretion, to receive and register any document registerable under that Act, without regard to the situation in any part of India of the property to which the document relates.

(c) For the purpose of registration of a document in Delhi the document should first be got 'adjudicated' from the Collector of Stamps in Delhi, then the stamp duty should be paid there and the document registered.

(d) If the stamp duty payable on the document in the State where the property is situate is more than the duty payable in Delhi, the difference in duty will have to be paid in the State concerned within 3 months.

(e) Once the stamp duty is paid on the debenture trust deed, no more stamp duty is required to be paid on the debenture certificate which in such a case can be issued without affixing any stamp thereon.
(f) In the case of equitable mortgage if no document, deed, note, memorandum, etc. is signed then nothing is required to be registered with the Sub-registrar of Assurances. If, however, such a note, memorandum, letter regarding deposit of title deeds is made or written, then it will attract stamp duty, e.g. Article 6 of the Bombay Stamp Act, 1958. Such a note, letter, memorandum, deed, etc., duly stamped may have to be registered with the Sub-registrar of Assurances. In that case, no further stamp duty may have to be paid on the debenture certificate.

According to article 27 of Schedule to the Indian Stamp Act, 1899, the stamp duty at the rates specified therein is payable on 'debenture' (whether a mortgage debenture or not) being a marketable security by endorsement or by a separate instrument of transfer or by delivery.

In terms of the exemption clause to Article 27, where a mortgage is created by a registered mortgage deed, i.e., English mortgage, no further stamp duty will be payable on 'debenture' under the said article 27. The object of the exemption is that duty should be payable only once. If it is paid on the mortgage deed, no duty is necessary on the separate debentures issued in conformity with it. This provision is intended for the benefit of limited companies, and does not apply to private persons or proprietors of estates, issuing debentures. Such debenture issuers will be responsible not only for the payment of the duty on the mortgage but also for the payment of the additional duty which is required for debentures.

Having regard to the distribution of legislative powers under the Constitution, State Stamp Laws do not impose any duty on debentures, except in Jammu & Kashmir and West Bengal. Moreover, where the debenture trust deed creates a charge by way of a mortgage, whether English mortgage or equitable mortgage, the amount of stamp duty payable thereon will have to be determined having regard to the provisions of the Stamp Act of the State in which the trust deed is executed.

A debenture trust deed is not a deed of mortgage or bond, but a deed of trust, and, therefore, the stamp duty chargeable is that under a deed of trust.

3. APPOINTMENT AND DUTIES OF DEBENTURE TRUSTEES

Section 117B was inserted by Companies (Amendment) Act, 2000. As per this Section, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed.

Provided that no person shall be appointed as a debenture trustee, if he —

(a) beneficially holds shares in the company;

(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;
(c) has entered into any guarantee in respect of principal debts secured by debentures or interest thereon.

The functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively [Sub-section (2)]

The duties of a debenture trustee have been described in detail in the Regulation 15 of the SEBI (Debenture Trustee) Regulations, 1993. In appointment of a Debenture trustee, the above conditions are required to be complied with. Where the company is a listed company, the SEBI Regulations should also be followed.

4. LIABILITY OF COMPANY TO CREATE SECURITY AND DEBENTURE REDEMPTION RESERVE

Section 117C was inserted by the Companies (Amendment) Act, 2000. According to this section —

(1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in Sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the Company Law Board1/Tribunal2 may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the Company Law Board1/Tribunal2 under Sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.

The debenture redemption reserve is required to be created for both, accrued and unaccrued debentures. In the case of partly-paid debentures, Debenture Redemption Reserve is to be created for non-convertible portion only.

Debenture Redemption Reserve (DRR)

(i) Section 117C of the Act requires every company to create a DRR to which adequate amount shall be credited out of its profits every year until such debentures are redeemed and shall utilize the same exclusively for redemption of a particular set or series of debentures only. There is no

1 Existing
2 Proposed
obligation on the part of the company to create DRR if there is no profit for that particular year. However, vide Circular No. 9/2002 dated 18th April, 2002, Department of Company Affairs (Now Ministry of Corporate Affairs) has clarified that:

(a) No DRR is required for debentures issued by AIFIs (All India Financial Institutes) regulated by Reserve Bank of India and banking companies for both public as well as privately placed debentures. For other FIs within the meaning of Section 4A of the Act, DRR will be as applicable to NBFCs registered with RBI.

(b) For NBFCs registered with the RBI under Section 45-IA of the RBI Act, 1997, the adequacy of DRR will be 50 per cent of the value of debentures issued through public issue as per present SEBI guidelines and no DRR is required in the case of privately placed debentures.

(c) For manufacturing and infrastructure companies, the adequacy of DRR will be 50 per cent of the value of the debentures issued through public issue and 25 per cent for privately placed debentures.

(d) Section 117C will apply to debentures issued and pending to be redeemed and as such DRR is required to be created for debentures issued prior to 13th December 2000 and pending redemption subject to clarifications issued herein.

(e) Section 117C will apply to non-convertible portion of debentures issued whether they are fully or partly convertible.

(ii) DCA has clarified that for housing finance companies registered with the National Housing bank under Housing Finance Companies (“NHB”) Directions, 2001 adequacy of DRR will be 50% of the value of debentures issued through public issues. No DRR is required in the case of privately placed debentures. (Circular No. 4/2003 dt. 16.2.03).

5. ISSUE OF DEBENTURES

The power to issue debentures is usually set out in the memorandum. The debentures can be issued in the same manner as shares in a company. But unlike shares, they can be issued at a discount without any restriction, if articles so authorise, the reason being that they do not form part of the capital of the Company. They can also be issued at a premium. The Companies Act, 1956 places no restriction in this regard. 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. Any rate of interest, though justifiable, can be paid on the debentures. Even zero rate of interest debentures can be issued. In the case of unsecured debentures which amounts to be deposits, the rate of interest should be within the maximum limit prescribed by the Rules. All sums allowed by way of discount must be stated in every balance sheet of the company until written-off. Section 122 of the Act provides that specific performance of a contract to give debentures may be enforced by an order of the Court against the company and that the company may specifically enforce against anyone an agreement to take debentures. No company is permitted to issue debentures carrying voting rights at any general meeting of the company.
Where payment for debentures was to be made by instalments and on the debentureholders’ failure to pay an instalment, the company had declared his debenture to be forfeited, the debenture ceased to be specifically enforceable. [Kuala Pahi Rubber Estates v. Mowbray, (1914) 111 LT 1072].

SEBI Guidelines pertaining to Issue of non-convertible Debentures

In order to facilitate development of a vibrant primary market for corporate bonds in India, Securities and Exchange Board of India (SEBI) has notified on 19th June 2008 Regulations for Issue and Listing of Debt Securities to provide for simplified regulatory framework for **issuance and listing of non-convertible debt securities** (excluding bonds issued by Governments) issued by any company, public sector undertaking or statutory corporations. The regulations cover issuance and listing of debt securities whether issued to the public or privately placed which are not convertible, either in whole or in part into equity instruments. The Regulations will not apply to issue and listing of, securitized debt instruments and security receipts for which separate regulatory regime is in place. The full text of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 is placed as Annexure I at the end of the study. The Regulations are also available on the website at: http://www.sebi.gov.in/acts/debtregu.pdf.

Salient features of the regulations are as follows:

- The Regulations provide for rationalized disclosure requirements for public issues of debt securities and flexibility to issuers to structure their instruments and decide on the mode of offering, without diluting the areas of regulatory concern.

- In case of public issues of debt securities, while the disclosures specified under Schedule II of the Companies Act, 1956 shall be made, the Regulations require additional disclosures about the issuer and the instrument such as nature of instruments, rating rationale, face value, issue size, etc.

- While the requirement of filing of draft offer documents with SEBI for observations has been done away with, emphasis has been placed on due diligence, adequate disclosures, and credit rating as the cornerstones of transparency.

- Regulations prescribe certifications to be filed by merchant bankers in this regard.

- The Regulations emphasize on the role and obligations of the debenture trustees, execution of trust deed, creation of security and creation of debenture redemption reserve in terms of the Companies Act.

- The Regulations enable electronic disclosures.

- The draft offer document needs to be filed with the designated stock exchange through a SEBI registered merchant banker who shall be responsible for due diligence exercise in the issue process and the draft offer document shall be placed on the websites of the stock exchanges for a period of seven working days inviting comments. The documents shall be
downloadable in PDF or HTML formats. The requirements for advertisements have also been simplified.

— While listing of securities issued to the public is mandatory, the issuers may also list their debt securities issued on private placement basis subject to compliance of simplified regulatory requirements as provided in the Regulations.

— The Regulations provide an enabling framework for listing of debt securities issued on a private placement basis, even in cases where the equity of the issuer is not listed.

— NBFCs and PPIs are exempted from mandatory listing. However, they may list their privately placed debt securities subject to compliance with the simplified requirements and Listing Agreement. A rationalized listing agreement for debt securities is under preparation.

— On and from the commencement of the regulations, the provisions of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 in so far as they relate to issue and listing of debt securities shall stand rescinded.

Notwithstanding such rescission:
(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;
(b) any application made to the Board under the said Guidelines and pending before it shall be deemed to have been made under the corresponding provisions of these regulations.

The detail procedure for issue of Debentures is explained hereunder:
1. SEBI (Issue and Listing of Debt Securities) Regulations, 2008 will be applicable, in case the Company wants to make
   (a) public issue of debt securities; and
   (b) listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.

2. ‘Debt securities’ under these regulations means 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.

3. The term “private placement” in accordance with the regulations means an offer or invitation to less than fifty persons to subscribe to the debt securities in terms of sub-section (3) of section 67 of the Companies Act, 1956 (1 of
1956); the term “public issue” means an offer or invitation by an issuer to the public to subscribe to the debt securities which is not in the nature of a private placement;

4. The Company cannot make any public issue of debt securities if as on the date of filing of draft offer document and final offer document as provided in the regulation, the Company or the person in control of the Company, or its promoter, has been restrained or prohibited or debarred by the Securities and Exchange Board of India (Board) from accessing the securities market or dealing in securities and such direction or order is in force.

5. Call a Board Meeting after giving notice to all the directors of the company as per section 286 to decide about the issue of debentures and the steps to be taken in that regard (Section 292), keeping in view the following matters:
   (a) whether the debenture is non-convertible, or fully or partly convertible
   (b) if convertible stage(s) and terms of conversion including premium
   (c) maturity period of non-convertible/non-convertible portion of partly convertible debenture
   (d) rate of interest
   (e) whether public/right issue
   (f) credit rating
   (g) appointment of trustee
   (h) appointment of Lead Manager(s) and other intermediaries.

6. Make an application to one or more recognized stock exchanges for listing of such securities before the date of filing of draft offer document and final offer document, provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange, Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange. A simplified Listing Agreement for debt securities has been put in place.

The Listing Agreement for debt securities as set out at Annexure IV consists of two parts. The first part prescribes only incremental disclosures which are relevant for debt securities of such issuers whose equity shares are listed on the Exchange. The second part, which is applicable to issuers whose equity shares are not listed on the Exchange, prescribes detailed disclosures. During the currency of listing of equity shares, the issuer shall comply with provisions in Part A. In all other cases, the issuer shall comply with provisions in Part B.

7. Before filing of draft offer document, the company should have obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

8. Obtain credit rating from at least one credit rating agency registered with the Board and is disclosed in the offer document, if credit ratings are obtained
from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document.

9. 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.

10. In case, the company is a public company or its subsidiary, then obtain the permission of the General Meeting by Ordinary Resolution unless borrowing by issue of debentures is within the borrowing limits already sanctioned under Section 293(l)(d).

11. Also obtain the permission of the General Meeting by Ordinary Resolution under Section 293(l)(a), if the whole or substantially the whole of any of the company's undertaking is proposed to be charged against the debentures by usufructuary mortgage.

12. If Ordinary Resolutions are passed as aforesaid by the company then file them in e-form No. 23 along with the Explanatory Statements with the concerned ROC within thirty days of their passing [Section 192(4)] after paying the requisite fee prescribed under Schedule X to the Act.

13. Forward promptly to the Stock Exchange with which the company is enlisted, three copies of the notice and a copy of the proceedings of the General Meeting. [Clause 31(c) and (d) of the Listing Agreement].

14. The Company is required to appoint one or more merchant bankers who are duly registered with the Board. One of them should be a lead merchant banker.

15. Obtain consent of the proposed trustees if the debentures are proposed to be issued under a trust deed.

16. The Company should then appoint one or more debenture trustees in accordance with the provisions of Section 117B of the Companies Act, 1956 (1 of 1956) and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

17. Prepare the draft trust deed and get the same approved by your Board authorizing some one to execute the same [Section 117A]

18. Execute the trust deed within 3 months of the date of closure of the issue after proper stamping and get the same registered with the registration authorities of the appropriate State.

19. Note that the debenture issue by the Company is not allowed 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. [sub-regulation (5) of Regulation 4]

20. Explanation given under sub regulation (6) of regulation 4 states that

(a) two persons shall be deemed to be “part of the same group” if they belong to the same group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own “inter-connected undertakings” within the meaning of clause (g) of section 2 of that Act;
(b) the expression “under the same management” shall have the meaning derived from sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956).

21. In accordance with Regulation 5(1), the offer document must contain all material disclosures which are necessary for the subscribers of the debentures to take an informed investment decision.

22. The Company and the lead merchant banker must ensure that the offer document contains the following:

   (a) the disclosures specified in Schedule II of the Companies Act, 1956;
   (b) disclosure specified in Schedule I of these regulations;
   (c) additional disclosures as may be specified by the Board.

23. In accordance with explanation given under sub regulation (2) of regulation 5, for the purpose of point number '21' above, “material” means anything which is likely to impact an investors’ investment decision.

24. A draft offer document is required to be filed by the Company with the designated stock exchange through the lead merchant banker. [Sub regulation (1) of regulation 6].

25. Public comments are then invited by posting the draft offer document filed with the designated stock exchange on the website of the designated stock exchange for a period of seven working days from the date of filing the draft offer document with such exchange. [Sub regulation (2) of regulation 6].

26. The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed. [Sub regulation (3) of regulation 6].

27. It should be ensured by the lead merchant banker that 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. [Sub regulation (4) of regulation 6]

28. It should be ensured by the Lead Merchant Banker that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies. [Sub regulation (5) of regulation 6].

29. A copy of draft and final offer document is also required to be forwarded to the Board for its records, simultaneously with filing of these documents with designated stock exchange. [Sub regulation (6) of regulation 6].

30. The lead merchant banker is required to furnish to the Board a due diligence certificate as per Schedule II of the regulations before filing of the offer document with the Registrar of Companies. [Sub regulation (7) of regulation 6]

31. The debenture trustee is also required to furnish to the Board a due diligence certificate as per Schedule III of these regulations, before opening of the public issue.
32. The draft and final offer document would be displayed on the websites of stock exchanges. Also these can be downloaded in PDF / HTML formats. [Sub regulation (1) of regulation 7].

33. The offer document is required to be filed 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. [Sub regulation (2) of Regulation 7]

34. In case, any person makes a request for a physical copy of the offer document, the Company or lead merchant banker should entertain the request and provide the same to him. [Sub regulation (3) of Regulation 7]

35. The Company is required to make a advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as provided in the Schedule IV of the Regulations. [Sub regulation (1) of Regulation 8]

36. Any advertisement issued by the Company should not be misleading in material particular and should not be manipulative or deceptive and should not contain any matters which are extraneous to the contents of the offer document.

37. Every application form issued by the company should accompanied by a copy of the abridged prospectus and such abridged prospectus should not contain matters which are extraneous to the contents of the prospectus. The facility for subscription of application in electronic mode may be provided for by the Company subject to the relevant applicable requirements as may be specified by the Board.

38. The Company 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. [Regulation 11]

39. In case of a private offer, obtain applications by private negotiations.

40. On receipt of applications, complete proceeding regarding allotment. If the debentures are to be enlisted, get the allotment scheme first approved by the Stock Exchange concerned.

41. In case, the Company has not received the minimum subscription, if decided, all the application moneys received in the public issue is required to be refunded forthwith to the applicants. [Sub-regulation (1) to the Regulation 12]

42. Adequate disclosures regarding underwriting arrangements are required to be disclosed in the offer document, where public issue of debenture securities are underwritten by an underwriter registered with the Board. [Regulation 13]

43. The offer document or abridged prospectus or any advertisement issued by the Company in connection with a public issue of debt securities should not contain any false or misleading statement. Also it should not omit disclosure of any material fact because of which the statements made therein (in light of the circumstances under which they are made) becomes misleading. [Regulation 14].
44. For securing the issue of debenture, a trust deed should be executed by the Company in favour of the debenture trustee within three months of the closure of the issue. Such deed should contain the clauses as may be prescribed under section 117A of the Companies Act, 1956 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. [Regulation 15]

45. The trust deed should not contain a clause which has the effect of –
   (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the Company in relation to any rights or interests of the investors;
   (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board;
   (iii) indemnifying the debenture trustees or the Company for loss or damage caused by their act of negligence or commission or omission.

46. The Company should create debenture redemption reserve, for the redemption of the debt securities, in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard. [Regulation 16]

47. The proposal to create a charge or security, if any, in respect of secured debt securities should be disclosed in the offer document along with its implications.

48. The Company is required to give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari passu charge on the assets of the issuer have been obtained from the earlier creditor.

49. File e-Form No. 10 with the concerned ROC. The ROC will issue the certificate of registration which shall be endorsed on every debenture certificate.

50. The issue proceeds should be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed. [Regulation 17]

51. Complete all other proceedings such as issuing letters of allotment, debenture certificates, making entries in various registers, etc., etc.

**Role of Company Secretary under Listing Agreement for Debt Securities**

The Debt Listing Agreement authorizes Company Secretaries to issues half yearly certificate regarding maintenance of 100% security cover in respect of listed secured debt securities. Clause 2 and 13 of the Debt Listing agreement reads as under:

1. **Part A of the Debt Listing Agreement applicable to the Issue of Debt Securities where equity shares of the Issuer are listed**

   “2. The Issuer agrees that it shall forward to the debenture trustee promptly, whether a request for the same has been made or not:
(d) a half-yearly certificate regarding maintenance of 100% security cover in respect of listed secured debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results. (not applicable for Bank or NBFC Issuers registered with RBI)

Provide that submission of such half yearly certificates is not applicable in cases where an issuer is a Bank or WBFC registered with RBI or where bonds are secured by a Government guarantee.

2. **Part B of the Debt Listing Agreement applicable to the Issue of Debt Securities where equity shares of the Issuer are not listed on the Exchange**

“13. The Issuer agrees that it shall forward to the debenture trustee promptly, whether a request for the same has been made or not:

(d) a half-yearly certificate regarding maintenance of 100% security cover in respect of listed secured debt securities, by either a practicing company secretary or a practicing chartered accountant, every within one month from the end of the half year. (not applicable for Bank or NBFC Issuers registered with RBI)

Further Clause 22 of the Debt Listing Agreement requires the issuer to designate **Company Secretary** or any other person as Compliance Officer responsible for ensuring compliance with the regulatory provisions applicable to such issuance of debt securities, reporting to various authorities etc. The extract of the clause is as under:

“22. The Issuer agrees and undertakes to designate the **Company Secretary** or any other person as Compliance Officer who:

(a) shall be responsible for ensuring compliance with the regulatory provisions applicable to such issuance of debt securities and report the same at the meeting of Board of Directors/Council of Issuer held subsequently;

(b) shall directly report to the Securities and Exchange Board of India, Stock Exchanges, Registrar of Companies, etc., and investors on the implementation of various clauses, rules, regulations and other directives of these authorities;

(c) shall be responsible for filing the information in the Corp Filing system/ Electronic Data Information Filing and Retrieval (EDIFAR) System or any other platform as may be mandated by SEBI from time to time. The compliance officer and the Issuer shall ensure the correctness and authenticity of the information filed in the system and that it is in conformity with applicable laws and terms of the Listing Agreement;

(d) shall monitor the designated e-mail ID of the grievance redressal division which shall be exclusively maintained for the purpose of registering complaints by investors. The company shall display the email ID and other relevant details prominently on their websites and in the various materials/pamphlets/advertisement campaigns initiated by them for creating investor awareness.”
Redemption and roll-over

In accordance with Regulation 18 of the SEBI (Issue And Listing Of Debt Securities) Regulations, 2008, the Company is required to redeem the debt securities in terms of the offer document.

The debentures which are redeemable are to be repaid by the company in accordance with the terms and conditions of issue. Debentures may be redeemed either out of the proceeds of a fresh issue of debentures or shares or by creating Debenture Redemption Reserve by setting aside certain sums out of annual profits of the company as provided under Section 117C of the Act. The debentures may be redeemed at the end of the period for which they are issued or they may be redeemed periodically by means of drawings by lots.

In case, the Company 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. The notice referred above shall contain disclosures with regard to credit rating and rationale for roll-over. The Company should 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.

The debt securities issued can be rolled over subject to the following conditions:

(a) 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;

(b) 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);

(c) 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;

(d) adequate security shall be created or maintained in respect of such debt securities to be rolled-over.

The issuer shall redeem the debt securities of all the debt securities holders, who have not given their positive consent to the roll-over.

Re-issue of redeemed debentures

Under Section 121 of the Act, the company has powers to keep alive the redeemable debentures either by re-issuing the same debentures or by issuing fresh debentures in their place unless:

(a) there is any provision to the contrary, whether express or implied contained in the articles/memorandum or in the conditions of issue or in any contract entered into by the company; or

(b) the company has manifested its intention to cancel the debentures by a resolution to that effect or by some other act.
Other important aspects under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

Obligations of Intermediaries and Issuers

Chapter V of the Regulations deals with obligations of the Debenture trustees, Issuer and Lead Merchant Banker. The obligations as specified are explained hereunder.

Obligations of Debenture trustee [Regulation 25]

1. The debenture trustee is 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.

2. The debenture trustee is under obligation to 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.

3. The debenture trustee is under duty to ensure disclosure of all material events on an ongoing basis.

4. The debenture trustees should supervise the implementation of the conditions regarding creation of security for the debt securities and debenture redemption reserve.

Obligations of the Issuer, Lead Merchant Banker, etc. [Regulation 26]

1. The Company shall disclose all the material facts in the offer documents issued or distributed to the public and should 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.

2. The Merchant Banker should verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the Company is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

3. The intermediaries are responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

4. No person should 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.

5. The issuer and the merchant banker should ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

Power of SEBI to undertake Inspection and to Issue Directions

Inspection by the Board

Chapter VI of the regulations deals with the remedy in case of violation of the regulations. According to Regulation 27 of the regulations, without prejudice to the
provisions of sections 11 and 11C of the SEBI Act, 1992 and section 209A of the Companies Act, the Board may suo-motu or upon information received by it, appoint one or more persons to undertake the inspection of the books of account, records and documents of the issuer or merchant banker or any other intermediary associated with the public issue, disclosure or listing of debt securities, for the specified purposes. The specified purposes are:

(a) to verify whether the provisions of the Act, Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, the rules and regulations made there under in respect of issue of securities have been complied with;

(b) to verify whether the requirement in respect of issue of securities as specified in these regulations has been complied with;

(c) to verify whether the requirements of listing conditions and continuous disclosure requirement have been complied with;

(d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of securities governed under these regulations;

(e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations;

(f) to inquire whether any direction issued by SEBI has been complied with.

Directions by the Board

In accordance with the Regulation 28, without prejudice to the action under section 11, 11A, 11 B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the SEBI Act, 1992 or section 621 of the Companies Act, 1956, the Board may suo-motu or on receipt of information or on completion or pendency of inspection or investigation, in the interests of the securities market, issue or pass such directions as it deems fit including any or all of the following –

(a) directing the issuer to refund of the application monies to the applicants;

(b) directing the persons concerned not to further deal in securities in any particular manner;

(c) directing the persons concerned not to access the securities market for a particular period;

(d) restraining the issuer or its promoters or directors from making further issues of securities;

(e) directing the person concerned to sell or divest the securities;

(f) directing the issuer or the depository not to give effect transfer or directing further freeze of transfer of securities;

(g) any other direction which Board may deem fit and proper in the circumstances of the case.

It is provided that the Board shall, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued.
It is provided further that if any ex-parte direction is required to be issued, the Board may give post decisional hearing to affected person.

6. ISSUE OF CONVERTIBLE DEBT INSTRUMENTS

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 specifically provide the following in relation to Convertible Debt Instruments:

1. No issuer shall make a public issue of convertible debt instrument
   (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;
   (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by the Board;
   (c) if the issuer of convertible debt instruments is in the list of wilful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months;
   (d) unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:
      Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;
   (e) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;
   (f) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
   (g) unless firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.

2. The lead merchant bankers shall submit to the Board along with the draft offer document a due diligence certificate from the debenture trustee as per Form B of Schedule VI.

3. The lead merchant bankers shall submit to the Board along with the offer document in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI.

4. Additional requirements for issue of convertible debt instruments (Regulation 20)
   (1) In addition to other requirements laid down in these regulations, an issuer making a public issue or rights issue of convertible debt instruments shall comply with
the following conditions:

(a) it has obtained credit rating from one or more credit rating agencies;

(b) it has appointed one or more debenture trustees in accordance with the provisions of section 117B of the Companies Act, 1956 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;

(c) it has created debenture redemption reserve in accordance with the provisions of section 117C of the Companies Act, 1956;

(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:
   (i) such assets are sufficient to discharge the principal amount at all times;
   (ii) such assets are free from any encumbrance;
   (iii) 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;
   (iv) 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.

(2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

Roll over of non convertible portion of partly convertible debt instruments. (Regulation 21)

(1) 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 compliance with the provisions of section 121 of the Companies Act, 1956 and 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;

(2) 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.

Conversion of optionally convertible debt instruments into equity share capital. (Regulation 22)

(1) 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.

(2) 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.

(3) 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.

(4) The provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

Issue of convertible debt instruments for financing. (Regulation 23)

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.
Explanation: For the purpose of this regulation:

(i) Two persons shall be deemed to be “part of the same group” if they belong to the group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own “inter connected undertakings within the meaning of clause (g) of section 2 of the said Act;

(ii) The expression “under the same management” shall have the same meaning as assigned to it in sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956)

7. SEBI (PUBLIC OFFER AND LISTING OF SECURITISED DEBT INSTRUMENTS) REGULATIONS, 2008

SEBI has notified SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 on May 26, 2008 taking into account the market needs, cost of the transactions, competition policy, the professional expertise of credit rating agencies, disclosures and obligations of the parties involved in the transaction and the interest of investors in such instruments. Salient features of the regulations are as follows :-

(a) The special purpose distinct entity i.e. issuer shall be in the form of a trust, the trustees thereof will require registration from SEBI. The registration granted to a trustee shall be permanent subject to compliance with the provisions with the SCRR and the regulations and payment of appropriate fees.

(b) If a debenture trustee registered with SEBI or a securitization company or a asset reconstruction company registered with Reserve Bank of India or National Housing Bank or the NABARD is the trustee of the issuer no registration from SEBI to act as such shall be required.

(c) The securitized debt instruments issued to public or listed on recognized stock exchange shall acknowledge the beneficial interest of the investors in underlying debt or receivables assigned to the issuer. The regulations provide flexibility in terms of pay through / pass through structures and do not restrict any particular mode.

(d) The assignment of assets to the issuer shall be a true sale. The debt or receivables assigned to the issuer should be expected to generate identifiable cash flows for the purpose of servicing the instrument and the originator should have valid enforceable interests in the assets and in cash flow of assets prior to securitization.

(e) Originator shall be an independent entity from the issuer and its trustees and the originator and its associates shall not exercise any control over the issuer. However, the originator may be appointed as a servicer. The issuer may appoint any other person as servicer in respect of any its schemes to co-ordinate with the obligors, manage the said pool and collection therefrom, administer the cash flows of asset pool, distribution to investors and reinvestments. The issuer shall not acquire any debt or receivables from any originator who is part of the same group or which is under the same management as the trustee. Regulations require strict segregation of assets of each scheme.
(f) The issuer may offer securitised debt instruments to public for subscription through an offer document containing disclosures of all relevant material facts including financials of the issuer, originator, quality of the asset pool, disclosure of various kinds of risks, credit ratings including unaccepted ratings, arrangements made for credit enhancement, liquidity facilities availed, underwriting of the issue etc. apart from the routine disclosures relating to issue, offer period, application, etc.

(g) Rating from at least two credit rating agencies is mandatory and all ratings including unaccepted ratings shall be disclosed in the offer documents. The rating rationale should include reference to the quality of the said pool and strengthen of cash flows, originator profile, payment structure, risks and concerns for investors, etc.

(h) The instrument shall be in dematerialized form.

(i) The draft offer document shall be filed with SEBI at least 15 days before opening of the issue.

(j) In case of public issuances listing will be mandatory. The instruments issued on private placement basis may also be listed subject to the compliance of simplified provisions of the regulations. The securitised debt instruments issued to the public or listed on a recognized stock exchange in accordance with these regulations shall be freely transferable.

(k) It has been proposed to introduce simplified and relaxed listing agreement. Listing of private placement is also permitted subject to the compliance of simplified provisions of the listing agreement and the regulations. The simplified listing agreement is under preparation.

ANNEXURE I

THE GAZETTE OF INDIA
EXTRAORDINARY
PART –III– SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, JUNE 6, 2008
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 6th June, 2008
SECURITIES AND EXCHANGE BOARD OF INDIA
(ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

LAD-NRO/GN/2008/13/127878- In exercise of the powers under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:-
CHAPTER I
PRELIMINARY

1. Short title, and commencement

(1) These Regulations may be called the Securities and Exchange Board of India

(2) They shall come into force on the date of their publication in the Official
Gazette.

2. Definitions

(1) In these Regulations, unless the context otherwise requires,

(a) “Act” means the Securities and Exchange Board of India Act, 1992 (15
of 1992);

(b) advertisement” includes notices, brochures, pamphlets, circulars, show
cards, catalogues, hoardings, placards, posters, insertions in
newspaper, pictures, films, cover pages of offer documents or any other
print medium, radio, television programmes through any electronic
medium;

(c) “Board” means the Securities and Exchange Board of India established
under provisions of Section 3 of Act;

(d) “book building” means a process undertaken prior to filing of prospectus
with the Registrar of Companies by means of circulation of a notice,
circular, advertisement or other document by which the demand for the
debt securities proposed to be issued by an issuer is elicited and the
price and quantity of such securities is assessed;

(e) “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;

(f) “designated stock exchange” means a stock exchange in which
securities of the issuer are listed or proposed to be listed and which is
chosen by the issuer for the purposes of a particular issue under these
regulations;

(g) “issuer” means any company, public sector undertaking or statutory
corporation which makes or proposes to make an issue of debt
securities in accordance with these regulations or which has its
securities listed on a recognized stock exchange or which seeks to list
its debt securities on a recognized stock exchange;

(h) “private placement” means an offer or invitation to less than fifty persons
to subscribe to the debt securities in terms of sub-section (3) of section
67 of the Companies Act, 1956 (1 of 1956);
(i) “public issue” means an offer or invitation by an issuer to public to subscribe to the debt securities which is not in the nature of a private placement;

(j) “offer document” means prospectus and includes any such document or advertisement whereby the subscription to debt securities are invited by the issuer from public;

(k) “recognised stock exchange” means any stock exchange which is recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

(l) “schedule” means a schedule annexed to these regulations;

(m) “specified” means specified by a general or special order or circular issued under the Act or these regulations.

(2) All other words and expressions used but not defined in these regulations, shall have the same meanings respectively assigned to them in the Act or the Companies Act, 1956 or Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996 or the Rules and the Regulations made thereunder or any statutory modification or reenactment thereto, unless the context requires otherwise.

3. Applicability

These regulations shall apply to-

(a) public issue of debt securities; and

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

CHAPTER II
ISSUE REQUIREMENTS FOR PUBLIC ISSUES

4. General Conditions

(1) No issuer shall make any public issue of debt securities if as on the date of filing of draft offer document and final offer document as provided in these regulations, the issuer or the person in control of the issuer, or its promoter, has 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.

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein: Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange:

Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;
Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document:

Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

(d) it has entered 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 thereunder.

(3) The issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 117B of the Companies Act, 1956 (1 of 1956) and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(5) The issuer shall not issue debt securities 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.

Explanation: For the purposes of sub-regulation (5), -

(a) two persons shall be deemed to be “part of the same group” if they belong to the same group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own “inter-connected undertakings” within the meaning of clause (g) of section 2 of that Act;

(b) the expression “under the same management” shall have the meaning derived from sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956).

5. Disclosures in the offer document

(1) The offer document shall contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a) the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations;

(c) additional disclosures as may be specified by the Board.
Explanation: For the purpose of this regulation, “material” means anything which is likely to impact an investors’ investment decision.

6. Filing of draft offer document

(1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(2) The draft offer document filed with the designated stock exchange shall be made public by posting 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.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.

(4) The lead merchant banker shall ensure that 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.

(5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

(8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.


(1) 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.

(2) The offer document shall be filed 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.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

8. Advertisements for Public issues

(1) The issuer shall make a advertisement in an 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.
(2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.

9. Abridged Prospectus and application forms

(1) The issuer and lead merchant banker shall ensure that:

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

(2) The issuer may provide the facility for subscription of application in electronic mode.

10. Electronic Issuances

An issuer proposing to issue debt securities to the public through the on-line system of the designated stock exchange shall comply with the relevant applicable requirements as may be specified by the Board.

11. Price Discovery through Book Building

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.

12. Minimum subscription

(1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.

(2) In the event of non receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.
13. Underwriting

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.


(1) 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.

(2) 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.

15. Trust Deed

(1) 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.

(2) The trust deed shall contain such clauses as may be prescribed under section 117A of the Companies Act, 1956 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(3) The trust deed shall not contain a clause which has the effect of –

(i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;

(ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board;

(iii) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

16. Debenture Redemption Reserve

(1) For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.

(2) Where the issuer has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.

17. Creation of security

(1) The proposal to create a charge or security, if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.

(2) The issuer shall give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are
already charged to secure a debt, the permissions or consent to create second or pari pasu charge on the assets of the issuer have been obtained from the earlier creditor.

(3) The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.

18. Redemption and Roll-over

(1) The issuer shall redeem the debt securities in terms of the offer document.

(2) 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.

(3) The notice referred to in sub-regulation (2) shall contain disclosures with regard to credit rating and rationale for roll-over.

(4) 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.

(5) As per regulation 18 of SEBI (Issue and Listing of Debt Securities Regulation), 2008. The debt securities issued can be rolled over subject to the following conditions:

(a) 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;

(b) 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);

(c) 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;

(d) adequate security shall be created or maintained in respect of such debt securities to be rolled-over.

(6) The issuer shall redeem the debt securities of all the debt securities holders, who have not given their positive consent to the roll-over.

CHAPTER III
LISTING OF DEBT SECURITIES

19. Mandatory listing

(1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956).

(2) The issuer shall 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.
20. Conditions for listing of debt securities issued on private placement basis

(1) An issuer may list its debt securities issued on private placement basis on a recognized stock exchange subject to the following conditions:

(a) the issuer has issued such debt securities in compliance with the provisions of the Companies Act, 1956, rules prescribed thereunder 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 provided in regulation 21 have been made.

(2) The issuer shall 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.

21. Disclosures in respect of Private Placements of Debt

(1) The issuer making a private placement of debt securities and seeking listing thereof on a recognized stock exchange shall make disclosures as specified in Schedule I of these Securities regulations accompanied by the latest Annual Report of the issuer.

(2) The disclosures as provided in sub-regulation (1) shall be made on the web sites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats.

22. Relaxation of strict enforcement of rule 19 of Securities Contracts (Regulation) Rules, 1957

In exercise of the powers conferred by sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, the Board hereby relaxes the strict enforcement of:

(a) sub-rules (1) and (3) of rule 19 the said rules in relation to listing of debt securities issued by way of a public issue or a private placement;

(b) clause (b) of sub-rule (2) of rule 19 of the said Rules in relation to listing of debt securities,

(i) issued by way of a private placement by any issuer;

(ii) issued to public by an infrastructure company, a Government company, a statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

Explanation: For the purposes of this regulation the terms ‘infrastructure company’ and ‘infrastructure sector’ shall have the same meaning as assigned to them under the SEBI (Disclosure and Investor Protection) Guidelines, 2000 or any successor thereof.
CHAPTER IV
CONDITIONS FOR CONTINUOUS LISTING AND TRADING OF DEBT SECURITIES

23. Continuous Listing Conditions

(1) All the issuers making public issues of debt securities or seeking listing of debt securities issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for debt securities.

(2) Every rating obtained by an issuer shall be periodically reviewed by the registered credit rating agency and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the debt securities are listed.

(3) Any change in rating shall be promptly disseminated to investors and prospective investors in such manner as the stock exchange where such securities are listed may determine from time to time.

(4) The issuer, the respective debenture trustees and stock exchanges shall disseminate all information and reports on debt securities including compliance reports filed by the issuers and the debenture trustees regarding the debt securities to the investors and the general public by placing them on their websites.

(5) Debenture trustee shall disclose the information to the investors and the general public by issuing a press release in any of the following events:

(a) default by issuer to pay interest on debt securities or redemption amount;
(b) failure to create a charge on the assets;
(c) revision of rating assigned to the debt securities.

(6) The information referred to in sub-regulation (5) shall also be placed on the websites, if any, of the debenture trustee, the issuer and the stock exchanges.

24. Trading of Debt securities

(1) The debt securities issued to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges subject to conditions specified by the Board.

(2) In case of trades of debt securities which have been made over the counter, such trades shall be reported on a recognized stock exchange having a nation wide trading terminal or such other platform as may be specified by the Board.

(3) The Board may specify conditions for reporting of trades on the recognized stock exchange or other platform referred to in sub-regulation (2).

CHAPTER V
OBLIGATIONS OF INTERMEDIARIES AND ISSUERS

25. Obligations of Debenture Trustee

(1) 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.

(2) 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.

(3) The debenture trustee shall ensure disclosure of all material events on an ongoing basis.

(4) The debenture trustees shall supervise the implementation of the conditions regarding creation of security for the debt securities and debenture redemption reserve.

26. Obligations of the Issuer, Lead Merchant Banker, etc.

(1) 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.

(2) 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 Schedule II of the Companies Act, 1956.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

CHAPTER VI
PROCEDURE FOR ACTION IN CASE OF VIOLATION OF REGULATIONS

27. Inspection by the Board

(1) Without prejudice to the provisions of sections 11 and 11C of the Act and section 209A of the Companies Act, the Board may suo-motu or upon information received by it, appoint one or more persons to undertake the inspection of the books
of account, records and documents of the issuer or merchant banker or any other intermediary associated with the public issue, disclosure or listing of debt securities, as governed under these regulations, for any of the purposes specified in sub-regulation (2).

(2) The purposes referred to in sub-regulation (1) may be as follows, namely:

(a) to verify whether the provisions of the Act, Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, the rules and regulations made thereunder in respect of issue of securities have been complied with;

(b) to verify whether the requirement in respect of issue of securities as specified in these regulations has been complied with;

(c) to verify whether the requirements of listing conditions and continuous disclosure requirement have been complied with;

(d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of securities governed under these regulations;

(e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations;

(f) to inquire whether any direction issued by the Board has been complied with.

(3) While undertaking an inspection under these regulations, the inspecting authority or the Board, as the case may be, shall follow the procedure specified by the Board for inspection of the intermediaries.

28. Directions by the Board

Without prejudice to the action under section 11, 11A, 11 B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may suo-motu or on receipt of information or on completion or pendency of inspection or investigation, in the interests of the securities market, issue or pass such directions as it deems fit including any or all of the following –

(a) directing the issuer to refund of the application monies to the applicants in a public issue;

(b) directing the persons concerned not to further deal in securities in any particular manner;

(c) directing the persons concerned not to access the securities market for a particular period;

(d) restraining the issuer or its promoters or directors from making further issues of securities;

(e) directing the person concerned to sell or divest the securities;

(f) directing the issuer or the depository not to give effect transfer or directing further freeze of transfer of securities;
(g) any other direction which Board may deem fit and proper in the circumstances of the case:

Provided that the Board shall, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued:

Provided further that if any ex-parte direction is required to be issued, the Board may give post decisional hearing to affected person.

29. Appeal

Any person aggrieved by an order of the Board or Adjudicating Officer under the Act or these regulations, may prefer an appeal to the Securities Appellate Tribunal in accordance with section 15T of the Act read with the Securities Appellate Tribunal (Procedure) Rules, 2000.

CHAPTER VII
MISCELLANEOUS

30. Delegation

The powers exercisable by the Board under these regulations shall also be exercisable by any officer of the Board to whom such powers are delegated by the Board.

31. Power of the Board to issue general order or circular

(1) The Board may by a general or special order or circular specify any conditions or requirement in respect of issue of debt securities.

(2) In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely:

(a) Electronic issuances and other issue procedures including the procedure for price discovery;

(b) Conditions governing trading, reporting, clearing and settlement of trade in debt securities;

(c) Listing conditions.

(3) If any special order is proposed to be issued to any particular issuer or intermediary on a specific issue, no such order shall be issued unless an opportunity to represent is given to the person affected by such order.

32. Power to remove difficulty

(1) In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications or grant relaxations from application requirement or conditions of these regulations, after recording reasons therefore.

(2) The Board may, on an application made by any issuer, relax any of the procedural requirements or conditions or strict enforcement of these regulations, if
the Board is satisfied that:
(a) requirement is procedural or technical in nature; or
(b) requirement causes undue hardship to a particular class of industry or issuers from accessing the securities market; or
(c) relaxation is in the interest of substantial number of investors; or
(d) such relaxation will be in the interest of securities market.

33. Repeal and Savings

(1) On and from the commencement of these regulations, the provisions of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 in so far as they relate to issue and listing of debt securities shall stand rescinded.

(2) Notwithstanding such rescission:-
(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;
(b) any application made to the Board under the said Guidelines and pending before it shall be deemed to have been made under the corresponding provisions of these regulations.

SCHEDULE I
[See Regulation 5 (2) (b)]

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 ___ Debt securities 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
— 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 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:

ANNEXURE II

Public Companies (Terms of issue of Debentures and of Raising of Loans with Option to Convert such Debentures or Loans into Shares) Rules, 1977

In exercise of the powers conferred by Section 642 read with clause (a) of the proviso to sub-clause (3) of Section 81 of the Companies Act, 1956 the Central Government hereby makes the following rules, namely:

1. Short title and commencement:
   (i) These rules may be called the Public Companies (Terms of and issues of Debentures and Raising of Loans with Option to Convert such Debentures or Loans into Shares) Rules, 1977.
   (ii) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:

   In these rules, unless the context otherwise requires:

   (a) ‘Act’ means the Companies Act, 1956;

   (b) “Public financial institution” means:
       (i) any of the financial institutions specified in Sub-section (1) of Section 4A of the Act;
       (ii) any of the other institutions specified by the Central Government to be public financial institutions under Sub-section (2) of the said Section 4A.

   (c) ‘Scheduled Bank’ means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934, but does not include co-operative banks, regional rural banks and foreign banks.*

3. Particulars regarding the terms of issue of debentures or the terms of raising of loans by a public company.

   The terms of issue of debentures or the terms of raising of loans by a public company which include a term providing for an option to convert such debentures or loans or any part thereof into shares in the company or to subscribe for shares in the company shall not require the approval of the Central Government under clause (a)
of the proviso to Sub-section (3) of Section 81 of the Act, if such terms conform to the following requirements, namely:

(a) the debentures or loans may be issued or raised either through private subscription or through the issue of a prospectus to the public;

(b) a public financial institution or scheduled bank either underwrites or subscribes to or sanctions the whole or part of the issue of debentures or the raising of loans, as the case may be;

(c) When and where necessary, the consent of the Central Government under the provisions of the Capital Issues (Control) Act, 1947 (20 of 1947), is obtained for the issue of shares consequent upon the conversion of debentures or loans into equity capital; [Consequent upon abolition of controller of capital issues and deletion of the CIC Act, 1947, and establishment of the Securities and Exchange Board of India under the Securities and Exchange Board of India, Act, 1992, the SEBI (Disclosure and Investor Protection) Guidelines should be followed and complied with for issuing shares consequent upon the conversion of debentures or loans into equity capital.

(d) Having regard to the financial position of the company the terms of the issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or loans, the capital of the company, its loans, liabilities, its reserves, its profits during the immediately preceding five years and the current market price of the shares of the company, as may be applicable, the public financial institutions or scheduled banks as the case may be, provide for the terms including the term providing for an option to convert such debentures or loans or any part thereof, into shares in the company or to subscribe for shares therein, either at par or at a premium not exceeding twenty-five percent of the face value of the shares.

ANNEXURE III

SPECIMEN DEBENTURE TRUST DEED

THIS TRUST DEED is made this_______________ day of_______________ 2002, between_______________ incorporated under the Companies Act, 1956 with its registered office at_______________ (hereinafter called "the Company") of the One Part, and Mr. _______________ and Mr. _______________ (hereinafter called "the Trustees") of the Other Part.

WHEREAS by Sub-Clause_______________ of Clause_______________ of its Memorandum of Association, the company is authorised to borrow or raise and secure the payment of money by the issue of debentures charged upon any of the company's property.

AND WHEREAS the Directors of the company being duly empowered in that behalf by Article No._______________ of the Articles of Association of the company have decided by a resolution passed in pursuance to Section 292 of the Companies Act, 1956 by the Board of directors in the meeting of the Board held on_______________ to raise a sum of Rs. _______________ by issue of_______________ First Mortgage Debentures of Rs. _______________ each, bearing interest at_______________ per cent per annum framed in accordance with
the forms set for in the First Schedule hereto and to secure the same by mortgaging with the trustees the properties described in the Second Schedule hereto.

AND WHEREAS the trustees above mentioned have consented to act as trustees for the debenture holders.

NOW THIS DEED WITNESSETH AND IT IS HEREBY MUTUALLY AGREED TO AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That in these presents unless there be something in the subject or context consistent therewith the expression following shall have the meaning hereafter mentioned, that is to say:
   (a) "Company" means _______________ Ltd.
   (b) "Trustees" means Mr. _______________ or any other trustees hereof for the time being.
   (c) "Debentures" means the debenture of the company in the form set out in the First Schedule hereto for the time being outstanding and entitled to the benefit of these presents.
   (d) "Debenture holders" means the holder for the time being of the debenture issued and entered in the register of debenture holders, mentioned on the conditions endorsed on the debentures on the holder of the debentures.
   (e) "Mortgaged premises" means the property belonging to the company described in the Second Schedule hereto and comprised in the security of the debenture holders.
   Words denoting the singular include the plural and vice versa unless the contrary appears from the context.
   (f) Act means the Companies Act, 1956 (I of 1956) and any modification or re-enactments thereof.

2. The debentures entitled to the benefit of these presents shall consist of a series of number of debentures of Rs._________ each, aggregating to Rs._________ in all to rank pari passu without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises.

3. The company hereby covenants with the trustees that the company will on the_________ day of_________ or such earlier day as the principal moneys shall become payable under clause 7 hereof pay the debenture holders the amounts secured by their debentures respectively, and in the meantime will pay interest to the debenture holders on the day of_________ 19____ in each year, the first payment of interest to be made on the day of_________ 19__.

4. All payments due by the company in respect of the Debentures issued hereunder whether of interest, principal or premium shall be made by cheque or warrant drawn by the company on its bankers and the company shall make at its own expenses all arrangements, with its Bankers as shall
be necessary to ensure that such cheques or warrants shall be encashable for the amount for which they are expressed without any deduction whatsoever at the office of its bankers in Delhi or such other places in the Union of India as the Trustees may require.

5. In consideration of the debentures hereby authorised aggregating to Rs._______________ the company, as the beneficial owner, hereby mortgages unto the trustees all the fixed plant and machinery and fixture at present existing at the company’s factory and described in part A of the Second Schedule hereto and which may be acquired by the company hereafter or fixed or erected hereafter at its factory for the benefit of the debentureholders and the property described in Part B of the Second Schedule as security for the due payment of principal moneys amounting to Rs._______________ in aggregate with interest and all other charges, expenses and other dues, the payment of which has been secured by a charge on the mortgaged premises under these presents. The charge hereby created on the property mentioned in Part A of the Second Schedule shall be the specified charge, while that on the property included in Part B of the Second Schedule shall rank as floating charges.

The trustees may, at any time, by notice in writing to the company, convert the said floating charge into a specific charge as regards any assets included in the Second Schedule and specified in the notice in case it is, in the opinion of the trustees in danger of being seized or sold under any sort of distress or execution levied or threatened or in any other case.

6. The company shall hold and enjoy all the mortgaged premises and carry on therein and therewith the business or any of the business mentioned in the Memorandum of Association of the company until the security hereby constituted shall become enforceable under the terms of these presents, in which case the trustees may, in their discretion, without any such request as next hereinafter mentioned and shall upon the request in writing of the holder or holders of_______________ at least of the debentures, enter upon or take possession of the mortgaged premises, or any of them and may in the like discretion and shall upon the like request sell, call in, collect and convert into money the same or any part thereof with full power to sell any of the same premises either together or in parcels, and either by public auction or private contract, and either for a lumpsum or for a sum payable by instalments or for a sum on account and a mortgage or charge for the balance and with full power upon every such sale to make any special or other stipulations as to title or evidence, or commencement of the title or otherwise which the trustees shall deem proper and with full power to modify or rescind or vary any contract for sale of the said premises or any part thereof and to re-sell the same without being responsible for any loss which may be occasioned thereby and with full power to compromise and effect compositions and for the purposes aforesaid or any of them to execute and do all such assurance and things as they shall think fit.

7. The principal moneys due to the debenture-holders under this Indenture shall become immediately payable and the security hereby constituted shall become enforceable within the meaning of these presents in each and any
of the following events:

(a) If the company makes default in the payment of any interest which ought to be paid in accordance with these presents.

(b) If the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so.

(c) If an order has been made by the Court of competent jurisdiction or a special resolution has been passed by the members of the company for winding up the company.

(d) If the company acts in contravention of clause__________ of its Articles of Association.

(e) If it is certified by a Chartered Accountants capable of being appointed as auditor under the Act, that the liabilities of the company exceed its assets.

(f) If 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.

(g) If in the opinion of the trustees the security of debenture holders is in jeopardy.

Provided that on the happening of the events specified in sub-clause (a), the permission given by clause 6 to hold and enjoy the mortgaged premises shall not be determined unless and until the trustees shall have first served on the__________ company a preliminary notice requiring the company to pay the interest in arrears and the company shall have neglected for the period of 30 days to comply with such notice.

8. As soon as the principal money shall become payable and the security enforceable under the last preceding clause 7 (and unless the time for payment and the security to be enforced has been expressly extended by the debenture holders), the trustees shall enter upon and take possession of the mortgaged premises and shall forthwith take steps to consult the debenture holders for the purpose of determining whether the business of the company may be allowed to be carried on or whether the mortgaged premises shall be realised by sale or otherwise.

9. Until the happening of some one of the events mentioned in Clause No. 7 of this Indenture, the trustees shall not be in any manner bound to interfere with the management of affairs of the said business except to the extent they may consider necessary for the preservation of the mortgaged premises or any part thereof.

10. If the debenture-holders resolve not to allow the business of the company to be carried on as mentioned in Clause 9 above but to realise the security, the trustees shall after giving a notice of 30 days in writing to the company, proceed to realise the mortgaged premises by sale or otherwise and, in doing so, shall conform to discretion, if any, given by debenture-holders.

11. The trustees shall apply the proceeds of such sale or other mode of
realisation in the following manner, that is to say, that the trustees shall pay:

(a) In the first place all costs, charges and expenses incurred in or about such sale or the performance or execution of trust or otherwise in relation to these presents or otherwise in respect of the security, including the remuneration of the trustees.

(b) Secondly, the interest for the time being due and owing on the debentures.

(c) Thirdly, the principal money then due and owing to debenture-holders.

(d) And lastly, the surplus, if any, to the company or its assignee.

Provided that if the said money shall be insufficient to pay all such interest or principal money in full, then the said moneys shall be paid rateably and without preference or priority among all debenture-holders of this series according to the amount of the face value of the debentures held by them, but all interest shall be paid before any principal money.

12. When all the principal moneys and secured by these presents shall have been paid and satisfied, the trustees shall forthwith, upon the request and at the cost of the company and on being paid all the costs, charges and expenses properly incurred by the trustees in relation to the security, reconvey, reassign, release and surrender the mortgaged premises or so much or the same as shall not have been sold or disposed of, unto the company or its assigns.

13. If the company shall, at any time during the continuance of the security, be desirous of selling, demising or otherwise disposing of or dealing with any part of the mortgaged premises otherwise than in respect of the floating charge the ordinary course of the company's business, the trustees may, if satisfied that the debenture-holders' security shall not be thereby prejudiced, assent to or concur in such sale, demise, disposal or other dealing, and may, if necessary, release the property in question from the trust under this deed on such terms as the trustees may determine.

14. The company hereby covenants with the trustees:

(i) That the moneys secured by this deed shall be the first mortgage and charge on the mortgaged premises and shall take precedence over all other moneys which may hereinafter be borrowed by the company against the security of the premises.

(ii) that the company shall maintain the mortgaged premises and any and every part thereof in a fit and efficient condition of repair and shall keep the said property duly insured against risk of fire, riot, civil and war risks with such insurers and in such manner as the trustees may determine from time to time and, in default, the trustees shall carry out repair and keep insured the mortgaged premises in the interest of the debenture-holders, and shall be entitled to the immediate payment of such expenditure in full.

15. (a) The company shall in each and every year during the continuance of
this security pay to the Trustees for the time being of these presents as
and by way of remuneration for their services as Trustees the sum of
Rs._____________ (Rupees_____________ only) per annum in
addition to all legal, travelling and other costs, charges and expenses
incurred by the Trustees on their officers, employees or agents in
connection with the execution of the trust hereof (including all the costs,
charges and expenses of and incidental to the approval and execution
of these presents) and all other documents effecting the security herein
and the first of such payments to be made proportionately for the period
and the said remuneration shall continue to be payable until the trust
hereof shall be finally discharged. The trustees acknowledge having
received from the company a sum of Rs.___________
(Rupees______________ only) as their fee for agreeing and accepting
the trusteeship of these presents.

(b) The company shall pay to the trustees all legal travelling and other
costs, charges and expenses incurred by them or their agents in
connection with execution of trusts of these presents including costs,
charges and expenses of and incidental to the approval and execution
of these presents and all other documents affecting the security herein
and will indemnify them against all actions, proceedings, costs, charges,
expenses, claims and demands whatsoever which may arise or be
brought or made against or incurred by them in respect of any matter or
thing done or permitted to be done without their wilful default in respect
of or in relation to the mortgaged premises.

16. The trustees hereof being a corporate body may, in the execution and
exercise of all or any of the trusts powers, authorities and discretions vested
in them by these presents act by responsible officers or a responsible officer
for the time being of the trustees and the trustees may also whenever they
think it expedient in the interests of the debenture-holders delegate by
power of attorney or otherwise to any such officer or officers all or any of the
trusts power, authorities, and discretions vested in them by these presents
and any such delegations may be made upon such terms and conditions
and subject to such regulations including power to sub-delegate as the
trustees may, in the interest of the debentureholders, think fit and the
trustees shall not be bound to supervise the proceedings of or be in any way
responsible for any loss incurred by reason of any misconduct or default or
any mistake, oversight, error of judgement, forgetfulness or want of
prudence on the part of any such delegate. The trustees, however shall be
liable for breach of trust, knowingly and intentionally committed by such
trustees or their delegate subject to the permission of Section 119 of the Act.

Note: This clause is suitable where the trustees is a bank. In case of
individual this be modified suitably.

17. The debenture holders may, by an ordinary resolution, remove the trustee or
trustees, or the trustee or trustees may, with the consent of the directors of
the company and of the majority of the debenture holders in writing resign or
retire from trusteeship.

18. In the event of death, bankruptcy, disability or resignation of any trustee or
trustees, another trustee or trustees shall be appointed who shall thereafter have and exercise all powers of the trustee or trustees under these presents. The power of appointing a new trustee or trustees shall be vested in the directors, but no such trustees shall be appointed by the company until his appointment has been approved by an ordinary resolution of the debenture holders.

19. The trustees may by agreement with the directors of the company modify the terms of the deed in any manner that may be necessary to meet any requirement or contingency, provided that the trustees are satisfied that such modifications are in the interests of the debenture holders.

20. If any debenture is proved to the satisfaction of the company to have been lost, the company shall issue a fresh debenture on payment of a fee of Rs.__________________ for each such debenture and on such indemnity as the directors may think fit.

21. The company hereby covenants with trustees that company will at all times during the continuance of the security (except as may be otherwise previously agreed in writing by the trustees).

(a) carry on and conduct its business in proper and efficient manner with due diligence and efficiency with sound financial standing and pay all rents, cesses on mortgage premises, and insured these properties against fire and natural calamities;

(b) to keep proper books of account as required under the Act and let them be open to inspection of trustees during business hours;

(c) to give trustees such information as he or they may require relating to business, mortgage property and the affairs of the company;

(d) not to effect any scheme of amalgamation, merger or reconstructions during the period of debenture or any part thereof remain outstanding;

(e) not to utilise any portion of the debentures for purposes other than those for which the same are issued;

(f) not to make any material changes in the existing management set up. Not to declare any dividend to the equity (or preference shareholders, if any) in any year until the company has paid or made satisfactory provision for payment of the instalments of principal (if it has become due) and interest due on the debentures;

(g) allow the debenture holders a right to appoint a nominee director on the Board of the company. The said director so appointed shall not be liable for rotation nor required to hold any qualification. Thus, if need be, the company shall take immediate steps to amend its Articles of Association accordingly.

22. The company hereby further covenants with the Trustees that the company shall duly perform and observe the obligations hereby imposed upon it by this deed.

IN WITNESS WHEREOF THE COMPANY has caused its Common Seal to be
The Company will during the continuance of this security pay to such registered holder(s) interest thereon at the rate of 15% per annum on the paid-up value of the debentures, (subject to deduction of Income-tax at the rate of the time being prescribed under the Income Tax Act, 1961, or any statutory modification or re-enactment thereof for the time being in force) by half-yearly payments on the________ and __________ every year in respect of the half-year period ending on that date.
the expiry of the__________________ year from the date of allotment at a
premium of_______% of the face value of the debentures, together with the
interest due as above stated.

3. During the continuance of the security under the Trust Deed, the Company
shall be entitled to make further issue of Debentures and/or raised further
term loans and/or avail of further Deferred Payment/Guarantee facilities
and/or other form of borrowings from time to time from any Financial
Institution/Bank/Body corporate or other person whomsoever by creation of
such prior or pari passu security on the mortgaged premises or any part
thereof without requiring any sanction from the holders of the Debentures
but subject to the consent of the Trustees.

4. The Debenture is issued subject to the provisions of the Trust Deed whereby
all remedies for the recovery of the principal moneys and interest secured by
the Debentures are vested into Trustees on behalf of the debenture-holders
and shall operate only according to the tenure thereof.

5. The provisions contained in Annexure 'C' of the Companies (Central
Government's) General Rules & Forms, 1956, as prevalent from time to time
shall apply to the meeting of the Debenture holders. The notices may be
served on the Debenture-holders either by the Company or by the Trustees
in accordance with the provisions of the Companies Act, 1956.

Given under the Common Seal of the Company this the__________________
day of__________________ Two thousand Two__________________.

Director___________________ Director_____________ Authorised Signatory.

DETAILS OF CERTIFICATE ISSUED BY THE REGISTRAR OF COMPANIES
Under Section 132 of the Companies Act, 1956.

(True copy of the Certificate issued by the Registrar)

Memoranda of Transfer to be effected by Separate Deeds

<table>
<thead>
<tr>
<th>Date of Transfer</th>
<th>Debenture Transfer No.</th>
<th>Name of Transferees</th>
<th>Account No.</th>
<th>Signature</th>
</tr>
</thead>
</table>

No Transfer of the Debenture comprised in this Certificate or of any portion
thereof can be registered unless accompanied by this Certificate.

THE SECOND SCHEDULE

DETAILS OF PROPERTIES CHARGED

PART A

PART B
LISTING AGREEMENT FOR DEBT SECURITIES

This agreement made at ___________ this ______________________ day of___________20_____by_____________________ an issuer duly formed and registered under ________ (mention relevant Act) and having its Registered office at___________________ (hereinafter called “the Issuer”) with the _________ (name of the Stock Exchange) (hereinafter called ‘the Exchange’).

WHEREAS the Issuer has filed with the Exchange an application for listing its debt securities that have been issued by way of an offer document prepared in compliance with Schedule I of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 annexed hereto and made a part thereof.

NOW THEREFORE in consideration of the Exchange having agreed to list the said securities, the Issuer hereby agrees to covenants stipulated in Part A or Part B (depending upon the status of listing of equity shares of the Issuer) of this Listing Agreement and agrees with the Exchange as follows :-

PART A
(Applicable where equity shares of the Issuer are listed)

1. The Issuer agrees that in addition to the covenants in this part of this agreement executed between the Issuer and the Exchange, the issuer shall be bound by the covenants provided in the equity Listing Agreement

Provided that covenants in the Equity Listing Agreement, which are not applicable to issue of debt securities in terms of the SEBI (Issue of Listing of Debt Securities) Regulations 2008, shall not be applicable in respect of this Listing Agreement.

Provided further that the issuer who has submitted any information to the Exchange in compliance with the disclosure requirements under the equity Listing Agreement, need not re-submit any such information under this Listing Agreement without prejudice to any power conferred on the Exchange or SEBI or any other authority under any law to seek any such information from the issuer.”

2. The Issuer agrees that it shall forward to the debenture trustee promptly, whether requested for the same has been made or not:

(a) a copy of the Statutory Auditors’ and Directors’ Annual Report, Balance Sheet and Profit & Loss Account and of all periodical and special reports at the same time as they are issued;

(b) a copy of all notices, resolutions and circulars relating to new issue of debt securities at the same time as they are sent to shareholders/holders of debt securities;

(c) a copy of all the notices, call letters, circulars, proceedings, etc. of the meetings of debt security holders at the same time as they are sent to the holders of debt securities or advertised in the media;
(d) a half-yearly certificate regarding maintenance of 100% asset cover in respect of listed debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results.

Provided that submission of such half yearly certificates is not applicable in cases where an issuer is a Bank or NBFC registered with RBI or where bonds are secured by a Government guarantee.

Explanation: Issuer may, subject to the consent of the debenture trustee, send the information stipulated in (a) to (d) in electronic form/ fax.

3. The Issuer agrees that it shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

4. The Issuer agrees that while submitting the half yearly/ annual results, it shall separately indicate the following line items after the item Earnings Per Share:
   (a) debt service coverage ratio; and
   (b) interest service coverage ratio.
   (To be computed as per applicable Annexure I, II or III of this agreement)
   (Not applicable for Bank or NBFC issuers registered with RBI)

5. In respect of its listed debt securities, the Issuer agrees that it shall maintain 100% asset cover sufficient to discharge the principal amount at all times for the debt securities issued and shall disclose to the exchange on half-yearly basis and in their annual financial statements the extent and nature of security created and maintained.

Provided that this requirement shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

6. The Issuer agrees to send to the Exchange for dissemination, along with the half yearly financial results, a half-yearly communication, counter signed by trustees, containing inter-alia the following information:
   (a) credit rating;
   (b) asset cover available;
   (c) debt-equity ratio;
   (d) previous due date for the payment of interest/principal and whether the same has been paid or not; and
   (e) next due date for the payment of interest/principal.

7. The Issuer agrees that it shall use the services of ECS (Electronic Clearing Service), Direct Credit, RTGS (Real Time Gross Settlement) or NEFT (National Electronic Funds Transfer) for payment of interest and redemption or repayment amounts as per applicable norms of the Reserve Bank of India.
8. The Issuer agrees that it shall notify the Exchange regarding expected
default in timely payment of interests or redemption or repayment amount or
both in respect of the debt securities as soon as the same becomes
apparent.

9. The Issuer agrees that credit to demat accounts of the allottees shall be
made within two working days from the date of allotment.

10. The Issuer agrees that (in case of listing of debt securities issued to public) -
(a) allotment of securities offered to public shall be made within 30 days of
the closure of the public issue;
(b) it shall pay interest @ 15% per annum if the allotment has not been
made and/or the refund orders have not been despatched to the
investors within 30 days from the date of closure of the issue.

11. The Issuer agrees that in the event equity shares of the Issuer are delisted
from the Exchange, the Issuer shall comply with provisions in PART B of this
agreement.

**PART B**
*(Applicable where equity shares of the Issuer are not listed on the Exchange)*

12. The Issuer agrees that:
(a) it will not forfeit unclaimed interest and such unclaimed interest shall be
transferred to the ‘Investor Education and Protection Fund’ set up as per
section 205C of the Companies Act, 1956; and
(b) unless the terms of issue provide otherwise, the Issuer shall not select
any of its listed securities for redemption otherwise than pro rata basis
or by lot and shall promptly furnish to Exchange.

13. The Issuer agrees that it shall forward to the debenture trustee promptly,
whether a request for the same has been made or not:
(a) a copy of the Statutory Auditors’ and Directors’ Annual Reports, Balance
Sheets and Profit & Loss Accounts and of all periodical and special
reports at the same time as they are issued;
(b) a copy of all notices, resolutions and circulars relating to new issue of
security at the same time as they are sent to shareholders/ holders of
debt securities;
(c) a copy of all the notices, call letters, circulars, proceedings, etc of the
meetings of debt security holders at the same time as they are sent to
the holders of debt securities or advertised in the media;
(d) a half-yearly certificate regarding maintenance of 100% asset cover in
respect of listed debt securities, by either a practicing company
secretary or a practicing chartered accountant, along with the half yearly
financial results.

Provided that submission of such half yearly certificates is not applicable in
cases where an issuer is a Bank or NBFC registered with RBI or where
bonds are secured by a Government guarantee.*
Explanation: Issuer may, subject to the consent of the debenture trustee, send the information stipulated in (a) to (d) in electronic form/ fax.

14. The Issuer agrees that it shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by debenture trustee.

15. The Issuer agrees to send to its holders of debt securities upon request a copy of the Director's Annual Report, Balance Sheet and Profit and Loss Account. The Issuer further agrees to file the same with the Exchange.

16. The Issuer agrees that it shall:

(a) In respect of its listed debt securities, the Issuer agrees that it shall maintain 100% asset cover sufficient to discharge the principal amount at all times for the debt securities issued and shall disclose to the exchange on half-yearly basis and in their annual financial statements, the extent and nature of security created and maintained.

Provided that this requirement shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

(b) ensure that services of ECS (Electronic Clearing Service), Direct Credit, RTGS (Real Time Gross Settlement) or NEFT (National Electronic Funds Transfer) are used for payment of interest and redemption or repayment amounts as per applicable norms of the Reserve Bank of India. The Issuer shall issue ‘payable-at-par’ warrants/ cheques for payment of interest and redemption amount;

(c) at all times abide by the requirements of the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and rules and the regulations made thereunder as applicable to further issuance, if any, of debt securities.

17. The Issuer agrees that credit to demat accounts of the allottees shall be made within two working days from the date of allotment.

18. The Issuer agrees that (in case of listing of debt securities issued to public):

(a) allotment of securities offered to public shall be made within 30 days of the closure of the public issue;

(b) it shall pay interest @ 15% per annum if the allotment has not been made and/or the refund orders have not been despatched to the investors within 30 days from the date of closure of the issue.

19. The Issuer undertakes to promptly notify to the Exchange:

(a) of any attachment or prohibitory orders restraining the Issuer from transferring debt securities from the account of the registered holders and furnish to the Exchange particulars of the numbers of securities so affected and the names of the registered holders and their demat account details;

(b) of any action which will result in the redemption, conversion, cancellation, retirement in whole or in part of any debt securities;
(c) of any action that would effect adversely payment of interest on debt securities;

(d) of any change in the form or nature of any of its debt securities that are listed on the Exchange or in the rights or privileges of the holders thereof and make an application for listing of the said securities as changed, if the Exchange so requires;

(e) of any other change that would affect the rights and obligations of the holders of debt securities;

(f) of any expected default in timely payment of interest or redemption or repayment amount or both in respect of the debt securities listed on the Exchange as soon as the same becomes apparent;

(g) of any other information not in the public domain necessary to enable the holders of the listed securities to clarify its position and to avoid the creation of a false market in such listed securities;

(h) the date of the meetings of its Board of Directors at which the recommendation or declaration of issue of debt securities or any other matter affecting the rights or interests of holders of debt securities is proposed to be taken up, at least two days in advance;

(i) of any changes in the General Character or nature of business / activities, disruption of operation due to natural calamity, revision in ratings and commencement of commercial production / commercial operations;

(j) of any events such as strikes and lock outs. which have a bearing on the interest payment/ principal repayment capacity;

(k) of any details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, Issuer and /or the assets along with its comments thereon, if any;

(l) delay/ default in Payment of Interest / Principal Amount for a period of more than three months from the due date;

(m) failure to create charge on the assets within the stipulated time period; and

(n) any other information having bearing on the operation/performance of the Issuer as well as price sensitive information.

19A  Statement of deviations in use of issue proceeds-

(a) The company agrees to furnish to the stock exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds of issue of debt securities from the objects stated in the offer document.

(b) The information mentioned in sub-clause (a) shall be furnished to the stock exchange along with the half-yearly financial results furnished under clause 29 to the stock exchange and shall also be published in the newspapers simultaneously with the half-yearly financial results."
20. The Issuer agrees to close transfers or fix a record date for purposes of payment of interest and payment of redemption or repayment amount or for such other purposes as the Exchange may agree to or require and to give to the Exchange the notice in advance of at least seven clear working days, or of as many days as the Exchange may from time to time reasonably prescribe, stating the dates of closure of transfers (or, when transfers are not to be closed, the date fixed for taking a record of its debt security holders) and specifying the purpose or purposes for which the transfers are to be closed (or the record is to be taken).

21. The Issuer agrees:
   (a) to intimate to the Exchange, of its intention to raise funds through new debt securities either through a public issue or on private placement basis (if it proposes to list such privately placed debt securities on the Exchange) prior to issuing such securities;
   (b) to make an application to the Exchange for the listing of such new issue of debt securities and to submit such provisional documents as required by the Exchange;
   (c) to ensure that any scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital to be presented to any Court or Tribunal does not in any way violate, override or circumscribe the provisions of securities laws or the Exchange requirements;
      Explanation: For the purposes of this sub-clause, ‘securities laws’ mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under section 55A thereof, the rules, regulations, guidelines etc. made under these Acts and the instant Listing Agreement.
   (d) that no material modification shall be made to the structure of the debenture in terms of coupon, conversion, redemption, or otherwise without prior approval of the Exchanges where the debt securities are listed. The issuer shall make an application to the exchange only after the approval of the Board of Directors and the debenture trustee.

21A The issuer agrees that it shall be a condition precedent for issuance of new debt securities that it shall deposit before the opening of subscription list and keep deposited with the Exchange (in cases where the debt securities are offered for subscription whether through an offer document or otherwise) an amount calculated at the rate of 1% (one per cent) of the amount of debt securities offered for subscription to the public, as the case may be for ensuring compliance by the company, within the prescribed or stipulated period, of all prevailing requirements of law and all prevailing listing requirements and conditions as mentioned in, and refundable or forfeitable in the manner stated in the Rules, Bye-laws and Regulations of the Exchange for the time being in force.

Provided that 50% (fifty per cent) of the above mentioned security deposit should be paid to the Exchange in cash. The balance amount can be provided for by way of a bank guarantee.
Provided further that the amount to be paid in cash is limited to Rs.3 crores.”

22. The Issuer agrees and undertakes to designate the Company Secretary or any other person as Compliance Officer who:

(a) shall be responsible for ensuring compliance with the regulatory provisions applicable to such issuance of debt securities and report the same at the meeting of Board of Directors/ Council of Issuer held subsequently;

(b) shall directly report to the Securities and Exchange Board of India, Stock Exchanges, Registrar of Companies, etc., and investors on the implementation of various clauses, rules, regulations and other directives of these authorities;

(c) shall be responsible for filing the information in the CorpFiling system/ Electronic Data Information Filing and Retrieval (EDIFAR) System or any other platform as may be mandated by SEBI from time to time. The compliance officer and the Issuer shall ensure the correctness and authenticity of the information filed in the system and that it is in conformity with applicable laws and terms of the Listing Agreement;

(d) shall monitor the designated e-mail ID of the grievance redressal division which shall be exclusively maintained for the purpose of registering complaints by investors. The company shall display the email ID and other relevant details prominently on their websites and in the various materials / pamphlets/ advertisement campaigns initiated by them for creating investor awareness.

23. The Issuer agrees that as soon as its debt securities are listed on the Exchange, it will pay to the Exchange fees as prescribed by the Exchange, and thereafter, so long as the securities continued to be listed on the Exchange, it will pay to the Exchange on or before April 30, in each year an Annual Listing Fee computed on the basis of the securities of the Issuer which are outstanding as on March 31 and listed on the Exchange. The Issuer also agrees that it shall pay the additional fee, at the time of making application for listing of debt securities arising out of further issue.

24. The Issuer agrees and undertakes, as a pre-condition for continued listing of securities, hereunder, to comply with any regulations, requirements, practices and procedures as may be laid down by the Exchange for the purpose of dematerialisation of securities hereunder in pursuance of the prevailing statutes and/or statutory regulations, to facilitate scripless trading.

25. In addition to the foregoing provisions and not in derogation thereof, the Issuer agrees to comply with the provisions of the relevant Acts including the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957 and guidelines issued by the Securities and Exchange Board of India and also such other guidelines as may be issued from time to time by the Government, Reserve Bank of India and/ or the Securities and Exchange Board of India.

26. The Issuer agrees to comply with such provisions as may be specified by the Exchange for clearing and settlement of transactions in debt securities.
27. The Issuer agrees to send the following to its holders of debt securities and also to the Exchange for dissemination:

(a) Notice of all meetings of the debt security holders specifically stating that the provisions for appointment of proxy as mentioned in section 176 of the Companies Act, 1956, shall be applicable for such meeting;

(b) A half-yearly communication, counter signed by debenture trustee, along with the half yearly financial results, containing, inter alia, following information:
   (i) credit rating;
   (ii) asset cover available;
   (iii) debt-equity ratio;
   (iv) previous due date for the payment of interest/ principal and whether the same has been paid or not; and
   (v) next due date for the payment of interest/ principal.

28. Annual Disclosure in Annual Report

A. With respect to Parent and Subsidiary companies

The Issuer shall make annual disclosures as under:

<table>
<thead>
<tr>
<th>Sl No</th>
<th>In the books of an Issue who is a</th>
<th>Disclosures of amounts at the year end and the maximum amount of loans/advances/investments outstanding during the year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parent</td>
<td>Loans and advances in the nature of loans to subsidiaries by name and amount.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Loans and advances in the nature of loans to associates by name and amount.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Loans and advances in the nature of loans where there is -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) no repayment schedule or repayment beyond seven years; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) no interest or interest below section 372A of Companies Act by name and amount.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Loans and advances in the nature of loans to firms/ companies in which directors are interested by name and amount.</td>
</tr>
<tr>
<td>2</td>
<td>Subsidiary</td>
<td>Same disclosures as applicable to the parent company in the accounts of subsidiary company</td>
</tr>
<tr>
<td>3</td>
<td>Parent</td>
<td>Investments by the loanee (borrower) in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.</td>
</tr>
</tbody>
</table>
Note:

(a) For the purpose of the above disclosures the terms "parent" and "subsidiary" shall have the same meaning as defined in the Accounting Standard on Consolidated Financial Statement (AS21) issued by ICAI.

(b) For the purpose of the above disclosures the terms ‘Associate’ and ‘Related Party’ shall have the same meaning as defined in the Accounting Standard on "Related Party Disclosures (AS 18)" issued by ICAI.

(c) For the purpose of above disclosures director’s interest shall have the same meaning as it has in section 299 of Companies Act, 1956.

B. Cash Flow Statement

The Issuer agrees to give cash flow statement, alongwith the Balance Sheet and Profit and Loss Account, which are prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India.

29. Half-yearly Financial Results

A. General

(a) The Issuer agrees to furnish un-audited or audited financial results on a half-yearly basis preferably in the format as per Annexure I to III within 45 days from the end of the half year to the Exchange. Un-audited financial results shall be accompanied by limited review report prepared by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) on the lines of the format given in Annexure IV or V, as applicable.

Explanation I: Banks and Non-Banking Financial Companies registered with the Reserve Bank of India may follow the format given in Annexure II. Explanation II: Manufacturing, trading and service companies, which have followed functional (secondary) classification of expenditure in the annual profit and loss account published in the most recent annual report or which proposed to follow such classification for the current financial year, may furnish the half-yearly financial results in the alternative format given in Annexure III. The alternative format can be used only if such format is used consistently from the first half-year of the financial year.

(b) Such half-yearly results should have been taken on record by the Board of Directors/ Council of Issuer as the case may be or its Sub Committee and signed by the Managing Director / Executive Director.

(c) The Issuer shall, within 48 hours of the conclusion of the Board/Council or its Sub Committee Meeting, publish the financial results in at least one English daily newspaper circulating in the whole or substantially the whole of India.

B. Results for the last half year

(a) The issuer agrees that if it intimates in advance to the Stock Exchange/s that it would publish/ furnish to the Exchanges its annual audited results within 60 days from the end of the financial year, un-audited financial results for the last half year accompanied by limited review report by the
auditors need not be published/ furnished to Exchanges. The audited results for the year shall be published/ furnished to the Exchanges in the same format as is applicable for half-yearly financial results.

(b) The issuer agrees that if it opts to submit un-audited financial results for the last half year accompanied by limited review report by the auditors, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the Board of Directors

C. Qualifications in Audit Reports

The issuer agrees that qualifications in Audit Reports that have a bearing on the interest payment/ redemption or principal repayment capacity of the company are appropriately and adequately addressed by the Board of Directors while publishing the accounts for the said period.

30. The Issuer agrees that it shall file the information, statements and reports etc in such manner and format and within such time as may be specified by SEBI or the stock exchange as may be applicable.

PROVIDED ALWAYS AND ISSUER HEREBY IRREVOCABLY AGREES AND DECLARES that the Issuer will not without the concurrence of Exchange and the previous permission in writing from SEBI withdraw its adherence to the clauses of this agreement for listing of its securities.

THE ISSUER FURTHER AGREES that it may apply for relaxation from strict application of the provisions of this agreement, in case it is unable to comply with any of the provisions of this agreement on account of provisions of the Act/ Rules or Regulations/ any other document under which it is formed or governed, or in order to avoid undue hardship to the security holders, in which case the Exchange may grant the relaxation sought for, with the prior approval of SEBI.

AND THE ISSUER FURTHER AGREES and declares that any of its securities listed on the Exchange shall remain on the list till the maturity or redemption of debt instrument or till the same are delisted as per the procedure laid down by SEBI and the Exchange in which case this agreement shall stand terminated AND THAT nothing herein contained shall restrict or be deemed to restrict the right of the Exchange to delist, suspend or remove from the list the said securities at any time and for any reason which the Exchange considers proper in accordance with the applicable legal provisions.

AND THE ISSUER FURTHER AGREES that if it fails to comply with the provisions of this agreement or relevant Securities Laws prescribed by the statutory and regulatory bodies, the Exchange has the right to take suitable action under applicable legal provisions.

Explanation: For this purpose, 'Securities Laws' mean the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under section 55A thereof, the rules, regulations, guidelines etc. made under these Acts and the Listing Agreement for debt securities.

IN WITNESS WHEREOF the Issuer has caused these presents to be executed and its Common Seal to be hereunto affixed as of the day and year first above written.
The common seal of __________________________ was hereunto affixed pursuant to a resolution passed at a meeting held on _______ day of _______

Signature of the Board of Directors/Council of the Issuer ___________________________ in the presence of ________________Signature

Annexure I to Listing Agreement for Debt Securities

Format for submitting the half yearly financial results by companies other than banks and NBFCs

(Rs. In Lacs)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>6 months ended (dd/mm/yyyy)</th>
<th>Corresponding 6 months ended in the previous year (dd/mm/yyyy)</th>
<th>Year to Date Figures for Current Period Ended (dd/mm/yyyy)</th>
<th>Previous accounting year ended (dd/mm/yyyy)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Audited/ Unaudited*</td>
<td>Audited/ Unaudited*</td>
<td>Audited / Unaudited*</td>
<td>Audited /Unaudited*</td>
</tr>
<tr>
<td>1.(a) Net Sales/Income from Operations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Other Operating Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Expenditure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a). Increase/decrease in stock in trade and work in progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b). Consumption of raw materials</td>
<td></td>
<td></td>
<td></td>
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<td>(c). Purchase of traded goods</td>
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<td>(d). Employees cost</td>
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<td>(e). Depreciation</td>
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<td>(f). Other expenditure</td>
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<td>(g). Total</td>
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<td>(Any item exceeding 10% of the total expenditure to be shown separately)</td>
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<td>3. Profit from Operations before Other Income, Interest and Exceptional Items (1–2)</td>
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<td>4. Other Income</td>
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<tr>
<td>5. Profit before Interest &amp; Exceptional Items (3+4)</td>
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<td>6. Interest</td>
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<td>7. Exceptional items</td>
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<tr>
<td>8. Profit (+)/ Loss (-) from Ordinary Activities before tax (3 - (4+5+6)</td>
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<td>9. Tax expense</td>
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<tr>
<td>10. Net Profit (+)/ Loss (-) from Ordinary Activities after tax (7-8)</td>
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</tbody>
</table>
11. Extraordinary Items (net of tax expense Rs. _________)  

12. Net Profit(+) / Loss(-) for the period (9-10)  

13. Paid-up equity share capital (Face Value of the Share shall be indicated)  

14. Paid up Debt Capital  

15. Reserves excluding Revaluation Reserves as per balance sheet of previous accounting year  

16. Debenture Redemption Reserve  

17. Earning Per Share (EPS)  

18. Debt Equity Ratio  

19. Debt Service Coverage Ratio  

20. Interest Service Coverage Ratio  

**Note:** Suggested definition for Coverage Ratios: 
- ISCR = Earnings before Interest and Tax / Interest Expense.  
- DSCR = Earnings before Interest and Tax / (Interest + Principal Repayment).  
Formula used for actual computation of the ratios shall be disclosed in the footnotes.  

**Annexure II to Listing Agreement for Debt Securities**  

**Format for submitting the half yearly financial results by banks and NBFCs**  

(Rs. In lacs)  

<table>
<thead>
<tr>
<th>Particulars</th>
<th>6 months Ended (dd/mm/yyyy)</th>
<th>Corresponding 6 months ended in the previous year (dd/mm/yyyy)</th>
<th>Year to Date Figures for Current Period Ended (dd/mm/yyyy)</th>
<th>Previous accounting year ended (dd/mm/yyyy)</th>
<th>Audited/ Unaudited*</th>
<th>Audited/ Unaudited*</th>
<th>Audited/ Unaudited*</th>
<th>Audited/ Unaudited*</th>
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</thead>
<tbody>
<tr>
<td>1. Interest earned (a)+(b)+(c)+(d)</td>
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<td>(a) Interest/disc. on advances/ bills</td>
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<td>(b) Income on investments</td>
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<td>(c) Interest on balances with Reserve Bank of India and other inter bank funds</td>
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<td>(d) Others</td>
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<td>2. Other Income</td>
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<td>3. Total Income (1+2)</td>
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<td>4. Interest Expended</td>
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<td>5. Operating Expenses (i)+(ii)</td>
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<tr>
<td>(i) Employees cost</td>
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<td>(ii) Other operating expenses (All items exceeding 10% of the total expenditure excluding interest expenditure may be shown separately)</td>
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<td>6. Total Expenditure ((4+5) excluding provisions and contingencies)</td>
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<td>7. Operating Profit before Provisions and Contingencies (3-6)</td>
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<td>8. Provisions (other than tax) and Contingencies</td>
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<td>9. Exceptional Items</td>
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<tr>
<td>10. Profit (+)/Loss (-) from Ordinary Activities before tax (7-8-9)</td>
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<td>11. Tax expense</td>
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<td>12. Net Profit(+)/ Loss(-) from Ordinary Activities after tax (10-11)</td>
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<tr>
<td>13. Extraordinary items (net of tax expense)</td>
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<tr>
<td>14. Net Profit (+)/ Loss (-) for the period (12-13)</td>
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<td>15. Paid-up equity share capital (Face Value of the Share shall be indicated)</td>
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<td>16. Reserves excluding Revaluation Reserves (as per balance sheet of previous accounting year)</td>
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<td>17. Analytical Ratios</td>
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<td>(i) Capital Adequacy Ratio</td>
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<td>(ii) Earnings Per Share (EPS)</td>
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<td>18. NPA Ratios</td>
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<tr>
<td>a) Gross/Net NPA</td>
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<tr>
<td>b) % of Gross/Net NPA</td>
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<tr>
<td>c) Return on Assets</td>
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</tbody>
</table>

* strike off whichever is not applicable

**Notes** (as per RBI requirements)

1. Employee cost under Operating expenses to include all forms of consideration given by the bank in Exchange for services rendered by employees. It should also include provisions for post employment benefits such as gratuity, pension, other retirement benefits, etc.

2. Extraordinary items as defined in Accounting Standard 5 as income or expenses that arise from the ordinary activities of the enterprise and therefore, are not expected to recur frequently or regularly.
Annexure III to Listing Agreement for Debt Securities

Format for submitting the half yearly financial results by companies other than Banks and NBFCs eligible for alternative format

(Rs. lakh)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>3 months ended (dd/mm/yyyy)</th>
<th>Corresponding 3 months ended in the previous year (dd/mm/yyyy)</th>
<th>Year to Date Figures for Current Period Ended (dd/mm/yyyy)</th>
<th>Year to Date Figures for the previous year ended (dd/mm/yyyy)</th>
<th>Previous accountin g year ended (dd/mm/yyyy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Net Income from Sales and Services</td>
<td>Audited/Unaudited</td>
<td>Audited/Unaudited</td>
<td>Audited / Unaudited</td>
<td>Audited/Unaudited</td>
<td>Audited/Unaudited*</td>
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<tr>
<td>2. Cost of sales/services</td>
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<tr>
<td>(a) Increase/decrease in stock in trade and work in progress</td>
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<tr>
<td>(b) Consumption of raw materials</td>
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<tr>
<td>(c) Purchase of traded goods</td>
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<tr>
<td>(d) Other expenditure</td>
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<tr>
<td>3 Gross Profit (1-2)</td>
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<td>4 General Administrative Expenses</td>
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<td>5 Selling and Distribution Expenses</td>
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<td>6. Depreciation</td>
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<td>7 Operating Profit before interest (3)-(4+5+6)</td>
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<tr>
<td>8 Interest</td>
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<tr>
<td>9 Exceptional Items</td>
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<tr>
<td>10 Operating Profit after interest and Exceptional Items (7-8-9)</td>
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<tr>
<td>11 Other Income</td>
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<tr>
<td>12 Profit (+)/Loss (-) from Ordinary Activities before tax (10-11)</td>
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<tr>
<td>13 Tax Expenses</td>
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<tr>
<td>14 Net Profit (+)/ Loss (-) from Ordinary Activities after tax (12-13)</td>
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<td>15 Extraordinary items (net of tax expense)</td>
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<td>16 Profit (+)/Loss(-) for the period(14-15)</td>
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<td>17. Paid-up equity share capital (Face Value of the Share shall be indicated)</td>
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<tr>
<td><strong>18. Paid up Debt Capital</strong></td>
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</tbody>
</table>
| **19. Reserves excluding Revaluation**
| Reserve as per balance sheet of
| previous accounting year |   |   |   |
| **20. Debenture Redemption Reserve** |   |   |   |
| **21. Earning Per Share (EPS)** |   |   |   |
| **22. Debt Equity Ratio** |   |   |   |
| **23. Debt Service Coverage Ratio** |   |   |   |
| **24. Interest Service Coverage Ratio** |   |   |   |

* Strike of whichever is not applicable

**Notes:**

1. Total expenditure incurred on (1) Employee Cost or (2) Any item of expenditure which exceeds 10% of the total expenditure, shall be given as a note.

2. Suggested definition for Coverage Ratios: ISCR = Earnings before Interest and Tax / Interest Expense. DSCR = Earnings before Interest and Tax / (Interest + Principal Repayment). Formula used for actual computation of the ratios shall be disclosed in the footnotes.


**Annexure IV to Listing Agreement for Debt Securities**

**Format for the limited review report for companies other than banks and NBFCs**

We have reviewed the accompanying statement of unaudited financial results of ________ (Name of the Company) for the period ended ______. This statement is the responsibility of the Company’s management and has been approved by the Board of Directors/ committee of Board of Directors. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Standard on Review Engagement (SRE) 2400, Engagements to Review Financial Statements issued by the Institute of Chartered Accountants of India. This standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit and accordingly, we do not express an audit opinion.

Based on our review conducted as above, nothing has come to our attention that causes us to believe that the accompanying statement of unaudited financial results prepared in accordance with applicable accounting standards and other recognised accounting practices and policies has not disclosed the information required to be disclosed in terms of Clause 29 of the Listing Agreement for debt securities including the manner in which it is to be disclosed, or that it contains any material misstatement.

For XYZ & Co.
Chartered Accountants
Annexure V to Listing Agreement for Debt Securities

Format for the limited review report for Banks and NBFCs

Review Report to ......................

We have reviewed the accompanying statement of unaudited financial results of __________ (Name of the Company) for the period ended ___. This statement is the responsibility of the Company’s Management and has been approved by the Board of Directors/committee of Board of Directors. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Standard on Review Engagement (SRE) 2400, Engagements to Review Financial Statements issued by the Institute of Chartered Accountants of India. This standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit and accordingly, we do not express an audit opinion.

In the conduct of our Review we have relied on the review reports in respect of non-performing assets received from concurrent auditors of ________ branches, inspection teams of the bank of ________ branches and other firms of auditors of ________ branches specifically appointed for this purpose. These review reports cover ________ per cent. of the advances portfolio of the bank. Apart from these review reports, in the conduct of our review, we have also relied upon various returns received from the branches of the bank.

Based on our review conducted as above, nothing has come to our attention that causes us to believe that the accompanying statement of unaudited financial results prepared in accordance with applicable accounting standards and other recognized accounting practices and policies has not disclosed the information required to be disclosed in terms of Clause 29 of the Listing Agreement for debt securities including the manner in which it is to be disclosed, or that it contains any material misstatement or that it has not been prepared in accordance with the relevant prudential norms.

---

1 The Accounting Standards notified pursuant to the Companies (Accounting Standards) Rules, 2006 and/or Accounting Standards issued by Institute of Chartered Accountants of India.
2 Partner or proprietor, as the case may be.
issued by the Reserve Bank of India in respect of income recognition, asset
classification, provisioning and other related matters."

For XYZ & Co.
Chartered Accountants

Signature
(Name of the member signing the audit report)
(Designation)
(Membership Number)

Place of signature
Date:

3 The Accounting Standards notified pursuant to the Companies (Accounting Standards) Rules, 2006
   and/or Accounting Standards issued by Institute of Chartered Accountants of India.

4 Partner or proprietor, as the case may be.

---

**LESSON ROUND UP**

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

- Based on convertibility, debentures can be classified under three categories, viz.
  Fully Convertible Debentures (FCDs); Non Convertible Debentures (NCDs); Partly
  Convertible Debentures (PCDs).

- A debenture trust deed is one of several instruments required to be executed to
  secure redemption of debentures and payment of interest on due dates. The trust
  deed should be in the form and be executed within such period as may be
  prescribed. Besides, the SEBI (Debenture Trustees) Rules 1993 and the SEBI
  (Debenture Trustees) Regulations 1993 are applicable to the listed companies.

- Section 117C of the Act requires every company to create a Debenture
  Redemption Reserve to which adequate amount shall be credited out of its profits
  every year until such debentures are redeemed and shall utilize the same
  exclusively for redemption of a particular set or series of debentures only.

- In order to facilitate development of a vibrant primary market for corporate bonds in
  India, SEBI has notified on 19th June 2008 Regulations for Issue and Listing of
  Debt Securities to provide for simplified regulatory framework for issuance and
  listing of non-convertible debt securities (excluding bonds issued by Governments)
  issued by any company, public sector undertaking or statutory corporations. The
  regulations cover issuance and listing of debt securities which are not convertible,
  either in whole or in part into equity instruments.

- SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 deals with
  respect to Issue of fully/ partly convertible debentures.
In accordance with Regulation 18 of the SEBI (Issue And Listing Of Debt Securities) Regulations, 2008, the Company is required to redeem the debt securities in terms of the offer document.

Under Section 121 of the Act, the company has powers to keep alive the redeemable debentures either by re-issuing the same debentures or by issuing fresh debentures in their place.

Chapter V of the SEBI (Issue And Listing Of Debt Securities) Regulations, 2008 deals with obligations of the Debenture trustees, Issuer and Lead Merchant Banker.

Chapter VI of the regulations deals with the remedy in case of violation of the regulations. It specifically deals with power of SEBI to undertake inspection and issue directions.

SEBI has notified SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 on May 26, 2008 taking into account the market needs, cost of the transactions, competition policy, the professional expertise of credit rating agencies, disclosures and obligations of the parties involved in the transaction and the interest of investors in such instruments.

**SELF-TEST QUESTIONS**

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Explain the term ‘Debenture’. What are the kinds of Debentures?
2. Write down the contents of debenture trust deed.
3. Write down the procedure for issue of debentures.
4. What are the obligations of debenture trustee.
5. What are the powers of SEBI to undertake inspection and to issue directions.
6. Prepare the format for due diligence certificate at the time of filing the offer document with Registrar of Companies and prior to opening of the issue.
STUDY VII
MEMBERSHIP AND TRANSFER/TRANSMISSION OF SHARES

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. After going through this chapter, you will be able to understand:

- Who are members?
- Modes of acquiring membership
- Membership and voting rights of producer company
- Procedure for cessation of membership
- Dispute regarding title of shares and its resolution
- Rectification of register of members
- Procedure for variation as well as cancellation of the variation of Members’ rights
- Procedure for registration of transfer as well as transmission of shares and to nominee
- Transposition of names
- Procedure for a company to have its shares dematerialized and rematerialisation of shares

1. WHO ARE MEMBERS

A company is composed of members, though it has its own entity distinct from 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 favour 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 yet he 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 150 of the Companies Act, 1956.

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 the 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.

**Definition of ‘Member’**

According to Section 41 of the Companies Act, 1956:

1. 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.

2. 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.

   Accordingly, there are two important elements which must be present
   before a person can acquire membership of a company viz., (i) agreement
   to become a member; and (ii) entry of the name of the person, in the
   register of members of the company.

3. Every person holding equity share capital of a company and whose name is
   entered as beneficial owner in the records of the depository shall be
   deemed to be a member of the concerned company.

   Section 2(27) excludes a bearer of a share-warrant of the company to be a
   member.

   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 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.”

   Section 581A(d) defines a member of Producer Company as a person or
   producer institution (whether incorporated or not) admitted as a member of a
   Producer company and who retains the qualification necessary for continuance as
   such.

   Two essential conditions have to be satisfied to constitute a person a member:
   (1) an agreement in writing to become a member; and
   (2) an entry on the register.
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 Comp Cas 662 (Ker)

It is, therefore, 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).

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 Comp Cas 976 (CLB).

2. MODES OF ACQUIRING MEMBERSHIP

A person may acquire the membership of a company:

(a) by subscribing to the memorandum of association,
(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.

Procedure for Becoming a Member through above stated modes

(i) By subscribing to the Memorandum of Association

(a) The selection of subscribers is made 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 has 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.
(ii) Making an Application for allotment of shares

(a) 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.

(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.

(For procedure for allotment of shares see Study V)

(iii) 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.

(iv) **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.

**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.

(v) **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 himself 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.
3. MEMBERSHIP AND VOTING RIGHTS OF PRODUCER COMPANY

In case of a Producer Company, the membership and voting rights shall be as follows:

(1) Where membership of a Producer Company consist solely of individual members, the voting rights shall be based on a single vote for every member, irrespective of his shareholding or patronage of the Producer company.

(2) Where the membership of Producer Company consists solely of Producer Institutions, the voting rights of such Producer Institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles. However, during the first year of its registration, the voting rights in a Producer Company shall be determined on the basis of shareholding by such Producer Institutions.

(3) Where the membership consists of individuals and Producer Institutions, the voting rights shall be computed on the basis of a single vote for every member.

(4) The articles of Producer company may provide for the conditions, subject to which a member may continue to retain his membership, and the manner in which voting rights shall be exercised by the members.

(5) The Articles may however, authorise the Producer company to restrict the voting rights to active members in any special or general meeting. Active members for this purpose is a member fulfilling the quantum and period of patronage of Producer company.

(6) No person, who has any business interest which conflicts with the business of Producer company, shall become a member of that company and if subsequently a member acquires any business interest which is in conflict with the business of the Producer company, he shall cease to be a member. (Section 581D)

4. PROCEDURE FOR CESSATION OF MEMBERSHIP

A member ceases to be a member of a company soon after his name is removed from the register of members or register of beneficial owners. Some of the methods by which Cessation of membership may occur are as follows:

(i) The member transfers his shares by sale or otherwise

(a) 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.

(b) 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.

An interesting case on cessation of member is given here.

In *Sunil Dang v. Indian Newspaper Society* [(2008) 88 SCL 121 (Del)], the brief facts of the case are that the defendant was a section 25 company. The plaintiff had two memberships of the defendant company. The defendant had treated both the memberships of the plaintiff to have ceased on the ground that the plaintiff had not paid his subscription. The plaintiff filed instant suit for permanent and mandatory injunction against the defendant’s order ceasing his membership contending that he had paid the subscription within time, hence, there was no reason for the defendant to treat his membership to have come to an end automatically, and that even if it was so, since he had, in accordance with the Articles of Association of the company, showed is willingness to pay subscription along with an addition sum, he could not be denied the relief of restoration of his membership.

The Injunction was granted. The reasons stated are as under:

The defendant had fairly admitted that unlike articles/rules of the several bodies which provide for the subscription/membership charges to be paid/deposited by a cut-off date to enable participation in the elections, there was no such rule/article of the defendant. Article 8 provided for the subscription of the ensuing year to be paid by 31st March and upon failure to do so, up to 30 June, in spite of three reminders, last of which should be by registered post, the membership was to cease automatically with effect from 1st July, Article 8(e) provided for the payment of the expenses of the society leviable, as decided by committee, besides the payment of subscription and admission fee.

The contention of the plaintiff was correct that the use of the expression ‘may’ in the article did not intend to vest any discretion in the defendant to readmit or not to readmit a member whose membership had ceased under Article 8(d) or 8(e) was applicable, also such other expenses which the Executive Committee might have levied. There were no expenses which the Executive Committee might have levied. There was no power vested in the defendant under its Articles to refuse or to deny readmission to the member tendering the subscription, readmission fee and other incidental expenses if any. Under Article 10 it was a right of member to have his membership restored on complying with the conditions thereof.

(ii) *Forfeiture of the 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 non-payment of the due amount by the member after complying with the relevant procedure in this regard. The procedure for forfeiture, in brief is as under:

(a) The Company sends a registered notice to the member who has not paid the allotment/call money on the shares held by him, to the effect that if the
payment of the due amount is not made on or before the last date as per
the notice, the shares shall be liable to be forfeited.
(b) If the member does not comply with the notice of the company, the
company in a meeting of its Board of directors can forfeit the shares for non
payment of allotment/call money and cancel the share certificate(s).
(c) The company shall inform the member whose shares are forfeited and
request him to return the share certificate(s) which have been cancelled.
(d) The company shall inform the stock exchanges where the shares of the
company are listed.
(e) On forfeiture, the member ceases to be a member.
(Detailed procedure for forfeiture of shares is given in Study Lesson V)

(iii) Sale of shares under lien

If 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.

The procedure shall be the same as stated in case of forfeiture of 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
herein above in case of transmission of shares.

(v) Conversion of shares into share warrants/stocks

If a company subject to its Articles of Association and the provisions of the
Sections 114 and 115 of the Companies Act 1956 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.

(Detailed procedure for conversion of shares into Stock/warrants is given in
Study Lesson V)

(vi) Buy back of shares

If a company, subject to its Articles of Association and the provisions of
Section 77A of the Companies Act, 1956, 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.
Procedure for buy-back of shares is as under:

1. According to Section 77A(2), buy-back of shares or other specified
securities by the company, is allowed if articles authorise such buy-back and a special resolution has been passed in general meeting authorising such buy-back. Therefore articles should be checked before considering the buy-back of shares. If they do not authorise then steps should be taken to alter the articles accordingly. Proviso to Section 77A2(b) provides that no special resolution is required to be passed in general meeting if the buy-back is authorised by the Board by passing a Board resolution and the buy-back is upto ten per cent of the total paid up equity capital and free reserves of the company. However, no offer of buy-back shall be made within a period of three hundred and sixty five days reckoned from the preceding offer of buy back, if any.

2. Decide whether the buy-back of shares or specified securities will be made from the existing security holders on a proportionate basis or from the open market or from odd lots or by purchasing the securities issued to employees of the company pursuant to scheme of stock option or sweat equity.

3. Make sure that buy-back is out of free reserves or the securities premium account or the proceeds of any shares or other specified securities of the company. However, buy-back should not be made out of proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

4. It should be kept in mind that the amount of buy-back proposed to be made is or less than 25% of the total paid-up capital and free reserves of the company and the buy-back of equity shares in any financial year does not exceed 25% of the total paid-up equity capital in that financial year.

5. It should be ensured that the ratio of debt including all amounts of unsecured and secured debts owned by the company is not more than twice the capital and its free-reserves after such buy-back except otherwise a higher ratio is prescribed by the Central Government for a class or classes of companies and all the shares or other specified securities which are to be bought back are all fully paid-up. The debt equity ratio of listed Housing Finance Company shall be such as specified by the National Housing Bank, being the regulator, in consultation with Central Government.

6. Prepare the draft of the notice of the general meeting and also the draft of the explanatory statement to accompany the notice.

7. The explanatory statement should contain the following:
   (a) full and complete disclosure of all material facts,
   (b) the necessity for the buy-back,
   (c) the class of security intended to be purchased under the buy-back,
   (d) the time limit for completion of buy-back (not exceeding 12 months from the date of passing of the special resolution).

8. Convene a Board meeting to decide about the details of the proposed buy-
back and to fix up the date, time, place and agenda for convening a general meeting and to pass a special resolution. Get the draft notice of the general meeting and the draft explanatory statement approved at the same meeting. (For Specimen of Board Resolution, please see Annexure I)

9. Hold the general meeting after issuing notices in writing at least twenty-one days before the date of meeting along with the explanatory statement and pass the special resolution approving the buy-back of shares or other specified securities. (For Specimen of General Meeting, Notice & Explanatory, please see Annexure II)

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

11. File with ROC the special resolution in e-Form No. 23 within thirty days from the date of passing the resolution.

12. After passing the board or special resolution but before making buy-back, file with the Registrar of Companies and also with SEBI, if the Company is a listed company, a declaration of solvency in prescribed form i.e. Form No. 4A to the effect that the Board has made a full inquiry into the affairs of the company as result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board and signed by atleast two directors of the company, one of whom shall be the managing director, if there is one. (For specimen of Form No. 4A, please see Annexure III)

In the e-filing scenario, Form 4A is to be filed as an attachment of e-Form 62. (For specimen of e-Form 62, please see Part B of this study)

13. Extinguish and physically destroy the securities so bought back within seven days of the last date of completion of buy-back.

14. Complete the buy-back proceedings within 12 months from the date of passing of the special resolution.

15. No further issue of shares as provided in Section 77A(8) shall be made within a period of six months from the completion of buy-back.

16. Maintain a register of securities so bought back, the consideration paid for the securities bought back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars in Form No. 4B. Secretarial Standards – 4 prescribed by the Secretarial Standards Board of the Institute of Company Secretaries of India has recommended certain additional information to be inserted in the Register of Securities bought back which may be included as a measure of good corporate governance. (For specimen of Form No. 4B, please see Annexure IV)

17. File with the Registrar of Companies and the SEBI, a return containing such particulars relating to buy-back within 30 days of completion of the buy-back as given in e-Form No. 4C. (For specimen of e-Form No. 4C, please see Part B of this study)
18. Further, if the shares of company are listed with the Recognised Stock Exchange then SEBI (Buy-back of Securities) Regulations, 1998 should be complied with otherwise Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999 should be complied with.

(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 402 of the Companies Act, 1956, such member ceases to be a member of such company on removal of his name and placing of others’ name in the register of member/beneficial owner.

(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.

(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.

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.

5. DISPUTE REGARDING TITLE OF SHARES AND ITS RESOLUTION

Under section 41, 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. [Murshidabad Loan Office Ltd. v. Satish Chandra Chakravarty (1943) 13 Comp Cas 159 (Cal): AIR 1943 Cal 440].

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 CLB. Upon the appellant getting the title established through the court, the appeal filed under section 111 was allowed and the company 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

* It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
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 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 Comp Cas 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]

6. RECTIFICATION OF REGISTER OF MEMBERS

Private company may by its Articles or otherwise refuse to register the transfer or transmission of shares. However in case of a public company, shares are freely transferable and it can not refuse transfer of shares. In case of refusal by public limited company, the Company Law Board is empowered to direct rectification of register of members to give effect to the transfer. Section 111A(3) of the Companies Act, 1956 provides that the Company Law Board may, on an application made by a depository, company, participant or investor or the SEBI, if the transfer of shares or debentures is in contravention of any of the provisions of the SEBI Act, 1992, or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.

(For specimen of Register of Members, please see Annexure V)

Procedure for obtaining a direction from the CLB for the rectification of the Register of Members

1. In case a public company refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer is delivered to the company, make an appeal by way of petition which is to be prepared in Form No. 1 of the Company Law Board Regulations, 1991.

(For specimen of Form No. 1, please see Annexure VI)

2. The aforesaid petition should be addressed to the Bench Officer, Company Law Board, Northern Region Bench at New Delhi or Eastern Region Bench,

* It shall be substituted by NCLT after the commencement of Companies (Second Amendment) Act, 2002.
* It shall be substituted by NCLT after the commencement of Companies (Second Amendment) Act, 2002.
at Calcutta or Western Region Bench at Mumbai or Southern Region Bench at Chennai as the case may be depending upon the jurisdiction of the particular Bench on the situation of the Registered office of the company whose shares are involved.

3. The petition should enclose the following:
   (i) Documentary evidence, if any, in support of the statements made in the petition, including a copy of the letter written by the petitioner to the company in this regard and the company’s letter of the refusal.
   (ii) Copies of the documents returned by the company.
   (iii) Affidavit verifying the aforesaid petition which should be prepared on a non-judicial stamp paper of the requisite value prevalent in the State and should be either notarised by the Notary Public or sworn before the Oath Commissioner.
   (iv) Demand draft evidencing payment of the fee of Rs. 500/-. 
   (v) Memorandum of Appearance in Form No. 5 of the Company Law Board Regulations, 1991 with certified true copy of the Board Resolutions or executed Vakalatnama as the case may be.

   (For specimen of Form No. 5, please see Annexure VII)

4. A court-fee stamp of the requisite value shall be affixed on the petition before submission.

5. Be sure that the aforesaid petition is presented in original and two extra copies thereof through the authorised representative of the company in person to the office of the Bench or sent by registered post with acknowledgment due addressed to the Bench Officer of the Bench concerned.

6. The filling fee of Rs. 500/- shall be paid by way of demand draft drawn in favour of Pay and Accounts Officer, Department of Company Affairs, New Delhi or Calcutta or Mumbai or Chennai as the case may be depending on the Bench on which it will be filed and payable at New Delhi, Calcutta or Mumbai or Chennai.

7. Once an appeal has been disposed of by the CLB, there is no further right of appeal or representation. The only remedy thereafter lies in filling an appeal to the High Court within sixty days from the date of communication of the decision of the CLB to the petitioners on any question of law arising out of such order.

7. EXPULSION OF A MEMBER

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, the powers of the Central Government as an appellate authority under Section 111 of the Act and the powers of the Court under Sections 107, 395 and 397 of the Companies Act, 1956.

According to Section 9 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 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).

8. VARIATION OF MEMBERS’ RIGHTS

The members’ rights are determined by the Companies Act, 1956, Memorandum of Association, Articles of Association of the company and the terms of issue of shares. Members’ rights relate to payment of dividend, voting at the members meetings and return of capital and participate in the surplus assets on winding up of the company.

Pursuant to Section 86 of the Act as amended by the Companies (Amendment) Act, 2000, the equity share capital may be issued with voting rights or with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed.

Under Section 106 of the Act, the rights attached to the shares of any class can be varied with the consent in writing of the holders of not less than 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 issued shares of that class; provided that it is authorised by the Memorandum of Association & Articles of Association or in 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.

Procedure for Variation of Members’ Rights

1. Check the Memorandum and Articles of Association of the company, whether any of them authorises 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 286 of the Act and also to the stock exchanges where the shares of that class are listed to the effect of an item of considering variation of the rights of the holders of issued shares of a particular class.

3.1 Hold the Board meeting so convened and decide as to which of the following ways to adopt for variations—

(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.

3.2 If the Board approves the first method as mentioned in 3.1(a) above, then also—

(i) approve the resolution for circulation among the holders of the issued shares of that class, and

(ii) circulate such resolution amongst the holders and obtain their approval in writing of at least three fourths of the issued shares of that class.

3.3 If the Board approves the second method as mentioned in 3.1(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

(i) authorize the company secretary to convene a separate meeting of the holders of the issued shares of that class; and

(ii) approve the notice of such meeting containing special resolution with an explanatory statement relating thereto and a proxy form.

4.1 Give twenty one days’ prior notice of the meeting to the holders of shares of that class and also to the stock exchanges where such shares are listed in accordance with the listing agreement.

4.2 Hold the separate meeting of the holders of issued shares of that class and pass special resolutions so proposed by three fourths majority of the holders present.

5. In both the cases, file e-Form No. 23 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 resolution, as the case may be together with requisite filing fees with the concerned Registrar of Companies.

6. Inform the stock exchange where the shares of that class are listed about the variation in the members’ rights thereof.

7. If variation affects the rights of the holders of other class of shares, simultaneously obtain consent or approval from them.

8. On variation becoming effective, make necessary changes in all the papers, documents, registers etc.

(Specimen Resolutions are given in Annexures VIII and IX at the end of study)

9. CANCELLATION OF THE VARIATION IN THE MEMBER’S RIGHTS

Under Section 107 of the Act, such variation in the members’ rights can be cancelled by the holders of the issued shares of that class, holding in the aggregate not less than ten percent of the issued shares of that class, who did not consent to or vote in favour of the resolution for variation. For the purpose they are required, within twenty one days after the date on which the consent was given, or the special resolution was passed, to apply to the concerned High Court* by a petition to have the variation in the members’ right cancelled.
Procedure for Cancellation of the Variation in the Members’ Rights

1. Ensure that the application to the concerned High Court* by way of a petition 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 favour of the resolution for the variation. For brevity, such holders are called as dissentient shareholders.

2. The heading of the petition is to be in Form No. 1 of the Companies (Court) Rules, 1959.

(For specimen of Form No. 1, as above, please see Annexure VI)

3. 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.

4.1 The petition may be made by all the dissentient shareholders or by one or more on behalf of the other dissentient shareholders.

4.2 If the petition is made by one or more of them, then the letter of authority from other dissentient shareholders should be annexed to the petition.

4.3 The names, addresses and the number of share held by each one of them are to be set out in the petition or a list of them may be annexed as an Annexure to the petition.

4.4 Ensure that the petition should set out the following—

— particulars of registration of the company;
— authorised capital of the company and 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.

5. Draw an affidavit verifying the petition in Form No. 3 of the Companies (Court) Rules, 1959 and it is to be made by the petitioner if there is one or

* It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
by one of the petitioners if they are more than one.

(For specimen of Form No. 3, please see Annexure X)

6. Annex a true copy of the Memorandum and Articles of Association of the Company to the petition.

7. Affix requisite court fee stamp on the petition before filing thereof.

8. On receipt of the order of the High Court*, file a Certified true copy thereof within thirty days from the date of obtaining the copy of the Order alongwith e-Form No. 21 with the requisite filing fees with the concerned Registrar of Companies. (For specimen of e-form No. 21, please see Part B of this study)

10. TRANSFER OF SHARES OF A COMPANY

Under Section 82 of the Companies Act, 1956, the shares of any member in a company are moveable property, transferable in the manner provided by the articles of association of the company.

Registration of Share Transfer

Section 108 of the Companies Act, 1956 regulates the registration of transfer of shares in a company. Sub-section (1) lays down that a company shall not register transfer of its shares unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares.

The stamp duty under article 62 (a), Schedule I to the Indian Stamp Act, on the transfer of shares in a company, for every one hundred rupees or part thereof of the market value of shares has been Paise fifty* since Ist June, 1976 vide Government Notification No.SO 198(E) dated 16th March, 1976.

Cancellation of Share Transfer Stamps is must for Registration of Transfer

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 lodgement 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 share are in dematerialised form.

Affixing Share Transfer Stamps on a Separate Sheet of Paper Attached to the Share Transfer Form

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

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* It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
* Reduced to Twenty five paise w.e.f. 28.01.2004.
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.)

Loss of Duly Executed Share Transfer Form

However, according to the first proviso to Section 108, where an application in writing has been made to the company by the transferee and bearing the share transfer stamps of appropriate value required for an instrument of transfer and it is proved to the satisfaction of the Board of directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the Board of directors of the company may register the transfer on such terms as to indemnity as it may think fit.

Signature of Transferor not Tallying with Those in Record

Quite often signatures of transferors on the share transfer forms do not tally with those available in the record of the company, which is quite possible by afflux of time. Moreover, most people do not keep their specimen signatures in their own records and with the passage of time their signature undergo changes. In such a situation if the signature on a share transfer form is attested by an authorised person specified in the form itself, the company cannot refuse to register transfer of the shares on the ground that the signature of the transferor do not tally with that on the record of the company. This has been clarified by the department of Company Affairs vide circular No. 3/91 dated 22nd March, 1993. However, the Department has, by another circular No.10 of 1993 dated 13th August, 1993, advised the companies to satisfy themselves where there is a doubt about the genuineness of the signature, by making a reference to the concerned transferor.

Validity Period of the Transfer Instrument

Every instrument of transfer shall be in Form No. 7B, as prescribed in the Companies (Central Government’s) General Rules and Forms, 1956, and in case of a company whose shares are listed on OTC exchange of India, the instrument of transfer shall be in Form 7BB. (Specimen of Form 7B and 7BB are given in Annexure XI and XII respectively at the end of this study).

However, as per the provisions of Section 108(1A):

(a) every share transfer form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority (ROC), who shall stamp or otherwise endorse thereon the date on which it is so presented, and

(b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company—

(i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with Section 154 of the Act, for the first time after the date of presentation of the form to the prescribed
authority or within twelve months from the date of such presentation, whichever is later;

(ii) in any other case, within two months from the date of such presentation.

Sub-section (1C) of Section 108 provides that the provisions of Section 108(1A) and 108(1B) do not apply, inter alia, to—

(i) any share which is held by a company in any other company in the name of a director or nominee under Section 49(2) & (3) of the Act as qualification shares; or

(ii) any share held by a Government corporation in any other company in the name of a director or nominee; or

(iii) any share in respect of which a declaration has been made to the Public Trustee under Section 153B of the Act.

(iv) any share deposited by any person with any bank by way of security for repayment of any loan or advance to or for the performance of any obligation undertaken by such person.

The instrument of transfer in such form duly completed in all respects and duly stamped to the effect, as the case may, is delivered within two months from the date so stamped or endorsed.

Sub-section (3) of section 108 provides that the provisions of this section also do not apply to transfer of a security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.

Further, it is to be noted that vide circular no. 30/2011 dated 23.05.2011, the provisions of Section 108A to 108I of the Companies Act, 1956 have become redundant and will have no legal force.

Transfer of shares or any class of shares under any offer of a scheme or contract
(The detailed topic is provided in Study, “Corporate Restructuring and Insolvency” of Module II of Professional program)

As per Section 395(4A)(a)(i) of the Companies Act, 1956, in relation to every offer of a scheme or contract involving the transfer of shares or Class of Shares in the transferor company or company to the transferee company, every offer or every circular containing such offer or the transferor company by its directors to accept such offer shall be accompanied by the information as prescribed in e-form 35A. (For specimen of e-form 35A, see Part B of this study).

11. TRANSFERABILITY OF SHARES OF PRODUCER COMPANY

Section 581ZD of the Act deals with the transferability of shares of Producer Company. A member of the Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active member at par value.

Within three months from the date of his becoming a member, such person shall nominate his nominee, to whom the shares shall vest in the event of his death. The nominee shall, on the death of the member, become entitled to all the rights in the shares of the Producer Company and the Board of that company shall transfer the shares of the deceased member to his nominee.
However where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by Board. Further where the Board is satisfied that any member has ceased to be a primary producer or any member has failed to retain his qualifications to be a member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board. However the Board shall not direct such surrender unless the member has been served with a written notice and given an opportunity of being heard.

12. PROCEDURE FOR REGISTRATION OF TRANSFER OF SHARES

Registration of Partly-Paid Shares

If the instrument of transfer and the share certificates have been received from a person other than the transferee and the shares are partly paid, the company must send a notice to the transferee and also to the transferor to ensure that the transfer is genuine and the transferee has agreed to pay the balance amount due on shares as and when called for by the company.

Lodgement of Transfer within the Validity Period of the Share Transfer Instrument

The company must ensure that the instrument of transfer has been lodged with it within the period of its validity according to the date/stamp of the prescribed authority affixed on it as per requirement of Sub-section (1A) of Section 108 of the Act. Any share transfer form received by the company after its validity period has expired, the company should return the form to the person who had lodged the same with the company. The transferee should be advised to get the same revalidated.

Seeking Extension of Time on the Share Transfer Form

For seeking extension of time on a share transfer form, procedure has been simplified by the Ministry of Corporate Affairs, by its circular No. 1/95 dated 15th February, 1995.

Under the simplified procedure, the applicant has to submit an application in Form No. 7C to the Registrar of Companies (either before or after the expiry of the validity period) along with a fee of Rs. 50/- where the nominal value of the shares is upto Rs. 5,000/-, and Rs. 100/- where the nominal value of shares exceeds Rs.5,000/-. The Registrar or the Assistant Registrar makes an endorsement on the transfer deed with the help of a rubber stamp on the day of receipt of the application and returns the same to the investor concerned across the table.

(For specimen of Form No. 7C, please see Annexure XIII at the end of this study).

Transfer of Shares in the Name of a Company

The company must make sure that where the shares have been purchased by a company, the instrument of transfer and the relevant share certificate(s) must have been lodged with the company along with a certified copy of the memorandum of association of the buying company and a certified copy of the Board resolution.
authorising a director or the other person who has signed the share transfer form on behalf of the company as transferee. The company must also ensure that the memorandum of association of the buying company contains an objects clause authorising the company to invest in the shares of other companies.

Transfer of Shares in the Name of a Trust

Under Section 153 of the Act, no notice of any trust, express, implied or construction shall be entered on the register of members or of debenture holders.

Period during which a Transfer must be Registered

The Companies Act allows two months’ time within which the share transfer should be registered, but the listing agreement of the stock exchanges require that all transfers must be registered within one month from the date of lodgement. Therefore, if the shares of the company are listed on one or more recognised stock exchanges, the company must make sure that the registration of transfer of shares must be completed in thirty days. It means that the Certificate of Securities duly registered on transfer should be delivered or despatched within thirty days. A certificate to this effect is required to be placed before the meeting of the Board of directors of the listed company.

Registration of Transfer of Shares in the Name of Minor

A minor, being incapable of contracting, cannot become a member of a company in his own name. His name may be entered in the register of members of the company through a guardian. On registration of transfer of shares in a minor’s name, it has to be made sure that the shares are fully paid and the name of the minor is entered in the register of members of the company through his guardian. However, a minor, on attaining majority, may opt to become a member or transfer his shares to any other person.

Consideration and Approval by Board

After all the above formalities have been completed by the company secretary and/or his subordinates in the company’s secretarial department, all the details of the transfers will be entered in the Register of Share Transfers and after fixed intervals, which must be less than thirty days as per the stock exchange requirements, the same along with the share transfer applications, should be placed before the Board or the Share Transfer Committee of the Board or the Company Secretary or Share Transfer Agent as may be authorised by the Board for its consideration and approval. The Board or the Committee is required to pass a resolution approving the registration of transfer of shares. Transfers approved by the Committee or Company Secretary or Share Transfer Agents should be placed before the next Board meeting for recording.

(For specimen of the Board resolution approving registration of share transfers, please see Annexure XIV at the end of this study).

CHECKLIST FOR SHARE TRANSFERS

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 108 and other applicable provisions of the Companies Act and the articles of association of the company or in their absence regulations 19 to 24 of Table A of schedule I to the Companies Act. 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 is properly and adequately filled in.
2. Names of the recognised stock exchange, where dealt in, if any, have been given in the Instrument.
3. Name of the company is correctly given.
4. Description of shares, viz., equity, preference etc. is correctly given.
5. Relevant share certificate(s) is/are enclosed.
6. Corresponding share certificates numbers have been entered in the Instrument.
7. Distinctive numbers of the shares given in the Instrument are same as are given in the enclosed share certificate.
8. Register of Members Folio number as given in the enclosed share certificate(s) is correctly entered in the form.
9. Whether the shares proposed to be registered in the name of the transfer are registered in the name of the transferor(s) in the register of members of the company and the name(s) of the transferor(s) has/have been correctly entered in the transfer deed and is/are same as are given in the enclosed share certificates.
10. Signature(s) of the transferor(s) agree with the one(s) available with the company.
11. 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.
12. If the Instrument has been signed and executed by or on behalf of the transferor(s), whether a duly executed power of attorney has been received, and if so, the same has been checked and found in order.
13. If the Instrument has been attested, the name, address and seal of the attestator of the signature(s) of the transferor(s) have been legibly given in the Instrument and the attestator has signed the Instrument.
14. Name(s), occupation(s), address(es), name of father/husband, his existing Folio No., if any, and the value of share transfer stamps affixed have been legibly entered in the Instrument.
15. The transferee(s) or the buyer(s) has/have signed the Instrument.
16. The transferee(s) or the buyer(s) has/have also signed the Instrument for the purpose of preservation of his/their signature(s) as specimen(s) in the signature card index maintained by the company for future use.

17. Share Transfer Stamps of appropriate value have been affixed on the Instrument and they have been property cancelled by a rubber stamp or defaced otherwise. If the shares are listed, the valuation of the Share Transfer Stamps is to be determined on their quoted value. At present the stamp duty on transfer of shares is at the rate of twenty five paise w.e.f. 28.01.2004 for every hundred rupees of value of the shares on the date of sale, or part thereof as per Article 62(a) of Schedule I to the Indian Stamp Act, 1899.

18. The Instrument has been dated, which date should be a date subsequent and not, in any case, prior to the date of presentation to the prescribed authority, as per clause (a) of Sub-section (1A) of Section 108 of the Companies Act, 1956.

19. Whether the Instrument along with the corresponding share certificate(s) or the letter of allotment, where no share certificates have been issued, has been lodged with the company within the validity period of the Instrument as per clause (b) of Sub-section (1A) of Section 108 of the Companies Act, 1956.

20. 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.

21. Whether the transferor(s) and/or transferee(s) is/are non-resident Indians and if so, whether the deal is permitted under the Foreign Exchange Management Act, 1999, and if not, whether specific permission of the Reserve Bank of India has been obtained.

22. If applicable, whether prior approval of the Central Government has been obtained under sections 108A, 108B or 108C of the Companies Act, 1956.

23. Where the Central Government has granted extension of time under Section 108(1D) of the Act for filing an executed Instrument, check whether the Instrument has been lodged with the company within the extended period of time.

24. Whether the shares under registration are subject to a lien of the company and is so the company has lifted the lien.

13. 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 shares 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.

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.

Consequences of Forged Transfer

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. Cas. 61].

A forged document never has any legal sanctity. It can never result in change of ownership from one person to another, however cleverly the signature on the document might have been forged and genuine the forged document might appear.

14. POST APPROVAL PROCESSING

After the Board or the Committee has approved the registration of the share transfers, the share certificates are endorsed in the names of the transferees and despatched to them at the addresses given in their share transfer forms, by registered post. Specimen signatures of the transferees on the share transfer forms are cut off and pasted on the members’ specimen signature register or scanned on the specifically designed software for future use and the forms are bound in the form of registers according to the transfer registration serial numbers and preserved in safe custody for record and any possible use at a future date.

In the cases where the Board or the Committee or the Company Secretary or the Share Transfer Agent do not approve the registration of transfers, the company is obliged to send notice to the transferors and the transferees as per provisions of the Companies Act. If the defects are technical in nature, e.g., the share transfer forms are not stamped or under-stamped, signatures of the transferors do not tally.
with those available in the company's record, the parties concerned are requested to rectify them and their cases are placed before the Board or the Committee at its next meeting for reconsideration and approval. In other cases the share transfer forms and also the relevant share certificates are sent back by registered post to the persons who had lodged them with the company with a covering letter giving detailed reasons for refusal to register transfer of the shares contained in the share transfer forms within two months or one month as the case may be. (A specimen of letter returning transfer deeds is given at Annexure XV at the end of this study).

15. TRANSFER OF DEBENTURES

In the case of debentures, the transfer instrument is not required to be dated by the prescribed authority nor the transfer is subject to any statutory period within which the registration has to be effected. However, stamp duty is payable for transfer of debentures and the duty varies from State to State.

After registering the transfer, the particulars thereof have to be recorded in the Debenture Transfer Register and should be initialled by the appropriate authority. After making appropriate endorsements, the debenture certificate may be sent to the party concerned.

16. TRANSFER OF SHARE WARRANTS

A share warrant is transferable by mere delivery of the warrants without execution of any written instrument of transfer being registered by the company. The bearer of a share warrant is not a member of the company unless otherwise so provided in the articles of the company in terms of Section 115(5) of the Act and, therefore, such a bearer of share warrants does not impliedly convenant to observe the provision of the company's memorandum and articles.

17. CERTIFICATION OF TRANSFER

The procedure outlined above is slightly varied when a shareholder sells only a part of the shares (and not all of them) mentioned in the share certificate. In such circumstances, 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.

18. 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 recognised 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 authorised 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.

19. DEATH OF TRANSFEROR OR TRANSFEE BEFORE REGISTRATION OF TRANSFER

In accordance with section 108(1) of the Companies Act, 1956, 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 favour of transferee and such documents were lodged for transfer but the transferor dies before such transfer is registered by the Company. In such a case, the company would register the transfer in both cases i.e. where the death of transferor is intimated to company before registration of transfer and also where 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 bona fide by the company, as per the information available with it.

In *Killick Nixon Ltd. v. Dhanraj Mills Ltd. (Supra)*, 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.

20. REGISTRATION OF TRANSMISSION OF SHARES

Transmission of shares is a process by operation of law, whereunder 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. Section 108 of the Companies Act regulates registration of transfer and transmission of shares in a company.

Sub-section (1) of Section 108 lays down that a company shall not register transfer of shares unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares.

The second proviso to the said Sub-section (1) of Section 108 of the Act lays down that nothing in the section shall prejudice any power of the company to register as shareholder any person to whom the right to any shares in the company has been transmitted by operation of law.

Articles of association of almost every company contain detailed provisions for regulating transmission of shares. These provisions are based on the regulations in Table A of Schedule I to the Companies Act, 1956.

*Regulation 25(1)*: It provides that on the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was the sole holder, shall be the only person(s) recognised by the company as having any title to his interest in the shares.

*Regulation 26(1)*: It lays down that any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may, from time to time, be required by the Board of directors of the company and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share; or

(b) to make such transfer of the share as the deceased member could have made.

*Regulation 26(2)*: The Board of directors of the company shall, in either case,
have the same right to decline or suspend registration as it would have had, if the deceased member had transferred the share before his death.

Regulation 27(1): If the person so becoming entitled shall elect to be registered as holder of the share himself he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(2) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice of transfer were a transfer signed by that member.

Regulation 28: 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 share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board of directors of the company may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with.

21. NOMINATION OF SHARES

Under Section 109A of the Act, every holder of shares in, or holder of debentures of, a company may, at anytime nominate in the prescribed Form No. 2B a person to whom his shares in or debentures of, the company shall vest in the event of his death. It may be noted Section 58A(11) also permits a depositor to make a nomination in respect of his deposits.

Where the shares in or debentures of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed Form No. 2B, a person to whom all the rights in the shares in or debentures of the company shall vest in event of death of all the joint holders. [For Specimen of Form No. 2B, please see Annexure XVI at the end of this Study].

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.

In all the circumstances, the nominee shall become entitled to all the rights in the shares or debentures of the company to the exclusions of all other person(s) unless the nomination is varied or cancelled in the prescribed manner.
Procedure for Transmission of Shares (in case nomination by member was not made)

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, 1956, 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. (A specimen of Form to be filled in by a person or persons claiming title to the shares of a deceased shareholder is given at Annexure XVII at the end of this study).

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 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. (Specimen of Affidavit, Indemnity Bond and deed of Relinquishment are given at Annexure XVIII, XIX and XX at the end of this study).

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 authorised 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.
Transmission of Shares to Nominee

Under Section 109B, 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 debentureholder. 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. 2B 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) The company on coming to know about death of its shareholder, 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 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 holder or to transfer the shares as the deceased could have done, alongwith 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).

22. TRANSFER AND TRANSMISSION OF DEBENTURES

For transfer of debentures there is no necessity to present the instrument of transfer before the prescribed authority. There is no time limit prescribed for lodgement for transfer deed with the company.

The rate of stamp duty payable on transfer of debentures is not prescribed by the Union of India, unlike in the case of transfer of shares. Therefore, the question would arise whether the stamp duty would be the one payable in the State where the transfer deed is executed or the one applicable in the State in which the registered office of the company is situate. Many State Governments have introduced a new Section 19A to the Stamp Act whereunder it is provided that the differential duty (i.e. duty in the State in which the Registered Office of the Company is situate minus the duty in the State in which the transfer was effected) has to be paid for. Such duty has to be paid for by the person executing the instrument. In effect, the duty payable on transfer of debentures would be higher of the following duty on the value of debentures.

(a) Stamp duty applicable in the State in which the transfer deed is executed;

(b) Stamp duty applicable in the State where the Registered Office of the Company is situate;

Provided the Stamp Act of the concerned State contains a provision to this effect. Otherwise, the stamp duty prevailing in the State where the registered office of the company is situate would be applicable.

23. DEMATERIALISATION OF SHARES OF A COMPANY

According to the preamble to the Depositories Act, 1996, it regulates depositories in securities and matters connected therewith or incidental thereto. Dematerialisation of securities is a matter connected with depositories. Therefore, the dematerialisation of shares of a company is regulated by the said Act. Before attempting a discussion on the subject, it is advisable and will be helpful to understand some of the important terms that have been used in the Act.

“Depository” means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under Sub-section (1A) of Section 12 of the Securities and Exchange Board of India (SEBI) Act, 1992.

“Participant” means a person registered as such under Sub-section (1A) of Section 12 of the SEBI Act, 1992.

“Registered owner” means a depository whose name is entered as such in the register of members of the issuer company.

“Beneficial owner” means a person whose name is recorded as such with a depository.
Procedure for a Shareholder to get his Shares Dematerialised

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].

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.

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.

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 dematerialised and his name has been entered in the depository’s electronic records [Refer Sub-section (3) of Section 6 of Depositories Act, 1996].

1. 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. (A specimen of DRF is given at Annexure XXIII at the end of the study).

2. 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).

3. 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.

4. DPs on receipt of such confirmation should inform the investor accordingly.

Procedure for a Company to have its Shares Dematerialised

A company proposing to have its shares dematerialised is required to take the following procedural steps:

As a first step it should ensure that its articles of association do contain an article which authorises the company to have its securities dematerialised. 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 31 of the Companies Act, 1956 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 authorising the company to have its securities dematerialised, please see Annexure XXII at the end of this study).

According to regulation 27 of the SEBI (Depositories and Participants) Regulations, 1996, every depository shall, in its bye-laws, state the specific securities which are eligible for being held in dematerialised form in the depository.

Regulation 28 provides that the following securities shall be eligible for being held in dematerialised form in a depository:

(a) shares, scripts, stocks, bonds, debentures, debenture stock, Indian Depository Receipts or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(b) units of mutual funds, rights under collective investment schemes and venture capital funds, commercial paper, certificates of deposit, securitised debt, money market instruments and government securities and unlisted securities shall also be similarly eligible for being held in dematerialised form in a depository.

(c) any other security as may be specified by the Board from time to time, by way of a notification in the Official Gazette and subject to such conditions as it may deem fit to impose.

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 authorise the company to dematerialise 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 dematerialised form [Refer Regulation 29(1) of the said regulations].

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 dematerialised form. Further that no such agreements shall be required to be entered into where the State or the Central Government is the issuer of such securities. [Sub-regulation (2) of Regulation 29 of the said regulations].

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.
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].

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.

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].

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]

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].

Registration of Transfer of Shares with Depository

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 associated paraphernalia stipulated in Section 108 of the Companies Act, 1956 shall not apply to the transfers effected within the depository mode. However, this formality need to be complied with for transfer of securities outside the depository mode. All transfer of securities involve change in registered ownership and/or beneficial ownership. If such change is in respect of shares within the depository mode, no stamp duty shall be payable.

Option to Receive Share Certificate on Subscription or hold Shares in Electronic Form with 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 68B inserted by the Companies (Amendment) Act, 2000 provides that every initial offer of rupees ten crore or more shall be made only in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations issued thereunder.

**Shares in Depositories to be in Fungible Form**

Section 9 of the Act clarifies that all the securities held by a depository shall be dematerialised and shall be in a fungible form.

**Rights of Depositories and Beneficial Owners**

According to Section 10 of the 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.

**Register of Beneficial Owners**

Every depository shall maintain a register and an index of beneficial owners in the manner provided in Sections 150, 151 and 152 of the Companies Act, 1956 [Refer Section 11].

**Pledge or Hypothecation of Shares Held in a Depository**

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].

**Transfer-cum-Demat Scheme**

SEBI had introduced compulsory dematerialized trading in select shares for all investors with effect from January, 1999. At this time, transfer and demat were two separate processes and the investors were required to submit the transferred shares to the share transfer agent, through their DPs, for dematerialisation. This entire process involved anywhere from 1-3 months and the investors could not sell the shares during this period. Accordingly, the transfer-cum-demat scheme was introduced by the depositaries to counter the problems faced by the investors in the transition phase of moving from physical to demat trading mode, to decrease the time period involved in transfer and demat.

**Phasing out of Transfer-cum-Demat Scheme**

With time, an increasing number of shares were added to the list of compulsory dematerialized trading and there was far less pressure on the companies/the share transfer agents.
It was then felt that the ‘Transfer-cum-Demat’ scheme had *outlived its utility*. Accordingly SEBI vide its circular SEBI/MRD/Cir-10/2004 dated February 10, 2004, withdrew the ‘Transfer-cum-Demat Scheme’. With this, once again transfer of shares and dematerialisation of shares have become two separate processes. Each of them involving different set of formalities.

24. PROCEDURE FOR REMATERIALISATION

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 through 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 confirm 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.

ANNEXURES

ANNEXURE I

SPECIMEN BOARD MEETING RESOLUTIONS

1. Specimen of Resolution to be passed at Board Meeting where approval of shareholders is not required

   — If the quantum of buy-back is less than or equal to 10% of the total paid-up equity capital and free reserves of the Company, the Board of Directors can authorize the same.

   "RESOLVED THAT pursuant to Section 77A of the Companies Act, 1956, 20,082 equity shares be and are hereby bought back from the shareholders at a price of Rs.625/- per share.

   RESOLVED FURTHER THAT a draft of the declaration of solvency prepared in the prescribed from and placed before this meeting be and is hereby approved for filing with the Registrar of Companies after having it verified by an affidavit and be signed by Mr. A and Mr. B, Directors of the Company.

2. Specimen of Resolution to be passed at Board Meeting where approval of shareholders is required

   — If the quantum of buy-back is more than 10% and not exceeding 25% of the total paid-up equity capital and free reserves of the Company, the buy-back is required to be approved by the shareholders in a general meeting.

* Withdrawal of the scheme would not cause any undue inconvenience and/or delay to the investors.
RESOLVED THAT pursuant to Section 77A of the Companies Act, 1956, 20,082 equity shares be and are hereby bought back from the shareholders at a price of Rs.625/-per share.

RESOLVED FURTHER THAT a draft of the declaration of solvency prepared in the prescribed form and placed before this meeting be and is hereby approved for filing with the Registrar of Companies after having it verified by an affidavit and be signed by Mr.A and Mr.B, Directors of the Company.

RESOLVED FURTHER THAT an Extraordinary General Meeting of the Company be held for the aforesaid purpose on August 8, 2003 at 11.a.m. as per the draft Notice and Explanatory Statement placed before the meeting and initialed by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT the Mr. A, Director of the Company be and is hereby authorised to issue the notice to all the members of the Company and take all steps needed in connection therewith or incidental or ancillary thereto.

ANNEXURE II

SPECIMEN OF NOTICE OF GENERAL MEETING

NOTICE

Notice is hereby given that the Extraordinary General Meeting of the XYZ limited will be held on August 8, 2006 at 11.00 a.m. at the registered office of the Company at Mumbai to consider and if thought fit, to pass the following resolution as a SPECIAL RESOLUTION, with or without modification:

RESOLVED THAT in accordance with the provisions contained in the Articles of Association and Sections 77A, 77B and all other applicable provisions, if any, of the Companies Act, 1956, and the provisions contained in the Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999 prescribed by the Department of Company Affairs including such modifications or re-enactment of the Act or the Rules and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions and modifications as may be prescribed while granting such approvals, permissions and sanctions which may be agreed by the Board of Directors of the Company, the consent of the Company be and is hereby accorded to the Board to purchase its own equity fully paid–up equity shares of Rs.100/- each upto a maximum of 20,082 equity shares of Rs.100/- each being 15% of the paid–up equity share capital of the Company to be bought back from the existing shareholders of the Company at a price of Rs.625/- per share payable in cash.

RESOLVED FURTHER THAT the Company may implement the Buy-back in one or more tranche/tranches, from out of its free reserves and/or securities premium account and/or the proceeds of an earlier issue of shares other than equity shares made specifically for buy-back purposes, and the Buy-back may be made in such manner as may be prescribed under the Act and the Buy-back Rules and on such terms and conditions as the Board may in its absolute discretion deem fit.
RESOLVED FURTHER THAT nothing contained hereinabove shall confer any right on the part of any shareholder to offer, or any obligation on the part of the Company or the Board to buy-back, any shares and/or impair any power of the Company or the board to terminate any process in relation to such buy-back, if so permissible by law.

RESOLVED FURTHER that the Directors of the Company be and are hereby authorized to carry out the aforesaid buying back of securities and to take every step that may be necessary in connection therewith or incidental thereto to give effect to the above resolution or to accept any change or modification as may be suggested by the appropriate authorities or Advisors."

By Order of the Board

Mumbai
Mr. A
July 7, 2009
Director

EXPLANATORY STATEMENT

Ensure that the Explanatory statement annexed to the notice of general meeting relating to the special resolution for buy back of shares contains disclosures specified in Schedule I of the Rules given hereunder:

(a) date of Board Meeting approving the buy-back:

(b) the necessity for buy-back,

(c) the class of security intended to be purchased under buy-back

(d) the method to be adopted for buy-back

(e) the maximum amount required under the buy-back and the source of funds from which the buy-back would be financed

(f) the basis of arriving at the buy-back price

(g) the number of securities that the Company proposes to buy-back

(h) the time limit for completion of buy-back

(i) — the aggregate shareholding of the promoter and the directors of the promoters, where the promoter is a Company and of persons who are in control of the Company as on the date of the Notice convening the General Meeting

— aggregate number of equity shares purchased or sold by persons including persons mentioned above during a period of six months preceding the date of the Board Meeting at which the buy-back was approved from date till date of notice convening the meeting

— the maximum and minimum price at which purchases and sales referred to above were made along with the relevant date.
(j) intention of the promoters and persons in control of the Company to tender shares for buy-back indicating the number of shares, details of acquisition with dates and price

(k) a confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks

(l) a confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the Company and that they have formed an opinion that

— Immediately following the date of the General meeting is convened there will be no grounds on which the Company could be found unable to pay its debts

— As regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the Company’s business during that year and to the amount and character of the financial resources which will be in their view be available to the company during that year, the Company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date, and

— in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the Company were being wound up under the provisions of the Companies Act, 1956 (including prospective and contingent liabilities)

(m) a report addressed to the Board of Directors by the Company’s auditors stating that

— they have inquired into the Company’s state affairs

— the amount of permissible capital payment for the securities in question is in their view properly determined

— the Board of Directors have formed the opinion as specified in clause (1) above on reasonable grounds and that the Company, having regard to its state of affairs will not be rendered insolvent within a period of one year from that date.

(n) the price at which the buy-back of shares shall be made

(i) if the promoters intend to offer their shares—

— the quantum of shares proposed to be tendered

— the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares acquired, the price and the date of acquisition.
FORM NO. 4A
(See rule 5C)

DECLARATION OF SOLVENCY

Name of the Company: ..............................................................
Address (Regd. Office): ..............................................................
..............................................................
..............................................................
..............................................................
..............................................................

Presented By: .............................................................. (Name)
........................................................................ (Designation)

We, .......................................... of .................. ............... and of ..................
being all the directors of M/s. .................. ............... do solemnly affirm and declare
that we have formed the opinion that the company is capable of meeting its total
liabilities and that the company will not be rendered insolvent within a period of one
year from the date of making this declaration.

We append a statement of company's assets and liabilities as
at.....................being the latest date before making of this declaration (Annexure-I).

We further declare that the company's audited annual accounts including the
Balance Sheet have been filed upto date with the Registrar of Companies...........

Signature ........................................
Name ........................................
Managing Director ..................

Signature ........................................
Name ........................................
Director ............................

Signature ........................................
Name ........................................
Director ............................

VERIFICATION

And we make this solemn declaration believing the same to be true.

We solemnly declare that we have made a full enquiry into the affairs of the
company including assets and liabilities of this company and that having done so
and having noted that the shareholders by a special resolution have approved the
buy-back of ..................... (.....................) (in words) number of shares/securities
as per the provision of the Section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Ordinance, 1999 (1 of 1999).

Verified this day the.............................. day of.................................20 .......

Signature ...........................................
Name ...........................................
Managing Director ..............................
Signature ...........................................
Name ...........................................
Director ........................................
Signature ...........................................
Name ...........................................
Director ........................................

Solemnly affirmed and declared at ..................... the ....................... day
of .................................................. 20 ........... before me.

Commissioner for Oaths and
Notary Public or
Justice of the Peace

Annexure-I

Statement of Assets and Liabilities

Statement as at ......................... 20.............., showing assets at estimated
realisable values and liabilities expected to rank.

Name of the Company : ..........................................................

<table>
<thead>
<tr>
<th>Assets</th>
<th>Book Value</th>
<th>Estimated to Realise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Balance at Bank</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Cash in hand</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Marketable Securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Bills Receivables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Trade Debtors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Loans &amp; Advances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Unpaid Calls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Stock-in-trade</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Work in Progress viz.,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
10. Freehold Property
11. Leasehold Property
12. Plant & Machinery
13. Furniture, fittings, utensils etc.
14. Patents, Trade Marks, etc.
15. Investments other than Marketable Securities
16. Other property, \textit{viz},

\begin{itemize}
\item \textbf{Total:} ............................................................
\end{itemize}

\textit{Liabilities}

Estimated to rank for payment (to the nearest rupee)

1. Secured on specific assets \textit{viz};
\begin{itemize}
\item \textbf{Total:} ............................................................
\end{itemize}

2. Secured by floating charge(s), \textit{viz};
\begin{itemize}
\item \textbf{Total:} ............................................................
\end{itemize}

3. Estimated cost of liquidation and other expenses including interest accruing until payment of debts in full.

4. Unsecured creditors (amounts estimated to rank for payment).
   \begin{itemize}
   \item (a) Trade accounts
   \item (b) Bills payable
   \item (c) Accured Expenses
   \item (d) Other liabilities
   \item (e) Contingent liabilities
   \end{itemize}
\begin{itemize}
\item \textbf{Total:} ............................................................
\end{itemize}

\begin{itemize}
\item \textbf{Total estimated value assets} \textbf{Rs.} ........................
\end{itemize}
Total liabilities Rs. ......................
Estimated surplus after paying debts in full Rs. ......................
Remarks

Signature ......................................
Name ...........................................
Managing Director ..........................
Signature ......................................
Name ...........................................
Director ........................................
Signature ......................................
Name ...........................................
Director ........................................

Place : .................................
Dated : .................................

* The period to be filled in should not exceed 3 years.

**ANNEXURE IV**

FORM No. 4B
COMPANIES ACT, 1956
[Pursuant to Section 77A(9)]
(See rule 5C also)

Register of securities bought back by the ............................. (indicate the name of the company)

1. Date of member’s special resolution, authorising buy-back of securities.
2. Amount of securities authorised to be bought back.
3. Date up to which buy-back referred to at serial number 2 above to be completed.
4. Description of securities bought-back by the company:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Folio No./ Certificate number of securities bought-back</th>
<th>Date of buy-back of securities</th>
<th>Number of securities bought-back</th>
<th>Category to which they belong (Preference/Equity/Employees’ Stock Option/Sweat equity, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
</tr>
</tbody>
</table>

---

---
<table>
<thead>
<tr>
<th>Name of the last holder of security</th>
<th>Reference to entry in register of members</th>
<th>*Mode of buy-back of securities</th>
<th>Face value of a security (Rs.)</th>
<th>Buy-back value paid for a security (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
<td>(9)</td>
<td>(10)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total consideration paid for buy-back of securities (Rs.)</th>
<th>Cumulative total of column 11</th>
<th>Date of cancellation of securities bought-back</th>
<th>Date of extinguishment of securities bought-back</th>
<th>Date of physical destruction of securities bought-back</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>(11)</td>
<td>(12)</td>
<td>(13)</td>
<td>(14)</td>
<td>(15)</td>
<td>(16)</td>
</tr>
</tbody>
</table>

*Indicate whether the securities have been bought back from the existing security-holders on a pro-portonate basis, or from the open market, or from odd-lots of listed securities, or from employees' stock option, or from sweat equity, or from any other mode, if so, indicate the mode.

5. Other relevant details, if any.

Signature of the person authorised to sign the register of members

Name of the above person:

Place: Designation:

Date: Company Seal:
**ANNEXURE V**

**REGISTER OF MEMBERS**  
*(See Rule 7)*

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Occupation</th>
<th>Date at which entered as a Member</th>
<th>Date at which ceased to be a Member</th>
<th>Shares acquired</th>
<th>Cash Payable on shares</th>
<th>Cash paid on shares</th>
<th>Shares transferred</th>
<th>Distinctive number of shares (inclusive)</th>
<th>Distinctive number of shares (inclusive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>Name</td>
<td>Address</td>
<td>Occupation</td>
<td>Date at which entered as a Member</td>
<td>Date at which ceased to be a Member</td>
<td>Shares acquired</td>
<td>Cash Payable on shares</td>
<td>Cash paid on shares</td>
<td>Shares transferred</td>
<td>Distinctive number of shares (inclusive)</td>
</tr>
<tr>
<td>No.</td>
<td>allotment or transfer</td>
<td>Date of allotment or transfer</td>
<td>No. of shares allotted or transferred</td>
<td>Number and date of issue of share certificate</td>
<td>Transfer’s Folio</td>
<td>Nominal value of shares acquired</td>
<td>Amounts due and on what account (allotment or call)</td>
<td>Date when due</td>
<td>Date of payment</td>
<td>Cash book folio</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
</tr>
</tbody>
</table>

**NOTE:** All entries in the Register should be authenticated by the Secretary or the person appointed by the Board to sign the share certificates.
FORM NO. 1
(See Regulations 13 and 14)
BEFORE THE COMPANY LAW BOARD, .......... PRINCIPAL BENCH *[ADDITIONAL PRINCIPAL BENCH]/REGIONAL BENCH, BOMBAY/CALCUTTA/MADRAS/ NEW DELHI IN THE MATTER OF THE COMPANIES ACT, 1956, SECTION .......

OR

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969, SECTION 2A

OR

[THE RESERVE BANK OF INDIA ACT, 1934, SECTION 45QA]

AND

IN THE MATTER OF ...............................................................

(State the name and registered office address of the company)

AND

IN THE MATTER OF ................................................................. (Petitioner)

(State the name and address of the petitioner)

OR

(Where applicable)

AB ................................................................. Petitioner(s)

versus

CD ................................................................. Respondent(s)

Details of petition :

1. Particulars of the company, whether petitioner or not (See regulation 16).

2. Particulars of the petitioner(s) (need not be stated where company is the petitioner) (Name, description, father's/husband's name, occupation, capacity, i.e., qua shareholder, qua depositor and address of the petitioner(s)).

3. Particulars of respondent(s) (need not be stated where company is the respondent) (Name, description, father's/husband's name, occupation, capacity, i.e. qua shareholder's, qua depositor and address of the respondent(s)).
4. Jurisdiction of the Bench
The petitioner declares that the subject-matter of
the petition is within the jurisdiction of the Bench.

5. Limitation
The petitioner further declares that the petition is
within the limitation laid down in section.....of the
Companies Act, 1956 {or Securities Act, 1956}
(where applicable).

6. Facts of the case are given below :
(Give here a concise statement of facts in a
chronological order, each paragraph containing as
nearly as possible a separate issue, fact or
otherwise).

7. Matters not previously filed or pending with any
other Court.
The petitioner further declares that he had not
previously filed any application, writ petition or suit
regarding the matter in respect of which this petition
has been made, before any court of law or any
other authority or any other Bench of the Board and
not any such application, writ petition or suit is
pending before any of them.
In case the petitioner had previously filed any
application, writ petition or suit, the stage at which it
is pending and if decided, the gist of the decision
should be given.

8. Relief(s) sought.
In view of the facts mentioned in para........above,
the petitioner prays for the following relief(s) :
(Specify below the relief(s) sought explaining the
ground for relief(s) and the legal provisions (if any)
relied upon).

9. Interim order, if any, prayed for. Pending final
decision on the petition, the petitioner seeks issue
of the following interim order :
(Give here the nature of the interim order prayed for
with reasons).

10. Particulars of Bank draft evidencing payment of fee
for the petition or application made :
[(i) Branch of the Bank on which drawn;
(ii) Name of the issuing branch]
(iii) Demand Draft No........
    Date........
    Amount Rs........

11. List of enclosures
    (See regulation 18 and Annexure III)
    1.
    2.
    3.
    4.

    Signature of the Petitioner

Note: The petition to the Company Law Board under Section 111 or 111A of the Companies Act, 1956, shall, as per entry No. 9 in Annexure II to the Company Law Board Regulations, 1991, be accompanied by the following documents:

Where the company is the petitioner:

1. Copy of the memorandum and articles of association.
2. Latest audited balance-sheet and profit and loss account, auditor’s report and directors’ report.
3. Authenticated copy of the extract of the Register of Members.
4. Copy of the resolution of the board or committee of directors (where applicable).
5. Any other relevant documents.
6. Affidavit verifying the petition.
7. Bank draft evidencing payment of application fee.
8. Memorandum of appearance with copy of the board resolution or the executed vakalatnama, as the case may be.
9. Two extra copies of the petition.

Where the petition is made by any other person:

1. Documentary evidence in support of the statements made in the petition including the copy of the letter written by the petitioner to the company for the purpose of registering the transfer of, or the transmission of right to, any shares or interest in, or debentures as also a copy of the letter of refusal of the company.
2. Copies of the documents returned by the company.
3. Any other relevant documents.
4. Affidavit verifying the petition.
5. Bank draft evidencing payment of application fee.

6. Memorandum of appearance with a copy of the Board’s resolution or the executed vakalatnama, as the case may be.

7. Two extra copies of the petition.

ANNEXURE VII

FORM NO. 5
[See regulation 18(3)]

Memorandum of appearance

To
The Bench Officer,
Company Law Board, .................Bench
In the matter of .................Petitioner.

v.

 .................Respondent
(C.P. No................. of 200........)

Sir,

Please take notice that I, AB, Secretary in whole-time practice/practising Chartered Accountant/practising Cost & Works Account, duly authorised to enter appearance, and do hereby enter appearance, on behalf of..................petitioner/opposite party/Registrar/Regional Director/Government of ...................... in the above-mentioned petition.

*A copy of the resolution passed by the Board of Directors authorising me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed, duly signed by me for identification.

Yours sincerely,

Dated.................day of.................20........

Address:

Enclosure : as aforesaid

Tele No.:

*Strike out if not applicable

ANNEXURE VIII

SPECIMEN RESOLUTIONS FOR VARIATION OF RIGHTS OF EQUITY SHAREHOLDERS (i.e. MEMBERS)

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 1995 fell due for redemption on .............., 200........ The date was extended and accordingly the shares were to be redeemed in five equal instalments of Rs. 2.00 lakhs each annually commencing from ..............200........ 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 80 of the Companies Act, 1956. 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 are the 11% Redeemable Cumulative Preference Shares of the company is included separately in the notice.

Directors of the company are interested in the said resolution except to the extent of their shareholdings.

ANNEXURE IX

Specimen resolution for variation of rights of the holders of Redeemable Cumulative Preference shares (1st Series) of Rs. 100 each.

Special Resolution for Consent by three fourths holders 10,000-9% Redeemable Cumulative Preference shares (1st series) of Rs. 100 each or for passing at the separate meeting of those holders.

RESOLVED that pursuant to the provisions of Section 106 and all other applicable provisions, if any, of the Companies Act, 1956 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, 1995 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, 2001 be and is hereby accorded to the company for redemption on 31st December 2003 and also for an increase in fixed preferential dividend to 11% per annum with effect from 1st January 2002 till the date of redemption so extended to 31st December 2003 and
the Board of Directors be and is hereby authorised 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 1995 for issuing 10,000 — 9%. Redeemable Cumulative Preference Shares
(1st series) of Rs. 100 each, decided in their meeting held on 11.01.2001 to extend
the date of redemption of two years from 31.12.2001 to 31st December 2003 and in
consideration of such extension to increase the fixed preferential dividend from 9%
to 11% per annum with effect from 1st January 2002.

Pursuant to the provisions of Section 106 of the Companies Act, 1956 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 2001.

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

ANNEXURE X

FORM NO. 3

[See rule 21]

[Heading as in Form No. 1]

Company Application No................. of 20......... in
Company Petition No....................of 20........

Affidavit verifying petition

I, A.B., son of............................aged........................residing at.............................. ...
do, solemnly affirm and say as follows :

1. I am a director/secretary/.................. of............... Ltd., the petitioner in the
above matter* (and as duly authorised by the said petitioner to make this
affidavit on its behalf).

[Note: This paragraph is to be included in cases where the petitioner is the
company].

2. The statements made in paragraphs.............of the petition herein now
shown to me and marked with the letter 'A', are true to my knowledge, and
the statements made in paragraphs.............are based on information, and
I believe them to be true.

Solemnly affirmed, etc.

*Note: To be included when the affidavit is sworn to by any person other than a
director, agent or secretary or other officer of the company.
FORM NO. 7B

Date of Presentation to the prescribed authority
Share Transfer Form

[Pursuant to Section 108(1A) of the Companies Act, 1956]

For the Consideration stated below the Transferor(s) named do hereby transfer to the “Transferee(s)” named the shares specified below subject to the conditions on which the said shares are now held by the Transferor(s) and Transferee(s) do hereby agree to accept and hold the said shares subject to the conditions aforesaid.

Full Name of the Company...........................................................................................................................

Name of the Recognised Stock Exchange where dealt in, if any..........................

Description of Equity/Preference Shares...........................................................................................................

<table>
<thead>
<tr>
<th>No. in Figures</th>
<th>Number in Words</th>
<th>Consideration (in figures)</th>
<th>Consideration (in words)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Distinctive Number From.................................. to..................................
Corresponding Certificate Nos............................ to ..................................

Transferor(s) [Seller(s)] Particulars       Regd.   Signature(s)
Folio No.

Name(s) 1...............................................................  1........................... 
in full  2......................................... ......................  2.......................... ..
  3............................................... ................  3............................
  4............................................... ................  4............................

ATTESTATION
I, hereby attest the signature of the Transferor(s) herein mentioned
Signature
Name
Address/Seal

Transferee(s) [Buyer(s)] Particulars       Signature(s)

Name(s) 1...............................................................  1........................... 
in full  2......................................... ......................  2.......................... ..
  3............................................... ................  3............................

*Please see overleaf for instructions
Occupation     Address     Father’s/Husband’s Name
1...................................................................................................................
2...................................................................................................................
3...................................................................................................................
Transferee(s) Existing Folio, Value of
if any, in same order of names     Stamps Affixed     Rs.
Dated this........day of........Two Thousand........Place........

For Office Use Only

Checked by...............................................  
Signatures tallied by.............................................  
Entered in Register of Transfer No..............  
Approval date............................................

Distinctive Numbers from...............................to.............................
Corresponding Certificate Nos............................................................

Instructions for Attestation:

Attestation, where required (thumb impressions, marks, signature, difference,
e.tc.) should be done by a Magistrate, Notary Public or Special Executive Magistrate
or a similar authority holding a Public Office and authorised to use the Seal of his
office or a member of a Recognised Stock Exchange through whom the shares are
introduced or a manager of the transferor’s bank.

Note:

Names must be rubber stamped preferably in a straight line. Chronological
order should be maintained. Broker’s Clearing Number should be stated when
delivery is given by a Clearing Member Bank.

Name of delivery Broker Or Clearing Number     Date
Power of Attorney/Probate/Death Certificate
Letters of Administration
Registered with the Company
No..........................Date..........................
(Signature (not initials) of Brokers, Bank,
Company or Stock Exchange Clearing House)
Lodged by..............................................
Full Address...........................................

Share Certificates to be Returned to
(Fill in the name and address to which the
certificates are required to be returned)
Name & Address........................................
......................................................................
......................................................................
......................................................................
......................................................................
Share Transfer Stamps

* To be filled only if the documents are lodged by a person other than the transferee.

ANNEXURE XII

FORM NO. 7BB

OTC Exchange of India............................................................

Date of presentation to the prescribed authority..............................

[Pursuant to sub-rule (2A) of rule 5A of the Companies (Central Government’s) General Rules and Forms, 1956, read with Section 108(1A) of the Companies Act, 1956].

COUNTER RECEIPT AND TRANSFER FORM

Scrip Details.......... C.R. No. ............
Scrip Code.......... Scrip Name. ............

Transaction Details:

Transaction in........................................Date..........Time........

Market Maker Name........................................Market Maker’s code...............

Quantity..................................................Rate...............

Value (consideration) (in figures)...................................................

(in words)..................................................

Brokerage............................Stamp duty............Total Value............

Issuing counter Details........................Investor Details............

Counter Code............................Investor’s Code............

Counter Name............................Investor’s Name............

Counter’s Signature............................Investor’s Signature............

Distinctive Number Range:

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TRANSFER PARTICULARS

For the consideration of Rs.......(rupees...........) the transferor(s) named hereby agree to transfer to the transferee(s) to be named, the shares specified in...
this document, subject to the conditions on which the said shares are now held by
the transferor(s) and to be held by the transferee(s) do hereby agree to accept and
hold the said shares subject to the conditions aforesaid:

Transferor(s) (seller)/transferee(s) (buyer) particulars:

<table>
<thead>
<tr>
<th>Regd. Folio No.</th>
<th>Code No.</th>
<th>Name of the holders</th>
<th>Address</th>
<th>Signatures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attestation:

Signature of witness

Name and address of the witness

I hereby attest the signature of the transferor(s) herein mentioned

Signature:

Name and address/seal of the counter

Power of attorney/probate/death certificate/letter of administration registered with the Company No.......................... Date..................

Signature [not initials of counter/bank/company]

*Lodged by..............................share certificates to be returned to

(Fill in the name and address to which the certificates are required to be returned)

*Note: To be filled only if the documents are lodged by a person other than the transferee.

#Counter means and includes members and dealers of OTCEI.

Terms and Conditions:

1. This contract is made subject to the rules, bye-laws, code of conduct and regulations of OTC Exchange of India and the provisions of the laws of the land for the time being in force.

2. Brokerage, where applicable may be charged at the rates not exceeding the official scale and will be indicated in the counter receipt/sale confirmation slip.

3. Transaction fees for every transaction and service charges for investor services may be levied as per the rates specified by OTC Exchange of India from time to time.

4. The Counter Receipt (CR) is valid for trading only at the authorised counters of OTC Exchange of India.
5. The CR authorises the holder to exchange the same for share certificates and vice versa at the option of the holder.

6. The first holder of a CR is authorised to transact on behalf of all the holders. The other holders will be deemed to have given their consent for all transactions. However, all the holders will have to sign on Part B of the Counter Receipt and transfer form, in case the shares are registered in the company's books in the investor's name. The seller/buyer of shares will sign the transfer form as transferor/transferee respectively.

7. Transfer would take place, within reasonable time, without reference to the relevant company, if the investor's purchase/holding does not exceed 0.5% of the company's paid-up capital or such other limit, as may be stipulated from time to time.

8. The transferred CR will bear the words “Transferred CR” on the CR. The transferred CR will not indicate the details of the transaction, therefore the investor is advised to keep a record of it separately before sending in the CR for transfer.

9. Safe custody of any trading document of OTC Exchange of India is at the risk of the holder. The CR is a very valuable document and the holder is requested to keep it safely.

10. If a cheque issued in pursuance of the contract is dishonoured or a CR or any other trading document is found invalid, the contract is liable to be declared null and void.

11. In the event of any claim (whether admitted or not) difference or dispute arising out of this contract, the matter shall be submitted to and decided by the Arbitration Committee as provided in the rules, bye-laws and regulations of OTC Exchange of India.

12. The jurisdiction of this contract extends to the whole of India where counters authorised by OTC Exchange of India operate.

13. In case of any dispute, notice and communications to a member or non-member shall be served in any one or more of all the following ways and any such notice or communication under (a) to (h) below shall be served at his ordinary business address and/or at his ordinary place of residence and/or at his last known address:

(a) by delivering it by hand.
(b) by sending it by registered post.
(c) by sending it under certificate of posting.
(d) by sending it by express delivery post.
(e) by sending it by telegram.
(f) by affixing it on the door at the last known business and residential address.
(g) by its oral communication of the party in the presence of third person.
(h) by advertising in at least once in any daily newspaper published in Bombay.
14. All dealings, transactions and contracts which are subject to the rules, regulations and bye-laws of the exchanges and every arbitration agreement, to which the rules, regulations and bye-laws of the exchange apply shall be deemed in all respects to be subject to the rules, regulations and bye-laws of the exchange and shall take effect as wholly made, entered into and to be performed in the whole of India and the parties to such dealings, transactions, contracts or agreements shall be deemed to have submitted to the jurisdiction of the courts all over India for the purpose of giving effect to the rules, regulations and bye-laws of the exchange.

15. Upon the sale of the said shares, the transferee authorises the company or OTC Exchange of India or any person(s) authorised by OTC Exchange of India in this regard, to treat the above declaration as authority for transferring the said shares to the subsequent person(s) who request the said shares to be transferred in the latter’s name.

ANNEXURE XIII

FORM NO. 7C

THE COMPANIES ACT, 1956

Application form for extension of time under Section 108(1D)

The Registrar of Companies.

Sub: Extension of time under Section 108(1D) of the Companies Act, 1956

Dear Sir,

I beg to apply for extension of time under Section 108(1D) of the Companies Act, 1956, and request you to kindly accord the same at an early date.

The brief particulars in respect of my holding are as under:

1. Name of the Company (with address) whose shares are the subject of transfer.

2. Name and address of the applicant seeking extension of time.

3. Number and nominal value of the shares involved in each instrument of transfer.

4. Name of the transferee.

5. Date of execution of the transfer.

6. Date of expiry of the period of validity of the instruments of transfer in question.

7. Whether the applicant is still the rightful holder of the transfer forms.

8. Name of the person in whose favour the shares stand registered in the books of the company.

9. Reasons given by the applicant for the extension of time asked for.

10. Particulars of payment of the application fee.

Dated........................ Signature
Instructions on this application

1. It is made under Section 108(1D) of the Companies Act, 1956, and it is presumed that the applicant and other parties to the Transfer Deed to be revalidated are fully aware of the contents and legal implications related to the matter of transfer of shares. It should be complete in all respects and accompanied by necessary fees. Extension of validity will be provided for a specified period from the date of revalidation based on the contents of the application. Responsibility for the truth, correctness and legal validity of application and the Transfer Deeds related thereto rests entirely with the applicant and extension will be provided based on this.

2. Where the transferees are companies, compliance with the provisions of Sections 49 and 372A (if applicable) of the Act should be ensured by the applicants to the satisfaction of Registrar of Companies.

3. Payment of fees - Table of fees per Transfer Deed.

<table>
<thead>
<tr>
<th>Nominal face value of shares involved in the Transfer Deed</th>
<th>Fee payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto Rs. 5,000</td>
<td>Rs. 50/-</td>
</tr>
<tr>
<td>Above Rs. 5,000</td>
<td>Rs. 100/-</td>
</tr>
</tbody>
</table>

Mode of payment - The amount may be paid in cash at the ROC’s Office or by Bank DD or pay order favouring..............to be attached to the application. Particulars of payment such as cash or DD or Pay Order No. and date to be furnished in column No. 10 of the application.

4. Attestation - In case of transfer deeds requiring attestation (in cases like thumb impressions, marks, signature differences, etc.) the attestation may be done on the transfer deed itself by a Magistrate, Special Executive Magistrate, Notary Public or a similar authority holding a public office and authorised to use the seal of his office, member of a recognised Stock Exchange through whom the shares are sold or a manager of the Transferor’s Bank.

5. Applications can be lodged at the Cash Counters of the Offices of the Registrars of Companies.

ANNEXURE XIV

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) the company secretary, Shri ........................., be and is hereby authorised to endorse the relevant share certificates under his signature, arrange for their despatch to the transferees of the shares and make appropriate entries in the register of members and other records of the company.”
Dear Sir/Madam,

Please refer to your letter No.............dated...........enclosing...........transfer deed(s) along with the relevant share certificate(s).

We are returning.................transfer deed(s) along with the relevant share certificate(s) for the reason(s) ticked below :

1. The transfer deed(s) is/are invalid as it/they has/have not been delivered to the company before the date on which the Register of Members is closed or written 12 months from the date of presentation of deed of the prescribed authority or within two months from the date stamped thereon, i.e.............. as required under Section 108(1A) of the Companies Act, 1956. Therefore, the transfer deed(s) will have to be either revalidated by the Registrar of Companies, or replaced by fresh transfer deed(s).

2. The date of execution of the transfer deed(s) precede(s) the date stamped on the transfer deed(s) by the prescribed authority.

3. The date of execution of the transfer deed(s) has/have not been mentioned.

4. Signature(s) of the transferor(s) differ from his/her/their specimen signatures with the Company. The signature(s), therefore, requires/require attestation.

5. Transferor(s) and transferee(s) signature(s) is/are in a language other than English and Hindi or has/have affixed his/her/their thumb impression. Therefore, it/they requires/require attestation.

6. Transferor(s)/transferee(s) has/have not signed the transfer deed(s).

7. Signature(s) of the transferor(s)/transferee(s) is/are not witnessed.

8. Transfer deed(s) is/are unstamped/under-stamped. The rate of stamp duty is 50 paise for the value of Rs. 100/- or part thereof on the market value of the shares as on the date of execution of the deed(s).

9. Corrections/alterations made in the transfer deed(s) must be authenticated both by the transferor(s) and the transferee(s).

10. The power of attorney executed by transferor(s)/transferee(s) is not registered with the company.

11. .......................................................... ..............................................................

12. .......................................................... ..............................................................
We request you to re-lodge the transfer deed(s) after removing the ticked deficiency(ies) or to lodge fresh transfer deed(s) at an early date to enable us to proceed in the matter.

Yours faithfully,
for.....................Ltd.
SECRETARY

Note: Attestation of signature/thumb impression should be done by a First Class Magistrate or a Notary Public or a Justice of Peace, under their respective official seals and in the case of Notary under appropriate notarial stamps.

ANNEXURE XVI

FORM 2B
(See Rules 4CCC and 5D)

NOMINATION FORM
(To be filled in by individual(s) applying singly or jointly)

I/we................................and.......................and the holders of Share/Debentures/Deposit Receipt bearing number(s)........................of M/s..................................wish to make a nomination and do hereby nominate the following person(s) in whom all rights of transfer and/or amount payable in respect of shares or debentures or deposits shall vest in the event of my or our death.

Name(s) and Address(es) of Nominee(s)

Name : ..................................................
Address : ...............................................
Date of Birth* : .....................................

(*to be furnished in case the nominee is a minor)

** The Nominee is a minor whose guardian is...........................................................
Name and Address............................................................................................................
............................................................................................................................................
............................................................................................................................................

(** To be deleted if not applicable)

Signature : ............................................
Name : .............................................
Address : ..........................................
Date : ............................................
Signature : ............................................
Name : .............................................
Address : ..........................................
Date : .............................................
Instructions:

1. The Nomination can be made by individuals only applying/holding shares/debentures on their own behalf singly or jointly. Non-individuals including society, trust, body corporate, partnership firm, Karta of Hindu Undivided Family, holder of power of attorney cannot nominate. If the shares are held jointly all joint holders will sign the nomination form. Space is provided as a specimen, if there are more joint holders more sheets can be added for signatures of holders of shares/debentures and witness.

2. A minor can be nominated by a holder of shares/debentures/deposits and in that event the name and address of the guardian shall be given by the holder.

3. The nominee shall not be a trust, society, body corporate, partnership firm, Karta of Hindu Undivided Family or a power of attorney holder. A non-resident Indian can be a nominee on repatriable basis.

4. Nomination stand rescinded upon transfer of share/debenture or repayment/renewal of deposits made.

5. Transfer of share/debenture in favour of a nominee and repayment of amount of deposit to nominee shall be valid discharge by a company against the legal heir.

6. The intimation regarding Nomination/Nomination Form shall be filed in duplicate with Company/Registrar and Share Transfer Agents of the Company who will return one copy thereof to the share or debenture or deposits holder.

ANNEXURE XVII

FORM TO BE FILLED IN BY A PERSON OR PERSONS CLAIMING TITLE TO THE SHARES OF A DECEASED SHAREHOLDER

(i) Particulars of the deceased shareholder:
   (a) Full name and address registered with the company.
   (b) Date of death according to the English Calendar. (Enclose original and a certified copy of the death certificate original to be returned).

(ii) Particulars of shares held by the deceased:
   (a) Number and kind of shares.
   (b) Distinctive Numbers.
   (c) Account/Ledger Folio No.
(iii) **Self-acquired or joint family property:**

(a) Whether the shares were self-acquired property of the deceased or of a joint Hindu Family of which the deceased was a member?

(b) In the later event give names, ages and present addresses of other members of the Joint Hindu Family.

(iv) **Share Certificates:**

Give name, address of the person, who is in possession of the share certificate(s).

(v) **By what law is the family of the deceased governed:**

In case of Hindu, please indicate by which school of law the family is governed Mitakshara or Dayabhaga or Customary.

(vi) **Other particulars:**

Did the deceased leave any of the following relations, and if so, give their names, ages and present addresses?

- Widow/Husband.
- Son/Sons.
- Widow/Son/Daughter of a pre-deceased son (please give name and date of death of the pre-deceased son).
- Daughter(s).
- Son/Daughter of a pre-deceased daughter (please give name and date of death of the pre-deceased daughter).
- Widow/Son/Daughter of a pre-deceased son.
- Mother.

(vii) **Testamentary documents:**

Did the deceased leave behind a Will or any other testamentary instrument(s) disposing of his estate including shares in the company? If so, a copy duly certified by a 1st Class Magistrate or a Notary Public under appropriate notarial stamps be sent.

Whether the Will has been probated or a letter of administration has been obtained from a Court of competent jurisdiction? If so, a court certified copy of the probate or letter of administration, as the case may be, be enclosed.

Whether a succession certificate has been obtained in respect of the shares standing in the name of the deceased in the company? If so, a court certified copy with a photo copy thereof be sent (Court certified copy to be returned).

In whose names are the shares of the deceased to be transmitted.

(viii) Any other information which the applicants desire/design(desire(s) to give in support of his/her/their claim to the shares of the deceased.

Date.......................... Signature of the Applicant(s)

Address......................
AFFIDAVIT

I/We..................S/o Shri...................residence of..................make oath and
solemnly state as under :

(1) That.....................equity/preference shares Nos................of..................
Rs................each are standing registered in the name of late.................. in
the books of the..................Co. Ltd., Delhi.

(2) That Mr./Ms.....................expired on..............leaving behind him/her the
following as his/her sole and legal heirs :
(1)
(2)
(3)

(3) That Mr./Ms.....................left behind him/her an unregistered Will
dated..................in which he/she bequeathed all his/her..............shares
to............... This Will has not been superseded by any other Will.

(4) That the aforesaid..............shares were the separate and self-acquired
property of the deceased.

(5) That under the Hindu Succession Act, 1956, the persons mentioned in
paragraph 2 above are jointly entitled to inherit the aforesaid shares.

(6) That Mr./Ms.....................have out of love and affection for me/us and in
deference to the wishes expressed by late Shri/Smt..................in
his/her unregistered Will dated..................have relinquished and renounced
all his/her/their rights, titles and interests whatsoever in the aforesaid...........
equity/preference shares vide deed of relinquishment dated..................
to the intent that I/We may become the sole and absolute owner of the
aforesaid shares.

(7) That I/We, therefore, request the...................Co. Ltd. to transmit the
aforesaid..............equity/preference shares in my/our names and to pay
to me/us the outstanding dividend, if any, without production of the Probate
of the Will or Letter of Administration or a Succession Certificate.

Signature :..................
Deponent/s

Verification

Verified at...................on this..............day of..............20........ that the
statements contained in the above paragraphs are true to the best of my/our
knowledge and belief and that nothing has been concealed.

Signature :..................
Deponent/s
INDEMNITY BOND

.............equity/preference shares Nos.............of Rs............. each are standing registered in the name of late.............in the books of the..................Co. Ltd. Delhi.

Mr./Ms............................................. expired on..................leaving behind him/her the following as his/her sole and legal heirs:

(1)

(2)

(3)

Mr./Ms.............................................left behind him/her an unregistered Will dated.............in which he/she bequeathed all his/her...............shares to............... This Will has not been superseded by any other Will. The aforesaid...............shares were the separate and self-acquired property of the deceased. Under the Hindu Succession Act, 1956, the persons mentioned in paragraph above are jointly entitled to inherit the aforesaid shares. Mr./Mrs.............have out of love and affection for me/us and in deference to the wishes expressed by late Shri/Smt........................in his/her unregistered Will dated.............have relinquished and renounced all his/her/their rights, titles and interests whatsoever in the aforesaid...............equity/preference shares vide deed of relinquishment dated.............to the intent that I/We may become the sole and absolute owner of the aforesaid shares.

I/We, therefore, request the..................Co. Ltd. to transmit the aforesaid my/our above request on my/our names and to pay to me/us the outstanding dividend, if any, without production of the Probate of the Will or Letter of Administration or a Succession Certificate.

In consideration of the..................Co. Ltd. to transmit the aforesaid my/our above request on my/our executing an indemnity bond in favour of the company, I/We do hereby indemnify the company and bind myself/ourselves, my/our heirs, executors and administrators to pay all claims, charges, costs, damages, demands, expenses, and losses, which the said...............Co. Ltd. may sustain, incur or be liable for in consequence of having complied with my/our request. The company may realise the said claims, charges, costs, damages, demands, expenses and losses, from me/us personally or my/our heirs, executors or administrators or my/our properties, as the case may be.

Place :              Date

Witnesses No. 1:
Full Address :            Signature

Witnesses No. 2:
Full Address              Address
We, the undersigned, certify that the above facts are true and bind ourselves to make good all claims, charges, costs, damages, demands, expenses, and losses which the said...........Co. Ltd. may sustain, incur or be liable for in consequence of complying with the request contained above and the...........Co. Ltd. will be entitled to realise all claims, charges, costs, damages, demands, expenses and losses from our persons or our heirs or our properties, as the case may be.

Witnesses No. 1:
Full Address:

Witnesses No. 2:
Full Address:

Surety No. 1:
Full Address:

Surety No. 2:
Full Address:

N.B. : The witness should not sign as sureties.

ANNEXURE XX

DEED OF RELINQUISHMENT

Whereas.........equity/preference shares Nos...........of Rs............ each are standing registered in the name of late Shri/Smt..................... in the books of.......................Co. Ltd.

Whereas Shri/Smt......................expired on...............leaving behind him/her the following as his/her sole and legal heirs:

(1)
(2)
(3)

Whereas Shri/Smt......................left behind him/her an unregistered Will dated...............in which he/she bequeathed all his/her shares to Shri/Smt............... This will has not been superseded by any other Will.

Whereas the aforesaid...............equity/preference shares were the separate and self-acquired property of the deceased.

Whereas under the Hindu Succession Act, 1956, the persons mentioned above are jointly entitled to inherit the aforesaid shares.

And whereas I/We out of love and affection for Shri/Smt......................and in deference with the wishes expressed by the Late Shri/Smt....................... in his/her unregistered Will dated....................... am/are desirous of relinquishing and renouncing all my/our rights, titles and interests whatsoever in the aforesaid............. equity/preference shares standing registered in the name of late Shri/Smt....................... in his/her/their favour to the intent that he/she may become the sole and absolute owner of the aforesaid shares.

Now, in pursuance of the aforesaid desire I/we do hereby relinquish and renounce all my/our rights, titles and interests whatsoever in the aforesaid.............
shares standing registered in the name of late Shri/Smt........................ in the books of the..................Co. Ltd. to transmit the aforesaid shares in his/her/their names and to pay to him/her/their the outstanding dividend, if any, without production of the Probate of the Will or Letter of Administration or a Succession Certificate.

In witness whereof I/We set out hands on this deed on the..................day of........................20......

Witness for No. 1 Sig.: Shri/Smt.............
Signature .....................................
Name and address......................

Witness for No. 2 Sig.: Shri/Smt.............
Signature .....................................
Name and address......................

Witness for No. 3 Sig.: Shri/Smt.............
Signature .....................................
Name and address......................

Note: This will be executed by all those legal representatives of the deceased in whose favour it is not proposed to transmit the shares.

ANNEXURE XXI

SPECIMEN OF BOARD RESOLUTION APPROVING REGISTRATION OF TRANSMISSION OF SHARES

“RESOLVED THAT—

(i) transmission 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 died on ...................... at .................. 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) the Company Secretary, Shri .................., be and he is hereby authorised 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.”
SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES OF
THE COMPANY TO INCLUDE AN ARTICLE AUTHOURISING THE COMPANY TO
HAVE ITS SECURITIES DEMATERIALISED

“RESOLVED THAT pursuant to Section 31 of the Companies Act, 1956, letter
of the stock exchange at ................ 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 ... Dematerialisation 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, 1956, 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, 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
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, 1956, 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 depositaries 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.

ANNEXURE XXIII

DEMATERRIALISATION REQUEST FORM

(Annexure-D of National Securities Depository and Business Rules)

(Pre-printed Serial No.)

PARTICIPANT NAME

PARTICIPANT-ID

DRN ............................................... ........................... DATE .................. ................

I/We hereby declare that the below mentioned securities are registered in the name of the below mentioned person(s). The original certificates are hereby surrendered by me/us for dematerialisation.

I/We also hereby declare that the securities submitted by me/us for dematerialisation are free from any lien or charge or encumbrance and represents the bonafide securities of the company to the best of my/our knowledge and belief.

Account No. ....................................... .........

Account Holder Name................................ ................................................... ............

No. of Securities to Dematerialised : (in figures) ..................................................

(in words) ........................................ ................................................... ................

Name of the Security ........................................ ................................................... ..............

Name of the Issuing Company ........................................ ................................................... ........

Face Value ........................................ ................................................... ............
Details of Securities:
Folio No. ................................................................................................................
Certificate No. ...........................................................................................................
Quantity ...................................................................................................................
From Distinctive No. ..............................................................................................
To Distinctive No. ..................................................................................................
(In case the space is found to be insufficient, an annexure containing the details of
the certificate in the same format may be attached).
The dematerialisation request is for locked shares Yes/No
Lock-in Reason
Lock in Release Date (dd-mm-yy)
____________________________________________________________
Authorised Signature

First/Sole Holder
Second Holder
Third Holder

Participant Authorisation
Received the above mentioned securities for dematerialisation into
Account No. ..........................................................
ISIN ..........................................................
Date ..........................................................
The application form is verified with the certificates surrendered for
dematerialisation and certify that the application form is in accordance with the
details mentioned in the enclosed certificates. It is also certified that the
shareholders hold beneficiary accounts with us in the same name.
Forwarded by (Seal)
Signature (Name of the executive)

Acknowledgement
Participant’s Name, Address and ID (pre-printed serial no.)
We hereby acknowledge the receipt of ................. No. of shares in ............... No.
of certificates bearing numbers ......................... from ............... (Name)
holding a/c No. .................................................. surrendered for dematerialisation on ...........
(date) of the security .................................
Authorised Signatory (Seal)
• A Company is composed of members, though it has its own entity distinct from members.

• A person may acquire the membership of a Company by subscribing to the Memorandum of Association, making an application for allotment of shares, by transfer, transmission, by acquiescence or estoppel as prescribed in the Companies Act, 1956. A Global Depository Receipt holder is not a member (clarified by MCA in June 2009)

• A member ceases to be a member of a company soon after his name is removed from the register of members or register of beneficial owners.

• Company Law Board has prescribed certain tests to be applied in case of dispute as to title.

• In case of refusal by public limited company, the Company Law Board is empowered to direct rectification of Register of members to give effect to the transfer.

• Under Section 106 of the Companies Act, the rights attached to the shares of any class can be varied with the consent in writing of the holders of not less than three fourths of the issue shares of that class or with the sanction of special resolution passed at a separate meeting of the holders of the issued shares of that class.

• Under section 107, such variation in the members’ rights can be canceled by following the procedure as prescribed.

• Under section 82 of the Companies Act, the shares of any member in a Company are moveable property, transferable in the manner provided by the articles of association of the Company.

• A forged document never has any legal sanctity. It can never result in change of ownership from one person to another, however cleverly the signature on the document might have been forged.

• Transposition does not require stamp duty.

• Transmission of shares is a process by operation of law, whereunder the shares registered in a company in the name of a deceased person or an insolvent person are registered in his legal heirs by the company on proof of death or insolvency.

• Section 109A of the Act permits a shareholder to make a nomination in respect of his shares.

• Every person subscribing to shares offered by a company shall have option either to receive the share certificates or hold shares with the depository in electronic form.

• Rematerialisation is conversion of electronic securities into physical certificates of such securities.
SELF TEST QUESTIONS

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation).

1. Enumerate the procedure for becoming a member of a company?
2. What is the procedure for buy-back of shares.
3. Explain the procedure for forfeiture of shares in brief.
4. Write short note on variation of members rights.
5. What do understand by expulsion of member. Whether a company can legally expel a member?
6. Explain the procedure to be followed by the company for registration of transfer of shares.
7. A company intends to get its shares dematerialized. Explain the procedure to be followed by the company.
8. Can a member of producer company transfer his shares?
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 importance. These are regulated by statute, the Companies Act, and in the case of listed companies also by the Listing Agreement. This chapter deals with the procedural aspects for appointment, removal, remuneration etc. of directors and managerial personnel. After going through this study, you will be able to understand the following:

- Procedure for appointment of directors
- Procedure for reduction/increase in number of directors
- Procedure for removal of directors
- Vacation of office by a 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
- Procedure for appointment of whole-time director
- Provisions applicable to managerial remuneration
- Resignation by whole-time director
- Remuneration of whole-time director
- Procedure for loans to directors
- Procedure for entering in contracts in which directors are interested
- Procedure for disclosure of interests by a director
- Procedure for a director or persons related to a director to hold an office or place of profit
1. 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 directors individually functioning 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.

(For specimen of Board resolution authorizing a director to discharge certain responsibilities on behalf of the Board, please see Annexure I to this Study).

Despite the importance of the office of director in a company, the Companies Act, 1956 does not contain an exhaustive definition of the term “director”.

Section 2(13) of the Act contains an inclusive definition of the term “director includes any person occupying the position of director, by whatever name called”. This definition is based purely on the functions of director. Accordingly, a person is a director if he performs the normal functions of a company director. The Act provides no further guidance on this score.

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. 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, 1956. A person may be a deemed director, if he occupies the position of director of a company, irrespective of his designation.

**Maximum/Minimum Number of Directors in a Company**

Every public company is required to have a minimum of three directors. Every other company is required to have at least two directors. Section 252(1) provides that a public company having a paid-up capital of five crore rupees or more and one thousand or more small shareholders may have a director elected by small shareholders in the manner as may be prescribed.

As per Section 581O of the Act, every Producer company must have at least five directors and not more than fifteen directors. However where an inter State Cooperative Society is incorporated as Producer company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as Producer company.
The maximum number of directors of a public company are provided in its articles of association. In order to increase or reduce the number of its directors, the company is required to pass an ordinary resolution in general meeting but such increase must be within the limits fixed in that behalf by its articles (Section 258).

Any increase in the number of directors beyond twelve requires approval of the Central Government. If the Central Government does not approve the increase, such increase beyond twelve shall not have any effect (Section 259).

2. PROCEDURE FOR APPOINTMENT OF DIRECTORS IN A COMPANY

Appointment of First Directors

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, the articles may authorise the subscribers to the memorandum to appoint the first directors of the company. In that event, either all the subscribers or majority of them may appoint the first directors of the company.

If the articles of a company do not name the first directors nor do they contain a provision authorising the subscribers of the memorandum to appoint the first directors, Section 254 of the Companies Act, 1956 comes into play, which lays down that in default of and subject to any regulations contained in the articles of the company, subscribers to the memorandum of the company, who are individuals, shall be deemed to be the first directors of the company, until the directors are duly appointed in accordance with Section 255 of the Act.

Appointment of First Directors in Producer Company

In case of Producer Company, save as provided in Section 581N, the members who sign the memorandum and articles may designate therein the Board of Directors (not less than five and not more than fifteen) to be the first directors who shall govern the affairs of the Producer company until the directors are elected in accordance with the provisions of Section 581P.

The directors shall be elected within a period of ninety days of registration of Producer company. However where an inter-State Co-operative Society is registered as a Producer company, the election of directors shall be conducted within a period of 365 days of the incorporation of Producer company.

Appointment of Directors by Members at General Meeting

According to Section 255 of the Companies Act, 1956, the retiring directors, whose number is not less than two-thirds of the total number of directors on the Board of directors of a public company or a private company which is a subsidiary of a public company, at every annual general meeting of a company, are eligible for re-appointment by the members of the company at the same annual general meeting. If the articles of a company do not provide the mode of appointment of the remaining one-third or less directors, they are also to be appointed by the members of the company in general meeting. However, this provision does not apply to a private company which is not a subsidiary of a public company. In a private company, the appointment and retirement of directors depend on the provisions of its articles of association.
In case of Producer company, except where directors are elected under Sub-section (2), the directors of the Board shall be elected or appointed by Members in the annual general meeting. However every director in Producer company shall hold office for a period of not less than one year but not more than five years, as may be specified in articles. [Section 581P(3) and (5)]

In the case of a listed company, in addition to the Companies Act, 1956, the listing Agreement also applies. The composition of the Board of Directors of the company is prescribed in Clause 49 of the listing Agreement. The relevant points thereto are:

(a) Fifty percent of the Board of Directors is required to be comprised of non-executive directors.

(b) Where the Chairman of the Board is a non-executive director, at least one-third of the Board is required to be independent directors & in case he is an executive director, at least half of the Board should be independent directors. Provided that where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

(c) The definition of independent directors is stated in the clause.

(Relevant paras of Clause 49 are reproduced as Annexure II)

Apart from the above, while appointing directors, it is necessary to keep in mind the Companies (Disqualification of Directors) Rules apart from Clause 30 & 31 of the listing agreement. (Companies (Disqualification of Directors under Section 274(1)(g) of the Companies Act, 1956 ) Rules, 2003 are reproduced as Annexure III)

In the case of public companies having share capital of Rs.5 crores or more and one thousand or more small shareholders, the rules specified in Companies (Appointment of Small Shareholders’ Directors) Rules, 2001 also applies. [Companies (Appointment of Small Shareholders’ Directors) Rules 2001 are reproduced as Annexure IV]. (For specimen resolution for appointment of director please see Annexure V to this Study).

The provisions of the Companies Act, 1956 allow an individual to be director of up to fifteen companies and such companies can be located in the jurisdiction in any of the Registrars 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. Sections 266A, 266B, 266C, 266D, 266E, 266F and 266G in the Companies Act, 1956 so as to, inter alia, provide for allotment of an unique Director Identification Number to any individual, intending to be appointed as a director in a company or to any existing director of a company, for the purpose of his identification as such, through electronic or other form and to provide for penalty for any violation in this regards.

Director Identification Number (DIN) is a unique identification number for 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.

For this purpose, MCA Portal can be visited and DIN application form can be filled online in e-form DIN-I. Along with the form, applicant needs to attach scanned photograph, identity proof and proof of residence. The form needs to be digitally signed by Practising Professional (CA/CS/CWA). On payment of requisite fee, the system shall automatically generate the approved DIN. With this simple procedure, applicant is able to get the approved DIN on same day.

Steps after the DIN is allotted:

1. The Director, to whom a DIN is allotted, is required to inform the companies, on which one is a Director, about the Director Identification Number allotted to him/her in Form DIN-2 within a period of one month of allotment of the DIN.

2. The companies, thereafter, are required to inform the Director Identification Numbers of the Directors on its Board to the Registrar of Companies in Form DIN-3 within a period of seven days after receipt of information to this effect from the Directors. This information is to be sent by the companies to the ROCs on-line in a paperless mode.

3. Provision has also been made for incorporating any changes in the personal particulars of a Director, including his address, after he has submitted the information initially in Form DIN-1. The required changes are to be intimated to the Central Government in Form DIN-4 within 30 days of change in particulars. He is required to intimate the changes to the Company also.

Companies (Director Identification Number) Rules, 2006 are given as Annexure VI(A). Forms (DIN-1, 2, 3, 4) are given in Part B of this study).

Procedure for re-appointment of the retiring director at the Annual General Meeting:

1. Ascertain which directors are due to retire by rotation under sections 255 and 256 of the Companies Act.

2. Ensure that the retiring director is not subject to any disqualification for re-appointment as director of the company under sections 274, 275 and 278 of the Act.

3. Ascertain whether the retiring director is willing-seeking re-appointment at the ensuing annual general meeting.

4. Ensure that the director has intimated his directors identification number to the company.

5. Ensure that the consent of the director as well as the declaration from the director has been obtained. [format attached in Annexure VI(B)].

6. Convene a Board meeting after giving notice to all directors of the company
in accordance with Section 286 of the Act, to consider the re-appointment of retiring director.

7. Fix the time, place and agenda of the annual general meeting to pass an ordinary resolution for the re-appointment of retiring director.

8. Send the notice in writing at least 21 days before the date of annual general meeting to the members and also to the Stock Exchanges where the shares of company are listed.

9. Hold the annual general meeting and pass an ordinary resolution for re-appointment of the retiring director.

10. Forward a copy of the proceedings of the annual general meeting to the stock exchanges where the company’s shares are listed.

**Appointment of a Person other than Retiring Director**

A person who is not a retiring director is also eligible for appointment as director. Section 257 of the Companies Act, 1956 provides that a person (even a non member) other than a retiring director may give a notice in writing to a public company or a private company which is subsidiary of a public company, not less than fourteen days before a general meeting about his candidature as a director or any member may give such notice signifying his intention to propose him as a candidate for that office. Such notice should be accompanied with a deposit of five hundred 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. (For specimen resolution appointing director other than a retiring director please see Annexure VII to this Study).

**Procedure for appointment of a director other than a retiring director at the Annual General Meeting**

In case of a private company, its Articles of Association will have to be followed. 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 five hundred 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 other in regional language) circulating in the place where the registered office of the company is situated.

— Forward copies of this notice also to the stock exchange, if the shares of the company are listed.
— 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.

— At the general meeting the motion to appoint a person other than the retiring director will be taken up, keeping in view the provisions of Articles vis-a-vis the number of directors. 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.

— Send 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 Rs. 500 to the person or to such other member, who had proposed his name for directorship.

— The company has to file particulars of director in e-form 32 with the Registrar of Companies within thirty days of the appointment.

For the purpose of filing e-form 32, the following further details are required:
— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
— Consent letter of appointee.

— 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 301, 303 and 307.

— After appointment the director concerned has to inform other companies in which he is director about his appointment within twenty days of the appointment. [Section 305 read with Section 270]

Appointment of Directors by Board

(i) Appointment of Additional Directors

The Articles of Association of companies usually authorise their Board of directors to appoint additional directors as and when they deem necessary. Additional directors hold office only up to the date of the next annual general meeting of the company.

However, the total number of directors and additional directors shall not exceed
the maximum strength of directors fixed for the Board by the articles of the company (Section 260).

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.

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 166 of the Act. (For specimen of Board Resolution appointing an additional director please see Annexure VIII to this Study).

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 269 of the Companies Act, 1956.

Appointment of additional directors of Producer Company

The appointment of additional director in case of Producer company is governed by Section 581P(6) of the Act. It provides that the Board of the Producer companies may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit. However the expert directors shall not have the right to vote in the election of the chairman but shall be eligible to be elected as chairman, if so provided by the articles. The tenure of the expert director or the additional director shall not exceed such period as may be specified in the articles.

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 under Sections 274, 275, 278 of the Companies Act, 1956.

— 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 under Section 264 to act as director should be obtained.

— 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 286 of the Companies Act, 1956.

— Hold the Board meeting and pass resolution for appointment of an additional director.

— The company has to file e-form 32 with the Registrar of Companies alongwith the prescribed filing fee.

For the purpose of filing e-form 32, the following further details are required:

— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
— Consent letter of appointee.

— The particulars as required under Sections 299, 301, 303, 305 & 308 etc. are to be obtained from him and necessary entries shall be made in the relevant Registers.

— Where the shares are listed, the concerned stock exchanges shall also be informed of the appointment as per the listing agreement.

— The person so appointed, shall also acquire the qualification shares within the prescribed time, if required by articles of association of the company, as per Section 270 read with Section 305 of the Act.

(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 262 of the Act provides that in the case of a public company or a private company which is a subsidiary 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 vacancy may be filled by the Board of directors at a Board meeting in accordance with the procedure laid down in the articles. The person so appointed shall hold office only upto the day upto 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. (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 consent to act as a director has to be obtained before appointment (Section 264).
— At the Board meeting the matter will be discussed and appointment may be made by passing a resolution.

— 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.

— The company shall file with the Registrar of Companies e-form 32 with the prescribed filing fee within 30 days of the date of appointment.

For the purpose of filing e-form 32, the following further details are required:
   — Designation of Director
   — Details of holding Directorship in other companies
   — Details of holding Partnership in any Partnership Firm
   — Details of Proprietorship
   — Photograph of person appointed
   — Evidence of payment of Stamp Duty incase qualification shares have been taken
   — The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
   — Consent letter of appointee.

— The company has also to obtain from the appointee relevant particulars for making suitable entries in the Registers maintained under Sections 301, 303 and 307.

— Where the shares are listed, the stock exchange shall be informed of the appointment as per the listing agreement.

— The appointee shall also acquire qualification shares, if required by articles of association of the company, within the time limit prescribed in Section 270 read with Section 305 of the Act.

(iii) Appointment of Alternate Director

Section 313 of the Companies Act, 1956, 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. (For specimen of Board resolution appointing alternate director please see Annexure X to this Study).

Procedure for appointment of an alternate Director

— Where it is proposed to appoint a person as an alternate director his consent
as required by Section 264 to act as director shall be obtained.

— The Board may approve the appointment by passing a resolution either at a Board meeting or by circulation.

— Where the articles the company require the holding of qualification shares, by a director, the appointee shall acquire his qualification shares within the time limit as prescribed under Section 270 of the Act.

— Necessary information/particulars shall also be obtained from the newly appointed director as required under Sections 299, 305 and 308 and the particulars thus received shall be entered in the appropriate registers maintained by the Company under Sections 301, 303 and 307 of the Act.

— 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.

— e-form 32 as prescribed in Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, shall be filed with the Registrar of Companies along with the prescribed filing fees within 30 days of the appointment.

For the purpose of filing e-form 32, the following further details are required:

— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
— Consent letter of appointee.

— Where the company’s shares are listed on a stock exchange, the concerned stock exchange shall be promptly notified of the appointment in terms of the Listing Agreement.

— 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 Central Government**

Under Section 408 of the Companies Act, 1956, the Central Government has been empowered to appoint directors whenever it is necessary to make the appointment in order to prevent the affairs of the company being conducted in a manner which is oppressive to any member of the company or in a manner which is prejudicial to the interests of the company or public interest. The Central Government
may appoint such number of persons as the Company Law Board* may, by order in writing, specify as being necessary to effectively safeguard the interests of the company or its shareholders or in the public interest to hold office as directors thereof for such period, not exceeding three years on any one occasion. 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 under Section 255 or 256, any director or directors appointed by the Central Government shall not be taken into account. Such director or directors shall not be required to hold any qualification shares and not be liable to determination by retirement of directors by rotation. But they can be removed by the Central Government at any time and other persons can be appointed by it in their place. Where the directors have been appointed by the Central Government, it may also issue such directions to the company, as it may consider necessary or appropriate in regard to their affairs. Such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company and upon such directions being given the appointment, removal or alteration as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done. The Government directors may be required to report to the Central Government from time to time with regard to the affairs of the company.

— Vide Circular No. 8/2011 dated 25th March 2011, it is clarified by Ministry of Corporate Affairs that director appointed u/s 408 of the Companies Act shall not be held liable for any act of omission or commission by the Company which constitute breach or violation of any provision of the Companies Act, 1956 which occurred without his knowledge attributable through Board Process. The Board Process includes meetings of any committee of Board and any information which the director was authorised to receive as Director of Board.

Appointment of Director by System of Proportional Representation

Section 265 of the Companies Act, 1956 lays down that the articles of a company may provide for the appointment of not less than two-thirds of the total number of directors of a public company or a private company which is subsidiary of a public company according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the provisions, mutatis mutandis, of Section 262 of the Act.

Appointment of nominee Directors

Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on the 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.

* It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
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 and they hold office at the pleasure of their nominating agencies. Vide Circular 8/2011 dated 25th March, 2011, Nominee directors shall not be held liable for any violation of provisions of Act, which had occurred without his knowledge attributable through Board Process.

The procedure to be followed in regard to appointment of nominee directors is as follows:

— Alter the Articles if there is no provision for such an appointment by passing a special resolution. Approval of the Central Government under Section 268 of the Companies Act shall have to be obtained in case an amendment of any provision relating to appointment of non-rotational director is to be made. For this purpose an application shall be made to the Central Government in e-form 25B.

Mandatory attachments as prescribed in the new e-form 25B are given below:

- Copies of the proceedings along with resolution of the board and general body meeting of the company.
- Newspaper clippings in which notice pursuant to section 640-B has been published.
- No objection certificate from the concerned banks/financial institutions—mandatory in case any loan has been taken by the company.
- Any other information can be provided as an optional attachment.

— Before making the application, formalities as to giving of general notice to the members under Section 640B of the Act, etc. are to be complied with.
— Copy of the special resolution passed shall be filed alongwith e-form 23 with the Registrar of Companies within thirty days of passing of the resolution.
— On receipt of intimation of the nomination by the company, the Board of directors take note of the nomination.
— 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.
— e-form 32 shall be filed with the Registrar of Companies together with the prescribed filing fee.

For the purpose of filing e-form 32, the following further details are required:

— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
— Consent letter of appointee.
— The nominated director shall give notice to the company under Sections 308 and 305 of the Companies Act, 1956.
— The particulars of the director shall be entered by the company in the register kept for this purpose under Section 303.

(For specimen of e-form 25B, please see Part B of this Study).

Procedure for Appointment of Director to be Elected by Small Shareholders

1. According to Section 252 of the Companies Act, 1956, a public 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 Rs. 20,000 or less) may have a director elected by such small shareholders.

2. If public company satisfies the above condition it may have atleast one director elected by such small shareholders. However, before making an appointment of such director, it should be ensured that such person does not suffer from any of the disqualification mentioned under Rule 5 of the Companies (Appointment of Small Shareholders’ Director) Rules, 2001. Further ensure that such person is not already holding office as small shareholders’ director in more than one company.

3. A company may act suo-moto to elect a small shareholders’ director from amongst small shareholders or upon the notice of small shareholders, who are not less than 1/10th of total small shareholders and have proposed the name of a person who shall also be a small shareholder of the company.

4. Small shareholders intending to propose a person shall leave a notice of their intention with the company atleast 14 days before the meeting under signature of atleast 100 small shareholders specifying name, address, shares held, folio number, particulars of shares with differential rights as to dividend and voting, if any, of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.

5. A person whose name has been proposed for the post of small shareholders’ director shall sign, and file with the company, his consent in writing to act as a director.

6. If the company is listed then such director shall be elected through postal ballot subject to the requirements mentioned above.

7. If the company is not listed then such small shareholders’ nominee shall be elected subject to above conditions if majority of small shareholders recommend his candidature for the post of director in their meeting.

8. Such director shall hold office for a maximum period of three years subject to meeting the requirement of provisions of the Companies Act. However, he shall not be liable to retire by rotation.
9. The particulars regarding the director so appointed shall be entered in the Register of Directors and Register of Directors’ Shareholdings.

(For specimen resolution for appointment of a director elected by small shareholders, Please see Annexure XI to this Study).

3. PROCEDURE FOR REDUCTION IN NUMBER OF DIRECTORS

Section 258 of the Act lays down that a company in a general meeting may by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles. However, this is subject to the provisions of Sections 252, 255 and 259 of the Act.

— In the case of a private company the number of directors should not go below two, and in the case of any other public company the number should not go below three, unless the articles of the concerned company provide for minimum number which is higher than the statutory number specified herein.

— Convene a Board meeting to consider the issue of reduction in the number of directors and also the method to be adopted in this regard.

— Obtain a resignation letter from the directors to vacate office or pass an ordinary resolution to reduce the number of directors under Section 258 or pass an ordinary resolution after giving a special notice in this regard under Section 284.

— 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.

— Notify any change among the directors to the Registrar of companies in e-form 32 within 30 days (Section 303) together with the requisite filing fee as prescribed under Schedule X to the Companies Act, 1956, and in accordance with Rule 22(1) of the Companies (Central Government’s) General Rules and Forms, 1956.

For the purpose of filing e-form 32, the following further details are required:

— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
— Supporting evidence of cessation whether due to resignation or disqualification or removal.
— If the shares of a company are listed, the stock exchange(s) shall be notified of such change among directors.

— The director who resigns or is removed should notify such change to other companies where he is director as per the requirement of Section 305.

4. PROCEDURE FOR INCREASE IN NUMBER OF DIRECTORS

The increase in number of directors beyond twelve directors needs prior approval of the Central Government and authority by the Articles of Association.

Appointment of a director by the Central Government under Section 408 of the Act and appointment of nominee directors by institutions formed under special enactments which dispense with the requirements of these provisions of the Act, will not be taken into account while counting the number of directors for this purpose. In case of a Government company, the provisions of Section 259 are not applicable [GSR 577(E) dated 16.7.1985]. For increasing the number of directors beyond twelve, the procedure is as under:

— Convene and hold a Board meeting to decide about the alteration of the Articles of Association so as to increase maximum number of directors to more than twelve and to call a general meeting for passing special resolution for this purpose.

— Issue notice of the general meeting to the members with a requisite explanatory statement at least 21 days before the date of the meeting.

— Forward three copies of notices to the Stock Exchange where the company is listed.

— Hold the general meeting so convened and pass special resolution for increase in number of directors beyond twelve.

— File e-form 23 within thirty days from the date of the meeting with the Registrar of Companies together with the requisite filing fees.

— Send a copy of the proceedings of the meeting to the Stock Exchanges where the company is listed.

— Publish a notice in newspapers as provided under Section 640B of the Act.

— Make the application in e-form 24 and enclose the following enclosures:

  — Copy of the board resolution for increasing the number of directors.

  — Copy of the minutes of the general meeting of the company, with the details of voting, where resolution for increase in number of directors and alteration of article of association has been passed.

  — Newspapers clipping as proof of publication in which notice pursuant to section, 640B have been published.

  — No objection certified from banks/financial institution if company has obtained loan from Bank or financial institutions.

  — Details of proposed appointee – mentioning his director identification number (if obtained), name, address, date of birth, nationality, qualification, experience etc.

  — Any other information can be provided as an optional attachment.
— Send a copy of the application with all enclosures to the concerned Registrar of Companies.
— Obtain approval of the Central Government for increase in maximum number of directors beyond twelve.
— Hold a Board meeting and appoint an individual or additional director
— 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.
— Obtain general notice in Form No. 24AA from such director.
— Inform Stock Exchange(s) where the company is listed.
— File e-form 32 with the concerned Registrar of Companies together with the requisite filing fees.

For the purpose of filing e-form 32, the following further details are required:
— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The original attachment relating to qualification shares duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office.
— Make entries in the Register of Contracts, Register of Directors and Register of Directors' Shareholding.

(For specimen of e-form 32, please see Part-B of this Study. Form No. 24AA is placed as Annexure XII of the end of this study.)

5. REMOVAL OF DIRECTORS

(i) Removal of Director by Shareholders

According to Section 284(1) of the Act, a company may, by an ordinary resolution, remove a director before the expiry of the period of his office. However, the following directors cannot be removed:

(a) A director of a private company holding office for life on the first of April, 1952 whether or not he is subject to retirement under an age limit by virtue of the articles of the company or otherwise [First proviso to Section 284(1)].

(b) A director appointed by a company in accordance with the principle of proportional representation under Section 265 of the Companies Act [Second proviso to Section 284(1)].
(c) A director appointed by the Central Government under Section 408 of the Companies Act [Sub-section (1) of Section 284].

(d) A director appointed by the Board for Industrial and Financial Reconstruction (BIFR) [Sections 16(6)(a) or Section 18(2)(c) read with Section 22(2)(b) of the *Sick Industrial Companies (Special Provisions) Act, 1985*].

(e) A director appointed by a Financial Institution or a bank under the terms of a loan agreement and in accordance with the provisions contained in the articles of the company.

**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.

   (For specimen of resolution and notice, please refer to Annexure XIII to this Study).

3. Decide to call a general meeting through the Board meeting or a resolution by circulation.

4. Issue notice of the general meeting in writing at least twenty-one days before the date of the meeting stating about 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 right of being heard at the meeting. However, the Company Law Board** 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.

7. Forward three copies of notice of the general meeting to the stock exchange(s) where the company is listed.

8. Hold the general meeting and pass the proposed resolution by ordinary resolution.

9. Forward a copy of the proceedings of the meeting to the stock exchange(s) where the company is listed.

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* Not yet repealed.
** It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
10. Notify the change in directors of the company to the stock exchange(s) where the company is listed.

11. Make entries in the Register of Directors and Register of Directors Shareholding.

12. File e-form 32 with the Registrar of Companies together with requisite filing fees within thirty days from the date of general meeting.

   For the purpose of filing e-form 32, the following further details are required:
   — Designation of Director
   — Details of holding Directorship in other companies
   — Details of holding Partnership in any Partnership Firm
   — Details of Proprietorship
   — Photograph of person appointed
   — Evidence of payment of Stamp Duty in case qualification shares have been taken
   — The attachment relating to qualification shares, duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office.

13. 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.

**Procedure for filling the vacancy caused by removal of a director**

The vacancy resulting due to removal of a director can be filled in, in the same general meeting in which an ordinary resolution for removal of a director is considered and passed provided special notice of the appointment has also been given. [Section 284(5)].

If the vacancy is not filled under Section 284(5) of the Act, it can be filled in as a casual vacancy in accordance with the provisions of Section 262 of the Act. However, the director who was removed from the office shall not be appointed as a director by the Board of Directors.

The procedure for filling in the vacancy caused by removal of a director is as under:

1. A special notice under Section 190 of the Act proposing an individual who is not prohibited or disqualified under the Act, for appointment as a director is necessary.

2. Convene a general meeting at a Board meeting or resolution by circulation.

3. Issue notice of the general meeting at least 21 days before the date of the meeting to the members of the company, proposing ordinary resolution for filling the vacancy to be caused by removal of the director with an appropriate explanatory statement.

4. Forward three copies of the notice to the stock exchange(s) where the company is listed.
5. 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.

6. Hold the general meeting and at the meeting after passing resolution for removal of the director, consider and pass resolution for appointment of a director in the vacancy caused by removal.

7. File e-form 32 with the Registrar of Companies, together with requisite filing fees (e-form 32 should contain changes in directors for both removal and appointment of directors) within 30 days from the date of the meeting.
   For the purpose of filing e-form 32, the following further details are required:
   — Designation of Director
   — Details of holding Directorship in other companies
   — Details of holding Partnership in any Partnership Firm
   — Details of Proprietorship
   — Photograph of person appointed
   — Evidence of payment of Stamp Duty incase qualification shares have been taken pursuant to Section 270.
   — The original attachment relating to qualification shares duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office
   — Consent letter of appointee.

8. Send a copy of the proceedings of the meeting to the stock exchange(s) where the company is listed.

9. Inform the changes in directors of the company to the stock exchange(s) where the company is listed.

10. Make entries in the Register of Directors and Register of Directors’ Shareholding.

(ii) Removal of Director by Central Government

The Central Government shall, by order, remove from office any director concerned in the conduct and management of the affairs of a company, against whom there is a decision of the Company Law Board* under Section 388D of the Act (Section 388E).

The decision of the Company Law Board* is on a reference by the Central Government under Section 388B of the Act.

Where in the opinion of the Central Government there are circumstances suggesting:

(a) that any person concerned in the conduct and management of the affairs of a company is or has been, in connection therewith, guilty of fraud,
misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) the business of a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Company Law Board* with a request that the Company Law Board* may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company [Refer Section 388B].

The Company Law Board* is required to record its decision whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company [Refer Section 388D].

(iii) Removal of Director by Company Law Board*

Where an application has been made to the Company Law Board* under Section 397 of the Companies Act for prevention of oppression or an application has been made to the Company Law Board* under Section 398 for prevention of mismanagement and the Company Law Board* has conducted its proceedings on the application, it has the power under Section 402 of the Act, *inter alia*, to terminate, set aside or modify any agreement between the company and any director.

6. VACATION OF OFFICE BY A DIRECTOR

Section 283 of the Act provides that the office of a director shall become vacant if—

(a) he fails to obtain the share qualification within two months after his appointment as director or at any time thereafter ceases to hold the share qualification, if any, required of him by the articles of the company;

(b) he is found to be of unsound mind by a Court of competent jurisdiction;

(c) he applies to be adjudicated as insolvent;

(d) he is adjudged an insolvent;

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* It shall be substituted by National Company Law Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of the shares of the company held by him, whether alone or jointly with others, within six months, from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure;

(g) he absents himself from three consecutive meetings of the Board of directors of the company or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(h) he whether by himself or by any person for his benefit or on his account, or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan from the company in contravention of Section 295 of the Act;

(i) he acts in contravention of Section 299;

(j) he becomes disqualified by an order of the Court under Section 203;

(k) he is removed in pursuance of Section 284; or

(l) having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the 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. However, a public company cannot, add any disqualification other than those mentioned above [Section 283].

On vacation of office of director, the company is required to file e-form 32 to the Registrar of Companies.

Vacation of office by Directors in case of Producer Company

The office of director of a Producer Company shall become vacant under the following circumstances as provided in Section 581Q of the Act viz.:

(a) if he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(b) if the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;

(c) if he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;

(d) if the Producer Company, in which he is a director:
   (i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002; or
   (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;
(e) if default is made in holding election for the office of director, in the Producer company in which he is a director, in accordance with the provisions of the Companies Act and articles;

(f) if the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of the Act except due to natural calamity or such other reasons.

The above provisions shall also, apply to the director of a Producer Institution, who is a member of a Producer Company.

7. MANAGING DIRECTOR

Section 2(26) of the Companies Act, 1956 defines a managing director as:

Managing director means a director, who, by virtue of an agreement with the company or an ordinary resolution passed by the company in general meeting or by its Board of directors or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management, which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

The Sub-section further states that a managing director shall exercise his powers subject to the superintendence, control and direction of its Board of directors. The Sub-section excludes from the sphere of substantial powers to be exercised by the managing director the 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.

As per above definition, a managing director has to be a director before he can be appointed 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 an additional director in accordance with the provisions of Section 260 of the Act. Before his appointment, he has to sign and file his consent to act as director of the company pursuant to the provisions of Section 264 of the Act. He shall also be bound in accordance with the provisions of Section 270 of the Act to obtain his share qualification, if any, prescribed by the articles of association of the company, within two months of his appointment as director, the nominal value whereof shall not exceed five thousand rupees or the nominal value of one share if it exceeds five thousand rupees.

Appointment of Managing Director

With effect from 18.9.90 it is obligatory for a public company or a private company which is a subsidiary of a public company having a paid-up share capital of Rs. five crores or more, to appoint a Managing Director or Whole-Time Director or Manager [Section 269(1) read with Rule 10A of the Companies (Central Government's) General Rules and Forms, 1956].
Sub-section (2) of Section 269 provides that no appointment of a person as a managing director (or whole-time director or manager) in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government. However, approval of the Government is not necessary if the appointment is made in accordance with the conditions specified in Parts I and II or Schedule XIII (the said parts being subject to the provisions of Part III of the said schedule) and a return in the prescribed form viz. Form 25C is filed with Registrar within 90 days from the date of such appointment.

A managing director may be appointed by a resolution passed by its Board of directors of a company or by an ordinary resolution passed by the company in general meeting. However, if the appointment is made by a resolution passed by the Board of directors of a company, his appointment and remuneration shall be subject to approval by a resolution of the shareholders in general meeting [Paragraph 1 of Part III of Schedule XIII to the Companies Act, 1956].

(For specimen of Board resolution and ordinary resolution at general meeting, appointing managing director, please see Annexure XIV and XV to this Study).

**Procedure for Managing Director’s Appointment**

First of all, the company must ensure that the appointment is made strictly in accordance with the conditions specified in Parts I and II of Schedule XIII to the Companies Act (the said Parts being subject to the provisions of Part III of that Schedule) and a return in e-form 25C, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, is filed with the Registrar of Companies and the prescribed filing fee is paid along with the application, within ninety days from the date of such appointment. Otherwise the appointment shall be made subject to the approval of the Central Government [Section 269(2)].

It may be noted that under Section 316 of the Act, a public company can not appoint or employ any person as managing director, if he/she is either the managing director or the manager of more than one other company.

It may also be noted that Section 317 of the Act limits the term of office of a managing director to five years. However, the term may be extended by further periods not exceeding five years on each occasion. The following steps shall be taken.

1. Convene and hold a Board meeting after giving to all the directors due notice as required under Section 286 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 mentioned in Sections 267 and 274 of the Act or disability mentioned in Sections 316 of the 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 Section 173(2) of the Act; and
(e) to authorise company secretary to issue notice of the general meeting on behalf of the Board.

2. Send three copies of the notice to the stock exchanges on which the securities of the company are listed as per the Listing Agreement signed with them.

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 XIII of the Act, the company is required to obtain approval of the Central Government as per Section 269(2) of the Act. For getting the approval of the Central Government under Section 269 certain formalities are to be complied with:

(a) As required by Section 640B 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 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 the company shall attach a copy of this notice with the application together with certificate as to the due publication thereof.

(A specimen of notice under Section 640B is given at Annexure XVI to this Study).

(b) The application should be in e-form 25A of the Companies (Central Government's) General Rules and Forms, 1956, accompanied by the prescribed fees as per the Companies (Fees on Application) Rules, 1968.

Details of proposal needs to be entered along with certain attachments as given below:

— Copy of resolution of remuneration committee along with its composition, board of directors or shareholders. If the remuneration committee is not applicable to the company, board of directors’ resolution is required to be enclosed. (Mandatory, if appointment/reappointment or increase in remuneration is selected in field 7(a))

— In case company has defaulted in repayment to financial institution no objection certificate from financial institution for this proposal is to be enclosed

— In case company has not made any default, certification from director or secretary declaring that company has not made any default is to be enclosed

— Copy of scheme approved by BIFR or lead bank/financial institution for the revival of the company if applicable

— Copy of draft agreement between company and the proposed appointee. If there is no agreement between the company and appointee, any formal appointment letter may be enclosed.
(Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— Certificate from the auditors with regard to the compliance of section 274 of the companies Act. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— Newspaper clipping in which notice has been published. (Mandatory, if proposal for appointment or reappointment or increase in remuneration is selected in field 7(a))

— Copy of visa- In case appointee is a foreign national.

— Copies of educational or professional certificate, if appointment is based on the professional qualification as per section 309(1)(b) of the Companies Act, 1956. (Mandatory, if expression of opinion is selected in field 7(a))

— If application is not made in time an application under section 637-B of the Act, 1956 is to be enclosed.

— Copy of calculation sheet relating to excess or overpayment duly verified from a chartered accountant or company secretary in whole-time practice. (Mandatory, if waiver of excess or overpayment is selected in field 7(a))

— Projections of the turnover and net profits for next three years. (Mandatory, if application is filed by a new company)

In case of payment of minimum remuneration or remuneration of excess of limits prescribed under Section 198 (1) and 309(3) of the Act the following attachment is required:

— Relevant resolution if company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under Section 198(1) and 309(3) of the Act

(c) As per Rule 20A of the Companies (Central Government's) General Rules and Forms, 1956, a copy of the application made to the Central Government together with a copy of each document enclosed therewith has to be filed simultaneously with the Registrar of Companies concerned. Rule 20A also provides that any person having any objection to the proposal of the company relating to the appointment of the managerial personnel as contained in the notice issued by the company may communicate his objection in writing to the Secretary, Department of Company Affairs, New Delhi as early as possible after the publication of the notice in newspapers. The Central Government will not consider any objection received after the expiry of 30 days from the date of publication of the notice.

5.Execute the agreement, as approved by the Board, with the managing director.

6. To obtain from the managing director notice in Form No. 24AA about his appointment as director, managing director, manager or secretary in other
companies for making required entries in the records of the company [Refer Section 305 of the Act].

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 e-form 25C, within ninety days 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 e-form 25C:
— Copy of Board resolution is to be attached.
— Copy of share holder resolutions-if any.
— Any other information can be provided as an optional attachment.

(b) e-form 32 within thirty days of the appointment.

For the purpose of filing e-form 32, the following further details are required:
— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
— The original attachment relating to qualification shares duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office.

(c) e-form 23 within thirty days of the appointment under Section 192(4)(c) of the Act.

9. Submit to the stock exchanges, proceedings of the general meeting.

10. Inform stock exchanges of the appointment of the managing director immediately after the appointment.

11. 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.

(For specimen of e-form 25A and 25C, please see Part B of this Study).

Appointment of a Person as Managing Director, who is Managing Director of Another Company

According to Section 316 of the Companies Act, 1956, a public company may appoint a person as its managing director if he is managing director of only one other company.

If such an appointment is made by a resolution passed at a duly convened and held meeting of the Board of directors of the company, the resolution should have
been approved *nemine contradicente* 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 [Proviso to Sub-section (2) of Section 316)].

(For specimen of Board Resolution appointing a person as Managing Director, who is Managing Director or Manager of one other company, please see *Annexure XVII* to this Study).

**Appointment of Managing Director/whole-time Director/Manager of a Private Company which is not a Subsidiary of a Public Company**

The provisions of Section 198 relating to overall remuneration of a managerial personnel, Section 269 relating to appointment and re-appointment of managing director, whole-time director and manager requiring Central Government approval, Sections 309 and 310 relating to the remuneration payable to the directors and of Sections 386 and 388A relating to the appointment of Manager are not applicable to a private company which is not a subsidiary of a public company. Therefore, the appointment of a managing director or a whole-time director or a manager in such 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.

**Variation of Provisions Regarding Appointment or Reappointment of Managing Director/Whole-time Director/Non-Rotational Director**

According to Section 268 of the Companies Act, 1956 in the case of a public company or a private company which is a subsidiary of a public company, an amendment of any provision relating to the appointment or re-appointment of a managing director or whole time director or of a director not liable to retire by rotation whether that provision be contained in the company’s memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors, shall not have any effect unless approved by the Central Government and the amendment shall become void if, and in so far as, it is disapproved by the Government.

**Procedure for Varying the Terms of Appointment of Non-rotational Directors**

(1) The provisions of Section 268 of the Companies Act, 1956 apply only to a public company or a private company which is a subsidiary of a public company.

(2) A Board meeting should be convened to decide the amendment to be made in any provision relating to the appointment or re-appointment of non-rotational directors.

(3) Issue a general notice to the members of the company indicating the nature of the application proposed to be made and arrange for its publication atleast once in the principal language of the district in which the Registered office of the company is situate and circulating in the district and also once in English in an English newspaper also circulating in that district (Section 640B). While making an application to the Central Government the company is required to attach a copy of the published notice with the application together with a
certificate by the Company as to its due publication.

(4) Prepare a draft of a proposed amendment.

(5) Convene a Board meeting for approving the amendment and also to call a general meeting and approve the notice thereof.

(6) Send three copies of the notice of the general meeting and a copy of the proceedings of the general meeting to the stock exchange(s) in case of listed company (standard listing agreement).

(7) The amendment of the articles shall be made by a special resolution.

(8) The application should be made in e-form 25B of the Companies (Central Government’s) General Rules and Forms, 1956 accompanied by –

— Copy of resolution and proceeding of the board and general body meeting of the company is to be attached.

— Newspaper clippings in which notice pursuant to section 640-B has been published.

— No objection certificate from the concerned bank/financial institutions – mandatory in case any loan has been taken by the company.

— Any other information can be provided as an optional attachment

(9) As per Rule 20A of the Companies (Central Government’s) General Rules and Forms, 1956, a copy of the application made to the Central Government together with the enclosures therewith have to be filed simultaneously with the concerned Registrar of Companies.

(10) File a certified copy of the Board/General Meeting resolution along with the copy of explanatory statement and e-form 23 with the Registrar of Companies within thirty days (Section 192).

Vide MCA notification no. G.S.R. 70 CEJ dated 8th Feb., 2011, it is provided that in case of remuneration (proposed) is exceeding the ceiling specified in sub-para (c) of Section II of Part II or Section XIII, prior approval of Central Government is required if the company is listed company or subsidiary of a limited company.

Further, subsidiary of a limited company is also not required to have approval of Central Government, if the conditions provided in the said proviso are fulfilled.

8. REMUNERATION OF MANAGING DIRECTOR/WHOLE-TIME DIRECTOR

Section 309(3) of the Companies Act, 1956 provides that 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. Except with the approval of Central Government such remuneration should not exceed five percent of the net profits for one such director and if there is more than one director, not more than ten percent for all of them together. The net profits shall be calculated in the manner referred to in Section 198. Schedule XIII regulates the payment of remuneration to the managing director of a company.

Section I of Part II of Schedule XIII to the Act lays down that subject to the
provisions of Sections 198 and 309, a company having profits in a financial year may pay any remuneration by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there are more than one such managerial person, ten per cent for all of them together.

Para 1 of Section II of Part II of Schedule XIII to the Act provides that notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person, by way of salary, dearness allowance, perquisites and any other allowances, not exceeding ceiling limit of Rs. 24,00,000 or Rs. 48,00,000 per annum or Rs. 2,00,000 or Rs. 4,00,000 per month calculated on basis of scale provided under this Part. The said ceiling limit shall apply if the conditions specified under this Part are satisfied.

Para 2 of Section II of Part II of the Schedule lays down that a managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section:

(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 payable at a rate not exceeding half a month’s salary for each completed year of service, and

(c) encashment of leave at the end of the tenure.

Para 3 of Section II of Part II of the Schedule provides for additional perquisites for expatriate managerial persons.

**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 286, 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 e-form 23 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.

6. If the remuneration fixed in the meeting, is more than stipulated under Section 309 read with Schedule XIII to the Act, then make an application to
the Central Government in e-form 25A along with the following documents—
Details of proposal needs to be entered along with certain attachments as given below:

— Copy of resolution of remuneration committee along with its composition, board of directors or share holders. If the remuneration committee is not applicable to the company, board of directors’ resolution is required to be enclosed. (Mandatory, if appointment/ reappointment or increase in remuneration is selected in field 7(a))

— In case company has defaulted in repayment to financial institution no objection certificate from financial institution for this proposal is to be enclosed

— In case company has not made any default, certification from director or secretary declaring that company has not made any default is to be enclosed

— Copy of scheme approved by BIFR or lead bank/ financial institution for the revival of the company- if applicable

— Copy of draft agreement between company and the proposed appointee. If there is no agreement between the company and appointee, any formal appointment letter may be enclosed. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— Certificate from the auditors with regard to the compliance of Section 274 of the companies Act. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— News paper clipping in which notice has been published.(Mandatory, if proposal for appointment or reappointment or increase in remuneration is selected in field 7(a))

— Copy of visa- In case appointee is a foreign national.

— Copies of educational or professional certificate, if appointment is based on the professional qualification as per Section 309(1)(b) of the Companies Act, 1956. (Mandatory, if expression of opinion is selected in field 7(a))

— If application is not made in time an application under section 637-B of the Act, 1956 is to be enclosed.

— Copy of calculation sheet relating to excess or overpayment duly verified from a chartered accountant or company secretary in whole-time practice. (Mandatory, if waiver of excess or overpayment is selected in field 7(a))

— Projections of the turnover and net profits for next three years.(Mandatory, if application is filed by a new company)

In case of payment of minimum remuneration or remuneration of excess of limits prescribed under section 198(1) and 309(3) of the Act the following attachment is required:

— Relevant resolution if company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under section 198(1) and 309(3) of the Act
7. Comply with the provisions of Section 640B and publish the necessary notice;

**Procedure for Payment of Remuneration to Part-time Directors**

A director who is neither in the whole time employment of the company or a managing director may be paid remuneration by way of monthly, quarterly or annual payment or by way of commission on net profits of the company. However, the remuneration payable to such directors shall not exceed the prescribed limits specified under Section 309(4) of the Act, without the approval of the Central Government. The procedure to be followed is as under:

1. A Board meeting should be called and a resolution should be passed there at 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 the 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 special 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**

Section 310 provides that any provision relating to the remuneration of any director including a Managing or Whole-time director, or any amendment thereof, which purports to increase or has the effect of increasing whether directly or indirectly, the amount thereof, whether that provision be contained in the company's memorandum or articles or in an agreement entered into by it or in any resolution passed by the company in general meeting or by its Board or directors shall not have any effect:

(i) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule and
(ii) in any other case, unless approved by the Central Government.

However, the approval of the Central Government is not required where any such provision or any amendment thereof, has the effect of increasing the amount of such remuneration only by way of fee for each meeting of a Board or committee thereof attended by such director provided such increase does not exceed rupees twenty thousand (in case of companies with a paid up share capital and free reserve of Rs.
10 crores and above or turnover of Rs. 50 crores and above). For other companies the sitting fees should not exceed the sum of ten thousand rupees.

**Procedure for Revision of Remuneration of Managing Director**

The procedure to be followed by a company for increase in the remuneration of managing director, within the overall ceiling, is as follows:

1. Pass a Board resolution for increase in remuneration and for convening a general meeting to secure the consent of members for such increase in remuneration.

2. In case of private company which is not a subsidiary of public company, convene a Board meeting after giving notices to all the directors of the company as per Section 286, and pass a resolution in Board meeting, for increase in the remuneration.

3. In case of public company, increase the remuneration within the limits prescribed under Sections 198 and 309 of the Companies Act, 1956.

4. If the Articles of Association of the Company requires approval in the general meeting then issue notices in writing at least twenty-one days before the date of the meeting.

5. Hold the General Meeting and pass an ordinary resolution. The approval of Central Government will not be required in case there is proposal for increase in director’s sitting fees provided such fee after increase does not exceed the amount of Rs. 20,000 (in case of companies with a paid up share capital and free reserve of Rs. 10 crores and above or turnover of Rs. 50 crores and above). For other companies, the sitting fees should not exceed the sum of ten thousand rupees.

6. Send three copies of notices and proceedings of the General Meeting to the stock exchange where the shares of the company are listed.

7. Approval of Central Government will be required if the increase is beyond the limits prescribed under Section 309 of the Companies Act. In such case send general notice to all members indicating the nature of the application made to the Central Government.

8. Publish the notice at least once in newspaper printed in the principal language of the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English newspaper circulating in that district.

9. Send an abstract of terms of variation within twenty-one days of the variation to every member of the company.

10. Submit an application in e-form 25A with the Department of Company Affairs, New Delhi seeking approval of Central Government for increase of remuneration of Managing Director. The application should be accompanied with following disclosures—

Details of proposal needs to be entered along with certain attachments as given below:

— Copy of resolution of remuneration committee along with its composition, board of directors or share holders. If the remuneration committee is not
applicable to the company, board of directors’ resolution is required to be enclosed. (Mandatory, if appointment /reappointment or increase in remuneration is selected in field 7(a))

— In case company has defaulted in repayment to financial institution no objection certificate from financial institution for this proposal is to be enclosed

— In case company has not made any default, certification from director or secretary declaring that company has not made any default is to be enclosed

— Copy of scheme approved by BIFR or lead bank/ financial institution for the revival of the company- if applicable

— Copy of draft agreement between company and the proposed appointee. If there is no agreement between the company and appointee, any formal appointment letter may be enclosed. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— Certificate from the auditors with regard to the compliance of section 274 of the companies Act.(Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— News paper clipping in which notice has been published.(Mandatory, if proposal for appointment or reappointment or increase in remuneration is selected in field 7(a))

— Copy of visa- In case appointee is a foreign national.

— Copies of educational or professional certificate, if appointment is based on the professional qualification as per section 309(1)(b) of the Companies Act, 1956.(Mandatory, if expression of opinion is selected in field 7(a))

— If application is not made in time an application under section 637-B of the Act, 1956 is to be enclosed.

— Copy of calculation sheet relating to excess or overpayment duly verified from a chartered accountant or company secretary in whole-time practice. (Mandatory, if waiver of excess or overpayment is selected in field 7(a))

— Projections of the turnover and net profits for next three years. (Mandatory, if application is filed by a new company)

In case of payment of minimum remuneration or remuneration of excess of limits prescribed under section 198 (1) and 309(3) of the Act the following attachment is required:

— Relevant resolution if company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under section 198(1) and 309(3) of the Act

(For specimen of e-form 25A, please see Part B of this Study).

11. File with the Registrar of Companies a copy of the application together with the enclosure thereon.

12. After getting itself satisfied that the increased remuneration proposed to be paid is reasonable Central Government will give its approval.
9. PROVISIONS APPLICABLE TO MANAGERIAL REMUNERATION

(1) Section 198 provides that the total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company to its directors, including managing and whole-time directors and manager, if any, in respect of any financial year shall not exceed eleven per cent of the net profits of the company for that financial year computed in the manner laid down in Sections 349 and 350 of the Act, except that the remuneration of the directors shall not be deducted from the gross profits. This percentage shall be exclusive of the fee payable to directors for attending meetings of the Board/committees under Section 309(2) of the Act.

(2) A director of a company is not its employee unless he has been entrusted with any specific assignment which involves full time and attention, which means more effort than what is expected of him as a non-executive director. However, a director may be a whole-time employee of the company and he may be paid an agreed remuneration. Therefore, in the absence of a specific agreement, no director is entitled to any remuneration for his services as director, apart from the fee and actual expenses incurred in connection with attending the Board/committee meetings, as per provisions of the Act and articles of the company.

(3) Sub-section (2) of Section 309 of the Act provides that a director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him.

Sub-section (2) of Section 198 of the Act provides that the percentage given in Sub-section (1) of Section 198 of the Act shall be exclusive of any fees payable to directors under Sub-section (2) of Section 309.

The amount of fee for each meeting shall not exceed rupees twenty thousand in case of companies with a paid up share capital and free reserves of Rs. 10 crores and above or turnover of Rs. 50 crores and above. For other companies the sitting fees should not exceed the sum of ten thousand rupees. [Notification No. GSR 580(E) dt. 24.7.03]. [Rule 10B of the Companies (Central Government’s) General Rules and Forms, 1956].

Note: Reimbursement of the travelling, conveyance, lodging and boarding expenses incurred by a director in attending such meeting shall be exclusive of the sitting fees and will be paid in accordance with the articles of the company and the decision of its Board of directors.

(4) According to Section 309(4) of the Act, a director, who is neither in the whole-time employment of the company nor a managing director may be paid remuneration—

(a) either by way of monthly, quarterly or annual payment with the approval of the Central Government;

(b) or by way of commission if the company by special resolution authorises such payment;

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(i) one per cent of the net profits of the company, if the company has a
managing or whole-time director or a manager;

(ii) three per cent of the net profits of the company, in any other case;

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent or, as the case may be three per cent of its net profits.

Vide Circular No. 4/2011 dated 4th March 2011, it has been decided that a Company shall not require approval of the Central Government for making payment of remuneration by way of Commission to its non-whole time Director(s) in addition to sitting fee if the total commission to be paid to all these non-whole time Directors does not exceed 1% of the net profit if it has whole time Director(s) or 3% of net profit, if it does not have MD or WTD(s)

(5) Proviso to the Sub-section (1) of Section 309 of the Companies Act, 1956, provides that remuneration for services rendered by any such director in any other capacity shall not be included in the remuneration if—

(a) the services rendered are of a professional nature, and

(b) in the opinion of the Central Government the director possesses the requisite qualifications for the practice of the profession.

For obtaining the Central Government’s opinion, the company is required to make an application to the Secretary, Ministry of Corporate Affairs, New Delhi, and pay the prescribed fee along with the application.

10. WAIVER OF RECOVERY OF REMUNERATION

Section 309(5A) of the Companies Act, 1956 specifically states that in case a Director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limits prescribed under this Section or without the prior approval of the Central Government, where it is so required, the Director concerned shall refund such sums to the Company and until such sum is refunded, hold such sums in trust for the Company. Sub-section 5B categorically states that the Company shall not waive the recovery of any sum due from a Director under Section 309(5A) unless permitted by the Central Government.

Any payment by way of remuneration in excess of the limits prescribed by the Section or without the approval of the Central Government has to be held by the recipient in trust for the Company and the Director concerned is liable to refund the same to the Company. The recovery of such sums cannot be waived unless permitted by the Central Government.

11. 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 318 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. Any provisions made in the Articles of Association of the company 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 other party, such condition shall be applicable.

If nothing is provided as aforesaid and the Managing/Whole-time director vacates the office of directorship on happening of the circumstances specified in Section 283 of the Act or he becomes disqualified under Section 274 of the Act then he will also cease to be a managing/whole-time director of the company.

Besides the above circumstances the Managing Director or Whole-time director can be removed by removing him from the directorship of the company under Section 284 of the Act.

Resignation by Managing Director

A managing director is entrusted with substantial powers of management. If he resigns his office as managing director before the expiry of the contract period his resignation as managing director becomes effective only when it is accepted by the company. Otherwise he may be liable to compensate the company for breach of service contract. However, a managing director may resign his office as managing director and may continue to be a non-executive or part-time director on the Board of directors of the company.

12. WHOLE-TIME DIRECTOR

The term “whole-time director” has not been defined in the Companies Act, 1956. However, Section 269 of the Act uses the expression “managing director or a whole-time director or a manager”.

The Explanation at the end of Section 269 of the Act says “In this section, “appointment” includes re-appointment and “whole-time director” includes a director in the whole-time employment of the company.

A whole-time director for the purpose of Section 269 or 300 is a director rendering his services whole-time to the management of the company.

Therefore, most of the provisions applicable to a managing director are also applicable to a whole-time director.

Unlike a manager, a whole-time director does not have the management of the whole or substantially the whole of the affairs of the company and unlike a managing director, a whole-time director is not entrusted with substantial powers of management in 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. Accordingly, the appointment of an employees as an alternate director will be governed by the provisions of Sections 198, 269, 309 and 314 of the Act (Department’s letter No. 2/19/63-P.R. dated 29.6.1964).
A company may appoint its whole-time secretary as a part-time director also. However, his appointment needs no approval by the Central Government.

The then Department of Company Affairs (now MCA) has also clarified that the appointment of a whole-time company secretary as director on the Board of directors of a company does not require approval of the Central Government under Section 269 of the Act so long as substantial powers of management are not entrusted to him (Letter No.16/39-CL-I/85 dated 26.6.1987).

**Appointment of Whole-time Director**

The appointment, remuneration, powers and duties of a whole-time director are determined by virtue either of—

(a) a Board resolution, if he is appointed by the Board or by an agreement to be executed by and between the company and the whole-time director after the same has been approved by the Board of directors of the company in the same meeting in which he is appointed. His appointment and remuneration will, however, be subject to approval by a resolution of the shareholders in general meeting [Section 269 read with para (1) of Part III of Schedule XIII to the Companies Act, 1956]; or

(b) by a company resolution passed in a general meeting or by an agreement to be executed by and between the company and the whole-time director after the same has been approved by the company in the general meeting in which he is appointed.

A company may have one or more managing/whole-time directors, if authorised by its articles. They are in the whole-time employment of the company. They are also known as executive directors as compared to other part-time directors who are not employees of the company and are known as non-executive directors.

A company appointing a whole-time director in compliance with the provisions of Sub-section (1) of Section 269 of the Act, must file with the concerned Registrar of Companies, a return of such appointment in e-form 25C together with a certificate required to be incorporated in the said return pursuant to para 2 of Part III of Schedule XIII to the Act.

**Procedure for Appointment of Whole-Time Director**

A company is required to take the following procedural steps for the appointment of a whole-time director:

1. It must ensure compliance with the provisions of Section 269 of the Act and Schedule XIII to the Act. Otherwise the appointment will be subject to the approval of the Central Government.

2. Convene and hold a Board meeting after giving to all the directors due notice as required under Section 286 of the Companies Act, 1956 to:

   (a) take a decision about the person to be appointed as whole-time director;

   (b) approve the draft agreement to be signed and executed by and between the company and the proposed whole-time 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 Section 173(2) of the Act; and
(e) authorise company secretary to issue notice on behalf of the Board.

(3) Send three copies of the notice to the stock exchanges on which the securities of the company are listed as per the Listing Agreement entered with them.

(4) Hold the general meeting and get the resolution passed approving the appointment of the whole-time director.

(5) In case the appointment of the whole-time director is not according to Schedule XIII of the Act, the company is required to obtain approval of the Central Government as per Section 269(2) of the Act. In order to obtain the approval of the Central Government, the company should make an application in e-form No. 25A to the Central Government, within ninety days of the appointment, and also ensure that the prescribed enclosures are attached to the application. The company is required to comply with the provisions of section 640B and Rule 20A of the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006.

Details of proposal needs to be entered along with certain attachments as given below:
- Copy of resolution of remuneration committee along with its composition, board of directors or share holders. If the remuneration committee is not applicable to the company, board of directors’ resolution is required to be enclosed. (Mandatory, if appointment/ reappointment or increase in remuneration is selected in field 7(a))
- In case company has defaulted in repayment to financial institution no objection certificate from financial institution for this proposal is to be enclosed
- In case company has not made any default, certification from director or secretary declaring that company has not made any default is to be enclosed
- Copy of scheme approved by BIFR or lead bank/financial institution for the revival of the company- if applicable
- Copy of draft agreement between company and the proposed appointee. If there is no agreement between the company and appointee, any formal appointment letter may be enclosed. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))
- Certificate from the auditors with regard to the compliance of section 274 of the companies Act. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))
- News paper clipping in which notice has been published.(Mandatory, if proposal for appointment or reappointment or increase in remuneration is selected in field 7(a))
— Copy of visa- In case appointee is a foreign national.
— Copies of educational or professional certificate, if appointment is based on the professional qualification as per section 309(1)(b) of the Companies Act, 1956. (Mandatory, if expression of opinion is selected in field 7(a))
— If application is not made in time an application under section 637-B of the Act, 1956 is to be enclosed.
— Copy of calculation sheet relating to excess or overpayment duly verified from a chartered accountant or company secretary in whole-time practice. (Mandatory, if waiver of excess or overpayment is selected in field 7(a))
— Projections of the turnover and net profits for next three years. (Mandatory, if application is filed by a new company)

In case of payment of minimum remuneration or remuneration of excess of limits prescribed under section 198(1) and 309(3) of the Act the following attachment is required:
— Relevant resolution if company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under section 198(1) and 309(3) of the Act

(6) Execute the agreement, as approved by the Board, with the whole time director.

(7) To obtain from the whole-time director notice in Form No. 24AA regarding disclosure of interest in other companies. Make necessary entries in the register of directors 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 whole-time director in e-form 25C, within ninety days of 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 e-form 25C:
— Copy of Board resolution is to be attached.
— Copy of share holder resolutions-if any.
— Any other information can be provided as an optional attachment

(b) e-form 32 in duplicate within thirty days of the appointment.
For the purpose of filing e-form 32, the following further details are required:
— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty in case qualification shares have been taken
— The original attachment relating to qualification shares duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office.

(9) Submit to the stock exchanges, proceedings of the general meeting.
(10) Inform stock exchanges of the appointment of the whole-time director immediately after the appointment.
(11) Inform all concerned about the appointment of whole-time director. It is advisable to issue a general notice in newspapers about the change.

13. RESIGNATION BY WHOLE-TIME DIRECTOR

The resignation of a whole-time director before the expiry of his term of office becomes effective only when it is accepted by the company as he is bound by the terms and conditions of his appointment contained either in the agreement signed by and between the company and himself or in the company or Board resolution by which he was appointed.

14. REMUNERATION OF WHOLE-TIME DIRECTOR

The provisions and procedure for fixation of remuneration of whole-time director are same as of managing director which have been discussed in the earlier part of this study.

15. VARIATION OF PROVISIONS REGARDING WHOLE-TIME DIRECTOR

In the case of a public company or a private company which is a subsidiary of a public company, an amendment of any provision relating to the appointment or re-appointment of a whole-time director or managing director or manager, whether that provision be contained in the company’s memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors, shall not have any effect unless approved by the Central Government and the amendment shall become void if, and in so far as, it is disapproved by the Government. [Section 268].

The procedure for variation of provisions regarding whole-time director is same as discussed is case of Managing director.

16. PROCEDURE FOR LOANS TO DIRECTORS

Section 295 of the Companies Act, 1956 governs the making of loan to directors. According to this section a public company or a private company which is a subsidiary of a public company cannot without obtaining previous approval of the Central Government, directly or indirectly make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to or to any other person by any director, any firm in which any such director or relative is a partner, any private company of which any such director is a director or member, any body corporate of which not less than 25% of the total voting power is exercisable by such director, or by two or more such directors, any body corporate, the Board of
directors, managing director or manager is accustomed to act in accordance with directions or instructions of the Board, or of any director or directors of the lending company. The procedure to be followed by the company is as follows:

1. A Board meeting should be called and a resolution should be passed there at making an application to the Central Government for sanctioning the loan to the director etc.

2. An application in plain paper should be submitted to the Central Government, furnishing the details of the loan, purposes, etc. enclosing the following documents:
   (i) names and addresses of the person to whom loan is made,
   (ii) copy of the Memorandum and Articles of Association of the company.
   (iii) Copies of the annual accounts for the past 3 years.
   (iv) Challan or demand draft towards fees.

It is to be noted that the approval of Central Government is required in following cases:

(a) Loan as covered under Sub-section (1) of Section 295 of the Companies Act, 1956.

(b) A house building loan to Managing or Whole-time Director by Companies not having any such scheme for their officers/employees.

(c) House Building Loan to Managing or Whole-time director on terms and conditions which are not in accordance with the scheme applicable to the Company's officers/employees.

3. On receipt of the approval from the Central Government a Board meeting should be convened and a resolution should be passed for making the loan on terms and conditions as specified by the Central Government. Thereafter, all formalities pertaining to execution of loan agreement should be completed.

17. PROCEDURE FOR ENTERING IN CONTRACTS IN WHICH DIRECTORS ARE INTERESTED

1. According to Section 297 of the Companies Act, 1956, Board's sanction is required for certain contracts in which any director is interested. Section 297 deals with the contracts between the company and:

   (i) a director of the company;
   (ii) his relative;
   (iii) a firm in which the director or his relative is a partner;
   (iv) a partner of a firm in which the director or his relative is a partner; and
   (v) a private company of which the director is a member or a director.

The contract referred to in Section 297 may relate to the sale, purchase or supply of any goods, materials or services; or for underwriting the subscription of any shares in or debentures of the company. The contract
shall not be entered into except with the consent of the Board of directors, which should be accorded by a resolution passed at a meeting of a Board and not otherwise. In the case of a company having a paid-up share capital of not less than Rs. 1 crore, previous approval of the Central Government is also required.

2. Every director who is, directly or indirectly, interested in the proposed contract, should make a disclosure regarding his interest in Form No. 24AA, at the meeting in which the contract is approved. If he is not present at that meeting, he should disclose his nature of interest at the first Board meeting after he becomes interested.

3. On the basis of this disclosure, a Board resolution should be passed for approving the contract.

4. In the case of a company having a paid-up share capital of not less than rupees one crore, the contract should be approved by the Central Government (Now Regional Director). For this purpose, an application in e-form 24A should be made to the Regional Director, together with the copy of the proposed agreement, copy of the Board resolution approving the contract and the requisite fees. (For specimen of e-form 24A, please see Part B of this study).

Mandatory attachments for e-form 24A are given below:
— Copy of agreement containing particulars of contract
— Copy of board resolution and proceedings of meeting
— Detailed application should be filed as an optional attachment containing details relating to the following:
  — Whether the terms of the contract conform to the prevailing market rates.
  — Whether the company has entered into any contract with any other person in respect of sale, purchase or supply of the same kind of goods, materials or services and whether the terms of such contract are similar to the terms of the proposed contract(s). Reasons for variation in rates, if any should be indicated.

5. In circumstances of urgent necessity, a director, relative firm, partner or a private company as mentioned above may enter into any contract with the company for the sale, purchase or supply of goods without obtaining the consent of the Board. But in such a case the consent of the Board must be obtained at a meeting within three months of the date on which the contract was entered into.

6. The company has to comply with the provisions of Section 640B and Rule 20A of the Companies (Central Government's) General Rules and Forms, 1956.

7. Every company must maintain a register of contracts in which particulars of contracts in which directors are interested should be entered within 7 days (exclusive of public holidays) of passing the Board resolution. The register shall be placed before the next Board meeting and shall be signed by all directors present at the meeting.
18. DISCLOSURE OF INTERESTS BY A DIRECTOR [Section 299]

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, by or on behalf of the Company, shall disclose the nature of his concern or interest at a meeting of the Board of Directors.[Section 299(1)] In the case of a proposed contract or arrangement, the disclosure is required to be made by a Director under Sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not, at the date of the meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after which he becomes so concerned or interested. In case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the Director becomes concerned or interested in the contract or arrangement.

The Director concerned has to give a general notice has to be given to the Board by the Director, to the effect that he is a Director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made. Such notice shall expire at the end of the financial year in which it is given, but may be renewed for a further period, for one financial year at a time, by a fresh notice in which it would otherwise expire. Such notice and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board or the Director concerned takes reasonable steps to secure that it is brought and read at the first meeting of the Board after it is given.

The above mentioned provisions shall not be taken to prejudice the operation of any rule of law restricting a director of a Company from having any concern or interest in any contracts or arrangement with the Company. The provisions entailed above shall also not apply to any contract or arrangement entered into or to be entered into with between two Companies where any of the Directors of the one Company or two of them hold together or hold not more than two per cent of the paid-up share capital of the Company.

Procedure for disclosure of interests by a director

— Ensure that the disclosure were duly made by all the Directors in Form 24AA
— A general notice of disclosure has been duly renewed
— Particulars of interest entered in the register of contracts etc., in accordance with the provisions of Section 301
— The Director concerned has given due notice with regard to the changes in directorship/membership etc
— The Director concerned had given notice and that notice was read out at the Board meeting and minutes to this effect was made with regard to the discussions held at the Board Meeting.
— The Register of Contracts in which the Director concerned or interested is updated within 7(seven) days from the date of passing the resolution. The Register shall be placed at the next Board Meeting and shall be signed by all the Directors present at the meeting.

— The Register of Directors is updated as envisaged in Section 303.

19. PROCEDURE FOR A DIRECTOR OR PERSONS RELATED TO A DIRECTOR TO HOLD AN OFFICE OR PLACE OF PROFIT

When a company decides to appoint relative of a director to an office or place of profit in the company, the provisions of Section 314 of the Companies Act, 1956 get attracted. The company is also required to follow the Director’s Relatives (office or place of profit) Rules, 2003. The company has to follow the following procedures:

1. A Board resolution should be passed for the appointment of a director to the office or place of profit. If the total monthly remuneration is not less than Rs. 10,000 the Board has to secure the approval of the shareholders by means of special resolution.

2. The appointment should be approved by the Central Government if the total monthly remuneration of a partner or relative of director or manager or firm in which such director or manager, or relative either is a partner or a private company of which such director or manager or relative of either is a director or member is more than Rs. 2,50,000 per month. For this, an application in e-form 24B should be submitted to the Central Government. (For specimen of e-form 24B, please see Part B of this Study).

Mandatory attachments for e-form 24B are:

— Copy of the resolution passed by the board of directors relating to the proposed appointment is mandatory.

— Copy of rules of the company relating to the terms and conditions in regard to perquisites as applicable to its employees. If no rules, a certificate from secretary or director of the company to the effect that similar perks at the same rate(s) are being paid to the other employees of the company in the equivalent grade is mandatory.

— Share holding pattern of the company is mandatory.

— An undertaking from the appointee that he or she will be in exclusive employment of the company and will not hold a place of profit in any other company. (This attachment is not required in case of application for increase in remuneration of the existing appointee if already submitted at the time of appointment)

— Copy of the minutes of the selection committee.

— Particulars of employees in receipt of remuneration of Rs. 2,50,000 or more per month.

— Any other information can be provided as an optional attachment.

3. A copy of the application together with enclosures thereon should be filed with the Registrar of Companies simultaneously.

4. The Central Government shall on being satisfied, approve the appointment
on such terms and conditions as it may deem fit.

5. The notice of the general meeting should be sent to the members, directors and auditor of the company.

6. In case of a listed company, three copies of the notice of the meeting and abstract of term of contract should be sent to each of the stock exchanges in which the securities of the company are listed.

7. At the general meeting, the special resolution for appointment should be duly passed.

8. The minutes of the general meeting should be recorded and signed by the Chairman within 30 days of the meeting.

9. In the case of a listed company, copy of the proceedings of the meeting and the intimation regarding the appointment thereof should be sent to each of the stock exchanges in which the securities are listed.

10. Within 30 days of appointment, a return in e-form 23 should be filed with the Registrar of Companies together with the filing fees.

20. MANAGER

Section 2(24) of the Companies Act, 1956 defines the manager which means 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, and 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 197A of the Companies Act, 1956, no company shall appoint at the same time, a managing director and a manager.

Appointment of Manager

A manager may be appointed by a resolution of the Board of directors of a company passed at a validly convened and conducted meeting or by the company in general meeting by an ordinary resolution. However, if the appointment is made by a Board resolution, the appointment and remuneration are subject to approval by a resolution of the shareholders in general meeting and such an approval may be secured at the first general meeting held after such an appointment (Para 1 of Part III of Schedule XIII to the Companies Act, 1956).

(For specimen of Board resolution appointing a manager, please see Annexure XVIII at the end of this Study).

The appointment of a manager in a company is regulated by the same provisions as to regulate the appointment of a managing director or a whole-time director.

The articles of association of some companies do contain provisions for the appointment of manager. Such provision is usually based on Regulation 82 in Table
A of Schedule I to the Companies Act, which provides that subject to the provisions of the Act,—

(1) a manager may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any manager so appointed may be removed by the Board;

(2) a director may be appointed as manager.

Section 269(1) of the Companies Act, 1956 lays down that every public company having a paid-up share capital of five crore rupees or more shall have a managing director, or whole-time director, or a manager. Sub-section (2) of Section 269 provides that no appointment of an managing director or whole-time director or manager shall be made except with the approval of the Central Government unless such appointment is in accordance with the conditions specified in Parts I and II of Schedule XIII to the Companies Act (the said Parts being subject to the provisions of Part III of that Schedule) and a return in e-form 25C, as prescribed in the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, is filed with the Registrar of Companies along with the prescribed filing fee, within ninety days from the date of such appointment.

**Provisions Applicable to Manager**

(1) Section 388 of the Companies Act, 1956 lays down that the provisions of—

(a) Section 269 (appointment of managing or whole-time director or manager to require Central Government’s approval only in certain cases);

(b) Section 310 (provision for increase in remuneration to require Government’s sanction);

(c) Section 311 (increase in remuneration of managing director on re-appointment or appointment to require Government’s sanction); and

(d) Section 317 (managing director not to be appointed for more than five years at a time)

shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of Section 312 (prohibition of assignment of office by director to be void) shall apply in relation to the manager of a company as they apply to a director thereof.

(2) According to Section 384 of the Act, no company shall appoint or employ any firm, body corporate or association as its manager.

(3) Section 385 of the Act lays down that no company is allowed to appoint any person, as manager, who—

(a) is an undischarged insolvent or who has, at any time within the preceding five years, been adjudged an insolvent; or

(b) suspends, or has at any time within the preceding five years suspended, payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or

(c) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.
(4) Section 386(1) of the Act lays down that no company shall appoint any person as manager, if he is either the manager or the managing director of any other company, except as provided in Sub-section (2).

Sub-section (2) provides that a company may appoint a person as its manager, if he is the manager or managing director of one, and not more than one, other company;

(5) Such appointment must be 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 [Proviso to Sub-section (2) of Section 386].

(6) According to Section 387 of the Act, the manager of a company may, subject to the provisions of Section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the net profits of the company calculated in the manner laid down in Sections 349, and 350 or partly by one way and partly by the other;

Provided that except with the approval of the Central Government, such remuneration shall not exceed in the aggregate five per cent of the net profits.

Note: Procedure for fixation of remuneration to manager and revision of remuneration to manager is same as discussed earlier in the case of Managing Director.

Procedure for Appointment of a Manager

A public company is required to take the following procedural steps for the appointment of a manager:

(1) Where the company has a paid-up share capital of rupees five crore or more, it must ensure compliance with the provisions of Section 269 of the Act and Schedule XIII to the Act.

(2) If the proposed manager is already the manager or the managing director of another company, ensure that notice of the Board meeting and of the resolution to be moved thereat are given to all the directors then in India and the resolution should be passed with the consent of all the directors present nem con at the meeting [Refer proviso to Sub-section (2) of Section 386].

(3) Convene and hold a Board meeting after giving to all the directors due notice as required under Section 286 of the Companies Act to transact, inter alia, the following business —

(a) take a decision about the person to be appointed as manager after fully ensuring that he does not suffer from any disqualification mentioned in Section 385 of the Act or disability mentioned in Section 386 of the Act;

(b) to approve the draft agreement to be signed and executed by and between the company and the proposed manager;

(c) to fix time, date and venue for holding a general meeting of the company;
(d) to approve notice of the general meeting along with the explanatory statement as required by Section 173(2) of the Act; and

(e) to authorise company secretary or some other competent officer to issue notice on behalf of the Board.

4) Send three copies of the notice to the stock exchanges on which the securities of the company are listed as per the Listing Agreements entered with them.

5) Hold the general meeting and get the resolution passed approving the appointment of the manager strictly in accordance with the provisions of Schedule XIII to the Companies Act.

6) Where the appointment of the manager is not according to Schedule XIII of the Companies Act, the company is required to obtain approval of the Central Government as required by Section 269(2) of the Act. In order to obtain the approval of the Central Government, the company should make an application in e-form 25A to the Central Government, within a period of ninety days of the appointment, and also ensure that the prescribed enclosures are attached to the application.

Details of proposal needs to be entered along with certain attachments as given below:

— Copy of resolution of remuneration committee along with its composition, board of directors or shareholders. If the remuneration committee is not applicable to the company, board of directors’ resolution is required to be enclosed. (Mandatory, if appointment/reappointment or increase in remuneration is selected in field 7(a))

— In case company has defaulted in repayment to financial institution no objection certificate from financial institution for this proposal is to be enclosed

— In case company has not made any default, certification from director or secretary declaring that company has not made any default is to be enclosed

— Copy of scheme approved by BIFR or lead bank/financial institution for the revival of the company - if applicable

— Copy of draft agreement between company and the proposed appointee. If there is no agreement between the company and appointee, any formal appointment letter may be enclosed. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— Certificate from the auditors with regard to the compliance of section 274 of the companies Act. (Mandatory, if proposal for appointment or reappointment is selected in field 7(a))

— News paper clipping in which notice has been published. (Mandatory, if proposal for appointment or reappointment or increase in remuneration is selected in field 7(a))

— Copy of visa- In case appointee is a foreign national.
— Copies of educational or professional certificate, if appointment is based on the professional qualification as per section 309(1)(b) of the Companies Act, 1956. (Mandatory, if expression of opinion is selected in field 7(a))

— If application is not made in time an application under section 637-B of the Act, 1956 is to be enclosed.

— Copy of calculation sheet relating to excess or overpayment duly verified from a chartered accountant or company secretary in whole-time practice. (Mandatory, if waiver of excess or overpayment is selected in field 7(a))

— Projections of the turnover and net profits for next three years. (Mandatory, if application is filed by a new company)

In case of payment of minimum remuneration or remuneration of excess of limits prescribed under section 198(1) and 309(3) of the Act the following attachment is required:

— Relevant resolution if company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under section 198(1) and 309(3) of the Act

(7) Sign and execute the agreement, as approved by the Board, with the manager.

(8) Obtain from the manager, notice in Form No. 24AA about his appointment as a director, managing director, manager or secretary in other companies and make necessary entries in the records and registers of the company.

(9) File the following documents with the ROC:

(a) Return of appointment of the manager in e-form 25C, within ninety days 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 25C:
— Copy of Board resolution is to be attached.
— Copy of share holder resolutions-if any.
— Any other information can be provided as an optional attachment

(b) e-form 32 within thirty days of the appointment.

For the purpose of filing e-form 32, the following further details are required:
— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
— Evidence of payment of Stamp Duty incase qualification shares have been taken
(10) Submit to the stock exchanges, proceedings of the general meeting in case of listed company.
(11) Inform stock exchanges of the appointment of the manager immediately after the appointment in case of a listed company.

21. REMOVAL OF A MANAGER

A manager appointed by the Board of directors of a company may be removed by the Board (Refer regulation 82 in Table A of Schedule I to the Companies Act). A manager appointed by a company in general meeting may be removed only by the company in general meeting by means of an ordinary resolution.

22. 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 318 of the Companies Act other than the following circumstances—

(a) Where the Director resigns his office in view of the reconstruction of the Company, or its amalgamation with any other body corporate or bodies corporate, and is appointed as the Managing Director, Manager or other Officer of the reconstructed Company or of the body corporate resulting from the amalgamation;
(b) Where the Director resigns his office otherwise than on the reconstruction of the Company or its amalgamation as aforesaid;
(c) Where the office of the Director is vacated by virtue of clauses (a) to (l) of Section 283 of the Companies Act;
(d) Where the Company is being wound up, whether by or subject to the supervision of the Court or voluntarily, provided the winding up was due to the negligence or default of the Director;
(e) Where the Director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the Company or any subsidiary or holding Company thereof;
(f) Where the Director has instigated, or has taken part directly or indirectly in bringing about the termination of his office.

It may be noted that payment made to a Managing Director or other Director in pursuance of Section 318(1) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold the office, or where he held the office for a lesser period than three years, during such period. However, no such payment shall be made to
the Director in the event of the commencement of the winding up of the Company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the Company on the winding up after deducting the expenses thereof, are not sufficient to repay to the shareholders the Share Capital (including the premiums, if any) contributed by them. It may further be noted that where the winding up is not due to negligence or default of the Director, he can be paid compensation for loss of office, even in a winding up. Termination of his services will not be wrongful, if the winding up was due to his default.

Section 318 of the Companies Act, 1956 however does not prohibit payment to a Managing Director, or a Director holding the office of Manager, of any remuneration for services rendered by him to the Company in any other capacity. In case compensation is paid in contravention of the provisions of this section, the Company and every officer of the Company, who is in default id punishable with a fine of upto Rs.5000 and with additional fine upto Rs.500 for every day after the first during which the contravention continues.

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 318(3) 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 318(4) of the Companies Act
- Ensure that the name of the Director is mentioned in the Register of Directors as specified in Section 303 of the Companies Act
- 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 318(4)
- 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

Payment to a Director etc. for loss of office etc. in connection with transfer of undertaking or property

The Act further states that no Director of a Company shall in connection with the transfer of the whole or any part of any undertaking or property of the Company, 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 any other person (not being such Company), unless particulars with respect to the payment proposed to be made by such transferee or person (including the amount thereof) is disclosed to the members of the Company and the proposal has been approved by the Company in General Meeting.
In case the Director of a Company receives payment of any amount in contravention of the provisions as envisaged above, the amount shall be deemed to have been received by him in trust for the Company. The restrictions contained in the section does not apply to payments made in good faith by way of damages for breach of contract or by way of pension in respect of past services including any superannuation allowance, gratuity or other similar benefit. [Section 319]

Procedure for Payment to a Director etc. for loss of office etc. in connection with transfer of undertaking or property:

— Check whether there has been any transfer of property or undertaking

— Check whether any payment has been received by any Director for loss of office

— Ensure that no such payment was made by the Company in contravention of the provisions of Section 319

— Ensure that particulars with regard to the proposed payment were disclosed to the members and the proposal was approved by the shareholders at the General Meeting of the Company

— Ensure that the Directors have not received any payment in contravention of the provisions of sub-section (1) of Section 319. In case the Directors have received any such payment, the same shall be deemed to be received by them in trust for the Company.

— Check whether there has been any agreement with the Directors concerned to this effect

— Check whether the notice of the Annual General Meeting together with the Explanatory Statement have been issued to the members concerned within the time limit prescribed under the Companies Act

— Ensure that such payment to be made to the Director concerned has been recorded in the minutes of the Board as well as the Annual General Meeting of the Company.

23. 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.
Section 581T of the Companies Act states that when the Directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company. Further, without prejudice to the provisions contained here in before, the Company shall have the right to recover from its Directors —

(a) Where such Director has made any profit as a result of the contravention specified above, an amount equal to the profit so made;

(b) Where the Producer Company incurred a loss or damage as a result of the contravention specified above, an amount equal to the loss or damage.

Section 201 of the Companies Act, 1956 specifically provides that any provisions, whether contained in the Articles of Association of the company or in an agreement, for exempting any director from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void. The section does not however prevent a company from taking out an insurance policy, the premium for the insurance policy may be paid by the company. This will not go against the section since the company does not agree to indemnify the Directors against the liability. This section is similar to section 310 of the English Companies Act. In UK the uncertainty has now been resolved. Section 137 of the English Companies Act, 1989 makes clear that section 310 does not prevent a company from purchasing insurance.

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.

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 theirs negligence or omission.

What is covered

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 ir. 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). The exposure to a GDR (Global Depository Receipts) listing, whilst not as great as ADR's need to be considered carefully.

ANNEXURES

ANNEXURE I

SPECIMEN RESOLUTION AUTHORISING A DIRECTOR TO DISCHARGE CERTAIN RESPONSIBILITY 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.”

ANNEXURE II

EXTRACTS FROM CLAUSE 49 OF THE LISTING AGREEMENT

(A) Composition of Board

(i) The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors.

(ii) Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.

Provided that where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

Explanation: For the purpose of the expression “related to any promoter” referred to in sub-clause (ii):

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

(b) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.”

(iii) For the purpose of the sub-clause (ii), the expression ‘independent director’ shall mean a non-executive director of the company who:

(a) apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;

(b) is not related to promoters or persons occupying management positions at the board level or at one level below the board;
(c) has not been an executive of the company in the immediately preceding three financial years;

(d) is not a partner or an executive or was 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.

(e) is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;

(f) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

(g) is not less than 21 years of age.

Explanation: For the purposes of the sub-clause (iii):

(a) Associate shall mean a company which is an “associate” as defined in Accounting Standard (AS) 23, “Accounting for Investments in Associates in Consolidated Financial Statements”, issued by the Institute of Chartered Accountants of India.

(b) “Senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

(c) “Relative” shall mean “relative” as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956.

(iv) Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors.

Explanation: “Institution’ for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a “corresponding new bank” as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts].”

ANNEXURE III

COMPANIES (DISQUALIFICATION OF DIRECTORS UNDER SECTION 274(1)(g) OF THE COMPANIES ACT, 1956) RULES, 2003

PUBLISHED IN THE GAZETTE OF INDIA, PART II, SECTION 3(i), EXTRAORDINARY

Ministry of Finance
(Department of Company Affairs)

NOTIFICATION
New Delhi, the 21st October , 2003

G.S.R. 830 (E).- In exercise of the powers conferred by clause (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government
hereby makes the following rules to carry out the purpose of clause (g) of sub-section (1) of section 274 of the said Act, namely:-

1. **Short title, commencement and extent**

   (1) These rules may be called the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003.

   (2) These rules shall come into force from the date of their notification in the Official Gazette.

   (3) These rules shall apply to all public limited companies registered under the Companies Act, 1956.

2. **Definitions**

   In these rules, unless the context otherwise requires, -

   (a) "disqualifying company" is the company in which the default has occurred on account of which a director stands disqualified;

   (b) "appointing company" is the company in which an individual is seeking appointment as a director, including re-appointment as director.

3. **Disqualifications under clause (g) of sub-section (1) of section 274 of the Companies Act, 1956**

   (a) Whenever a company fails to file the annual accounts and annual returns, as described in sub-clause (A) of clause (g) of sub-section (1) of section 274, persons who are directors on the last due date for filing the annual accounts and the annual returns for any continuous three financial years commencing on and after the first day of April, 1999, shall be disqualified.

   (b) If a company has failed to repay any deposit, irrespective of the enactment, rules or regulations under which the deposits have been accepted by the companies, or interest thereon, or redeem its debentures, or pay any dividend declared on the respective due dates, and if such failure continues for one year, as described in sub-clause (B) of clause (g) of sub-section (1) of section 274, then the directors of that company shall stand disqualified immediately on expiry of that one year from the respective due dates:

   Provided that all the directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified:

   Provided further that disqualification on account of the reasons cited under this Rule shall also apply to the reappointment as a director.

   *Explanation.*- For the purpose of this rule, it is clarified that non-payment of dividend referred to in sub-clause (B) of clause (g) of sub-section (1) of section 274 due to the reason of dividend not being claimed or kept in separate bank account as required under section 205A of Companies Act, 1956 or paid into Investors Education & Protection Fund as required under section 205C of that Act shall not be deemed to be a failure to make payment of dividend.

4. **Duty of Statutory Auditor to report on disqualification**

   (a) It shall be the duty of statutory auditor of the appointing company as well as
disqualifying company, as required under section 227(3)(f) to report to the members of the company whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274 and to furnish a certificate each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment as a director or not.

(b) It shall be the duty of the statutory auditors of the “disqualifying company” as required in section 227(3)(f) to report to the members of the company whether any director in the company has been disqualified during the year from being re-appointed as director, or being appointed as director in another company under clause (g), of sub-section (1) of section 274.

5. Duty of company to intimate disqualification

Whenever a company fails to file the annual accounts and returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as described in clauses (A) and (B) of clause (g) of sub-section (1) of section 274, the company shall immediately file a return in duplicate in Form ‘DD-B’, prescribed under these rules for this purpose, to the Registrar of Companies, furnishing therein the names and addresses of all the Directors of the company during the relevant financial years:

Provided that names of such directors who have been exempted from application of Section 274(1)(g) by the Central Government, from time to time, shall be excluded.

Provided further that no unusual abbreviations or short forms shall be used in filling up the Form ‘DD-B’, which shall give such details as may be necessary to distinguish and identify each director without any ambiguity.

5A. The Form DD-B prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under Section 610A of the Companies Act, 1956.

6. Failure to intimate disqualification shall render director as officer in default

When a company fails to file the Form ‘DD-B’ as above within 30 days of the failure that would attract disqualification under Section 274(1)(g), officers of the company listed in section 5 of the Companies Act, 1956 shall be officers in default.

7. (a) Upon receipt of the Form ‘DD-B’ in duplicate under Rule 5, the Registrar of Companies shall immediately register the document and place one copy of it in the document file for public inspection.

(b) The Registrar of Companies shall forward the other copy to the Central Government.

8. Names of the disqualified directors on the web-site etc.

(a) The Central Government shall place on the web-site of the Department of Company Affairs the names and addresses and such other details including names and details of the companies concerned, as may be necessary, in respect of all the disqualified directors.

(b) The Central Government may also publicize the names of disqualified
directors in such manner as it may consider appropriate.

(c) The Central Government shall take such steps as may be required to update its web-site to ensure that name of the person, in whose respect disqualification period has expired after 5 years, is deleted from the web-site.

8A. The Form DD-C prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under Section 610A of the Companies Act, 1956.

9. Duty of every director

Every director in a public company registered under the Companies Act, 1956 shall file Form ‘DD-A’, prescribed under these Rules, before he is appointed or re-appointed.

10. If any question arises as to whether these rules are or are not applicable to a particular company, such question shall be decided by the Central Government.

11. Punishment for contravention of the rules

If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Companies Act, 1956, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which the contravention continues.

12. On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provision is made in these Rules shall stand repealed, except as respects things done or omitted to be done before such repeal.

13. The electronic form shall be authenticated by the authorised signatures as defined under the Information Technology Act, 2000.

14. The forms prescribed in these rules, when filed in physical form, may be authenticated by affixing his signature manually.

[F. No.1/8/2002-CL.V]

ANNEXURE IV

COMPANIES (APPOINTMENT OF SMALL SHAREHOLDERS' DIRECTOR) RULES, 2001

[See section 252 of the Companies Act, 1956]

[Notification No. G.S.R. 168(E) issued by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) vide F.No. 1/19/2000-CL. V; Published in the Gazette of India Extraordinary Part-II, Section 3, Sub-section (i) dated 9th. March, 2001]

In exercise of the powers conferred by section 642 read with section 252 of the
Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely:

1. **Short title and Commencement**

   (1) These rules may be called the Companies (Appointment of the Small Shareholders' Director) Rules, 2001.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions**

   In these rules, unless the context otherwise requires—

   (a) "Act" means the Companies Act, 1956 (1 of 1956);

   (b) "Small Shareholder" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which section 252 of the Act applies.

3. **Applications**

   These rules shall apply to public companies having—

   (a) paid-up capital of five crore rupees or more;

   (b) one thousand or more small shareholders.

4. **Manner of election of small shareholders' director**

   (1) A company may act suo-moto to elect a small shareholders' director from amongst small shareholders or upon the notice of small shareholders, who are not less than 1/10th of total small shareholders and have proposed name of a person who shall also be a small shareholder of the company

   (2) Small shareholders intending to propose a person shall leave a notice of their intention with the company at least 14 days before the meeting under the signature of at least 100 small shareholders specifying name, address, shares held and folio number and particulars of share with differential rights as to dividend and voting, if any, of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.

   (3) A person whose name has been proposed for the post of small shareholders' director shall sign, and file with the company, his consent in writing to act as a director.

   (4) The listed public company shall elect small shareholders' nominee subject to sub-rules (1), (2) and (3) above through the postal ballot.

   (5) The unlisted company may appoint such small shareholders' nominee subject to above conditions if majority of small shareholders recommend his candidature for the post of director in their meeting.

   (6) Tenure of such small shareholder' director shall be for a maximum period of 3 years subject to meeting the requirement of provisions of Companies Act except that
he need not have to retire by rotation.

(7) On expiry of his tenure, the same person if so desired by small shareholders, may be elected for an another period of 3 years.

(8) Such director shall be treated as director for all other purposes except for appointment as whole time director or managing director.

5. Disqualification

A person shall not be capable of being appointed as small shareholders' director of a company, if-

(i) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force:

(ii) he is an undischarged insolvent;

(iii) he has applied to be adjudicated as an insolvent and his application is pending;

(iv) he has been convicted by a Court of any offence involving moral turpitude 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;

(v) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last fixed for the payment of the call; or

(vi) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section.

6. Vacation of office

A person appointed as small shareholders' director shall have to vacate the office if-

(i) such person so elected, as director of small shareholders ceases to be a small shareholders' director on and from such date on which he ceased to be a small shareholder;

(ii) he has been rendered disqualified by virtue of sub-rule (1) of rule (5).

(iii) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call;

(iv) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board:

(v) he is partner of any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295;
(vi) he acts in contravention of section 299;
(vii) he becomes disqualified by an order of Court under section 203;
(viii) he is removed in pursuance of section 284.

7. Restriction on number of directorship

No person shall hold office at the same time as small shareholders' director in more than two companies.

ANNEXURE V

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTORS 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.”

ANNEXURE VI(A)

COMPANIES (DIRECTOR IDENTIFICATION NUMBER) RULES, 2006
NOTIFICATION
New Delhi, the 19th October, 2006
Students are advised to see Annexure III of Chapter I i.e. E-Governance of Company Law (MCA-21), of this study.

ANNEXURE VI(B)

DECLARATION

I, the undersigned, having consented to act as a Director of the Company, M/s.__________________________ Limited pursuant to section 264(2), 266(1)(a) of the Companies Act, 1956 and certify that I have not been disqualified to act as a director under section 267 and/or 274 of the Companies Act. 1956.

Signature:

NAME OF THE DIRECTOR:
(To be printed on the personal Letter-head of the Director if any / or plain paper)

LETTER OF CONSENT

(Name & Address of the Director)

Date:

To the Board of Directors
__________________________ Limited
401, Samarth Vaibhav Building, Opp. Tarapore Towers,
Lokhand Wala Complex, off Andheri Link Road,
Andheri (West), Mumbai-400 053
Dear Sir,

Sub: Appointment as a Director

I hereby give my consent to be appointed as a Director of the Company ______________ Limited, You are requested to note the same in your records.

Yours truly,

(Name of the Director)

ANNEXURE VII

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 264 of the Companies Act, 1956, 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.”

ANNEXURE VIII

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” be and is hereby appointed as an additional director of the company to hold office till the next annual general meeting.”

ANNEXURE IX

SPECIMEN RESOLUTION OF THE BOARD TO FILL THE CASUAL VACANCY

“RESOLVED that pursuant to the provisions of Section 262 and those of 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.”

ANNEXURE X

SPECIMEN RESOLUTION OF THE BOARD FOR APPOINTMENT OF ALTERNATE DIRECTOR

“RESOLVED that pursuant to the provisions of Section 313 of the Companies Act, 1956, read with those of 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.”
ANNEXURE XI

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 proviso to Sub-section (1) of Section 252, 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 Companies (Appointment of Small Shareholder’s Director) Rules, 2001."

ANNEXURE XII

FORM NO. 24AA
THE COMPANIES ACT, 1956
Notice by the Interested Directors
(Pursuant to Section 299)

To

The Board of Directors
of..........................

............................

I, .................................. son of .................................. resident of .................. holding....................... shares (equity or preference) of Rs. .......................... (per cent of the paid-up capital) in the company in my name, hereby give notice that I am interested directly/through my relative(s) in the following companies.

<table>
<thead>
<tr>
<th>Name of companies/firms</th>
<th>Nature of interest</th>
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<tbody>
<tr>
<td>1........................</td>
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<td>2........................</td>
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<tr>
<td>3........................</td>
<td>3..................</td>
</tr>
</tbody>
</table>

Signature..................................
Name..................................
(In Block Capitals)

Dated.............. day of ............... 20..........

ANNEXURE XIII

SPECIMEN RESOLUTION FOR REMOVAL OF DIRECTOR

"RESOLVED that pursuant to notice received from Mr. X, member of the company in accordance with Section 284 of the Companies Act, 1956, Mr. B be and is hereby removed from the office of director of the company."
RESOLVED FURTHER that the Secretary of the company be authorised to take all further steps as required under Section 284 of the Companies Act, 1956, 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 ................... 2009 ............ at ............ hours.

A copy of the aforesaid resolution is enclosed for your perusal. We draw your attention to the provisions contained in Sub-section (3) of Section 284 of the Companies Act, 1956 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

ANNEXURE XIV

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGING DIRECTOR

"RESOLVED THAT—

(i) in accordance with Sections 198, 269 and 309 and other applicable provisions, if any, of the Companies Act, 1956 and Schedule XIII 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 of the managing director assuming the 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 eForm No. 25C for the appointment of the Managing Director as per requirement of Sub-section (2) of Section 269 of the Companies Act, 1956 and Part III of Schedule XIII to the Companies Act, 1956, duly certified by the auditor or the company secretary or secretary in whole time practice that the requirements of Schedule XIII 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) eForm No. 32, in duplicate, in respect of the appointment of the managing director within thirty days of the passing of this resolution; and

(c) eForm No. 23 along with a certified copy of the foregoing resolution for registration of the resolution as required under Section 192 of the Companies Act, 1956, within thirty days of the passing of the resolution.

ANNEXURE XV

SPECIMEN OF ORDINARY RESOLUTION APPOINTING MANAGING DIRECTOR

"RESOLVED that pursuant to the provisions of Sections 198, 269 and 309 read with Schedule XIII and all other applicable provisions, if any, of the Companies Act, 1956 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 effective from 1st January, 2003 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, 2003 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.

ANNEXURE XVI

SPECIMEN NOTICE UNDER SECTION 640B

I. Notice under Section 640B for Central Government’s Approval to the Appointment of Managing Director

...........................Limited

Notice

Pursuant to the provisions of Section 640B of the Companies Act, 1956, notice is hereby given that the Company intends to apply to the Central Government for its approval under Section 269, of the Companies Act, 1956 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 640B for Central Government’s Approval to Increase Managing Director’s Remuneration

Notice is hereby given pursuant to Section 640B of the Companies Act, 1956 (the Act) that the company intends to make an application to the Central Government for its approval under Section 310 of the Act to the increase in the remuneration payable to Shri........................, Managing director of the Company.

Registered Office: For......................Limited
................................................
................................................ Secretary
Dated...................

ANNEXURE XVII

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 the 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 (2) of Section 316 of the Companies Act, 1956, 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."

ANNEXURE XVIII

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGER

"RESOLVED THAT—

(i) in accordance with Sections 198, 269 and 309 and other applicable
provisions, if any, of the Companies Act, 1956 and Schedule XIII 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 of the appointment of the manager as per requirement of Sub-section (2) of Section 269 of the Companies Act, 1956 and paragraph (2) of Part III of Schedule XIII to the Companies Act, 1956, duly certified by the auditor or the company secretary or secretary in whole-time practice that the requirements of Schedule XIII 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) eForm No. 32 in duplicate, in respect of the appointment of the manager, to be filed within thirty days of the passing of this resolution."

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**LESSON ROUND-UP**

- Directors may be appointed by the Board or by the shareholders at the General Meeting.
- Directors may be appointed as additional Directors; Alternate Director; filling the Casual vacancy.
- The increase in number of directors beyond 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 by Company Law Board.
- Section 309(3) of the Companies Act, 1956 provides that 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.

- 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 318 of the Act.

- A whole-time director for the purpose of Section 269 or 300 is a director rendering his services whole-time to the management of the company. Therefore, most of the provisions applicable to a managing director are also applicable to a whole-time director. Unlike a manager, a whole-time director does not have the management of the whole or substantially the whole of the affairs of the company and unlike a managing director, a whole-time director is not entrusted with substantial powers of management in the company.

- Section 295 of the Companies Act, 1956 governs the making of loan to directors.

- When a company decides to appoint a director to an office or place of profit in the company, the provisions of Section 314 of the Companies Act, 1956 get attracted.

- A manager may be appointed by a resolution of the Board of directors of a company passed at a validly convened and conducted meeting or by the company in general meeting by an ordinary resolution.

- 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 318 of the Companies Act.

- 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.

### SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for revaluation)

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.
According to sub-section (1) of section 383A, every company having a paid-up share capital of Rs. 5 crores shall have a whole-time secretary. The ‘whole-time secretary’ indicates that a Company Secretary must be in whole time employment of the company.

Rule 2(2) of the Companies (Appointment and Qualifications of Secretary) Rules, 1988 also provides that, a person to be appointed as whole-time secretary under sub-rule (1), i.e. in a company which has paid-up share capital Rs. 5 crores or more, must be a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

Hence, a Company Secretary assumes great importance in the corporate world. This chapter will make you understand about the functions of Company Secretary, requirements related to his appointment, removal etc. The following topics are covered in the chapter:

- Who can be a Company Secretary
- Functions of a Company Secretary – An officer of the company
- Appointment of a Company Secretary
- Removal of a Company Secretary
- Appointment as Compliance Officer
- Company Secretary in Practice and areas of practice
- Permission to practice granted generally
- Permission to practice to be granted specifically
- Appointment of a Company Secretary in whole-time practice for issue of compliance certificate
- Removal of Company Secretary in Practice
- Functions of Company Secretary in Practice
- Designation to be used by members in practice
- Prefix of CS

1. WHO CAN BE A COMPANY SECRETARY

According to Section 2(45) of the Companies Act, 1956, “Secretary” means a Company Secretary within the meaning of clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and includes any other individual possessing
the prescribed qualifications* and appointed to perform the duties which may be performed by a secretary under the Act or any other ministerial or administrative duties.

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.

Functions of a Company Secretary – An officer of company

A company secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act, 1956 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 authorised. 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, 1956 as applicable to companies. Under the Companies Act, 1956 he is responsible for performance of the duties of a secretary and such other ministerial and administrative duties as may be assigned to him. However, the Companies Act, 1956 has not defined the functions of a secretary but has specifically fixed the statutory responsibilities on a secretary for compliance with legal requirements under the provisions of the Act. The responsibility of secretary has also increased as he has been particularly specified by the Companies (Amendment) Act, 1988 to be an officer who is in default, bracketed alongwith the managerial personnel and is 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” liable (Section 5).

However, for a proper understanding of the role of a company secretary under different Acts, it would be desirable to study the provisions of those Acts in this regard.

* Such qualifications are prescribed under sub-rule (4) of Rule 2 of Companies (Appointment & Qualifications of Secretary) Rules, 1988, for an individual to be appointed as whole-time Secretary of a Company having a paid up share capital of less than rupees two crores (discussed later in the chapter).
We have already seen the statutory position of a company secretary under the Companies Act, 1956. In 1975, Section 2(45) of the Act was amended by deleting the word ‘purely’ before the words ‘ministerial and administrative duties’ which indicates that a secretary could also be assigned managerial duties. However, he is not a managerial personnel within the meaning of Section 197A of the Act as this covers only the managing and whole-time directors and the managers within the meaning of the Act. 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 161(1)], make declarations regarding commencement of business (Section 149), authenticate the Balance Sheet and Profit and Loss Account (Section 215) and to make declaration under Section 33(2) 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 the Indian Stamp Act it is the duty of a secretary to see that the documents such as letter of allotment, share certificate, debentures, mortgages are issued duly stamped. He is the principal officer under Section 2(35) of the Income Tax Act, 1961. Under the MRTP Act, 1969 and its rules, the term ‘principal officer’ includes a secretary who has been so authorised by a resolution of the Board.

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 MRTP 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 organisation problems.”

This concept of Peter Drucker provides for the company secretary to co-effectively play a coordinating 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 in the case of companies assisted by them financially that certificate format duly certified by the company secretary should be furnished periodically at the Board meetings.

Furnishing of the certificate requires a 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, 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, 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.

(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 normally 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 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 labour 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, service 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 to the auditors during the statutory annual audit. He is to ensure that before their appointment proper certificate is obtained under Section 224(1B) of the Companies Act, 1956. He should intimate them about their appointment/re-appointment as the case may be, within seven days from the date of the annual general meeting so as to enable them to file the necessary return with the Registrar of Companies in time.

**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 law as well as in spirit.
Community

In recent years the responsibility of a company towards society has become very important since the company has to function within the parameters of the environment of the country. With this in view, a number of companies have undertaken rural development 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 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.

Organisational 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-relations of departments and functions. 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 safeguard 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 an officer called the Office Manager 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 increased but to also ensure that the cost of such services are 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 trade marks, patents, licences are done from time to time and take legal action in respect of infringement of such industrial rights.

Corporate Records

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, 1956, 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.

Personnel and Property

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.

2. APPOINTMENT OF A COMPANY SECRETARY

For companies with paid up share capital of Rs. 5 crores or more

Section 383A of the Companies Act, 1956 lays down that every company
having a paid-up share capital of not less than rupees 5 crores or more must have
a whole-time secretary and such secretary must be a member of the Institute of
Company Secretaries of India. [Sub-rule (1) & (2) of Rule 2 of Companies
(Appointment and Qualifications of Secretary) Rules, 1988].

The section is silent about the method of his appointment and the authority to
appoint him, to determine the terms and conditions of his appointment, his removal
from office etc.

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 82 in Table A of Schedule I to the Companies Act and according to this
regulation, subject to the provisions of the Act,—

"a secretary may be appointed by the Board for such term, at such
remuneration and upon such conditions as it may think fit; and any secretary so
appointed may be removed by 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 a passing a resolution either at a duly convened and held meeting or
by means of resolution passed by circulation.
For companies with paid up share capital of two crores rupees or more but less than five crores

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 [sub-rule (3A)].

Provided that where a company has appointed in companies having paid up share capital of less than rupees two crores [sub-rule (3)] OR in companies having paid up share capital of rupees two crores or more but less than five crores [sub-rule (3A)], 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.

For companies with paid up share capital of less than Rs. 2 crores (sub-rule 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, if he possesses one or more of the following qualifications [specified in sub-rule (4) of Rule 2 of Companies (Appointment and Qualifications of Secretary) Rules, 1988]:

(i) membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;
(ii) pass in the Intermediate examination conducted either by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980, or by the earlier Institute of Company Secretaries of India incorporated on 4th October, 1968, under the Companies Act, 1956, and licensed under Section 25 of that Act;
(iii) post-graduate degree in commerce or corporate secretarship granted by any university in India;
(iv) degree in law granted by the any university;
(v) membership of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949;
(vi) membership of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1949;
(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 secretarship 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.

Explanation: In this rule, “University” has the meaning assigned to it in the University Grants Commission Act, 1956, and includes any university outside India which is recognized 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.

Appointment of Secretary of Producer Company

Section 581X of the Act provides that every Producer company having an average annual turnover exceeding Rs. 5 crores in each of three consecutive financial years shall appoint a member of the Institute of Company Secretaries of India as a whole time secretary of the company. If a Producer company fails to comply with this requirement, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

In any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of Section 581X were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole time secretary.

Procedure for Appointment of a Company Secretary

Only an individual, who is a Company Secretary within the meaning of the Company Secretaries Act, 1980 or who possesses the prescribed qualifications, can be appointed as secretary of the company.

The following procedural steps should be taken for appointing a whole-time secretary.

1. Advertise the post, collect applications, hold interview, short list the individuals for the position, finalise the terms of appointment.
2. Convene a Board meeting and place the proposal of appointing Company Secretary with the details of the person finalized and pass a resolution. (For specimen of Board resolution appointing company secretary, please see Annexure I).
3. File e-form 32 within thirty days from the date of appointment (date of joining office) with the Registrar of Companies together with required filing fees.

The particulars of 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. Obtain the details of the offices held by such individuals as director or otherwise in other companies.
5. Make entries in the Register of directors under Section 303 of the Act.

6. Inform to the Stock Exchange(s) where the company is listed.

7. Please verify whether the company secretary so appointed holds office or place of profit within the provisions of Section 314 of the Act. If yes, then comply with the requirements in this regard.

3. REMOVAL OF A COMPANY SECRETARY

As has been discussed above in the light of the provisions in the regulations in Table A of Schedule I to the Companies Act 1956 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.

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, place the matter of removal/resignation of the Company Secretary and pass a resolution to the effect.

3. File e-form 32 within thirty days with the Registrar of Companies together with requisite filing fees. Evidence of Cessation (for ex. 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.

6. Issue a general public notice, if it is so warranted, according to size and nature of the company.

4. APPOINTMENT AS COMPLIANCE OFFICER

Under clause 47 of the 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 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 of the listing agreement, rules, regulations and other directives of such authorities and investor services and complaints on related matters.

Besides, such company has to ensure that the Registration and 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 one month 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. 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 II at the end of this Study).

5. COMPANY SECRETARY IN PRACTICE

According to Section 2(45A) of the Companies Act, "Secretary in whole-time practice" means a Secretary who shall be deemed to be in practice within the meaning of Sub-section (2) of Section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who is not in full-time employment.

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 (29 of 1947), the Industries (Development & Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye laws made by a recognized stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), 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.

Categories of services specified by the Council under section 2(2)(f) of the Companies Secretaries Act, 1980

Section 2(2)(f) of the Company Secretaries Act, 1980 says:

(f) 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 practising 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, Local Registration Authority of Digital Signature Certificate Providers.

— Conceptualisation, 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 trade marks, 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, 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 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.

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 Organisation of the Institute or any other organisation, 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.

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.
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 had at the 156th meeting held on 19th – 20th March, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 accorded general permission to members in practice to become 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.

The Council had also allowed members in practice to become non-executive directors/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 term non-executive director was defined to mean an ordinary director who is required to attend the meetings of the board or its committees only, 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 devoting his time for the company only to attend meetings of the board or committee thereof and not for any other purpose.

In line with the aforesaid decisions, the Council 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.”

6. APPOINTMENT OF A COMPANY SECRETARY IN WHOLE-TIME PRACTICE FOR ISSUE OF COMPLIANCE CERTIFICATE

Proviso to Section 383A(1) provides that every company not required to employ a whole-time secretary under Sub-section (1) and having a paid-up share capital of ten lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all the provisions of this Act and a copy of such certificate shall be attached with the Boards report referred to in Section 217.
The Ministry of Corporate Affairs (the then Department of Company Affairs), has vide Circular dated 11th December, 2003, clarified that a company which is not required under law to employ a whole time secretary, but has nevertheless employed a whole time company secretary within the meaning of Section 2(1)(c) of the Company Secretaries Act, 1980, such a company is not required to obtain compliance certificate from company secretary in practice. In other words, no company employing a full time company secretary is required to obtain a compliance certificate from a company secretary in practice.

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India has specified that w.e.f. January 1, 2008:

A member of the Institute in practice who is entitled—
(i) to issue compliance certificate pursuant to the proviso to sub-section (1) of Section 383A of the Companies Act, 1956 (1 of 1956); and/or
(ii) to sign an Annual Return pursuant to the proviso to sub-section (1) of Section 161 of the Companies Act, 1956 (1 of 1956),

shall be deemed to be guilty of professional misconduct if he—
— issues compliance certificates; and/or
— signs Annual Return

for more than eighty companies in aggregate, in a calendar year.

Provided, however, that in the case of a firm of Company Secretaries, the ceiling of eighty companies aforesaid would apply to each partner therein who is entitled to (i) sign the compliance certificate in terms of the proviso to Sub-section (1) of Section 383A of the Companies Act, 1956; (ii) sign Annual Return in terms of the proviso to Sub-section (1) of Section 161 of the Companies Act, 1956.

Procedure for Appointment of Company Secretary in Whole-time Practice for Issue of Compliance Certificate

The following procedure should be adopted in this regard:

1. Before appointment of Secretary in Whole-time practice ensure that individual to be appointed, satisfies the definition of secretary in whole-time practice under Section 2(45A) of Company Secretaries Act, 1980 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 286 of the Companies Act, 1956.

4. Consider the proposal to appoint company secretary in whole-time practice for issue of compliance certificate and pass Board resolution in the meeting, appointing company secretary in whole-time practice for issue of compliance certificate. (For specimen resolution for appointment of
company secretary in whole-time practice for issue of compliance certificate, please see Annexure III to this study).

5. The resolution should mention the remuneration to be paid to such individual as company secretary in whole-time practice.

6. The appointment shall be made up to the conclusion of the annual general meeting held after such appointment.

7. 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. File e-form 32 with ROC intimating about the removal as well as appointment of a company secretary (in case a company secretary in his place is appointed).

In case the company is listed company, then notify such removal to the stock exchange immediately after Board meeting.

8. 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.


— 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 Board.
— Appearing as authorized representative before the Company Law Board, Central Government, Regional Director and Registrar of Companies.
— Acting as Scrutinizer for postal ballot voting process.

MRTP Act/Competition Act/Consumer Protection Act:
— Appearing as authorized representative before the MRTP Commission/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, Co-operative 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, Regional Director, Registrar of Companies, MRTP Commission, 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.

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.
— Valuation of Intellectual Property Rights.

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:**
— Compliance Certificate by companies having paid-up share capital of Rs. 10 lakhs or more but less than Rs. 2 crores.
— 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 in respect of Section 25 companies 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 listed 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 under Schedule XIII.
— Certification regarding compliance with Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999 including those relating to extinguishment and destruction of certificates which has to be done in the presence of a Practising Company Secretary.
— 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.

**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.

**9. DESIGNATION TO BE USED BY MEMBERS IN PRACTICE**

Under Section 7 of the Act, a member in practice shall use the designation of a
Company Secretary and shall not 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.W.A., etc. The Council has recognized membership of the Institute of Chartered Accountants of India and Institute of Cost and Works 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.

10. 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. Deepa Khatri
LLB, ACS

11. 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.
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.............. Rs............... per month in the pay scale of Rs..............
(b) Other allowances .......... Rs............... per month.
(c) Company’s leased accommodation for residential purpose.
(d) Company’s car with driver for company’s work.
(e) 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.
ANNEXURE II

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 liase 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.”

ANNEXURE III

SPECIMEN RESOLUTIONS FOR APPOINTMENT OF COMPANY SECRETARY IN WHOLE-TIME PRACTICE FOR ISSUE OF COMPLIANCE CERTIFICATE

Board Resolution

"Resolved that M/s ABC & Co., Practising Company Secretaries be and is hereby appointed for issuance of compliance certificate in terms of the provisions of Section 383A(1) of the Companies Act, 1956 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 Mr........................., the secretary in whole-time practice within the meaning of Section 2(45A) of the Companies Act, 1956 be and is hereby appointed for issue of Compliance Certificate 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

As the paid-up share capital of the Company is Rs. 25 lakh, it is required to obtain a Compliance Certificate under section 383A of the Companies Act, 1956 from a secretary in whole-time practice.

Mr......................... is a practising company secretary and has consented to be appointed for the issue of compliance certificate 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.

LESSEN ROUND-UP

- According to sub-section (1) of section 383A, every company having a paid-up
  share capital of Rs. 5 crores shall have a whole-time secretary. Also, the proviso
to sub-section (1) states that every company not required to employ a whole time
secretary under sub-section (1) shall file with the Registrar a certificate from a
secretary in whole-time practice in the prescribed form. The ‘whole-time
secretary’ indicates that a Company Secretary must be in whole time
employment of the company. Provided that where a company has appointed in
companies having paid up share capital of less than Rs. 5 crores, a whole-time
company secretary possessing membership of ICSI, such company is not
required to obtain compliance certificate from company secretary in whole-time
practice.
- 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.
- For appointment of a Company Secretary, a resolution is required to be passed
  at the duly convened Board Meeting. Also e-form 32 is required to be filed with
  the Registrar of Companies.
- A Company Secretary can be removed in accordance with the terms of
  appointment and the Board can record the same by passing the resolution. Also
e-form 32 is required to be passed at the meeting.
- Under clause 47 of the 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 report to the Board in its each meeting.
- Under Section 2(2)(f) of the Company Secretaries Act, 1980 (56 of 1980), the
  Council of the Institute has specified certain categories of Management, Advisory
and other services, which may be rendered by a Company Secretary in Practice.
- Under Regulation 168, the Council has granted permissions by general or
  specific resolution for a Company Secretary in practice to engage in the specified
business or occupation other than the profession of company secretary.
- A Practising Company Secretary can render the plethora of services as listed in
  the Chapter.
SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for revaluation)

1. Define Company Secretary. What are the functions of Company Secretary in practice?
2. Draft a Board Resolution for appointment of a Company Secretary.
3. What are the permissions under Regulation 168 which are granted by specific resolution for company secretary.
4. Write down the procedure for removal of a Company Secretary.
The Auditor of a company registered under the Companies Act is required to form an opinion as to whether the annual accounts of the company give a true and fair view of its profit or loss for the period under review and of its state of affairs at the end of the period; they are also required to certify that the accounts are prepared in accordance with the requirements of the Companies Act. Auditors play an important role by giving the Auditor's Report which is a report to the members of the company and, according to section 216, it must be attached to the Balance Sheet and filed, together with the annual accounts, with the Registrar. It is very important to know the provisions relating to the appointment, removal etc. of the Auditors. After going through this chapter, you will be able to understand the following:

- Appointment, re-appointment of statutory auditors
- Remuneration of auditors
- Removal of auditors
- Branch auditor
- Removal of branch auditor
- Statutory auditor vis-a-vis branch auditor
- Cost auditor
- Special auditors
- CAG audit

1. **APPOINTMENT OF STATUTORY AUDITORS**

Important provisions relating to appointment of auditors—

(1) According to Section 224(1) of the Companies Act, 1956, every company shall, at each annual general meeting (AGM), appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) The proviso to the Sub-section (1) of Section 224 lays down that before any appointment or re-appointment of auditor or auditors is made by any public company at any AGM, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in Sub-section (1B) of Section 224.
(3) Under Section 226(3), none of the following persons shall be qualified for appointment as auditor of a company:

**Note:** Vide notification no. S.O. 1152(E) dated 23rd May, 2011, it was specified that for the limited purpose of Sub-section (3) of Section 226 of the Companies Act, 1956, the term ‘body corporate’ does not include the Limited Liability Partnership (LLP) incorporated under Limited Liability Partnership Act, 2008.

It means LLP may be appointed as auditors of Company.

(a) A body corporate;
(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 is indebted to the company for more than Rs. 1,000 or who has guaranteed the repayment of any debt of more than Rs. 1,000 due to company by a third person;
(e) A person holding any security of that company which carries voting rights of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.

A person shall also not be qualified for appointment as auditor of the company, if he is disqualified for appointment as auditor of any other body corporate which is that company’s subsidiary or holding company or subsidiary of that company’s holding company.

If an auditor becomes disqualified in any of the above ways after his appointment as auditor, then he shall be deemed to have vacated his office.

According to the clarification issued on 27th August, 1976 by the then Department of Company Affairs (now Ministry of Corporate Affairs), an internal auditor cannot act as statutory auditor and similarly the statutory auditor cannot act as internal auditor (Department of Company Affairs Circular No. 5/77 dated 8th April, 1977).

(4) According to Section 224(1) of the Companies Act, 1956, every company shall, after appointing at each annual general meeting (AGM), an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting, within seven days of the appointment, give intimation thereof to every auditor so appointed.

**Appointment of First Auditors**

As per Sub-section (5) of Section 224 the Companies Act, 1956, the first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company, and the auditor or auditors so appointed shall hold the office until the conclusion of the first annual general meeting of the company. Following is the procedure for the appointment of first auditor.

(1) Obtain certificate in writing from proposed auditor to the effect of eligibility
under Section 224 of the Act.

(2) Convene a Board meeting within one month of incorporation of the company and appoint the first auditor.

(3) Inform the first auditor so appointed and forward a certified copy of the resolution.

(For specimen of Board resolution, please see Annexure I at the end of this Study).

Auditor to intimate to ROC about his Appointment

Sub-section (1A) of Section 224 provides that every auditor appointed under Sub-section (1) shall, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar of Companies in writing that he has accepted, or refused to accept, the appointment.

Clause (b) of the proviso to Sub-section (5) of Section 224 lays down that if the Board fails to exercise its power, the company in general meeting may appoint the first auditor or auditors by an ordinary resolution. In this case, the following procedure is to be adopted—

(1) Convene a Board meeting, discuss the matter, finalise first auditor and remuneration, decide day, date, time and place of a general meeting and approve notice of the meeting.

(2) Issue notice of general meeting to the members of the company.

(3) Hold the general meeting and pass ordinary resolution for appointing the first auditor.

(4) Inform the first auditor so appointed forwarding therewith a certified copy of the resolution passed at the general meeting.

(For specimen of ordinary resolution appointing first auditor(s) where Board fails to appoint within one month of registration, please see Annexure II of this Study).

Subsequent Appointment of Auditors

Section 224(1) provides that every company must appoint auditor or auditors at each annual general meeting to hold office from the conclusion of that annual general meeting until the conclusion of the next annual general meeting, and must, within seven days of the appointment, give intimation thereof to the auditors so appointed. As per Section 224(1A) every auditor so appointed must, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing in e-form 23B that he has accepted the appointment or refused it.

(For specimen of e-form 23B, please see Part B of this study)

Copy of intimation letter received by auditor from the company is to be mandatorily attached with e-form 23B. Any other information can be provided as an optional attachment.

It is however, necessary for every public company, before making an appointment or re-appointment at any annual general meeting of an auditor or
auditors, to obtain through e-form 23B from the auditor or auditors proposed to be
appointed a certificate to the effect that the appointment or re-appointment, if made,
will be in accordance with the limits on the number of auditors specified in Sub-
section (1B) of Section 224.

Sub-section (1B) of Section 224 provides that private limited companies shall
be excluded in reckoning the number of companies which an auditor can audit.
Where a firm is appointed auditor, the ceiling of twenty will be per partner who is
not in full time employment elsewhere. Where any partner of a firm of auditors is
also a partner in any other firm or firms of auditors, the overall ceiling in relation to
such partner will also be 20 so that he may not be able to get an extra advantage
by becoming a partner in more than one firm of auditors and thereby defeat the
purpose of the provisions of the Act. (For specimen resolution appointing
subsequent auditors, please see Annexure III to this Study).

Re-appointment of Auditors

Section 224(2) states that subject to Sub-section (1B), with regard to the ceiling
of twenty companies and Section 224A, regarding appointment of auditors by
special resolution in certain cases, at any annual general meeting, a retiring
auditor, by whatsoever authority appointed shall be re-appointed unless:

(a) he is not qualified for re-appointment; or
(b) he has given to the company notice in writing of his unwillingness to be re-
appointed; or
(c) a resolution has been passed at that meeting appointing somebody instead
of him or providing expressly that he shall not be re-appointed; or
(d) where notice has been given of an intended resolution to appoint some
person or persons in the place of a retiring auditor, but owing to that
person's death, incapacity or disqualification, the resolution cannot be
proceeded with and so must be dropped.

However, an ordinary resolution or a special resolution if Section 224A is
applicable, is required to re-appoint the auditors.

Procedure relating to Re-appointment of Retiring Auditor at the Annual
General Meeting

1. It is usual for the companies to re-appoint the auditors at the next annual
general meeting on the same remuneration or in certain cases the
remuneration of the auditors may be increased. 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 Section 224(1B) should be obtained.

2. After ascertaining from the auditors the relevant particulars, the Board will
consider the same and the consideration of appointment will be included in
the agenda for the annual general meeting. Where the appointment
requires a special resolution in terms of Section 224A, mention in this
regard will be made in the notice convening the annual general meeting,
otherwise an ordinary resolution is sufficient for the purpose of
appointment. It may be noted that in the case of an annual general
meeting, appointment of auditors is only an ordinary business and the appointment requires either an ordinary or a special resolution depending upon the applicability of Section 224A.

3. The appointment will be considered at the annual general meeting and the necessary resolution be passed.

4. In terms of Section 224(1), the auditor must be intimated of his appointment within seven days.

5. Where a special resolution is passed in terms of Section 224A, within 30 days of passing the special resolution, e-form 23 of the Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006, should be filed along with the filing fees and the necessary enclosures.

6. It is incumbent upon the re-appointed auditor to give intimation of re-appointment to the Registrar of Companies within 30 days of receipt of intimation from the company in e-form 23B. Copy of intimation letter received by auditor from the company is to be mandatorily attached. Any other information can be provided as an optional attachment.

Appointment of Auditor other than a Retiring Auditor (Section 225)

Sub-section (2) of Section 224 provides that the retiring auditor shall be re-appointed unless any of the circumstances specified in clauses (a) to (d) thereof exist. Neither the Board of directors nor the company in general meeting has the powers to refuse re-appointment of the retiring auditor. But if any of the circumstances mentioned in clauses (a) to (d) of Sub-section (2) intervenes, there is no obligation on the part of the company to re-appoint the retiring auditor and the company may proceed to appoint as auditor any person other than the retiring auditor having the requisite qualifications. It is, however, to be noted that the re-appointment of the existing auditor is not automatic as clarified above. There must be an act of the company re-appointing him by passing a resolution. Where the retiring auditor is not re-appointed and or a person other than him is proposed to be appointed as an auditor, the procedure as laid down in Section 225 of the Act is described below.

Procedure for Appointing an Auditor who is not the Retiring Auditor

1. According to Section 225(1) a special notice is required for appointing as auditor a person other than the retiring auditor or providing expressly that a retiring auditor shall not be re-appointed. Therefore, the provisions of Section 225 read with Section 190 are to be strictly adhered to in this regard.

2. On receipt of notice of such a resolution, the company should forthwith send a copy of the same to the retiring auditor.

3. 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. Where it is received just fourteen days before the meeting and it is not feasible for the company to send notice of the same to members the company has to notify the same in a newspaper having an appropriate circulation at least seven days before the meeting.
4. The retiring auditor can make a representation. Where he makes any representation in writing to the company and requests for the notification to members, 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 of the right to be heard orally) require that the representations shall be read out at the meeting.

However, the aforesaid requirements need not be complied with if on the application of the company or any other person who claims to be aggrieved, the Company Law Board*, on being satisfied that the rights conferred by Section 225(3) are being abused to secure needless publicity for defamatory matter, passes an order to that effect.

5. In the general meeting, the appointment will be considered and the necessary resolution be passed.

6. After the appointment, the new auditor will be informed of the appointment within seven days of appointment and the auditor concerned has to file with the Registrar e-form 23B within thirty days of receipt of intimation from the company, intimating him whether he has accepted or refused to accept the appointment.

Copy of intimation letter received by auditor from the company is to be mandatorily attached. Any other information can be provided as an optional attachment.

**Appointment of Auditors by Special Resolution**

Section 224A provides that in the case of a company in which not less than 25 per cent of the subscribed share capital is held, whether singly or in any combination by:

(a) a public financial institution or Government company or Central Government or any State Government; or

(b) any financial, or other institution established by any Provincial or State Act in which State Government holds not less than 51 per cent of the subscribed share capital; or

(c) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

* It shall be substituted by Tribunal after the commencement of Companies (Second Amendment) Act, 2002.
Where any such company as mentioned above fails to pass at its annual general meeting any special resolution appointing an auditor or auditors it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the Central Government may appoint an auditor or auditors to fill the vacancy.

The procedure for appointment of auditors by special resolution is already discussed under the procedure for re-appointment of retiring auditor at the Annual General Meeting.

The then Department of Company Affairs (now MCA) has given a clarification on the provisions of Section 224A(1) of the Companies Act, 1956 according to which three sub-clauses (a), (b) and (c) mentioned above, are not mutually exclusive. The provisions of Sub-section (1) would therefore apply to all cases of shareholdings in any combination by any of the Institutions mentioned in the three clauses. (Circular No. 14/2001 dated 16.7.2001)

Filling of Casual Vacancy [Section 224(6)]

The casual vacancy in the office of auditor may be filled by the Board. But where the vacancy is caused by resignation of auditor, such vacancy shall only be filled by the company in general meeting. The remaining auditor or auditors may act notwithstanding the casual vacancy. The auditor appointed in the casual vacancy holds office till the conclusion of the next annual general meeting. (For specimen of resolution for appointment of auditor to fill vacancy caused by resignation, please see Annexure IV).

Procedure in Regard to Appointment of an Auditor in Casual Vacancy

1. A casual vacancy in the office of an auditor may be filled by the Board. (for specimen resolution, please see Annexure V at the end of the study) However, while such vacancy continues, the remaining auditor or auditors, if any, may act. Where a casual vacancy is caused by the resignation of an auditor, the Board is not empowered to fill the vacancy and such vacancy can be filled only by the company in the general meeting.

2. Where a casual vacancy caused by reasons other than resignation is to be filled, the Board of directors will consider the same and where it is proposed to appoint an auditor in that vacancy, his approval and a written certificate that his appointment if made, will be in accordance with Section 224(1B) would also be necessary. After the consideration of the same, the directors will resolve in their meeting to appoint him as an auditor in casual vacancy and the auditor so appointed will hold office up to the conclusion of the next annual general meeting.

Procedure in Regard to Appointment of an Auditor in Casual Vacancy Caused Due to Resignation

1. Where a casual vacancy results on account of resignation, as already stated, the vacancy can be filled only by the company in the general meeting.
2. The Board of directors will consider the appointment of a person as an auditor in casual vacancy and the necessary consent and certificate under Section 224(1B) will be obtained from him.

3. The same will be referred to the general meeting for passing the necessary resolution.

4. On the appointed day, the general meeting will be held and the necessary resolution shall be passed.

5. After appointing the auditor, he has to be intimated within seven days of appointment and he, in turn, has to file e-form 23B with the Registrar within thirty days of the receipt of intimation from the company.

Copy of intimation letter received by auditor from the company is to be mandatorily attached. Any other information can be provided as an optional attachment.

Internal Audit of Producer Company

Section 581ZF provides that every producer company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in Clause (b) of Sub-section (1) of Section 2 of the Chartered Accountants Act, 1949.

Power of Central Government to Appoint Auditors

If no auditors are appointed or re-appointed at the annual general meeting, the Central Government may appoint a person to fill the vacancy [Section 224(3)]. Application for appointment of such auditor under this section to Central Govt., (powers now delegated to Regional Director) is required to be made in eform 24A. It has also been clarified by the Department of Company Affairs that where the auditors are not appointed or re-appointed in accordance with the provisions of the Act including Section 224(2), as read with Sections 225 and 190, Section 224(3) becomes attracted in the matter (Vide Circular No. 5/72 dated 21.2.1972).

The company is required to give within one week notice to the Central Government that the power has become exercisable. If a company fails to give such notice, then the company and every officer of the company who is in default shall be punishable with fine upto Rs. 5000 [Section 224(4)].

Appointment of Auditors of Government Companies

Section 619(2) of the Companies Act, 1956 provides that the auditors of a Government company shall be appointed or re-appointed by the Comptroller and Auditor General of India (CAG);

Provided that the limits specified in Sub-sections (1B) and (1C) of Section 224 of the Act shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.
Sub-section (3) of Section 619 confers power on the Comptroller and Auditor General of India—

(a) to direct the manner in which the company’s accounts shall be audited by the auditors so appointed and to give such auditors instructions in regard to any matter relating to the performance of their duties as such; and

(b) to conduct supplementary or test audit of the company’s accounts by such person or persons as they may be authorised in this behalf, and for the purpose of such audit to 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 Comptroller and Auditor General may, by general or special order, direct.

Sub-section (4) of Section 619 provides that the auditors shall submit a copy of their audit report to the Comptroller and Auditor General who shall have the right to comment upon or supplement the audit report in such manner as he may think fit.

According to Sub-section (5) of Section 619, any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the auditors report.

2. REMUNERATION OF AUDITORS

In accordance with the provisions of Sub-section (8) of Section 224, the remuneration of the auditors of a company—

(a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be;

(aa) in the case of an auditor appointed under Section 619 by the Comptroller and Auditor General of India, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine; and

(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

3. REMOVAL OF AUDITORS

(i) First Auditors

The first auditor of a company may be removed, if the company at a general meeting appoints another auditor, of whose nomination by any member, notice has been given to the members not less than fourteen days before the meeting [Refer Sub-section (5) of Section 224].

(ii) Subsequent Auditors

Sub-section (7) of Section 224 of the Act lays down that except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting after obtaining previous approval of the Central Government in that behalf.
Powers have been delegated to Regional Directors. (For specimen resolution, please see *Annexure VI* at the end of this study)

**Procedure for Removal of an Auditor Before the Expiry of the Term**

1. Convene a Board Meeting and decide about removal of the existing auditor of the company with reasons thereof. (for specimen of board resolution, please see *Annexure VI*). After deliberation, pass a resolution authorising the officers to make application to the Regional Director for obtaining approval of the Central Government. [Section 224(7) of the Act].

2. e-Form 24A is required to be filed with the Regional Director. Hence, make an application on the letter head of the company to the Regional Director of the Concerned Region in which the Registered Office of the company is situate, explaining in detail the grounds for removal of the existing auditor of the company and the particulars of the company's auditor and enclose following documents –
   - Copy of ordinary resolution
   - Copy of special notice under section 224(7)
   - Copy of the representation if any made by the statutory auditor

3. Simultaneously, deliver a copy of the application with all enclosures to the concerned Registrar of Companies for information and comments/recommendation, as may be required.

4. Follow up, explain, submit further details/particulars/documents and obtain approval from the Regional Director.

5. On receipt of the approval, convene a Board meeting of the company. Place the approval of the Regional Director so received and decide about (i) new auditor to be appointed in place of the existing auditor of the company; (ii) obtain certificate in writing from the new auditor to the effect of his eligibility to act as auditor if appointed; (iii) fix date, day, time and place of general meeting; and (iv) approve draft notice of the general meeting, specifying therein the resolutions (ordinary or special, as the case may be for removing and appointing Auditor). [Specimen Resolution at General Meeting to remove auditors', is placed at *Annexure VII*.]

6. Issue notice to the members of the company, at least clear 21 days before the date of the meeting alongwith relevant explanatory statement and place the documents including Letter of Approval of the Regional Director for inspection of the Registered Office of the company.

7. Send three copies of the notice to the stock exchanges where the company is listed.

8. Hold the general meeting and pass the resolutions as set out in the notice with or without modification.

9. Intimate the new auditor with a certified copy of the resolution passed within seven days.
10. Also intimate the auditor removed with a certified copy or the resolution passed along with a copy of the approval of the Regional Director.

11. File e-form 23 with certified copy of the special resolution and explanatory statement relating thereto with requisite filing fees within thirty days from the date of passing of special resolutions together with a copy of the approval with the concerned Registrar of Companies.

12. Send a certified copy of the proceedings of the general meeting and information about change in auditor of the company to the stock exchanges where the company is listed.

4. BRANCH AUDITOR

If any company has a branch office, in or outside India, the company must get the accounts of the branch office independently audited. This is mandatory under section 228(1) of the Companies Act.

But a company having a branch office has an option to appoint an independent Auditor to audit the accounts of the branch office. If the company has more than one branch office, it can appoint independent Auditor for each branch office. It is, however, not mandatory to appoint an independent Auditor/s to audit the accounts of a branch office/s. The accounts of that office shall be audited either by the company's Auditor appointed under section 224 or by another person qualified for appointment as auditor of the company under section 226.

If a company has a branch office in a country outside India, the accounts of that branch office shall be audited either by the company's Auditor or by a person qualified for appointment as auditor of the company under section 226 or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

The decision to have the accounts of a branch office audited by an independent Auditor must be taken by an ordinary resolution passed at a general meeting (either an annual general meeting or at an extraordinary general meeting). (For specimen resolution, please see Annexure VIII at the end of the study).

If any branch accounts of the company is to be audited by an auditor other than the company’s auditor the auditor is required to be appointed for carrying out audit of the accounts of the branch and who will send report to the company’s auditor. The procedure is as under:

1. Select and finalise an auditor who is qualified to act as branch auditor.

2. Convene a Board meeting and pass a resolution for appointing a branch auditor for the Branch of the company, recommend his appointment to the shareholders of the company and fix date, time and place for holding a general meeting.

3. Send notice of the general meeting to the shareholders at least 21 days before the date of the meeting.

4. Send three copies of the notice to the stock exchanges where the company is listed.
5. Hold general meeting and pass necessary resolution.
6. Send a certified copy of the proceedings of the general meeting to the stock exchanges where the company is listed.
7. Intimate the auditors about appointment and send a copy of the resolution passed.

Notes:

1. In case of a foreign branch, its auditor may also be an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the law of the foreign country concerned.
2. The branch auditor has to report on certain additional matters as contained in the Companies (Auditors' Report) Order, 2003.

A company may authorise the Board of Directors to appoint a Branch Auditor and fix his remuneration, in consultation with the company's Auditor. (for specimen resolution authorizing the Board to appoint a Branch Auditor, please see Annexure IX). Such a resolution is usually passed at every annual general meeting. The Board of Directors will, in pursuance of the power conferred on it, appoint a Branch Auditor and fix his remuneration, by a resolution passed at a Board meeting. (for specimen resolution, please see Annexure X).

The Branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors.

Exemption to Branch Office from applicability of Section 228

The Procedure for making application to the Central Government is as follows:

1. An application seeking exemption to branch office of the company from the provisions of section 228 under rule 4 of the Companies (Branch Audit Exemption) Rules must be made in the form set out in the Annexure to the said Rules. [Rule 5(1)]. Requisite fee, as applicable under the Companies (Fees on Applications) Rules, 1999 by depositing the amount of fee in the manner laid down in rule 22 of the Companies (Central Government's) General Rules & Forms, 1956, must be paid.

2. The application must accompany the following enclosures:
   (a) A copy of the challan evidencing the payment of the fees.
   (b) A certificate signed by the managing director or manager, to the effect that the company has made arrangements for the audit of the accounts of the branch office by a person who is qualified to be appointed as Auditor as Branch Auditor even though such person is company's employee.
   (c) A written statement from the Auditor of the company that, in his opinion, the arrangement made by the company for the audit of the accounts of the branch office are adequate and that the arrangements made for keeping the accounts are such as would enable the person auditing the accounts to certify that they show a true and fair view of the working of the branch office.
(3) The application must be made to the Secretary, Ministry of Corporate Affairs.

(4) If exemption is granted on the ground that the company has arranged for the audit of its branch accounts by a person otherwise qualified for appointment as a branch auditor, even though such person is an employee of the company, it will be necessary for the company, to comply with the following conditions:

(a) the company shall give such person access at all times to the books of account maintained at the branch office and furnish such information or explanation as he may require;

(b) such person shall, every year, make out a report on the accounts of the branch office examined by him and forward it to the company's auditor; and

(c) the management of the company shall attach to the balance sheet a certificate to the effect that no material change has taken place in the arrangement for internal audit of branch accounts.

(5) In case exemption is granted by the Central Government, the Auditor of the company must state that fact in the Auditor's Report every year so long as the exemption is in force.

Revocation of exemption

An exemption granted by the Central Government under the Companies (Branch Audit Exemption) Rules may be withdrawn by that Government on any of the following grounds:

(a) The company has contravened any of the terms and conditions stipulated by the Government in the exemption letter;

(b) The circumstances relating to the scrutiny, check or audit of the accounts of the branch office on the basis of which the exemption was granted, have materially altered;

(c) For any other reason, if the Central Government is satisfied that the exemption is no longer necessary or justified.

Before revoking the exemption, the Central Government must give the company an opportunity of making its objection to the intended revocation of the exemption.

5. REMOVAL OF BRANCH AUDITOR

Although the procedure laid down in section 225 of the Act regarding removal of auditor applies to statutory auditor, it seems that the same procedure should be adhered to while proposing removal of branch auditor too.

6. STATUTORY AUDITOR VIS-A-VIS BRANCH AUDITOR

As required by section 228(3)(a), a company at its general meeting may appoint branch auditor or authorise the board to appoint branch auditor, in consultation with the statutory auditor. This means that the company at its general
meeting may authorise the board to appoint branch auditor, but in that case the board will have to consult the statutory auditor before appointing branch auditor.

The purpose behind the said provision is difficult to comprehend. As, stated earlier, if the company has joint statutory auditors, then all such joint auditors will have to be consulted by the board before finalising the appointment of a branch auditor. As it is experienced in actual practice, appointment of a branch auditor acceptable to the board as well as all joint statutory auditors is not easy due to numerous factors and reasons involved. Further, a statutory auditor is not blessed with such powers under the Act in connection with the appointment of Special auditor (section 233A) or cost auditor (section 233B), whose appointment is also made by the board, in accordance with the directions of Central Government. In practice, appointment of internal auditor is also made by the board. While making all these appointments, the board is not statutorily required to consult the statutory auditor.

The combined reading of sub-sections 3(a) and 3(d) of section 228 connotes that the board is required to consult the statutory auditor for appointment of branch auditor but not for fixing his remuneration.

*Intimation to the Registrar of Companies*

An intimation to the Registrar of Companies about the acceptance or refusal of appointment as branch auditor need not be submitted. Such intimation in Form 23B should be sent only in case of appointment as statutory auditor made under section 224(1A) of the Act.

7. COST AUDITOR

Maintenance of cost accounts by certain companies is compulsory. Section 209 of the Companies Act, 1956 provides that every company shall keep at its registered office proper books of account with respect to—

(a) all sums of money received and expended by the company, and all the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods of the company;

(c) the assets and liabilities of the company; and

(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed*, if such class of companies is required by the Central Government to include such particulars in the books of account.

Every company to which the Companies (Cost Accounting Records) Rules, 2011 apply keep the cost records and submit a compliance report to the Central Government within one hundred and eighty days from the close of company’s financial year to which the compliance report relates.

Such report is required to be duly certified by a Cost Accountant and in the prescribed form.

* Refer the Companies (Cost Accounting Records) Rules, 2011.
The form prescribed for filing compliance report and other documents with Central Government is Form-A. Form of Compliance Report is Form-B. These forms are provided at the website www.mca.gov.in.

Section 233B of the Companies Act, 1956 provides that where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of Section 209 of the Act (as quoted above) to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order, by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959.

However, Central Government may by notification allow Chartered Accountants to conduct the audit of cost accounts of company where it has opinion that sufficient number of Cost Accountants are not available.

An audit conducted by the auditor under Section 233B shall be in addition to an audit conducted by an auditor appointed under Section 224 of the Act.

Appointment of Cost Auditor

The auditor under Section 233B shall be appointed by the Board of directors of a company in accordance with the provisions of Sub-section (1B) of Section 224 of the Act and with the previous approval of the Central Government. However, before making such an appointment, the public company shall obtain a written certificate from the proposed auditor to the effect that the appointment, if made, will be in accordance with the provisions of Sub-section (1B) of Section 224 of the Act.

(For specimen of e-form 23C for making application for obtaining approval of the Central Government for the appointment of cost auditor for company, please see in Part B of this Study)

Mandatory attachments for this Form are given below:

— Copy of the board resolution of the company sanctioning the proposal for which the Central Government approval has been sought is a mandatory attachment.

— Copy of the certificate obtained from cost auditor regarding compliance of the section 224(1B) of the Companies Act, 1956 is a mandatory attachment.

— Any other information can be provided as an optional attachment.

Statutory Auditor not to be Appointed as Cost Auditor

According to Sub-section 5(b) of Section 233B of the Companies Act, the statutory auditor of a company shall not be appointed or re-appointed for conducting audit of the cost accounts of the company.

Procedure for Appointment of Cost Auditor

1. On receipt of the order of the Central Government under Section 233B(1) of
the Act, select the proposed cost auditor who is cost accountant and holds valid certificate of practice under sub-section (1) of Section 6 of Cost and Works Accountants Act, 1959 and includes a firm of cost accountants. Obtain a certificate in writing to the effect of eligibility for appointment as cost auditor.

2. The Audit Committee of the Board be convened for appointment of cost auditor. The committee is required to ensure that
   - The cost auditor is free from any disqualifications as specified under Section 233B(5) read with Section 224 and sub-section (3) or sub-section (4) of Section 226 of the Companies Act, 1956.
   - He does not violate the limits specified under Section 224(1B) of the Companies Act, 1956.

3. The Audit Committee is required to obtain a Certificate from the Cost Auditor certifying his/its independence and arm’s length relationship with the company.

4. Convene a Board meeting and appoint the cost auditor as proposed by Audit Committee and fix remuneration by passing a requisite resolution and authorise officer(s) of the company to make application to the Central Government.

5. Make online application to Central Government in e-Form No. 23C within ninety days from the date of commencement of each financial year along with fee enclosing therewith—
   - Certified copy of the board resolution of the company sanctioning the proposal for which the government approval has been sought.
   - Copy of the certificate obtained from cost auditor regarding compliance of the section 224(1B) of the Companies Act, 1956 is a mandatory attachment.
   - Any other information can be provided as an optional attachment.

6. On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty days from the date of filing such application.

7. If, the Central Government, within such thirty days, directs the company to re-submit the said application with such additional information or explanation, the period of thirty days for deemed approval shall be counted from the date of re-submission by company.

8. After expiry of thirty days, the company shall issue formal letter of appointment to the Cost Auditor, as approved by the Board.

9. Cost Auditor is required to inform the Central Government in the thirty days of receipt of formal letter of appointment in the e-form (to be notified shortly)

10. 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.
11. In those companies, where constitution of Audit Committee is not required by law, then in place of Audit Committee, the Board Meeting is required to be conducted.

Report of Cost Auditor

The cost auditor shall submit his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company [Refer Sub-section (4) of Section 233A].

Within thirty days from the receipt of copy of the cost auditor’s report, the company shall furnish to the Central Government with full information and explanations on every reservation or qualifications contained in the report of the cost auditor [Sub-section (7) of Section 233A].

Under Sub-section (10) of Section 233B, the Central Government may direct the company to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the auditor’s report, as it may specify in this behalf.

8. SPECIAL AUDITORS

The Central Government has the power to order a special audit of accounts of a company in the circumstances mentioned in sub-section (1) of Section 233A, namely, if the Central Government is of the opinion:

(a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(b) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or

(c) that the financial position of any company is such as to endanger its solvency.

The power conferred by section 233A will be exercised not as a matter of routine but in special circumstances and after making such enquiry as the Central Government might consider necessary on the facts and circumstances of each case. The Central Government may direct that a special audit of the company's accounts be conducted for such period or periods as specified in the order.

The special audit will be conducted either by the auditor of the concerned company or by any other chartered accountant (whether or not such chartered accountant is a chartered accountant in practice within the meaning of that Act), as directed by the Central Government in the order. On this point, the MCA (the then DCA) has clarified that under this section the Central Government has been empowered to appoint a Chartered Accountant who is not in practice for the special audit of a company. Even though the auditor appointed by a company is required to audit its books of account in accordance with law, in fact, however, cases may occasionally arise when the said auditor may not be considered suitable for the purpose of special audit. Government has to exercise its discretion in such cases.
The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227. However, the special auditor shall, instead of making his report to the members of the company, make the same to the Central Government.

The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit. Where such person fails to comply with the directions of the Central Government, he will be punishable with a fine which may extend to Rs. 5,000.

On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force. But if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from, the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting.

The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the company and in default of such payment shall be recoverable from the company as an arrear of land revenue.

**Special audit on directions of court**

A deposit was made by prospective consumers, dealers and distributors with a company which was offering LPG connections and dealership, etc. Allegation of mismanagement of funds by the company was made by way of a Public Interest Litigation petition. A direction given by the Supreme Court to the Central Government to have special audit conducted to find out the amounts which have been received by way of deposits by the company from the consumers, dealers and distributors and by way of cost of Application Forms and the amount that has been actually refunded by the company to the consumers, dealers, and distributors.

9. **CAG Audit [Section 619]**

A Company, which is a Government Company under Section 617 of the Companies Act, the following provisions shall apply, notwithstanding anything contained in Section 224 to 233 of the Companies Act. The auditor of a Government Company shall be appointed or re-appointed by the Comptroller and Auditor-General of India. Provided that the limits specified in sub-section (IB) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this Section.
The Comptroller and Auditor General of India shall have power –

(a) to direct the manner in which the Company’s accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;

(b) to conduct a supplementary or test audit of the Company’s accounts by such person or persons as he may authorize in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorized, on such matters by such person or persons, and in such form, as the Comptroller and Auditor-general of India may, by general or special order direct.

The Auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit. Any such comments upon or supplement to the audit report shall be placed before the Annual General Meeting in such manner as the Audit Report.

ANNEXURE I

SPECIMEN OF BOARD RESOLUTION FOR THE APPOINTMENT OF FIRST AUDITORS

“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 First Auditors of the Company to hold office up to the conclusion of the First Annual General Meeting of the company at a remuneration of Rs. ............. 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 the resolution.”

ANNEXURE II

SPECIMEN OF ORDINARY RESOLUTION APPOINTING FIRST AUDITOR(S) WHERE BOARD FAILS TO APPOINT WITHIN ONE MONTH OF COMPANY’S REGISTRATION

“RESOLVED THAT pursuant to clause (b) of the proviso to Sub-section (5) of Section 224 of the Companies Act, 1956, Shri................., Chartered Accountant, ................., be and is hereby appointed as the first auditor of the company on a remuneration of Rs................. 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 to hold office as such until the conclusion of the first Annual General Meeting.

Explanatory Statement

The company was registered on................. The Board of directors of the company failed to exercise its power under Sub-section (5) of Section 224 of the
Companies Act, 1956 within one month 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 clause (b) to the proviso to Sub-section (5) of Section 224 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.

ANNEXURE III

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR(S) OF THE COMPANY AT AN AGM

"RESOLVED THAT pursuant to Sub-section (1) of Section 224 of the Companies Act, 1956, M/s. ........................... Chartered Accountants, ..........................., New Delhi, be and they are hereby appointed auditors of the company from the conclusion of this annual general meeting until the conclusion of the next annual general meeting of the company to audit the financial accounts of the company for the financial year................................ on a remuneration of Rs................. (Rupees...................) and reimbursement of actual expenses that may be incurred by the auditors in the performance of their duty as auditors of the company."

ANNEXURE IV

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR OF THE COMPANY TO FILL VACANCY CAUSED BY RESIGNATION

"RESOLVED THAT, pursuant to proviso to Sub-section (6)(a) of Section 224 of the Companies Act, 1956, M/s............................. Chartered Accountants ..........................., New Delhi, be and they are hereby appointed 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 Rs................. 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

Proviso to Section 224(6)(a) of the Companies Act, 1956, 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 only by the company in general meeting. Hence this resolution for approval by the members.

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.
ANNEXURE V

BOARD RESOLUTION FOR APPOINTMENT OF AUDITOR
TO FILL CASUAL VACANCY

The Board appoints ..........., Chartered Accountants, as Auditors of the Company to fill the casual vacancy caused by ..........., Chartered Accountants and to 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.

ANNEXURE VI

BOARD RESOLUTION REGARDING REMOVAL OF AUDITOR
AND OTHER INCIDENTAL MATTERS

The Board resolves that

(a) subject to the approval of the Company at a general meeting according to section 224(7) read with section 225(4) of the Companies Act, 1956 (the Act), ..........., Chartered Accountant, the Auditor of the Company be removed from the office;

(b) an extraordinary general meeting of the Company be convened to 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) the Secretary of the Company is authorised to issue the notice of the extraordinary general meeting in accordance with the provisions of the Act to the members of the Company;

(d) the Secretary of the Company is authorised to inform the Auditor of the decision of the Board as required under section 225(2) of the Act;

(e) the Secretary of the Company is authorised to make an application to the Central Government for its approval for the removal of the Auditor under section 224(7) of the Act.

ANNEXURE VII

RESOLUTION AT A GENERAL MEETING TO REMOVE AUDITOR

Subject to the approval of the Central Government under the proviso (a) to section 224(5)/section 225(4) of the Companies Act, 1956, the Company removes....... Chartered Accountant, from the office of the Auditors of the Company.

ANNEXURE VIII

MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING TO APPOINT BRANCH AUDITOR

The Company approves, in accordance with section 228 of the Companies Act, 1956 the appointment of M/s. ..........., Chartered Accountant/s, who are qualified for appointment as Auditor of the Company under section 226 of the Companies Act, 1956 as Branch Auditor on a remuneration of Rs .......... to audit the accounts of the Company's branch office/s at ......
MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING TO AUTHORISE BOARD OF DIRECTORS TO APPOINT BRANCH AUDITOR

The Company approves, pursuant to section 228 of the Companies Act, 1956, the accounts 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 226 of the Companies Act, 1956, and the Board of Directors is 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

The Board approves, pursuant to section 228 of the Companies Act, 1956 and the power conferred on the Board by the Company by an ordinary resolution passed at the annual general meeting held on................., the audit of the accounts of the Company's branch office situated at..........., by M/s.................., Chartered Accountant/s, who is/are qualified under section 226 of the Companies Act, who are appointed as the Branch Auditor to 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 Rs................., besides travelling, lodging, boarding and out of pocket expenses incurred by him in connection with his audit work.

LESSON ROUND-UP

- According to Section 224(1) of the Companies Act, 1956, every company shall, at each annual general meeting (AGM), appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- In accordance with the provisions of Sub-section (8) of Section 224, the remuneration of the auditors of a company—
  (a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be;
  (aa) in the case of an auditor appointed under Section 619 by the Comptroller and Auditor General of India, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine; and
(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

- If any company has a branch office, in or outside India, the company must get the accounts of the branch office independently audited. This is mandatory under section 228(1) of the Companies Act.

- Section 233B of the Companies Act, 1956 provides that where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of Sub-section (1) of Section 209 of the Act to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order, by an audit or who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959.

- The Central Government has the power to order a special audit of accounts of a company in the circumstances mentioned in sub-section (1) of Section 233A.

- The auditor of a Government Company shall be appointed or re-appointed by the Comptroller and Auditor-General of India.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for revaluation)

1. Explain the procedure for appointment of cost auditor.
2. Draft a Board Resolution for appointment of first auditor.
3. Explain the procedure for filling casual vacancy caused by the resignation of an auditor.
4. Write short note on ‘CAG Audit’.
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. General Meetings of the Members provide a forum to them to express their will in 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 chapter, you will learn everything about the meetings. After going through this chapter, you will be able to learn the following:

- Collective decision making forums
- Division of powers between shareholders and directors
- Responsibility and accountability, delegation of powers
- Procedure for holding Board Meetings
- Procedure for holding statutory Meeting, Annual general Meetings, extraordinary general meetings, class meetings
- Procedure for conducting a poll
- Procedure for passing a resolution through postal ballot
- Procedure for adjournment of meeting.

1. 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.

2. 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 291 of Companies Act 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 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 as such. If the shareholders are dissatisfied with what the directors do, their remedy is to remove them in the manner provided by the Act or 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 Comp Cas 21 (All): AIR 1941 All 360

The directors of a company are collectively referred to in 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 of 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 the directors can usurp the powers vested by the articles in the general body of the shareholders."

### 3. 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.

### 4. 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 292 (1)] or by Resolutions passed by circulation (Section 289) or by delegating the same to Committees or to the Managing Director or other principal officers (Section 292) 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 292 (1), are:

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to issue debentures;
(c) to borrow moneys otherwise than on debentures;
(d) to invest funds of the company;
(e) to make loans; and
(f) to buy back securities.

However, the powers mentioned at (c) to (e) above can be exercised by the Managing Director or other principal officer or a Committee of Directors if such powers are specifically delegated by the Board, subject to the provisions of sub-sections (2) to (4) of Section 292 which prescribe that limits shall be laid down in respect of:

(i) the total amount outstanding at any one time upto which moneys may be borrowed by the delegate;
(ii) the total amount upto which the funds may be invested and the nature of investments which may be made by the delegate; and
(iii) the total amount upto which loans may be made by the delegate, together with the purposes and the maximum amount in respect of each individual case.

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:

(i) approval of the fixed deposits advertisement (Section 58A);
(ii) registration of transfer in the absence of the instrument of transfer [proviso to Section 108(1)];
(iii) filling casual vacancies on the Board (Section 262);
(iv) making contribution to a political party or for political purposes [Section 293A(2)];
(v) approving contracts in which any Director or his relative, firm, private company of which he is a member or Director is interested (Section 297);
(vi) recording disclosure of interest of Directors (Sections 299 and 305);
(vii) receiving notice of disclosure of Directors’ shareholdings [Section 308(2)];
(viii) appointment as a Managing Director or Manager of a person who is already the Managing Director or Manager of another company (Sections 316 and 386);
(ix) investments in shares, etc. (Section 372A); and
(x) filing a declaration of solvency (Section 488).

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 77 of Table A 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.

However, the provisions relating to the appointment and functioning of the Audit Committee shall be as per Section 292A of the Act.

In the absence of powers delegated to a Committee of the Board to frame rules or regulations for the conduct of its business and unless otherwise provided in SS-1 (e.g. for quorum), the regulations for conduct of meetings of the Board and the provisions of the Act in relation thereto will apply to the conduct of meetings of the Committee. (Guidance note issued by the Institute of Company Secretaries of India on Meetings of the Board of Directors).

5. 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 and not for entertainment or the like purpose. 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, 1956 (the Act) relating to meetings and to ensure that the business at meetings is conducted in conformity with the provisions of the Act.

**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 73(1) of Table A provides that the Board of directors may meet for the despatch 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.

Vide Circular no. 28/2011 dated 20.05.11, it is clarified that directors of a Company may participate in a meeting of Board/Committee of directors under the provisions of Companies Act, 1956 through electric mode, by following requirements and procedure as provided in the Circular.

The meetings of a company under the Companies Act, 1956 can be classified as under:

1. Meetings of the Directors and their Committees
2. Meetings of Shareholders:
   (a) Statutory Meeting
   (b) Annual General Meetings (AGM)
   (c) Extraordinary General Meetings (EGM)
   (d) 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. Procedure for Holding First Meeting of the Board of Directors**

Section 285 of the Act prescribes that in case of every company a meeting of Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year. It has been clarified by the Department of Company Affairs that so long as four Board meetings are held in a calendar year,
one in each quarter, the interval between two meetings may be more than three months. For instance, if a meeting is held on January 1, next meeting may be held on June 30, the third on 1st July and the fourth on the 31st December.

In case of Producer Company, provisions regarding meeting of Board is contained in Section 581V of the Act. It provides that the Board meeting of a Producer company shall be held at least once in every three months and at least four such meetings shall be in every year.

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 25 company, it is required to hold Board meeting at least once in every six months.

Further, it may be noted that Institute of Company Secretaries of India has recommended, by Secretarial Standard-I, that the Board should meet atleast once in every 3 months, with a maximum interval of 120 days between any two consecutive meetings, such that atleast four meetings are held in each year.

The procedural steps for first Board meeting are as follows:

1. Consult the company’s Articles of Association to see who can issue notice for convening a Board meeting and follow the procedure laid down by Articles of Association in this regard.
   In case of Producer Companies, the Chief Executive shall give notice to every director for the time being in India, and at his usual address in India to every other director, at least seven days prior to the date of meeting:
   The Board meeting of Producer Company may also be called at a shorter notice after recording reasons thereof in writing.

2. The Secretary or any other person so authorised shall issue notice in writing to every director of the company for the time being in India and at his usual address in India in case of every other director (Section 286).
   The notice must also mention that it is the first Board meeting. In absence of any provision in the Articles of Association of the company, pursuant to Regulation 73 of Table A 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.
   [Specimen Notice is given at Annexure I to this Study].

3. The day of the meeting should not, unless the Articles of Association otherwise provide, be a public holiday [By inference from Section 288].

4. The first meeting should be convened and held within one month from the date of incorporation [Section 224(5)].

5. 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.
   [The practical aspects of drafting of an Agenda are given at Annexure II. Specimen Agenda for the first Board Meeting is placed at Annexure III.]
6. Keep ready —
   (i) Original certificate of Incorporation.
   (ii) Copy of Memorandum and Articles of Association.
   (iii) Copies of Form Nos. 1, 18, 32 and power of attorney.
   (iv) Design etc. of common seal, share certificate, sign board, name plate, letterhead etc.
   (v) Statement of preliminary expenses incurred.
   (vi) Certificate in writing about eligibility to appointment from the proposed Auditors [Section 224(1B)].
   (vii) A copy of agreement for appointment from the proposed Secretary in whole-time practice [if provisions of the proviso to Sub-section (1) of Section 383A are applicable].
   (viii) Account opening form of the Bank with which Bank account of the company is to be opened.
   (ix) Cheques/drafts from members towards payment for the shares agreed to be taken by them.
   (x) Application(s) of qualified secretary to be appointed as secretary.
   (xi) In case of public company, draft statement in lieu of prospectus as per Schedule III of the Act to be filed with the concerned Registrar of Companies for obtaining certificate of commencement of business.
   (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, latest copy of the Companies Act, 1956, 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.

7. Contact and request all the directors to attend the meeting and arrange the facilities required by them in this regard, like conveyance, location of venue etc.

8. 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.

   [Specimen Notes on Agenda are at Annexure IV at the end of this Study].

9. Before holding the meeting, welcome the directors and obtain their signatures on the Attendance Register.

10. If quorum, as required under Section 287, 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 for the meeting of Producer
Company shall be one third of the total strength of directors, subject to a minimum of three.

11. 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.

12. Help the Chairman to conduct the meeting as per the agenda.

13. 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.

14. Decide the date, time and place of the next Board meeting.

15. 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.

16. Send copy of draft minutes of the meeting to each of the directors of the company for information and comments.

17. 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.

18. 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.

[Specimen Minutes of first Board Meeting are given at Annexure V to this Study].

7. PROCEDURE FOR HOLDING SUBSEQUENT BOARD MEETINGS

For all subsequent meetings of the Board of directors of the company, the procedure shall be the same as detailed for the first Board meeting. In the notice of Board meeting the following matters are required to be specifically mentioned:

(1) Appointment of Managing Director who is already a Managing Director or Manager of another company (Section 316).

(2) Appointment of Manager who is already a Manager or Managing Director of another company (Section 386).

(3) Making loan or investment or giving of guarantee or security (Section 372A).

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.

[Specimen Agenda, Notes on Agenda and Minutes are given at Annexures VI, VII and VIII to this Study].
8. 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 77 of Table A to Schedule I which reads as under:

*Regulation 77 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 78 to 81 of Table A to Schedule I of the Act or other corresponding provisions of the company’s articles. Regulations 78-81 read as under:

*Regulation 78 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 number to be chairman of the meeting.”

*Regulation 79 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 80 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 81 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-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.”

*Committee of Directors of Producer Companies*

Under Section 581U of the Companies Act, 1956, the Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in efficient discharge of its functions under Section 581U. However, the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee of directors.

A Committee, constituted in aforesaid manner may with the approval of Board, co-opt such number of person as it deems fit as the members of committee. Provided that the Chief Executive appointed under Section 581W or director of the Producer Company shall be a member of such Committee.

Every such Committee shall function under the general superintendence
direction and control of the Board, for such duration, and in such manner as the Board may direct. Further the fees and allowances to be paid to the members of the committee shall be such as may be determined by the Board. The minutes of each meeting of committee shall be placed before the Board at its next meeting.

**Audit Committee**

Relevant provisions relating to meetings of Audit Committee as given under Section 292A are as follows:

1. Every public company having a paid-up capital of not less than rupees five crores is required to constitute ‘Audit Committee’ as per Section 292A of the Companies Act, 1956. Therefore steps shall be taken to constitute an audit committee if the paid-up capital of the company is not less than rupees five crores.

2. The auditors, the internal auditor, if any, and the director in charge of finance shall attend and participate at the meetings but shall not have the right to vote.

3. The proceedings at the meeting of Audit Committee will take place in accordance with the terms specified in writing by the Board.

4. Discussions with the auditors will take place at the meeting regarding internal control system, scope of audit including the observations of the auditors and review of the half-yearly and annual financial statements before their submission to the Board and also compliance of internal control systems.

5. The recommendations of the audit committee on any matter relating to financial management including the audit report shall be binding on the Board. If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

Clause 49 of the Listing Agreement specifies certain requirements with respect to Audit Committees which is applicable to Listed Companies. Section 292A & Clause 49 need to be read in conjunction and the stricter interpretation to be adopted to arrive at the right composition etc. A Comparative chart of Sec. 292A and Clause 49 is given in Annexure IX.

**9. PROCEDURE FOR HOLDING STATUTORY MEETING**

According to Section 165 of the Companies Act, a public company limited by shares or limited by guarantee and having share capital has to call a statutory meeting within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business. However, a private company is not required to hold a statutory meeting.

The duties of the company secretary in connection with the holding of a Statutory Meeting are:

**(a) Before the meeting:**

(i) To draft Statutory Report in e-Form No. 22 as prescribed in the Companies (Central Government’s) General Rules and Forms, 1956 and the notice of
the meeting under the directions of the chairman or the managing director, as the case may be.

(ii) To convene a Board meeting after giving notice to all directors as per Section 286 and get the Statutory Report approved and also to secure authority for secretary to issue notice for the statutory meeting.

(iii) To get the e-form digitally signed by managing director and one director of the company. If there is no managing director in the company then by two directors of the company. The e-form is then to be certified by the auditor of the company by digitally signing the e-form.

(iv) To get the Statutory Report and the Notice for the meeting printed and issue them at least twenty one clear days before the date of the meeting, under postal certificate. Notice must specifically state that the meeting is to be the statutory meeting.

(v) To forward 3 copies of the Notice of the meeting and six copies of the Statutory Report to the stock exchange, with which the securities are listed. In case of a listed company, also forward one copy each to all the recognised stock exchanges in India.

(vi) To prepare a detailed agenda for the meeting as directed by the chairman or the managing director and also to compile a gist containing the names, addresses and occupations of the members of the company for production at the meeting for inspection by any member during the course of the meeting.

(vii) To make other arrangements for holding the meeting, such as a suitable accommodation, proper seating arrangement for members, dais, loud speakers and mike, refreshments, attendance slips, ballot papers, proxies depending on the attendance expected at the meeting etc.

(b) At the meeting:

(i) To secure members attendance before commencement of the meeting;

(ii) To receive the directors and the members and make them comfortable in their seats;

(iii) To ascertain quorum on the advice of the chairman;

(iv) To produce the list of members at the meeting and to keep the same during the continuance of the meeting for inspection by any member;

(v) To read notice of the meeting, if instructed by the chairman after ascertaining the sense of the meeting;

(vi) To read the Statutory Report, if instructed by the chairman after ascertaining the sense of the meeting;

(vii) To supply to the chairman any required information, register, record, paper etc. to enable him to offer explanations, clarifications to the members during the meeting;

(viii) To take notes of the proceedings for drafting the minutes.

(c) After the meeting:

(i) To prepare minutes of the proceedings of the meeting, get the same
approved by the chairman and have the same recorded in the Minutes Book and signed by him within thirty days of the meeting.

(ii) To take follow up action if required, on the decisions taken at the meeting.

[For Board's Resolution, Notice of Statutory Meeting, Consent for Shorter Notice in Form No. 22A and Minutes of Statutory Meeting, please see Annexures X to XIII. E-form 22 i.e. form for filing statutory report is given in Part B of this study.]

10. PROCEDURE FOR HOLDING AN ANNUAL GENERAL MEETING

A meeting known as an annual general meeting is required to be held by every company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company every year. Section 166(1) of the Companies Act, 1956 states that every company must, in each calendar year hold an annual general meeting, so specified in the notice calling it, provided that not more than 15 months shall elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In that event it need not hold any annual general meeting in the year of its incorporation or in the following year. Thus, if a company is incorporated in December 2000, it may hold its first annual general meeting in May 2002, and that meeting will be deemed to be the annual general meeting for 2000, 2001 and 2002.

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 286, 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 217 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.
      (Note: 1. If the Auditors’ report contains any reservations qualification or adverse remarks, the Board’s Report must contain explanations therefor. 2. If applicable also attach Compliance Certificate from Secretary in whole-time practice).
   (e) To fix time, date and place for the annual general meeting and to approve the draft notice also to authorise the Secretary to issue Notice for the meeting. The Notice must contain Ordinary Business in accordance with the provisions of Section 173 of the Act, viz., receiving and adoption of accounts; declaration of dividend, if the same has been recommended by the Board of directors in their report to the members;
appointment of retiring directors and/or appointment of other than retiring directors if a notice of candidature under Section 257 of the Act has been received by the company; and appointment of auditors and fixation of their remunerations.

However, while fixing the time, date and place for the annual general meeting, care should be taken that the time should be during business hours, the date should not be a public 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.

(f) To consider the closure of the Register of Members and the Share Transfer Books of the Company in compliance with the provisions of Section 154 of the Act and to authorise the Secretary to arrange for its publication in a newspaper. If the shares are listed on one or more stock exchanges, a reference should be made to the stock exchange(s) about the proposed dates for such closure in advance of at least 21 days (15 days in case of such securities which are announced by SEBI for compulsory delivery in demat from by all investors) 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. Book closure notice should be sent to all the stock exchanges.

3. To arrange for the publication in a newspaper of notice of closure of the Register of Members and the Share Transfer Books as per Section 154 of the Act.

4. 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.

5. To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting. However in case of Section 25 Company a notice of not less than 14 days may be given. Notice of the meeting must also be sent to the directors (whether member or not), auditors and stock exchanges.

6. If the directors decide for the publication of the Chairman's statement, make arrangements for the same.

7. If the shares are listed at one or more stock exchanges, 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.

8. 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.
9. To arrange for the printing of attendance slips and ballot papers.

10. In consultation with the chairman or the Managing Director, prepare a
detailed agenda for the meeting.

11. To secure from the auditors a certificate in accordance with the provisions
of the proviso to Sub-section (1) of the Section 224 of the Companies Act to
the effect that the re-appointment, if made will be in accordance with the
limits specified in Sub-section (1B) of Section 224 of the Act. This shall be
obtained before holding the Board meeting and placed at the Board
meeting.

12. To prepare Dividend List from the Register of Members/beneficial owners,
on and from the last date of the closure of the Register of Members and the
Share Transfer Books which will generally be the date of the annual
general meeting.

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 notice of the meeting if advised by the Chairman.

(4) To read the Auditor’s Report 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.

Vide Circular no. 27/2011 dated 20.05.11, it is hereby clarified that a
shareholder of the company may participate in a general meeting under the
provisions of Companies Act, 1956 through electronic mode, with effect
from financial year 2012-13, it shall be mandatory for companies to provide
the facility to attend meetings through video conferencing. (Circular no.
35/2011 dated 06.06.11)

For this purpose the company shall also comply with the following
requirements and procedures, in addition to the normal procedures required
under the Companies Act, 1956 for holding general meeting:-

(a) Electronic mode means video conferencing facility i.e. audio-visual
electronic communication facility employed which enables all persons
participating in that meeting to communicate concurrently with each
other without an intermediary, and to participate effectively in the
meeting.
(b) The notice of the meeting must inform shareholders regarding availability of participation through video conference, and provide necessary information to enable shareholders to access the available facility of videoconferencing.

(c) The Chairman of the meeting and Secretary shall assume the following responsibilities:

(i) to safeguard the integrity of the meeting via videoconferencing.
(ii) to ensure proper videoconference equipment/facilities.
(iii) to prepare the minutes of the meeting.
(iv) to ensure that no one other than the concerned shareholder or proxy to the shareholder is attending the meeting through electronic mode.
(v) if a statement of a participant in the meeting via videoconferencing is interrupted or garbled, the Chairman of the meeting or Secretary shall request for a repeat or reiteration, and if need be, the Chairman or Secretary shall repeat what he heard the participant was saying for confirmation or correction.

(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) To 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 before the meeting the Register of Directors’ shareholdings in compliance with the provisions of Section 307(7) of the Companies Act and also 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.

(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 e-Form 32 with the Registrar of Companies within 30 days of appointment along with filing fee.

For the purpose of filing e-Form 32, the following further details are required.

— Designation of Director
— Details of holding Directorship in other companies
— Details of holding Partnership in any Partnership Firm
— Details of Proprietorship
— Photograph of person appointed
Evidence of payment of Stamp Duty incase qualification shares have been taken
— The original attachment relating to qualification shares duly filled in and signed on Stamp paper is required to be sent in physical mode to the concerned ROC office.

(4) To send intimation of appointment/re-appointment of auditors.

(5) To file along with the prescribed filing fee, copies of the special and other resolutions alongwith e-Form No. 23 with the Registrar of Companies in compliance with the provisions of Section 192 of the Companies Act, within thirty days of the meeting.

(6) To file, along with the prescribed filing fee, balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting alongwith the requisite fee as prescribed under Schedule X of the Companies Act, 1956 within thirty days of the meeting. Ensure that a copy of compliance certificate obtained from a Secretary in whole time practice as required under Section 383A of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual general meeting. As prescribed by the Ministry of Corporate Affairs, balance sheet, profit and loss account and compliance certificate, if any are to be filed as attachments to e-Form 23AC, e-Form 23ACA and e-Form 66 respectively.

In case of listed company, to file with the stock exchange a Schedule in quadruplicate in the prescribed form, showing the distribution of its securities at the date of the annual general meeting and the names and holdings of large holders. Also send a copy of the proceedings of the annual general meeting to the stock exchange.

(7) Deposit dividend tax at the applicable rate within the prescribed time limit under Income Tax Act, 1961.

(8) Where the company has invited 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 e-Form 20B [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 159/160 of the Companies Act, 1956. For specimen of form of Annual Return of a company having a share capital is given at Annexure XIV]. e-Form 20B and e-Form 20A is to be filed for Annual Return by companies having share capital and by
companies not having share capital respectively. Specimen of e-Form 20B & 20A is given in Part B of this study.

(13) To take action on other decisions of the shareholders.

[For specimen Notice of Annual General Meeting, Attendance Slip, Proxy Form, Notice of Book Closure and Annual General Meeting for Publication in News papers, Notice of postponed AGM, Agenda for Guidance of the Chairman at Annual General Meeting, Minutes of Annual General Meeting, please see Annexures XV to XXII].

11. CONDUCT OF POLL

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 87(1)(b) 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 86 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 87(2)].

Section 180(1) 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.

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 Extra-Ordinary 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 179, a demand for poll can be made by the following Members:

I. Companies with share capital

(A) Public companies – by Members present in person or by Proxy and holding
   (i) 10% or more of the total voting power in respect of the Resolution; or
   (ii) paid-up shares of Rs. 50,000 or more.

(B) Private companies – by
   (i) one Member present in person or by Proxy and having a right to vote on the Resolution if not more than seven Members are personally present; or
   (ii) two Members present in person or by Proxy and having a right to vote on the Resolution if more than seven Members are personally present.

II. Companies not having share capital – by Members present in person or by Proxy and holding 10% or more of the total voting power in respect of the Resolution.

Once a valid demand for a poll has been received, Sub-section (2) of Section 179 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 55 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, Comp. Cas. 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 Comp.Cas.147]. 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.

Where the poll has been conducted forthwith, the Chairman should declare the result orally at the Meeting. The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken. [Section 185(2)]. A Member has no right to question the decision of the Chairman or to inspect the poll papers and other related records. 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].

The result of the poll is deemed to be the decision of the Meeting at which the poll was demanded. [Section 185(2)].

Specimen of demand of poll, announcements by the chairman of the meeting in connection with a poll, checklist for poll, poll paper, polling record, report of the scrutineers to the chairman and announcement on the notice board of the company of the result of poll, see Annexures XXIII to XXIX.

12. PROCEDURE FOR PASSING OF RESOLUTIONS BY POSTAL BALLOT

The concept of obtaining the consent of the Members of a company by voting by Postal Ballot has been introduced in the Companies Act, 1956, (hereinafter referred to as “the Act”) by the Companies (Amendment) Act, 2000, by inserting a new Section 192A in the Act. The Central Government notified Rules, known as the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, (hereinafter referred to as “Rules”).

In terms of Section 192A of the Act, every listed public company should, in the case of such items of business as are declared by the Central Government to be conducted only by Postal Ballot, and may, in respect of any other item of business as may be decided by the Board, obtain the approval of its Members to the Ordinary or Special Resolution in respect thereof, by means of voting by Postal Ballot instead of transacting the relevant items of business at general meetings of the company. Such a Resolution, if assented to by the requisite majority of the shareholders by means of Postal Ballot, shall be deemed to have been duly passed at a general meeting convened in that behalf.

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 concept 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.
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 a electronic registry in a centralized server.

The process of voting by Postal Ballot as envisaged in Section 192A is, therefore, in substitution of and not in addition to the usual process of putting a Resolution to the vote of the Members at a general meeting duly convened for this purpose. Hence, notwithstanding any interpretation of the Rules, Circulars or Clarifications issued in this behalf, in respect of a Resolution required to be passed through voting by Postal Ballot, a company is not required to convene a general meeting of the Members.

However, a company is required to hold an Annual General Meeting, every year, as this is a mandatory requirement under Section 166 of the Act.

**Items of business to be transacted through postal ballot**

In terms of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2011, these rules shall be applicable to listed companies and in case of resolutions relating to following businesses:

(a) alteration in the objects clause of Memorandum;
(b) alteration of Articles of Association in relation to insertion of provisions defining private company;
(c) buy back of own shares by the company under sub-section (1) of section 77A;
(d) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 86;
(e) change in place of Registered Office outside local limits of any city, town or village as specified in sub-section (2) of section 146;
(f) sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 293;
(g) giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;
(h) election of a director under proviso to sub-section (1) of section 252;
(i) variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

Items specified at (a), (b), (c), (e), (g) and (i) require to be passed by a Special Resolution while items specified at (d), (f) and (h) require to be passed by an Ordinary Resolution.

The Central Government has the power to prescribe any other item of business for which Resolutions shall be passed only through voting by Postal Ballot.
Procedure

1. For any item of business identified to be transacted through voting by Postal Ballot, the first step is to convene a meeting of the Board for the purposes of:
   (i) approving Notice of the Resolution along with draft Resolution sought to be passed through voting by Postal Ballot and the explanatory statement thereof;
   (ii) authorising a Managing or Whole-time Director and the Company Secretary or, where there is no such Managing or Whole-time Director, any other Director and the Company Secretary to supervise and control the entire Postal Ballot process;
   (iii) approving the appointment of the Scrutinizer and fixing the duration of his appointment as well as his remuneration, or authorising the Chairman/Managing Director or a Whole-time Director or any other Director to fix his remuneration;
   (iv) determining the date for reckoning voting rights and ascertaining those shareholders to whom the Notice and postal ballot form should be sent;
   (v) specifying a time limit within which the postal ballot forms should be despatched;
   (vi) specifying a time limit within which the postal ballot forms, duly completed, should be returned by shareholders to the Scrutinizer;
   (vii) identifying the person who will retain custody of the postal ballot forms received from the Scrutinizer after the Scrutinizer has submitted his Report on the scrutiny to the Chairman (such person could be the Company Secretary);
   (viii) determining the date of the announcement of the result of Postal Ballot by the company;
   (ix) approval of calendar of events.

2. The Scrutinizer appointed by the Board should not be in the employment of the company. He should be a person of repute such as a retired judge or any person of repute who, in the opinion of the Board, can conduct the Postal Ballot process in a fair and transparent manner.

3. The Board should ascertain whether the person to be appointed as a Scrutinizer is willing to act as such and should obtain the consent of the Scrutinizer. The appointment of the Scrutinizer can also be made through a Resolution passed by circulation. Within seven days of his appointment, the Scrutinizer should be intimated of such appointment.

4. In addition to the remuneration to be paid to the Scrutinizer, he should be reimbursed out of pocket expenses incurred by him for the purpose of scrutiny.

5. The Scrutinizer may appoint one or more assistants to help him in the process of scrutiny. The company should provide suitable infrastructural facilities to the Scrutinizer and, having regard to the size and scale of work involved, the scrutiny expenses incurred by or in connection with the assistants or independent team appointed by the Scrutinizer should also be borne by the company.
6. The Managing or Whole-time Director or, if there is no such Managing or Whole-time Director, any other Director together with the Company Secretary entrusted by the Board with the responsibility for the entire Postal Ballot process should regularly monitor the action taken for conduct of the process for voting by Postal Ballot. They should ensure that necessary steps are taken and timely communications are issued including sending of Notices to all shareholders, such that there is free and fair voting. They should take note of the other actions taken by the Scrutinizer in connection with the scrutiny of postal ballot forms and declaration of the result and should settle all questions or difficulties that may arise.

7. A copy of the Board Resolution authorizing the process for obtaining approval of shareholders through voting by Postal Ballot should be sent to the Registrar of Companies within one week of passing of such Resolution and should be accompanied by a copy of the calendar of events. No filing fee is required to be paid in this connection. A specimen of the Board Resolution is placed at Annexure XXX.

8. The calendar of events should be in the format given below, where dates are given merely as illustrations:

(a) Date on which consent is given by the Scrutinizer. Before 1st May 2010

(b) Date of Board Resolution authorizing the Managing Director or the Whole-time Director or any other Director and the Company Secretary to be responsible for the entire Postal Ballot process. 1st May 2010

(c) Date of appointment of the Scrutinizer (Appointed at Board Meeting or by Resolution passed by circulation). 1st May 2010

(d) Date of completion of despatch of Notice (Thirty days may be required for printing and despatch of Notices and postal ballot forms). 1st June 2010

(e) Last date for receiving postal ballot forms by the Scrutinizer. 1st July 2010

(f) Last date of submission of the Report by the Scrutinizer. 17th July 2010

(g) Date of declaration of the result by the Chairman (the same date as has been mentioned in the Notice). 17th July 2010

(h) Last date of signing of Minutes by the Chairman (within thirty days from the date of declaration of the result of the Postal Ballot). 16th August 2010

(i) Date of handing over the postal ballot forms to the designated person. 16th August 2010
9. Notice in writing of every Resolution required to be passed through voting by Postal Ballot should be given to every Member of the company, holding equity or preference shares, on a date as close to the date of despatch of the Notice as may be fixed by the Managing or Whole-time Director and the Company Secretary authorized to supervise the Postal Ballot process. Notice should also be given to the Directors and Auditors of the company, to every Stock Exchange on which the securities of the company are listed and, where applicable or so required, to other persons such as debenture holders, trustees for debenture holders, banks and financial institutions. For such persons, the postal ballot form should be marked “specimen” and should not have any serial number. If the company accidentally omit to send the Notice or if an eligible Member does not receive the postal ballot form sent to him, this will not invalidate the Resolution passed or the result of the Postal Ballot.

10. The Notice should specify that it is being issued pursuant to Section 192A(2) of the Act. It should contain the draft Resolution proposed to be passed through voting by Postal Ballot and should be accompanied by the necessary explanatory statement explaining the reasons therefor and setting out all material facts as would enable a Member to take a considered decision on the matter. The Notice should also specify the day, date, time and venue where the result of the voting by Postal Ballot will be announced.

11. The nature of interest and the extent of shareholding, if any, of Directors in the proposed Resolution should be disclosed in the explanatory statement. Where reference is made to any document, contract, agreement or the Memorandum and Articles of Association, the relevant explanatory statement should state that such documents are available for inspection and such documents should be so made available for inspection, upto the last date for receipt of postal ballot forms, for not less than two hours during business hours on working days of the company at the registered office of the company and copies thereof should also be made available at the head/corporate office of the company if such office is situated elsewhere.

12. The Notice should state that only a Member entitled to vote can fill in the postal ballot form and send it to the Scrutinizer, and that any recipient of the Notice who has no voting rights should treat the Notice as an intimation only.

13. The Notice should specify the last date and time on or before which the duly filled in postal ballot form should reach the Scrutinizer, such date being thirty days from the last date of despatch of Notice.

14. The Notice should be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same. In the case of shareholders who are resident and have an address in India, a self-addressed business reply envelope in the name of the Scrutinizer should accompany the Notice. The envelope should either be prepayed or specify that postage shall be paid, on receipt, by the addressee (i.e. the company, even where such envelopes are pre-addressed to the Scrutinizer).

15. A specimen of the Notice in respect of an item of business to be transacted by way of voting by Postal Ballot is given at Annexure XXXI.
16. The date of dispatch of Notice shall be deemed to be the date on which the dispatch of all Notices, postal ballot forms and other related papers is completed. This date is hereinafter referred to as the cut-off date.

17. An advertisement intimating the despatch of postal ballot forms should be published in a leading English newspaper and in one vernacular newspaper circulating in the State in which the registered office of the company is situated.

18. The advertisement should indicate the last date on or before which the postal ballot forms should reach the Scrutinizer and should state that Members may obtain duplicate postal ballot forms, if so required. The advertisement should specifically state that a person who has become a Member of the company on a date not later than the cut-off date but has not received the postal ballot form may obtain a postal ballot form from the company and vote on the Resolution. A specimen of the Advertisement is placed at Annexure XXXII.

19. It should be made clear to any shareholder requesting for a duplicate postal ballot form that the time limit of thirty days for receiving the duly filled in postal ballot form would be counted from the cut-off date and not from the date of issue of the duplicate Notice and duplicate postal ballot form.

20. Voting rights of every Member should be verified and reckoned as on the cut-off date.

Illustration: If Notice has been despatched to a shareholder on 10th May 2010 but the date when despatch of all Notices has been completed is 1st June 2010 and if the shareholder has sold all his shares on 25th May 2010, he has no right to vote on the Resolution by Postal Ballot. Similarly, if a person becomes a Member after the date of commencement of despatch of the Notice but before the cut-off date, he would be entitled to obtain a postal ballot form from the company and vote on the Resolution by Postal Ballot.

21. A Member shall 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.

22. If the number of shares mentioned by the shareholder in the postal ballot form as the votes cast by him is higher than the number of shares appearing in the records of the company as on the cut-off date, the latter figure should be considered.

23. The postal ballot forms should be serially numbered, have distinguishing marks or bar coding or other security features unique to the company and should be in the format set out in Annexure XXXIII or as near thereto as circumstances admit.

24. The company should fill in the details at items 1, 2, 3 and 4 of the postal ballot form regarding the shareholder’s name, address, folio number and number of shares held before sending the postal ballot form. A single postal ballot form may provide for multiple items of business to be transacted. A postal ballot form shall be valid only for the items of business of the Notice to which it relates.
25. The postal ballot form should contain instructions as to the manner in which the form is to be completed and may also specify the instances in which the postal ballot form shall be treated as invalid.

26. The last date for receiving the duly completed postal ballot forms by the Scrutinizer should also be mentioned in the form along with a statement that forms received after this date will be treated as if the reply from the Member has not been received.

27. The postal ballot forms, duly filled and signed by the shareholders, should be sent to the Scrutinizer.

28. 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 vote under his signature. In cases 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 such nomination should accompany the postal ballot form. A Member may sign the postal ballot 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. However, a Member cannot sign the postal ballot form through proxy.

29. Duly filled in postal ballot forms should be received by the Scrutinizer not later than thirty days from the cut-off date. If the last date fixed for receipt of postal ballot forms is subsequently declared a public holiday, the last date fixed should be construed as the immediately following working day.

30. The Scrutinizer, personally or through his authorised representative, should mark a serial number for identification, on the envelopes received by him, affix a date stamp on such envelopes for the date of receipt and put such envelopes, unopened, in a sealed box to be kept safely till the envelopes are opened.

31. The Scrutinizer, personally or through his authorised representative in his presence, should:
   (i) open the envelopes only after the last date for receipt of postal ballot forms;
   (ii) initial each postal ballot form to ensure authenticity of the process and to facilitate identification;
   (iii) check the validity of the postal ballot forms;
   (iv) separately number the valid and invalid postal ballot forms consecutively; and
   (v) determine:
       (a) the total number of postal ballot forms received;
       (b) the number of invalid postal ballot forms received;
       (c) the number of valid postal ballot forms received.

32. Before verifying any other particulars, the Scrutinizer, personally or through his appointed representative, should verify the signature of the shareholder in the
space provided for that purpose. To facilitate verification of signatures of persons holding shares in dematerialised form, the company should obtain the specimen signatures of such persons from the Depository(ies). If the signature tallies with the specimen signature available with the company, the Scrutinizer should proceed to verify the other details. Any extraneous paper which has been enclosed in the envelope together with a valid and correctly filled in postal ballot form will not impair the validity of the postal ballot form. Any comment or observation made by the Member on the postal ballot form, apart from the vote exercised by him, should not be considered for determining the validity of the postal ballot form.

33. In case there are two items of business to be transacted by Resolutions to be passed through Postal Ballot, if a Member has given assent/dissent for one item and not for the other, the postal ballot form should be treated as valid for the item for which the decision has been conveyed and invalid for the item for which no decision is indicated.

34. A postal ballot form should be considered invalid if:
   (a) a form other than the one issued by the company or a photocopy thereof has been used;
   (b) it has not been signed by or on behalf of the shareholder;
   (c) it is not possible to determine without any doubt the assent or dissent of the Member;
   (d) neither assent nor dissent is mentioned;
   (e) any competent authority has given directions in writing to the company to freeze the voting rights of the shareholder;
   (f) the envelope containing the postal ballot form is received after the last date prescribed;
       Such envelopes should not be opened at all. In such cases the Scrutinizer should mention on the envelope the reason for rejection (i.e. received after the last date). Such response should be treated as if a reply from the Member has not been received.
   (g) the postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
   (h) it is received from a shareholder who is in arrears of payment of calls;
   (i) it is damaged or mutilated in such a way that its identity as a genuine form cannot be established;
   (j) it is not filled in accordance with the instructions for filling and executing the form.
   (k) Any amendment made by the Member to the Resolution or any condition imposed by the Member while exercising his vote, will render the postal ballot form invalid.

35. The Company shall follow the procedure for voting by electronic mode as recommended by agency.

36. The Scrutinizer should submit his report as soon as possible after the last
date of receipt of postal ballot forms to facilitate declaration of the result on the
specified date. The Scrutinizer’s Report must be addressed to the Chairman and
should contain details of the complete process of scrutiny. If a company has issued
shares with differential voting rights, the Report should also deal separately with
voting by shareholders having differential voting rights. The Report should be
signed and dated by the Scrutinizer. A specimen format of Scrutinizer’s Report is
placed at Annexure XXXIV.

37. The Chairman should, on the basis of the Scrutinizer’s Report, declare the
result of the voting on the Resolution sought to be passed by Postal Ballot on the
date, time and venue specified in the Notice. The result should be in the form of a
summary of number of votes cast for and against the Resolution, indicating also the
votes rejected. A specimen format for declaration of the result is placed at
Annexure XXXV.

38. The Resolution and a brief report thereon, including the result of the voting
on the Resolution declared by the Chairman and a summary of the Scrutinizer’s
Report, shall be recorded in the Minutes Book containing Minutes of proceedings of
general meetings, which should be signed by the Chairman within thirty days from
the date of declaration of the result of the Postal Ballot. A specimen of the Minutes
is placed at Annexure XXXVI.

39. The result of the Postal Ballot 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, if any, of the company. The
result should also be furnished to every stock exchange on which the securities of
the company are listed and announced by way of a press release. The Resolution
shall be deemed to have been passed on the date on which the result of the Postal
Ballot has been declared. The result of the Postal Ballot, once declared, shall be
final.

40. A Resolution passed by Postal Ballot should not be rescinded otherwise
than by a Resolution passed subsequently through Postal Ballot.

The postal ballot forms and all other related records should be kept in the safe
custody of the Scrutinizer till the Chairman signs the Minutes Book in which the
result of the voting by Postal Ballot is recorded. The Scrutinizer shall thereafter
return the postal ballot forms, the register and any other related documents or
records to the designated person of the company for safe-keeping until the
Resolution has been implemented.

41. A Resolution shall be deemed to have been implemented if anything is to
be done thereon when it is so accomplished, or if any document is to be filed with
the Registrar or any other authority, when it is so filed.

42. A copy of the Resolution which has been passed, together with a copy of
the Notice under Section 192A(1) of the Act containing the draft Resolution and the
statement of material facts annexed thereto should, within thirty days from the
passing of the Resolution, be duly certified under the signature of an officer of the
company and filed with the Registrar of Companies.
13. 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 53(1) 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 Comp. Cas. 1 at 18 (Raj)]. In the case of United Bank of India Ltd. v. United India Credit and Development Corporation Ltd. (1977) 47 Comp. Cas. 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

The entire Postal Ballot process has been summarized in the form of a timeframe placed at Annexure XXXVII.
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.

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. However, the Board can decide to hold it on some other date, at some other time and place, after complying with the procedures outlined above in relation to giving of fresh Notice or making an announcement thereof, as the case may be.

7. If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand dissolved.

If, at a Meeting called upon the requisition of Members, the Quorum is not present within half an hour, the Meeting stands dissolved. As the Meeting had been called by Members themselves, such a Meeting will not be adjourned for want of Quorum but shall stand dissolved.

8. 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. Section 191 provides that where a Resolution is passed at an adjourned Meeting, the Resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

14. ANNUAL GENERAL MEETING OF PRODUCER COMPANY

The Companies (Amendment) Act, 2002 has inserted provisions of Section 581ZA relating to the holding of Annual General Meeting of Producer Company according to which every Producer Company shall hold in addition to any
other meetings, a general meeting as its annual general meeting and shall specify
the meeting as such in the notices calling it, and not more than fifteen months shall
elapse between the date of one annual general meeting of a Producer Company
and that of the next. The Registrar may, for any special reason, permit the
extension of time for holding an AGM (not being the first AGM) by a period not
exceeding three months. The Producer Company shall hold its first Annual General
Meeting within a period of ninety days from the date of its incorporation. The
members shall adopt the articles of Producer Company and appoint directors of its
Board in the annual general meeting.

Notice in writing indicating date, time and place of meeting shall be given to
every member and auditor of Producer Company. The said notice shall be
accompanied by the following documents namely:

(a) agenda of the annual general meeting.
(b) minutes of the previous annual general meeting or the extraordinary
general meeting.
(c) the names of candidates for election, if any, to the office of director
including a statement of qualifications in respect of each candidate.
(d) the audited balance sheet and profit and loss accounts of the Producer
Company and its subsidiary, if any, together with a report of Board of
Directors, with respect to:
(i) the state of affairs of the Producer company,
(ii) the amount proposed to be carried to reserve,
(iii) the amount to be paid as limited return on share capital,
(iv) the amount proposed to be disbursed as patronage bonus,
(v) the material changes and commitments, if any, affecting the financial
position of the Producer company and its subsidiary, which have
occurred in between the date of the annual accounts of the Producer
company to which balance sheet relates and the date of the report of
the Board,
(vi) any other matter of importance relating to energy conservation,
environmental protection, expenditure or earnings in foreign exchange,
(vii) any other matter which is required to be, or may be, specified by the
Board.
(e) text of draft resolution for appointment of auditors,
(f) text of draft resolution proposing amendment to the memorandum or
articles to be considered at the general meeting, along with the
recommendations of the Board.

The Annual general meeting shall be held during business hours, on a day not
being a public holiday at the registered office of the company or at any other place
within the city, town or village where the registered office of the company is situated.

Unless the articles provide for a larger number, the quorum of the general
meeting shall be one-fourth of the total number of members.
The proceedings of every annual general meeting along with the Directors’ Report, the audited balance-sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act. Where a Producer company is formed by Producer Institution such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf, except in case of default under clauses (d) to (f) of Section 581Q(1) of the Act.

15. MATTERS TO BE TRANSACTED AT GENERAL MEETING

As per Section 581S of the Companies Act, 1956, the Board of Directors of Producer Company shall exercise the following powers on behalf of that company and it shall do so only by means of resolutions passed at the annual general meeting of its members, namely:

(a) approval of budget and adoption of annual accounts of the Producer company,
(b) approval of patronage bonus,
(c) issue of bonus shares,
(d) declaration of limited return and decision on the distribution of patronage,
(e) specify the conditions and limits the loans that may be given by the Board to any director, and
(f) approval of any transaction of the nature as is to be reserved in the articles for approval by the members.

16. 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. As per the Regulation 48 of Table A of Schedule I of the Companies Act, 1956, the Board may, whenever it thinks fit, call an extraordinary general meeting. Further, as per the provisions of Sub-section (1) of Section 169 of the Act, Board of directors of the company shall, on the requisition of such number of members as specified in Sub-section (4), forthwith duly proceed to call an extraordinary general meeting.

In case of Producer Company as per Section 581ZA(4), the Board of directors shall on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the members entitled to vote in any general meeting, proceed to call an extra ordinary general meeting in accordance with the provisions contained in Sections 169 to 186 of Companies Act, 1956.

The duties of the company secretary in connection with the holding of an Extraordinary General Meeting are:

(A) Before the Meeting:

(1) To convene a Board meeting after giving notice as per Section 286, in consultation with the chairman or the managing director to transact the following business:
(i) To approve agenda for the proposed extraordinary general meeting;

(ii) To approve notice for the meeting and also the explanatory statement in compliance with the provisions of Section 173 of the Companies Act, 1956;

(iii) To fix time, date and place for the meeting; and

(iv) To authorise the Company Secretary or any other competent officer to issue notice for the meeting.

(2) To arrange for the printing of the notice along with its enclosures and to despatch notice at least 21 days before the date of the General Meeting. However, a shorter notice may be given if the same has been consented to by the members holding 95% of the total paid-up share capital of the company or having, if the company has no share capital, not less than 95% of the total voting power.

(3) In case of listed company, send three copies of the notice to the Stock Exchange.

(4) To make seating arrangement for the expected number of shareholders and to serve them with light refreshments. If the expected number is large, also to arrange for loud speakers and mike.

(B) At the Meeting:

(1) To get attendance slip of members/proxies.

(2) To check whether quorum is present for the meeting.

(3) To read the notice, if directed by the chairman.

(4) To take notes of the proceedings for preparing the minutes.

(5) To assist the chairman and supply to him informations, clarifications, papers, registers, documents etc., that may be required by him for conducting the meeting.

(6) To ensure that proxies, if any present at the meeting, do not speak on any matter before the meeting, unless the articles provide otherwise.

(7) To make preparations for poll, if any, and to keep ballot papers ready.

(8) To assist the scrutineers in scrutinising the votes cast in the event of a poll being demanded and allowed by the chairman, on any of the matters before the meeting.

(C) After the Meeting:

(1) To prepare minutes of the proceedings of the meeting, get them approved by the chairman, record them or have them recorded in the Minutes Book and get the same signed by the Chairman or in the event of his inability to sign, to get them signed by a person so authorised by the Board, within thirty days of the meeting.

(2) To send copies of the minutes to the stock exchange on which the shares of the company are listed.

(3) To file with the Registrar of Companies e-Form No. 23 along with certified
copies of the resolutions passed at the meeting, which are required to be filed in accordance with the provisions of Section 192 of the Companies Act, 1956, along with the prescribed filing fee, within thirty days of the meeting.

(4) To file e-Form No. 5 alongwith e-Form 62 (for specimen of e-form 5 and 62, please see Part B of this study) electronically with the Registrar of Companies along with the prescribed filing fee within thirty days of the meeting, if the share capital or the number of members of the company has been increased, the shares have been consolidated or converted into stock in compliance with the provisions of Sections 94A, and 95 of the Companies Act. E-form 5 & 62 are given in Part B of this study.

(5) If the meeting has approved alteration of any of the clauses of the memorandum or any article in the articles of association of the company, to ensure that the alteration are carried out in all the printed copies with the company.

(6) To take action on other decision of the shareholders.

[For Specimen Notice and Agenda, Notes on Agenda, Minutes - Please see Annexure XXXIII to XL].

17. PROCEDURE FOR CLASS MEETINGS

Regulation 3 of the Table A of Schedule I of the Act provides as under:

(1) 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 Sections 106 and 107, 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 special resolution passed at the separate meeting of the holders of the shares of that class. (Specimen form of consent to variation of class shareholders’ right is given at Annexure XLI).

(2) To every such separate meeting, the provisions of these regulations relating to general meeting shall mutatis-mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy 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. (Specimen Board resolution and notice of class of shareholders’ meeting are at Annexure XLI).

Sub-section 2(a) of Section 170 of the Act provides that Section 176 dealing with proxies will apply to any meetings of a class of shareholders with such adaptations and modifications as may be prescribed in like manner as it applies
with respect to general meetings of the company. Sub-section 2(b) of Section 170 says that unless the articles of the company or a contract binding on the persons concerned otherwise provide, Sections 171 to 175 and Sections 177 to 186 will apply with respect to meetings of any class of members in like manner as they apply with respect to the General Meetings of the company with such adaptations and modifications as may be prescribed. These have been prescribed in Rule 7 of Companies (Central Government's) General Rules and Forms, 1956. According to Rule 7, Sections 171 to 186 shall apply with respect to meetings of any class of members of a company, as adopted and modified in the form set out in Annexure B of Companies (Central Government's) General Rules and Forms, 1956. (Please see Annexure B as Annexure XLIII at the end of this study).

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.

18. 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 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 Company Law Board*/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

* It shall be substituted by ‘Tribunal’ after the commencement of Companies (Second Amendment) Act, 2002.
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 193 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, specially 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/CLB* wherever required, whereas the resolution passed at a general meeting will only indicate that ‘it is subject to the approval of the Central Government/CLB* wherever required. Finally, the interest of directors shall be stated in the minutes of the Board meeting as under Section 300 of the Act, 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.

**Matters Requiring Sanction by Ordinary Resolution**

(i) to rectify the name of the company (Section 22);
(ii) to vary the terms and contracts in prospectus/statement in lieu of prospectus (Section 61);
(iii) to issue shares at a discount (Section 79);
(iv) to alter share capital of the company (Section 94);
(v) to cancel/redeem debentures (Section 121);
(vi) to declare dividend (Section 205);
(vii) to adopt annual accounts and balance sheet (Section 210);
(viii) to inspect the books of accounts of subsidiary company by the representatives and members of the holding company (Section 214);
(ix) to appoint auditors in those cases not covered by Section 224A (Section 224), and in a casual vacancy caused by resignation;
(x) to appoint directors (Section 255);
(xi) to appoint directors by rotation (Section 256);
(xii) to appoint a person who is not a retiring director (Section 257);
(xiii) to increase or decrease the number of directors (Section 258);
(xiv) to remove a director and appoint another director in his place (Section 284);
(xv) to give consent for the exercise of powers by the Board (Section 293);
(xvi) to approve appointment of sole selling agents (Section 294);
(xvii) to approve the appointment and remuneration of director (Sections 269 and 309);
(xviii) to approve voluntary winding up if the articles provide [Section 484(1)(a)];
(xix) to approve appointment and remuneration of Liquidator in voluntary winding up (Section 490);

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* It shall be substituted by ‘Tribunal’ after the commencement of Companies (Second Amendment) Act, 2002.
(xx) to authorise the Board of directors to exercise certain powers after appointment of Liquidator (Section 491);

(xxi) to fill up the vacancy in the office of Liquidator (Section 492);

(xxii) to consider accounts prepared by the Liquidator in voluntary winding up (Sections 496, 497);

(xxiii) to nominate creditors’ representative as Liquidator in voluntary winding up (Section 502);

(xxiv) to appoint a committee of inspection in creditors’ voluntary winding up (Section 503);

(xxv) to consider accounts prepared by the Liquidator in creditors’ voluntary winding up (Sections 508, 509).

**Matters Requiring Special Resolution**

1. To alter the provisions of the memorandum so as to change the registered office of the company from one State to another subject to confirmation of the Company Law Board* or to change the objects of the company (Section 17).

2. To change the name of the company with the approval of the Central Government (Section 21).

3. To alter the articles of association (Section 31).

4. To change the name of the company by omitting “Limited” or “Private Limited”, the Central Government by licence permitting the company with charitable objects to do so by special resolution (Section 25).

5. Issue of further shares to persons other than existing members [Section 81(1A)].

6. Issue of debentures having conversion option [Section 81(3)].

7. To decide that any part of the uncalled share capital shall not be called up except for the purpose of winding up (Section 99).

8. To reduce the share capital subject to the confirmation of the Court (Section 100).

9. To vary the rights of different classes of shareholders. This can be done either by obtaining the consent in writing of the holders of 3/4ths of issued capital of that class or by special resolution of shareholders of that class (Section 106).

10. To remove the registered office of the company outside the local limits of the city, town or village in which it is situated (Section 146).

11. To commence any new business [Section 149(2A)].

12. To keep registers and returns in a place other than a place within the city, town or village in which the registered office of the company is situated (Section 163).

13. To pay interest on share capital under certain circumstances (Section 208).

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(14) To appoint auditor of a company in which not less than 25 per cent of the subscribed capital is held by a public financial institution or a Government company or by Central Government or by a State Government etc. (Section 224A).

(15) To enable the Central Government to appoint inspectors to investigate the affairs of a company (Section 237).

(16) To appoint sole selling agents in specified cases [Section 294AA(3)].

(17) To determine the remuneration payable to any director including managing director, if articles allow (Section 309).

(18) To authorise a director, a relative or partner of such director, director of a private company of which he is a director, or manager to hold office of profit in the company (Section 314).

(19) To alter the memorandum for rendering the liability of its directors or manager unlimited (Section 323).

(20) To authorise inter-corporate loans/giving of guarantee/security or inter corporate Investments exceeding the prescribed limits (Section 372A).

(21) To obtain an order from the Court* for the winding up of a company (Section 433).

(22) To wind up a company voluntarily [Section 484(1)(b)].

(23) To confer general authority on the liquidator or an authority in respect of any particular arrangement with reference to a proposed sale of property of a company in voluntary liquidation (Section 494).

(24) To enable a liquidator in members' voluntary winding up to exercise certain powers (Section 512).

(25) To render binding on company and creditors any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors, if it is acceded to by the three-fourths in number and value of the creditors (Section 517).

(26) To authorise liquidator to exercise certain specified powers in voluntary winding up (Section 546).

(27) To direct the manner of disposing of a company’s books and papers when the affairs of the company have to be completely wound up in a voluntary winding up (Section 550).

(28) To render possible the application of Table A of Schedule I to a company registered under Part IX of the Act to the extent as it is adopted by the special resolution (Section 578).

(29) To alter the form and constitution of the company by substituting a memorandum and articles for a deed of settlement in the case of a company registered in pursuance of Part IX of the Act (Section 578).

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Matters Requiring Special Notice

(a) Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 225(1)].

(b) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 225(1)].

(c) Resolution to remove a director before the expiry of his period of office (Section 284).

(d) Resolution to appoint another director in place of the removed director (Section 284).

(e) Where the articles of a company provide for the giving of a special notice for a resolution in respect of any specified matter or matters.

ANNEXURES

ANNEXURE I

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)

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.
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;
      (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.

ANNEXURE III

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 Additional Directors.
8. To consider the appointment of the Chairman of the Board.
9. To fix the financial year of the company.
10. To consider the appointment of the first Auditors.
11. To adopt the Common Seal of the company.
12. To appoint Bankers and to open bank accounts of the company.
13. To authorize printing of share certificates.
14. To authorize the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.

15. To approve preliminary expenses and preliminary contracts.

16. To consider the appointment of the Managing Director/Whole-time Director/Manager and Secretary, if applicable and other senior officers.

ANNEXURE IV

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.

Draft Minutes:

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.

Draft Minutes:

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.

Draft Minutes:

Item No. 4
Item: To note the situation of the registered office of the company.

Note: The Board may kindly take note to decide the situation of the registered office of the company.

Draft Minutes:
Item No. 5
Item: To note the appointment of the first directors of the Company
Note: Article________ of the Articles of Association of the company relating to
the appointment of first directors of the company be referred to the Board.

Draft
Minutes:

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.

Draft
Minutes:

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.

Draft
Minutes:

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.

Draft
Minutes:

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.

Draft
Minutes:
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.  
Draft Minutes:

Item No. 12  
Item: To fix the financial year of the company  
Note: The Board be informed that the first financial year may be for more or less than 12 months so that the first annual general meeting would be held within 18 months from the date of Incorporation of the Company. Uniform financial year is 1st April to 31st March.  
Draft Minutes:

Item No. 13  
Item: To place draft statement in lieu of prospectus.  
Note: Draft statement in lieu of Prospectus will be placed before the meeting.  
Draft Minutes:

Item No. 14  
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.  
Draft Minutes:

Item No. 15  
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.  
Draft Minutes:

Item No. 16  
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.
Draft
Minutes:

**Item No. 17**

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.

Draft
Minutes:

**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.

Draft
Minutes:

ANNEXURE V

MINUTES OF THE FIRST BOARD MEETING OF __________, BOARD MEETING NO 1/2002 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 No……………… of …….., dated …….. issued by the Registrar of Companies…………….. The Board also took note of the filing of Form Nos. 1,18 and 32 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 299(1) of the Companies Act 1956, 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. **Appointment of Additional Directors**
   The Chairman proposed that Mr. .............. and Mr. .............. be appointed additional Directors of the Company. The Board agreed and, accordingly, the following Resolutions were unanimously passed:
   "RESOLVED that, pursuant to the provisions of Section 260 of the Companies Act, 1956, and the power conferred on the Board by the Articles of Association of the company, Mr. .............. be and is hereby appointed as additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company".
   "RESOLVED that, pursuant to the provisions of Section 260 of the Companies Act, 1956, and the power conferred on the Board by the Articles of Association of the company, Mr. .............. be and is hereby appointed as additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company".

8. **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 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".
9. **Financial year**

The Board decided that, with a view to coincide with the financial year for taxation purposes, the financial year of the company be from April to March of the succeeding year and, accordingly, the following Resolution was passed:

“RESOLVED that the financial year of company be fixed from 1st April of each year to 31st March of the following year and that the accounts for the first year be prepared for the period commencing from the date of incorporation i.e. .................. upto 31st March.................”

10. **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 224(5) of the Companies Act, 1956, 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”.

[Not applicable to Government companies and Section 619 of the Companies Act – appointment to be made by Comptroller and Auditor General].

11. **Common Seal**

The Chairman produced to 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 under Section 2(45) of the Companies Act, 1956, read with Rule 2(1) of the Companies (Appointment and Qualifications of Secretary) Rules, 1988, and presently residing at........., be and is hereby appointed as Secretary of the company, as required under Section 383A of the said Act, 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 the Companies Act, 1956, 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. Shares 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 41 of the Companies Act, 1956, 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 Rs. ............ incurred/contracted be and are hereby approved and confirmed as per the statement submitted by the Chairman.”

“RESOLVED FURTHER that the preliminary expenses of Rs. ............ 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 .................

ANNEXURE VI

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 leave of absence to Directors;
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/Manager 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 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
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; its 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

ANNEXURE VII

NOTES ON AGENDA OF BOARD MEETING

Board meeting on.......................... (day) ............................... (date)................200
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. and notice dated ................. 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 31st
March, 2001. 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: Where maintenance of cost accounts has been made mandatory in respect of any product under Section 209, the Central Government is vested under Section 233-B 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 224(1B) of the Act, be appointed for the year 2003-2004 subject to the approval of the Central Government.”

“RESOLVED FURTHER that a remuneration of Rs. ....................... 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. 10

Appointment of Sole Selling Agent

Notes: The Marketing Department has stated that the Company needs the services of an established selling agent for the Southern States who will be able to develop the market for the Company’s products and distribute the same throughout the area with the help of outlets set up already by the sole selling agent and additional warehouses and agents in other areas.

In this connection, the Marketing Department has investigated the existing infrastructure available with .................................. Co. Ltd. and its capabilities in the marketing field and its reputation and standing and they have recommended the appointment of the said company as sole selling agent for the Southern States of Tamil Nadu, Pondicherry, Karnataka and Kerala.

The Directors of the said company and the said Company itself are shareholders of the company holding shares of a total paid-up value of more than Rs. Five lakh. In terms of Section 294-AA of the Act a company having a paid-up
capital of Rs. Fifty lakh and more cannot appoint a person as a sole selling agent unless the appointment is approved by the Company in general meeting by a special resolution and also by the Central Government. It is also provided in the said section that where it is proposed to appoint an individual, firm or body corporate as a sole selling agent where the proposed sole selling agent holds a substantial interest in the appointing company (such substantial interest means holding shares of 5 per cent or of a value of Rs. Five lakh, whichever is less), such a proposal requires the approval of the Central Government.

In the circumstances and as the proposed appointment will be in the long-term interest of the company, the proposal is submitted for the consideration of the Board. If the proposal is approved, the following resolution may also be passed:

**Draft Resolution**

"RESOLVED that an application be made to the Central Government for their approval to the appointment of ......................... Co. Ltd. as sole selling agents which holds substantial interest in the company, on the basis of the draft agreement proposed to be entered into with the latter copy whereof was placed on the table.

RESOLVED FURTHER that approval to the said appointment be also obtained by special resolution at the forthcoming Annual General Meeting of the Company.

RESOLVED FURTHER that the Secretary be and is hereby authorised to make the necessary application to the Central Government and on receipt of the said approval, to enter into the agreement with the proposed sole selling agent."

**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 XIII 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 XIII to the Act, namely:

1. (a) Salary: Rs. .............................. 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 upto a ceiling of 10 per cent of the salary of the appointee.

(iii) Medical reimbursement to the appointee for self, and family upto 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 Rs. 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 upto 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 XIII in respect of the appointment of the Whole-time Director be filed with the Registrar of Companies in terms of Section 269(2) 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 309(4) 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. The general meeting may, however, authorise the payment of commission at a higher rate than one per cent or three per cent with the approval of the Central Government.

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. In terms of Section 310 of the Act, any change in the Articles relating to the remuneration of a Director shall not have any effect unless it is approved by the Central Government.

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 310 of the Companies Act, 1956 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 309(5) of the Act for a period of five years commencing from the financial year ended 31st March, 2003 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 a 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 640-B 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..................

Subject to the provisions of Section 309 of the Act, 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 first proviso of Section 310, 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 Sub-section (5) of Section 309 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, 2009

Notes: Draft of the Balance Sheet as at 31st March, 2009 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, 2009 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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit for the year</td>
<td></td>
</tr>
<tr>
<td>Profit brought forward</td>
<td></td>
</tr>
<tr>
<td>Provision for Taxation</td>
<td></td>
</tr>
<tr>
<td>Transfer to Debenture Redemption Reserve</td>
<td></td>
</tr>
<tr>
<td>Transfer to General Reserve as per Transfer of Profits to Reserve Rules</td>
<td></td>
</tr>
<tr>
<td>Interim dividend paid on</td>
<td></td>
</tr>
<tr>
<td>Proposed final dividend</td>
<td></td>
</tr>
<tr>
<td>Profit carried forward</td>
<td></td>
</tr>
</tbody>
</table>
"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 205 of the Companies Act, 1956 and the Companies (Transfer of Profits to Reserves) Rules, 1975

Draft Resolution

"RESOLVED that Final Dividend at the rate of Rs..................... per equity share of Rs. 10 each aggregating Rs. ......................... 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 to 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 224 of the Act to the effect that if they are reappointed, they will be Auditors of the number of companies as specified in Section 224. 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 30 days in advance and also published in a newspaper under Section 154 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 ................. 2009 (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, 1975, 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:

Maximum that a public company can invite or accept together with already taken:

(i) 10 per cent of share capital and free reserves from shareholders, and
(ii) 25 per cent of share capital and free reserves from the public.

Maximum rate of interest:

At a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India i.e. 11% that the Non Banking Financial Companies can pay on their public deposits.

Issue of advertisement:

Before a company can invite deposits, the Board of directors of the Company shall approve publication of an advertisement in two newspapers containing the financial results of the Company for last three years, and before that, a copy of text
of the advertisement signed by a majority of the Directors has to be filed with the Registrar of Companies.

**Validity of advertisement:**

An advertisement once issued during a financial year will be valid up to the conclusion of six months from the date of closure of the financial year or the date of the annual general meeting at which the balance sheet is laid or when the annual general meeting is not held for any reason, till the last date by which the annual general meeting ought to be held.

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 Companies (Acceptance of Deposits) Rules, 1975 the Company borrow by inviting deposits from the public on the basis of its audited accounts for the year ended 31st March, 2009 as under:

Upto Rs......................... lakh from the shareholders being 10 per cent of the Company's paid-up capital and free reserves, and Upto Rs. ......................... lakh from the public being 25 per cent of the paid-up capital and free reserves at a rate of interest 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 11 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 advertisement duly signed by the majority of Directors on the Board of the company with the Registrar of Companies 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 2009 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.

ANNEXURE VIII

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**

A. The following notices, received from the Directors of the Company, notifying their interest in other bodies corporate pursuant to the provisions of Section 305 of the Companies Act, 1956, were read and recorded:

<table>
<thead>
<tr>
<th>Name of the Director and Date of Notice</th>
<th>Nature of Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. C.D. (date, month, year)</td>
<td>Appointed as a Member of the Committee of Limited with effect from (date, month, year).</td>
</tr>
<tr>
<td>Mr. E.F. (date, month, year)</td>
<td>Resigned as a Director of Limited with effect from (date, month, year).</td>
</tr>
</tbody>
</table>

B. A notice dated... received from Mr. I.J. pursuant to the provisions of Section 308 of the Companies Act, 1956, disclosing his shareholdings and the shareholdings of Mrs. I.J. in the Company was read and recorded.

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 2002 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, subject to the approval of the Company in general meeting and of the Central Government under Section 294AA(6) and other applicable provisions of the Companies Act 1956, 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 initialled 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 Rs. 10,00,000, be paid on the ............ (date), out of the profits of the Company for the year ending .........., on 1 0,00,000 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.

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 58A of the Companies Act, 1956, and the Companies (Acceptance of Deposits) Rules, 1975, the advertisement both in English and (vernacular language) inviting deposits from the public, from shareholders, employees, ex-employees of the company, charitable and other trusts, etc. 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 4(4), of the Companies (Acceptance of Deposits) Rules, 1975.

“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, 1975.”
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 Rs. ................ 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 subsection (1) of Section 372A of the Companies Act, 1956.

"RESOLVED FURTHER that the Managing Director be and is hereby authorised to sign the applications and receive any moneys in respect of the said investment and 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 Rs. 25,00,00,000. 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 Rs.25,00,00,000 sanctioned by ......................... Bank, (address) as per the terms and conditions specified by the Bank vide its letter dated .................. placed before the Board and initialled by the Chairman for the purpose of identification.

"RESOLVED FURTHER that Mr. A.B., Chairman 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.

"AND RESOLVED FURTHER that the Company Secretary be and is hereby authorised to file the necessary charges 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 TO ANNEXURE VIII

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 as per Section 299(3) of the Act were read and noted;
(e) that Notices of disclosure of shareholdings in the company given by Directors under Section 308 of the Act were read and noted;
(f) the appointments of officers made at the Meeting;
(g) the fact of giving of notice of the proposal and unanimity of decisions of disinterested Directors as contemplated by Sections 316, 372A and 386;
(h) that interested Director(s) did not take part in the discussion of or vote on the items in which he/they was/were interested.
Comparative Chart of Clause 49 of the Listing Agreement and Section 292A of Companies Act, 1956 with respect to Audit Committees

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Provisions of Clause 49</th>
<th>Section No.</th>
<th>Companies Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>II (A)</td>
<td>Qualified and Independent Audit Committee: A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following: (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors. (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Explanation 1: The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows. Explanation 2: A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief</td>
<td>292A</td>
<td>(1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board knows as “Audit Committee” which shall consist of not less than three directors and such number of other directors as the Board may determine of which two thirds of the total number of members shall be directors, other than managing or whole-time directors. (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board. (3) The members of the Audit Committee shall elect a chairman from amongst themselves.</td>
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<tr>
<td><strong>(iii)</strong> The Chairman of the Audit Committee shall be an independent director; (iv) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;</td>
<td>(10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>II (B)</strong> <strong>Meeting of Audit Committee:</strong> The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.</td>
<td>(5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote. (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.</td>
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</tbody>
</table>
### II(C) Powers of Audit Committee:
The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

### (7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.

### (8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.

### (9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

### II (D) Role of Audit Committee
The role of the audit committee shall include the following:

1. Oversight of the company’s financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the

### (4) The annual report of the company shall disclose the composition of the Audit Committee

### (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.
management, the annual financial statements before submission to the board for approval, with particular reference to:

(a) Matters required to be included in the Director’s Responsibility Statement to be included in the Board’s report in terms of clause (2AA) of section 217 of the Companies Act, 1956
(b) Changes, if any, in accounting policies and practices and reasons for the same
(c) Major accounting entries involving estimates based on the exercise of judgment by management
(d) Significant adjustments made in the financial statements arising out of audit findings
(e) Compliance with listing and other legal requirements relating to financial statements
(f) Disclosure of any related party transactions
(g) Qualifications in the draft audit report.

5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval

6. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.

7. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public
issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.

8. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.

9. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.

10. Discussion with internal auditors any significant findings and follow up there on.

11. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.

12. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
13. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

14. To review the functioning of the Whistle Blower mechanism, in case the same is existing.

15. Approval of appointment of CFO (i.e. the whole-time Finance Director or any other person heading the Finance Function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate.

16. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

**Explanation (i):** The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

**Explanation (ii):** If the company has set up an audit committee pursuant to provision of the Companies Act, the said audit committee shall have such additional functions/features as is contained in this clause.

<table>
<thead>
<tr>
<th>II (E)</th>
<th>Review of information by Audit Committee:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Audit Committee shall</td>
</tr>
</tbody>
</table>
mandatorily review the following information:
1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

There are no penalty provisions prescribed specifically for this sub-clause of Clause 49. However, non-compliance of the Listing Agreement results in penalty provisions which are discussed separately.

(11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

**ANNEXURE X**

**BOARD’S RESOLUTION FOR APPROVING STATUTORY REPORT AND FOR CALLING THE STATUTORY MEETING**

RESOLVED that the Statutory Meeting of the Company be held on .......... at................ and that the Company Secretary is hereby directed to give notice to the members along with a copy of the Statutory Report.
RESOLVED FURTHER that the Statutory Report of the Company as set out which has been initialled by the Chairman be and is hereby approved.

RESOLVED FURTHER that Shri ‘X’ and Shri ‘Y’, Managing Director, and whole-time director respectively of the company be and are hereby authorised to certify the same as correct and after it is so confirmed the Company Secretary be and is hereby directed to forward the same to the auditors for certification as required by Section 165(4) of the Companies Act, 1956.

RESOLVED FURTHER that the Company Secretary be directed to file a copy of the Statutory Report as certified by the directors and the auditors, with the Registrar of Companies as soon as the Statutory Report would be sent to the Members of the Company.

ANNEXURE XI

NOTICE OF STATUTORY MEETING

XYZ Limited

Registered Office : ________________________________

NOTICE is hereby given that the Statutory Meeting of XYZ Limited will be held at the Registered Office of the Company on Monday, 14th August 2000 at 11:30 a.m. to transact the following items of special business:

1. To consider and approve the Statutory Report made up to 30th June 2000.

2. To consider the appointment of branch auditors.

The Statutory Report dated ______________ is enclosed.

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi.
Date : 10th July 2009.

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 173(2) of the Companies Act, 1956, relating to the business to be transacted at the Meeting is annexed.

EXPLANATORY STATEMENT

As required by Section 173(2) of the Companies Act, 1956, 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 10th July 2009.

Item No. 1

The Company was incorporated on 15th May 2009.

The Company was entitled to commence business on 15th June 2009.

The Statutory Report, made up to 30th June 2009 and containing the particulars prescribed under Sub-section (3) of Section 165 of the Companies Act, 1956, is enclosed.

The Directors commend the approval of the Statutory Report by the Members.

Item No. 2

Pursuant to Sub-section (7) of Section 165 of the Companies Act, 1956, the Statutory Meeting is competent to discuss any matter relating to the formation of the Company. Accordingly, it is proposed to place before the Members for consideration, the appointment of M/s.............., Chartered Accountants, Lucknow, as branch auditors, to audit the accounts of the Lucknow Branch of the Company.

The Directors commend the appointment of M/s..............Chartered Accountants, Lucknow, by the Members.

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi.

Date : 10th July 2009.

ANNEXURE XII

FORM NO. 22A
The Companies Act, 1956

Consent by Shareholder for Shorter Notice

[Pursuant to Section 171(2)]

To
The Board of Directors
of............................

I, ................, son of Shri....................resident of ...................holding equity/
preference shares............of Rs...................in the company in my own name, hereby
give consent, pursuant to Section 171(2) of the Companies Act, 1956, to hold the
annual/extraordinary general meeting on...............at a................. shorter notice.

Signature...........................
Name..............................
(IN BLOCK CAPITALS)

Dated this...........Day of..............200.........................

ANNEXURE XIII

SPECIMEN MINUTES OF THE STATUTORY MEETING

......................................Ltd.

MINUTES OF THE PROCEEDINGS OF THE STATUTORY MEETING OF
_______LIMITED HELD ON _______DAY, THE __________ 2008, AT ____ A.M.

AT THE REGISTERED OFFICE OF THE COMPANY

The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director)
3. Mr. C (Director)
4. Mr. D (Director)
5. Mr. E (Director)
6. Mr. F (Company Secretary)
7. _____ (Members present in person) [state number]
8. _____ (Members present by Proxy) [state number]

CHAIRMAN

Mr. A took the Chair.

QUORUM

After ascertaining and announcing that the requisite Quorum for the Meeting
was present, the Chairman welcomed the Members and called the Meeting to
order.

The Company Secretary read the Notice of the Statutory Meeting and the
Statutory Report, which had been sent to the Members alongwith the Notice.
The Chairman apprised the Members about the working of the Company and reviewed the position since its incorporation. The Statutory Report was discussed by the Members and, after discussions, the following Resolutions were passed:

**Item No. 1 - Statutory Report**

Proposed by Mr. M  
Seconded by Mr. N

The following Resolution was put to the vote as an Ordinary Resolution:

“RESOLVED that the Statutory Report of the Company laid before the Meeting be and is hereby approved and adopted.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**Item No. 2 - Appointment of Branch Auditors**

Proposed by Mr. S  
Seconded by Mr. T

The following Resolution was put to the vote as an Ordinary Resolution:

“RESOLVED that M/s.___________, Chartered Accountants, Lucknow, be appointed as Branch Auditors, to audit the accounts of the Lucknow Branch of the Company, for the period upto 31st March 2009, on a remuneration of Rs.________ plus service tax and out-of-pocket expenses.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**TERMINATION OF THE MEETING**

The Meeting terminated with a vote of thanks to the Chair.

__________________  
CHAIRMAN

Date: __________

**ANNEXURE XIV**

Form of Annual Return of a Company Having a Share Capital

**ANNUAL RETURN**  
The Companies Act (1 of 1956)  
**SCHEDULE V - PART II**  
(See Section 159)
**I. Registration Details**

<table>
<thead>
<tr>
<th>Registration No.</th>
<th>State Code</th>
<th>Whether shares listed on Recognised Stock Exchange(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration Date</td>
<td></td>
<td>Date of AGM</td>
</tr>
<tr>
<td>AGM Held</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**II. Name and Registered Office Address of Company.**

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Pin Code</th>
<th>Tel. No.</th>
<th>Fax No.</th>
</tr>
</thead>
</table>

**III. Capital Structure of the Company (Amount in Rs. Thousands).**

**Authorised Share Capital Breakup.**

<table>
<thead>
<tr>
<th>Type of Shares</th>
<th>No. of Shares</th>
<th>Nominal Value (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Equity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Preference</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Authorised Capital

**Issued Share Capital Breakup**

<table>
<thead>
<tr>
<th>Type of Shares</th>
<th>No. of Shares</th>
<th>Nominal Value (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Equity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Preference</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Issued Capital

**Subscribed Share Capital Breakup**

<table>
<thead>
<tr>
<th>Type of Shares</th>
<th>No. of Shares</th>
<th>Nominal Value (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Equity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Preference</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Subscribed Capital

**Paid-up Share Capital Breakup**

<table>
<thead>
<tr>
<th>Type of Shares</th>
<th>No. of Shares</th>
<th>Nominal Value (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Equity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Preference</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Paid-up Capital
Debentures Breakup

<table>
<thead>
<tr>
<th>Type of Debentures</th>
<th>No. of Debentures</th>
<th>Nominal Value (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Non-Convertible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Partly Convertible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) Fully Convertible</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Amount : 

IV. Directors/Manager/Secretary information (Past and Present)

Directors/Managers/Secretary Information (Past and Present)

(Refer Clause 6 of Part I of Schedule V)

<table>
<thead>
<tr>
<th>Names and addresses</th>
<th>Nationality</th>
<th>Date of birth</th>
<th>Designation</th>
<th>Date of appointment</th>
<th>Date of ceasing</th>
</tr>
</thead>
</table>

V. Details of shares / Debentures Held at Date of AGM *

List of Equity Shareholders (Rs.100/- Each).

<table>
<thead>
<tr>
<th>Folio no.</th>
<th>Names &amp; addresses</th>
<th>Father’s/ Husband’s name.</th>
<th>No. of Shares held at</th>
<th>AGM date.</th>
</tr>
</thead>
</table>

VI. Details of Shares/Debentures Transfer since Date of last AGM (or in the case of the first return at any time since the incorporation of the Company)*

Date of Last AGM :

Details of Shares transferred since the date of last AGM

Equity Shares of Rs.10/- each

<table>
<thead>
<tr>
<th>Date of Transfer</th>
<th>Number of Shares</th>
<th>Transferor Folio No.</th>
<th>Transferor’s Name</th>
<th>Transferee Folio No.</th>
<th>Transferee Name</th>
</tr>
</thead>
</table>

VII. Indebtedness of the Company (Amount in Rs. Thousands)

[Secured Loans including interest outstanding / accrued but not due for payment]

Amount :
VIII. Equity Share Capital Breakup (Percentage of Total Equity)

<table>
<thead>
<tr>
<th>(i)</th>
<th>Govt. [Central &amp; State(s)]</th>
<th>(ii)</th>
<th>Govt. Companies</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td>(iii)</td>
<td>Public Financial Institutions</td>
<td>(iv)</td>
<td>Nationalised/Other Banks</td>
<td>-</td>
</tr>
<tr>
<td>(v)</td>
<td>Mutual Funds</td>
<td>(vi)</td>
<td>Venture Capital</td>
<td>-</td>
</tr>
<tr>
<td>(vii)</td>
<td>Foreign Holdings (FII/FC/FFI/NRI/OCB)</td>
<td>(viii)</td>
<td>Bodies Corporate (Not mentioned above)</td>
<td>-</td>
</tr>
<tr>
<td>(ix)</td>
<td>Directors/Relatives of Directors</td>
<td>(x)</td>
<td>Other top 50 Share Holders</td>
<td>-</td>
</tr>
</tbody>
</table>

We certify that:

(a) the return states the facts as they stood on the date of the annual general meeting aforesaid, correctly and completely.

(b) since the date of the last annual return the transfer of all shares, debentures, the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose.

(c) the whole of the amount of dividend remaining unpaid or unclaimed for a period of seven years from the date they become payable by a Company have been credited to the Investor Education and Protection Fund.

(d) the Company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the Company, issued any invitation to the public to subscribe for any shares or debentures of the Company;

(e) Where the annual return discloses the fact that the number of members of the Company exceed fifty, the excess consists wholly of persons who under sub-clause (l) section 3 are not to be included in the reckoning the number of fifty.

(f) Since the date of annual general meeting with reference to which the last return was submitted or in the case of a first return since the date of incorporation of the private Company, no public company or deemed public company has or have held twenty five percent, or more of its paid-up share capital;

(g) the Company did not have an average turnover of Rs. Ten Crores or more during the relevant period;

(h) Since the date of the annual general meeting with reference to which the last annual return was submitted or since the date of incorporation of the Company, if it is first return, the Company did not hold twenty five percent or more of the paid up share capital of one or more public companies; and

(i) the private company did not accept or renew or invite deposits from the public.

Director: ____________________
Note: Certificates to be given by a Director and Manager/Secretary or by two Directors where there is no manager or secretary. In the case of a company whose shares are listed on a recognised stock exchange, the certificates shall also be signed by a secretary in whole time practice.

Annual Return is required to be submitted as an attachment to the e-form 20B. For copy of e-form 20B, i.e. Form for filing annual return by a company having a share capital with the Registrar, please see Part B of this study.

ANNEXURE XV

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 2009, 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, 2009, 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.

OR

(in cases where the appointment of Auditors requires a Special Resolution):

To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“RESOLVED that, pursuant to the provisions of Section 224A and other applicable provisions, if any, of the Companies Act, 1956, M/s.__________________, Chartered Accountants, New Delhi, the retiring Auditors of the Company, be and are hereby re-appointed as Auditors of
the Company to hold office from the conclusion of this Annual General Meeting up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs._________, plus service tax and out of pocket expenses, as determined by the Board of Directors of the Company on the recommendation of the Audit Committee of the Board."

**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 Section 260 of the Companies Act, 1956 and Article ___ of the Articles of Association of the Company and who holds office only up to the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 257 of the Companies Act, 1956, from a Member signifying his intention to propose Mr. D as a candidate for the office of a Director of the Company, 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 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 2009.
Notes:

1. The explanatory statement pursuant to Section 173(2) of the Companies Act, 1956, 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 2009 to Tuesday, 24th September 2009 (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 2009, 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 2009.

6. Pursuant to Section 205A of the Companies Act, 1956, dividend for the financial year ended 31st March 1996, 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 declared for the financial year ended 31st March, 1995 and earlier periods to the General Revenue Account of the Central Government as required by the Companies Unpaid Dividend (Transfer to the General Revenue Account of Central Government) Rules, 1978. 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 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 by filing Form 2- B, as prescribed under the Companies (Central Government) General Rules & Forms, 1956, 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 Rs. 2,500. Resident individual shareholders who are likely to receive dividend amounting to more than Rs. 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 Rs. 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 2009. 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 2009.

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 173(2) of the Companies Act, 1956, 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 2009.

In the case of appointment of Auditors is by a Special Resolution, the following explanatory note may be given:

Item No. 6

Appointment of Auditor

Section 224A of the Companies Act, 1956, provides for the appointment or reappointment of auditor or auditors of a Company at each Annual General Meeting by Special Resolution if the Company is one in which not less than twenty-five percent of its subscribed share capital is held singly or in combination by Public Financial Institutions, Nationalised Bank, etc. The holding of the aforesaid categories of shareholders in the Company being not less than twenty-five percent of its subscribed share capital, the reappointment of M/s. ______________, Chartered Accountants, as Auditors of the Company is required to be made by a Special Resolution. Further, as required under Section 224 of the Act, a certificate has been received from the Auditors to the effect that their appointment, if made, will be in accordance with the limits specified in Section 224(1B) of the Act.

None of the Directors of the Company is interested or concerned in the proposed Resolution.

The Directors commend the appointment of M/s. __________ for approval of the Members.)

Item No. 7

Appointment of Director

Mr. D was appointed by the Board of Directors of the Company on 15th April,
2009 as an additional Director and, as per the provisions of Section 260 of the Companies Act, 1956, 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 Rs. 500, 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)
- The National Stock Exchange of India Limited (NSE)
- The Delhi Stock Exchange Association (DSE)
- The Stock Exchange - Ahmedabad (ASE)
- The Ludhiana Stock Exchange Association Limited (LSE)
- The Calcutta Stock Exchange Association Limited (CSE)

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 de-list 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 de-listing 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 de-listing will take effect after all approvals, permissions and sanctions are received.

Since the approval of Members is required for such voluntary de-listing 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 2009.
ANNEXURE XVI

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, 2009.

Full name of the Shareholder  Signature

Folio No.:   / DP ID No.:     & Client ID No.:

Full name of Proxy/Authorised Representative  Signature of Proxy/Authorised 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.

ANNEXURE XVII

FORM OF PROXY

XYZ LIMITED

Registered Office: ________________________________

I/We ______________________________, being a Member(s) of XYZ LIMITED, hereby appoint the following as 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:

Resolutions For Against

Resolution No. 1. (To specify)
Resolution No. 2. (To specify)
Resolution No. 3. (To specify)
Resolution No. 4. (To specify)

Number of Shares held
Affix
Revenue
Stamp

Signed this _______________ day of ____________ 2002.

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.

ANNEXURE XVIII

NOTICE IN THE NEWSPAPER FOR CLOSURE OF REGISTER OF MEMBERS

A LIMITED
(Registered Office)

Notice is hereby given, under Section 154 of the Companies Act, 1956, that the
Register of Members of the Company will remain closed from.................
to.......................September 2009 to..................the................September 2009 (both
days inclusive) for the purpose of annual dividends on equity shares and on
preference shares, to the year ended 31st March 2009. The dividends when
declared will be paid to those shareholders whose names appear in the register of
members on the......... September 2009.

Dated:SECRETARY

ANNEXURE XIX

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 2009 at 3:30 p.m. at
_____________ (address) to transact the business as set out in the Notice dated
26th August 2009 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 2009.

The Register of Members and the Share Transfer Books will remain closed
from the 17th September 2009 to 24th September 2009 (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 2009. 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 2009 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
Company Secretary

Place : New Delhi.

Date : 28th August 2009.

Note: Members may please intimate immediately any change in their address.
ANNEXURE XX

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 2009, will now be held on ______________________ 2009, at ____ p.m. at the Registered Office of the Company, to consider the business mentioned in the Notice dated 26th August 2009 which had been sent to Members in connection with the Meeting originally scheduled to have been held on 24th September 2009.

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 2009.

Note: Members may please immediately intimate any change in their address.

ANNEXURE XXI

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...............2009.............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 307 of the Companies Act, 1956, 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, 2009, 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, 2009, 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 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, 2009, on the equity shares of the Company at the rate of Rs. 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..................2009...............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 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 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 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 257 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 until 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 the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.
12. SPECIAL BUSINESS

Ordinary Resolutions

(i) Under Section 293(1)(a)

Mr...........................................a member personally present proposes:

"That pursuant to Section 293(1)(a) of the Companies Act, 1956, 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 Rs....................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 Rs....................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 the votes “for” and “against” separately on a show of hands by
members personally present, the Chairman will declare the result.

(ii) Under Section 293(1)(d)

Mr..............................a member personally present will propose:

“That pursuant to the provisions of Section 293(1)(d) of the Companies Act,
1956, and in supersession of the Ordinary 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 Rs. 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 the votes “for” and “against” separately on a show of hands by members
personally present, the Chairman will declare the result.

(iii) Under Section 293(1)(e)

Mr..............................a member personally present will propose:

“That in supersession of the resolution passed at the Extraordinary General
Meeting held on.............. consent be and is hereby accorded pursuant to
Section 293(1)(e) of the Companies Act, 1956 to the Board of directors of the
Company contributing to charitable and other funds not directly relating to the
Business of the Company or the welfare of the employees such sum or sums as it
may from time to time determine but so that the total amount of such contribution
shall not exceed Rs. 50,00,000 (Rupees Fifty lakh only) in any financial year
notwithstanding that such contributions may exceed the limit prescribed by the said
Section.”

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 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 persons holding 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.

ANNEXURE XXII

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 2002 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 2009 and Mr. ______________ read out the Ordinary Resolution as follows:

“RESOLVED that the audited Balance Sheet of the Company as at 31st March 2002 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 @ Rs. 2 on the equity shares of Rs. 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 2009”.

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 256 of the Companies Act, 1956, 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 256 of the Companies Act, 1956, 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.

5. 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 256 of the Companies Act, 1956, Mr. C, 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 Rs. _____, 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 260 of the Companies Act, 1956 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 257 of the Companies Act, 1956, from a Member signifying his intention to propose Mr. D as a candidate for the office of a Director of the Company, 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: __________

**ANNEXURE XXIII**

**DEMAND FOR POLL**

2nd September 2009

To

The Chairman of the Second Annual General Meeting of XYZ Limited being held on Tuesday, 24th September 2009 at 3:30 p.m. at ______________ (address).

We the undersigned, being the holders of an aggregate of ______ equity shares of Rs.10 each of the Company, as per the details set out below against our respective names, demand that, pursuant to the provisions of Section 179 of the Companies Act, 1956, a poll be taken in respect of the Resolution proposed at Item No. 3 of the Notice dated 26th August 2009 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.}

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of Member</th>
<th>Folio No./Client ID No</th>
<th>No. of shares held</th>
</tr>
</thead>
</table>

**ANNEXURE XXIV**

**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 ascertain the validity of the demand in terms of the Companies Act, 1956, and the Articles of Association of the Company.”

2. 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 ________________”

ANNEXURE XXV

CHECKLIST FOR POLL

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Relevant Section of the Companies Act</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>179(1)</td>
<td>Poll may be ordered by the Chairman or demanded by Member(s) (as in 3 below) before or on the declaration of the result of the voting by show of hands on a Resolution.</td>
</tr>
<tr>
<td>2.</td>
<td>179(1)(a)</td>
<td>Poll may be demanded by any Member(s) present in person or by proxy holding shares:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) of 1/10 of the total voting power, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) on which not less than Rs. 50,000/- has been paid-up.</td>
</tr>
</tbody>
</table>
4. The demand for a poll may be withdrawn at any time by the person(s) who made the demand.

5. Poll shall be taken immediately if demanded on a question of adjournment of the Meeting or on the election of the Chairman (Section 175); otherwise within forty-eight hours from the time it is demanded on any other question.

6. Each Resolution should be put to poll separately and polling papers shall be distributed to all Members and to proxies attending the Meeting. Thereafter, polling/ballot papers shall be deposited in a ballot box by the Members / proxies.

7. A Member present by proxy shall be entitled to vote only on a poll.

If any Member present in person or by proxy has more than one vote, then such Member has the option to use his votes in different ways.

8. The Chairman shall appoint two scrutineers to scrutinise the votes given on a poll and to report to him.

9. One of the Scrutineers should be a Member attending the Meeting, other than an Officer or employee of the Company.

The Chairman has the power, at any time before the result of the poll is declared, to remove a scrutineer(s) and fill the vacancy / vacancies.

10. (i) The demand for a poll, except on the question of the election of the Chairman or of any adjournment, shall not prevent the continuance of a Meeting for the transaction of any business other than the question on which a poll has been demanded.

(ii) In case of equality of votes, the Chairman shall have a second or casting vote (in addition to his vote as a Member).

11. Votes shall be counted in the presence of the Scrutineers.
12. The results of poll shall be entered in a polling register showing the votes for and against each Resolution, which shall be signed by the Scrutineers, and shall be deemed to be the decision of the Meeting.

13. The Chairman shall regulate the manner of Poll and declare the results, after completion of the procedures listed in 6 to 12 above.

Notes:

(a) The Meeting is deemed to continue until the poll has been taken. Appointing a later day for taking / completing the poll is not an adjournment.

(b) A voter may vote at the poll even though not present when the poll was demanded.

(c) Members in arrears of payment of allotment money or calls cannot vote.

(d) Every Member entitled to vote at a Meeting, or on any Resolution to be moved thereat, shall be entitled 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, to inspect the proxies, at any time during the business hours of the Company, provided not less than three days notice in writing of the intention so to inspect is given to the Company.

ANNEXURE XXVI

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 2002, 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
   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 187 of the Companies Act, 1956:
   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**

<table>
<thead>
<tr>
<th>Votes Cast</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>Against</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>
</tr>
</tbody>
</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.

ANNEXURE XXVII

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.</th>
<th>No. of shares held For</th>
<th>No. of shares held Against</th>
</tr>
</thead>
</table>

Date: __________ Initials of Scrutineers: __________ (each page should be initialed by the Scrutineers and they should sign the last page in full)

ANNEXURE XXVIII

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 : __________

ANNEXURE XXIX

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 _____ TH 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 : ________________________________
BOARD RESOLUTION

“RESOLVED that, pursuant to Section 192A and other applicable provisions, if any, of the Companies Act, 1956, 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:

[Here give the calendar of events with specific dates]

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).”

ANNEXURE XXXI

NOTICE

XYZ Limited

Registered Office: ______________________________

Dear Shareholder(s),

Notice pursuant to Section 192A(2) of the Companies Act, 1956

Pursuant to the provisions of Section 293(1)(a) of the Companies Act, 1956, 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 192A of the Companies Act, 1956, read with the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, consent of the Members under Section 293(1)(a) of the Companies Act, 1956, 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 293(1)(a) and other applicable provisions, if any, of the Companies Act, 1956, 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 173 of the Companies Act, 1956

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 recommends the Resolution for your approval.

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.
ANNEXURE XXXII

ADVERTISEMENT

XYZ Limited

NOTICE TO MEMBERS

Members are hereby informed that the Company has on _______ (Date) completed the despatch of a Notice under Section 192A of the Companies Act, 1956, 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 293(1)(a) of the Companies Act, 1956, 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 : ______________

ANNEXURE XXXIII

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 (v) mark in the appropriate box below.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>No. of shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>I/We assent to</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>the Resolution</td>
</tr>
<tr>
<td>3</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.

ANNEXURE XXXIV

SCRUTINIZER’S REPORT

The Chairman of __________
(Full address of the Company)

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</th>
<th>No. of shares</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ballot forms</td>
<td>equity</td>
<td>paid up capital</td>
</tr>
<tr>
<td>(a) Total postal ballot forms received</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Less : Invalid postal ballot forms (as per register)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Net valid postal ballot forms (as per register)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Postal ballot forms with assent for the Resolution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Postal ballot forms with dissent for the Resolution</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 :

ANNEXURE XXXV

RESULT OF POSTAL BALLOT

Result of the voting conducted through Postal Ballot on the Ordinary Resolution under Section 293(1)(a) of the Companies Act, 1956, 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

ANNEXURE XXXVI

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 192A of the Companies Act, 1956 on the Ordinary Resolution under Section 293(1)(a) of the said Act as set out in the Notice dated __________ pursuant to Section 192A(2) 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 192A(2) of the Companies Act, 1956, 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 293(1)(a) and other applicable provisions, if any, of the Companies Act, 1956, 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 up to 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
- Votes in favour of the Resolution
- Votes against the Resolution
- Number of invalid postal ballot forms received

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

ANNEXURE XXXVII

TIME-FRAME

<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></td>
</tr>
<tr>
<td></td>
<td>(a) Notice u/s 192(A)</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>27th April 2010</td>
</tr>
<tr>
<td>2.</td>
<td>Obtain consent of the Scrutinizer.</td>
<td>27th April 2010</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>
</tbody>
</table>
(iii) Pass a Resolution nominating a Managing Director/ Whole-time Director and the Company Secretary for being responsible to complete the 'Postal Ballot' process.

(iv) Approve the calendar of events. 1st May 2010

4. 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. 7th May 2010

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 2010

6. Complete despatch of Notices (names of shareholders to be ascertained on a date as close as possible to the despatch date). 1st June 2010

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 2010

8. Last date for receipt of postal ballot forms. 1st July 2010

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 2010

10. Preparation of Scrutinizer’s Report and submission of the same to the Chairman by the Scrutinizer 17th July 2010

11. Declaration of result. 17th July 2010

12. Result to be displayed on Notice Board and released to the Press. 17th July 2010

13. File the Resolution with Registrar of Companies. 16th August 2010

14. Last date for signing the Minutes. 16th August 2010
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 2010 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 17 and other applicable provisions, if any, of the Companies Act, 1956, and subject to the approval of the Company Law Board, 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 Company Law Board, Northern Region Bench at New Delhi 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, including compliance of directions, if any, of the Hon'ble Company Law Board, Northern Region Bench at New Delhi."

Commencement of New Business

2. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

"RESOLVED that, pursuant to Section 149(2A) and other applicable provisions, if any, of the Companies Act, 1956, consent of the Company be and is hereby given for commencement of a new business as contained in sub-clause IIIC of the Objects Clause of the Memorandum of Association, as reproduced hereunder.

IIIC (25)

__________________________

By order of the Board of Directors

PQR

Company Secretary
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 173(2) of the Companies Act, 1956, relating to special business to be transacted at the Meeting is annexed.

EXPLANATORY STATEMENT

As required by Section 173(2) of the Companies Act, 1956, 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 2010.

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 rents 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.

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.

**Item No. 2**

Under the Export-Import Policy of the Government of India, in order for the company to become an Eligible Export House, the Company is required to make exports to the extent specified in the Policy from time to time. On acquiring and retaining the status of an Eligible Export House, the Company becomes entitled to avail of Import Licences and other benefits.

Accordingly, the Company proposes to export various products, including goods of other manufacturers. It is, therefore, necessary to seek the approval of the Members in terms of Section 149(2A) of the Companies Act, 1956, to the undertaking of all such business as an Export House and an Indenting/Import House can undertake. The Company has the necessary authority to undertake such business in terms of Clause III of the Objects Clause of its Memorandum of Association.

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.2 as a Special Resolution.

None of the Directors is concerned or interested in the proposed Resolution.

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi.
Date : 30th September 2010

*ANNEXURE XXXIX*

**NOTES ON AGENDA FOR EXTRAORDINARY GENERAL MEETING**

Day & Date: Thursday, the 20th September, 2010

Time : 11.30 a.m.

1. **Chairman**:

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 found the quorum present has to call the meeting in order.

3. Notice of the Meeting :

Notice dated 16th August, 2010 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 Rs. 1000.00 lacs and Rs. 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 293(1)(a) and other applicable provisions, if any, of the Companies Act 1956 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 Rs. 1000.00 lacs and Rs. 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 293(1)(a) and other applicable provisions, if any, of the Companies Act 1956 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 him for a further period of 5 years w.e.f. 1.1.2010 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 198, 269, 309, 311, Schedule XIII and other applicable provisions, if any, of the Companies Act 1956 or any modification or re-enactment thereof, the reappointment of Shri A Chairman of the Company, as Managing Director of the Company for a period of 5 years with effect from 1st January, 2009 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 under Sections 349 and 350 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 authorised to give 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 372A and other applicable provisions, if any, of the Companies Act 1956 or any modification or re-enactment thereof, the guarantee of the company for Rs. 5,46,10,000/- furnished by the Chairman & Managing Director of the Company as per the resolution passed in the meeting of the Board of directors of the company held on 29.7.2006, 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 Rs. 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 372A and other applicable provisions, if any, of the Companies Act 1956 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 Rs.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:-

(Rs. in lacs)

<table>
<thead>
<tr>
<th>Company</th>
<th>Investment in Equity Shares</th>
<th>Loans (Rs. in lacs)</th>
<th>Guarantee/Security</th>
<th>Overall limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>W&amp;M (India) Ltd.</td>
<td>1000.00</td>
<td>400.00</td>
<td>1200.00</td>
<td>2200.00</td>
</tr>
<tr>
<td>XY Packagings Pvt. Ltd.</td>
<td>Nil</td>
<td>100.00</td>
<td>350.00</td>
<td>400.00</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.

ANNEXURE XL

MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF XYZ LIMITED HELD ON FRIDAY, 25TH OCTOBER 2010 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)
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 17 and other applicable provisions, if any, of the Companies Act, 1956, and subject to the approval of the Company Law Board, 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 Company Law Board, Northern Region Bench, at New Delhi 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, including compliance of directions, if any, by the Hon’ble Company Law Board, Northern Region Bench at New Delhi”.

On a show of hands, the Chairman declared the aforesaid Special Resolution carried by the requisite majority.

2. Commencement of New Business

Proposed 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 149(2A) and other applicable provisions, if any, of the Companies Act, 1956, consent of the Company be and is hereby given for commencement of a new business as contained in sub-clause IIIC of the Objects Clause of the Memorandum of Association, as reproduced hereunder:

IIIC

_____________________________________________________

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 : ___________

ANNEXURE XLI

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 106 of the Companies Act, 1956, 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

Resolved that a 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:

“..........................................................................................” 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, 1956, consent of the Company be and is hereby accorded for the extension in the redemption period of ........................ to....................... years of the ......................... Redeemable Cumulative Preference Shares of Rs. ......................... each of the Company, of which ......................... Redeemable Cumulative Preference Shares of Rs......................... each were allotted on ............ and ................ Redeemable Cumulative Preference Shares of Rs. ......................... 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 Rs................. each so that the Redeemable Cumulative Preference Shares shall be redeemable in two annual installments of Rs. .................. and Rs. .................. on and .................. respectively.

Resolved further that so 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 173(2) of the Companies Act, 1956, 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 173(2) of the Companies Act, 1956).

Item No. 1

The Company had issued a total of ................. Redeemable Cumulative Preference Shares of Rs. ................. each, of which ................. Redeemable Cumulative Preference Shares of Rs. ................. each were allotted on ................. and ................. Redeemable Cumulative Preference Shares of Rs................. 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 Rs. ................. each are due for redemption on............... and the ................. Redeemable Cumulative Preference Shares of Rs................. each are due for redemption on ................. .

Owing to the loss suffered during the year ................. amounting to Rs................. lakhs and having still a carried forward loss of Rs. ................. 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 Rs. ................ each amounting to Rs. ................ be redeemed on .................. and the Redeemable Cumulative Preference Shares of Rs. ................ each amounting to Rs. ................ 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, 1956, 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

ANNEXURE XLIII

ANNEXURE B

See RULE 7

Form in which sections 171-186 of the Act1 are to apply with respect to meetings of any class of members of the company

171. Length of notice for calling meeting

(1) A meeting of any class of members of company may be called by giving not less than twenty-one days’ notice in writing.

1 The words “the managing agent, if any, the secretaries and treasurers, if any” wherever occurring, have been omitted as these words have become redundant as a result of abolition of managing agency.
(2) A meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto by members belonging to the class, and holding not less than 95 per cent of the total voting power exercisable at the meeting of the class.

172. Contents and manner of service of notice and persons on whom it is to be served

(1) Every notice of a meeting shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting shall be given—

(i) to every member belonging to the class, in any manner authorised by sub-sections (1) to (4) of section 53;

(ii) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description at the address, if any in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred; and

(iii) to the auditor or auditors for the time being of the company in any manner authorised by section 53 in the case of any member or members of the class:

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, statement of the material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

173. Explanatory statement to be annexed to notice

(1) There shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein, of every director and the manager, if any:

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director and the manager, if any, of the first mentioned company shall also be set out in the statement if the
extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company.

(2) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

174. Quorum for meeting

(1) Unless the articles of the company provide otherwise, five members belonging to the class present in person or by proxy in the case of a public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company shall be the quorum for a meeting of the class and the provisions of sub-sections (2), (3) and (4) shall apply with respect thereto.

(2) If within half-an-hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of members of the class, shall stand dissolved.

(3) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board of Directors may determine.

(4) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding the meeting, the members present shall be a quorum.

175. Chairman of meeting

(1) Unless the articles of the company otherwise provide, members of the class personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

176. Proxies

(1) Any member of the class entitled to attend and vote at the meeting shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; and a proxy so appointed, shall not have any right to speak at the meeting:

Provided that, unless the articles otherwise provide—

(a) this sub-section shall not apply in the case of a company not having a share capital;
(b) a member, in the case of a private company, shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of any class of members of a company the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member of the company.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(4) If for the purpose of any meeting, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company’s expense to any member of the class entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorizes or permits their issue shall be punishable with fine which may extend to one thousand rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member of the class at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or a list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out below, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.
(7) Every member entitled to vote at a meeting or on any resolution to be moved thereat shall be entitled 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, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days’ notice in writing of the intention so to inspect is given to the company.

177. Voting to be by show of hands in the first instance

At any meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 179, be decided on a show of hands.

178. Chairman’s declaration of result of voting on show of hands to be conclusive

A declaration by the chairman in pursuance of section 177 that on show of hands, a resolution has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

179. Demand for poll

(1) Before or on the declaration of the result of the voting on any resolution on a 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 the person or persons specified below, that is to say,—

(a) in the case of a meeting of any class of members of a public company, by at least five members of the class having the right to vote on the resolution and present in person or by proxy,

(b) in the case of a private company, by one member of the class having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present,

(c) by any member or members of the class present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution, or

(d) by any member or members of the class present in person or by proxy and holding shares in the company conferring a right to vote on the resolution being shares on which an aggregate sum has been paid-up which is not less than one-tenth of the total sum paid-up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.
180. Time of taking poll

(1) A poll demanded on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 175) shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.

181. Restrictions on the exercise of voting right of members who have not paid calls, etc.

Notwithstanding anything contained in this Act, the articles of a company may provide that no member of the class shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the company has, and has exercised, any right of lien.

182. Restrictions on the exercise of voting right in other cases to be void

A public company, or a private company which is a subsidiary of a public company, shall not prohibit any member of the class from exercising his voting right, on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken or on any other ground not being a ground set out in section 180.

183. Right of member to use his votes differently

On a poll taken at a meeting of a class of members of the company, a member of the class entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

184. Scrutineers at poll

(1) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers to scrutinize the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of two scrutineers appointed under this section, one shall always be a member of the class (not being an officer or employee of the company) present at the meeting, provided such a member is available and willing to be appointed.

185. Manner of taking poll and result thereof

(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.
(2) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

186. Power of Company Law Board to order meeting to be called

(1) If for any reason it is impracticable to call a meeting of a class of members of a company in any manner in which such meeting may be called, or to hold or conduct the meeting in the manner prescribed by this Act or the articles, the Company Law Board may, either of its own motion or on the application of any director of the company or of any member of the class who would be entitled to vote at the meeting:

(a) order such a meeting to be called, held and conducted in such manner as the Company Law Board thinks fit; and

(b) give such ancillary or consequential directions as the Company Law Board thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of the Act and of the company’s articles.

Explanation: The directions that may be given under this sub-section may include a direction that one member of the class present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the class of members of the company duly called, held and conducted.

LESSON ROUND-UP

- 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.

- 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.

- The powers relating to the affairs of a company are divided between the Board and shareholders of the 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.

• 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 (Statutory Meetings, AGM, EGM, Class Meetings), Meetings of Debenture-holders, Meetings of the creditors (in winding up and otherwise than in winding up).

• Section 180(1) 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.

• In terms of Section 192A of the Act, every listed public company should, in the case of such items of business as are declared by the Central Government to be conducted only by Postal Ballot, and may, in respect of any other item of business as may be decided by the Board, obtain the approval of its Members to the Ordinary or Special Resolution in respect thereof, by means of voting by Postal Ballot instead of transacting the relevant items of business at general meetings of the company.

• 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

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

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. Write short notes on:
   (i) Meetings of Committee of Directors
   (ii) Class meetings.
8. Explain the provisions relating to holding of an Annual General Meeting of a Producer company.
9. Draft a notice and agenda for an Annual General Meeting.
10. Draft Minutes of an Extra-ordinary General Meeting in which resolution under Section 293(1)(a) and (d) were passed.
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 study deals with the procedure for preparing and placing the annual reports at the Shareholders meeting. After going through this chapter, you will be able to understand:

- Procedure for preparation, finalization of Balance sheet and Profit and Loss Account
- Procedure for exemption from attaching the accounts of subsidiary companies.
- 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
- Compliance certificate under section 383A
- Chairman’s statement

1. INTRODUCTION

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 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, compliance certificate, schedules to balance-sheet, profit and loss account/income and expenditure account, notes to accounts, information about company as per Part IV of Schedule VI to the Companies Act, etc.

2. E-FILING

The Ministry of Corporate Affairs (‘MCA’) had notified the Companies (Electronic Filing and Authentication of Documents) Rules, 2006 w.e.f. 14.9.2006 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 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.

The filings of e-forms can be done from the website of MCA viz. http://www.mca.gov.in

3. ANNUAL ACCOUNTS

Section 209 of the Companies Act, 1956 (the Act) provides that every company must keep at its registered office or any other place in India, as the Board of Directors think fit, 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 receipts and expenditure take place;
(b) all sales and purchases of goods by the company;
(c) all assets and liabilities of the company; and
(d) in case of a company pertaining to any class of companies engaged in production processing, manufacturing or mining activities such particulars relating to utilisation of labour or material or to other items of costs as may be prescribed if such class of companies required by the Central Government to include such particulars in the books of accounts.

Under Section 210 of the Companies Act, the Board of Directors of every company shall lay before the company at every annual general meeting of the company:

(i) a balance sheet as at the end of the financial year, and
(ii) a Profit and Loss Account or Income and Expenditure Account as the case may be for that financial year (alongwith reports of the Board of Directors and the Auditors of the company).

It has been decided by the Ministry of Corporate Affairs to mandate certain class of companies to file balance sheet and profit and loss account alongwith Director’s and Auditor’s Report for the year 2010-11 onwards by using extensible Business Reporting Language (XBRL) taxonomy.
Besides signing by signatories as specified u/s 215 of the Companies Act, 1956, the statutory Auditor has to certify the financial statements prepared in XRBL mode for filing on MCA-21 portal.

Vide circular no. 57/2011 dated 28/07/2011, it was informed that the verification and certification of the XRBL documents of financial statements on the e-forms would continue to be done by authorised signatory of the company as well as professionals like Chartered Accountant or Company Secretary or Cost Accountant in whole time practice.

4. ANNUAL ACCOUNTS OF PRODUCER COMPANY

Section 581ZE of the Companies Act, 1956 provides that every Producer Company shall keep at its registered office proper books of accounts with respect to:

(a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place.
(b) all sales and purchase of goods by the Producer Company.
(c) the instruments of liability executed by or on behalf of the Producer Company.
(d) the assets and liabilities of the Producer Company.
(e) in case Producer Company is engaged in production, processing and manufacturing the particulars relating to utilisation of materials or labour or other items of costs.

The balance sheet and profit and loss account of the Producer company shall be prepared in accordance with Section 211 of the Act.

5. PROCEDURE FOR PREPARATION, FINALISATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

1. At the close of the financial year of the company, the controller of accounts should prepare Trial Balance, Manufacturing Trading and Profit and Loss Account (Income and Expenditure Account for non-profit making company), Profit and Loss Appropriation Account 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 VI and XIV to the Companies Act, 1956.

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. For this purpose—

(i) Call a Board meeting by giving notice in writing to all the directors under Section 286 of the Act.

(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 I at the end of this Study).

(iii) File the Certified true copy of the resolution with the concerned
Registrar of Companies in eForm No. 23AA within seven days of passing such resolution, with requisite filing fees.

(For specimen of eForm No. 23AA, please see Part B of this study).

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 is taken in maintenance of adequate accounting records in pursuance of the provisions of the Act.

4. Internal audit and statutory audit of the accounts is a continuous process. Hence, the annual accounts so prepared and finalised should be duly audited.

5. After the annual accounts have been audited, these are required to be approved by the Board of Directors:

   (i) For the purpose, call a Board meeting by giving a notice in writing to all the directors under Section 286 of the Act.

   (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. Thereafter, annual accounts shall be signed by the two directors, one of whom shall be managing director, if any and the manager or secretary, if any. Then annual accounts shall be submitted to the auditors for their report thereon, whereupon the auditors shall place their report. Subsequently, directors shall also place their report in the Board Meeting.

   (iv) Such approved annual audited accounts together with Directors’ report, Auditors’ Report, Compliance Certificate if applicable 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; and in case of first annual general meeting nine months from the date of closing of the Accounts of the first financial year.

DCA vide Circular No. 1/2003 dated 13.1.03 has clarified that a company could reopen and revise its accounts even after their adoption in the annual general meeting and filing with the ROC in order to comply with technical requirements of any other law to achieve the object of exhibiting true and fair view. The revised annual accounts would be required to be adopted either in the extra-ordinary general meeting or in the subsequent annual general meeting and filed with the ROC.

(For specimen resolution of the Board, please see Annexure II at the end of this study.)

Under E-filing system of MCA, companies are required to file Balance
Sheet and Profit and Loss Account, as separate documents. For e-filing purpose, MCA has prescribed e-form 23AC for Balance Sheet and e-form 23ACA for Profit and Loss Statement.

It may be noted that for filing purpose Balance sheet and Profit and Loss Account are required to be converted in electronic/computerised portable document format (pdf) and then the said pdf files are to be attached to aforesaid respective e-forms.

(For specimen of e-form 23AC and 23ACA, please see Part B of this study).

6. In the case of preparing and finalising the annual accounts not in the form prescribed or not in accordance with instructions provided in the Schedule VI to the Companies Act, the provisions of Section 211 of the Act shall be complied with by following the procedure as under:

(i) Convene a Board meeting after giving notice in writing to all the directors of the company as per Section 286 of the Act.

(ii) Hold the Board meeting and get approval to the proposed deviation from the prescribed form and/or instruction prescribed in the Schedule VI of the Act. (A specimen Board resolution is given at Annexure III).

(iii) Apply in e-form 23AAA to the Central Government pursuant to Section 211(1) of the Act.

(For specimen of e-form 23AAA, please see Part B of this study).

(iv) e-form 23AAA is to be attached with certified copy of the board resolution in this regard.

(v) Make the payment, towards filing fees of e-form 23AAA.

(vi) Obtain approval of the Central Government then only prepare annual accounts in the proposed manner otherwise in the prescribed form, in accordance with the instructions and provisions of the Act and Rules provided in this regard.

(viii) Mention about approval of the Central Government so obtained in the Annual Accounts by way of a note.

(ix) Send a copy of approval as an attachment to the concerned Registrar of Companies while filing annual accounts with the Registrar of Companies.

6. PROCEDURE FOR EXEMPTION FROM ATTACHING THE ACCOUNTS OF SUBSIDIARY COMPANIES

According to Section 212, a holding company is required to attach with its balance sheet a copy of balance sheet, profit and loss account, report of Board of Directors, report of auditors etc. of its subsidiary company. Following procedural steps are to be taken to get exemption from the aforesaid requirement.

(a) Convene a Board meeting after giving notice in writing to all the directors of the company as per Section 286 of the Act;
(b) Hold Board meeting and take decisions to get exemption from attaching the documents of subsidiary company(ies) required under Section 212 of the Act. (For specimen of Board Resolution see Annexure IV at the end of the Study);

(c) For making application to the Central Government, make application in e-form 23AAB. Further, the Ministry of Corporate Affairs vide Circular No. 2/2011 dated 8th February 2011, has decided to grant a general exemption on fulfillment of certain conditions. Such conditions are:

- The Board of Directors has given consent for it by resolution;
- The annual report shall include consolidated financial statements of holding company and all subsidiaries (duly audited) prepared in compliance with Accounting Standards and Listing Agreement, where applicable;
- Annual Accounts of Subsidiary companies shall be made available to the shareholders, if they require;
- The holding and subsidiary companies shall regularly file such data to the various regulatory and Government authorities as may be required by them;
- The company shall give Indian rupee equivalent of figures given in foreign currency appearing in accounts of subsidiary companies along with exchange rate as on closing day of financial year.

(For specimen of e-form 23AAB, please see Part B of this study).

(d) After obtaining the approval from Central Government only, file annual accounts without attaching particulars of subsidiary company.

(e) In this case, while filing the annual accounts of the company, attach the approval letter also.

7. PROCEDURE FOR PREPARING ABRIDGED BALANCE SHEET AND PROFIT AND LOSS ACCOUNT BY A LISTED COMPANY

(a) Convene a Board meeting after giving a notice in writing to all the directors of the company as per Section 286 of the Act.

(b) Hold Board meeting and pass a resolution for preparing annual Reports and Accounts of the company also in the abridged form as permitted under Section 219(1)(b)(iv) of the Act in accordance, with Rule 7A of the Companies (Central Government's) General Rules and Forms, 1956 in the prescribed form No. 23AB for the purpose. (For specimen of Board resolution & Form 23AB see Annexure V & V-A at the end of the study).

(c) 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 215 of the Act.

(d) 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 ensuring annual general meeting.
(e) 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.

(f) Three certified true copies of the abridged annual reports and accounts are also required to be filed with the concerned Registrar of Companies along with true certified copies of full annual reports and accounts and with single filing fee pursuant to Section 220 of the Act. Under MCA21 e-filing system, only single copy of balance-sheet along with e-form 23AC and single copy of profit and loss account along with e-form 23ACA are required to be filed, as two separate documents;

(g) Pursuant to clause 32 of the listing agreement, a listed company will have to supply a copy of the complete and full Balance Sheet, Profit and Loss Account and the Directors’ Report to each shareholder and upon application to any member of the Exchange. However, the Company may supply a single copy of these documents to shareholder's residing in one household. Provided that, on receipt of request, the company shall supply such documents to any shareholder residing in such household.

8. AUDITOR’S REPORT

Under Section 227(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 Comp. Cas. 319 (Ch.D)]. The report, besides other things necessary in any particular case, must expressly state:

1. whether in his opinion and to the best of his information and according to explanation given to him, the accounts give the information required by the Act and in the manner as required;

2. whether the balance-sheet gives a true and fair view of the company’s affairs as at the end of the financial year and the profit and loss account gives a true and fair view of the profit and loss for its financial year;

3. whether he has obtained all the information and explanations required by him for the purposes of his audit;

4. whether, in his opinion, proper books of account as required by law have been kept by the company, and proper returns for the purposes of his audit have been received from the branches not visited by him;

5. whether the company’s balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;
(6) whether the profit and loss account and balance sheet comply with the accounting standards referred to in Sub-section (3C) of Section 211;

(7) whether the observations or the comments of the auditors which have any adverse effect on the functioning of the company are in thick type or in italics;

(8) whether any director is disqualified from being appointed as director under clause (g) of Sub-section (1) of Section 274;

(9) whether the cess payable under Section 441A has been paid and if not, the details of the amount of cess not so paid.

Section 227(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.

Central Government has been empowered under Section 227(4A) to require the auditor to include in his report certain matters, in respect of certain class of Companies. The Central Government has issued an order under these powers, called the Companies (Auditors' Report) Order, 2003. It is duty of the auditor to comply with this order in his report to the shareholders. Companies (Auditors' Report) Order, 2003 vide notification No. GSR 480(E) dated 12th June, 2003 replaces the Manufacturing and Other Companies (Auditors' Report) Order, 1988 (MAOCARO). Accounts in respect of financial year ending 1st January 2004 or thereafter, will have to strictly follow CARO, 2003.

(A specimen of Auditor's Report is given at Annexure VI to this Study).

9. DIRECTORS’ REPORT

Section 217 of the Act provides that there shall be attached to every balance sheet of a company, a report by its Board of Directors with respect to—

(a) the state of the company's affairs;

(b) the amounts, if any, which it proposes to carry to any reserves in such balance sheet;

(c) the amount if any, which it recommends should be paid by way of dividend;

(d) 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 balance sheet relates and the date of the report;

(e) the conservation of energy, technology absorption; foreign exchange earnings and outgo, in such manner as may be prescribed;

(f) changes during the financial year in the nature of company’s business, its subsidiary’s business and generally about the classes of business in which the company has an interest;

(g) particulars of employees;

(h) directors’ responsibility statement;

* This shall come into force after the commencement of Companies (Second) Amendment Act, 2002.
(i) reasons for the failure, if any of completion of buy-back within the prescribed time;
(j) full information and explanations on every reservation, qualification or adverse remark contained in the Auditors Report;
(k) changes in share capital, directors and directors retiring by rotation and retiring auditors and their reappointment; and
(l) other matters, considered material to the working of the company;
(m) payment of listing fee and information relating to delisting in case of listed companies, if any [Listing Agreement].

10. REPORT ON CORPORATE GOVERNANCE UNDER CLAUSE 49 OF THE LISTING AGREEMENT

SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumarmanglam 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. The new revised clause 49 is made applicable to all listed entities with effect from January 1, 2006. [SEBI circular SEBI/CFD/DIL/CG/1/2005/29/3 dated 29-3-2005].

As per 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 VIII and a specimen of Report on Corporate Governance is given at Annexure IX to this study].

The Companies are also required to submit a quarterly compliance report to the stock exchanges within 15 days of the end of quarter. The format is given as Annexure X.

Form for voluntary reporting of Corporate Social Responsibility (CSR)

A new form is provided on the website of Ministry of Corporate Affairs for Voluntary reporting of Corporate Social Responsibility (CSR). Students may refer to ‘Corporate Social Responsibility Voluntary Guidelines, 2009’, provided on the website www.mca.gov.in (for specimen of Form CSR, please refer to Part B of this study)

10A. Voluntary Guidelines by Ministry of Corporate Affairs

The Ministry of Corporate Affairs in the year 2009 has released two voluntary guidelines namely: (i) Voluntary Guidelines for Corporate Governance and (ii)
Voluntary Guidelines for Corporate Social Responsibility. It is hoped that more and more corporate in India adopt these voluntary guidelines. The complete text of the Guidelines can be seen at the website of the Ministry i.e. www.mca.gov.in.

11. MANAGEMENT DISCUSSION AND ANALYSIS REPORT (MDAR)

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. 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.

12. DIRECTORS' RESPONSIBILITY STATEMENT

Sub-section (2AA) of Section 217 of the Companies Act, 1956 provides that the Board's report shall also include a Directors' Responsibility Statement, indicating therein,—

(i) that in the preparation of the annual accounts, the applicable accounting standards have been followed along with proper explanation relating to material departures.

(ii) that the directors had selected such accounting policies and applied them consistently and made judgements 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 or loss of the Company for that period.

(iii) that the Directors have 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.

(iv) that the Directors have prepared the annual accounts on a going concern basis.

The responsibilities of directors have been increased. They should ensure the compliance of the accounting standards, selection and application of reasonable
and prudent accounting policies, taking of proper and sufficient care for
maintenance of adequate accounting records in accordance with the provisions of
the Companies Act for safeguarding the assets of the company and for preventing
and detecting fraud and other irregularities and preparation of annual accounts on a
going concern basis. (The specimen of Directors’ report given at Annexure XI also
contains a Directors’ Responsibility Statement).

13. 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, 1956. Directors
should be persuaded to furnish this information which can be obtained as at the last
date of the financial year and also periodically update them.

Specimen format for disclosing information about directors is given at
Annexure XII.

14. DECLARATION FROM INDEPENDENT DIRECTORS

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 XIII.

not be held liable for violation of any provision of Companies Act, 1956, which has
occurred without his knowledge attributable through Board Process and without his
consent or connivance or where he has act diligently in the Board process.
15. PARTICULARS OF EMPLOYEES

The Board’s report shall also include a statement showing the name of every employee of the company who—

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than ₹ sixty lakh, or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than ₹ five lakh.

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate is in excess of that drawn by the managing director or whole time director or manager and holds by himself or along with his spouse and dependent children not less than two percent of the equity shares of the company.

Where any such employee is relative of any director or manager of the company, a statement to that effect should be made in the report. The statement shall also indicate such other particulars or prescribed by the Companies (Particulars of Employees) Rules, 1975.

According to Companies (Particulars of Employees) Amendment Rules, 2002 the Board Report shall include a statement showing the name of every employee in receipt of remuneration throughout the financial year of not less than ₹ 60,00,000 p.a. or if employed for a part of the financial year, received a remuneration not less than ₹ 5,00,000 p.m. However vide its notification dated 24th March, 2004, Department of Company Affairs has clarified that particulars of employees of Government companies and companies engaged in IT sector, posted and working in a country outside India, not being directors or their relatives drawing more than rupees sixty lakh per financial year or rupee five lakh per month, as the case may be, shall not be included in such statement of Board’s report but such particulars shall be furnished to the Registrar of Companies. Provided further that such particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting in which the same is considered.

16. 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 keep 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 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 about the following:

(i) Conservation of energy, technology absorption, foreign exchange earnings and outgo in accordance with the Companies (Disclosures of Particulars in the Report of Board of Directors) Rules, 1988 in the prescribed forms thereunder. If these rules are not applicable to the company, a statement in the Directors Report to this effect shall be proper compliance.

(ii) Particulars of the Employees in accordance with the Companies (Particulars of Employees) Rules, 1975 as amended from time to time. If there is no employee to whom these rules are applicable, a statement to this effect in the Directors' Report shall be proper compliance thereto.

(iii) Directors' responsibility statement.

(iv) Compliance Certificate from a secretary in whole-time practice in the case of Companies having paid-up share capital of ₹ 10 lakh or more and not required to employ a whole time secretary, is to be attached.

17. In addition to the above, the Directors', report should also contain statements of the directors in respect of the following:

(a) The reasons for the failure, if any, to complete the buy-back within the time specified i.e. twelve months as specified in Sub-section (4) of Section 77A of the Act. [Section 217(2B)]

(b) The fullest information and explanation in the Directors' report on every reservation, qualification or adverse remarks contained in the Auditors' Report/Compliance Certificate.

18. 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 regarding compliance of conditions of corporate governance as stipulated in Clause 49 of the Listing agreement, is to be annexed with the Directors' Report.

19. The Directors' Report and any addendum thereto is required to be signed by the Chairman of the Board of Directors, if he is so authorised by the Board and in the absence of the Chairman of the Board or non-authorisation of the Chairman of the Board, by such number of directors as required under Section 215 of the Act i.e., not less than two directors of the company one of whom shall be the managing director, where there is one.

(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 VII 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 XI).

17. COMPLIANCE CERTIFICATE UNDER SECTION 383A

As per the proviso in sub-section (1) of Section 383A of the Companies Act, 1956 every company not required to employ a whole-time secretary under Sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of the Act and a copy of such certificate shall be attached with Board’s report referred to in Section 217. Accordingly, every company having a paid-up share capital of rupees ten lakhs or more but less than rupees five crores is required to file with the Registrar of Companies a Compliance Certificate from a Secretary in Whole-time Practice and also attach a copy of that certificate with Board’s report which are not required to employ a whole-time secretary but has nevertheless employed. However, the company having paid up share capital of less than ₹ 5 crores, such a company is not required to obtain compliance certificate from a practising company secretary.

According to Sub-rule (1) of Rule 3, every company not required to employ a whole-time secretary under Section 383A(1) of the Act and having a paid-up share capital of ten lakh rupees or more shall obtain a certificate from a secretary in whole-time practice.

For the purpose of this proviso the relevant date for determining the paid-up share capital shall be date on which the Board’s report is signed. Further Sub-rule (2) of Rule 3 provides that the Compliance Certificate shall relate to the period pertaining to the financial year of the company. So, every company to which the section is applicable is required to obtain a Compliance Certificate from a secretary in whole-time practice for the financial year in which the Board’s report is signed on or after 1st February 2001.

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India has specified that w.e.f. January 1, 2008:

A member of the Institute in practice who is entitled—

(i) to issue compliance certificate pursuant to the proviso to sub-section (1) of Section 383A of the Companies Act, 1956 (1 of 1956); and/or

(ii) to sign an Annual Return pursuant to the proviso to sub-section (1) of Section 161 of the Companies Act, 1956 (1 of 1956),
shall be deemed to be guilty of professional misconduct if he—

— issues compliance certificates; and/or

— signs Annual Return

for more than eighty companies in aggregate, in a calendar year.

Provided, however, that in the case of a firm of Company Secretaries, the ceiling of eighty companies aforesaid would apply to each partner therein who is entitled to (i) sign the compliance certificate in terms of the proviso to Sub-section (1) of Section 383A of the Companies Act, 1956; (ii) sign Annual Return in terms of the proviso to Sub-section (1) of Section 161 of the Companies Act, 1956.

Under e-filing system of MCA, companies are required to file Compliance Certificate on-line with the Registrar of Companies within 30 days from the date on which its Annual General Meeting is held. Provided that where the annual general meeting of such company for any year has not been held, then it shall be filed with the Registrar 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.

The form for filing compliance certificate with the Registrar is e-form 66.

(For specimen of e-form 66 for filing compliance certificate, please see Part B of this study).

As per Sub-rule (3) of Rule 3 secretary in whole-time practice, for the purpose of issue of Compliance Certificate, shall have right to access at all times the registers, books, papers, documents and records of the company and shall be entitled to require from the officers or agents of the company, such information and explanations as he may think necessary for the purpose of such certificate.

The Compliance Certificate must be laid by the Company at its Annual General Meeting (Sub-rule (4) of Rule 3). As a good secretarial practice, the certificate should be read at the meeting and also made available to the members for inspection. It is also necessary for the company to attach a copy of the Compliance Certificate with the Board’s report while forwarding the same to members and others under Section 219 of the Act.

Vide Circular No. 18/2011 dated 29.4.2011, it is clarified that the company would be in compliance of Section 219(1) of Companies Act, 1956, in case, a copy of Balance Sheet etc. is sent by electronic mail to its members subject to the fact ha the company has obtained:

(a) e-mail address of members registered with the company or with the concerned depository for receiving Annual Report

(b) These statements are displayed on website of company.

(c) If e-mail address of members not registered for receiving the documents, then these documents will be sent by other modes of service.

(A specimen Compliance Certificate is given at Annexure XIV)
In case of listed companies, if any member insists for physical copies of stock, then these should be sent to him free of cost, a company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in Clause 49 and annex the certificate with the directors report to be sent annually to all the shareholders of the company. The certificate shall also be sent to the stock exchanges along with the annual return filed by the company. While publishing chairman’s speech in a newspaper, provisions of Section 197 must be taken into account.

18. 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 XV at the end of the Study).

ANNEXURE I

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 209(1) of the Companies Act, 1956, the books of accounts of the company be kept and maintained at the company's head office at ......................... with effect from ......................... and that the company secretary, Mr. ......................... be and is hereby authorised to file electronically E-Form No. 23AA with the Registrar of Companies ..................... at ......................... with the requisite filing fees within the prescribed time of seven days hereof."

ANNEXURE II

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 215 of the Companies Act, 1956 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."

ANNEXURE III

SPECIMEN BOARD RESOLUTION FOR DEVIATION FROM THE PRESCRIBED FORM AND/OR INSTRUCTIONS IN THE SCHEDULE VI

"RESOLVED that pursuant to the provisions of Section 211(4) and other applicable provisions, if any, of the Companies Act, 1956 (the Act) or any modification or re-enactment thereof and subject to the approval of the Central Government as may be required, the Company do, in view of its key financial figures i.e. paid-up share capital, reserves and surplus, assets, Income and others having been in Crores and in some cases over hundred Crores, show the figures in “Rupees in Lacs” in its Balance sheet, Profit and Loss Account, Schedules thereto and all documents required to be annexed or attached thereto for the year ending March 31, 2005 and subsequent financial years and not in “Rupees in 000” as shown in the Balance sheet etc. for the immediately preceeding financial year ended March 31, 2006 and earlier years as prescribed in schedule VI to the Act and
that Mr....................General Manager (Finance) and Secretary and Mr. ....................
General Manager (Corporate Affairs) of the company be and are hereby authorised
severally to make application to the Central Government and to appear before the
concerned Authorities, represent the Company, submit explanations, statements,
facts, details as may be required and to do all acts, deeds, things in this
connections or incidental thereto."

**ANNEXURE IV**

**SPECIMEN RESOLUTION TO GET EXEMPTION FROM THE CENTRAL
GOVERNMENT UNDER SUB-SECTION (8) OF SECTION 212**

"RESOLVED that an application be made to the Central Government under
Sub-section (8) of Section 212 of the Companies Act, 1956, seeking for
dispensation from the requirements of attaching to the Balance Sheet of the
Company, copies of Balance Sheet, Profit and Loss Account, Director's Report and
the Auditor's Report thereof of the subsidiary and Mr.................... be and is hereby
authorised to make and submit the application to the Central Government and take
all necessary actions in this respect."

**ANNEXURE V**

**SPECIMEN BOARD RESOLUTION FOR PREPARATION OF ANNUAL
REPORT IN ABRIDGED FORM FOR MAILING TO THE MEMBERS**

1. RESOLVED that pursuant to the provisions of Section 219(1)(b)(iv) of the
Companies Act, 1956 and Rule 7A of the Companies (Central
Government's) General Rules and Forms 1956, the Annual Reports
comprising Balance Sheet, Profit and Loss Account etc. of the company for
the financial year ended 31st March 2006 be also prepared, finalised and
audited in the prescribed Form No. 23AB for sending to the members of the
company.

2. RESOLVED that the draft audited statement containing salient features of
balance sheet, profit and loss account etc. for the year ended 31st March
2006, prepared in the prescribed Form No. 23AB in accordance with
Section 219(1)(b)(iv) of the Companies Act, 1956 and Rule 7A of the
Companies (Central Governments') General Rules and Forms 1956 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 215 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.
FORM NO. 23AB

(See Rule 7A)

Statement contenting salient features of balance sheet and profit and loss account, etc. as per section 219(1)(b)(iv)

Form of Abridged Balance Sheet

Name of the Company ………………………

Abridged balance sheet as at …………………

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Figures at the end of</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current financial year</td>
</tr>
</tbody>
</table>

I. SOURCES OF FUNDS

(4) Shareholders funds

(a) Capital
   (i) Equity
   (ii) Preference
   (iii) Reserves and surplus

(b) Reserves and surplus
   (i) Capital reserve
   (ii) Revenue reserve
   (iii) Revaluation reserve
   (iv) Surplus in profit and loss account
   (v) Share premium reserve
   (vi) Investment allowance reserve

(5) Loan funds

(a) Debentures (the amount of convertible/partly convertible debentures indicating the date of conversion]

(b) Public deposits

(c) Secured loans (other than debentures)

(d) Unsecured loans

Total of (1) and (2)

II APPLICATION OF FUNDS

(4) Fixed assets

(a) Net block -----(Original cost less depreciation)

(b) Capital work-in-progress

(5) Investments

(a) Government securities

(b) Investment in subsidiary companies
   (i) Quoted
(ii) Unquoted  
(c) others  
   (i) Quoted  
   (ii) Unquoted  
(6) (I) Current assets, loans and advances  
   (a) Inventories  
   (b) Sundry debtors  
   (c) Cash and bank balances  
   (d) other current assets  
   (e) Loans and advances  
      (i) To subsidiary companies  
      (ii) To others  

Less:  
(i) Current liabilities and provisions  
   (a) Liabilities  
   (b) Provisions  
Net current assets (I—ii)  
(4) Miscellaneous expenditure to the extent not written off or adjusted  
(5) Profit and loss account  
Total of 1 to 5

### Abridged profit and loss account for the year ending .........

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Figures at the end of</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current financial year</td>
</tr>
</tbody>
</table>

I. Income  
— Sales/services rendered (Details to be given separately as per Annexure)  
— Dividend  
— Interest  
— Other income (See Note 5)  
Total

II Expenditure  
Cost of goods consumed/sold  
(i) opening stock  
(ii) Purchases  
Less: Closing stock
Manufacturing expenses  
Selling expenses  
Salaries, wages and other employee benefits managerial remuneration  
Interest  
Depreciation
Auditor’s remuneration
Provisions for (i) Doubtful debts; and (ii) Other contingencies (to be specified)  
Any other expenses (See Note 5)  
Total

III Profit/loss before tax (I-II)
IV Provision for taxation
V Profit/loss after tax
VI Proposed dividend:  
---preference shares  
---Equity shares
VII Transfer to reserves/surplus

Notes to the abridged balance sheet and the abridged profit and loss account.

1. The amounts to be shown here should be the same as shown in the corresponding aggregated heads in the accounts as per Schedule VI or as near thereto as possible.
2. The total amount of contingent liabilities and that of capital commitments should be shown separately.
3. All notes forming part of the accounts as per Schedule VI to which specific attention has been drawn by the auditors or which form a subject-matter of qualification by the auditor should be reproduced.
4. If fixed assets are revalued, the amount of revaluation should be shown separately for the first five years subsequent to the date of revaluation.
5. Any item which constitutes 20% or more of the total income of or expenditure (including provision) should be shown separately.
6. Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting, should be disclosed separately.
7. If no provision is made for depreciation, the fact that no provision has been made shall be stated along with the quantum of arrears of depreciation computed in accordance with section 205(2) of the Act.
8. Market value of quoted investments (both for current year as also of previous year) should be mentioned.
9. Any noted forming part of the accounts as per Schedule VI which is in the nature of any explanation regarding compliance with any law should be reproduced.
10. Important ratio performance such as sales/total assets ratio, operating profit/capital employed ratio, return on net worth profit/sales ratio.
11. Details of installed capacity and productivity of main items manufactured should be disclosed.
12. Notes in the abridged balance sheet should be given the same number as in the main balance sheet.
The above stated salient features of balance sheet and profit and loss account should be authenticated in the same manner as the main accounts are to be authenticated.

Auditor’s report and the comments, if any, of the Comptroller and Auditor-General of India under sub-section (4) of section 619, in the respect of Government companies and companies under section 619B.

DIRECTORS REPORT

Should be given in full except the information under clause (e) of sub-section (1) and sub-section (2A) of section 217.

Subsidiary company/companies--------

Every holding company shall give a statement relating to its subsidiary company/companies to be furnished in pursuance of clauses (e), (f) and (g) of sub-section (1) of section 212.

(Signed by Directors/Secretary in the manner prescribed in section 215(1)

ANNEXURE VI

AUDITORS’ REPORT
TO THE MEMBERS

We have audited the annexed Balance Sheet of .........................Ltd., New Delhi, as at 31st March, 2006 and also the annexed Profit and Loss Account of the Company for the year ended on that date and we report that:

1. We have obtained all the information and explanation which, to the best of our knowledge and belief were necessary for the purpose of our audit.

2. In our opinion, proper books of accounts as required by law have been kept by the Company so far as it appears from our examination of books.

3. The Balance Sheet and Profit and Loss Account dealt with by this report are in agreement with the books of accounts.

4. In our opinion the Profit and Loss Account and Balance Sheet comply with the requirements of the accounting standards referred to in Sub-section (3C) of Section 211 of the Companies Act, 1956.

5. In our opinion and to the best of our information and according to explanations given to us, the said accounts give the information required by the Companies Act, 1956 in the manner so required and give a true and fair view:

   (a) In the case of Balance Sheet of the state of affairs of the company as at 31st March, 2006, and

   (b) In the case of the Profit and Loss Account of the Profit for the year ended on that date.

6. As per representation made by the company and its directors, none of
directors is disqualified for being appointed as director under Section 274(1)(g) of the Companies Act, 1956.

As required by the Companies (Auditor's Report) Order, 2003 issued by the Central Government and on the basis of such checks as we considered appropriate, we further state that:

1. (a) The company has maintained proper records showing full particulars including quantitative details and situation of fixed assets.
   (b) The fixed assets have been physically verified by the management and no material discrepancies were noticed on such verification.
   (c) None of the substantial part of fixed assets have been disposed of during the year.

2. (a) As certified by the management the inventory has been physically verified during the year by the management.
   (b) In our opinion and on the basis of our examination valuation of stock is fair and proper and in accordance with the normally accepted accounting principles commensurate with the size of the company and nature of its business.
   (c) In our opinion the frequency of verification is reasonable.
   (d) The company has maintained proper records of inventory and no discrepancies were noticed on such physical verification.

3. (a) The company has granted unsecured loan to M/s PQR Ltd. of the amount ₹ 1,00,000. The company has not taken any loan from companies. Proper register is maintained under Section 301 of the Companies Act, 1956 and adequate information is given therein.
   (b) The rate of interest and other terms and conditions of loans given to M/s PQR Ltd. is reasonable having regard to prevailing market rates and is not prejudicial to interest of the company.
   (c) The company has no overdue amount of more than one lakh rupees.

4. In our opinion there is an adequate internal control procedure commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods.

5. (a) the particulars of contracts or arrangements referred to in Section 301 of the Act have been entered in the register required to be maintained under that section.
   (b) the transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time.

6. The company has not received any public deposits during the year. Hence, the directives issued by the Reserve Bank of India and provisions of Sections 58A, 58AA of the Companies Act, 1956 and the rules framed thereunder are not applicable.

7. In our opinion, the company has an internal audit system commensurate with the size and nature of its business.
8. The company is not required to maintain cost records.

9. (a) According to the information and explanation given to us and the books and records maintained by the company, the company is regular in depositing of Provident Fund, Investor Education and Protection Fund, Employees State Insurance, Income tax, Sales tax, Wealth tax, Service tax, Custom Duty, Excise Duty, Cess and other statutory dues with the appropriate authorities and there was no amount outstanding as on 31st March, 2006 for a period exceeding six months from the date they became payable.

(b) No dispute is pending in any forum with regard to depositing of sales tax/income tax/custom duty/wealth tax/service tax/excise duty/cess.

10. The company does not have accumulated losses at the end of financial year equivalent to 50% of its net worth.

11. The company has not defaulted in repayment of dues to a financial institution or bank or debenture holder.

12. In respect of Hire Purchase Finance Activities:

   (a) The Company has not granted any loans and advances on the basis of security by way of pledge of shares, debentures and other similar securities.

   (b) The provisions of special statute applicable to Chit Fund, Nidhi or Mutual Benefit fund/Societies are not applicable to the Company.

   (c) During the year the company has not dealt or traded in shares, securities, debentures and other investments.

13. The company has not given any guarantee for loans taken by others from bank or financial institutions.

14. No funds raised on short term basis were used for long term investment.

15. The company has not made any preferential allotment of shares to parties and companies covered in the Register maintained under Section 301 of the Act.

16. No securities or charge has been created in respect of debentures issued.

17. No fraud on or by the company has been noticed or reported during the year.

18. Other paragraph (xvi) and (xx) of the main clause 4 of the order are not applicable to the company.

Partner

New Delhi For ..........................

21st May, 2006 Chartered Accountants
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 2008 prepared in accordance with the provisions of Section 217 of the Companies Act, 1956 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 217 of the Companies Act, 1956 the draft of the Board’s Report for the year ended........, 2008 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 227, 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."

ANNEXURE VIII

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. Remuneration Committee:
   (i) Brief description of terms of reference
   (ii) Composition, name of members and Chairperson
   (iii) Attendance during the year
   (iv) Remuneration policy
   (v) Details of remuneration to all the directors, as per format in main report.

5. Shareholders Committee:
   (i) Name of non-executive director heading the committee
   (ii) Name and designation of compliance officer
   (iii) Number of shareholders’ complaints received so far
   (iv) Number not solved to the satisfaction of shareholders
   (v) Number of pending complaints

6. General Body meetings:
   (i) Location and time, where last three AGMs held.
   (ii) Whether any special resolutions passed in the previous three AGMs
   (iii) Whether any special resolution passed last year through postal ballot – details of voting pattern
   (iv) Person who conducted the postal ballot exercise
   (v) Whether any special resolution is proposed to be conducted through postal ballot
   (vi) Procedure for postal ballot

7. Disclosures:
   (i) Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
   (ii) Details of non-compliance by the company, penalties, strictures 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.
   (iii) Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
   (iv) Details of compliance with mandatory requirements and adoption of the nonmandatory requirements of this clause

   (i) Quarterly results
   (ii) Newspapers wherein results normally published
   (iii) Any website, where displayed
(iv) Whether it also displays official news releases; and
(v) The presentations made to institutional investors or to the analysts.

9. General Shareholder information:
(i) AGM : Date, time and venue
(ii) Financial calendar
(iii) Date of Book closure
(iv) Dividend Payment Date
(v) Listing on Stock Exchanges
(vi) Stock Code
(vii) Market Price Data : High., Low during each month in last financial year
(viii) Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
(ix) Registrar and Transfer Agents
(x) Share Transfer System
(xi) Distribution of shareholding
(xii) Dematerialization of shares and liquidity
(xiii) Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
(xiv) Plant Locations
(xv) Address for correspondence.

ANNEXURE IX

SPECIMEN CORPORATE GOVERNANCE REPORT

COMPLIANCE WITH CLAUSE 49
OF
THE LISTING AGREEMENT WITH THE STOCK EXCHANGES

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), alongwith the Certificate of Statutory Auditors (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 Shareowners 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:

<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 Meetings Held</th>
<th>Attendance in last AGM</th>
<th>Other Board Committee Directorships</th>
<th>Committee Chairmanships</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr. A</td>
<td>PD</td>
<td>NED</td>
<td>11</td>
<td>Present</td>
<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>Mr. B</td>
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<td>ED</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Mr. C</td>
<td>PD</td>
<td>ED</td>
<td>11</td>
<td>Present</td>
<td>2</td>
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<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Mr. D</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>Present</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Mr. E</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>Present</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>6</td>
<td>Mr. F</td>
<td>NPD</td>
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<td>0</td>
<td>2</td>
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<tr>
<td>7</td>
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<td>8</td>
<td>Mr. H</td>
<td>NPD</td>
<td>NED/ID</td>
<td>11</td>
<td>Present</td>
<td>9</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>9</td>
<td>Mr. I</td>
<td>NPD</td>
<td>NED/ID</td>
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<td>10</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>10</td>
<td>Mr. J</td>
<td>NPD</td>
<td>NED/ID</td>
<td>4</td>
<td>Present</td>
<td>0</td>
<td>0</td>
<td>0</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, 2001

2. Details of Board Meetings held during the year:

<table>
<thead>
<tr>
<th>Date of Board Meeting</th>
<th>Board Strength</th>
<th>No. of Directors Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4.00</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>24.4.00</td>
<td>9*</td>
<td>8</td>
</tr>
<tr>
<td>12.6.00</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>7.7.00</td>
<td>10</td>
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</tr>
<tr>
<td>18.7.00</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>25.7.00</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>20.9.00</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>16.10.00</td>
<td>9</td>
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</tr>
<tr>
<td>6.11.00</td>
<td>9</td>
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</tr>
<tr>
<td>9.1.01</td>
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<td>9</td>
</tr>
<tr>
<td>23.1.01</td>
<td>9</td>
<td>9</td>
</tr>
</tbody>
</table>

*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, 2000.
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 1956;
   
   (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, 1956 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>Meetings/Attendance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>24.4.00 25.7.00 16.10.00 23.1.01</td>
</tr>
<tr>
<td>1.</td>
<td>Mr. D., Chairman</td>
<td>Present Present Present Present</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. F, Member</td>
<td>Present Present Present Present</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. H, Member</td>
<td>Absent Present Present Present</td>
</tr>
<tr>
<td>4.</td>
<td>Mr. I, Member*</td>
<td>NA Absent Present Present</td>
</tr>
</tbody>
</table>

* Inducted w.e.f. 12.6.00

4. Remuneration Committee:

(1) **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 under Sections 79A and 81(1A) of Companies Act 1956.

(II) Composition of Committee and Attendance of Members:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Director and position</th>
<th>24.4.00</th>
<th>25.7.00</th>
<th>28.8.00</th>
<th>23.11.00</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. 12.6.00 # Inducted w.e.f. 12.6.00

(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, 1956;

(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, 1956

(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 (Rs)</th>
<th>Benefits (Rs)</th>
<th>Bonus/Commission (Rs.)</th>
<th>Performance linked incentives (alongwith criteria)</th>
<th>Total (Rs)</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 by rotation</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 7/7/00)</td>
</tr>
</tbody>
</table>

* 5 years w.e.f. 01.08.99/notice period 3 months/remuneration for un-expired period or 2 years whichever is less/NA.

** 25,000 warrants were allotted on 3rd August 1999, 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, 1999. Accordingly 3,750 warrants were converted into shares on August 28, 2000.

*** 2 years w.e.f. 01.01.01/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. Shareholders/Investors 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></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date and Time</td>
<td>September 4, 1998</td>
<td>July 8, 1999</td>
<td>July 7, 2000</td>
</tr>
<tr>
<td>Venue</td>
<td>12.30 p.m.</td>
<td>11.00 a.m.</td>
<td>12.00 Noon</td>
</tr>
<tr>
<td>Electronic Sadan No. II</td>
<td>MIDC, TTC Indl. Area,</td>
<td>MIDC, TTC Indl. Area,</td>
<td>MIDC, TTC Indl. Area,</td>
</tr>
<tr>
<td>Mahape, Dist. Thane,</td>
<td>Mahape, Dist. Thane,</td>
<td>Mahape, Dist. Thane,</td>
<td>Mahape, Dist. Thane,</td>
</tr>
<tr>
<td>Navi Mumbai 400 701</td>
<td>Navi Mumbai 400 701</td>
<td>Navi Mumbai 400 701</td>
<td>Navi Mumbai 400 701</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, 1956 as applicable at the relevant point of time.

— Procedure for postal ballot:
The procedure shall be as per the provisions of the Companies Act, 1956 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:

— Quarterly results:
The Audited Quarterly Results alongwith the Notes were published in the Newspapers as under:
### Newspapers

<table>
<thead>
<tr>
<th>Newspapers</th>
<th>Date of Publication of results for the quarter ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>31.3.00</td>
</tr>
<tr>
<td>The Economic Times</td>
<td>25.4.00</td>
</tr>
<tr>
<td>Maharashtra Times</td>
<td>25.4.00</td>
</tr>
<tr>
<td>Nav Shakti</td>
<td>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:

Signature
Date:........  [..................name..................]
Place:........  Practising Company Secretary
Membership No. ___________
Certificate of Practice No. ________

* Retain whichever is applicable
** If the entity is not a Company under the Companies Act, 1956, the entity may be referred to appropriately (e.g. public/private sector banks, financial institutions, insurance companies etc.)

ANNEXURE X

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>49 (I)</td>
<td></td>
</tr>
<tr>
<td>(A) Composition of Board</td>
<td>49 (IA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Non-executive directors compensation &amp; disclosures</td>
<td>49 (IB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(C) Other provisions as to Board and Committees</td>
<td>49 (IC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(D) Code of Conduct</td>
<td>49 (ID)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II. Audit Committee</td>
<td></td>
<td>49 (II)</td>
<td></td>
</tr>
<tr>
<td>(A) Qualified &amp; Independent 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>
(C) Powers of Audit Committee 49(IIC)
(D) Role of Audit Committee 49(IID)
(E) Review of information by Audit Committee 49(IIE)

III. Subsidiary Companies 49(III)

IV. Disclosures 49(IV)
(A) Basis of related party transactions 49(IVA)
(B) Disclosure of Accounting Treatment 49(IVB)
(C) Board disclosures 49(IVC)
(D) Proceeds from Public issues, rights issues, preferential issues etc. 49(IVD)
(E) Remuneration of directors 49(IVE)
(F) Management 49(IVF)
(G) Shareholders 49(IVG)

V. CEO/CFO Certification

VI. Report on Corporate Governance 49(V)

VII. Compliance 49(VII)

Note

(1) The details under each head shall be provided to incorporate all the information required as per the provisions of the Clause 49 of the Listing Agreement.

(2) In the column No.3, compliance or non-compliance may be indicated by Yes/No/N.A. For example, if the Board has been composed in accordance with the Clause 49 I of the Listing Agreement, “Yes” may be indicated. Similarly, in case the Company has no related party transactions, the words “N.A.” may be indicated against 49 (IVA).

(3) In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the ANNUAL GENERAL MEETING/EGM, it might be indicated in the “Remarks” column as – “will be complied with at the ANNUAL GENERAL MEETING”. Similarly, in respect of matters which can be complied with only where the situation arises, for example, “Report on Corporate Governance” is to be a part of Annual Report only, the words “will be complied in the next Annual Report” may be indicated.
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, 2006.

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:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>₹ 895 Million</td>
<td>₹ 743 Million</td>
<td>₹ 1108 Million</td>
<td>₹ 851 Million</td>
</tr>
</tbody>
</table>

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>(Rs. in Million)</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>Extra-ordinary 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>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>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>
</tbody>
</table>

APPROPRIATIONS:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<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 November 14, 2005, 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, 2006.

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, 2006. 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 Section 212 of the Companies Act, 1956 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, 2006.
Your Directors also recommend a dividend of 11.50% on Preference Capital of ₹ 100.00 million for the year ended March 31, 2006.

4. TERM DEPOSITS:
As on 31st March, 2006, 539 Depositors having deposits aggregating to ₹3,716,200 did not collect the amounts due. However, deposits amounting to ₹553,000 (63 Depositors) have been subsequently repaid.

5. PARTICULARS OF EMPLOYEES:
The information required under the provisions of Section 217(2A) of the Companies Act, 1956, read with Companies (Particulars of Employees) Rules, 1975, and forming part of the Report is annexed hereto.

6. CONSERVATION OF ENERGY, TECHNOLOGY ABSORPTION AND FOREIGN EXCHANGE EARNINGS AND OUTGO:
The additional information required under the provisions of Section 217(1)(e) of the Companies (Disclosure of Particulars in the Report of Board of Directors) Rules, 1988, and forming part of the Report is also annexed hereto.

7. DIRECTORS:
Mr. A has been nominated on the Board, with effect from April 3, 2006, as nominee of ICICI Limited in place of Mr. B whose nomination was withdrawn, with effect from March 29, 2006. 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, 2001, 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, 1956 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 re-appointment.

8. DIRECTORS’ RESPONSIBILITY STATEMENT:
Pursuant to the requirement under Section 217(2AA) of the Companies Act, 1956, with respect to Directors’ Responsibility Statement, it is hereby confirmed:

(i) That in the preparation of the accounts for the financial year ended 31st March, 2006, the applicable accounting standards have been followed along with proper explanation relating to material departures;

(ii) That the directors have selected such accounting policies and applied them consistently and made judgements 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 of the Company for the year under review;
(iii) That the directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Companies Act, 1956 for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities;

(iv) That the directors have prepared the accounts for the financial year ended 31st March, 2006 on a ‘going concern’ basis.

9. 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 cooperation 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
Dated : June 2, 2006. Managing Director


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:


(A) Power and Fuel consumption:

1. Electricity:

(a) Purchased:

<table>
<thead>
<tr>
<th>Units (KWH in thousand)</th>
<th>54.584</th>
<th>60.460</th>
</tr>
</thead>
<tbody>
<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>
</tbody>
</table>

(b) Own Generation:

(i) Though diesel Generator Units (in thousand) — —

| Units per Ltr. of Diesel Oil | — | — |
| Cost/Unit (₹) | — | — |

(ii) Through Seam turbine/Generator Units — —

| Units per Ltr. of Fuel Oil/Gas | — | — |
| Cost/Unit (₹) | — | — |

2. Coal (Steam used for generation of Steam in boiler):

| Qty. (Tonnes) | — | — |
| Total Cost (₹ in million) | — | — |
| Rate (₹) — | — |

3. Furnace Oil:

| Qty. (K. Ltrs.) | — | — |
| Total Amount | — | — |
| Rate (₹) — | — |

4. Others:

(i) Fuel Oil:

| Qty. (K. Ltrs.) | 14.595 | 19.371 |
| Total Cost (₹ in million) | 158.395 | 172.600 |
| Rate/K. Ltr. (₹) | 10.852 | 8.910 |

(ii) L.P.G.:

| Qty. (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:
      Rs. 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
         — 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 manufactures 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 2005-2006, were to the tune of US $ 2 million and are likely to increase in future.

(b) Total foreign exchange used and earned:

| USED       | ₹ 419.833 Million |
| EARNED     | ₹ 1125.596 Million |

For and on behalf of
Board of Directors

Pune, Chairman and
Dated : June 2, 2006. Managing Director


STATEMENT ANNEXED TO THE BOARD’S REPORT FOR THE YEAR ENDED...

Information required by the Companies (Particulars of Employees) Rules, 1975

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name</th>
<th>Age</th>
<th>Designation/ Nature of Duties</th>
<th>Gross Remuneration</th>
<th>Qualifications</th>
<th>Experience in years</th>
<th>Date of Employment</th>
<th>Last Employment / Designation held</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tbody>
</table>

Notes

1. Gross remuneration includes salary, bonus, allowances, commission, cost of other perquisites calculated on the basis of rules prescribed in this behalf by the Department of Company Affairs but excludes compensation paid under voluntary retirement scheme. It also includes company’s contribution to provident fund, superannuation fund and other funds.

2. All employees have adequate experience to discharge the responsibilities assigned to them.
3. The nature of employment in all cases is contractual.

4. The services of all the above employees, who were in the employment of the company as on 31st March are terminable by either party by giving three months’ notice.

5. None of the employees mentioned above is a relative of any director of the company, other than Mr. X who is ______ (relation) of Mr. Y, director of the company.

ANNEXURE XII

Format for disclosing information about each Director

(As on last date of financial year)

<table>
<thead>
<tr>
<th>Name of Director :</th>
<th>Position of Director : Chairman/CEO/ND etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category of director:</td>
<td>Executive/ Non executive/ Independent/ Nominee/ Promoter</td>
</tr>
</tbody>
</table>

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 : |

<table>
<thead>
<tr>
<th>Directorship details</th>
<th>Committee membership/Chairmanship details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the Company</td>
<td>Name(s) of Committee(s) in the Company</td>
</tr>
<tr>
<td>— Indian</td>
<td></td>
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<tr>
<td>— Executive</td>
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<tr>
<td>— Non executive</td>
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<tr>
<td>— Foreign</td>
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<tr>
<td>— Executive</td>
<td></td>
</tr>
<tr>
<td>— Non Executive</td>
<td></td>
</tr>
<tr>
<td>— Main achievement</td>
<td></td>
</tr>
<tr>
<td>of the director</td>
<td></td>
</tr>
</tbody>
</table>

ANNEXURE XIII

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 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 :

ANNEXURE XIV

SPECIMEN COMPLIANCE CERTIFICATE

FORM
[See Rule 3]

Compliance Certificate

To
The Members

________________________(Name of the company)
I/we have examined the registers, records, books and papers of __________ Limited (the Company) as required to be maintained under the Companies Act, 1956, (the Act) and the rules made thereunder and also the provisions contained in the Memorandum and Articles of Association of the Company for the financial year ended on 31st March, 20___ (financial year). In my/our opinion and to the best of my/our information and according to the examinations carried out by me/us and explanations furnished to me/us by the company, its officers and agents, I/we certify that in respect of the aforesaid financial year:

1. the company has kept and maintained all registers as stated in Annexure ‘A’ to this certificate, as per the provisions of the Act and the rules made thereunder and all entries therein have been duly recorded;
2. the company has duly filed the forms and returns as stated in Annexure ‘B’ to this certificate, with the Registrar of Companies, Regional Director, Central Government, Company Law Board or other authorities within the time prescribed under the Act and the rules made thereunder;
3. the company being private limited company has the minimum prescribed paid-up capital and its maximum number of members during the said financial year was___________ excluding its present and past employees and the company during the year under scrutiny:
   (i) has not invited public to subscribe for its shares or debentures; and
   (ii) has not invited or accepted any deposits from persons other than its members, directors or their relatives;
4. the Board of Directors duly met ____ times on___________ (dates) in respect of which meetings proper notices were given and the proceedings were properly recorded and signed including the circular resolutions passed in the Minutes Book maintained for the purpose;
5. the company closed its Register of Members, and/or Debentureholders from____________ to____________ and necessary compliance of Section 154 of the Act has been made;
6. the annual general meeting for the financial year ended on___________ was held on___________ after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in Minutes Book maintained for the purpose;
7. _______extraordinary meeting(s) was/were held during the financial year after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in the Minutes Book maintained for the purpose;
8. the company has advanced loan amount to ₹___________ to its directors and/or persons or firms or companies referred in Section 295 of the Act after complying with the provisions of the Act;
9. the company has duly complied with the provisions of Section 297 of the Act in respect of contracts specified in that section;
10. the company has made necessary entries in the register maintained under Section 301 of the Act;
11. the company has obtained necessary approvals from the Board of Directors, members and previous approval of the Central Government pursuant to Section 314 of the Act wherever applicable;

12. the Board of Directors or duly constituted Committee of Directors has approved the issue of duplicate share certificates;

13. The Company has:
   (i) delivered all the certificates on allotment of securities and on lodgment thereof for transfer/transmission or any other purpose in accordance with the provisions of the Act;
   (ii) deposited the amount of dividend declared including interim dividend in a separate bank account on___________ which is within five days from the date of declaration of such dividend;
   (iii) paid/posted warrants for dividends to all the members within a period of 30 (thirty) days from the date of declaration and that all unclaimed/ unpaid dividend has been transferred to Unpaid Dividend Account of the Company with_________ Bank on___________;
   (iv) transferred the amounts in unpaid dividend account, application money due for refund, matured deposits, matured debentures and the interest accrued thereon which have remained unclaimed or unpaid for a period of seven years to Investor Education and Protection Fund;
   (v) duly complied with the requirements of Section 217 of the Act;

14. the Board of Directors of the company is duly constituted and the appointment of directors, additional directors, alternate directors and directors to fill casual vacancies have been duly made;

15. the appointment of Managing Director/Whole-time Director/Manager has been made in compliance with the provisions of Section 269 read with Schedule XIII to the Act and approval of the Central Government has been obtained in respect of appointment of__________ not being in terms of Schedule XIII;

16. the appointment of sole-selling agents was made in compliance of the provisions of the Act;

17. the company has obtained all necessary approvals of the Central Government, Company Law Board, Regional Director, Registrar or such other authorities as may be prescribed under the various provisions of the Act as detailed below:

18. the directors have disclosed their interest in other firms/companies to the Board of Directors pursuant to the provisions of the Act and the rules made thereunder;

19. the company has issued __________ shares/debentures/other securities during the financial year and complied with the provisions of the Act;

20. the company has bought back_______ shares during the financial year ending________________ after complying with the provisions of the Act;
21. the company has redeemed ____________ preference shares/debentures during the year after complying with the provisions of the Act;

22. the company wherever necessary has kept in abeyance rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act;

23. the company has complied with the provisions of Sections 58A and 58AA read with Companies (Acceptance of Deposit) Rules, 1975/the applicable directions issued by the Reserve Bank of India/any other authority in respect of deposits accepted including unsecured loans taken, amounting to ₹__________raised by the company during the year and the company has filed the copy of Advertisement/Statement in lieu of Advertisement/necessary particulars as required with the Registrar of Companies on___________. The company has also filed return of deposit with the Registrar of Companies/Reserve Bank of India/other authorities;

24. the amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the financial year ending__________ is/are within the borrowing limits of the company and that necessary resolutions as per Section 293(1)(d) of the Act have been passed in duly convened annual/extraordinary general meeting;

25. the company has made loans and investments, or given guarantees or provided securities to other bodies corporate in compliance with the provisions of the Act and has made necessary entries in the register kept for the purpose;

26. the company has altered the provisions of the memorandum with respect to situation of the company’s registered office from one State to another during the year under scrutiny after complying with the provisions of the Act;

27. the company has altered the provisions of the memorandum with respect to the objects of the company during the year under scrutiny and complied with provisions of the Act;

28. the company has altered the provisions of the memorandum with respect to name of the company during the year under scrutiny and complied with the provisions of the Act;

29. the company has altered the provisions of the memorandum with respect to share capital of the company during the year under scrutiny and complied with the provisions of the Act;

30. the company has altered its articles of association after obtaining approval of members in the general meeting held on_____________ and the amendments to the articles of association have been duly registered with the Registrar of Companies;

31. a list of prosecution initiated against or show-cause notices received by the company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the company in such cases is attached;
32. the company has received ₹________ as security from its employees during the year under certification and the same has been deposited as per provisions of Section 417(1) of the Act;

33. the company has deposited both employee’s and employer’s contribution to Provident Fund with prescribed authorities pursuant to Section 418 of the Act.

Note: The qualification, reservation or adverse remarks, if any, may be stated at the relevant places.

Place: Signature:  
Date: Name of the Company Secretary:  
C.P. No.:  

ANNEXURE A  
Registers as maintained by the Company  
1. _______________________ u/s ______________________  
2. _______________________ u/s ______________________  
3. _______________________ u/s ______________________  

ANNEXURE B  
Forms and Returns as filed by the Company with Registrar of Companies, Regional Director, Central Government or other authorities during the financial year ending on 31st March, 20____  
1. Form No._____________ Filed u/s ______________ for________  
2. Form No._____________ Filed u/s ______________ for________  
3. Form No._____________ Filed u/s ______________ for________  

ANNEXURE XV  
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>XY Stand alone</th>
<th>Current Year 2004-2005</th>
<th>Previous Year 2003-2004</th>
<th>% Growth</th>
</tr>
</thead>
<tbody>
<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>XY Consolidated</th>
<th>Current Year</th>
<th>Previous Year</th>
<th>% Growth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2004-2005</td>
<td>2003-2004</td>
<td></td>
</tr>
<tr>
<td>Net Sales (₹ Crores) (Net of Excise Duty and Sales Tax)</td>
<td>624.7</td>
<td>516.1</td>
<td>21</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 2000). 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 2000-2003 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 your are aware, our shareholders have already approved our proposal in the Extra Ordinary General Meeting of shareholders held on 29th April, 2005. 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.

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**LESSON ROUND-UP**

- Annual reports of the companies form the most important documents. Mandatory disclosure through annual reports and accounts is a method of providing information to the shareholders and the public about the financial position of the company.
- After the annual accounts 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. However, Companies Act provides the procedure to get the exemption from the aforesaid requirement.
- Under Section 227(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 matter to be included in the Board’s report have been specified in section 217 of the Companies Act, 1956. Apart form this, Section 212, 219, 220, 222, 292A and 383A of the Companies Act, 1956 also contain provisions in relation to the Board’s report.

- Listed companies are required to comply with clause 49 of the listing agreement and should provide separate section on Corporate Governance in the annual report of the company.

- Directors’ Responsibility statement, Management discussion and analysis report, Disclosure of information about each director, Declaration form Independent directors and Particulars of employees should also form part of Board’s report.

- The Compliance certificate must be laid by the Company at its Annual General Meeting in accordance with proviso to Section 383A (1).

- 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 prepared under Section 217(2AA) of the Companies Act, 1956.

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.

6. Draft a Board resolution for approval of annual accounts.

7. Draft format of quarterly compliance report on corporate governance.
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 study, you will be able to understand:

- Meaning of Dividend
- Declaration of Dividend
- Procedure for declaration and payment of Interim Dividend
- Procedure for declaration and payment of Final Dividend
- Payment of Dividend without providing for depreciation
- 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
- Secretarial Standard on Dividend

1. MEANING OF DIVIDEND

The term ‘dividend’ has been defined under Section 2(14A) of the Companies Act, 1956. 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 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 25 of the Act are prohibited by its constitution from paying any dividend to its members. They apply the profits in promoting the objects of the company.

2. DECLARATION OF DIVIDEND

An interim dividend is declared by the Board of directors at any time before the closure of financial year, whereas a final dividend is declared by the members of a company at its annual general meeting if and only if the same has been recommended by the Board of directors of the Company.

The Companies Act, 1956 lays down certain provisions for declaration of dividend, which are:

(i) Section 93 permits companies to pay dividends proportionately, i.e. in proportion to the amount paid 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.

However, 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. [Table A, Article 88(1)]

(ii) Final Dividend is generally declared at an annual general meeting at a rate not more than recommended by the directors in accordance with the articles of association of a company [Section 173(1)(a)].

(iii) In accordance with Section 217(1) (c), Board of directors must state in the Directors' Report the amount of dividend, which it recommends to be paid. This is called 'final dividend', as against 'interim dividend, which is not 'recommended' by the Board; it is simply paid after the Board resolves to pay it. This does not require approval of the shareholders.

The dividend recommended by the Board of directors in the Board's Report must be 'declared' at the annual general meeting of the company. This constitutes an item of ordinary business to be transacted at every annual general meeting. This does not apply to interim dividend.
(iv) No dividend can be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with Section 350 of the Act or out of profits of the company for any previous financial year/years arrived at after providing for depreciation in accordance with the provisions of the Act and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for payment of dividend in pursuance of a guarantee given by the concerned Government [Section 205(1)].

Further, vide Circular No. 31/2011 dated 31st May, 2011, it has been clarified that companies referred to in Section 616(c) of the Companies Act can distribute dividend out of profit arrived at after providing for depreciation following the rates as well as methodology notified by CERC (Central Electricity Regulatory Commission and the same shall be sufficient compliance of Section 205 of the Companies Act, 1956.

(v) Dividend can be declared by a company for any financial year only after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent as prescribed by the Central Government, vide Companies (Transfer of Profits to Reserves) Rules, 1975 [Section 205(2A)].

(vi) If owing to inadequacy or absence of profits in any year, a company proposes to declare dividend out of the accumulated profits earned by it in any previous financial year or years and transferred to reserves, such declaration of dividend shall not be made except in accordance with the Companies (Declaration of Dividend out of Reserves) Rules, 1975 or except with the previous approval of the Central Government, where the declaration is not in accordance with the Rules. [Section 205A(3)]

(vii) Depreciation, as required under Sub-section (1) of Section 205 of the Companies Act has to be provided in accordance with the provisions of Section 350 of the Act.

(viii) The amount of dividend shall be deposited in a separate bank account within 5 days from the date of declaration.

(ix) Dividend has to be paid within 30 days from the date of declaration.

(x) In case of listed companies, Section 55A confers on SEBI, the power of administration of the provisions pertaining to non-payment of dividend. SEBI can exercise the powers only under Section 206A i.e. right to dividend, right shares and bonus shares to be held in abeyance pending registration of transfer of shares and Section 207 i.e. penalty for failure to distribute dividends within 30 days. All other powers remain vested in Central Government.

(xi) If dividend has not been paid or claimed within the said 30 days, the company is required to transfer the total amount of dividend which remains unpaid or unclaimed, to a special account to be opened by the company in a scheduled bank to be called “Unpaid Dividend Account of ...., Company Limited/ Private Limited”. Such transfer shall be made within 7 days from the date of expiry of the said 30 days.
(xii) In accordance with Section 77B, a company cannot buy its shares if apart from other things provided in the section, it makes default in payment of dividend to any shareholder.

(xiii) Section 78 of the Companies Act prevents distribution of the premium to the shareholders by way of dividend and permits its utilisation only for purposes specified therein.

(xiv) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Investor Education and Protection Fund. [Section 205A(5)]

(xv) Where a dividend has not been paid by the company within 30 days from the date of declaration, every director shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to 3 years and shall also be liable to a fine of Rs. 1000 for every day during which default continues and the company shall be liable to pay simple interest @ 18% per annum during the period for which such default continues. [Section 207]

(xvi) If the company delays the transfer of the unpaid dividend amount to the unpaid dividend account, it shall pay an interest @ 12% p.a. till it transfers the same and the interest accruing on such amount shall accrue to the benefit of the members of the company in proportion to the amount remaining unpaid to them. [Section 205A(4)]

(xvii) Section 13 or any other provisions of the Act do not provide that a right to dividend in respect of any class of shares should be stated in the Memorandum of Association. So 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 Comp Cas 85 (Cal.).]

In British India Corporation Ltd. v Shanti Narain, it was held with reference to Section 10 of Indian Companies Act, 1913 (corresponding to the present section): "The provisions with regard to the rights and privileges attaching to particular class of shares are not required by the Act 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".

3. PROCEDURE FOR DECLARATION AND PAYMENT OF INTERIM DIVIDEND

1. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. The notice must be in accordance with Section 286 of the Companies Act. 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.

2. In case of listed companies, notify Stock exchange(s) where the securities
of the company are listed, at least 2 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].

3. At Board meeting, Board of Directors consider 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 upto 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.

(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,

(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. [For a specimen of the Board resolution for interim dividend on equity shares, please see Annexure I at the end of this Study].

(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 study].
4. 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]

5. 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. [For a notice of book closure, please see Annexure III at the end of this Study]. In case of listed companies:
   (i) To give notice of book closure at least 7 days or as many days as the stock exchange may prescribe, before the closure 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.
   [Clause 16 of listing agreement read with Section 154 of Companies Act, 1956].

6. Close the register of members and the share transfer register of the company.

7. Hold a Board/committee meeting for approving a 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.

8. 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]

9. 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.

10. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centres as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]

11. Prepare a statement of dividend in respect of each shareholders containing
the following details:
(a) Name and address of the shareholder with ledger folio No.
(b) No. of shares held.
(c) Dividend payable.
12. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.
13. 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.
14. No RBI approval required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.
15. 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.
16. 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)
17. Dispatch dividend warrants within thirty days of the declaration of dividend [Refer Section 207]. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.
18. 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.
19. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.
20. 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).
21. 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.
22. 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 205A)
23. 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 crediting the fund, should separately furnish to RoC a statement in e-Form 1 of IEPF Rules duly certified by chartered accountant or a company secretary or a cost accountant practising in India or by the statutory auditors of the company. *(Specimen of e-Form 1, please see Part B of this study).*

Any dividend payable in cash may be paid by way of cheque or warrant sent through post directed to the registered address of the shareholder who is entitled to the payment of the dividend, or in the case of joint shareholders, to the registered address of one of the joint shareholders who is first named on the register of members, or to such person and to such address as the shareholders or the joint shareholders may in writing, direct.

4. 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. The notice must be in accordance with Section 286 of the Companies Act. 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 7 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].

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 as per provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975; or

      (ii) out of reserves in accordance with the provisions of the Companies (Declaration of Dividend out of Reserves), Rules, 1975.

   (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 154 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)

4. 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 by way of a letter or telegram/fax. [Clause 20 of listing agreement]

5. 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. [For a notice of book closure, please see Annexure III at the end of this Study]. In case of listed companies:

(i) To give notice of book closure at least 21 days or as many days as the stock exchange may prescribe, before the closure 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) In case of securities which are announced by SEBI to be compulsorily delivered in the dematerialized form, notice as above to be given at least 15 days (instead of 21 days) before the closure or record date and time gap between two book closures would be at least 30 days.).

(Clause 16 of listing agreement read with Section 154 of Companies Act, 1956).

6. Close the register of members and the share transfer register of the company.

7. 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”.

8. Hold a Board/committee meeting for approving a 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. 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) Prorata 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. [Table A, article 88(1)].

(d) Unless the terms of issue of shares or the resolution declaring a dividend so provide, dividend shall be apportioned and paid proportionately to the amounts paid or credited on shares during any portion(s) of the period in respect of which the dividend is paid. But if the terms of issue (or the resolution declaring a dividend) provide that the shares shall rank for dividend as from a particular date, dividend may be paid accordingly. [Table A, article 88(3)].

10. Prepare a statement of dividend in respect of each shareholders containing the following details:

(a) Name and address of the shareholder with ledger folio No.

(b) No. of shares held.

(c) Dividend payable.
11. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.

12. 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]

13. Open a 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.

14. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centres as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]

15. 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.

16. No RBI approval required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.

17. 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.

18. 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 205A)

19. Dispatch dividend warrants within thirty days of the declaration of dividend [Refer Section 207]. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

20. 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.

21. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.

22. 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).
23. 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.

24. 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.

25. 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 of IEPF Rules duly certified by chartered accountant or a company secretary or a cost accountant practising in India or by the statutory auditors of the company.

5. PAYMENT OF DIVIDEND WITHOUT PROVIDING FOR DEPRECIATION

1. Hold a board meeting after giving notice as per Section 286 and take the decision of applying to the Central Government for approval for payment of dividend without providing for depreciation.

2. Make an application to the Central Government in e-form 23AAC (prior to 10.2.2006, no form was prescribed) giving reasons for not providing depreciation along with the following attachments. (*Specimen of e-Form 23AAC is given in Part B of this study*).
   — Certificate from company secretary or director certifying that no relevant facts material to the proposal have been concealed or misrepresented.
   — An undertaking that the company will not come up with any public issue or invite any fresh deposits in the next 18 months.
   — Copy of the Board of director’s resolution in support of the company’s proposal.
   — Shareholding pattern of promoters and their relatives.
   — Copy of concurrence of Administrative ministry

3. Send a copy of the application to the concerned Registrar of Companies along with a copy of each document annexed to it.

After obtaining approval of the Central Government, rest of the procedure is same as in the case of payment of final dividend.

(*For Specimen extracts of minutes containing Board resolution for recommending declaration of dividend without providing for depreciation—see Annexure V).*

**Procedure for Declaration of Dividend out of Company’s Reserves**

A company which wishes to declare dividend out of reserves in any year must fulfil the following conditions in accordance with the Companies (Declaration of
Dividend out of Reserves) Rules, 1975:

(a) The rate of dividend to be declared must not be more than the average of the rates at which dividend was declared in the five years immediately preceding the year in which the company proposes to declare dividend out of reserves or 10% of the paid-up share capital, whichever is less [Rule 2(i)];

(b) The amount to be drawn from the reserves must not be more than an amount equal to 10% of the aggregate of paid-up share capital and free reserves [Rule 2(ii)];

(c) If in the year for which the company proposes to declare dividend out of the reserves, it has incurred a loss, the amount drawn from the reserves must first be utilised to set off the loss before any dividend is declared for that year on equity shares or preference shares [Rule 2(ii)];

(d) The amount of residual reserves, i.e. the reserves remaining in balance after the amount sufficient to set off the loss and declaration of dividend, must be at least 15% of the paid-up share capital of the company [Rule 2(iii)].

The procedure is as follows:

1. Give notice as per Section 286 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 of Dividend out of Reserves) Rules, 1975 are complied with. (given at Annexure VI)

3. 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.

4. 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]

5. 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.

6. 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.

7. Open a 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.

8. 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.

(For specimen extracts of minutes of Board Meeting for recommending declaration of dividend out of reserves with due compliance of the rules, please refer Annexure VII).

7. CLAIMING OF UNCLAIMED /UNPAID DIVIDEND

In accordance with Section 205A, 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.

Before the Companies (Amendment) Act, 1999, sub-section (5) of section 205A provided that any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for period of three years from the date of such transfer, was required to be transferred by the company to the general revenue account of the Central Government.

A claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money was due and could be dealt with as if such transfer to the general revenue account had not been made.

Thus, even after the unpaid dividend amount was transferred by a company to the general revenue account, the shareholder or any other legitimate claimant of the part of the money transferred which was owed to him, could be claimed from the Central Government.

The proviso inserted by the Companies (Amendment) Act, 1999, w.r.e.f. 31.10.1998, has nullified the application of the provisions of this section to any money transferred to the Investor Protection Fund after the commencement of the Companies (Amendment) Act, 1999. Therefore, once unclaimed dividends have been transferred to the Fund, the same cannot be claimed by a shareholder or by his legal heir.

With the amendment of section 205A and the enactment of section 205C by the Companies (Amendment) Act, 1999, it is provided that any moneys transferred to the 'unpaid dividend account' of the company and remaining unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred to the Investor Education and Protection Fund.
Section 205C also requires the following amounts to be credited to the Investor Education and Protection Fund (the Fund):

(a) The application moneys received by companies for allotment of any securities and due for refund;
(b) Matured deposits with companies;
(c) Matured debentures with companies;
(d) The interest accrued on the amounts referred to in clauses (a) to (c).

The above amounts have to be transferred to the Fund when they have remained unclaimed or unpaid for a period of seven years from the date they became due for payment.

In accordance with the Explanation to sub-section (2) of section 205C, no claims shall lie against Fund or company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from dates that they first became due for payment and no payment shall be made in respect of such claims.

8. 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) Convene a Board Meeting after giving notice as per Section 286 and approve the statement in the prescribed form 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 other particulars as may be prescribed.

(2) Furnish to such committee as constituted by the Central Government in this behalf, the statement in the prescribed form as approved by the Board. Such committee shall call upon any company to give estimates of the amounts to be credited to the Fund in Form 2.

(Specimen of Form 2 is given at Annexure VIII).

(3) 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.

(4) The amount shall be tendered by the companies on behalf of the Central Government in such branches of Punjab National Bank (in triplicate) and the Bank will return two copies duly stamped to the Company as token of having received the amount.

(5) 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
(6) 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 1 (see in Part B of the study) duly certified by a chartered accountant or a company secretary or a cost accountant practicing in India or by the statutory auditors of the company. Provided that 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 and the committee or sub-committee shall have powers to inspect such records of that period.

(7) 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 205A(1). [Rule 3]

(8) The form must be signed by the Managing Director or director or manager or secretary of the Company.

(9) The form must also be certified by a
   — Chartered Accountant practising in India; or
   — Cost Accountant practising in India; or
   — Company Secretary practising in India; or
   — The auditors of the company.

(10) Any one of the four persons mentioned above will sign the form in addition to the signatories mentioned earlier. 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.

(11) Obtain a receipt from the committee for the money so transferred as such a receipt will be an effectual discharge of the duty of the company in respect thereof.

It is important to note that the Central Government has constituted a Committee consisting of persons of eminence to administer the Investor Education and to 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.
ANNEXURES

ANNEXURE I

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 share 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 ............... 2008 to those members of the company whose names would appear on the register of members of the company on the ............... day of .............., 2008.

(ii) a bank account to be designated as “Interim Equity Dividend (2008) 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.

ANNEXURE II

SPECIMEN OF BOARD RESOLUTION FOR 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, ........ 2008 and ending on December 31, ........ 2008...... aggregating Rs. ............., be paid to the registered holders thereof whose names would appear on the register of holders of the said shares on the ............... ................. 2008, 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 (2008) 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.

ANNEXURE III

NOTICE FOR BOOK CLOSURE

Name of Company: .........................

Registered Office: .........................

Notice

Pursuant to Section 154 of the Companies Act, 1956 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), ............... 2008 to the ...............th day of ............... 2008 (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: ......................... For ......................... Limited

Date: ......................... (..........................) Company Secretary

Not 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 ..........., 2003. 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

ANNEXURE IV

SPECIMEN OF BOARD RESOLUTION RECOMMENDING PAYMENT OF DIVIDEND ON EQUITY SHARES OUT OF CURRENT PROFITS

"RESOLVED THAT in accordance with the provisions of Section 205 and other applicable provisions, if any, of the Companies Act, 1956 and the Companies (Transfer of Profits to Reserves) Rules, 1975, 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 2008 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 .......... 2008."

ANNEXURE V

SPECIMEN EXTRACT OF MINUTES CONTAINING BOARD RESOLUTION FOR RECOMMENDING DECLARATION OF DIVIDEND WITHOUT PROVIDING FOR DEPRECIATION

The Chairman informed the meeting that the company had been providing for depreciation at the rate of .................. per cent on gas cylinders including valves and regulators but Schedule XIV requires the depreciation of the said cylinders to be provided at the rate of .................. per cent.

The chairman further informed the meeting that the Board of directors of the company had, at its meeting held on ................. resolved to recommend dividend for the financial year ending on ................. 2008 and the declaration of the said dividend at the AGM cannot be made without the permission of the Central Government. He, therefore, suggested that the proposed resolution be passed.

The meeting considered the matter in detail and passed the following resolution:

RESOLVED THAT –

(i) an application be made to the Central Government under clause (c) of the proviso to Sub-section (1) of Section 205 of the Companies Act, 1956 to allow the company to declare and pay dividend for the financial year ending on ................. 2008 out of the profits of the company for that year without providing for depreciation at the rate specified in Schedule XIV, which requires the depreciation on the gas cylinders including valves and regulators, to be provided at ................. per cent.
(ii) the Company Secretary, Shri .............. be and is hereby authorised to make
the required application to the Central Government for seeking Central
Government’s approval to the company declaring and paying dividend for
the financial year ending .............. 2008 out of the profits of the company
for that year without providing for depreciation at the specified rate.

ANNEXURE VI

Companies (Declaration of Dividend out of Reserves) Rules, 1975*

In exercise of the powers conferred by Sub-section (3) of Section 205A, read
with clause (a) of Sub-section (1) of Section 642, of the Companies Act, 1956 (1 of
1956), the Central Government hereby makes the following rules, namely:

1. Short title.—These rules may be called the Companies (Declaration of Dividend
out of Reserves) Rules, 1975.

2. Declaration of dividend out of reserves.—In the event of inadequacy or
absence of profits in any year, dividend may be declared by a company for that
year out of the accumulated profits earned by it in previous years and transferred
by it to the reserves, subject to the conditions that—

(i) the rate of the dividend declared shall not exceed the average of the rates
at which dividend was declared by it in the five years immediately
preceding that year or ten per cent of its paid-up capital, whichever is less;

(ii) the total amount to be drawn from the accumulated profits earned in
previous years and transferred to the reserves shall not exceed an amount
equal to one-tenth of the sum of its paid-up capital and free reserves and
the amount so drawn shall first be utilised to set off the losses incurred in
the financial year before any dividend in respect of reference or equity
shares is declared; and

(iii) the balance of reserves after such drawal shall not fall below fifteen per
cent of its paid-up share capital.

Explanation: For the purposes of this rule, “profits earned by a company in
previous years and transferred by it to the reserves” shall mean the total amount of
net profits after tax, transferred to reserves as at the beginning of the year for which
the dividend is to be declared; and in computing the said amount, the
appropriations out of the amount transferred from the Development Rebate
Reserve [at the expiry of the period specified under the Income-tax Act, 1961 (43 of
1961)] shall be included and all items of Capital Reserves including reserves
created by revaluation of assets shall be excluded.

Form is placed at Part-B of this Study.

*[(iv) The Forms prescribed in these rules may be filed through electronic media
or through any other computer readable media as referred under Section
610A of the Companies Act, 1956 (1 of 1956).

(v) The electronic form shall be authenticated by the authorized signatories

* GSR 427(E), dated 24.7.1975.
* Inserted vide Notification No. GSR 134(E) dated 03.03.2006.
using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).

(vi) The Forms prescribed in these rules, when filed in physical form, may be authenticated by the authorized signatory by affixing his signature manually.]
6. Details of amounts
State the details of amounts remaining unclaimed for six years since becoming due for payment for the following:
(a) Unpaid dividend
(b) Unpaid application money
(c) Unpaid matured deposit
(d) Unpaid matured debentures
(e) Interest in respect of (a) to (d).
7. Relevant financial year in which amount is due for payment or redemption.

Signature of Person presenting the return    Date & Place
Certificate from auditors
Verified and found correct.
Place:         Chartered Accountant/Cost Accountant/
Date:         Company Secretary/Statutory Auditor

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 provisions of sub-sections (1) and (2) of section 205 are mandatory in nature and must be strictly complied with before declaring or paying any dividend. If a company has calculated its distributable profits without providing for depreciation and if the profit and loss account of the company does not provide for
depreciation accordingly, the balance sheet and profit and loss account of the company for a relevant year cannot be said to give a true and fair view of its state of affairs or of its profits and losses as contemplated by sections 211(1) and (2).

- 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 term 'Reserves' referred to in the Companies (Transfer of Profits to Reserves) Amendment Rules, 1976 means only 'free reserves'.
- 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, 1956 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.
1. 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. After going through this chapter, you will be able to understand:

- Definition and kinds of charge
- Distinction between charge, mortgage and pledge
- Registrable Charges
- Register of Charges
- Procedure for Registration of charges
- Inspection of Charges
- Procedure for Modification of charges
- Procedure for Satisfaction of charges

Section 124 of the Companies Act, 1956 states that “charge” includes “mortgage”. However, this definition is not adequate to know the exact nature of a charge. The precise meaning of the expression “charge” has to be derived from judicial pronouncements. However, it is a well established fact that a charge has the following essential features:

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 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 manifest by an agreement entered by him in favour of the lender, written or otherwise.
4. Prescribed particulars of every charge falling under any of the categories of charges enlisted in Sub-section (4) of Section 125 of the Companies Act, 1956, must be registered with the concerned Registrar of Companies.

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 an 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.

2. WHAT IS A MORTGAGE?

A mortgage is a legal process whereby a person, who 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.

3. 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.

4. 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.

5. 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 institution/bank 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.

6. E-FILING

The Ministry of Corporate Affairs (‘MCA’) has notified the Companies (Electronic Filing and Authentication of Documents) Rules, 2006 w.e.f. 14.9.2006 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 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.

All e-filing is required to be done through the portal on the website of MCA viz. http://www.mca.gov.in/

7. REGISTER OF CHARGES MAINTAINED IN ROC’S OFFICE

Section 130 of the Companies Act provides means to register this information about the status of a particular asset of a company.
Whereas Section 125 makes it compulsory for the companies to file with the ROC, e-form No. 8 containing particulars of every charge created by them along with a certified copy of the document by which the charge has been created. Sub-section (1) of Section 130 makes it compulsory for the ROC to keep a register containing the particulars of all the charges requiring registration.

Form No. 13 was required to be filed with ROC along with form 8, 10, and 17 until introduction of e-filing by MCA. Upon commencement of e-filing, particulars of charge are required to be filed along with—

(i) e-form No. 8 containing particulars of a charge;
(ii) e-form No. 10 containing particulars of a series of debentures, containing or giving by reference to any other instruments, any charge, to the benefit of which the debenture holders of the said series, are entitled pari passu, created by a company registered in India and also of any issue of debentures in a series; and
(iii) e-form No. 17 containing memorandum of complete satisfaction of a charge.

So, Form 13 is not required to be filed after the introduction of e-filing of forms.

(For specimen of e-form No. 8, 10 and 17, please see Part-B of this Study).

8. REGISTRATION OF PARTICULARS OF CHARGES

For enabling a person who intends to deal with a company as a secured creditor, to know whether or not the company has encumbered all or any of its properties, the Companies Act, 1956 contains provisions making it obligatory on the part of companies to file with the Registrar of Companies, for registration in the register of charges, particulars of charges and mortgages. Particulars of charges can be inspected by any interested person by online inspection and payment of the prescribed inspection fee to know the state of indebtedness and the state of the encumbered properties of the company. Registration of charges and online inspection facility of particulars of charges is a deemed notice to public about the status of assets of companies and it provides a sort of protection to the lending institutions and banks.

The Companies Act also gives a list of registrable charges. Registration of particulars of charges identifies the properties and assets which are subject to a charge. It is a constructive notice to all such persons who have either been approached by a company or who propose to lend money to the company, and who would, before lending, wish to know whether the property being offered as security is already subject to a charge or is unencumbered.

9. REGISTRABLE CHARGES

Sub-section (4) of Section 125 lays down that the following nine types of charges are registrable under this section:

1. a charge for the purpose of securing any issue of debentures;
2. a floating charge on the undertaking or any property of the company including stock in trade;
3. a charge on uncalled share capital;
4. a charge on calls made but not paid;
5. a charge on any immovable property, wherever situated, or any interest therein;
6. a charge on a ship or any share in a ship;
7. a charge on any book debt of the company;
8. a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright; and
9. a charge, not being a pledge, on any movable property of the company.

The scope of Section 125 depends on many factors, e.g., whether the rights acquired by a charge-holder in the assets or properties of the company constitutes a charge and if it does constitute a charge, is it one of the charges enumerated in the section and whether the right in the assets of the company was created by the company.

10. NOTICE OF CHARGE

Section 126 of the Act lays down that where any charge on any property of a company required to be registered under Section 125 has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the charge as from the date of such registration.

11. CONSEQUENCES OF NON-REGISTRATION OF CHARGE

According to Section 125 (1) of the Companies Act, 1956, if the prescribed particulars of a charge, which is required to be registered by a company, 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].

Every company is required to file online, eform No. 8 as prescribed in the Companies (Central Government’s) General Rules and Forms, 1956, along with certified copy of document like deed of hypothecation etc. and the prescribed filing fee, within 30 days of the creation of every charge, which is registrable under the section, containing complete particulars of the charge created by it in favour of another person. [These e-forms are to be signed by both lender and borrower, using their respective digital signatures.]

12. REGISTRATION OF CHARGES ON PROPERTIES ACQUIRED SUBJECT TO CHARGE

Sub-sector (1) of Section 127 of the act lays down that where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under the Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by the Act within thirty days after the date on which the acquisition is completed.

Provided that, if the property is situated and the charge was created, outside India, thirty days after the date on which a copy of the instrument could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for “thirty days after the completion of the acquisition” as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

13. PARTICULARS OF CHARGE IN CASE OF SERIES OF DEBENTURES

Section 128 of the Act lays down that where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall, for the purposes of Section 125, be sufficient, if they are filed with the Registrar, within thirty days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:

(a) the total amount secured by the whole series;
(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
(c) a general description of the property charged; and
(d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the Registrar, for entry in the register, particulars of the date
and amount of each issue; but an omission to do this shall not affect the validity of the debentures issued.

14. PARTICULARS IN CASE OF COMMISSION, ETC. ON DEBENTURES

According to Section 129 of the Act, where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under Section 125 and 128 shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made; but an omission to do this shall not affect the validity of the debentures issued.

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this section, be treated as the issue of the debentures at a discount.

15. ROC EMPOWERED TO GRANT EXTENTION OF TIME FOR FILING PARTICULARS

The proviso to Sub-section (1) of Section 125 lays down that the Registrar of Companies may allow the prescribed particulars and the instrument or copy as aforesaid to be filed for registration, within thirty days next following the expiry of the said period of thirty days on payment of additional fee in accordance with the guidelines for payment of fixed additional fee on belated filing of documents issued by the Ministry of Law, Justice and Company Affairs, Department of Company Affairs vide No. 14/3/87-CL-V: Press Note No. 2/95 dated 21st March, 1995. (For guidelines, please see Annexure II at the end of this study lesson)

Extension of Time by CLB

However, the facility of extension of period of 30 days is not available to the Registrar for the registration of satisfaction of charges under Section 138 of the Act.

The Company Law Board through its order dated 1/8/2007 directed as follows:

(1) In cases where there are no disputes, the Central Government is authorised to accept registration/modification /satisfaction of charge up to a period of 300 days from the dates of events.

(2) Additional fees as prescribed in terms of Section 611(2) of the Act shall be levied for the delay beyond 30 days. The Central Government shall notify a slab system of levying additional fee up to 300 days.

The aforesaid order has taken effect from the 27th October, 2007. The slab system for levy of additional fees, pursuant to para (2) of the order of the CLB referred to above, in terms of section 611(2) shall be as per Ministry’s Press note No.2 dated 21-3-1995 as may be amended from time to time.

16. ANY INTERESTED PARTY MAY FILE PARTICULARS OF CHARGE WITH ROC

Sub-section (1) of Section 134 of the Act provides that it shall be the duty of a
company to file with the Registrar for registration, the prescribed particulars of every charge created by it, and of every issue of debentures of a series, requiring registration under the Act, but registration of any such charge may also be effected on the application of any person interested therein.

Sub-section (2) lays down that where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

17. 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 chargeholder.

18. INDEX TO REGISTER OF CHARGES

Pursuant to Section 131, the registrar is required to maintain a chronological index in prescribed form (Form No. 12) and with prescribed particulars of the charges registered with him. Under rule 5 of the Companies (Electronic Filing and Authentication of Documents) Rules, 2006, the Central Government to set up and maintain a secure electronic registry in which all the documents filed electronically shall be stored. The electronic registry so set up shall enable public access and inspection of such documents as required to be in the public domain under the Act on payment of the fees as prescribed under the Act or rules made thereunder.

(For specimen of Form No. 12, please see Annexure I at the end of this Study).

19. PROCEDURE FOR REGISTRATION OF A CHARGE

A company which has passed resolutions under Section 293(1)(d) of the Companies Act, 1956, authorising its Board of directors to borrow funds for the requirements of the company and under Section 293(1)(a) of the Companies Act, 1956, 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 on the assets of the company, registered with the ROC, should follow the procedure detailed below:

To begin with, the company must ensure that the charge it is planning to get registered with the ROC falls within the categories specified in Sub-section (4) of
Section 125 of the Companies Act. For this purpose Sub-section (4) of Section 125 contains a list of registrable charges as stated earlier. The following procedural steps should be taken:

1. If the charge falls under any of the specified categories mentioned in Section 125(4), then file particulars of the charge with the concerned Registrar of Companies within thirty days of creating the charge in e-form No. 8 (containing particulars of charge) or e-form No. 10 (in the case of debenture), as the case may be.

2. Attach the following documents with e-form No. 8/10:
   (i) A certified true copy of the instrument or deed by which the charge is created or evidenced.
   (ii) In case of joint charge and consortium finance, particulars of other chargeholders.

   An attachment shall be in Portable Document Format (PDF).

3. Payment of fees can be made either offline or online. Under offline method, the payment can be made by taking the printout of pre-filled challan generated by MCA21 system and making the payment through cash/DD/cheque to authorised bank branches. 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 file it within sixty days of creating the charge after satisfying the Registrar of Companies the reasons for delay and after payment of additional fee.

5. In case the charge has been created outside India and it comprises of property situated outside India then file the particular of the charge in e-form No. 8/10 within thirty days after the date on which the instrument creating or evidencing the charge or copy thereof, could in due course of post and if despatched with due diligence, have been received in India.

6. Verify the copy of the instrument or deed mentioned above before its filing in the following manner:
   (i) If the instrument or deed creating the charge relates solely to property situated outside India, by a certificate either under the seal of the company or under the hand of the director or manager or secretary of the company or under the hand of some person interested in the mortgage or charge on behalf of any person other than the company, stating that it is a true copy.
   (ii) If the instrument or deed creating the charge relates whether wholly or partly to property situated in India, by a certificate of the director, manager or secretary of the company stating that it is a true copy or by a certificate of a public officer given under and in accordance with the provisions of Section 76 of the Indian Evidence Act, 1872.

7. E-form 8 is to be signed by the managing director or director or manager or secretary in case of an Indian Company or an authorized representative in
case of a foreign company, and/or Asset Reconstruction Company or assignee and the charge holders.

On the other hand, e-form 10 is to be signed by the managing director or director or manager or secretary in case of an Indian Company or an authorized representative in case of a foreign company and trustee of debenture holders.

In case the charge is modified in favour of the asset reconstruction company (ARC) or assignee then the e-form should also be digitally signed by such ARC or assignee. In such case, the digital signature of company representative is optional.

8. Before e-filing, e-form 10 is required to be pre-certified by Chartered Accountant or Cost Accountant or Company Secretary (in whole time practice).

9. A certificate of registration of charge will be provided by the Registrar of Companies as per Section 132 of the Companies Act, 1956.

[Specimen of the ordinary resolutions under Section 293(1)(d) and Section 293(1)(a), please see Annexures III and IV at the end of this Study].

20. RECTIFICATION BY COMPANY LAW BOARD* OF REGISTER OF CHARGES

Section 141(1) of the Companies Act 1956 lays down that the Company Law Board* (CLB), on being satisfied,—

(a) that the omission to file with the ROC the particulars—
   (i) of any charge created by a company, or
   (ii) of any charge subject to which any property has been acquired by the company, or
   (iii) of any modification of any such charge, or
   (iv) of any issue of debentures of a series, or
(b) that the omission to register any charge within the time required by the Act, or
(c) that the omission to give intimation to the ROC of the payment or satisfaction of a charge within the time required by the Act, or
(d) that the omission or mis-statement of any particular with respect to—
   (i) any such charge, modification or issue of debentures of a series, or
   (ii) any memorandum of satisfaction, or
   (iii) other entry made in pursuance of Section 138 or 139,

was accidental or due to inadvertence or due to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to
the Company Law Board 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.

According to Sub-section (3) of Section 141, where the Company Law Board 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.

**21. PROCEDURE FOR PETITION TO COMPANY LAW BOARD FOR RECTIFICATION OF ROC’S REGISTER OF CHARGES**

As stated earlier in the event of failure on the part of the borrowing company in getting the particulars of charge registered, Section 141 of the Act entitles any person interested in the charge to make an application to the Company Law Board for rectification of Register of charge or for grant of extention of time for filing the particulars of charge with the Registrar of Companies.

Petition under Sub-section (1) of Section 141 of the Companies Act, 1956 to be filed with the Company Law Board shall in Form No. 1 as prescribed in the Company Law Board Regulations 1991 along with a fee of Rs. 200/-.

The petition to the Company Law Board under Section 141 of the Companies Act, 1956, shall, as per entry No. 13 in Annexure III to the Company Law Board Regulations, 1991, be accompanied by the following documents:

1. A copy of the agreement creating, modifying the charge, as the case may be.
2. Copy of the resolution envisaged by Section 292(1)(b) or (c) and Section 293(1)(d), as may be applicable. (For specimen of Board resolution under section 292(1)(c) and company resolution under Section 293(1)(d), please see Annexures V and III respectively at the end of this study)
3. Affidavit verifying the petition.
4. Bank draft evidencing payment of the application fee.
5. Memorandum of appearance (in Form No. 5 of the CLB Regulations) along with a certified copy of Board resolution authorising the company secretary to appear before the Bench of the CLB as and when summoned or the duly executed vakalatnama in favour of an authorised representative, as the case may be.

Immediately on obtaining order of the Company Law Board, file the particulars of the charge with the ROC as per order of the Company Law Board.

**22. REGISTER OF CHARGES TO BE MAINTAINED BY COMPANIES**

Section 143 of the Act, provides that every company shall keep at its registered office a register of charges and enter therein all charges specifically affecting property

* It shall be substituted by Central Government on the commencement of Companies (Second Amendment) Act, 2002. It shall come into force after notification from Central Government.
of the company and all floating charges on the undertaking or on any property of the
company, giving in each cases—

(i) a short description of the property charged;
(ii) the amount of the charge; and
(iii) except in the case of securities of bearer, the names of the persons entitled
to the charge.

It requires the entries to be made in the register in respect of all the charges
specifically affecting property of the company as well as all floating charges on the
undertaking or on any property of the company. The requirement under this section
has nothing to do with the filing or non-filing of, or the registration or non-
registration of charges. It is also not concerned with whether a certificate of
registration of a charge has been issued by the Registrar or not.

23. COMPANIES TO KEEP AT REGISTERED OFFICE COPIES OF
INSTRUMENTS CREATING CHARGES

According to Section 136 of the Act, every company is required to keep at its
Registered Office a copy of every instrument creating any charge requiring
registration under the Act. In the case of series of uniform debentures, a copy of the
debenture of the series shall be sufficient.

24. INSPECTION OF CHARGES

Any member or creditor of a company is entitled to inspect-

(a) Instruments creating charges; and
(b) Register of Charges.

The instruments and the Register must be made available for inspection at the
registered office of the company during business hours subject to the condition that
the instrument and the Register are available for inspection for at least two hours a
day. The company can impose reasonable restrictions on the right of inspection, by
an ordinary resolution passed at a general meeting.

A company cannot charge any fee for inspection by any member or creditor.
Any person, other than a member or creditor of a company, is entitled to inspect the
Register of Charges kept in pursuance of section 143. A company can charge a fee
of not more than Rs. 10 per inspection. [Companies (Central Government’s)
General Rules & Forms, 1956, rule 21A].

Inspection in electronic mode

In the electronic era, one can access to public records pertaining to a company
through the website of Ministry of Corporate Affairs (i.e. www.mca.gov.in). After
logging to the above mentioned website, one needs to select the name of the
company and the document which one wishes to inspect. One may opt to make a
payment and thereafter the concerned document can be viewed and inspected. The
documents can be viewed from anywhere without visiting the specific ROC office.
After the payment is received by MCA, one can view the documents during the next
7 days for a maximum of 3 hours.
25. MODIFICATION OF CHARGE

According to Section 135 of the Companies Act, 1956, whenever the terms and conditions, or the extent of operation, of any charge registered under the Act are or is modified, it shall be the duty of the company to file with the Registrar, the particulars of such modification, within thirty days thereof, in e-form No. 8 as prescribed in the Companies (Central Government's) General Rules and Forms, 1956, along with the prescribed filing fee.

The section also provides that the provisions of the Act as to registration of a charge shall apply to such modification of charge which means that every company modifying any registrable charge must file particulars of every modification thereof, with the Registrar of Companies in the prescribed e-forms Nos. 8 and within the prescribed period of thirty days of the execution of the document modifying the charge and in the prescribed manner along with the prescribed filing fee.

In order to comply with the provisions of Section 135 of the Act, it is very important to know as to what modification of a charge means. Modification means any variation in the terms or conditions or extent of operation of the charge. Following are the usual terms and conditions of charges:

1. Amount secured by the charge.
2. Document evidencing the charge, viz., loan agreement, deed of hypothecation, promissory note, general power of attorney, etc.
3. Name(s), address(es) and description of the person(s) entitled to charge.
4. Collateral security, if any, given or to be given by the borrowing company to the lending institution or bank.
5. Rate of interest payable by the borrower on the borrowed money.
6. Schedule of repayment of the loan by periodical instalments.
7. Right of conversion of the loan into equity, if secured in the loan agreement and the terms of conversion, viz., on nominal value or market value and the mode of determining the market value.

In the light of the above usual terms and conditions of a charge, the following situations may be considered as modifying a charge.

Variation in interest rate

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. (However, it may be covered by the term of the original charge by adding the words “or such rates as may be charged from time to time”).

However, if the rate of interest has been fixed on the loan documents, at a specified percentage above the bank rate as notified by the RBI, any change arising as a result of any variation in the bank rate would not amount to a change in the ‘term’ of the charge under Section 135 of the Act as such and hence in such a case no return need to be filed under the said section.

In other cases of variation of rate of interest, Section 135 would be applicable and e-form No. 8 would be required to be filed with the ROC, unless the change is
consequent upon a change in the bank rate notified by the RBI [Letter No. 8/6/81-CL-V dated 14th April, 1981].

26. PROCEDURE FOR MODIFICATION OF EXISTING CHARGE

(1) If any term or condition or the extent of the operation of any charge registered by the company under Section 125 is modified, then particulars of such modification should be sent to the concerned Registrar of Companies in e-form No. 8 along with Index No. of original charge registered with ROC alongwith requisite filing fee, within 30 days of the modification.

(2) Attach with e-form No. 8 a certified true copy of the agreement or other instrument modifying the existing charge and also a certified true copy of the registration certificate of the charge already registered with the Registrar of Companies and now being modified. All attachment shall be in pdf format.

(3) e-form No. 8 and the instrument modifying the charge shall be digitally signed on behalf of the company and/or ARC or assignee and the chargeholder.

27. SATISFACTION OF A CHARGE

Section 138(1) of the Companies Act, 1956 requires every company to give to the Registrar of Companies, an intimation of the payment or satisfaction in full, of any charge relating to the company and requiring registration under the Act, within thirty days from the date of such payment or satisfaction.

This intimation is to be given in e-form 17, which has been prescribed for the purpose in the Companies (Central Government's) General Rules and Forms, 1956, along with the prescribed filing fee. The form should be digitally signed by the borrowing company and the chargeholder.

In terms of the Rule 6 of the Companies (Central Government's) General Rules and Forms, 1956 amended by Notification No. GSR 283 (E) dated 21st March 1995 where by Form No. 8, 10 and 17 are required to be signed on behalf of the Company and the chargeholder, the Sub-sections (2), (3) and (4) to Section 138 have become redundant.

Only complete satisfaction of charge to be intimated to ROC

As is apparent from the wording of Section 138, it is only the complete satisfaction of a charge, of which due intimation is required to be given by the company to the ROC. Partial satisfaction need not be intimated. However, if the charge has been satisfied by the borrower in parts, it is only at the time of payment of the last instalment of the loan or the debt, when complete satisfaction of the charge would have to be intimated to the ROC.

28. PROCEDURE FOR SATISFACTION OF A REGISTERED CHARGE

(1) File electronically with the concerned Registrar of Companies an intimation of satisfaction of charge in e-form No. 17, within 30 days of making full payment or within 30 days of full satisfaction of the charge, alongwith requisite filing fee.

(2) Attach with e-form No. 17 a certified true copy of the registration certificate of the charge given by the Registrar of Companies for which the intimation of
satisfaction is now being given and a certified true copy of the document satisfying the charge. Attachments shall be in pdf format.

(4) e-form No. 17 and the instrument evidencing satisfaction of charge in full shall be digitally signed on behalf of the company by managing director or manager or secretary in case of an Indian Company or an authorized representative in the case of a foreign company and the charge-holder.

(5) e-form No. 17 is required to be pre-certified by Chartered Accountant or Cost Accountant or Company Secretary (in whole-time practice) by digitally signing the e-form.

ANNEXURES

ANNEXURE I

FORM NO. 12

Registration No. of Company......................

THE COMPANIES ACT, 1956

*Chronological Index of Charges

[Pursuant to Section 131]

<table>
<thead>
<tr>
<th>Serial Number of Reg-</th>
<th>Date of Registration</th>
<th>Number of Company</th>
<th>Name of Company</th>
<th>Amount Secured by Charge</th>
<th>Number of Debentures</th>
<th>First Issue Date</th>
<th>Further Issue Date</th>
<th>Other Charges if any</th>
<th>Party by whom registered</th>
<th>Name and Signature of Persons entitled to the charge or of the Trustees for the Debenture Holders</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
<td>(9)</td>
<td>(10)</td>
<td>(11)</td>
</tr>
</tbody>
</table>

* "Charge" includes mortgages – See Section 124.
** "Persons entitled to the charge" includes mortgages.

ANNEXURE II


The Department of Company Affairs (now Ministry of Corporate Affairs) had earlier streamlined and standardised the additional fee under Section 611(2) of the Companies Act, 1956 in June, 1994 in respect of companies having authorised share capital upto Rs. 1 crore for delays upto one year in case of Form No. 5 under Section
97 of the Act relating to increase in the authorised share capital and for delays upto 6 months in respect of other documents filed by companies with the Registrars of Companies.

This liberalised procedure is working well. As per recommendations made by the Review Committee (Joshi Committee) set up by the Ministry of Corporate Affairs, it has now been decided that the standardisation of additional fee be extended to all the companies irrespective of their authorised share capital and period of delay. Accordingly, the levy of fixed rates of additional fee will be regulated according to the following table with effect from 1st May, 1995.

Table

Fixed rates of additional fee under Section 611(2) of the Companies Act, 1956

(As per Circular No. 2/95 (F.No. 14/3/87-CL.V), dated 31st March, 1995)

<table>
<thead>
<tr>
<th>Documents</th>
<th>Period of delay</th>
<th>Fixed rate of additional fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>(a) Form No. 5 under Section 97 relating to increase in authorised Share capital</td>
<td>(i) Upto 1 year</td>
<td>2 percent p.m. on the fee payable under para I.3 or II.11 of Sch. X as the case may be.</td>
</tr>
<tr>
<td></td>
<td>(ii) More than one year</td>
<td>2.5 per cent p.m. on the fee payable under para I.3 or II.11 of Sch. X as the case may be.</td>
</tr>
<tr>
<td>(b) Other documents.</td>
<td>(i) upto 30 days.</td>
<td>Two times of normal Filing fee.</td>
</tr>
<tr>
<td></td>
<td>(ii) More than 30 days and upto 60 days</td>
<td>Four times of normal filing fee.</td>
</tr>
<tr>
<td></td>
<td>(iii) More than 60 days and upto 90 days</td>
<td>Six times of normal filing fee.</td>
</tr>
<tr>
<td></td>
<td>(iv) More than 90 days</td>
<td>Nine times of normal filing fee.</td>
</tr>
</tbody>
</table>

This table shall be applicable from 5-12-2010.

Fixed rates of additional fee specified in column 3 of the above Table, shall be paid by the companies at the time of filing the documents. Documents filed belatedly will not be accepted by the Registrar without payment of additional fee.

Registrars of Companies will not now be required to issue show cause notices/demand notices for late filing of documents by the companies. The aforesaid liberalised procedure will be convenient not only to the companies, but will also result in taking the documents on record expeditiously for public inspection.
Specimen of ordinary resolution under Section 293 (1) (d) authorising the Board to borrow for company’s business upto a limit beyond paid up capital and free reserves

Ordinary resolution

“RESOLVED that pursuant to the provisions of Section 293(1)(d) and other applicable provisions, if any, of the Companies Act, 1956, and subject to such approvals 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 sums of money as the Board may deem fit for the purpose of the business of the company, notwithstanding that the moneys 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 Rs............. (Rupees.........................) at any one time.”

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on ....................., passed a resolution under Section 293 (1) (d) fixing the maximum amount of rupees twenty crore, 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 twenty crore 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 293(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 Ordinary Resolution;

“RESOLVED that consent of the Company be and is hereby accorded in terms of Section 293(1) (a) and other applicable provisions, if any, of the Companies Act 1956 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 Rs. 1000.00 lacs and Rs. 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 of 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.”

2. To consider and, if thought fit, to pass with or without modification(s), the following as Ordinary Resolution;

“RESOLVED that consent of the Company be and is hereby accorded in terms of Section 293(1)(a) and other applicable provisions, if any, of the Companies Act 1956 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.”

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 Rs. 1000.00 lacs and Rs. 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 293 (1) (a) of the Companies Act, 1956 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 293(1)(a) of the Companies Act, 1956.

The Directors recommend the resolutions for approval of the shareholders as ordinary resolutions under Section 293(1)(a) of the Companies Act, 1956.

None of the Directors are concerned or interested in the proposed resolutions.

ANNEXURE V

Specimen of the Board Resolution under Section 292(1)(c) to borrow Moneys otherwise than on Debentures 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 Rs............. 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 Rs............. (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 Rs............. (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 8 through MCA portal giving complete
  particulars together with the instrument creating charge within 30 days of creation
  of charge under Section 125 of the Companies Act, 1956.

• For intimating modification of charge, e-form 8 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.

• Section 128 provides for filing with the Registrar the particulars specified in
  clauses (a) to (d) in case of series of debentures entitling holders pari passu.
  These particulars have to be filed in e-form 10 within 30 days of the execution of
  the deed containing the charge or, if there is no such deed, after the execution of
  any debenture of the series.

• 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.

• Non-registration does not render the transaction void or the debt non
  recoverable, but that the security created by the charge is void against the
  liquidator and other creditors.

• 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 CLB/Central Government* for extension of time for filing particulars of charges to ROC for registration.

Any person interested in the charge can make an application to the Company Law Board for rectification of Register of charge.

For intimating satisfaction of charge to ROC, e-form 17 is required to be filed within 30 days from the date of such satisfaction.

*After enforcement of Companies (Second Amendment) Act, 2002.

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**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 resolution to borrow for company's business upto 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. Draft resolution for borrowing money otherwise than on debentures within the authority of the Board.
6. What are the consequences of non registration of charge?
7. Distinguish between:
   (i) Charge and Mortgage
   (ii) Charge and Pledge.
8. E-governance is stakeholders friendly with respect to charges. Comment.
LEARNING OBJECTIVES

This lesson explains provisions of the Companies Act, 1956 in relation to inter-corporate loans and investments. It also gives a detailed procedure for Inter-Corporate Loans/Investment/Giving Guarantee/Providing Security. At the end of the lesson, you should be able to understand:

- Provisions of Inter-corporate loans and investments.
- Procedure for Inter-corporate loans and investments.
- Loans to members of Producer Company.
- Investment in other companies, formation of subsidiaries etc. in case of Producer Company.

1. INTRODUCTION

The Companies (Amendment) Act, 1999, which came into force with retrospective effect from 31st October, 1998, made far-reaching changes in the provisions relating to Inter-corporate loans and investments, in the Companies Act, 1956. The Amendment Act has done away with the concept of “companies under the same management and companies under the same group”. All the companies are now on the same footing in the matters of inter-corporate loans and investments, giving guarantees and providing security.

Prior to the coming into effect of the Companies (Amendment) Act 1999, the Companies Act, 1956 had Section 370 dealing with “loans etc. to companies under the same management” and Section 372 dealing with “purchase by company of shares, etc. of other companies”.

The Amendment Act made Section 370 inoperative by inserting Sub-section (6) thereon which reads: “Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Act, 1999” (w.e.f. 31.10.1998).

Similarly, the Amendment Act also made Section 372 inoperative by inserting Sub-section (15) therein which reads: “Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Act, 1999” (w.e.f. 31.10.1998).

In order to rationalise the provisions in the Act relating to inter-corporate loans,
Section 372A of the Companies Act provides as under:

(1) No company shall, directly or indirectly:
   (a) make any loan to any other body corporate;
   (b) give any guarantee, or provide security, in connection with a loan made
       by any other person to, or to any other person by, any body corporate;
   and
   (c) acquire, by way of subscription, purchase or otherwise the securities of
       any other body corporate,

exceeding sixty per cent of its paid-up share capital and free reserves, or
hundred per cent of its free reserves, whichever is more.

(2) However, a company may make loan, give any guarantee or provide
    security and/or make investment in aggregate exceeding the aforesaid
    limits if the same is previously authorised by a special resolution passed in
    a general meeting.

(3) The Board of directors may give guarantee without being previously
    authorised by a special resolution if :
    (a) a resolution is passed in the meeting of the Board authorising to give
        guarantee in accordance with the provisions of the Section 372A.
    (b) there exists exceptional circumstances which prevent the company
        from obtaining previous authorisation by a special resolution passed in
        a general meeting for giving a guarantee, and
    (c) the resolution of the Board is confirmed within twelve months, in a
        general meeting of the company or the annual general meeting held
        immediately after passing of the Boards resolution, whichever is earlier.

(4) Notice of such resolution shall indicate:
    (i) the specific limits;
    (ii) the particulars of body corporate in which the investment is proposed to
         be made or loan or security or guarantee to be given;
    (iii) the purpose of the investment, loan, security or guarantee;
    (iv) specific sources of funding;
    (v) any other detail which is material.

(5) The resolution for loans/investments is to be passed at a meeting of the
    Board with consent of all the directors present at the meeting.

(6) The company has to obtain prior approval of the public financial institution,
    where any term loan is subsisting.

(7) However, the prior approval of Public Financial Institution shall not be
    required where the aggregate of loans and investments so far made, the
amounts for which guarantee or security so far provided alongwith proposed investments, loans, amount of security or guarantee does not exceed the limits of sixty percent as specified above, if there is no defaults in repayment of loan instalments or payment of interest thereon as per terms and conditions of such loan.

(8) No loans to any body corporate shall be made at a rate of interest lower than the prevailing bank rate.

(9) No company, which has defaulted in complying with the provision of Section 58A, shall, directly or indirectly make loan, investments, security or guarantee till such default is subsisting:

This prohibition will operate in respect of any default under Section 58A and the rules made thereunder and not only the default of repayment of deposit or payment of interest thereon.

(10) The Central Government may prescribe guidelines for the purposes of this Section.

(11) For the purposes:

(a) “Loan” includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) “Free reserves” means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

(12) Nothing contained in Section 372A shall apply:

(a) to any loan made, any guarantee given or any security provided or any investment made by:

(i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities;

(ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities;

(iii) a private company, unless it is a subsidiary of a public company;

(b) to investment made in shares allotted in pursuance of clause (a) of Sub-section (1) of Section 81.

(c) to any loan made by a holding company to its wholly owned subsidiary;

(d) to any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary;

(e) to acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary.

Income from business is not the criterion for judging whether a company is to be regarded as an investment company for the purposes of section 372A. The
criterion should be as to what the principal business of the company is and the balance sheet should show as to what the principal business of the company is. It was held in the case of Assistant Registrar v. Kothari (HC) (1992) 75 Comp Cas 688 (Mad): (1993) 10 CLA 80 (Mad), that where the company, whose memorandum contains investment activity as a main object and whose principal business, even after diversification into other activities, continues to be investment in shares and securities, it will be regarded as an investment company, despite the fact that there is a reduction in investment in shares and securities.

2. PROCEDURE FOR INTER-CORPORATE LOANS/INVESTMENT/GIVING GUARANTEE/PROVIDING SECURITY

A company which proposes to make loan/give guarantee/provide security/make investment in another body corporate must follow the procedure detailed below:

1. Issue notice for Board meeting in writing to every director for the time being in India and to every other director at his usual address in India as per the provisions of Section 286 of the Companies Act.

2. Hold Board meeting to consider the proposal to give loan/guarantee or provide security/make investment and—

   (i) if the aggregate amount of proposed loan/guarantee/security/investment is within the limits specified in the first proviso to Sub-section (1) of Section 372A of the Act, then pass the resolution with all the directors present at the meeting consenting specifying the limit for such loan/guarantee/security/investment.

   (ii) if the aggregate amount of proposed loan/guarantee/security/investment exceeds the specified limits under Section 372A then fix time, date and venue for holding general meeting to pass the special resolution thereat in that regard.

If the Board wants to give guarantee without being previously authorised by a special resolution then—

   (a) a resolution is required to be passed in a Board meeting to give guarantee as per Section 372A;

   (b) there must exist exceptional circumstances which prevent the company from obtaining previous approval by a special resolution; and

   (c) the Board resolution is required to be confirmed within 12 months in a general meeting of the company or the annual general meeting held immediately after passing of the Board resolution, whichever is earlier.

If your company is a listed company then have the Special Resolution mentioned above passed through postal ballot for giving loans or extending guarantee or providing Security. [Section 192A read with Rule 4(g) of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001]

3. Draft the notice of the special resolution indicate therein clearly the following—

   (a) specific limits;
(b) particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee is to be given;
(c) the purpose of investment, loan, security or guarantee;
(d) specific sources of funding;
(e) other details.
4. Get the aforesaid notice and its relevant Explanatory Statement approved by the Board.
5. Issue notice in writing at least twenty one clear days before the date of the General Meeting proposing the special resolution with suitable explanatory statement.
6. In case of listed companies, send three copies of the notice to each Stock exchange, where shares of the company are listed.
7. Hold the General meeting and pass the special resolution.
8. In case of listed company, forward to the Stock exchanges where the shares of the company are listed, copy of the proceedings of the general meeting.
9. File the special resolution in e-form 23 along with the explanatory statement with the concerned Registrar of companies within thirty days of passing the Special Resolution after paying the requisite fee prescribed under Schedule X to the Companies Act, 1956.
Specifically indicate in the Explanatory Statement to the resolution the specific Securities in which the company is proposed to invest the amount.
10. Ensure that approval of the Public Financial Institution(s) has been obtained before implementing the proposal if the company has taken any term loan from any one of the financial institutions referred to in Section 4A and that term loan is subsisting except in the following situation:
   (i) where the aggregate of the loans and investment so far made, the amounts for which guarantee or security so far provided to for in all other bodies corporate, alongwith the investments, loans, guarantee or security proposed to be made does not exceed the limits of 60% as specified in Sub-section (1); and
   (ii) there is no default in repayment of loan instalments or payment of interest thereon as per the term and condition of such loan to the Public Financial Institution.
11. Ensure that company has not defaulted in complying with the provisions of Section 58A of the Companies Act, 1956.
12. Also ensure that loan to any body corporate is not made at the rate of interest lower than the prevailing bank rate of interest being the standard rate made public under Section 49 of the Reserve Bank of India Act, 1934.
13. Follow the guidelines/rules, if any, prescribed by the Central Government for the purposes of Section 372A.
14. The officers authorised for this purpose should comply with all formalities like execution of documents, remittance of money etc.
15. Enter the following particulars in respect of every investment or loan made, guarantee given or security provided by the company in relation to any body corporate in a register kept for such purpose in chronological order:

(i) the name of the body corporate;
(ii) the amount, terms and purpose of the investment or loan or security or guarantee;
(iii) the date on which the investment or loan has been made;
(iv) the date on which the guarantee has been given or security has been provided in connection with a loan.

16. The above said entries are to be made within seven days of the making of such investment or loan or the giving of such guarantee or the provision of such security.

[Specimen of Board resolution and special resolution at General meeting for inter corporate loan etc. and special resolution confirming Board resolution for providing security are given at Annexure I, II and III respectively to this study. Specimen of Board resolution and special resolution for making inter-corporate investments in securities are given at Annexure IV and V respectively to this study].

3. LOAN TO MEMBERS OF PRODUCER COMPANY

Companies (Amendment) Act, 2002 has inserted provisions as regards Loans to members of Producer Company.

Section 581ZK provides that the Board may, subject to the provisions made in articles, provide financial assistance to the members of Producer company by way of—

(a) credit facility, to any member, in connection with the business of the Producer company, for a period not exceeding six months.
(b) loans and advances, against security specified in articles to any member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances.

However, any loan or advance to any director or its relative shall be granted only after the approval by the members in general meeting.

4. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES ETC. IN CASE OF PRODUCER COMPANY

As per Section 581ZL, the general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the government or co-operative or scheduled bank or in such other mode as may be prescribed. Any Producer Company may for promotion of its objectives acquire the shares of another Producer Company.

Any Producer company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary
company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer company by special resolution in this behalf.\(^1\)

All investments by a Producer Company may be made as such investments are consistent with the objects of the Producer Company. The Board may, with the previous approval of members by a special resolution, dispose off any of its investments referred to above.\(^2\) The Producer Company shall maintain a register containing particulars of all investments. The register shall be kept at the registered office of the Producer Company and shall be open to inspection by Members.

**ANNEXURES**

**ANNEXURE I**

**SPECIMEN OF BOARD RESOLUTION FOR MAKING LOAN TO ANOTHER COMPANY**

RESOLVED that pursuant to the provisions of Section 372A and other applicable provisions, if any, of the Companies Act, 1956 and subject to the approvals of the shareholders of the Company and IDBI/ICICI/IFCI, lending institutions, as may be required, the company do make secured/unsecured loan(s) of not exceeding Rs. 100 lakh on such terms and conditions as to security, period of repayment, rate of interest not lower than the prevailing bank rate to M/s ABC Ltd. having registered office at ...................... promoted by the company to meet funds requirements due to overrun in the project cost, out of its own internal accruals and not from borrowed funds and that Mr. ...................... Managing Director, Mr. ................. Director and Mr............... Company Secretary be and are hereby authorised severally to do all acts, deeds and things in connection therewith or incidental thereto.

**ANNEXURE II**

**SPECIMEN OF SPECIAL RESOLUTION AUTHORISING BOARD TO MAKE LOAN TO OTHER COMPANIES**

“RESOLVED that pursuant to Section 372A and other applicable provisions, if any, of the Companies Act 1956 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

---

1. A producer company, either by itself or together with its subsidiary, may make investment in the shares of any other company, which may not be a producer company and/or not related to the promotion of its objects, up to a ceiling of 30% of the aggregate of its paid up capital and free reserves.

   In case the producer company wishes to invest in excess of 30%, as stated above, it can do so subject to the prior approval of Central Government and a special resolution passed at the general meeting of the members in this behalf.

2. A producer company may dispose of any or all of its investments, made in its subsidiaries or in joint ventures and other inter-corporate investments in companies not being producer companies, with the previous approval of its members through a special resolution passed at a general meeting in this regard.

   The section does not put any restriction on disposal of investments made under sub-section (2) of section 581ZL of the Act in other producer companies.
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 by and associated with the company 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:-

<table>
<thead>
<tr>
<th>Company</th>
<th>Investment in Equity shares</th>
<th>Loans</th>
<th>Guarantee/Security</th>
<th>Overall limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>WML Ltd.</td>
<td>1000.00</td>
<td>400.00</td>
<td>1200.00</td>
<td>2200.00</td>
</tr>
<tr>
<td>SPP Ltd.</td>
<td>Nil</td>
<td>100.00</td>
<td>350.00</td>
<td>400.00</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 deem 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.”

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 exceeds the limits provided in Section 372A of the Companies Act 1956. The company will have to make investments/loans from its internal accruals to, and/or provide guarantee(s) or security(ies) for the loan(s) made to WML Ltd. and SPP Ltd., promoted by and associated with the company to meet their temporary working capital requirements.

The Board of Directors at 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 Shri............ and Shri............ who are also Directors on the Board of WML (Ltd.) are concerned or interested in the resolution.

ANNEXURE III

SPECIMEN OF SPECIAL RESOLUTION CONFIRMING BOARD RESOLUTION OF GIVING GUARANTEE

“RESOLVED that pursuant to Section 372A and other applicable provisions, if any, of the Companies Act, 1956 or any modification or re-enactment thereof, the
guarantee of the company for Rs. 5 crore furnished by the Chairman & Managing Director of the Company as per the resolution passed in the meeting of the Board of directors of the company held on .................. to The Hongkong and Shanghai Banking Corporation Ltd., New Delhi, for the Banking facilities granted to WML Ltd., in lieu of the guarantee for Rs. 5,61,66,250.00 furnished earlier by the company, be and is hereby confirmed and approved.”

Explanatory Statement

The Board of directors of the company at its meeting held on .................. discussed the request of WML Ltd. promoted by the company for giving its corporate guarantee for Rs. 5 crore to The Hongkong and Shanghai Banking Corporation Ltd., New Delhi for the banking facilities granted to WML Ltd., in lieu of the guarantee of the company for Rs. 5 crore furnished earlier by the company.

The Board was satisfied with the existence of the exceptional circumstances i.e. emergent need of funds by WML Ltd., prevented the company from obtaining previous authorisation by a Special Resolution to be passed in a General Meeting for giving such guarantee. Accordingly, the Board authorised the Chairman & Managing Director of the company to furnish the guarantee as requested by WML Ltd.

The Board of directors recommends the resolution as set out in the notice for confirmation of the shareholders.

None of the directors save and except Shri L.K. and Shri A.K. who are also directors on the Board of WML Ltd. are concerned or interested in the resolution.

ANNEXURE IV

SPECIMEN OF BOARD RESOLUTION FOR INTER-CORPORATE INVESTMENTS

RESOLVED unanimously that pursuant to the provisions of Section 372A and other applicable provision, if any, of the Companies Act, 1956 and subject to the approvals of the shareholders of the company and financial institutions as may be required, the company do make investment of not exceeding Rs. 100 lakh in equity shares of (i)....................... Ltd. (ii)....................... Ltd. and (iii)....................... Ltd. which propose to make initial Public offerings during the second quarter ending.................., 2010 and Mr....................... managing director, Mr....................... director and Mr....................... Company Secretary be and are hereby authorised severally to sign applications and other papers as may be required and to do all acts/deeds and things in connection therewith or incidental thereto.

ANNEXURE V

SPECIMEN OF SPECIAL RESOLUTION AUTHORISING THE BOARD TO ACQUIRE SECURITIES OF OTHER COMPANIES

RESOLVED THAT—

(i) pursuant to Section 372A read with Section 292(1)(e) and other applicable
provisions, if any, of the Companies Act, 1956 and other applicable laws, the Board of directors of the company be and is hereby authorised to acquire by subscription, preference or equity shares in (i)........................ Limited, (ii)............................ Limited and (iii)..................... Limited for the sum in aggregate not exceeding Rs. 100 lakh under the authority of this resolution together with the amounts of the securities of other companies already acquired, loans already made to other bodies corporate, amounts of security already provided and guarantees already given in connection with loans made by other persons to, or to other persons by, the company, exceed the limits prescribed in Section 372A of the Act, i.e. sixty per cent of the paid up capital and free reserves of the company or one hundred percent of its free reserves whichever is more.

(ii) the Board of directors of the company be and is hereby authorised 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

The company is associated with several bodies corporate by way of participation in their equity share capital and management and/or by having regular dealings with them for purchase and supply of substantial quantities of raw materials, consumable stores, packing material and other products. By virtue of such association, the company is sometimes called upon to assist these bodies corporate by way of investment in their equity share capital or in preference shares. The Board of directors considered desirable in the interest of the company to invest in equity shares of the companies mentioned in the resolution.

At times the Board may have to invest in the equity shares of these associate companies, the aggregate whereof, together with the investments already made, loans already given, guarantees already given and security already provided by the company, may exceed the limits prescribed in Section 372A of the Act, i.e. sixty per cent of the paid up capital and free reserves of the company or one hundred percent of its free reserves whichever is more for which the company’s approval is required.

The proposed resolution seeks the company’s authority for the purpose, which the shareholders are requested to approve.

None of the directors save and except Mr. .................. and Mr.................... directors of the company are concerned or interested in the proposed resolution to the extent of their directorship/membership in the companies of which equity shares are proposed to be acquired.
LESSON ROUND-UP

- The power to invest the funds of the company is the prerogative of the Board of Directors. However, that the Board may not misuse its powers, the Companies Act, 1956 contains provisions for restrictions on investments that a company can make and loans it can provide. Restrictions are also placed on the guarantees which the company can give or security it can provide for a loan.
- Approvals for making investments and loans would have to be taken in accordance with the specific provisions of the Companies Act. A blanket approval of the shareholders for the purpose would not suffice.
- The Companies Act provides for the particulars to be provided in the register of loans made, guarantees given, securities provided and investments made and the manner in which it is to be kept.
- There are certain exemptions wherein these provisions would not be applicable.
- In case of Producer Companies, the Board may provide financial assistance to the members by way of credit facility and loans and advances but subject to the provisions in the articles.
- The general reserves of any Producer Company shall be invested to secure the highest returns from approved securities, fixed deposits etc.
- Any producer company may subscribe to the share capital of any body corporate to enter into any agreement or for forming a subsidiary for promoting its objects.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Draft a resolution for making inter corporate investments within the prescribed limit.
2. What are the particulars to be entered in the register maintained in respect of investment or loan made, guarantee given or security provided by company?
3. Explain the provisions regarding loans to members of a Producer company.
4. State the particulars to be given in the notice of the special resolution.
5. What is the procedure adopted by the Board at its meeting for making intercorporate loans and investments etc.?
STUDY XVI
FILLING AND FILING OF RETURNS AND DOCUMENTS

LEARNING OBJECTIVES

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. After going through this chapter, you will be able to understand:

- 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
- 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

1. INTRODUCTION

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. MCA-21 is an ambitious e-governance initiative of the Government of India that resulted into 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 permitted the ministry to concentrate more on policy matters.
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”.

Filling 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.

2. 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 Government's) 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. A table containing the forms is given as *Annexure I* at the end of the study briefing purpose of each filing.

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. 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.

3. 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, later it can not be changed in the office of RoC. At the most additional form can be filed, which is termed as ‘Revised Filing’.

* Specimen of the e-forms are given in Part-B of this study. E-forms are at times updated by Ministry of Corporate Affairs. Updated e-forms may be downloaded from mca website: www.mca.gov.in
4. IMPORTANT TERMS USED IN E-FILING

Pre-fill

Pre-fill is a 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 has 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 “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 an 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**

Some times the applicant is required to fill up the country code in the e-Form. This is available in the instruction kit. However, for the information of students it is reproduced in *Annexure II*.

**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. List enclosed at *Annexure III*.

**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 more 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 pre-scrutiny.

**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 lead 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 MyMCA 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 eForm 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 eform. Re-submission does not require any payment, if done within prescribed time (30 days in case of form 1A and 60 days in case of other forms). The documents that were uploaded during submission of eForm 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 eForm Upload button under eForms tab, for offline filing of e-Form. The Offline eForm 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 eForm for resubmission. A progress bar shows the extent of uploading process.
5. The eForm 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.

This pre-certification is to be carried out by inter-alia, Company Secretaries in whole-time practice. Pre-certification of the following e-Forms by a practising professional is mandatory:


B. e-Form under Companies (Declaration of Dividend out of Reserves) Rules, 1975.

C. e-Form for application for approval for declaration of dividend out of reserves pursuant to Section 205A (3).


E. Form No.1 relating to statement of amounts credited to Investor Education and Protection Fund.

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. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under section 628 of the Companies Act, 1956 besides disciplinary action by the Institute which issued the Certificate of Practice.

5. 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 a 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 filling 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.
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.

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.

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.

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.

After the filling part is complete, the e-Form is ready for submitting into the MCA central documentary repository.

### 6. 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, 1956 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>Balance Sheet</td>
<td>Form 23AC to be filed by all companies.</td>
</tr>
<tr>
<td>2.</td>
<td>Profit and Loss Account</td>
<td>Form 23ACA to be filed by all companies.</td>
</tr>
<tr>
<td>3.</td>
<td>Annual Return</td>
<td>Form 20B to be filed by companies having share capital.</td>
</tr>
<tr>
<td>4.</td>
<td>Annual Return</td>
<td>Form 21A to be filed by companies without share capital.</td>
</tr>
<tr>
<td>5.</td>
<td>Compliance Certificate</td>
<td>Form 66 to be filed by companies with paid up capital between Rs.10 lacs to Rs.5 crores.</td>
</tr>
</tbody>
</table>

**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 e-forms.
- 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 prescrutinised 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 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 application and mobilization of fund are not required.

— The attachments to be filed with the e-form are:

(a) copy of balance sheet duly authenticated as per Section 215 along with other documents (in Pdf converted format);
(b) Statement of the fact and reasons for not having adopted balance sheet in the annual general meeting (AGM);

(c) Statement of the fact and reasons for not holding the annual general meeting (AGM);

(d) Optional attachments- if any.

— After the eForm has been filled, click the Prescrutiny button to prescrutinize the eForm. If the eForm is not pre-scrutinized, it shall be rejected when you attempt to upload the eForm.

— This eForm shall be taken on record through electronic mode without any processing at the office of Registrar of Companies. Ensure that all particulars in the eForm are correct as per the balance sheet to be attached. There is no provision for resubmission of this eForm.

— Balance sheet and other documents attached with the eForm 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 ODF format and attach with the eForm. 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 eForm. 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 eForm has been filled, click the Prescrutiny button to prescrutinize the eForm. If the eForm is not pre-scrutinized, it shall be rejected when you attempt to upload the eForm.

- This 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 as per the profit and loss account to be attached. There is no provision for resubmission of this eForm.

- Profit and loss account attached with the eForm 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 eForm.

**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.

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 20B - Form for filing annual return by a company having a share
capital with the Registrar

— The information to be provided in the eForm 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 eForm has been filled, click the Prescrutiny button to pre-
scrutinize the eForm. If the eForm is not prescrutinised, it shall be rejected
when you attempt to upload the eForm.

— This 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 as per the annual return. There is no provision for
resubmission of this eForm. No attachment is allowed to be submitted
through the addendum service in respect of this eForm.

— Please ensure that all required attachments have been attached before
uploading this eForm 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:

(a) 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).

(b) If any extension is granted for the financial year or AGM – Approval
letter for extension of financial year or annual general meeting.

(c) 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
code 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 prescrutinised

Following dates are entered in the prescrutinised Form 20B

- Financial Year – 31.03.2008
- Actual date of AGM – 31.11.08
- Due date of AGM – 30.09.2008

Please note that Actual date of AGM entered in form 23AC (31.11.08) is different from date entered in already pre-scrutinised form 20B (31.10.2008). 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 the for being prescrutinised.

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 – 31.03.2008
- Actual date of AGM – 31.10.2008
- Due date of AGM – 30.09.2008

At the time of uploading already pre-scrutinized Form 23AC with following dates:

- Financial Year – 21.03.2008
- Actual date of AGM – 31.11.2008
- Due date of AGM – 30.09.2008

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 may be.

- After the eForm has been filled, click the Prescrutiny button to prescrutinise the eForm. If the eForm is not prescrutinised, it shall be rejected when you attempt to upload the eForm.

- This 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 as per the records.

- No attachment can be submitted through the addendum service in respect of this eForm.

- 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- 31.03.2008
- Actual date of AGM- 31.10.2008
- Due date of AGM- 30.09.2008

If you pre-scrutinize Form 23AC with the following dates:

- Financial Year- 31.03.2008
- Actual date of AGM- 31.11.08
- Due date of AGM- 30.09.2008
Please note that Actual date of AGM entered in form 23AC (31.11.08) is different from date entered in already pre-scrutinized Form 21A (31.10.2008). 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 prescrutinise Form 23AC, the pre scrutiny of Form 21A shall be rejected as it onltained 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- 31.03.2008
- Actual date of AGM- 31.10.2008
- Due date of AGM- 30.09.2008

At the time of uploading already pre-scrutinised Form 23AC with following dates:
- Financial Year- 31.03.2008
- Actual date of AGM- 31.11.2008
- Due date of AGM- 30.09.2008

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 – 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 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. 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:
  2. 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 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 as per the compliance certificate to be attached. There is no provision for resubmission of this eForm.

* No attachment can be submitted through the addendum service in respect of this eForm.

7. IMPORTANT ASPECTS TO BE CONSIDERED AT THE TIME OF E-FILING OF FORMS

E-Form 1 – Application and declaration for incorporation of a company

— This form is required to be filed pursuant to section 33 (1) and (2) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Name of the company.
  — Name of the state in which the company is to be registered.
  — Name of the office of the Registrar of Companies in which the company is to be registered.
  — Capital structure of the company.
  — Details of number of members, in case of company not having share capital.
  — Main division of the industrial activity of the company.
  — Particulars of Promoters.
  — Particulars of payment of stamp duty.

— The following attachment are required to be filed with form:
  — Memorandum of association
  — Articles of association
  — Annexure containing details of subscribers
  — No objection certificate in case there is change in promoters (first subscribers to the MOA)
  — Optional attachment(s) – if any

— The form should be digitally signed by
  — A person named in the articles as director or manager or secretary of the company. OR
  — An advocate or attorney or pleader or company secretary or chartered accountant (in whole time practice)

— The form does not require pre-certification.

— It is suggested that eForm 18 and eForm 32 should be filed together at the time of filing of eForm 1.

— Stamp duty on eForm 1, Memorandum of Association (MoA) and Article of Association (AoA) can be paid electronically through the MCA portal and in such case submission of physical copies of the uploaded eForm 1, 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. In respect of the States from whom the authorization is yet to be received, the company will continue to pay stamp duty outside the MCA portal.

— In case stamp duty is not paid electronically through MCA portal, it is required to deliver simultaneously the original stamped physical copies of the uploaded eForm 1, MoA and AoA along with a copy of challan/receipt in the concerned office of ROC failing which such eForm shall be put into “Waiting for user clarification” in term of Regulation 17 of the Companies Regulations, 1956.

— 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.

E-Form 1A – Application form for availability or change of name

— This form is required to be filed pursuant to section 20 and 21 of the Companies Act, 1956.

— The important particulars required to be filled in the form with regard to Availability of name are:

— Details of applicant such as DIN or PAN or passport number, name, address, city, state, country, e-mail ID and phone no.

— Type of company.

— Name of the state in which the proposed company is to be registered.

— Name of the office of the Registrar of Companies in which the proposed company is to be registered.

— Details of promoters (proposed first subscribers to Memorandum of association (MOA)

— Proposed name of the company. (6 names in order of preference has to be given)

— Main objects of the proposed company.

— It has to be stated whether the proposed name is in consonance with the main objects.

— Further, it has to be stated whether the proposed name are based on a registered trade mark or is the subject matter of an application pending for registration under the trade marks Act.

— Particulars of proposed directors.

— The important particulars required to be filled in the form in case of change of name are:

— CIN of company, name of the company, address of the registered office of the company, e-mail ID of the company and present authorized capital of the company.

— It has to be stated whether the change in name requires change in main
objects of the company. If yes, then mention the main objects of the company.

— The following attachment are required to be filed with form:
  — In case of change of name of an existing company, a copy of Board resolution.
  — Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment.
  — If change is due to a direction received from the Central Government, then a copy of such direction.
  — Optional attachment(s) – if any.
— The form should be digitally signed by
  — Applicant or managing director or manager or secretary of the company.
— The form does not require pre-certification.

E-Form 1AA – Particulars of person(s) or director(s) charged or specified for the purpose of clause (f) or (g) of section 5.

— This form is required to be filed pursuant to section 5 (g) of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
  — CIN of the company.
  — Name of the company, address of the registered office of the company & e-mail ID of the company.
  — Number of person(s) or director(s) charged.
  — Particulars of persons(s) or director(s) charged.
  — Date of board resolution.
— The following attachment are required to be filed with form:
  — Copy of the board resolution
  — Optional attachment(s) – if any
— The form should be digitally signed by
  — The person charged
  — Managing director or director or manager or secretary of the company
— The form does not require pre-certification.

E-Form 1AD – Application for confirmation by Regional Director for change of registered office of the company within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar.

— This form is required to be filed pursuant to section 17A of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
  — CIN of company
  — Name of the company, address of the registered office of the company & e-mail ID of the company.
— Name of office of new Registrar of Companies (ROC) under whose jurisdiction the proposed registered office lies.
— Reasons for change of place of registered office.
— Service request number of Form 23 filed, date of passing the special resolution and date of filing form 23.
— Number of members present at the meeting where the decision of shifting was taken and number of shares held by them.
— Number of members who voted in favour of the proposal, number of members who voted against the proposal, number of members who abstained from voting and number of shares held by them.
— Date of advertising inviting objections in the newspaper.
— Details of objections, if any, received in response to the advertisement.
— Whether any prosecution is pending against the company under the Companies Act.

— The following attachments are required to be filed with form:
— Copy of the minutes of meeting.
— Copy of newspaper of the advertisement.
— Particulars of investor grievances.
— Any attachment to support the details of prosecution filed against the company and its officers in default, if any.
— Optional attachment(s) – if any.

— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form does not require pre-certification.

E-Form 1B – Application for approval of the Central Government for change of name or conversion of a public company into a private company

— This form is required to be filed pursuant to section 21 or 31(1) of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
— Purpose of application i.e. whether it is for change of name or for conversion of a public company into a private company.
— CIN number of the company.
— Name of the company, address of the registered office of the company & e-mail ID of the company.
— Proposed name of the company.
— Reason(s) for change of name or conversion of a public company into a private company.
— Service request number of Form 23 filed, date of passing the special resolution and date of filing form 23.
— Name of the company at the time of incorporation (to be displayed in the certificate).
— Number of members present at the meeting where the special resolution was passed for change of name or conversion and number of shares held by them.
— Number of members who voted in favour/against the change of name or conversion and number of shares held by them.

The following attachments are required to be filed with form:
— Minutes of the members’ meeting.
— Certified copy of the order for condonation of delay.
— Optional attachment(s) – if any.

— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form does not require pre-certification.

E-Form 2 – Return of allotment
— This form is required to be filed pursuant to section 75(1) of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
— CIN of the company.
— Name of the company, Address of the registered office of the company & e-mail of the company.
— Shares allotted payable in cash.
— Shares allotted for consideration otherwise than in cash.
— Bonus shares issued.
— Capital structure of the company after taking into consideration the above allotment(s).
— Date of passing the special resolution authorising issue under section 81 and service request number of Form 23.
— State whether complete list of allottees has been enclosed as attachment. In case no, then submit the details of all the allottees in a CD separately.

— The following attachments are required to be filed with form:
— Copy of the resolution authorising the issue of bonus shares.
— List of allottees.
— Copy of the resolution for the issue of shares at a discount with a copy of the order of the Central Government.
— Copy of the contract or agreement, if any, for allotment of share for consideration otherwise than in cash.
— Copy of Board or shareholders’ resolution.
— Optional attachment(s) - if any.
— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 3 – Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash**

— This form is required to be filed pursuant to section 75(2) of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — CIN of company
  — Name of the company and address of the registered office of the company.
  — If the allotment is made in full or part satisfaction of the purchase price of property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied.
  — If the consideration for allotment of such shares is services, or any consideration other than that mentioned above, state nature of such consideration and number of shares so allotted.
  — Give full particulars, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads.
— The following attachments are required to be filed with form:
  — Board resolution approving allotment of shares otherwise than in cash.
  — Optional attachment(s) - if any
— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 4 – Statement of amount or rate percent of the commission payable in respect of shares or debentures and the number of shares or debentures for which persons have agreed for a commission to subscribe for absolutely or conditionally**

— This form is required to be filed pursuant to section 76(1) of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — CIN of the company
— Name of the company, address of the registered office of the company & e-mail ID of the company.
— Article number of the Article of association authorizing commission.
— Particulars of amount paid/payable or commission for subscribing or agreeing to procure subscription for any shares or debentures of the company.
— Rate of commission.
— Date of circular or notice (if any) not being a prospectus, inviting subscriptions for the shares or debentures and disclosing the amount or rate of commission.
— Type of subscription.
— Number of shares or debentures for which persons have agreed for commission to subscribe.
— Face value of each equity share or debenture.
— The following attachments are required to be filed with form:
  — Contract relating to payment of commission
  — Resolution of the board of directors authorising such payment
  — Consent of all the directors of the company.
  — Optional attachment(s) - if any.
— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form does not require pre-certification.

E-Form 4C – Return in respect of buy back of securities
— This form is required to be filed pursuant to section 77A of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — CIN of the company
  — Name of the company, Address of the registered office of the company & e-mail ID of the company.
  — Income-tax permanent account number.
  — State whether the company is listed or not. Mention the name of stock exchange where the company is listed and the date of listing.
  — Name of the merchant banker appointed by company.
  — Details of paid up capital.
  — Free reserves or securities premium account or proceeds of any shares or other securities or debts.
  — Date of Board of directors’ resolution approving or authorising the buy back of securities.
— Date of special resolution of members authorising buy back of securities.
— Amount of securities authorised to be bought back.
— Date upto which buy back of securities to be completed & date of completion of buy back.
— Date on which last buy back was authorized & Details of last buy back.
— Debt to capital and free reserve ratio allowed for company & details of government approval if the ratio is higher than 2:1.
— Mention if there is any subsisting default in the repayment of deposit, debentures, preference shares, payment of dividend to shareholders etc.
— State if there is default in complying with provisions relating to annual return, payment of dividend and balance sheet or profit and loss account.
— Date of payment of consideration to all shareholders from whom securities have been bought back.
— The shareholding pattern after buy back of securities.
— Service request number (SRN) of form 23 & SRN of form 62 (option form 4A) in respect of declaration of solvency.
— The following attachments are required to be filed with form:
— Description of securities bought back by the company
— Particulars relating to holders of securities before buy back
— Copy of the special resolution passed at the general meeting
— Copy of board resolution
— Optional attachment(s) - if any
— The form should be digitally signed by Managing Director or director or manager or secretary of the company.
— The form does not require pre-certification.

E-Form 5 – Notice of consolidation, division, etc. or increase in share capital or increase in number of members
— This form is required to be filed pursuant to section 95, 97 or 94A (2) of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
— Corporate identity number (CIN) of company.
— Name of the company, address of the registered office of the company & e-mail ID of the company.
— Purpose of the form.
— Amount of increase in authorized share capital of the company.
— Increase in the number of members of the company.
— Details regarding division of additional capital.
— Mention the conditions subject to which new shares have been issued.
— Revised capital structure of the company.
— State whether articles of association has been altered or not.
— Particulars of payment of stamp duty.
— In case maximum stamp duty payable has already been paid, provide details of form filled, receipt number, form number, date of filing, amount of stamp duty paid.

— The following attachments are required to be filed with form:
— Proof of receipt of Central Government order
— Altered memorandum of association
— Altered articles of association
— Optional attachment(s) - if any

— The form should be digitally signed by Managing Director or director or manager or secretary of the company.

— The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 8 – Particulars for creation or modification of charge (other than those related to debentures) including particulars of modification of charge by asset reconstruction companies in terms of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFASI)**

— This form is required to be filed pursuant to section 125, 127, 130, 132 and 135 of the Companies Act, 1956.

— The important particulars required to be filled in the form are:

— Corporate identity number (CIN) or foreign company registration number of the company.
— Name of the company, address of the registered office or principle place of business in India of the company & e-mail ID of the company.
— State whether the form is for creation of charge or modification of charge.
— State whether the charge is modified in favour of asset reconstruction company (ARC) or assignee.
— Type of charge.
— State whether consortium finance is involved.
— If joint charge is involved, state the number of charge holders.
— Particulars of the charge holder (In case charge is modified in favour of ARC or assignee, enter particulars of ARC or assignee).
— Nature, description and brief particulars of the instrument(s) creating or modifying the charge.
— Date of the instrument creating or modifying the charge
— State whether charge is modified outside India. If yes, then mention the date of receipt of the instrument(s) in India.
— Amount secured by the charge.
— Brief particulars of the principal terms and conditions and extent and operation of the charge.
— Short particulars of the property or asset(s) charged (including complete address and location of the property).
— State whether any of the property or interest therein is not registered in the name of the company. If not registered in the name of the company, mention in whose name it is registered.
— Date of last modification prior to the present modification.
— Particulars of the present modification.
— The following attachments are required to be filed with form:
  — Instrument(s) of creation or modification of charge
  — Instrument(s) evidencing creation or modification of charge in case of acquisition of property which is already subject to charge.
  — Particulars of all joint charge holder.
  — Optional attachment(s) - if any.
— The form should be digitally signed by Managing Director or director or manager or secretary of the company (In case of an Indian company) or an authorised representative (In case of a foreign company).
— The form should also be digitally signed by the charge holder.
— In case charge is modified in favour of ARC or assignee, the form should also be digitally signed by the ARC or assignee.
— The form does not require pre-certification.

E-Form 10 – Particulars for registration of charges for debentures
— This form is required to be filed pursuant to section 125, 127, 128, 129, 130, 132, 134 and 135 of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) or foreign company registration number (FCRN) of the company.
  — Name of the company, Address of the registered office or of the principal place of business in India of the company & e-mail ID of the company.
  — State whether charge is modified outside India. If yes, then mention the date of receipt of the instrument(s) in India.
  — Number of trustee(s) of debenture holders or charge holder (s).
  — Particulars of the trustee of debenture holders or charge holder(In case charge is modified in favour of ARC or assignee, enter particulars of ARC or assignee).
— Date of creation of charge.
— State whether the series of debentures are registered with the Registrar of Companies (ROC)
— Date of present issue of series
— Amount of present issue of series (amount secured by the charge) (in Rs.)
— (In case of modification of charge, enter the amount secured by the charge after such modification)
— Amount secured by the charge
— Date of resolution authorising the issue of the series
— Description of the property charged
— Brief of the principal terms and conditions, (including rate of interest, date of redemption and creation of debenture redemption reserve) extent and operation of charge
— Particulars as to amount or rate percent of the commission, allowances or discount (if any) paid, or made either directly or indirectly by the company to any person(s) in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return.

Modification of Charge
— State whether charge is modified in favour of asset reconstruction company (ARC) or assignee.
— State whether trustee of debenture holders or charge holder is authorised to assign the charge.
— Description of the instrument modifying the charge, date of instrument modifying the charge, is modification of charge done outside India.
— Particulars of the present modification.
— The following attachments are required to be filed with form:
  — Copy of the resolution authorising the issue of the debenture series
  — Instrument of creation or modification of charge.
  — Optional attachment(s) - if any
— The form should be digitally signed by Managing Director or director or manager or secretary of the company (In case of an Indian company) or an authorised representative (In case of a foreign company).
— The form should also be digitally signed by the trustee of debenture holders or charge holder.
— In case charge is modified in favour of ARC or assignee, the form should also be digitally signed by the ARC or assignee.
— The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 17 – Particulars for satisfaction of charges**
— This form is required to be filed pursuant to section 138 and 600 of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
  — Corporate identity number (CIN) or foreign company registration number (FCRN) of the company and Global location number (GLN) of company.
  — Name of the company, address of the registered office or principle place of business in India of the company & e-mail ID of the company
  — State whether charge is satisfied in favour of asset reconstruction company (ARC) or assignee.
  — Charge creation identification number.
  — Particulars of the charge holder or ARC or assignee.
  — Particulars of creation of original charge and subsequent modifications.
  — Date of satisfaction of charge in full.
— The following attachments are required to be filed with form:
  — Letter of the charge holder stating that the amount has been satisfied.
  — Optional attachment(s) - if any.
— The form should be digitally signed by Managing Director or director or manager or secretary of the company (In case of an Indian company) or an authorised representative (In case of a foreign company).
— The form should also be digitally signed by the charge holder (financial institution or bank or debenture holder etc.)
— In case charge is modified in favour of ARC or assignee, the form should also be digitally signed by the ARC or assignee.
— The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 18 – Notice of situation or change of situation of registered office**
— This form is required to be filed pursuant to section 146 of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
  — Form 1A reference number (Service request number (SRN) of (Form 1A) or corporate identity number (CIN) of company.
  — Name of the company & address of the registered office of the company.
  — Name of office of existing Registrar of Companies (ROC).
Purpose of the form.
Name of office of proposed ROC or new ROC.
The full address of the police station under whose jurisdiction the registered office of the company is situated.
SRN of form 23, SRN of relevant form (form 1AD & 21)
Date of order of company law board (CLB) or any other competent Authority, Petition Number.
The following attachments are required to be filed with form:
Optional attachment(s) - if any
The form should be digitally signed by Managing Director or director or manager or secretary of the company.
The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

E-Form 19 – Declaration of compliance with the provisions of section 149 (1) (a), (b) and (c) of the Companies Act, 1956
This form is required to be filed pursuant to section 149 (1) (d) of the Companies Act, 1956.
The important particulars required to be filled in the form are:
Corporate identity number (CIN) of company, Global Location Number (GLN) of the company.
Name of the company, address of the registered office of the company & e-mail ID of the company.
Declaration by the director or secretary or company secretary (in whole time practice) mentioning:
That the amount of the share capital of the company offered to the public for subscription.
That the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital has been raised in order to provide for the matters specified in Clause 5 of Schedule II of the Companies Act, 1956.
That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription. Further, mention the name of directors who have not complied with the above obligations. Also mention if no director of the company has taken or contracted to take any shares for which he is liable to pay in cash.
That no money is, or may become, liable to be repaid to applicants
for any shares or debentures which have been offered for public
subscription by reasons of any failure to apply for, or to obtain,
permission for the shares or debentures to be dealt in on any
recognised stock exchange.

— Particulars of payment of stamp duty.

— The following attachments are required to be filed with form:
  — Copy of prospectus
  — Optional attachment(s) - if any
  — The form should be digitally signed by director or secretary or company
    secretary (in whole-time practice) of the company.
  — The form does not require pre-certification.

E-Form 20 – Declaration of compliance with the provisions of section 149(2) (b)
of the Companies Act, 1956

— This form is required to be filed pursuant to section 149(2)(c) of the
  Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company, Global Location Number
    (GLN) of company.
  — Name of the company, address of the registered office of the company &
    e-mail ID of the company.
  — Declaration by the director, secretary or company secretary (in whole
    time practice) mentioning:
    — That the amount of the share capital of the company subject to the
      payment of the whole amount thereof in cash.
    — That the company has not issued a prospectus inviting the public to
      subscribe for its shares, and that it has file with registrar a statement
      in lieu of prospectus.
    — That every director of the company has paid to the company on each of
      the shares taken or contracted to be taken by him, and for which he is
      liable to pay in cash, a proportion equal to the proportion [payable on
      application and allotment on the shares payable in cash]. Further,
      mention the name of directors who have not complied with the above
      obligations. Also mention if no director of the company has taken or
      contracted to take any shares for which he is liable to pay in cash.
  — Particulars of payment of Stamp Duty.

— The following attachments are required to be filed with form:
  — Statement in lieu of prospectus (schedule III)
  — Optional attachment(s) - if any
  — The form should be digitally signed by director or secretary or company
    secretary (in whole-time practice) of the company.
  — The form does not require pre-certification.
E-Form 20A – Declaration of compliance with the provisions of section 149(2A) or of section 149(2B)

— This form is required to be filed pursuant to section 149(2A)(ii) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
   — Corporate identity number (CIN) of company
   — Name of the company, address of the registered office of the company & e-mail ID of the company.
   — Declaration by the director, secretary or company secretary (in whole time practice):
      — That the company has, by a special resolution passed at the general meeting approved of the commencement of new business not germane to the business which it was carrying on at the commencement of the Companies (Amendment) Act, 1965 (XXXI of 1965) OR business in relation to object(s) other than the main object(s) or object(s) incidental or ancillary thereto as specified in its memorandum of association.
   — No special resolution was passed in regard to the commencement of the new business not germane to the business which it was carrying on at the commencement of the Companies (Amendment) Act, 1965 (XXXI of 1965) OR business in relation to object(s) other than the main object(s) or object(s) incidental or ancillary thereto as specified in its memorandum of association, but the votes cast on a show of hands or poll in favour of the proposal to commence any business contained in the resolution moved at the meeting (including the casting of vote by the chairman) by members who being entitled so to do voted in person or by proxy exceeded the votes cast against the proposal by members who being entitled and voting, the board of directors made an application to the Central Government to allow the company to commence such business and the Central Government has granted the necessary permission.
   — Particulars of payment of stamp duty.
   — The following attachments are required to be filed with form:
      — Copy of special resolution or approval letter from the Central Government.
      — Optional attachment(s) - if any.
      — The form should be digitally signed by director or secretary or company secretary (in whole-time practice) of the company.
   — The form does not require pre-certification.

E-Form 21 – Notice of the court or the company law board order or any other competent authority

— This form is required to be filed pursuant to section 17(1), 17A, 79, 81(4), 94A(2), 102(1), 107(3),111(5), 141, 155, 167, 186, 391(2), 394(1), 396,
The important particulars required to be filled in the form are:

- Corporate identity number (CIN) or foreign company registration number (FCRN) of the company.
- Name of the company, address of the registered office or of the principle place of business in India and e-mail ID of the company.
- Name of the court or company law board (CLB) or any other competent authority, location, petition or application number & order number.
- Date of passing the order.
- Section of the Companies Act under which order passed.
- Number of days within which order is to be filed with Registrar (To be entered pursuant to aforesaid sections or in terms of court order or CLB order or order of the competent authority, as the case may be).
- Date of application to court or CLB or the competent authority for issue of certified copy of order.
- Date of issue of certified copy of order
- Due date by which order is to be filed with Registrar.
- In case of compounding of offence, enter Service request number (SRN) (s) of Form 61.
- In case of compounding of offence, enter Service request number (SRN) (s) of Form 61.
- In case of amalgamation, mention whether company filing the form is transferor or transferee, details of transferee company and transferor company.
- In case of winding up, provide details regarding date of commencement of winding up under section 445, Income-tax permanent account number (Income-tax PAN), Name of liquidator, Address of liquidator, Date with effect from which winding up proceedings have been stayed under Section 466, Date of dissolution under section 481, Date with effect from which dissolution has been declared as void under section 559. Further, whether the order is in the respect of company dissolved under section 394. Also, provide details of the transferor company whose dissolution has been declared as void. State whether penalty involved or not. If yes, provide SRN of payment of penalty.

The following attachments are required to be filed with form:

- Copy of court order or company law board order or order by any other competent authority.
- Optional attachment(s) - if any

The form should be digitally signed by director or Managing Director or manager or liquidator or secretary of the company.

The form is precertified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).
E-Form 22 – Statutory report

— This form is required to be filed pursuant to section 165 of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company
  — Name of the company, address of the registered office of the company & e-mail ID of the company.
  — Date of notice for holding the statutory meeting
  — Date of the meeting
  — Place where the meeting is to be held
  — Shares allotted and payment thereof in cash.
  — Shares allotted as fully paid-up otherwise than in cash and consideration for which they have been allotted
  — Shares allotted as partly paid and the consideration for which they have been so allotted.
  — Particulars of directors, manager, secretary and auditors of the company.
  — Particulars and proposed modifications (if any) of any contract which is to be submitted to the statutory meeting for approval.
  — Brief description of underwriting contracts.
  — Reason(s), if contract has not been carried out fully and the extent to which it has not been carried out.

— The following attachments are required to be filed with form:
  — Notice of statutory meeting
  — Abstract of receipts and payments
  — Details of preliminary expenses
  — Details of the arrears, if any, due on calls from directors and managers
  — Details of particulars of any commission and brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director, or manager
  — Optional attachment(s) - if any

— The form should be digitally signed by director or Managing Director of the company.

— The statutory auditor shall certify as correct so much of the report as relates to the shares allotted by the company and to the cash received in respect of such shares and to receipts and payments.

— The form does not require pre-certification.

E-Form 23 – Registration of resolution(s) and agreement(s)

— This form is required to be filed pursuant to section 192 of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company.
  — Name of the company, address of the registered office of the company & e-mail ID of the company.
  — Whether the e-Form is for registration of resolution/agreement, Postal Ballot Resolution(s) under section 192A.
  — Date of dispatch of notice for passing of resolutions(s)/postal ballot resolution(s).
  — Date of passing of resolutions / postal ballot resolution (s).
  — Number of resolution(s) for which the form is being filed.
  — Details of the resolution i.e. section of the Companies Act, 1956 under which passed, purpose of passing the resolution and subject matter of the resolution. In case of listed company, mention whether resolution passed by postal ballot, indicate the authority passing or agreeing to the resolution and whether the resolution is ordinary or special resolution with requisite majority.
  — In case of alteration in object clause, whether there is any change in the industrial activity of the company. If the answer is yes, please provide the main division of new industrial activity of the company.
  — In case of voluntary winding up under section 484, provide the details regarding Mode of winding up, Date of commencement of winding up & Number of liquidator(s).
  — Details of the agreement i.e. date of the agreement, section of the Companies Act, 1956 under which agreement made, purpose of entering into the agreement & subject matter of the agreement.
  — Service request number(SRN) of Form21 (in case of alteration in object clause)
— The following attachments are required to be filed with form:
  — Copy(s) of resolution(s) along with copy of explanatory statement under section 173
  — Altered memorandum of association
  — Altered articles of association
  — Copy of agreement
  — Optional attachment(s) - if any.
— The form should be digitally signed by director or Managing Director or manager or liquidator or secretary of the company.
— The form is pre certified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).
E-Form 23AA – Notice of address at which books of account are maintained

— This form is required to be filed pursuant to section 209 (1) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company
  — Name of the company, address of the registered office of the company.
  — Date of board resolution wherein a decision regarding address at which books of account are to be maintained has been taken.
  — Address at which the books of account are to be maintained.
  — Details pertaining to police station under whose jurisdiction the place of the address at which the books of account are to be maintained falls.

— The following attachments are required to be filed with form:
  — Copy of board resolution
  — Optional attachment(s) - if any

— The form should be digitally signed by director or Managing Director or manager or secretary of the company.

— The form does not require pre-certification.

E-Form 23AAA – Application to Central Government for modification in the matters to be stated in the company’s balance sheet or profit and loss account.

— This form is required to be filed pursuant to section 211 (4) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company
  — Name of the company, address of the registered office of the company.
  — Turnover of company
  — State Whether the company is a hotel company
  — Financial year for which exemption is sought for
  — State whether latest accounts have been adopted by members or not
  — Nature of business – manufacturing, trading, export oriented or a service company.
  — Specific paras of part II of schedule VI to the Companies Act, 1956 from which exemption has been sought for along with precise justification for each exemption.

— Is this the first application? If yes, state precise reasons as to how the company has been complying in the past.

— Whether the company is producing or supplying defence equipments

— Whether the company is maintaining proper purchase, sale and stock register so as to furnish the true and fair view of its state of affairs in
compliance with section 209 or section 211 with schedule VI to the Companies Act, 1956.

— Whether details for which exemption is being asked for, have been given by the company in its tax audit reports under the Income-tax Rules, 1962, if no why. In case your company is a hotel company please specify the number of hotels or restaurants or bars being operated or run by the company along with addresses.

— The following attachments are required to be filed with form:

  — Copy of the board of directors resolution for exemption sought (indicating the specific para and financial year)
  — Recommendation of the Ministry of Defence or concerned Defence department or concerned administrative ministry.
  — Optional attachment(s) - if any.

— The form should be digitally signed by director or Managing Director or secretary of the company.

— The form does not require pre-certification.

**E-Form 23AAB – Application for exemption from attaching the annual accounts of the subsidiary companies.**

— This form is required to be filed pursuant to section 211 (4) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:

  — Corporate identity number (CIN) of company
  — Name of the company & address of the registered office of the company.
  — State whether the company is listed or not
  — Financial year of holding company
  — Year for which exemption is sought
  — Detailed reasons and justification for exemption sought with respect to subsidiaries alongwith documentary proof
  — Whether the company sought any exemption under this section during previous years of any subsidiary, if yes, give the details of exemptions and a copy of each approval thereof.
  — Whether the latest accounts have been adopted by the members
  — Whether the company intends to attach audited consolidated accounts of the subsidiaries
  — Whether the subsidiary or holding company are adopting different accounting practice

— The following attachments are required to be filed with form:

  — Specific board resolution in support of the proposal mentioning the names of subsidiaries and their financial year under reference.
— Documentary proof if the subsidiary and holding company are holding different accounting years due to requirements under law of country of incorporation.

— Documentary proof of company under lockout or pending court case or non-finalisation of accounts.

— Optional attachment(s) - if any

— The form should be digitally signed by director or Managing Director or manager or secretary of the company.

— The form does not require pre-certification.

E-Form 23AAC – Application to Central Government for not providing Depreciation

— This form is required to be filed pursuant to section 205 (2C) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:

— Corporate identity number (CIN) of company

— Name of the company, address of the registered office of the company.

— Year for which permission is sought for

— Detailed reasons and justification in respect of the proposal

— If the company is a govt. company whether concurrence of administrative ministry is sought.

— State whether permission is sought on the ground to declare dividend. If yes, then mention the amount and rate of dividend.

— Was the company defaulting in its payments to creditors or bankers or has any plan to re-schedule its payments

— Whether the company has made any application for payment of managerial remuneration higher than the limits prescribed under Schedule XIII of the Companies Act.

— Mention, how is the interest of the stakeholders other than shareholders going to be affected by current share prices.

— Are there any special circumstances under which the permission is sought. The reasons could be acts of God or change in technology or general, pertaining to the economy or a sector as a whole or pertaining to business activities of the company alone

— Detailed justification of public interest involved in the proposal

— Amount of depreciation that is proposed not to be provided

— Number of years in which the deferred depreciation is proposed to be provided for indicating the specific years of its commencement

— State how the company is going to make up for non provision of depreciation at the time when replacement of plant and machinery etc. become due.
The following attachments are required to be filed with form:

- A certificate from the secretary or director certifying that no relevant facts or materials to the proposal have been concealed or misrepresented.
- An undertaking that the company will not come up with any public issue or invite any fresh deposits in the next 18 months.
- Copy of the board of director's resolution in support of the company's proposal.
- Shareholding pattern of promoters and their relatives.
- Copy of concurrence of administrative ministry
- Optional attachment(s) - if any

The form should be digitally signed by director or Managing Director or manager or secretary of the company.

The form does not require pre-certification.

**E-Form 23B – Information by auditor to Registrar**

This form is required to be filed pursuant to section 224(1A) of the Companies Act, 1956.

The important particulars required to be filled in the form are:

- Corporate identity number (CIN) of company
- Name of the company & address of the registered office of the company.
- State the category of auditor - an individual or an auditor’s firm.
- Income-tax permanent account number of auditor or auditor's firm
- Name of the auditor or auditor's firm
- Membership number of auditor or auditor's firm's registration number
- State whether auditor has been appointed in the annual general meeting (AGM), if yes, date of AGM
- Date of receipt of intimation of appointment
- State whether appointment was accepted
- Period of accounts for which appointed
- In case of a public company state whether appointment of auditor is within the limits specified in sub-section 1B of Section 224.

The following attachments are required to be filed with form:

- Copy of the intimation received from the company
- Optional attachment(s) - if any

The form should be digitally signed by the auditor.

The form does not require pre-certification.
E-Form 23C – Form of application to the Central Government for appointment of cost auditor

— This form is required to be filed pursuant to section 233B(2) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:

— Corporate identity number (CIN) or foreign company registration number (FCRN) of the company

— Name of the company, Address of the registered office or of the principal place of business in India of the company & e-mail ID and phone no. of the company

— Number and date of the Central Government's order directing cost audit, name of industry to which cost audit order relates

— Name of proprietorship or partnership firm who is proposed to be appointed as cost auditor as per Board resolution

— Details of the member representing the above firm

— e-mail ID of the firm or member

— Whether the cost auditor is subject to any disqualification under section 233B(5) of the Companies Act, 1956

— Proposed remuneration of the cost auditor

— Financial year to be covered by the cost auditor.

— Date of meeting of Board of directors proposing the name of the cost auditor

— State whether there any change in the cost auditor. If yes, name and address of previous auditor & Reasons for change in the auditor.

— The following attachments are required to be filed with form:

— Copy of the Board resolution of the company sanctioning the proposal for which the Central Government approval has been sought. (mandatory)

— Copy of the certificate obtained from cost auditor regarding compliance of the section 224(1B) of the Companies Act, 1956. (mandatory)

— Optional attachment(s) - if any

— The form should be digitally signed by Managing Director or director or manager or secretary of the company (in case of Indian company) or authorised representative (In case of a foreign company).

— The form does not require pre-certification.

E-Form 24 – Form of application to the Central Government for increase in the number of directors of the company.

— This form is required to be filed pursuant to section 259 of the Companies Act, 1956.
The important particulars required to be filled in the form are:

- Corporate identity number (CIN) of company.
- Name of the company, address of the registered office of the company & e-mail ID of the company.
- Maximum number of directors permitted under the articles of association.
- Number of directors in office on the date of application (including alternate director)
- Article number of the articles of association
- Number of director(s) proposed to be added
- Reason(s) for increase in number of directors
- Whether the company has obtained any loan from banks or financial institutions.
- Whether banks or financial institutions hold any shares in the company.

The following attachments are required to be filed with form:

- A copy of the board resolution for increasing the number of directors
- Minutes of the general meeting of the company along with the details of voting
- Newspaper clippings in which notices pursuant to section 640B have been published
- No objection certificate from financial institution(s) or bank(s)
- Details of proposed appointee
- Optional attachment(s) - if any

The form should be digitally signed by director or Managing Director or manager or secretary of the company.

The form does not require pre-certification.

**E-Form 24A – Form for filing application to Central Government (Regional Director)**

This form is required to be filed pursuant to section 22, 25, 224(3), 224(7) 297 of the Companies Act, 1956.

The important particulars required to be filled in the form are:

- Corporate identity number (CIN) of company or Form 1A reference number
- Name of the company & address of the registered office of the company.
- Purpose of the application i.e. whether it is for approval for entering into contract under section 297 or Appointment of auditor under section 224(3) or Issue of license under section 25 or Removal of auditor under section 224(7) or Rectification of name.
Details of application

The following attachments are required to be filed with form:

- Memorandum of association (MoA)
- Articles of association (AoA)
- Declaration as per annexure V of Companies Regulation Act, 1956
- Future annual income and expenditure estimates
- Assets and liabilities statement with their estimated value as on seven days before making the application
- Declaration by advocate of Supreme Court or High Court, attorney or pleader entitled to appear before a High Court, or a company secretary or chartered accountant in whole time practice that the MoA and AoA have been drawn in conformity with provisions of the Act.
- Details of the promoters and of the proposed directors of the company
- A list of the names, addresses, descriptions and occupations of its directors and of its managers or secretary, if any, together with the names of companies, associations and other institutions, in which the directors of the applicant company are directors or hold responsible positions, if any with the descriptions of the positions so held.
- If association is already in existence, then last two years’ accounts, balance sheet and report on working of the association as submitted to the members of the association.
- Statement of brief description of the work, if already done by the association and the work proposed to be done.
- Statement of the grounds on which application is made
- If any of the above documents not in English or Hindi, then a translation of such document in English or Hindi.
- Copy of agreement containing particulars of contract
- Copy of ordinary resolution
- Copy of board resolution
- Optional attachment(s) - if any
- The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant.
- The form does not require pre-certification.

E-Form 24AB – Form for filing application for giving loan, providing security or guarantee in connection with a loan

This form is required to be filed pursuant to section 295 of the Companies Act, 1956.

The important particulars required to be filled in the form are:
— Corporate identity number (CIN) of company
— Name of the company, address of the registered office of the company.
— Working results of the company for the last three financial years
— Amount of loan or security or guarantee
— Indicate the sub-section of section 295 of the Act under which the application is made
— Details of the proposal mentioned in the application
— Justification for the proposal
— State whether the loan will be backed by any guarantee
— Name and address of the borrowing firm
— Details of loan given or corporate guarantee or security provided to any company or person or firm etc. so far under section 295 along with details thereof and proof of compliance of section 372A wherever applicable

The following attachments are required to be filed with form:
— Copy of board of directors resolution indicating
  (i) The proposal of the company, terms and conditions
  (ii) Interest of directors or relatives, if any
  (iii) Rate of interest chargeable
  (iv) The schedule and terms of repayment
  (v) The loan is not being made out of borrowed funds of the company
  (vi) Any other major or important condition having bearing on the loan or financial position of the company
— Copy of member resolution containing specific approval of required members along with explanatory statement
— A declaration that company has defaulted in making repayments to the investors as and when they become due to them
— List of directors of board of both the companies and disclosing inter-se interest if any.
— Copy of draft loan agreement
— Declaration to the effect that funds proposed to be loaned are not required for its working capital requirements at least for a year
— Copy of loan scheme for the employees of the company, If any
— A No objection certificate (NOC) or prior approval of public financial institutions or banks in case any term loan is subsisting.
— A declaration from the statutory auditor or a company secretary in whole-time practice that:
  (a) The company has not defaulted in:
(i) The repayment of any fixed deposits or part thereof or interest thereon
(ii) Payment of dividend
(iii) Redemption or repayment of debenture and timely payment of interest thereon
(iv) Redemption of preference shares, and
(b) The company is regular in filing all forms or returns as required to be filed under the Companies Act, 1956
(c) The proposal is in conformity with the provisions of the section 372A of the Companies Act, 1956
(d) That the company is not in any default on account of undisputed dues of the Central Government, e.g. income tax, central excise etc.

— Copy of letter from bank or financial institutions wherein the company has been asked to furnish corporate guarantee or security for the loan sanctioned to the borrower company
— Shareholding pattern of applicant and borrowing company
— Optional attachment(s) - if any
— The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant.
— The form is pre certified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

E-Form 24B – Form of application to the Central Government for obtaining prior consent for holding of any office or place of profit in the company by certain persons

— This form is required to be filed pursuant to section 314(1B) of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
— Corporate identity number (CIN) of company.
— Name of the company, address of the registered office of the company & e-mail ID of the company.
— Proposal for which Central Government’s approval is sought
— Period of appointment
— Remuneration
— Name(s) of the directors or managing directors or whole-time directors to whom the proposed appointee is related and the nature of relationship
— State whether the appointee is an individual or company or a partnership, name, designation or nature of appointment.
— State whether any similarly placed employee or executive exists in the company.
— Statement showing the details of the relatives of the director who have been either appointed as managing or whole-time director, manager or in any other position in the applicant company indicating clearly the remuneration paid to each relative and total remuneration paid to them as percentage of profit as computed under section 198 of the Companies Act, 1956.
— Service request number (SRN) of Form 23, Date of filing of Form 23 & Date of passing of special resolution.
— Share holding pattern
— Total number of share holders
— The following attachments are required to be filed with form:
  — Copy of the resolution passed by the board of directors, relating to the proposed appointment
  — Copy of members’ special resolution approving the proposal alongwith notice and explanatory statement relating there to
  — Copy of rules of the company relating to the terms and conditions in regard to perquisites as applicable to its employees
  — Certificate from secretary or director of the company to the effect that similar perks at the same rate(s) are being paid to the other employees of the company in the equivalent grade
  — An undertaking from the appointee that he or she will be in exclusive employment of the company and will not hold a place of profit in any other company
  — Copy of the minutes of selection committee in case of public limited company (including composition of selection committee)
  — Particulars of employees in receipt of remuneration of Rs. 50,000 or more per month
  — Optional attachment(s) - if any.
— The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant.
— The form does not require pre-certification.

E-Form 25A – 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 or whole-time director(s) or manager and commission or remuneration or expression of opinion to directors

— This form is required to be filed pursuant to section 198(4), 269, 309(3), 309(5B), 310, 311, 387, 388, 2(24), 4(7), 309 (1)(b), 309(4)(a) and (b) and 316(4) of the Companies Act, 1956.
The important particulars required to be filled in the form are:

**A - Details regarding profile of the company.**

- Corporate identity number (CIN) of company
- Name of the company, address of the registered office of the company & e-mail ID of the company
- Effective capital as computed under Schedule XIII to the Companies Act, 1956 as per previous year's audited balance sheet
- Net profit or loss as computed under section 198 of the Act, details of remuneration paid and dividend declared by the company during immediately preceding three financial years
- If the company has made any default in filing of annual return and balance sheet during immediately preceding three financial years, furnish the reasons thereof
- Financial parameters for the immediately preceding three financial years as per balance sheet and profit and loss account filed by the company
- Share holding pattern
- Total number of share holders

**B - Details of the proposal**

- PART-B Details of the proposal
  - Whether the proposal for which Central Government's approval is sought and justification thereof is for Appointment or reappointment (including payment of remuneration or Waiver of excess remuneration paid during a particular financial year or Increase in remuneration including commission or Commission or remuneration to non executive directors or Expression of opinion in respect of directors or Approval under section 316 or 386.
  - Justification of the proposal
  - Whether the company has made any default in repayment of its debts (including public deposit) or debentures or interest payable thereon as prescribed in part II of schedule XIII
  - Whether the proposed appointee or the person in whose respect the application is filed suffers from any of the disqualification mentioned in section 267 or section 385 or section 274 of the Act.
  - Furnish details of resolution passed e.g. Board resolution date.
  - Particulars of the proposed appointee or the person in whose respect the application is filed
  - Proposed remuneration per annum of the appointee or of the person in whose respect application is filed
  - Details of remuneration per annum (including perks and commission) as on date of application drawn by appointee or the
person in whose respect application is filed, in any other company(s)

— Remuneration paid by the company during the immediately preceding three financial years to be stated separately for each director or managing director or whole time director or manager

C - Application to the Central Government for approval to the payment of minimum remuneration or of remuneration in excess of the limits prescribed under section 198(1) or section 309(3)

— Whether the company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under section 198(1) or section 309(3).

— The following attachments are required to be filed with form:

— Copy of the calculation sheet of effective capital as computed under Schedule XIII to the Companies Act, 1956 as per previous year's audited balance sheet.

— Copy(s) of the resolution of Board of directors

— Copy(s) of resolution of remuneration committee along with its composition

— Copy(s) of resolution of shareholder(s)

— Certificate from the auditor with regard to the compliance of section 274 of the Companies Act, 1956

— No default certificate towards repayment of debts (including public deposit or debentures or interest payable thereon) from director or secretary of the company

— No objection certificate from the financial institution(s) or bank(s) to whom the company has defaulted

— Copy of scheme approved by board for industrial and financial reconstruction (BIFR) or financial institution(s) or bank(s) for the revival of the company

— Copy of draft agreement between the company and the proposed appointee

— Newspaper clipping in which notices pursuant to section 640B have been published

— Copy of visa

— Copies of educational or professional certificates with regard to section 309(1)(b)

— Application under section 637B of the Act (This requires extra fee)

— Copy of calculation sheet relating to excess or overpayment duly certified from a chartered accountant or company secretary in whole-time practice

— Projections of the turnover and net profits for next three years
— In case of consultant, details of other project(s) or assignment(s) being dealt and fee or remuneration for the same
— Statement as per proviso (iv) of Part (B) of Part II of Schedule XIII to the Companies Act (refer Schedule XIII for details)

Attachments in Part-C
— (xviii) Relevant resolution

E-Form 25B – Form of application to the Central Government for approval to amendment of provisions relating to managing, whole-time or non-rotational directors.
— This form is required to be filed pursuant to section 268 of the Companies Act, 1956.
— The important particulars required to be filled in the form are :
  — Corporate identity number (CIN) of company.
  — Name of the company and address of the registered office of the company.
  — Number of directors
  — Proposal and reason(s) for which government's approval is sought
  — State whether the proposal has been approved by the board of directors
  — State whether the proposal was approved by company in general meeting
  — State whether the company has obtained any loans from banks or financial institutions
  — State whether banks or financial institutions hold any shares of the company
— The following attachments are required to be filed with form :
  — Copies of the proceedings along with resolution of the board and general body meeting of the company. (mandatory)
  — Newspaper clippings in which notices pursuant to section 640-B have been published. (mandatory)
  — No objection certificate from the concerned banks or financial institutions
  — Optional attachment(s) - if any
— The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant.
— The form does not require pre-certification.

E-Form 25C – Return of appointment of managing director or whole-time director or manager
— This form is required to be filed pursuant to section 269(2) of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company.
  — Name of the company, address of the registered office of the company.
  — Name & Director Identification number (DIN) or income-tax permanent account number (PAN) (Please provide DIN in case of Director).
  — Designation of the Manager, Whole time director and managing director.
  — Date of the resolution by the board of directors
  — Effective date of appointment
  — Terms and conditions including remuneration, tenure of appointment
  — Date of resolution, if any passed by the shareholders approving the appointment
  — Service request number (SRN) of related Form 23

— The following attachments are required to be filed with form:
  — Copy of board resolution
  — Copy of shareholder resolution
  — Optional attachment(s) - if any

— The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant & Chartered accountant or cost accountant or company secretary (in whole-time practice).

— The form does not require pre-certification.

**E-Form 32 – Particulars of appointment of Managing Director, directors, manager and secretary and the changes among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares.**

— This form is required to be filed pursuant to section 303(2), 264(2) or 266(1)(a), 266(1)(b)(iii) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Form 1A reference number (Service request number (SRN) of Form 1A) or corporate identity number (CIN) of company.
  — Name of the company & address of the registered office of the company & e-mail ID of the company.
  — Number of Managing Director, director(s) for which the form is being filed
  — Details of the Managing Director or director of the company i.e. name, father’s name, date of birth, designation, residential address etc.
— The following attachments are required to be filed with form:
  — Evidence of payment of stamp duty where qualification shares is involved (This will be mandatory only if the director giving consent agrees to pay for at least one share).
  — Consent(s) of the appointee Managing Director, director(s).
  — Declaration regarding qualification shares
  — Evidence of cessation
  — Optional attachment(s) - if any

— The form should be digitally signed by Managing director or director or manager or secretary of the company or applicant & Chartered accountant or cost accountant or company secretary (in whole-time practice).

— The form is pre certified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 37 – Application by an existing joint stock company or by an existing company (not being a joint stock company) for registration as a public limited or private limited or an unlimited company**

— This form is required to be filed pursuant to section 565, 566, 567 and 568 of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Form 1A reference number
  — Name of the company
  — Name of the proposed company
  — Date of instrument constituting the company
  — Description of the instrument

— The following attachments are required to be filed with form:
  — Copy of the instrument constituting or regulating the company
  — Optional attachment(s) - if any

— The form should be digitally signed by Managing director or director or manager or secretary of the company

— The form does not require pre-certification.

**E-Form 39 – Registration of an existing company as a limited company**

— This form is required to be filed pursuant to section 565(1), 567(a) and (c) and 568(a) of the Companies Act, 1956.

— The important particulars required to be filled in the form are:
  — Form 1A reference number
  — Name of the company
— Number of shares taken
— Amount paid on each share

Part A
— List of members (pursuant to section 567)
— Date of resolution declaring the amount of guarantee
— Amount of guarantee

Part B
— Date of general meeting passing the resolution assenting to registration with limited liability
— Place of general meeting
— The following attachments are required to be filed with form:
  — A copy of resolution passed at the general meeting assenting to registration with limited liability. (mandatory)
  — A copy of the resolution declaring the amount of guarantee
  — List of equity or preference shareholders in standard format as described in schedule V
  — Optional attachment(s) - if any
— The form should be digitally signed by two directors of the company.
— The form does not require pre-certification.

E-Form 61 – Form for filing an application with Registrar of Companies
— This form is required to be filed pursuant to section 166, 210, 394, 560, and 621A of the Companies Act, 1956.
— The important particulars required to be filled in the form are:
  — Category of applicant
  — Name of office of the Registrar of Companies (RoC) to which application is being made
  — Corporate identity number (CIN) or foreign company registration number (FCRN) of the company or Form 1A reference number (Service request number (SRN) of Form 1A)
  — Name of the company, Address of the registered office or of the principal place of business in India of the company & e-mail ID of the company.
  — Details of applicant i.e. name, address, e-mail ID etc.
  — Application filed for Compounding of offences or Extension of period of annual general meeting by three months under section166(1) or Extending the period of annual accounts upto eighteen months under section 210(4) or Declaring a defunct company under section 560 Scheme of arrangement, amalgamation or Others.
  — Details of application
  — Provide details if the application is for compounding of offences i.e.
Number of person(s) for whom the application is being filed, Details of person(s) for whom the application is being filed, Section for which application is being filed, Brief particulars as to how the default has been made good etc.

— Particulars of payment of stamp duty.

— The following attachments are required to be filed with form:
  — Board resolution
  — Scheme of arrangement, amalgamation
  — Detailed application
  — Copy of notice received from RoC or any other competent authority
  — Optional attachment(s) - if any

— The form should be digitally signed by Managing director or director or manager or secretary (in the case of Indian company) or an authorised representative (in case of a foreign company) or other.

— The form is pre certified by Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice).

**E-Form 62 – Form for submission of documents with the Registrar**

— This form is required to be filed pursuant to section 44, 60, 77A, 488, 497, 509, 516, 551, and 555 of the Companies Act, 1956, rule 313, 315, 327, 331, 335 of the Companies (Court) Rules, 1959 and rule 10 of the Companies (Acceptance of Deposits) Rules, 1975]

— The important particulars required to be filled in the form are:
  — Corporate identity number (CIN) of company
  — Name of the company & address of the registered office of the company.
  — Please indicate the document being filed.
  — Section(s) of Companies Act, 1956 under which the document is being filed.
  — Details of the documents being filed
  — Date of event
  — Financial year to which the document relates

— The following attachments are required to be filed with form:
  — Copy of statement in lieu of prospectus as per schedule IV or copy of prospectus as per schedule II
  — 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 4A of the Companies (Central Government’s) General Rules and Forms, 1956
— Return of deposits pursuant to rule 10 of the Companies (Acceptance of Deposits) Rules, 1975
— Optional attachment(s) - if any
— The form should be digitally signed by Managing director or director or manager or secretary of the company.
— The form should be digitally signed by Liquidators of the company.
— The form does not require pre-certification.

E-Form 65 – Form for filing application or documents with Central Government

— The important particulars required to be filled in the form are:
— Corporate identity number (CIN) or foreign company registration number of company
— Name of the company, Address of the registered office or of the principal place of business in India of the company.
— Please indicate the purpose of application
— Date of end of financial year to which the cost audit report relates
— Date of receipt of cost audit report by the company
— Service request number of related cost audit report
— Details of application or document
— The important particulars required to be filled in the form are:
— Detailed application pursuant to rule 2 of the Companies (Application for Extension of Time or Exemption under Sub-section (8) of Section 58A) Rules, 1979
— Information and explanation on reservations and qualification contained in the cost audit report
— Optional attachment(s) - if any
— The form should be digitally signed by Managing director or director or manager or secretary of the company (in case of Indian company) or an authorised representative (in case of a foreign company).

E-Form 66 – Form for submission of compliance certificate with Registrar

— This form is required to be filed pursuant to Section 383A of the Companies Act, 1956 and rule 3(2) of the Companies (Compliance Certificate) Rules, 2001.
— The important particulars required to be filled in the form are:
— Corporate identity number (CIN) of company
— Name of the company
— Address of the registered office of the company
— E-mail ID of the company
— Financial year to which the compliance certificate relates
— Whether annual general meeting (AGM) held? If yes, date of AGM and
 Due date of AGM. Whether any extension for financial year of AGM
 granted. If yes, due date of AGM after grant of extension.
— The following attachments are required to be filed with the form:
  — Compliance certificate pursuant to rule 3 of the Companies
    (Compliance Certificate) Rules, 2001
  — Optional attachment(s) – if any
— The form should be digitally signed by:
  — Managing director or director or manager or secretary of the company.
— The form does not required pre-certifications.

E-Form 67 – Form for submission of compliance certificate with Registrar
— This form is required to be filed pursuant to Rule 20A(3) of the Companies
— The important particulars required to be filled in the form are:
  — Service request number (SRN) of relevant form(s)
  — Date of SRN, Form Number
  — Corporate identity number (CIN) or foreign company registration
    number (FCRN) of the company
  — Name of the company and Address of the registered office or of the
    principal place of business in India of the company and e-mail ID of the
    company.
  — Details of defects pointed out or further information called by the
    Registrar of Companies (ROC) or any other competent authority.
  — Details of rectification of the defects or further information furnished
  — SRN of additional (differential) stamp duty payment.
  — Details of additional (differential) stamp duty.
— The following attachments are required to be filed with the form:
  — Maximum five documents can be attached.
— The form should be digitally signed by:
  — Director or Managing director or manager or secretary (In case of an
    Indian company) or an authorized representative (In case of a foreign
    company).
  — In case the form in respect of which addendum is being filed was
    signed by applicant or subscriber or advocate or attorney or pleader or
    person charged or chargeholder or ARC or assignee or trustee of
    debentureholder or receiver or person securing appointment or auditor
    or liquidator or cost auditor or chartered accountant (in whole-time
    practice) or company secretary (in whole-time practice) or cost
    accountant (in whole-time practice) or others.
— The form is precertified by chartered accountant (in whole-time practice) or
cost accountant (in whole-time practice) or company secretary (in whole-time practice).

8. 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
— Registration of Digital Signature Certificate (DSC)
— New User Registration
— Other Important things
— Uploading the duly filled up e-Form

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 DIN 3/Form 32 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 DIN-3 form. Therefore, filing of DIN-3 form by the company is most critical.
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/Form 32 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.
   
   (b) After clicking the New User link you will get the registration form.
   
   (c) Select the User Category and User Role.

   **User Role** field is activated depending on the selection of **User Category**.

   - 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.
   - A **Business User** has access to certain specific functionalities, 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:
     - Directors
     - Company User-Others
     - Practicing Professionals
     - Manager/Secretary
   
   (d) Start filling up the fields one by one. Fields marked as “**” are 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 ad email address. In fields Country and State, click on the down arrow associated with the respective fields 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:

- User ID
- Password
- Confirm Password
- Hint Question
- Hint Answer
- Please type the letters shown here into the box below

(i) **Business User** having user role Authorised Signatory and Professional User will be entered the following fields:

- User ID

(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.

9. 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. If the defect is one which requires filing of a revised document, then, in certain cases, the Registrar of Companies may accept the revised form on payment of additional fee which he may determine in terms of Section 611(2) of the Act.

Penalty for Filing False Documents/Statements with the Registrar

According to Section 628 if in any return, report, certificate, balance sheet, prospectus, statement or other document, required by or for the purposes of any of the provisions of this Act, any person makes a statement which is false in any material particular, knowing it to be false; or which omits any material fact, knowing it to be material, he shall, except when otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

10. 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 an 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.

11. CONDONATION OF DELAY

Under Section 637-B of the Act the Central Government may for reasons to be recorded in writing, condone the delay where any document required to be filed with the Registrar under any provision of the Act is not filed within the time specified therein. As already stated earlier in this study, the Registrar of Companies has been given the power to condone a delay of 30 days in filing electronic Form No. 8 relating to charges under Section 125 or modification of charges under Section 135. He has, however, no such power relating to satisfaction of charges. Delay of more than 30 days in filing electronic Form No. 8 and satisfaction of charges in electronic Form No. 17, can be condoned only by Central Government under Section 141.

On 27.09.07 the Ministry of Corporate Affairs vide its General Circular No. 13/2007 notified that the concerned ROC will levy additional fees pursuant to para (2) of the Company Law Board order in terms of section 611 (2) for delays upto 300 days in filing the electronic Form No. 8 relating to charges under Section 125 or modification of charges under section 135.

Procedure for Condonation of Delay by Central Government in Relation to Filing of Documents with Registrar of Companies

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, as attachment to electronic form no. 65, 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.
<table>
<thead>
<tr>
<th>Country Name</th>
<th>Country Code</th>
</tr>
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<tbody>
<tr>
<td>AFGHANISTAN</td>
<td>AF</td>
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VIET NAM | VN |
VIRGIN ISLANDS, BRITISH | VG |
VIRGIN ISLANDS, U.S. | VI |
WALLIS AND FUTUNA | WF |
WESTERN SAHARA | EH |
YEMEN | YE |
ZAMBIA | ZM |
ZIMBABWE | ZW |

ANNEXURE II

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</tr>
<tr>
<td>A 128</td>
<td>Pune</td>
<td>B 128</td>
<td>Gauhati</td>
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<tr>
<td>A 128</td>
<td>Pune</td>
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</tr>
<tr>
<td>A 256</td>
<td>Kanpur</td>
<td>B 256</td>
<td>Bhubaneshwar</td>
</tr>
<tr>
<td>A 512</td>
<td>Ludhiana</td>
<td>B 512</td>
<td>Magadh</td>
</tr>
<tr>
<td>A 1024</td>
<td>National Stock Exchange</td>
<td>B 1024</td>
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</tr>
<tr>
<td>B 2048</td>
<td>Rajkot</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If a company is listed in more than one exchange, add the respective codes under the same category to arrive at the total. For example, for a company listed in Bombay, Pune, Nagpur and Cochin, fill the exchange code as:

A 129 | B 10 |
(1+128) | (2+8)
LESSON ROUND-UP

- An e-form is a re-engineered conventional form, represents a document in electronic format to be filed on MCA portal through internet.
- The filing of returns, documents and applications to the RoC, Regional Director and the Ministry of Company Affairs under e-Filing is transparent and instant.
- Proper knowledge of substantive law, the guidelines and other instructions for filling the e-Form should be considered before filling the e-Form.
- Wherever physical filing of the form is required, filing will not be considered to be complete in the absence of physical filing and legal action may also be taken.
- The e-forms may be revised by the Ministry of Corporate Affairs so as to make the more user friendly and compliant with law. The updated e-forms are available at the website of MCA (www.mca.gov.in).

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Explain the following terms:
   (a) Pre-fill
   (b) Pre-certification
   (c) Drop down box
   (d) Text box

2. State the check points with reference to e-form 32 and e-form 8.

3. What are the modes of payment under e-filing.

4. What are the common points for all annual e-forms.

5. Which e-form is required for following event
   (a) Notice of situation or change of situation of registered office
   (b) Notice of the Court or the Company Law Board order
   (c) Statutory Report
   (d) Registration of resolution(s) and agreement(s)
STUDY XVII

STRIKING OFF NAMES OF COMPANIES

LEARNING OBJECTIVES

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. The chapter covers the following topics:

- Introduction
- Meaning of defunct company
- Important provisions of law on striking off
- Power of ROC to strike off defunct companies
- Position of company’s creditors
- Court’s power to wind up 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

1. INTRODUCTION

On incorporation of a company under the Companies Act, the Registrar of Companies (ROC) issues a Certificate of Registration to the Company implying thereby 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 under Regulation 21 of the Companies Regulations, 1956. Every company so registered is assigned a unique identification number in one consecutive series called Corporate Identification Number (CIN) and it can take steps to start business enumerated in the object clause of the memorandum.

Once registered, the name of the company can not 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. 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.
2. 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, it will be deemed to be in operation. Such companies cannot be dissolved by following the procedure mentioned in Sec. 560 of the Act.

3. 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 dissolved u/s. 560
(iv) Restoration of company within 20 years

4. 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 defunct or 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 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.

5. 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 treasures, 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.

6. COURT’S POWER TO WIND UP THE COMPANY EVEN AFTER DISSOLUTION UNDER SECTION 560(5)

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.

7. 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.

8. PROCEDURE INVOLVED IN STRIKING OFF NAMES OF COMPANIES BY REGISTRAR UNDER SEC. 560

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 the month of sending the 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 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:** An application shall be made to the Registrar for striking the company off the Register, pursuant to the Board resolution. The application should be accompanied by (A specimen of application form is placed as Annexure II at the end of this study) :

(a) 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.)

(b) 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.)

(3) **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. (Specimen of notification is placed in Annexure V at the end of this study.)

9. 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 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 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
— that it is just that the company be restored to the register.

One of the reasons for exercising the Court’s direction in favour of restoring a company must be that after restoration the company will be in a position to carry on the business of the company. 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 No. 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.

10. 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.

ANNEXURE I

Board resolution for getting the company struck off

The Company being a defunct company and it is not carrying on any business
and in operation and the Company does not intend to carry on any business, and the Company has no assets or liabilities, the Board authorize Mr./Ms.................. Director and Mr./Ms.................., Director, jointly and severally, 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.

ANNEXURE II

Application form for striking off name of company under Section 560 of the Companies Act, 1956

<table>
<thead>
<tr>
<th>Affix</th>
<th>Affix</th>
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<tbody>
<tr>
<td>PP size</td>
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</tr>
<tr>
<td>Photo</td>
<td>Photo</td>
</tr>
</tbody>
</table>

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 M/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**.

* Clauses 5 and 6 applicable only in case of an CIMC/NBFC.
** Strike out whichever is not applicable.

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 … … … … … … …

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).

* Strike out whichever is not applicable
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 *(Annexure VI)*/declaration* signed by me.

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: ………………..
(Deponent)

Date:

ANNEXURE IV

Indemnity Bond

(to be given individually by Applicant)

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:

(a) (i) I…………………, S/o D/o Shri…………………, am holder of passport/ PAN…………………etc.

(copy 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.)

* Strike out whichever is not applicable
(iv) My permanent address is..................
(cop[y 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.

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
ANNEXURE V

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

ANNEXURE VI
[Please refer Annexure III]

Statement of Account*
(Para l(b) of circular)

Name of the Company:

Year to which the Statement of Account pertains:

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
   (i) Current Assets, loans and Advances
   Less: (if) Current Liabilities and provisions

Net Current assets (/") - (if)

* Where the period of operation is less than one accounting year, a statement of account is required to be furnished.
(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:**

**Signature (Secretary/Applicant*)**

* Applicable only if there is MD/Secretary.

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**LESSON ROUND-UP**

- A defunct company is a company which is not carrying on any business or in operation. It may be struck off 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 it 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)?
Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency. The formulation of Secretarial Standards by the 'Secretarial Standards Board' (SSB) of the Institute of Company Secretaries of India (ICSI) is a unique and pioneering step towards standardisation of diverse secretarial practices prevalent in the corporate sector. This chapter covers various aspects of Secretarial Standards. After going through this chapter, you will be able to understand:

- Establishment of Secretarial Standards Board and its objectives
- Scope and Functions of SSB
- What are Secretarial Standards
- Scope of Secretarial Standards
- Need for Secretarial Standards
- Secretarial Standards issued by ICSI
- A brief Analysis of Secretarial Standards issued
- Guidance notes issued so far
- Advantages of Secretarial Standards
- Procedure for issuing Secretarial Standards
- Compliance of Secretarial Standards

1. ESTABLISHMENT OF SECRETARIAL STANDARDS BOARD AND ITS OBJECTIVES

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards. The establishment of Secretarial Standards Board by ICSI in the year 2000 is a visionary step. There is perhaps no similar Board or authority in existence anywhere in the world for the purpose of formulating Secretarial Standards.

The Secretarial Standards Board formulates Secretarial Standards taking into
consideration the applicable laws, business environment and the best secretarial practices prevalent. Secretarial Standards are developed:

— in a transparent manner;
— after extensive deliberations, analysis, research; and
— after taking views of corporates, regulators and the public at large.

The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of regulatory authorities such as the Ministry of Corporate Affairs, the Securities and Exchange Board of India and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost and Works Accountants of India.

2. SCOPE AND FUNCTIONS OF THE SECRETARIAL STANDARDS BOARD

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB also clarifies issues arising out of such Standards and issues guidance notes for the benefit of members of ICSI, corporate and other users.

The main functions of SSB are:

(i) Formulating Secretarial Standards;
(ii) Clarifying issues arising out of the Secretarial Standards;
(iii) Issuing Guidance Notes; and
(iv) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

3. WHAT ARE SECRETARIAL STANDARDS

Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector. These Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

4. SCOPE OF SECRETARIAL STANDARDS

The Secretarial Standards do not seek to substitute or supplant any existing law or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations. Secretarial Standards that are issued are in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

5. NEED FOR SECRETARIAL STANDARDS

Companies today follow diverse secretarial practices. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. As an illustration, the Companies Act, 1956, provides that companies must convene their Board Meetings by giving notice to directors in this
regard. However, no minimum period for giving such Notice has been laid down and, companies are at liberty to give any or no length of notice for convening a Board Meeting. Further, there is no requirement for sending Agenda for the Meeting. Companies, therefore, follow varied practices with regard to giving Notices and sending Agenda and Notes on Agenda for Meetings of the Board of Directors. Some companies specify the business to be transacted in the Notice itself, while others send a separate Agenda. In addition, some companies also send detailed Notes, explaining each item on the Agenda. While some companies send the Agenda in advance of the Meeting, others place the Agenda at the Meeting itself. Even in case of those companies which send the agenda in advance, the period varies. These divergent practices need to be harmonised by laying down the best practices in this regard.

A need was, therefore, felt to integrate, consolidate, harmonise and standardise all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country. Such uniformity of practices, consistently applied, would result in the establishment of sound corporate governance principles.

6. SECRETARIAL STANDARDS ISSUED

The Institute has so far issued the following Secretarial Standards:

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

7. BRIEF ANALYSIS OF SECRETARIAL STANDARDS

A Brief Analysis of various Secretarial Standards issued so far is discussed hereunder:

Secretarial Standard on Meetings of the Board of Directors (SS-1)

The Board of Directors of a company holds a fiduciary position and hence it is essential that the decisions of the Board are taken conscientiously and that, for this purpose, Meetings of the Board are held frequently, convened and constituted properly and that all important matters are discussed thereat. The Secretarial Standard on Meetings of the Board of Directors lays down a set of principles which companies are expected to adopt in the convening and conduct of meetings of the Board of Directors and committees thereof. These principles relate to frequency of meetings, quorum, attendance, resolutions, recording and preservation of minutes etc. Illustrative lists of items to be considered at different meetings of the Board are enunciated in the Standard. Further, the Standard seeks to enhance stakeholders confidence by focussing on the principles relating to responsibilities of the Chairman.
of the Board, maintenance of attendance registers, preservation of minutes, disclosures in Annual Report etc.

_Briefly, the Secretarial Standard provides for the following, amongst others:_

— A Board Meeting should be convened by giving at least 15 days notice. The agenda should be sent at least 7 days before the date of the meeting.

Companies Act does not prescribe any length of Notice for calling a meeting.

— Notice should be given to all Directors, whether in India or abroad and may be sent by hand, post, facsimile or e-mail. Where Notice is given by electronic mode, a hard copy of the Notice should also be sent by post.

Section 286 (1) of Companies Act provides that Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

— Standard provides that the Notice of a meeting should be given even when meetings are held on pre-determined dates or at pre-determined intervals. Companies Act is silent on this issue.

— To avoid any item of significance being considered and approved without the prior knowledge of Directors, the Standard provides that prior Notice for such item is essential.

Companies Act does not provide for any such requirement.

— The quorum should be present at every stage of the Meeting. Any business transacted by a number lesser than the quorum is void.

Companies Act only prescribes the quorum requirement - one-third of the total strength of the Board, or two Directors, whichever is higher. As per the standard, it is not sufficient that quorum is present only at the commencement of meeting.

— Leave of absence to Directors should not be granted as a ritual. It should be granted only when specifically sought by a Director.

Section 283(1)(g) of Companies Act only provides for vacation of office if director absents himself from three consecutive meetings without obtaining leave of absence. No mention is made regarding communication of leave of absence. Granting of leave should not be a ritual. Leave be granted only when specifically sought for by a Director. Communication may be oral or written.

— To ascertain the 'will of the majority', resolutions to be passed by circulation should be sent to all Directors, whether in India or abroad.

— Recognising its importance, the Standard crystallises the date on which a Resolution sent for passing by circulation shall be deemed to have been passed.

— To ensure authenticity, the standard provides that the Resolutions passed by circulation should be placed before the next Meeting of the Board for noting and should be reproduced as part of the minutes of that Meeting.
— Annual, quarterly or half-yearly financial results should be approved at a meeting of the Board or its Committee and should not be approved by means of a Resolution passed by circulation. Companies Act does not specify any such requirement.
— The limited review report, in case of material variance, should be discussed and approved at a Meeting of the Board and not by Resolution passed by circulation. Companies Act is silent on this aspect.
— Within seven days from the date of the meeting of the Board, the draft Minutes thereof should be circulated to all the Directors for their comments.
— The Minutes of meetings of any Committee should be circulated to the Board along with the Agenda for the next meeting and should be noted by the Board. Companies Act does not provide for circulation of minutes amongst directors.
— Apart from the Resolution or decision, the Minutes should mention the brief background of the proposal and the rationale for passing the Resolution or taking the decision. Companies Act is silent on this aspect.
— As decisions taken by the Board are collective decisions. Standard provides that the names of the Directors who dissented or abstained from the decision should be recorded.
    Section 193(4) only provides that Minutes should contain the names of Directors dissenting from or not concurring in the resolution. However, as decisions taken by the Board of Directors are collective decisions, the names of the Directors who not only dissented or but also abstained from the decision should also be recorded. This is essential, since the minutes of a meeting of directors are very persuasive evidence of the proceedings therein and prima facie evidence in any subsequent proceeding challenging the directors’ conduct in respect of a particular decision.
— The Minutes of all meetings should be preserved permanently.

**Secretarial Standard on General Meetings (SS-2)**

The members of a company exercise their decision-making powers through the forum of General Meetings and hence it is essential that standard and best practices are followed by companies in this regard which will also strengthen shareholders confidence. The Secretarial Standard on General Meetings prescribes a set of principles which companies are expected to observe in the convening and conduct of General Meetings and matters related thereto. Principles have been laid down with respect to requirements of quorum, voting, proxies, conduct of poll, withdrawal/rescinding/modification of resolutions, adjournment of meetings, recording in and preservation of minutes as well as the duties of the Chairman and the disclosures to be made in the Annual Reports of companies. Further, explicit principles have been laid down on the related critical aspects such as distribution of gifts, presence and duties of Company Secretary/Auditors in the meetings, preservation of minutes. Besides, it intends to integrate and standardize the diverse secretarial practices prevalent in the corporate sector for conducting General meetings.

*The salient features of this Standard which supplement the Company Law and on which the Companies Act is silent are—*
— Notice of every General Meeting should be given to every member at the
address provided by him whether in India or outside India and Notice should also be placed on the website of the company, if any. If the venue of the meeting is not a prominent place, a site map of the venue should be enclosed with the Notice. Notice should also be given to the Directors and other specified recipients such as banks and financial institutions and other interested parties.

— In case of listed companies with more than 5,000 Members, an abridged version of the Notice should be published in a newspaper having wide circulation with such States of India where more than 1,000 Members reside.

— All Directors of the company should attend all meetings of shareholders and be available to reply to shareholders’ queries. If any Director is unable to attend the Meeting for reasons beyond his control, the Chairman should explain such absence at the Meeting.

— Framing of Resolutions and explanatory statement in simple language in the Notice is emphasized for the benefit of members.

— The attendance of Practicing Company Secretary who has given the compliance certificate has been made mandatory at every Annual General Meeting. The Standard also makes it obligatory for the auditors of the company to attend the Annual General Meeting if there are any reservations, qualifications or adverse remarks in the Auditor’s Report.

— Onerous responsibility has been placed on the Chairman of the meeting who is expected to be fair and impartial in the conduct of his duties. He is enjoined upon to provide a fair opportunity to Members who are entitled to vote to raise questions and/or offer comments and ensure that these are answered.

— The Chairman should explain the objective and implication of each resolution, before the resolution is put to vote.

— The Standard specifies a two-way proxy form and specifies that the proxy holder should also sign the instrument of proxy.

— The Standard deals in depth with the concept of voting by poll.

— In case of listed companies with over 5,000 Members, the result of the poll should be published in a leading newspaper circulating in the neighbourhood of the registered office of the company.

— Resolutions specified in the Notice for items of business which are likely to affect the market price of the securities of the company should not be withdrawn.

— No gifts, gift coupons or cash in lieu of gifts should be distributed before, at or in connection with the General Meetings.

— Annual Report of companies should disclose the particulars of all general meetings held during the last three years.

— Best practices for entering, recording and signing as well as preservation of the Minutes have been laid down.
Secretarial Standard on Dividend (SS-3)

Declaration and distribution of dividends is a complicated task involving both financial and non-financial considerations. The Secretarial Standard lays down a set of principles in relation to the declaration and payment of dividend, interim dividend, treatment of unpaid Dividend, revocation of dividend as well as the preservation of dividend warrants, maintenance of dividend registers, disclosure requirements and matters incidental thereto. The Standard, by stipulating requirements in regard to all allied and significant matters such as intimation to members before transferring unpaid dividend to Investor Education and Protection Fund, preservation of dividend Registers, validity of dividend warrants etc. attempts to give the right direction to the corporate sector, promote uniformity of practices and ensure effective corporate governance.

The salient features of this standard are:

— Dividend can be declared out of free reserves and surplus in the profit and loss account of the company. However, dividend should not be declared out of the Securities Premium Account or the Capital Redemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on reissue of forfeited shares or out of profit earned prior to the incorporation of the company.

— Interim Dividend may be declared after the Board has considered the interim financial statements for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, appropriations and transfers to statutory reserves, taxation, Dividend at the contracted rate on preference shares and transfer to reserves as per provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975.

— Interim Dividend should not be declared out of reserves.

— In case a company has issued equity shares with differential rights as to Dividend, Interim Dividend (if so decided by Board) may be declared on all or anyone or more of the classes of such shares.

— If preference shares have not been redeemed, then no Dividend should be declared until such preference shares are redeemed.

— Preference shareholders should be paid dividend before dividend is paid to equity shareholders of the company. However, in the case of Interim Dividend, while preference shareholders need not necessarily be paid dividend before interim dividend is paid to equity shareholders, the board should set aside such sum as would be necessary to pay dividend to preference shareholders at the contracted rate.

— Arrears of Dividend on cumulative preference shares should be paid before paying any dividend.

— Dividend should not be declared on equity shares for previous years in respect of which annual accounts have been adopted at the respective Annual General Meeting.

— Dividend may be paid by cash, cheque, warrant, demand draft, pay order or directly through ECS but not in kind.
— Initial validity of Dividend warrant is for three months. The Duplicate dividend warrant should be issued only after expiry of the validity of the Dividend warrant and the reconciliation of the paid amounts thereof.

— Calls in arrears and any other sum due from a member may be adjusted against Dividend payable to the member.

— Dividend, whether interim or final, once declared becomes a debt and should not be revoked.

— Unpaid/Unclaimed Dividend should be transferred to the Investor Education and Protection Fund on expiry of seven years from the date on which such Dividends were transferred to unpaid Dividend Account after giving individual intimation to the claimant shareholders.

— Any interest earned on unpaid Dividend Account should also be transferred to Investor Education and Protection Fund.

— Paid Dividend warrant instruments returned by the Bank and Dividend Registers should be preserved for a period of eight years.

— The Balance Sheet, Annual Report and Annual Return of the company should make separate disclosures of the amount of Dividend lying in the unpaid or unclaimed Dividend account for seven years. Annual Return and Annual Report should also disclose the amount transferred to Investor Education and Protection Fund.

Secretarial Standard on Registers and Records (SS-4)

The salient features of this standard are as below:

A company is required to maintain certain registers and records. There are some registers and records, the maintenance of which is not statutorily required but is essential for the smooth, efficient and systematic functioning of the company. Some of the registers and records are required to be kept open by a company for inspection by directors and members of the company and by other persons, including creditors of the company. The right to inspect such registers and records is an enforceable right. Companies are also required to allow extracts to be made from certain documents, registers and records and to furnish copies thereof. This Standard deals with the various registers/records to be kept, manner of their keeping, their place of keeping, entry of particulars and information to be made and recorded therein, their inspection and preservation etc.

The standard prescribes a set of principles and good practices in relation to various registers and records including the maintenance and inspection thereof and gives a direction to the companies to establish and maintain systems that comply with all statutory provisions and meet the needs of the stakeholders.

The Information Technology Act, 2000 permits the maintenance of registers and records in electronic mode. Such registers and records should be maintained in accordance with the provisions of the said Act.

The standard deals with the following registers:

— Register of Investments in securities not held in the name of the Company
— Register of buy-back of securities
— Register of charges
— Register and index of members
— Register and index of debenture holders
— Foreign Register of members or debenture holders
— Register of renewed and duplicate certificates
— Register of contracts in which directors are interested
— Register of directors, Managing Director, Manager and Secretary
— Register of Directors’ Shareholdings
— Register of Inter corporate Loans and investments
— Register of Deposits
— Register of Allotment
— Register of payment of dividend
— Register of Directors’ Attendance
— Register of Postal ballot
— Register of proxies
— Register of Inspection
— Register of investments (other than securities not held in the name of the Company)
— Register of documents executed under Common seal
— Register of records and documents destroyed
— Register of Investors’ Complaints
— Register of transfer of shares
— Register of transmission of shares
— Register of transfer of debentures
— Register of Transmission of debentures
— Register of employee stock options
— Register of sweat equity shares
— Register in respect of SEBI (Substantial Acquisition of shares and takeovers) regulations, 1997
— Register in respect of SEBI (Prohibition of Insider trading) regulations, 1992
— Books of Accounts
— Annual Return

Secretarial Standard on Minutes (SS-5)

Every company is required to keep minutes of all proceedings of the meetings conducted during its existence. Minutes kept in accordance with the provisions of the Act, evidence that the meeting has been duly convened and held, all proceedings thereat have taken place and all appointments made thereat are valid.

The Minutes should contain a fair and correct summary of the discussions and decisions taken at the meeting so as to enable absentee directors/ committee members/shareholders to form an idea of what transpired at these meetings.
This Secretarial Standard on Minutes 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:
— A separate Minutes Book should be maintained for each type of Meeting.
— Generally, the Minutes should begin with the number and type of the Meeting and then go on to state the name of the company, day, date, venue, time of commencement and time of conclusion of the Meeting.
— Minutes of Meetings of the Board or Committee should also include:
  — The names of officers in attendance and invitees for specific items.
  Section 193(4)(a) of the Companies Act requires only the names of directors present at the Meeting of the Board of Directors or of a Committee of the Board to be included in the Minutes of such Meeting.
  — If any director has participated only for a part of the Meeting, the reference to the agenda items in which he had participated.
  — In case of a director joining through video or tele-conference, the place from and the agenda items in which he participated.
  — The names of directors who abstained from any decision.
  The Companies Act only provides for recording of the names of the directors, if any, dissenting from, or not concurring in the resolution. [Section 193(4)(b)].
  — The name of Company Secretary present at the Meeting. The Companies Act does not contain any such requirement.
Also, the Minutes should mention the brief background of the proposals made in the Meeting, summarise the deliberations and the rationale for taking the decisions.
— The Minutes of General Meetings should also include:
  — The information regarding presence of the Chairman of the Audit Committee at the Annual General Meeting.
  — The information regarding presence if any, of the Auditors, the Practising Company Secretary who issued the Compliance Certificate, the Court appointed observers or scrutineers.
— Summary of the opening remarks of the Chairman.
— Summary of the clarifications provided.
— In the case of resolutions passed through postal ballot, the name of the scrutinizer appointed and the result of the ballot.
— In respect of recording the Minutes of Meetings of the Board, any document, report or notes placed before the Board and referred to in the Minutes should be identified by initialling of such document, report or notes by the Chairman or the concerned director.
— Draft Minutes should be circulated to all the members of the Board or the Committee, as the case may be, within fifteen days from the date of the conclusion of the Meeting of the Board or Committee, for their comments.
— Minutes of the Meetings of all Committees should be placed and noted at a subsequent Meeting of the Board.
— Minutes of all Meetings should be preserved permanently.
— Office copies of Notices, Agenda, Notes on Agenda and other related papers should be preserved in good order for as long as they remain current or for ten years, whichever is later, and may be destroyed thereafter under the authority of the Board.
— Minutes Books should be kept in the custody of the Secretary of the company or any director duly authorized for the purpose by the Board.

Secretarial Standard on Transmission of Shares and Debentures (SS-6)

Realizing the divergent practices involved in the transmission of shares and the difficulties faced by both the companies and the investors, the Secretarial Standards Board has formulated the Secretarial Standard on Transmission. This Standard lays down principles in relation to the documentation and for verification of legal claimants in case of physically and electronically held shares for smooth functioning of the process. The Standard inter alia deals with situations where shares are singly or jointly held, nominee has been appointed, shareholder has died intestate etc.

The absence of detailed provisions in the Act has resulted into companies developing varying and diverse documentary compliances and procedures. To address this issue and to evolve a uniform procedure as well as to alleviate and redress the grievances of shareholders arising from disparate practices, this Standard has been evolved.

SS-6 has set standards in several areas to bring clarity and to unify the disparate practices, including:
— Documents required
— Time period within which the transmission process should be completed
— Preservation.

Briefly, the Secretarial Standard provides for the following, amongst others:
— In case of transmission of shares of a sole shareholder who has appointed a nominee, the company should register the shares in the name of the nominee within a period of 30 days.
Companies Act does not prescribe any such period.

— Similarly, in the case of transmission of shares of a sole shareholder who has not appointed a nominee, the company should register shares in the name of any other person (i.e. beneficiary of a Will or legal Heir) within a period of 30 days.

Companiecompanies Act does not prescribe any such period.

— The Secretarial Standard lays down the procedure for transmission of shares in case where sole shareholder has not appointed a nominee. It clearly provides for both the situations, i.e. where the sole-shareholder dies leaving a Will and where the sole-shareholder dies intestate.

Regulation 25 of Table A of Schedule I to the Companies Act merely provides that legal representatives shall be entitled to transmission of shares in both these cases.

— In case of transmission of shares held jointly, whether nomination has been made or not, the company should register the shares in the name of the nominee or in the name of any other person elected by such nominee, within a period of 30 days.

Companiecompanies Act does not prescribe any such period.

— In respect of transmission of shares held jointly, where no nomination has been made, the Secretarial Standard lays down provisions for different permutation and combinations covering all aspects. This is to say that it covers the case where the last shareholder dies leaving a Will; case where shares are held jointly and the last of the surviving shareholders dies intestate without appointing a nominee; case where shares are held jointly and all the shareholders die simultaneously without appointing a nominee but the first holder leaves a Will; case where shares are held jointly and all the shareholders die simultaneously intestate without appointing a nominee.

The Companies Act is silent on the different situations which may arise as stated above in regard to transmission of shares held jointly without making any nomination.

— The Secretarial Standard requires that every company should maintain a register containing particulars of all transmissions.

The Companies Act is silent on this issue.

— The register and records pertaining to transmission should be preserved permanently and kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

The Companies Act does not provide for preservation and custody of such register and records.

Secretarial Standard on Passing of Resolutions by Circulation (SS-7)

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. Section 289 of the Companies Act enables the Board of Directors to pass resolutions by circulation. However, it merely provides that the resolution is to
be circulated to all members of the Board or Committee and is to be passed by the requisite majority. As the law is silent on who is to propose the resolution, what matters to be passed through circulation, the mode of circulation, timing of approval of the resolution etc., SS-7 lays down the best practices to be followed.

SS-7 authorizes the Chairman of the Board or Managing Director and in their absence any other director to decide whether the approval of the Board for a particular matter is to be obtained by means of resolution by circulation. The Standard also enlists a number of matters which are to be passed only at duly convened meetings of the Board and which should not be passed by circulation. This is to ensure that the important items of business which require deliberations by the Board are passed only after necessary debate and discussion at Board room.

Briefly, the Secretarial Standard provides, amongst others, for the following:

— The proposed resolution with all the papers should be sent to all directors including interested directors and directors who are usually residing abroad.

— There should be a note with every such resolution setting out the details of the proposal and draft of resolution proposed and also indicating how to signify assent or dissent to the resolution proposed.

— The draft resolution along with necessary papers should be circulated by hand, or by post or by facsimile, or by e-mail or by any other electronic mode.

— The resolution is deemed to have been passed on the date on which it is approved by the majority of the Directors.

— In case a director does not append a date, the date of receipt by the company of the signed resolution should be taken as the date of signing.

— The minutes of the next meeting of the Board or, committee should record the text of the resolution passed and dissent, if any.

— Passing of resolution by circulation should be considered valid as if it had been passed at a duly convened meeting. This does not dispense with the requirement for the Board to meet at the specified frequency.

— The standard provides, as an Appendix, list of illustrative notes to be passed at a duly convened Board meeting and which cannot be passed by circulation.

**Secretarial Standard on Affixing of Common Seal (SS-8)**

Substantive law is mainly silent on fixation of common seal. SS-8 deals with Affixing of Common Seal. The standard aims at clarifying documents which need to be common sealed and procedure thereof. The unique feature of the standard is that it introduces the concept of Official Seal. This would substitute the common seal in case affixation of common seal is not possible physically.

As per the Standard the common seal should be adopted by a resolution of the Board and the impression of the seal should be made part of the minutes of the meeting in which it is adopted. The common seal should be affixed to any document in the presence of Managing Director or any two Directors, and the Company Secretary or any other person as may be authorized by the Board. Every
Briefly, the Secretarial Standard provides, amongst others, for the following:

— As per the Standard, Common Seal means the metallic seal of a company which can be affixed only with the approval of the Board of directors of the company.

— The Common seal should be adopted by a resolution of the Board and its impression should be made part of the minutes of the meeting in which it is adopted.

— The persons in whose presence the seal is affixed should sign every instrument to which seal of the company is so affixed.

— The common seal should be kept in the custody of a director of the company or the Company Secretary or any other official, as authorised by the Board.

— A company whose objects require or comprise transactions of business outside India may have for use in any territory, district or place not situated in India an official seal, which shall be a facsimile of the common seal.

— Use of official seal requires an enabling provisions in the Articles.

— The official seal should be facsimile of the common seal.

— Official seal should have engraved in it the name of the territory where it is to be so used in addition to the name and state in which the registered office of the company is situated.

— The person affixing the official seal shall sign and write on deed or other instrument, the date and place at which it is affixed.

— Every company should maintain a register containing particulars of documents on which the official seal of the company has been affixed.

— The register should be maintained at the office where the official seal is kept.

**Secretarial Standard on Forfeiture of Shares (SS-9)**

Articles 29 to 35 of Table ‘A’ deal with forfeiture of shares. The Act being silent on forfeiture gave rise to the need for issuing the secretarial standard. SS-9 ensures that the forfeiture is carried out bona fide and in the interests of the shareholders.

This standard lays down a set of principles for forfeiture both for equity and preference shares arising from non-payment of calls. Initiation of forfeiture process, effect of forfeiture, re-issue of forfeiture sales, pricing of reissue of forfeiture shares, annulment of forfeiture of shares are the major aspects which are being dealt under SS-9. The standard dwells upon the authority for the forfeiture. Forfeiture of shares is to be made only with the approval of the Board. No forfeiture can be made unless notice is served on the shareholder whose shares are being forfeited. The notice to the defaulting member should be served by registered post acknowledgement due.
The standard also specifies the contents of notice. The standard also empowers the Board to annul forfeiture at its discretion, if the member pays all outstanding calls due together with interest. The standard also clarifies about the pricing on re-issue of forfeited shares.

Briefly, the Secretarial Standard provides, amongst others, for the following:

— The Articles should contain a provisions for forfeiture of shares.
— Forfeiture of shares requires approval of the Board in a duly convened meeting.
— If a call on the shares, together with interest accrued thereon, in accordance with the terms of issue of shares, remains unpaid after the day appointed for payment thereof, then forfeiture of shares should be made under the authority of the Board.
— The notice should be served by the company on the defaulting member by registered post acknowledgement due.
— The notice should state the amount of the call due and interest accrued thereon. It should specify a date (not more than 21 days from date of posting of notice) before which the payment should be made. Also specify that in case of non-payment forfeiture shall be offered.
— The Board should approve the forfeiture at a duly convened meeting.
— The date of approval by the Board in the date of forfeiture.
— The Board should issue individual notices to the defaulting members whose shares have been forfeited.
— Entries in the register of members should be made with regard to forfeited shares.
— There should be a reference to the forfeiture of shares in the report of the directors to the shareholders.
— On annulment of the forfeited shares, the name of the member should be restored in the register of members for those shares.
— A forfeited share may be reissued or otherwise disposed of or such terms and in such a manner as the Board may think fit.
— On reissue the transferee should be registered as the holder of the share.
— The title of the transferee should not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**Secretarial Standard on Board’s Report (SS-10)**

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 Secretarial Standard on Board's report is prepared.

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 disclosure 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.

8. GUIDANCE NOTES ISSUED

To facilitate the corporate sector to comply with the Secretarial Standards, the SSB also formulates Guidance Notes. The Institute has issued Guidance Notes on:
— Meetings of the Board of Directors
— General Meetings
— Passing of the Resolutions by Postal Ballot
— Dividend
— Buy-Back of Securities
— Board’s Report
— Corporate Governance Certificate (Clause 49 of the Listing Agreement)
— Preferential Issue of Shares.
— Related Party transactions – Listing of Corporate debt.

SSB has also brought out a Consultative Paper on Meetings of the Board of Directors through tele/video-conferencing.

9. ADVANTAGES

The ultimate goal of the SSB is to promote good corporate practices leading to better corporate governance. The Standards are for good secretarial practices and
desirable corporate governance with a view to ensuring shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law.

The adoption of the Secretarial Standards by the corporate sector will, over the years have a substantial impact on the improvement of quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.

Many companies today are voluntarily adopting the Secretarial Standards in their functioning. The annual reports of several companies released during the last few years include a disclosure with regard to the compliance of the Secretarial Standards. To name a few, Reliance Industries Ltd., Tata Metals Ltd., Reliance Energy Ltd., Ashok Leyland Ltd., Infotech Enterprise Limited have adopted Secretarial Standards.

By following the Secretarial Standards in true letter and spirit, companies will be able to ensure adoption of uniform, consistent and best secretarial practices in the corporate sector. Such uniformity of best practices, consistently applied, will result in furthering the shareholders democracy by laying down principles for better corporate disclosures thus adding value to the general endeavour to strive for good governance.

10. PROCEDURE FOR ISSUING SECRETARIAL STANDARDS

The procedure being adopted by SSB for formulating and issuing Secretarial Standards is briefly explained below:

SSB, in consultation with the Council of the Institute, determines the areas in which Secretarial Standards need to be formulated. The SSB then either constitutes Working Groups or requests the Secretariat of the Institute to formulate a preliminary draft of the proposed Standard. The preliminary draft is discussed by SSB and then circulated to various persons/authorities such as members of the Council, Chairmen of Regional Councils / Chapters of ICSI; various professional bodies; Chambers of Commerce; Regulatory authorities such as MCA, DEA, SEBI, RBI, DPE and such other bodies/organizations as may be decided by SSB for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received. Based on the suggestions received, an Exposure Draft is prepared by SSB and published in the “Chartered Secretary”, the monthly journal of ICSI, and also put on the website of ICSI to elicit comments from members and the public at large. The draft of the proposed Secretarial Standard generally includes the following basic points:

(a) Concepts and fundamental principles relating to the subject of the Standard;
(b) Definitions and explanations of terms used in the Standard;
(c) Objectives of issuing the Standard;
(d) Disclosure requirements; and
(e) Date from which the Standard will be effective.
After taking into consideration the comments received, the draft of the proposed Secretarial Standard is finalised by SSB and submitted to the Council which finalises the same in consultation with SSB. The Secretarial Standard on the relevant subject is then issued under the authority of the Council.

11. COMPLIANCE WITH SECRETARIAL STANDARDS

The Secretarial Standards are currently recommendatory. Recognizing the fact that the users are unfamiliar with the need and effect of such Standards, the Council of Institute has decided to introduce these Secretarial Standards to the corporate world in the form of recommendations for compliance.

ICSI is endeavouring to persuade the Government and appropriate authorities to enforce these Standards, to facilitate their adoption by industry and corporate entities in order to achieve the desired objective of standardization of best secretarial practices.

It is expected that once these standards gain acceptability and their importance has been recognized, that these would be made mandatory.

LESSON ROUND-UP

- The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.
- The main functions of SSB are Formulating Secretarial Standards; Clarifying issues arising out of the Secretarial Standards; Issuing Guidance Notes; and Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.
- Secretarial Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.
- Institute has so far issued Ten Secretarial Standards on: Meetings of the Board of Directors (SS-1); General Meetings (SS-2); Dividend (SS-3); Registers and Records (SS-4); Minutes (SS-5); Transmission of Shares and Debentures (SS-6); Passing of Resolutions by Circulation (SS-7); Affixing of Common Seal (SS-8); Forfeiture of Shares (SS-9) and Board's Report (SS-10).
- To facilitate the corporate sector to comply with the Secretarial Standards, the SSB also formulates Guidance Notes.
- The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.
- The Secretarial Standards are currently recommendatory. Once the Standards gain acceptability and their importance has been recognised, these would be made mandatory.
SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. What are Secretarial Standards? Discuss the need for Secretarial Standards.
2. Discuss the scope and function of Secretarial Standard Board.
3. Write down the brief analysis of following:
   (a) Secretarial Standard on Dividend (SS-3)
   (b) Secretarial Standard on Minutes (SS-5)
4. Secretarial Standards are currently recommendatory. Comment.
STUDY XIX
INSIDER TRADING

LEARNING OBJECTIVES

Insiders in a listed company or outside when in possession of the price sensitive information about the company try to make easy money by utilizing the information before it comes in the knowledge of general public or shareholders. SEBI, the regulator of the capital market with the help of these regulations prevent undue fluctuation of the prices of securities. By going through this chapter students are expected to know the following in broad terms.

- Concept and Rationale Behind Prohibition of Insider Trading
- SEBI’s (Prohibition of Insider Trading) Regulations, 1992
- Penalty provisions for violations of the Regulations
- Major actions taken by SEBI so far
- Insider Trading Regulations in Other Countries
- Role of Company Secretary in compliance requirements

1. CONCEPT AND RATIONALE BEHIND PROHIBITION OF INSIDER TRADING

Today, we live in an information-driven society. The value of information can be experienced in almost every facet of life. It is as an asset and is the new dividing line between haves and have-nots. Today, as a general rule, the most successful man is the one who has the best information and who makes its use to his benefit. Similarly in a Company form of organization a person having access or who had access to the unpublished price sensitive information in respect of securities of a Company usually takes advantage of the information by dealing in the securities of the company.

‘Insider trading’ is the buying or selling, dealing in the securities, communicating, conselling or procuring directly or indirectly any price sensitive information of a listed company by a director, officer, a designated employee of the firm or by any other person such as internal auditor, statutory auditor, agent, advisor, analyst, consultant, deemed connected person who has knowledge of material 'inside' information not available to the general public. The amendment brought about in 2002 restricts dealing in securities by a company of any other company or associate of that other company while in possession of any price sensitive information. The dealing in securities by an 'insider' is illegal when it is predicated upon the utilization of 'insider' information to profit at the expense of other investors who do not have access to the
same information. The prices of most securities reflect the available public information about those companies. Hence, any investor who acts on non-public information does so at the cost of public confidence in the securities market and in the process corrupts the ‘level playing field’.

An insider being in privileged position due to employment in the Company or due to direct or indirect connection with the section of the Company where such vital information is normally dealt with, has the vital information which is otherwise not available to others and he can use the information for his personal gain which might affect the interest of other investors or public adversely. Insider dealing also leads to loss of confidence of investors in stock market as they feel that the market is rigged and only the few who have inside information benefit and make profits from their investments. Hence, to provide a level playing field to the shareholders and public control over such information by way of regulatory and penal provisions is the necessity of the day to protect interest of common investors and healthy development of the capital market.

The rationale behind the prohibition of insider trading in the capital market is because it is legally, economically and socially undesirable. The very basis of the operation of the stock exchange is that it functions on the tacit understanding that all participants should have equal access to material information regarding publicly traded securities. This implies that persons are not supposed to make use of this ‘material information’ being in their exclusive possession to their benefit, if they are to be valid players on the exchange. The insider trading menace results on account of certain persons who by virtue of their position, being in a more advantageous position vis-a-vis others with regard to price sensitive information, takes advantage of the situation.

In the securities market, information is money because its timely gathering, analysis and dissemination are essential for efficient operation in the market. The balance in bargaining power obviously shifts favourably towards the person possessing insider information. Hence it leads to unfairness in the market as it violates the belief that there must be a parity in the bargaining power of all the players.

The wrongful obtaining and use of such information by insiders is unfair and adversely affects the incentive to invest in such securities. Therefore, a failure to control this practice would not only result in unfairness permeating into the market but another obvious result would be a loss of public confidence in the institution as a whole as it undermines the honesty that underlie public confidence in securities market of a country.

One of the strongest arguments in favour of prohibiting insider trading is that it distorts the pricing of listed securities by free play of market forces. It is a basic principle that the perfect stock market is the one that accurately prices listed securities. The correct pricing is the one that would naturally be present in the market if all information relating to the company affairs have been made public. Any practice which seeks to distort this market balance is undesirable. This obviously gives rise to investor uncertainty and decreases the attractiveness of investing in securities. It is fundamentally for this reason that the insider must desist from dealing in the securities until the information has been made public. Thus in a developed capital
market prohibition of insider trading is a must. Today all reputed company management ensures that the insiders are not allowed to make use of their information by making their internal procedures and conduct more stringent than those specified in the model code and ensuring that those are strictly adhered to by all those are connected. Securities and Exchange Board of India being the market regulator promulgated the SEBI (Prohibition of Insider Trading) Regulations, 1992 to curb this social and economic menace.

2. SEBI’S (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

In May, 1984 the Government of India constituted a High-Powered Committee (Patel Committee) to make a comprehensive review of the functioning of stock exchanges and to make recommendations to the Government thereon. The Committee in its report inter alia recommended measures to prohibit the practice of insider trading and also suggested a draft legislation.

In order to promote orderly and healthy growth of the securities market and for investor protection, the Government of India constituted the Securities and Exchange Board of India (SEBI) on 12th April, 1988. In July, 1988, the SEBI prepared an approach paper on comprehensive legislation for securities market with the basic objectives of healthy and orderly development of the securities markets and adequate investor protection. The SEBI suggested in approach paper that proposed legislation would seek to curb fraudulent and unfair trade practices in securities market.

SEBI in its publication titled “Securities and Exchange Board of India — Objectives, Functions and Activities” released in 1991, stated:

“Insider trading is one of the ills which plague our system today, and there is no legal provision to curb it. In the absence of a regulatory framework, insider trading fuels illegitimate speculation in the stock exchanges and places the average investor at a great disadvantage. SEBI is working towards a separate legislation for dealing with insider trading.”

In December, 1991, SEBI issued a Consultative Paper containing draft Insider Trading Regulations. The draft regulations suggested stringent measures to curb the practice of insider trading and deterrent punishment for those who would indulge in it.

The Securities and Exchange Board of India Act, 1992, was enacted on 30th January, 1992, with a preamble “An act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto;” The functions of the Board (SEBI) pursuant to provisions of section 11(2)(g) of said Act, provided inter alia “prohibiting insider trading in securities;”. With a view to achieve the aforesaid objects, section 11 of said Act authorised SEBI to take such measures as it thinks fit.

SEBI (Insider Trading) Regulations, 1992 were notified by the Securities and Exchange Board of India vide F.No. LE/6308, 92; Published in the Gazette of India Extraordinary in Part III, Section 4 dated 19th November, 1992 and came into force w.e.f. the 19th November, 1992. The words ‘prohibition of’ were prefixed before the words ‘insider trading’ vide SEBI (Insider Trading) (Amendment) Regulations, 2002 and the nomenclature of the Regulations became SEBI (Prohibition of Insider Trading) Regulations, 1992.
With a view to strengthening the existing Insider Trading Regulations and to create a framework for prevention of insider trading, a committee was constituted by SEBI under the Chairmanship of Shri Kumar Mangalam Birla. The recommendations of the Committee were considered by the SEBI Board and the amended regulations notified in the Gazette on 20th February 2002. Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘the Regulations’) 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.

The underlying principles behind the regulations are as follows:
(a) The persons in charge of management or in control of the company and its employees and others who may, by virtue of their position or relation in ordinary course of business, have access to the unpublished price sensitive inside information, need to be prohibited to deal in shares of that company at a time when such privileged information is not available to the general public.
(b) The directors, executives and others involved in such insider dealing should be compelled to make disclosures to prevent the menace of insider trading.
(c) The persons involved in insider trading make undue profit or avoid loss at the cost of general investors.

The SEBI (Prohibition of Insider Trading) Regulations, 1992 comprise of four chapters and three schedules encompassing the various regulations related to insider trading as set out below:

Chapter I deal mainly with the definitions of the terminologies used in the regulations like connected person, deemed connected person, insider and price sensitive information etc.

Chapter II provides for the prohibitions on dealing, communicating or counselling by insider as defined in the regulations. It also contain the defences available to a company in a proceeding against it on allegation of insider trading.

Chapter III narrates the investigating power of SEBI under the regulation and also enumerates the prohibitory orders or directions that it can issue against the guilty in the interest of the capital market regulation. Additionally, the Securities and Exchange Board of India has wide powers to deal with the menace by initiating criminal prosecution under section 24 of the SEBI Act, 1992.

Chapter IV deals with the code of internal procedure and conduct to be followed by listed companies and other entities, disclosure requirements to be followed by company directors, officers and substantial shareholders. It also contains the appeal provisions which an aggrieved person may like to follow against the orders of the SEBI.

Schedule I and II provide model code of conduct and the code of corporate disclosure practices respectively which the Companies and the entities are required to circulate and adhere as per the requirement of the regulations. Schedule III contains various forms being used for reporting the disclosures. (Schedule I, II and the forms are placed as Annexures I, II, III, IV, V and VI at the end of this study.)

3. CERTAIN IMPORTANT EXPRESSIONS USED IN THE REGULATIONS

The meaning of certain important expressions, referred to in the Regulations, is
given below:

**A. Trading window**—The company shall specify a trading period called ‘trading window’ for trading in company’s securities. The trading window shall be closed at the time the following information is unpublished—

(a) Declaration of Financial results (quarterly, half-yearly and annual)
(b) Declaration of dividends (interim and final)
(c) Issue of securities by way of public/rights/bonus etc.
(d) Any major expansion plans or execution of new projects
(e) Amalgamation, mergers, takeovers and buy-back
(f) Disposal of the whole or substantially whole of the undertaking
(g) Any change in policies, plans or operations of the company.

The time for commencement of closing of trading window shall be decided by the company.

The trading window shall be opened 24 hours after the above information is made public.

**B. Connected Person** means any person who—

(a) is a director of a company as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), or is deemed to be a director of the company by virtue of sub-clause (10) of section 307 of that Act; or
(b) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

Explanation: For this purpose, the words ‘connected person’ shall mean any person who is a connected person six months prior to an act of insider trading.

**C. Dealing in Securities** means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell, or deal in any securities of the company by any person either as principal or agent. Therefore, a person is said to deal in securities if he subscribes, acquires or disposes of the securities himself, whether for himself or as agent of some other person, or procures an acquisition or a disposal of the securities by someone else.

**D. Insider** means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or
(ii) who has received or has had access to such unpublished price sensitive information.

**E. Officer of the company** includes an auditor of the company, any director,
manager or secretary, or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act.

**F. Designated employee** includes —

(i) officers, comprising the top three tiers of the company management;

(ii) the employees designated by the company to whom the trading restrictions are applicable, keeping in mind the objectives of the code of conduct.

**G. Person is deemed to be a connected person** if such person —

(i) is a company under the same management or group or any subsidiary company thereof within the meaning of section (1B) of section 370, or subsection (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation; or

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a member of the Board of Directors, or an employee, or a public financial institution as defined in Section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a self regulatory organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company;

(viii) relatives of the connected person;

(ix) is a concern, firm, trust, Hindu Undivided Family, company or Association of Persons wherein any of the connected persons mentioned in Clause 3(i) above of this regulation or any of the persons mentioned in sub-clauses (vi), (vii) or (viii) herein above has have more than 10% of the holding or interest.

**H. Price sensitive information** means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company;

Explanation:

(a) The following shall be deemed to be price sensitive information:

(i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects;

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;

(vii) any significant changes in policies, plans or operations of the company.

(b) Listing Agreement requires all listed companies to immediately inform Stock Exchange(s) in respect of the following events which are considered to be price sensitive:

— Change in the general character or nature of business

— Disruption of operations due to natural calamity

— Commencement of Commercial Production/ Commercial Operations

— Developments with respect to pricing/ realization arising out of change in the regulatory framework

— Litigation/dispute with a material impact

— Revision in Ratings

— Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to:

  (a) issue of any class of securities;

  (b) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or setting division of the company, etc;

  (c) Change in market lot of the company’s shares, sub-divisions of equity shares of the company;

  (d) Voluntary delisting by the company from the stock exchange(s);

  (e) Forfeiture of shares;

  (f) Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company;

  (g) Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad;

  (h) Cancellation of dividend/rights/bonus, etc;

Price sensitive information is required to be disseminated to the stock exchange on an immediate and continuous basis.

I. Unpublished means information which is not published by the company or its agents and is not specific in nature.

Explanation: Speculative reports in print or electronic media are not considered as published information.
J. Pre-Clearance of Trades: Every listed company is required to prescribe a threshold limit for dealing in the securities of that company. All directors, officers, designated employees and their dependents as defined by the act would need to obtain pre-clearance from the company for dealing in securities above the threshold limit. Model Form for obtaining pre-clearance is prescribed in Form 3A. Such persons should furnish an undertaking as prescribed in Form 3B along with a statement of holdings (refer to Form 3D and 3E) at the time of pre-clearance.

Transactions for which pre-clearance is granted should be executed within seven days of the approval. The details of the transactions executed should be communicated to the compliance officer. In case the transactions are not executed, it would be necessary for the concerned persons to apply afresh for pre-clearance.

K. Chinese Wall: To prevent the misuse of confidential information the organisation/firm shall adopt a “Chinese Wall” policy which separates those areas of the organisation/firm which routinely have access to confidential information, considered “inside areas” from those areas which deal with sales/marketing/investment advise or other departments providing support services, considered “public areas”.

4. RESTRICTIONS WITH RESPECT TO EXECUTION BY DIRECTORS/ OFFICERS ETC.

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.

5. REQUIREMENT OF COMPLIANCES BY THE COMPANY

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—

(a) 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 (Schedule I is placed as Annexure I at the end of the study). It shall cover matters such as

- Appointment of compliance officer, his responsibilities under the Regulations and the company's code of conduct
- Maintaining confidentiality of "Price Sensitive Information"
- Prevention of misuse of "Price Sensitive Information" i.e. company’s rules on pre-clearance of trades, internal guidelines about trading period, to be called Trading Window
- Other restrictions on trading the securities of the company
- Reporting requirements for holding and transaction in securities of the company by the directors/employees/designated employees of the company to the compliance officer and the procedure for intimating to the Managing Director/Chief Executive Officer or a committee specified by the company by the compliance officer.
- Penalty for contravention of the code of conduct and
- Company’s obligation to inform to the SEBI about the violation

(b) abide by the code of corporate disclosure practices as specified in Schedule II of the Regulations (Schedule II is placed as Annexure II at the end of the study) which incorporate provisions on matters such as

- Corporate disclosure policy,
- Prompt disclosure of price sensitive information
- The Officer designated to oversee and co-ordinate various disclosure requirements and his responsibility related to approval of such matters
- Responding to market rumours about the company’s working effecting the price of its securities in the market
- Reporting of shareholdings/ ownership whether under the SEBI Act or the Listing Agreement in a timely and adequate manner.
- Company’s policy on disclosure/dissemination of price sensitive information to Analysts and Institutional Investors
- Medium of disclosure/dissemination to ensure quick dissemination, and
- Dissemination by stock exchanges

(c) adopt corporate mechanisms and procedures to enforce the codes specified above.

(d) In addition to the compliance of regulation 12 of the Insider Regulations every listed company, within five days of receipt, 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) and (4) of regulation 13 in the prescribed format.

(e) 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.
6. REQUIREMENT OF COMPLIANCES BY PERSONS OTHER THAN COMPANY

An insider is prohibited to deal in the securities of a listed company whether on his own behalf or on behalf of any other person when he is in possession of any unpublished price sensitive information. He is further prohibited to communicate, counsel or deal in information related to the securities during the closure of trading window. The insider includes the deemed to be connected person which is very exhaustive. In addition, employees working in entities connected with the securities market and the listed company are also required to abide by the code of conduct of the company. However, broadly the disclosure requirements prescribed under sub-regulations (1), (2) (3) and (4) of regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992 can be summarized as follows:

Initial Disclosure by member

As per regulation 13(1), any person who holds more than 5% shares or voting rights in any listed company shall disclose in the prescribed Form A (Form A is placed as Annexure III at the end of the study) to the company, 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.

Initial Disclosure by director or officer

As per regulation 13(2), every director or officer of a listed company shall disclose in the prescribed Form B (Form B is placed as Annexure IV at the end of the study) to the company, 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.

Continual Disclosure by member

Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C (enclosed as Annexure V) 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.

Continual Disclosure by director or officer

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 (enclosed as Annexure VI), 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.
Such disclosure shall be made within two working days of;
(a) the receipt of intimation of allotment of shares, or
(b) the acquisition or sale of shares or voting rights, as the case may be.

**E-filing**

The disclosures required under this regulation may also be made through electronic filing in accordance with the system devised by the stock exchange.

**Disclosure by company to stock exchanges**

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.

**7. PENALTY PROVISIONS FOR VIOLATIONS OF THE REGULATIONS**

Without prejudice to the directions under regulation 11, if any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the Act.

Regulation 11 & 14 of the Insider regulations empowers the SEBI to issue following directions to the violators without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of the SEBI Act, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulation made there under issue any or all of the following order, namely:

(a) directing the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act not to deal in securities in any particular manner;
(b) prohibiting the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act from disposing of any of the securities acquired in violation of these regulations;
(c) restraining the insider to communicate or counsel any person to deal in securities;
(d) declaring the transaction(s) in securities as null and void;
(e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller:
   Provided that in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher, shall be paid to the seller;
(f) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a recognised stock exchange.

Section 24 of the SEBI Act, 1992 provides as under:

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations
made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Penalty for insider trading under Section 15G of SEBI Act:

If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information.

Thus violation of the provisions of the regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of the Board, may prefer an appeal to the Securities Appellate Tribunal within a period of forty-five days of the order. The persons aggrieved can also apply to SEBI for consent order under the scheme announced by it in which case the case is considered by a High Power Committee constituted under the SEBI Act, 1992.

8. MAJOR ACTIONS TAKEN BY SEBI SO FAR

Hindustan lever Ltd. (HLL) v. SEBI (1998) 3 Comp L J 473 (A.P.)

Hindustan lever Ltd. (HLL) and Brooke Bond Lipton India Ltd. (BBLIL) were companies controlled by Uniliver Inc. of U.K. and were under the same management; HLL purchased 8 lac shares from BBLIL from U.T.I. on the 25th March, 1996 @ Rs. 350.35 per share; 25 days after the said transaction viz. on the 19th April, 1996, HLL announced its merger with BBLIL and notified the stock exchanges; After the announcement of the merger, BBLIL’s price shot up to Rs. 400 and even beyond that; SEBI after 15 months of investigation came to a conclusion that HLL, BBLIL and its common directors were liable for insider trading and causing a huge loss to UTI. SEBI’s charge were based on the following factors:

— On the date of acquisition of shares HLL and BBLIL had full knowledge of the impending merger and this knowledge was in fact unpublished price sensitive information under the insider trading Regulations and hence was in an advantageous position as compared to public investors;

— HLL made misuse of this unpublished price sensitive information since it did not disclose the fact of impending merger to U.T.I. and neither did it make the same public before the deal to acquire 8 lac shares of BBLIL;
PP-CSP-19

— U.T.I. suffered a loss of Rs. 3.04 crore due to the concealment of the information since it sold the shares at a price of Rs. 350.35 per share, whereas after the public disclosure of the merger the share price of BBLIL shot up beyond Rs. 400. U.T.I could have got a better price for its shares had the disclosure been made by HLL.

Accordingly HLL was directed to compensate the U.T.I. to extend of Rs. 3.04 crore and also ordered the launching of prosecution against HLL and the five directors of HLL and BBLIL.

On appeal by HLL to the Appellate Authority, SEBI’s charge was demolished on the ground that there was no unpublished price sensitive information involved since prior to the announcement of the merger, leading financial newspapers had reported the possibility of the merger and hence it was public knowledge. U.T.I could not allege that the information was undisclosed since it had the best of market analysts and experts who were fully familiar with the market trends. A fall out of this case SEBI amended its Regulations in 2002 to specifically provide that speculative reports in the media would not be treated as publication of price sensitive information, as referred in definition 2(k) of amended regulations.

Reliance Industries Ltd. v. SEBI (2004) 63 CLA 252 (SAT)

As on 5th Nov 2001, Reliance Industries Ltd. (RIL)’s stake in Larsen & Toubro Ltd. (L & T) was above 5%; it had two nominees on the Board of L&T viz. Mr. Mukesh Ambani and Mr. Anil Ambani and thereafter it started purchasing shares of L&T as a result of which its stake reached 10.98% on 12th November, 2001. This entire block of 2.5 core shares was sold by RIL to Grasim Industries Ltd. (Grasim) around 16th November, 2001. This deal was ratified by the Boards of RIL as well as Grasim. Under this transaction the shares were sold @ Rs. 306.60 per share as against the ruling market price of Rs. 208.50. Under this transaction/deal RIL was required to withdraw its two nominees from the Board of L&T and was prohibited from dealing in L&T shares for a period of five years. Necessary disclosures were made to the Stock Exchanges as well as to L&T (the target company). A complaint was made to SEBI by the Investor Grievances Forum to the effect that RIL had indulged in insider trading by increasing its holding to 10.98% prior to their deal with Grasim and then made a huge profit by selling its entire stake @ Rs. 306 as against the prevailing market price of Rs. 208.50. The thrust of the complaint was that RIL knew about the deal with Grasim happening and misused this price sensitive unpublished information to first acquire shares at the prevailing low market prices and then making an unjust enrichment by selling the same at a huge premium to the market price.

The Securities Appellate Tribunal (SAT) was faced with one basic question, namely “Was the information about the impending deal of RIL with Grasim price sensitive and did RIL act on the basis of this information for unjust enrichment and to the detriment of the general public investors?”

SAT held that RIL could not be held liable for the offences of Insider Trading on account of the following reasons:

(a) The information of the impending deal was not supposed to emanate from L&T and in fact did not emanate from L&T. The RIL nominees on the
Board of L&T were aware of the impending deal not because of their directorship but due to their position as potential sellers as Managing Directors of RIL. The Ambanis were not the 'directing mind and will' of L&T since they were only two (2) in number as compared to the total number of seventeen (17).

(b) For the offence of insider trading price sensitive information must come to an insider by virtue of his being an insider. L&T was not even aware of this deal and in fact was not supposed to know the same. Thus the information about the impending deal could not be classified to fall within the ambit of the Insider Trading Regulations.

*Rakesh Agrawal v. SEBI (2003) 57 CLA 173 (SAT)*

The facts of the case were that Rakesh Agrawal (RK) was the Managing Director of ABS Industries Ltd. (name subsequently changed to Bayer ABS Ltd.) (hereinafter referred to as ‘the company’). The company was listed on BSE, NSE and the stock exchanges of Ahmedabad and Vadodara; RK was frantically trying to get a JV partner to strengthen the company, when the particular industry was facing problems. The proposed JV partner was Bayer. It put up a stiff condition that it would hold not less than 51% stake in the company. Bayer AG (Bayer) is a company registered in Germany which made an open offer to the Indian investors with the objective of acquiring not less than 51% stake. Now before the notification by the company of the price sensitive information regarding the proposed open offer and intention of Bayer to acquire controlling stakes to the stock exchanges. RK had informed his brother-in-law Mr. Kedia about the same and also instructed him to purchase shares of the company from the market. This was to meet the eventuality of the open offer failing. In such a case Kedia would sell the shares to Bayer to ensure that the Bayer is able to acquire 51% stake. RK even funded some of the purchases of such shares by Kedia.

On receiving complaints SEBI initiated investigation and concluded that the purchase of shares was doubtlessly made on the basis of unpublished price sensitive information available to RK by virtue of his position as MD and also as the negotiator with Bayer. SEBI found RK guilty of insider trading and directed his prosecution, adjudication proceedings and also directed him to! deposit a sum of Rs.34 lacs with the Investor Protection Funds of NSE and BSE to compensate any investor who is aggrieved by the said act of insider trading.

However, on appeal SAT overruled SEBI’s charge on the following grounds:

(a) there was no distinct advantage to the insider by this act. The intension/motive of the insider as to be taken into account. It is true that this regulation does not specifically bring in ‘mens rea’ or guilty intention as in ingredient, but that does not mean that the motive can be ignored.

(b) what is sought to be prohibited is gaining an unfair advantage by the insider over the public investors at large. If an insider has dealt in securities without any intention of gaining any unfair advantage then the charge of insider trading would not be sustainable. In the instinct case the object was not to gain any unfair advantage.
With all the due respect to the wisdom of SAT and without any intention to show any disrespect it is submitted that when the Regulations have not been specifically provided for the presence of guilty intention or ‘mens rea’ to complete the offence then how can SAT make it a pre-requisite. But that does not mean that the motive need to be ignored.

The Supreme Court of India has in the case of Indo China Steam Navigation Co. v. Jagjit Singh AIR 1964 SC 1140 held that certain statutes impose absolute prohibition irrespective of guilty intention and have to be interpreted accordingly. Thus this issue still remains debatable.

Samir C Arora v. SEBI (2004) 63 CLA 38 (SAT)

Samir Arora (SA) was the Head of equity investments in India for Alliance Capital Mutual Fund (ACMF). Alliance Capital Asset Management (India) Ltd. (ACAML) is the asset management company of ACMF. The merger of Digital Global Soft Ltd. (DGL) and HP ISO (Hewlett Packard) at the global level had been in the offing for quite some time. DGL appointed M/s. Bansi Mehta & Co. (BSM) to recommend a suitable merger ratio for the proposed demerger of HP ISO Division of Hewlett Packard and its merger with DGI. BSM worked out the valuation ratio of demerger on the 7th May 2003 and this ratio was discussed at the Board meeting of DGL held on the 12th May, 2003. The Board however did not announce the merger and decided instead to seek fairness opinion from a third party. The ratio was finally announced after a final board meeting on 6th June 2003. The valuation ratio was perceived negatively in the market and the market price of DGL scrip fell from Rs. 500.50 to Rs. 371 on June 9, 2003.

The basic charge of SEBI against SA was that he had inside information that the Board of DGL would announce a merger ratio which would not be positively welcomed by the market and on the basis of this inside information he sold off the entire holdings of ACMF & ACM between May 8th 2003 and May 12th 2003 thereby avoiding a loss of Rs. 23 crore to the funds managed by him. SEBI alleged that SA first moved up the price of DGL scrip from Rs. 537.55 on 2nd May 2003 to Rs. 597 on 7th May 2003 by making a statement that the scrip is very promising which was published in Business Standard on 5th May 2003. SA then sold the entire holdings of the funds managed by him over the next four working days. SEBI observed that there was no other reason for SA to dispose off all of his holdings when he in fact had made a statement in Business Standard that the scrip was very promising. SEBI also based its charge on the statement made by, MD of DGL that “he had known SA for the past 5-6 years”. SEBI, thus, concluded that SA had indulged in insider trading by liquidating the holdings of DGL on the basis of prior knowledge of the valuation ratio which was unpublished as well as price sensitive.

SAT overruled SEBI’s charge on the ground that there is not even an attempt by SEBI to show as to how the valuation ratio worked out by a renowned Chartered Accountant which was put in a sealed cover and personally given to S with instructions to open the same only at the Board meeting on 12th May 2003, could have reached SA. SEBI has nowhere doubted the credentials of the Chartered Accountant or S. Further, it was found that there were assessments by independent analysts on 8th May 2003 recommending downgrading and sale of DGL scrip. It was also found that several other funds had also sold the same scrip in the same month in
substantial numbers. It was also found that SA had also disposed off holdings in many other reputed snips like Infosys, Satyam etc. in the same month. Thus merely the fact that SM disposed off the entire holdings of DGL scrip cannot be construed as Insider Trading. There has to be independent proof to establish this charge. SAT quashed SEBI’s case by observing that “……it is not possible for us to let mere suspicions, conjectures and hypothesis take place of evidence under the Indian Evidence Act. SAT also remarked that it was sad that SA had already suffered needlessly for more than one year without there being any worthwhile evidence against him.”

*Dilip Pendse v. SEBI*

This was perhaps the simplest case of insider trading which was handled by SEBI and it had no difficulties in punishing the offenders. The facts were that Nishkalpa was a wholly owned subsidiary of TATA Finance Ltd. (TFL) which was a listed company. Dilip Pendse (DP) was the MD of TFL. ON 31/03/2001, Nishkalpa had incurred a huge loss of Rs. 79.37 crore and this was bound to effect the profits of TFL. This was basically the unpublished price sensitive information of which Pendse was aware of. This information was disclosed to the public only on 30/04/2001. Thus any transaction by an insider between the period 31/03/2001 to 30/04/2001 was bound to fall within the scope of insider trading.

DP passed on this information to his wife who sold 2,90,000 shares of TFL held in her own name as well as in the name of companies controlled by her and her father-in-law.

It was very easy for SEBI prove insider trading in this cake walk or vanilla case.

**9. INSIDER TRADING REGULATIONS IN OTHER COUNTRIES**

**UNITED STATES OF AMERICA**

The first country to devise effective measures on curbing the menace of insider trading was United States of America. The Securities Exchange Act, 1934 imposed statutory curbs on insider trading, requiring public disclosure of insiders’ transactions in the shares of their companies and providing for recovery of ‘shortswing’ profit by them. The Act provided the remedial measures for protection of investors against sharp practices and fraudulent schemes by insiders in making short-term, speculative profit. Accordingly, a corporation or issuer of a registered security can recover profits realised by an insider, by unfair use of information which he must have obtained by virtue of his relationship with the issuer, from any purchase or sale of the securities, within a period of six months. The quantum of compensation is determined by the Federal Court. Where corporation fails to bring a suit within 60 days, the shareholder may, in the name and on behalf of the issuer corporation, bring a suit for recovery within two years of realisation of such profit. However, there must be actual misuse of confidential information. Secondly, the motive must be established and the burden of proving damages has to be sustained.

In USA the act of insider trading was addressed through introduction of Section 16(b) and 10(b) of the Securities Exchange Act, 1934. Section 16(b) prohibits short...
term profits by corporate insiders whereas Section 10(b) makes it unlawful for any person to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the SEC may prescribe. These anti-fraud provisions make fraud or misrepresentation in connection with the purchase or sale of a security, an unlawful aspect.

The insider trading law in USA is part of the general law relating to fraud. Under the federal system prevailing in the USA, there were state laws known as “blue sky” laws which contained anti-fraud provisions which are used to deal with insider trading.

“Rule 10(b)-5. Employment of manipulative and deceptive devices.-It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange [445 US 226]-

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

The said is merely an enabling provision not intended to deal with the problem of insider trading. It prohibits the use of manipulative or deceptive devices in relation to purchase and sale of securities on the stock exchange. The rule itself makes no reference to insider trading let alone gives a definition of it. It came to be applied to insider trading by courts, through private litigation and then by the SEC in 1960 as part of SEC enforcement policy on insider trading. Since the law governing insider trading in USA is a part of general law of fraud, mens rea, motive, intention to make a profit, who is an insider, duty of an insider and outsider, etc., are relevant and are required to be established before a charge of insider trading can be made and/or said to have been proved.

Apart from the above measures, the Supreme Court and Courts of Appeals of every State have issued guidelines on the subject to maintain proper ‘fiduciary standards’ to ensure justice and equity for insider trading and for protection of interest of investing public. Further, the Securities and Exchange Commission has been empowered under the Insider Trading Sanctions Act, 1984, to seek imposition of civil penalties, besides criminal proceedings, upto three times the profits gained or losses avoided, in cases involving use of unpublished price sensitive information or material.

The US court in Shapiro v. Merrill Luynch 495 5 F 2d.235, propounded the theory of “disclose or abstain” stating that this is to protect the investing public and to secure fair dealing in the securities market by promoting full disclosure of insider information so that an informed judgment can be made by the investors.
The judgment in case of Speed v. Trans American Corp. 99 F. Supp.808 emphasised “It is unlawful for an insider, such as majority stockholder, to purchase the stock of minority stockholders without disclosing material facts affecting the value of the stock, known to the selling minority stockholders, which information would have affected the judgment of the sellers”.

The jurisprudential principles behind the prohibition of insider trading were enunciated by the Securities and Exchange Commission (SEC) in its decision in the matter of Cady Roberts & Co., 40 SEC 907 1961 (on 8th November, 1961). In Cady, Roberts, a corporate director called his broker in the middle of a Board of Director’s meeting to tell that the Board of Directors had decided to cut the dividend of the corporation. After receiving this information, the broker sold his customers’ shares. This information was not public yet, and as soon as the news came out, the price of the corporation’s stock plummeted. The SEC found the broker in violation of Rule 10(b)-5, and he was forced to pay damages. This case and subsequent cases made it clear that insiders possessing material, nonpublic information have an obligation to release this information or to abstain from trading.

Insider trading regulations not only applies to the typical insider, but it also applies to employees, such as engineers, accounts who acquire material information from a corporate source. These persons are considered “temporary insiders”. Under rule 10(b)-5, liability also extends to tipees such as the broker in Cady, who used insider information to sell shares. A tipper is a person who passes on insider information but does not actually trade in the stock. A tippee is someone who acquires information from or through insiders who have breached their duties.

The SEC while considering section 1(a) of the Securities & Exchange Act and rule 10(b)-5 of the Rules thereunder, inter alia, of particular acts or practices which constitute fraud but rather we designed to encompass the infinite variety of devices by which undue advantage may be taken of investors and others. The SEC went on to observe that an insider must disclose material fact known to them by virtue of his position, but which are not known to persons with whom he deals and which if made known could affect their investment/judgment. They also observed that if the disclosure prior to effecting a purchase or sale of shares could be improper or unrealistic, the alternative is to forgo the transaction. The SEC further went to observe:

“Analytically, the obligation rests on two principle elements;

(1) The existence by a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purchase and not for the personal benefit of any one,

(2) Inherent unfairness involved where the party takes advantages of information knowing it is not available to others with whom he is dealing.”

It was this decision which introduced the “disclose or abstain”rule in securities transactions. The prohibition on trading on undisclosed information is only when information is entrusted for a corporate purpose and should not be used for personal benefit on the principle that there is inherent unfairness when the party takes advantage of such information knowing that it is unavailable to others. Consequently
it is only when the information is being misused for personal benefit or where a person takes advantage of such information that there would be a contravention of fiduciary obligation cast upon the corporate insider who is in possession of the material information. The decision of the SEC does not suggest that the information cannot be used even for a corporate purpose. In fact, the SEC has recognised that if there are conflicting fiduciary obligations the obligation to the company is paramount and there is no compulsory bar to the use of such information.

The aforesaid decision was considered by the US Supreme Court in *Chiarella v. United States* 445 US 222 in its decision rendered on 18th March, 1980. The Supreme Court, while considering the argument that there is an absolute duty to ‘disclose or abstain’ and while dealing with the decision of the SEC, *inter alia*, observed the decision which solely rested upon its belief that federal securities laws have “created a system providing equal access to information necessary for reasoned and intelligent investment decision” id (p. 1362). The use by anyone of material information not generally available is fraudulent, this theory suggests, because such information gives certain buyers or sellers an unfair advantage over less informed buyers and seller.

The US Supreme Court had once again considered the principle of disclose or abstain in *Dirks v. SEC* 463 US 646. The Supreme Court in its decision rendered on 1st July, 1983, has, *inter alia*, made the following observations in the context of the arguments of an absolute principle of disclose or abstain.

“Not all breaches of fiduciary duty in connection with a securities transaction” however, come within the ambit of rule 10(b)-5. There must be “manipulation or deception” id, at 473.

In an insider trading cause this fraud derives from the “inherent unfairness involved where one takes advantage” of “information intended to be available only for corporate purposes and not for the personal benefit of any one”—Merrill Lynch, Pierce, Fenner & Smith, In re. 438 SEC 933, 936 (1968). Thus, an insider will be liable under rule 10(b)-5 for insider trading only where he fails to disclose material non-public information before trading on it and, thus, make “secret profit”.

**SARBANES OXLEY ACT, 2002**

The Sarbanes-Oxley Act,2002, was enacted by the US Congress in January,2002, to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes. It is a voluminous document and provides around improvement in accuracy and reliability of all corporate disclosures for the investors. The Sarbanes-Oxley tools can be divided into five distinct categories: risk and control management, audit management, data analysis, employee training, and Sarbanes-Oxley section compliance. It has focused committees and their members on carrying out their duties. Good governance requires good processes is the philosophy behind this law. The section 404 assessment of internal controls over financial reporting should prove highly beneficial. The section 306 provides prohibition of insider trading during pension fund blackout periods directly or indirectly by any director or executive officer of an issuer. Any profit realised by a director or executive officer from any purchase, sale, or other acquisition or transfer in violation of the law shall be recoverable by the
issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction. The “blackout period” as defined means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan.

UNITED KINGDOM

The first legislative measure to curb insider trading was made in 1980 by inserting the provisions in the Companies Act, 1980. By virtue of such provisions, the insider trading became a criminal offence under certain eventualities. The Council of Stock Exchanges issued a model code on share transactions by directors and their relatives and employees of the listed companies. The relevant provisions on insider trading under Companies Act, 1980 were shifted in 1985 to a separate piece of legislation, namely, the Company Securities (Insider Dealing) Act, 1985. The Financial Services Act, 1986 also contain provisions for prevention of insider trading. Since 1973, there exists a non-statutory model code relating to directors' share dealings, e.g. "the Stock Exchange Model Code for Securities Transactions by Directors of Listed Companies". The listed companies are required to adopt this non-statutory model code, though it is not binding on the directors. It emphasises that in no circumstances should the directors deal when they are forbidden from doing so under the Insider Dealing Act. It also prescribes that they should not do so within a period of two months preceding the preliminary announcement of company's annual results or the half-yearly results. They should give notice before hand on all dealings to the board's chairman or a committee of directors appointed specifically for the purpose. The directors of listed companies are never willing to breach these conditions as they would run the grave risk of finding themselves on the Exchange black-list as unacceptable persons as directors of listed companies.

The City Code on Takeovers and Mergers is also concerned with insider dealing. The significant rules of the Code are given below:

"Rule 2.1: The vital importance of absolute secrecy before an announcement must be emphasised. All persons privy to confidential information, and particularly price sensitive information concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of an accidental leak of information.

Rule 4.1: (a) No dealings of any kind (including option business) in the securities of the offeree company by any person, not being the offeror, who is privy to confidential price sensitive information concerning an offer or contemplated offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or the termination of the discussions.

(b) No person who is privy to such information may make any recommendation to any person as to dealing in the relevant securities."
The law in England relating to insider trading is no different. In Attorney-General's Reference (1) of 1988 (1988) IAC 971, Lord Lane while referring to white paper on the conduct of a company director (1977) referred to paragraph 22 of the paper which is, *inter alia*, stated:

"...Public confidence in directors and others closely associated with companies requires that such people should not use inside information to further their own interests. Furthermore, if they were to do so, they would frequently be in breach of their obligations to the companies, and could be held to be taking an unfair advantage of the belief with whom they were dealing."

Lord Lane then went on to observe:

"What is in our view much more significant is obvious and understandable concern which the Paper shows about the damage to public confidence which insider dealing with, is likely to cause and the clear intention to prevent so far as possible what amounts to cheating when those with inside knowledge use that knowledge to make a profit in their dealing with others. This is the reason for the proposal in paragraph 25 of paper."

"...The prosecution will need to show that the insider knew or had reasonable grounds to believe that the information was not generally known and was price sensitive and that he dealt nevertheless. Also, it will be possible for a person to offer a defence that his purpose in dealing was not to make a profit or avoid a loss by the use of his insider information."

An appeal against the decision of the Court of Appeal was turned down by the House of Lords. The laws relating to regulating insider trading in USA and UK are based on theory that insider trading is as good as fraud.

**EEC COUNTRIES**

Netherland, Belgium and Ireland have implemented the directives issued by European Economic Community (EEC) in 1989. Portugal has also implemented the directive in 1991. Norway and Sweden had introduced necessary legislation in 1985, Denmark in 1986 and Luxembourg and Switzerland in 1987 and Greece and Spain in 1988. The first French law was adopted in 1970 and gradually strengthened in 1983, 1988, 1989 and 1990. The French law, as Pierre Lemieux pointed out in Asian Wall Street Journal (27th November, 1992), mandates civil or criminal penalties of upto 10 million francs or ten times the realised profits, and jail terms ranging from two months to two years. Germany is in process to comply with the EEC directive.

**HONGKONG**

In Hongkong, the provisions of Securities (Insider Dealing) Act are very strict and impose stringent penalties for insider trading.

**SRI LANKA**

The law enacted in Sri Lanka prohibits an individual from dealing in a company's shares on a recognised Stock Exchange, if he is connected with the company in any
of specified ways and has price sensitive information relating to securities of the company. Further he cannot deal in securities of other company with which his company has dealings, if he is in a privileged position to have unpublished sensitive information. If a person having the privileged information passes on the same to some other person, such person is also prohibited in dealing with shares of such company. Thus persons are prohibited to give counsel on such information to others.

A person in possession of such privileged information is not prevented from doing anything, except for making a profit or avoiding a loss for himself and others. Further, he is not prohibited from carrying out in good faith his duties as liquidator, receiver or trustee in bankruptcy. Where a person obtains such information in natural course of business, such as jobber (dealing in securities on recognised stock exchange), he is exempt from the provisions. The law also applies to public servants who are in a position to obtain inside information and prohibits them from acting upon it.

10. ROLE OF COMPANY SECRETARY IN COMPLIANCE REQUIREMENTS

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 informed, from time to time the requirements under the regulations and their practical interpretation, to all concerned. 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 the 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 the 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.

(vii) To identify and declare the designated employees for the purpose of the regulations.

4. In case of unlisted company 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

7. To suggest any improvements required in the policies, procedures, etc 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 any 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 window 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.

External Reporting by the Company Secretary as Compliance Officer

1. To disclose within five days of receipt, to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) of regulation 13.
2. To inform the SEBI the violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 if any committed by any person. But before bringing it to the notice of SEBI, the compliance officer has to inform the Managing Director/Chief Operating Officer and the Board of the Company.
3. In addition to the above he is also required to liaison with other authorities and the shareholders of the Company.

ANNEXURE I

SCHEDULE I

[Under regulation 12(1)]

PART A

Model Code of Conduct for Prevention of Insider Trading for Listed Companies

1.0 Compliance Officer

1.1 The listed company has appointed a compliance officer (senior level employee) who shall report to the Managing Director/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies,
procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation: For the purpose of this schedule, the term 'designated employee' shall include:-

(i) officers comprising the top three tiers of the company management.

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

1.3 The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.

1.4 The compliance officer shall assist all the employees 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.

2.0 Preservation of "Price Sensitive Information"

2.1 Employees/directors shall maintain the confidentiality of all Price Sensitive Information. Employees/directors shall not pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know Unpublished Price Sensitive Information is to be handled on a "need to know" basis, i.e., Unpublished Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty and whose possession of such information will not give rise to a conflict of interest or appearance of misuse of the information.

All non-public information directly received by any employee should immediately be reported to the head of the department.

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, i.e., Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and pass word etc.

3.0 Prevention of misuse of "Price Sensitive Information"

3.1 All directors/ officers and designated employees of the company shall be subject to trading restrictions as enumerated below :-

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called "Trading Window",
for trading in the company’s securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is un-published.

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company’s securities in such period.

3.2.3 The trading window shall be, inter alia, closed at the time of:-
   (a) Declaration of Financial results (quarterly, half-yearly and annual)
   (b) Declaration of dividends (interim and final)
   (c) Issue of securities by way of public/rights/bonus etc.
   (d) Any major expansion plans or execution of new projects
   (e) Amalgamation, mergers, takeovers and buy-back
   (f) Disposal of whole or substantially whole of the undertaking
   (g) Any changes in policies, plans or operations of the company

3.2.3A. The time for commencement of closing of trading window shall be decided by the company.

3.2.4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2.5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company’s securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

3.2.6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company and their dependents (as defined by the company) who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transactions as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:
   (a) That the employee/director/officer does not have any access or has not
received "Price Sensitive Information" upto the time of signing the undertaking.

(b) That in case the employee/director/officer has access to or receives “Price Sensitive Information” after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.

(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(d) That he/she has made a full and true disclosure in the matter

4.0 Restrictions w.r.t. execution by directors/officers etc.

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.

5.0 Reporting Requirements for transactions in securities

5.1 All directors/officers/designated employees of the listed company shall be required to forward following details of their Securities transactions including the statement of dependent family members (as defined by the company) to the Compliance officer:

(a) all holdings in securities of that company by directors/officers/designated employees at the time of joining the company;

(b) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the company. The company may also be free to decide whether reporting is required for trades where pre-clearance is also required); and

(c) annual statement of all holdings in securities

5.2 The Compliance officer shall maintain records of all the declarations in the
appropriate form given by the directors/officers/designated employees for a minimum period of three years.

5.3 The Compliance officer shall place before the Managing Director/Chief Executive Officer or a committee specified by the company, on a monthly basis all the details of the dealing in the securities by employees/director/officer of the company and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

6.0 Penalty for contravention of code of conduct

6.1 Any employee/officer/director who trades in securities or communicates any information for trading in securities, in contravention of the code of conduct may be penalised and appropriate action may be taken by the company.

6.2 Employees/officers/directors of the company who violate the code of conduct shall also be subject to disciplinary action by the company, which may include wage freeze, suspension, ineligibility for future participation in employee stock option plans, etc.

6.3 The action by the company shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading), Regulations, 1992.

7.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992

7.1 In case it is observed by the company/compliance officer that there has been a violation of SEBI (Prohibition of Insider Trading) Regulations, 1992, SEBI shall be informed by the company.

PART B
Model Code of Conduct for Prevention of Insider Trading for Other Entities

1.0 Compliance Officer

1.1 The organisation/firm has a compliance officer (senior level employee) reporting to the Managing Partner/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies and procedures and monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of all designated employees and their dependents trades (directly or through respective department heads as decided by the organisation/firm), monitoring of trades and the implementation of the code of conduct under the overall supervision of the partners/proprietors.

1.3 The compliance officer shall also assist all the employees/directors/partners in addressing any clarifications regarding SEBI (Prohibition of Insider Trading) Regulations, 1992 and the organisation/firm’s code of conduct.

1.4 The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.
2.0 Preservation of "Price Sensitive Information"

2.1 Employees/directors/partners shall maintain the confidentiality of all Price Sensitive Information. Employees/directors/partners must not pass on such information directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, i.e. Price Sensitive Information should be disclosed only to those within the organisation/firm who need the information to discharge their duty and whose possession of such information will not give rise to a conflict of interest or appearance of misuse of the information.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and pass word, etc.

2.4 Chinese Wall

2.4.1 To prevent the misuse of confidential information the organisation/firm shall adopt a "Chinese Wall" policy which separates those areas of the organisation/firm which routinely have access to confidential information, considered "inside areas" from those areas which deal with sale/marketing/investment advise or other departments providing support services, considered "public areas".

2.4.2 The employees in the inside area shall not communicate any Price Sensitive Information to anyone in public area.

2.4.3 The employees in inside area may be physically segregated from employees in public area.

2.4.4 Demarcation of the various departments as inside area may be implemented by the organisation/firm.

2.4.5 In exceptional circumstances employees from the public areas may be brought "over the wall" and given confidential information on the basis of "need to know" criteria, under intimation to the compliance officer.

3.0 Prevention of misuse of Price Sensitive Information

3.1 Employees/directors/partners shall not use Price Sensitive Information to buy or sell securities of any sort, whether for their own account, their relative’s account, organisation/firm's account or a client's account. The following trading restrictions shall apply for trading in securities:

3.2 Pre clearance of trades

3.2.1 All directors/officers/designated employees of the organisation/firm who intend to deal in the securities of the client company (above a minimum threshold limit to be determined by the organisation/firm) shall pre-clear the transactions as per the pre-dealing procedure as described hereunder.
3.2.2 An application may be made in such form as the organisation/firm may specify in this regard, to the Compliance officer indicating the name and estimated number of securities that the designated employee/director/partner intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the organisation/firm in this behalf.

3.2.3 An undertaking shall be executed in favour of the organisation/firm by such designated employee/partners/directors incorporating, *inter alia*, the following clauses, as may be applicable:

(i) That the designated employee/director/partner does not have any access or has not received any "Price Sensitive Information" up to the time of signing the undertaking.

(ii) That in case the designated employee/director/partner has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the client company till the time such information becomes public.

(iii) That he/she has not contravened the code of conduct for prevention of insider trading as specified by the organisation/firm from time to time.

(iv) That he/she has made a full and true disclosure in the matter

4.0 Restricted /Grey list

4.1 In order to monitor Chinese wall procedures and trading in client securities based on inside information, the organisation/firm shall restrict trading in certain securities and designate such list as restricted/grey list.

4.2 Security of a listed company shall be put on the restricted/grey list if the organisation/firm is handling any assignment for the listed company or is preparing appraisal report or is handling credit rating assignments and is privy to Price Sensitive Information.

4.3 Any security which is being purchased or sold or is being considered for purchase or sale by the organisation/firm on behalf of its clients/schemes of mutual funds, etc. shall be put on the restricted/grey list.

4.4 As the restricted list itself is a highly confidential information it shall not be communicated directly, or indirectly to anyone outside the organisation/firm. The Restricted List shall be maintained by Compliance Officer.

4.5 When any securities are on the Restricted List, trading in these securities by designated employees/directors/partners may be blocked or may be dis-allowed at the time of pre-clearance.

5.0 Other restrictions

5.1 All directors/designated employees/partners shall execute their order within one
week after the approval of pre-clearance is given. If the order is not executed within one week after approval is given, the employee/director/partners must pre-clear the transaction again.

5.2 All directors/officers/designated employees/partners shall hold their investments for a minimum period of 30 days in order to be considered as being held for investment purposes.

5.3. The holding period shall also apply to purchases in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.

5.4 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.

5.5 Analysts, if any, employed with the organisation/firm while preparing research reports of a client company(s) shall disclose their share holdings/interest in such company(s) to the compliance officer.

5.6 Analysts who prepare research report of a listed company shall not trade in securities of that company for thirty days from preparation of such report.

6.0 Reporting Requirements for transactions in securities

6.1 All directors/designated employees/partners of the organisation/firm shall be required to forward following details of their Securities transactions including the statement of dependent family members (as defined by the organisation/firm) to the Compliance officer:-

(a) all holdings in securities by directors/officers/designated employees/partners at the time of joining the organisation.

(b) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the firm or organisation. The organisation/firm may also be free to decide whether reporting is required for trades where pre-clearance is also required.

(c) annual statement of all holdings in securities

6.2 The Compliance officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.

6.3 The Compliance officer shall place before the Chief Executive Officer/Partner or a committee notified by the organisation/firm, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organisation/firm and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

7.0 Penalty for contravention of code of conduct

7.1 Any employee/partner/director who trades in securities or communicates any information or counsels any person trading in securities, in contravention of the code of conduct may be penalised and appropriate action may be taken by the organisation/firm.
7.2 Employees/partners/directors of the organisation/firm who violate the code of conduct may also be subject to disciplinary action by the company, which may include wage freeze, suspension, etc.

7.3 The action by the organisation/firm shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

8.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations

8.1 In case it is observed by the organisation/firm/compliance officer that there has been a violation of these Regulations, SEBI shall be informed by the organisation/firm.

9.0 Listed intermediaries to comply with both part A and B of Schedule I

9.1 The intermediaries such as credit rating agencies, Asset Management Companies, or broking companies etc. whose securities are listed in recognised stock exchange shall comply with both Part A and Part B of this Schedule in respect of its own securities and client’s securities.

ANNEXURE II

SCHEDULE II
[see under regulation 12(2)]


1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies:

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving investor access to their public announcements.

3.0 Overseeing and co-ordinating disclosure

3.1 Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements, overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media, and educating staff on disclosure policies and procedure.

3.3 Information disclosure/dissemination may normally be approved in advance by the official designated for the purpose.

3.4 If information is accidentally disclosed without prior approval, the person responsible may inform the designated officer immediately, even if the information is not considered price sensitive.
4.0 Responding to market rumours

4.1 Listed companies shall have clearly laid down procedures for responding to any queries or requests for verification of market rumours by exchanges.

4.2 The official designated for corporate disclosure shall be responsible for deciding whether a public announcement is necessary for verifying or denying rumours and then making the disclosure.

5.0 Timely Reporting of shareholdings/ ownership and changes in ownership:

5.1 Disclosure of shareholdings/ ownership by major shareholders and disclosure of changes in ownership as provided under any Regulations made under the Act and the listing agreement shall be made in a timely and adequate manner.


Listed companies should follow the guidelines given hereunder while dealing with analysts and institutional investors:-

(i) Only Public information to be provided

Listed companies shall provide only public information to the analyst/ research persons/ large investors like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.

(ii) Recording of discussion

In order to avoid misquoting or misrepresentation, it is desirable that at least two company representative be present at meetings with Analysts, brokers or Institutional Investors and discussion should preferably be recorded.

(iii) Handling of unanticipated questions

A listed company should be careful when dealing with analysts’ questions that raise issues outside the intended scope of discussion. Unanticipated questions may be taken on notice and a considered response given later. If the answer includes price sensitive information, a public announcement should be made before responding.

(iv) Simultaneous release of Information

When a company organises meetings with analysts, the company shall make a press release or post relevant information on its website after every such meet. The company may also consider live webcasting of analyst meets.

7.0 Medium of disclosure/ dissemination

(i) Disclosure/ dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination.

(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly.
(iii) Corporates may also facilitate disclosure through the use of their dedicated Internet website.

(iv) Company websites may provide a means of giving investors a direct access to analyst briefing material, significant background information and questions and answers.

(v) The information filed by corporates with exchanges under continuous disclosure requirement may be made available on the company website.

8.0 Dissemination by stock exchanges

(i) The disclosures made to stock exchanges may be disseminated by the exchanges to investors in a quick and efficient manner through the stock exchange network as well as through stock exchange websites.

(ii) Information furnished by the companies under continuous disclosure requirements, should be published on the web site of the exchange instantly.

(iii) Stock exchanges should make immediate arrangement for display of the information furnished by the companies instantly on the stock exchange web site.

ANNEXURE III

FORM A
Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992
[Regulation 13(1) and (6)]

Regulation 13(1) – Details of acquisition of 5% or more shares in a listed company

| Name, PAN No. & address of shareholder with telephone number | Shareholding prior to acquisition | No. and percentage of shares/voting rights acquired | Date of receipt of allotment/advice. Date of acquisition (specify) | Date of intimation to Company | Mode of acquisition (market purchase/public rights/preferential offer etc.) | Shareholding subsequent to acquisition | Trading member through whom the trade was executed with SEBI Registration No. of the TM | Exchange on which the trade was executed | Buy quantity | Buy value |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
### ANNEXURE IV

**FORM B**

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

[Regulation 13(2) and (6)]

**Regulation 13 (2) – Details of shares held by Director or officer of a Listed company**

<table>
<thead>
<tr>
<th>Name, PAN No. &amp; Address of Director/Officer</th>
<th>Date of assuming office of Director / Officer</th>
<th>No. &amp; % of shares/voting rights held at the time of becoming Director / Officer</th>
<th>Date of intimation to company</th>
<th>Mode of acquisition (market purchase / public / rights / preferential offer etc.)</th>
<th>Trading member through whom the trade was executed</th>
<th>Exchange on which the trade was executed</th>
<th>Buy quantity</th>
<th>Buy value</th>
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### ANNEXURE V

**FORM C**

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

[Regulation 13(3) and (6)]

**Regulation 13(3) – Details of change in shareholding in respect of persons holding more than 5% shares in a listed company**

<table>
<thead>
<tr>
<th>Name, PAN No. &amp; address of shareholders</th>
<th>Shareholding prior to acquisition/sale</th>
<th>No. &amp; % of shares/voting rights acquired/sold</th>
<th>Receipt of allotment advice/acquisition of shares/sale of shares – specify</th>
<th>Date of intimation to company</th>
<th>Mode of acquisition (market purchase / public / rights / preferential offer etc.)</th>
<th>No. &amp; % of shares/voting rights post-acquisition/sale</th>
<th>Trading member through whom the trade was executed</th>
<th>Exchange on which the trade was executed</th>
<th>Buy quantity</th>
<th>Buy value</th>
<th>Sell quantity</th>
<th>Sell value</th>
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</table>
### FORM D

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

[Regulation 13(4) and (6)]

**Regulation 13(4) – Details of change in shareholding of Director or Officer of a Listed Company**

<table>
<thead>
<tr>
<th>Name, PAN No. &amp; Address of Director/Officer</th>
<th>No. &amp; % of shares/voting rights held by the Director/Officer</th>
<th>Date of receipt of allotment advice/acquisition/sale of shares/voting rights</th>
<th>Date of intimation to company</th>
<th>Mode of acquisition (market purchase/public rights/preferential offer etc.)</th>
<th>No. &amp; % of shares/post acquisition/voting rights sale</th>
<th>Trading member through whom the trade was executed with SEBI Registration no. of the TM</th>
<th>Exchange on which the trade was executed</th>
<th>Buy quantity</th>
<th>Buy value</th>
<th>Sell quantity</th>
<th>Sell value</th>
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### LESSON ROUND-UP

- To curb insider trading SEBI prescribed various regulations and code of conduct and corporate disclosure practices to be followed by listed companies and entities connected with them.
- Insider means and includes deemed to be a connected person. The definition of Deemed to be a connected person is very elaborate.
- The regulations not only seeks to curb dealing in securities, they also seek to curb communicating or counselling about securities by the insiders.
- The regulations provide for initial as well as continual disclosures by members of the company after a threshold limit of holding and by the directors/employees/designated employees at regular intervals.
SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. What are the compliances to be made by the company under SEBI (Prohibition of Insider Trading) Regulations, 1992?

2. XYZ Ltd. is a listed company and as a company secretary of the company draft a model code of conduct for prevention of insider trading.

3. Describe the obligations casts upon the company under SEBI (Prohibition of Insider Trading) Regulations, 1992.

4. Explain the international regulatory scenario on insider trading.

5. Explain the impact of speculative reports in media with price sensitive information quoting case laws.
Learning Objectives

The governments of 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 framework that supports and sustains their economic growth. The chapter 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 continuities 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, unavailing. 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, 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 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;

— in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—

  (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;

— in any other case, particulars of—

  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)

A General notice in accordance with section 185 is a sufficient declaration of interest in relation to the matters to which it relates.

**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 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 includes 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 subsection (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,

(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.

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 subsection (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 subsection (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 law 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.

**Salient features of RMBCA of U.S. Corporations**

A Business Corporation Act is the collection of laws in each state that governs corporations.

A model corporation statute compiled by the American Bar Association that has been adopted in whole or in part by, or has influenced the statutes of many states.

**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 subsections (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 subsection (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 [name or describe] 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:
   - notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or
   - 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 subsection (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 number 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 subsection (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 subsection (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:

- an individual;
- a firm;
- 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:

- 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. Rofe* (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 it is 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.

R.S., 1985, c. C-44, s. 132; 2001, c. 14, s. 55.

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

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

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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 subsection (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 subsection (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 subsections (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.

R.S., 1985, c. C-44, s. 106; 1994, c. 24, s. 11; 2001, c. 14, ss. 38, 135(E).

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 subsection 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) Subsection (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.

127. to 129. [Repealed, 2001, c. 14, s. 53]

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 subsection (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 subsection or in subsection (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 subsection or in subsection (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 subsection (6).

**Deemed insiders**

(3.1) An insider of a person referred to in subsection (3), and an affiliate or associate of such a person, is an insider of the corporation referred to in that subsection. 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 subsection (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 subsection (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 subsection (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 the 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 had thereat to have been duly had, 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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (2).

None of the following persons shall be qualified for appointment as auditor of a company-

an officer or servant of the company;

(a) a person who is a partner of or in the employment of an officer or servant of
the company;
(b) a body corporate;
(c) 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,
(d) and references in this subsection 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 subsection (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 subsections (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 subsection 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 subsection (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 subsection (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. (Amended 6 of 1984 s. 126)

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 section 23 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.
- (2) A company may be formed.
- 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 month.

- 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 subsections (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 subsection (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 subsection (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 subsection (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 subsection (5) within 42 days after the company’s return date.

(2) The company’s return date mentioned in subsection (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 subsection (5) within 42 days after the company’s return date.

(4) The company’s return date mentioned in subsection (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; or
(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 subsection(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

Companies Act, 1956 which provides the legal framework for corporate entities in India too is a mammoth legislation. As the corporate sector grew in pace the need for streamlining this Act was felt and as many as 24 amendments have taken place since
Major amendments were made through the Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and in 2002 through the Companies (Second Amendment) Act, 2002. Unsuccessful attempts were made in 1993 and 1997 to replace the present Act with a new law. Companies (Amendment) Bill, 2003 containing important provisions relating to Corporate Governance and aimed at achieving competitive advantage was also introduced.

To frame a law that enables companies to achieve global competitiveness in the fast changing corporate scenario, the Government has now taken up a fresh exercise for a comprehensive revision of the Companies Act, 1956 albeit through a consultative process. As a first step in this direction, a Concept Paper on Company Law drawn up in the legislative format was exposed for viewing on the electronic media so that all interested may not only express their opinions on the concepts involved but may also suggest formulations on various aspects of Company Law.

The response to the concept paper on Company Law was tremendous. The Government, therefore, felt it appropriate that the proposals contained in the Concept Paper and suggestions received thereon be put to merited evaluation by an independent Expert Committee. A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models.

**DR. J J IRANI COMMITTEE REPORT**

Dr. J J Irani Expert Committee on Company Law had submitted its report charting out the road map for a flexible, dynamic and user-friendly new company law. The Committee had taken a pragmatic approach keeping in view the ground realities, and has sought to address the concerns of all the stakeholders to enable adoption of internationally accepted best practices. As one wades through the report, one finds an arduous zeal to ensure that flexibility is coupled with accountability and transparency. Be it the role of directors in the management of the company or the role of promoters at the time of incorporation or the responsibility of professionals in ensuring better governance, the report has made very dynamic and balanced recommendations. The Report of the Committee had also sought to bring in multifarious progressive and visionary concepts and endeavored a significant shift from the “Government Approval Regime” to a “Shareholder Approval and Disclosure Regime”.

The Expert Committee had recommended that private and small companies need to be given flexibilities and freedom of operations and compliance at a low cost. Companies with higher public interest which access capital from public need to be subjected to a more stricter regime of Corporate Governance. Further, Government companies and public financial institutions be subject to similar parameters with respect to disclosures and Corporate Governance as other companies are subjected to.
The Government considered the recommendations of Irani Committee and after detailed discussions and deliberations has finalized the Companies Bill, 2008. The highlights of the Bill are discussed later in this study.

**New Concepts introduced by Dr. J J Irani Committee in its report**

To attune the Indian Company Law with the global reforms taking place in the arena, the Report of the Committee had sought to bring in multifarious visionary concepts, which if accepted and acted upon will really simplify the voluminous and cumbersome Companies Act in the country.

**One Person Company (OPC)**

To encourage corporatisation of business and entrepreneurship, the concept of single person economic entity has been introduced in the form of ‘one person company’.

It is recommended that:

(a) OPC may be registered as a private Company with one member and may also have at least one director;

(b) Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.

(c) Letters ‘OPC’ to be suffixed with the name of One Person Company to distinguish it from other companies.

The recommendation is in sync with the international practice as U.K., Australia, Singapore and many other countries provide that a company is capable of being formed with a single person and having one director. Even the neighboring country Pakistan has introduced the concept, albeit only for incorporation of private companies limited by shares.

It is also recommended that such companies should be regulated through a simpler regime so that the single entrepreneur is not compelled to dissipate his time and energy and resources on procedural matters. However, the OPCs should be permitted to be formed only by natural persons.

**Small Companies**

The law should provide a framework compatible to growth of small corporate entities and should enable them to achieve transparency at a low cost through simplified requirements. With this aim and to enable simplified decision making procedure by relieving small companies from select statutory internal administrative procedures, the Committee has recommended that such companies be governed by a simpler regime through exemptions which can be given in the form of a schedule to the Act. Such companies should be subjected to reduced financial reporting and audit requirements as well as simplified capital maintenance regime. Such companies should also be subjected to scaled down free structure. The definition of small
companies may be based upon the gross assets comprising of fixed assets, current assets and investments not exceeding a particular limit as also the turnover of the company concerned.

Simplified regulatory regime for small companies as proposed in U.K. white paper with its emphasis on 'think small first approach, also exists in many other countries including Germany, France, U.S.A. etc.

**Limited Liability Partnership (LLP)**

The ‘unlimited liability’ of partners has so far been the chief reason why partnership firms of professionals, have not grown in size to successfully meet the challenges posed today by international competition, WTO, GATT etc. As an alternative corporate business vehicle that has the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a traditional partnership, the Committee has proposed the concept of LLP to be introduced.

In an LLP, while the LLP itself is liable for the full extent of its assets, the liability of the partners is limited. Partners are protected from vicarious liability i.e. liability arising from the incorrect decision or misconduct of other partners and employees not under their direct control. There is no recourse to attach the personal assets of other members except the member who is negligent. However, the liability of negligent partner remains unlimited. Also any new or existing firm of two or more persons can incorporate as an LLP.

LLP is the very suitable vehicle for growth of the service sector and specially for multi disciplinary partnership firms. It provides flexibility to small enterprises to participate in joint ventures and to access technology and to professionalise business in order to face increasing global competition.

The laws of U.S.A., U.K. and Australia permit formation of LLPs. Most LLP statutes provide that partners will be personally liable for their own negligence or malfeasance. In addition, most LLP statutes provide that LLP partners are liable for the negligence, wrongful acts and misconduct of any person under the LLP partner’s "direct supervision and control", although the statutory terminology differs in this regard. Further, the most recent LLP statutes including those enacted in Colorado, New York etc., provide LLP partners with full protection from vicarious liability but limits LLPs to professional firms.

Though advocating the adoption of the concept of LLP in the Indian legal system, the Committee has recommended that a separate Act be brought about to facilitate limited liability partnerships. The concept need not be introduced in the Companies Act.

Consequently a new Limited Liability Partnership Bill was introduced in Parliament in December 2006 and the same is likely to become an Act shortly.

**Independent Directors**

Though the concept of independent directors is not new, it has so far been enshrined in the corporate governance codes of various countries. It is for the first
The concept of independent directors has been proposed to be introduced in Company Law in India. The Committee has suggested that independent directors are required to be appointed only in respect of listed companies or the companies which have accepted public deposits.

The Committee has proposed that at least one-third of the Board should comprise of independent directors irrespective of whether the company has an executive or non-executive Chairman. This is in contrast with Clause 49 of the listing agreement which provides for proportion of the Independent Directors on the basis of chairman being non-executive or non-executive.

No minimum qualification has been laid for an independent director. It has been specified that the appointment of independent directors should be made by the company from amongst persons, who in the opinion of the Board, are persons with integrity, possessing relevant expertise and experience and who satisfy the criteria for independence. This will indirectly ensure that only the persons possessing necessary knowledge, skills, and ethics are kept on the Boards of Companies.

The Committee has recommended that the expression ‘Independent Director’, shall mean a non-executive director of the company who:

(a) apart from receiving director’s remuneration, does not have, and none of his relatives or firms/companies controlled by him have, any material pecuniary relationship or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associate companies which may affect independence of the director.

(b) is not, and none of his relatives is, related to promoters or persons occupying management positions at the board level or at one level below the board;

(c) is not affiliated to any non-profit organization that receives significant funding from the company, its promoters, its directors, its senior management or its holding or subsidiary company;

(d) has not been, and none of his relatives has been, employee of the company in the immediately preceding year;

(e) is not, and none of his relatives is, a partner or part of senior management (or has not been a partner or part of senior management) during the preceding one year, of any of the following:-

(i) the statutory audit firm or the internal audit firm that is associated with the company, its holding and subsidiary companies;

(ii) the legal firm(s) and consulting firm(s) that have a material association with the company, its holding and subsidiary companies;

(f) is not, and none of his relatives is, a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;

(g) is not, and none of his relatives is, a substantial shareholder of the company i.e. owning two percent or more of voting power.
Explanation:

For the above purposes -

(i) “Affiliate” should mean a promoter, director or employee of the non-profit organization.

(ii) “Relative” should mean the husband, the wife, brother or sister or one immediate lineal ascendant and all lineal descendents of that individual whether by blood, marriage or adoption.

(iii) “Senior management” should mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

(iv) “Significant Funding” – Should mean 25% or more of funding of the Non Profit Organization.

(h) “Associate Company” – Associate shall mean a company which is an “associate” as defined in Accounting Standard (AS) 23, “Accounting for Investments in Associates in Consolidated Financial Statements”, issued by the Institute of Chartered Accountants of India.

Key managerial personnel

The Committee has identified CEO /MD /CFO and Company Secretary as the Key Managerial Personnel for all companies, whose appointment and removal shall be by the Board of Directors of the company concerned.

Key Managerial Personnel should be in the whole-time employment of only one company at a time and both the managing director and the whole time directors should not be appointed for more than 5 years at a time. However, the present requirement of having managing director/whole time director in a public company with a paid up capital of Rs.5 crores may be revised to Rs.10 crores by appropriate amendment of the Rules.

Special exemptions may be provided for small companies, which may obtain such services, as may be considered mandatory under law, from qualified professionals in practice.

Directors and Officers (D&O) Insurance

The long felt need of the corporate sector in regard to extending insurance cover for the key man and key directors of companies has been addressed by the committee. It is recommended that insurance of key men and key directors and senior officers of companies may be taken by means of general insurance policies and the insurance premium paid by the company for such a policy need not be treated as perquisite or income in the hands of director concerned. However, if the wrongful act of the director or concerned officer is established, then the appropriate amount of premium attributable to such person shall be considered as perquisite or income for the purpose of remuneration.
Directors and officers (D&O) insurance as a means by which directors/officers of companies seek to mitigate potential personal liability, is very much prevalent in many developed economies of the world.

Rights and liabilities of independent and non-executive directors

Independent directors should have access to accurate, relevant and timely information in order to discharge their duties and responsibilities effectively with this objective in mind, the Expert Committee has recommended that Independent/non-executive directors should be able to call upon the Board for due diligence or obtaining of record for seeking professional opinion by the Board, right to inspect records of the company, review legal compliance reports prepared by the company; and in case of disagreement, record their dissent in the minutes.

The Committee also went into the question of whether independent directors should be liable for all acts on the same footing as executive directors or should they be granted immunity from certain offences. It has recommended that a non-executive/independent director should be held liable only in respect of contravention of any provisions of the Act which had taken place with his knowledge and where he has not acted diligently, or where the contravention has been with his consent or connivance.

It is further recommended that if the independent director does not initiate any action upon knowledge of any wrong, such director should be held liable. This implies, if irregularities come to the knowledge of the directors and yet they do not act proactively and exercise due diligence to ensure that the interest of the company is duly protected, then they should be held responsible.

Knowledge should flow from the processes of the Board. Additionally, upon knowledge of any wrong, follow up action/dissent of such independent directors from the commission of the wrong should be recorded in the minutes of the Board meeting.

Freeing the Managerial Remuneration of limits

Managerial remuneration in India has so far been restricted to certain limits in the case of public companies and private companies which are subsidiaries of public companies, with the overall limit being 11% of the net profits of the company during the financial year.

Internationally, the laws of various countries including U.K., Australia, Canada and Singapore do not provide for any upper ceiling or minimum level of directors’ remuneration. The UK Companies Act provides for necessary disclosures about ‘emoluments and other benefits of directors and others’ in the notes to accounts (for a company which is not quoted). In case of quoted companies, it provides for preparation of Directors’ Remuneration Report, which must be duly signed. The auditors of the company must also audit this report. The Act also provides for laying the Directors’ Remuneration Report before the company in general meeting, approval by the members, delivery to the registrar and other related matters.

The Australian and Singapore Companies Acts provide that members with
certain majority/voting power may obtain information about directors’ remuneration. The Acts also mandate for audit of the statement of managerial remuneration paid, sending it to the entitled persons and the laying the same before the general meeting.

Moving in tune with the international practice, the Committee has recommended removal of all ceilings on payment of directors’ remuneration. Shareholders of companies have been empowered to decide as to how to remunerate their directors. However, this process is to be transparent and based on principals that ensure fairness, reasonableness and accountability. It is important that there should be a clear relationship between responsibility and performance vis-à-vis remuneration, and that the policy underlying Directors’ remuneration be articulated, disclosed and understood by investors/stakeholders. To ensure transparency, it is recommended that Directors’ Remuneration Report should form part of the annual report of the company and should contain details of remuneration package of directors including company’s policy on directors’ remuneration, the performance graph of the company and the remuneration of directors vis-à-vis the performance of the company.

Another important feature of the recommendations relating to managerial remuneration is the removal of all government approvals. The Committee felt that in the current competitive environment, where Indian companies have to compete for specialized manpower globally, it may not be feasible or appropriate for the government to interfere. Instead of the restrictive regime based on ‘government approvals’, the ‘shareholder approval’, regime be adopted. Decision on how to remunerate directors should be left to the company. However, this should be transparent and based on principles that ensure fairness, reasonableness and accountability. The shareholders have been recommended to be empowered to decide the remuneration of non-executive directors including independent directors with no government interference. The criteria for remuneration/compensation of non-executive/independent directors should be based on their attendance and contribution and performance of the company. This may be in the form of sitting fees for Board and committee meetings attended physically or participated in electronically and/or profit related commissions.

**Committees of the Board**

While recognizing the need for discretion of the Board to manage and govern the company through collective responsibility, the Expert Committee has mandated the constitution of certain committees of Board for certain categories of companies, whose recommendations would be available to the Board for taking final decisions. These Committees are Audit Committee, Remuneration Committee and Stakeholders Relationship Committee. Although the concept of Audit Committee was already there in the Companies Act, 1956 the mandatory requirement of other two committees in respect of certain companies is new. While the constitution of Audit Committee and Remuneration Committee has been recommended as must for all listed companies and companies accepting public deposits, the stakeholders relationship committee is suggested to be constituted in companies having combined shareholder/deposit holder/debenture holder base of 1000 or more. The main recommendations in
respect of these committees are as below:

**Audit Committee for Accounting and Financial matters**
- Majority of directors to be independent, if appointment of independent directors is required.
- Independent Chairman.
- Atleast one member to have financial knowledge.
- Chairman to attend AGM and provide clarifications relating to Audit. If Chairman is unable to attend, he may authorise any other member of Audit Committee to do so.
- Recommendations of the Committee not accepted by the Board to be disclosed in Directors’ Report with reasons for overruling.

**Stakeholders Relationship Committee**
- To be constituted in companies having combined shareholder/deposit holder/debenture holder base of 1000 or more.
- Main objective shall be to monitor redressal of investor grievances.
- Non-executive director to act as Chairman.

**Remuneration Committee**
- Compulsory constitution in Public listed companies and any company accepting deposits.
- To comprise of non-executive directors including atleast one independent director if appointment of independent directors is required. In such a case, Chairman also to be independent.
- Main objective shall be to determine the company’s policy and remuneration packages of MD/Executive directors/senior management.
- Chairman or atleast one member of the committee should be present in General Meeting to answer shareholders’ queries.

**Recognition to joint venture/shareholders’ agreements**

Over the years, several Court judgments have been pronounced in India on validity of joint venture agreements vis-à-vis the provisions of the Act contained in sections 9, 111A, etc. It has been held that the provisions of Joint Venture/Shareholders’ Agreement will bind the company only if such agreement is endorsed/incorporated in the articles of the company itself.

The Committee recognised the issues involved in validity of joint venture covenants vis-à-vis the provisions of the existing Act. It was noted that joint venture agreements have several clauses pertaining to voting rights, additional quorum requirements, arbitration provisions, pre-emption rights or restrictions on transfer of shares etc. The effect of this framework is that dispute resolution in respect of joint venture provisions becomes subject to contract law provisions and is subject to lengthy arbitration. Companies, however, prefer such aspects to be addressed more speedily through the corporate processes.
The Committee has, therefore, recommended that a transparent modality for providing recognition to agreements between joint venture partners for corporate action should be worked out in company law, keeping in view the concern that such arrangements should not become a window for circumventing the essential provisions of the law.

**Tracking and Treasury Stocks**

*Tracking Shares* - The Committee has recommended the introduction of ‘Tracking Stocks’, also known as ‘targeted stocks’. Tracking Stocks as a financial vehicle that tracks the performance of a particular division or subsidiary. A tracking stock is a type of common stock that “tracks” or depends on the financial performance of a specific business unit or operating division of a company, rather than the operations of the company as a whole. As a result, if the said unit or division performs well, the value of the tracking stocks may increase, even if the company’s performance as a whole is not up to mark or satisfactory. The opposite may also be true.

By issuing a tracking stock, the different segments or divisions of the company can be valued differently by investors. When a parent company issues a tracking stock, all revenues and expenses of the applicable division are separated from the parent company’s financial statements and bound to the tracking stock. Often this is done to separate financial statement of a high-growth division from the financial statements of the parent company which may contain huge losses. The parent company and its shareholders, however, still control operations of the subsidiary.

Tracking stock carries dividend rights tied to the performance of a targeted division without transferring ownership or control over divisional assets. In contrast to a spin-off or an equity carve-out, the parent retains full control, allowing it to enjoy any operating synergies, or economies of scale in administration or finance. Shareholders of tracking stocks have a financial interest only in that unit or division of the company. Unlike the common stock of the company itself, a tracking stock usually has limited or no voting rights. When a tracking stock is issued, the company can choose to sell it to the markets (i.e., via an initial public offering) or to distribute new shares to existing shareholders. Either way, the newly tracked business segment gets a longer lease, but can still run back to the parent company if times get tough.

Even though the tracking stock is targeted at a specific subunit, the business subunit is still responsible for all of the firm’s debts and the assets can be transferred in or out of the subunit as the common board of directors think fit. The assets of the tracking stock portion of the business continue to be owned by the parent company and can be used against the corporation’s liabilities. In addition the capital raised through the issuance of tracking stock is not restricted for use only by the tracked business segment.

A key advantage of tracking stock is that it offers divisional managers a degree of decision-making authority that might otherwise be unattainable, given top management’s reluctance to dilute its control over the division’s assets. The practical effect would be to enhance job satisfaction for divisional managers, thus reducing...
retention risk and also increasing the company’s responsiveness to changing market conditions. Also, investors have more direct access to the specific businesses of the parent, which can be highly useful in the case of a diversified company.

_Treasury Stocks_ - The Committee has also recommended introduction of treasury stocks as a measure for raising of funds at a low cost. Presently, section 77A of the Companies Act, 1956 provides for buy-back of securities. Once bought back, the relevant securities are to be extinguished. Internationally, however, a company can, subject to certain restrictions, hold bought back shares itself under the name “Treasury Stock”. In other words, Treasury Stocks are the shares which a company legitimately holds on its share register in its own name. The voting rights on these Treasury Stocks are suspended and company cannot exercise voting rights on such shares. No distribution of dividend (including dividend during winding up) can be made to such stock.

The Committee felt that a number of preparatory actions were required before the concepts of Tracking Stocks and Treasury Stocks could be introduced, such as the regulations to be framed by capital market regulator, development of appropriate, specific accounting standards etc. It therefore recommended that while an enabling provision for Tracking / Treasury Stocks could be incorporated in the new Law, actual introduction of Tracking and Treasury Stocks in the Indian Capital Markets be made only when the necessary framework is ready.

**Perpetual Preference Shares**

As per the existing provisions, preference shares can be issued for a maximum period of 20 years. As many companies may like to raise capital of a quasi equity and permanent nature on account of long gestation project capital requirements, the Committee felt that the concept of perpetual preference shares or preference shares of higher tenure be permitted in the new Law. The Committee recommended that companies should be permitted to issue perpetual/ longer duration preference shares and that returns from such shares may be linked to market benchmark or reset periodically. In case the subscriber of perpetual preference shares wants to redeem his shares prematurely, necessary enabling provisions to redeem the shares by the company up to a certain percentage of preference shares on an annual basis may be provided. This may be done through “call/put option mechanism”. The Committee also felt that flexibility should be given to the companies to revise the tenure of already issued preferential shares by obtaining prescribed approval of shareholders for variation of rights.

**Single Window Clearance for Mergers**

The Committee recognised the fact that the Indian merger law, as it exists today, is cumbersome and time consuming and rightly emphasized on the need for speedier disposal of mergers and acquisitions (M&As) proposals. Mergers and acquisitions today are a widely used multipurpose business tool that can bring long-term benefits in the context of increasing competitiveness in the market. The Committee addressed on formulation of a corporate insolvency legislation which would enable to carry out M&As with “digital speed” and made several recommendations in this regard. One of
the recommendation is a single window clearance for the purpose. The law should provide for a single forum which would approve the schemes of mergers and acquisitions in an effective time bound manner. The concept of ‘deemed approval’ should be provided for in cases where the regulators do not intimate/inform their comments within a specified time period to the Court/Tribunal before which the scheme of merger/amalgamation is submitted for approval.

Empowering the National Company Law Tribunal to grant clearance for all aspects of the merger/amalgamation would obviate the need to approach different forums for clearances required for the merger/amalgamation and hasten the process. This would address the problem that has ailed Indian businesses for long.

**Contractual Mergers**

The Committee was of the view that contractual mergers may be given statutory recognition in the Company Law in India as is the practice in many other countries as a restructuring tool to hasten the process of mergers and acquisitions. Such mergers and acquisitions are in the contract form (i.e. without the intervention of the court) and are made subject to subsequent approval of shareholders by simple majority.

The recognition of such contractual mergers would eliminate obstructions to mergers and acquisitions, give ex-post facto protection and the ability to rectify them.

Committee felt that steps should be taken to validate contractual mergers because court-oriented process many times leads to delays. Even as judicial process is important to take care of the interest of minority shareholders, many times it is used as a tool to abuse and derail the process. In fact, “Some very well-meaning mergers and acquisitions are taken to court by motivated shareholders with vested interests to derail the process”.

**Time-bound proceedings for restructuring and liquidation**

The Committee recognised the business need for efficient and speedy procedures for exit as much as for start up. The Committee noted that a recent survey by World Bank (Doing business in 2005 – India Regional Profile) has pointed out that it takes an average 10 years to wind up/liquidate a company in India as compared to 1 to 6 years in other countries. Such lengthy time-frames are detrimental to the interest of all stakeholders. The process should be time-bound, aimed at maximizing the chances of preserving value for the stakeholders as well as the economy as a whole.

The Committee has recommended that a single independent forum should be created for accelerating the liquidation process and a definite and predictable time frame should be provided for. The existing time frame in India is too long and keeps precious assets locked in proceedings for many years, destroying their value in the process. In this protracted and never-ending process, the assets not only lose value but even disappear and vanish. On an average, a time frame of two years should be feasible for the liquidation process to be completed. A period of one year should be adequate from commencement of the process till sanction of a plan. There should
also be a definite time period within which proceedings may commence from the date of filing of the application for rehabilitation.

The legislation should limit the possibility of appeals at every stage so that the process is not delayed through frivolous appeals or stalling tactics. A fixed time period should be provided for at each stage of rehabilitation and liquidation process. Extension at every stage should be rare and allowed only in exceptional circumstances and in any case without effecting the outer time-limit provided for the process.

On an average a time frame of 2 years should be feasible for the liquidation process to be completed.

**Insolvency Practitioners**

Keeping in view the important role of professionals and experts in the insolvency process, the Committee has recommended the recognition of the concept of ‘Insolvency Practitioners’. Currently, the law does not support effective participation of professionals and experts in the insolvency process. Law should encourage and recognize the concept of Insolvency Practitioners (Administrators, Liquidators, Turnaround Specialists, Valuers etc.) and disciplines of chartered accountancy, company secretarial, cost and works accountancy, law etc. can act as feeder streams, providing high quality professionals for this new activity. Greater responsibility and authority should be given to Insolvency Practitioners under the supervision of the Tribunal to maximize resource use and application of skills.

**The insolvency fund**

The Committee proposed that the provisions relating to rehabilitation cess should be replaced by the concept of ‘Insolvency Fund’ with optional contributions by companies. The Government may make grants for the fund and provide incentives to encourage contributions by companies to the fund. Companies which make contributions to the fund should be entitled to certain drawing rights in the event of insolvency. Administration of the fund should be by an independent administrator. Insolvency fund should not be linked/credited to Consolidated Fund of India.

**International Considerations**

Key international initiatives like United Nations Commission on International Trade Law (UNCITRAL) legislative Guide on Insolvency, World Bank Principles for Efficient Insolvency and Creditors Right Systems International projects were examined by the Expert Committee to bring the provisions in tune with international developments.

A strong need for a suitable framework for Cross Border Insolvency which provides for rules of jurisdiction, recognitions of foreign judgments, co-operation and assistance among Courts in different countries and choice of law is recommended by the Committee. It is also suggested that the Government may consider adoption of UNCITRAL Model Law on Cross Border Insolvency with suitable modifications at an appropriate time.
The Companies Bill, 2009 (India)

The Minister for Corporate Affairs, Mr Salman Khurshid, on 3rd August, 2009 introduced the Companies Bill, 2009 in the Lok Sabha. Earlier, last year, Companies Bill, 2008 was introduced in the Lok Sabha on 23rd October, 2008. Due to dissolution of the 14th Lok Sabha, the Companies Bill, 2008 lapsed. The Government decided to re-introduce the Companies Bill, 2008 as the Companies Bill, 2009, without any change except for the Bill year.

The review and redrafting of the Companies Act, 1956 was taken up by the Ministry of Corporate Affairs on the basis of a detailed consultative process. A ‘Concept Paper on new Company Law’ was issued by the Government on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December 2004 which was submitted its report to the Government on 31st May 2005.

Highlights of the Companies Bill, 2009

— Introduced in Lok Sabha on August 3rd, 2009.
— The Bill has 426 clauses as against 658 Sections in the existing Companies Act, 1956.
— The entire bill has been divided into 28 chapters.
— Many new chapters have been introduced, viz., Registered Valuers (ch.17) ; Government companies (ch. 22); Companies to furnish information or statistics (ch. 24); Nidhis (ch. 25); National Company Law Tribunal & Appellate Tribunal (ch. 26); Special Courts (ch. 27)
— The Bill is forward looking in its approach which empowers Central Government to make rules, etc. through delegated legislation and after having detailed consultative process (clause 426 and others).

The salient and unique features of the Bill are as under:

The Companies Bill is the result of detailed consultative process adopted by the Government.

Classification and registration

— Concept of One Person Company (OPC limited) has been introduced [clause 2(zzk)]
— Small companies have been defined (maximum paid-up share capital not exceeding Rs.5 crores) and have been subjected to a less stringent regulatory framework [clause 2(zzg)].
— Registration process has been faster and compatible with e-governance.
— The memorandum of a company shall be in such form as may be prescribed [clause 5(6)].
— For the first time, provision for entrenchment has been proposed in the Bill [clause 6(3)].
— For the first time, **provision for re-registration of companies** already registered, has been introduced [clause 17].

— A declaration in the prescribed form is 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. Company Secretaries continue to be recognized for the purpose of giving this declaration. (clause 7)

**BOARD AND GOVERNANCE**

— “**Key Managerial Personnel (KMP)**, in relation to a company, means—
  (i) the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director or Manager, a whole-time director or directors;
  (ii) the **Company Secretary**; and
  (iii) the Chief Financial Officer;” [clause 2(zza)]

— Every company belonging to such class or description of companies as may be prescribed shall have Whole-Time Key Managerial Personnel. [clause 178 (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. [clause 178 (2) & (4)]

— If a company does not appoint a Company Secretary, the penalty proposed is:
  — On company – one lakh rupees
  — On every director and KMP who is in default – 25,000 rupees for each such default.

— Every company shall have at least **one director resident in India** [clause 132(2)].

— Concept of **independent directors** has been introduced for the first time in Company Law; [clause 132(5)]
  — All listed companies are required to appoint independent directors.
  — Such other public companies and subsidiaries of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
  — **At least one-third of the Board should comprise of independent directors.**
  — The independent director has been clearly defined in the Bill.
  — **Nominee director appointed by any 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 and stock
options as may be approved by the members.

— Only an independent director can be appointed as alternate director to
an independent director. [clause 142(2)].

— There is a comprehensive revision of the provisions relating to payment of
managerial remuneration. No limits have been laid down on the
quantum of remuneration to be paid. [clause 175].

— No limit has been prescribed on payment of sitting fees to the
directors. Accordingly, a director who is neither a whole-time director nor a
managing director may be paid remuneration in the form of fee for attending
meetings of the Board or Committees thereof and as profit related
commission with the prior approval of members by special resolution.
[clause 176].

— 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 [clause 154(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. [clause 154(1)]

— Besides the Audit Committee, the constitution of Remuneration
Committee has also been made mandatory in the case of listed
companies and such other class or description of companies as may be
prescribed. [clause 158(1)].

The Audit committee shall consist of a minimum of three directors with
independent directors forming a majority and at least one director having
financial knowledge. [clause 158(2)].

The Remuneration Committee shall consist of non-executive director(s)
with at least one independent director. [clause 158(10)].

— Where the combined membership of the shareholders, debenture holders
and other security holders is more than one thousand at any time during
the financial year, the company shall constitute a Stakeholders’
Relationship Committee. The Chairman of the Committee shall be a non-
executive director. [clause 158(12)].

— 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. [clause 154(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. [clause 154(3)].
— 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. [clause 149(1)].

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. [clause 149(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 [clause 149(4)].

— Duties of directors have been specified in the Bill [clause 147].

— If a person other than retiring director stands for directorship but fails to get appointed, he shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total votes cast [clause 141(1)].

— 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. [Clause 175 (2)]

General Meetings

— To encourage wider participation of shareholders at General Meetings, the members have been permitted to exercise their vote at meetings by electronic means [clause 97].

— 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 thereunder. 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 with such fee as may be prescribed. Non-filing of the report has been made a punishable offence. [Clause 109].

— One person companies have been given the option to dispense with the requirement of holding an AGM. [clause 85(1)].

— For the first time, the concept of Secretarial Standards has been introduced. Every company is required to observe such Secretarial Standards as may be prescribed with respect to General and Board Meetings. [Clause 107 (10)]

Investor Protection Measures

— Issue and transfer of securities and non-payment of dividend by listed
companies, has to be administered by SEBI by making regulations. (Clause 22)

— An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees. (Clause 31)

— 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. (Clause 32).

— A company may accept deposits subject to fulfillment of the following conditions (Clause 66):
   
   (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.
   
   (vii) An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account.

— The penalty for failure to repay deposit has been made extremely stringent. Now the default is punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees. And every officer of the company who is in default, shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than 25 lakhs rupees, but which may extend to two crore rupees, or with both (Clause 68).

— Stringent punishment is proposed for failure to distribute dividend within thirty days of its declaration. (Clause 115)

— Annual Return being a public document is now required to have more disclosures especially on matters relating to certification of compliances, disclosures etc (Clause 82)

**Annual return [clause 82]**

Apart from the existing disclosures regarding the registered office, shares, debentures, indebtedness of the company etc., the following additional information is to be given:

   (i) principal business activities, particulars of its holding, subsidiary and associate companies;
(ii) its promoters, directors, key managerial personnel along with changes therein since the close of the last financial year;

(iii) meetings of members or a class thereof, Board and its various committees along with attendance details;

(iv) remuneration of directors and key managerial personnel;

(v) penalties imposed on the company, its directors or officers and details of compounding of offences;

(vi) matters related to certification of compliances, disclosures; and

(vii) such other matters as may be prescribed.

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, whether private or public, listed or unlisted, if no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

(ii) a Company Secretary in whole-time practice in respect of:

(a) A company having such paid-up capital and turnover as may be prescribed, and

(b) a company whose shares are listed on a recognized stock exchange.

The Practising Company Secretary has to certify that the annual return states the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

(iii) It means, in case of a listed company, even if the Annual Return is signed by the Company Secretary in employment of the Company, it is further required to be signed by the Company Secretary in Whole time practice. Also, in case of a company having such paid up capital and turnover as may be prescribed and even if the company is not listed, the Annual Return is required to be signed by the Company Secretary in whole time practice in addition to the Company Secretary in employment.

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.

Certification regarding compliances

By signing the return, a Company Secretary certifies that the annual return states the facts correctly and adequately and that the company has complied with all the provisions of the Act. In addition, the adequacy of disclosures made are required to be certified by the Company Secretary in the Annual Return. It is a great opportunity as well as a challenge for the Company Secretaries.
Penalty

- In case a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, 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.

Board’s Report has been made more informative and includes extensive disclosures like –

(i) extract of annual return
(ii) report of the committee on directors’ remuneration
(iii) a declaration by independent directors wherever they are appointed
(iv) particulars of loans, guarantees, or investments made
(v) particulars of contracts or arrangements entered into

The Boards’ Report is to be signed by the Chairman if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or where there is only one director, by such director (Clause 120).

New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [clause 173].

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. [clause 166(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. [clause 170].

- 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 a 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 (clause 171).

- Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company. (clause 172).
Share capital and debentures

— Equity share capital has now been defined as:

Equity share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which has no limits for participation, either with respect to dividend or with respect to capital, in distribution of profits or otherwise. [clause 37(2)].

The existing Section 85 of the Companies Act, 1956 defines Equity share capital as share capital which is not preference share capital.

— If a company with intent to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares. Stringent penalties have also been imposed for defaulting officers of the company. [clause 40(5)]

— Where any depository has transferred shares with an intention to defraud a person, it shall be punishable with fine which shall not be less than rupees three lakh but which may extend to rupees twenty five lakh. [clause 40(6)]

— Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 46(2)(e)]

— A company can not issue share at a discount except in case of sweat equity shares. Any share issued by a company at a discounted price shall be void. [Clause 47]

— A company limited by shares can not 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. This period of twenty years may, however, be excluded in case of such infrastructural projects as may be prescribed. [Clause 49].

— Every company shall deliver Debenture Certificate issued by the company within six months of allotment. [Clause 50(4)(d)].

— The Tribunal on receiving an application for reduction of share capital, shall give notice to the Central Government and to the SEBI and consider the representations received in this behalf. (Clause 59)

Inspection, enquiry and investigation

— A new clause 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 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. [clause 191]

— Another new clause added to the Bill seeks to provide that no suit or proceedings shall lie in any court or Tribunal or authority in respect of any
action initiated by the Central Government in respect of an investigation, etc. till such investigation report is submitted [clause 194].

— Another new clause 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. (clause 199).

Class action suits

— A provision has been made for class action suits. It is provided that any one or more members or one or more creditors may file an application before the Tribunal on behalf of the members and creditors, 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 creditors. The order passed by the Tribunal shall be binding on the company and all its members and creditors. (clause 216)

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. (clause 233).

— The Tribunal may appoint an interim administrator or a company administrator from the panel of COMPANY SECRETARIES, Advocates, CAs, CWAs, etc. maintained by the Central Government. [clause 234(1)].

— The Company Administrator shall prepare a scheme of revival and rehabilitation. [clause 236(1)].

— If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company. (clause 233).

— No civil court shall have jurisdiction in respect of any matter on which Tribunal or Appellate Tribunal is empowered. (clause 243).

Company Liquidators (Clause 250)

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 and Works 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 (Clause 266)

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.
Any person appointed under this clause shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Registered valuers
- 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. (clause 218).
- The Central Government shall maintain a register of valuers. [clause 219(1)].
- A CS, CA, CWA or other persons possessing prescribed qualifications may apply to the Central Government to be registered as valuers. No company or body corporate shall be eligible to apply as registered valuers. [clause 219(2)].
- The Central Government shall be empowered to provide for appointment of a committee of experts to recommend suitable names for the purpose of inclusion in the Register of Valuers. [clause 220(1)].

Qualifications of President and Members of Tribunal (Clause 370)
The constitution of the Tribunal shall widen the scope of services for Practising Company Secretaries. Amongst others, a Company Secretary in practice is eligible to become a Technical Member of National Company law Tribunal, if he is practising for at least twenty years.

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. (clause 396).
- 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 (clause 397)
- 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. (clause 398).

End Note
The process of reforms in Company Law is indeed a herculean task. And this task is being undertaken globally to enact comprehensive, simple and effective company law which not only provides a flexible framework for corporate entities to compete globally, but also imposes strict corporate responsibility thereby ensuring protection of all stakeholders. Corporate reporting of social and environmental aspects too is being recognised as an essential ingredient of new Company Law.
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. Answer 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:
(1) Farrar’s Company Law — J.H. Farrar and B.M. Hannigan
(2) Law of Corporations — Harry G. Henn
(3) Pennighn’s Company Law — Butterworths
(4) Palmer’s Company Law
(5) Company Law of Canada — Fraser & Stewart

Students are advised to attempt at least one Test Paper from Test Papers 3/2011, 4/2011 and 5/2011 i.e. either Test Paper 3/2011 or Test Paper 4/2011 or Test Paper 5/2011 and send the response sheet for evaluation to make him/her eligible for Coaching Completion Certificate. However, students may, if they so desire, are encouraged to send more response sheets including Test Paper 1/2011 and 2/2011 for evaluation.

While writing answers, students should take care not to copy from the study material, text books or other publications. Instances of deliberate copying from any source, will be viewed very seriously.
WHILE WRITING THE RESPONSE SHEETS TO THE TEST PAPERS GIVEN AT END OF THIS STUDY MATERIAL, THE STUDENTS SHOULD KEEP IN VIEW THE FOLLOWING WARNING AND DESIST FROM COPYING.

**WARNING**

Time and again, it is brought to our notice by the examiners evaluating response sheets that some students use unfair means in completing postal coaching by way of copying the answers of students who have successfully completed the postal coaching or from the suggested answers/study material supplied by the Institute. A few cases of impersonation by handwriting while answering the response sheets have also been brought to the Institute’s notice. The Training and Educational Facilities Committee has viewed seriously such instances of using unfair means to complete postal coaching. The students are, therefore, strongly advised to write response sheets personally in their own handwriting without copying from any original source. It is also brought to the notice of all students that use of any malpractice in undergoing postal or oral coaching is a misconduct as provided in the explanation to Regulation 27 and accordingly the studentship 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.”
1. Comment on the following:
   (a) The articles of association play a subordinate role to the memorandum of association.
   (b) Promoters are the persons, who conceive the idea or visualize a project and then take steps to execute the idea into a reality.
   (c) A producer company may alter its object clause specified in its memorandum of association by passing a special resolution.
   (d) A share certificate is prima facie evidence of the title of the person whose name is entered on it.

2. (a) What is the procedure to register a foreign company in India?
    (b) What is the procedure for changing objects of a company?

3. (a) State the salient features of SEBI (Issue and Listing of Debt Securities) Regulation, 2008.
    (b) Discuss the steps involved in issue of Bonus Shares.

4. (a) Draft a specimen Board Resolution for conversion of shares into stock.
    (b) Draft a specimen resolution authorizing a director to discharge certain responsibility on behalf of the board.
    (c) What are the conditions subject to which debt securities can be rolled over?

5. (a) Explain the general structure of an e-form and the e-filing process.
    (b) What are the conditions which are required to be fulfilled for issue of shares on right basis under section 84?
    (c) Write a short on functions of a company secretary.

6. Write short notes on the following:
   (i) Corporate Identity Number
   (ii) CAG Audit
   (iii) Reissue of Redeemed Debentures.
   (iv) Remuneration of Auditors
1. (a) Explain the procedure for bonus issue by an unlisted company.
    (b) Explain the procedure for obtaining a direction from the Company Law Board for the rectification of the Register of Members.  

2. Write short notes on –
   (a) Powers to be exercised only at Board Meeting
   (b) Secretarial Standard – 10
   (c) Register of members
   (d) Corporate Identity Number

3. Draft specimen resolution for the following mentioning the kind of resolution and the type of resolution –
   (a) Approving statutory report and calling the statutory meeting.
   (b) Keeping and maintaining books of accounts at a place other than the registered office.
   (c) Recommending payment of dividend on equity shares out of current profits.
   (d) Making loan to another company.

4. (a) What are the conditions when a document or form is said to be defective? Also, state the penalty for filing false documents with registrar.
    (b) Briefly describe the procedure for condonation of delay in relation to filing of documents with ROC?
    (c) Briefly explain the scope and functions of the Secretarial Standards Board.
    (d) State the conditions when a person is deemed to be a connected person.

5. (a) Explain the role of company secretary in compliance requirements.
    (b) Describe the obligations casts upon the company under SEBI (Prohibition of Insider Trading) Regulations, 1992.

6. (a) Write short notes on –
    (1) Key Managerial Person
    (2) Consequences of non-registration of charge
    (b) Distinguish between:
    (1) Certificate of incorporation and certificate of commencement of business.
    (2) Prospectus and statement in lieu of prospectus.
1. Draft the following:
   (i) Special Resolution for Change of name of the company as per proviso to section 21 of the Act.
   (ii) Resolution for conversion of shares into stock.
   (iii) Board resolution for the Appointment of first auditor.
   (iv) A notice under section 640B for the Central Government’s approval to increase remuneration of the managing director. (5 marks each)

2. (a) Choose the most appropriate answer from the given option in respect of the following:
   (i) The instrument appointing a proxy shall be in:
       (a) Oral
       (b) Writing
       (c) Non-judicial stamp paper
       (d) None of the above.
   (ii) Companies are required to file compliance certificate with the Registrar:
       (a) Within 30 days
       (b) Within 45 days
       (c) Within 60 days
       (d) Within 15 days.
   (iii) A company can remove a director before the expiry of the period of his office by passing:
       (a) a Special resolution
       (b) an Ordinary resolution
       (c) a Resolution by special notice
       (d) a Board Resolution.
   (iv) A Debenture is
       (a) An evidence of debt
       (b) An acknowledgement of debt
       (c) A certificate of debt
       (d) An instrument of debt.
(v) The auditor of a Government Company shall be appointed or re-appointed by the:
(a) Central Government
(b) State Government
(c) Comptroller and Auditor General of India
(d) None of the above.

(vi) To borrow moneys otherwise on debentures can be exercised only at:
(a) Board meeting
(b) General meeting
(c) Either at Board meeting or at General Meeting
(d) Resolution by circulation.  

(b) (i) Every user who is required to sign an e-form for submission with MCA is required to obtain a__________
(ii) ________ are the persons who conceive the idea or visualize a project and then take steps to execute the idea into a reality.
(iii) Where the Chairman is not authorized by the Board to sign the board's report, it must be signed by ________
(iv) Only fully paid-up shares can be converted into__________
(v) The declaration of bonus issue in lieu of__________ is not permitted.
(vi) Section________ of the Companies Act, 1956 provides for Cost Audit.  

(c) Write a short-note on resignation by Managing Director.  

3. (a) Distinguish between the following:
   (i) Managing Director and Manager
   (ii) Voidable Allotment and Void Allotment.  

(b) State, with reasons in brief, whether the following statements are correct or incorrect:
   (i) A company can increase the authorized share capital of a company by passing an ordinary resolution.
   (ii) The articles of association of a company contain provision and authorizing the company to consolidate its shares.
   (iii) A share warrant is transferred by a mere delivery of the warrants without execution of any written instrument of transfer being registered by the Company.
   (iv) No dividend can be paid by a company except in cash.
   (v) A public company may appoint a person as its manager, if he is the manager of only two other companies.
4. (a) Draft a resolution approving commencement of new business. (4 marks)

(b) Discuss the procedure for exemption from attaching the accounts of subsidiary companies. (4 marks)

(c) What type of information shall be mandatorily reviewed by the Audit Committee? (4 marks)

(d) Enumerate the scope and functions of the Secretarial Standards Board. (4 marks)

5. (a) Discuss the procedure for incorporation of a producer company. (8 marks)

(b) Enumerate the procedure for changing the financial year of the company. (8 marks)

6. (a) Describe the various mode of payment of fees under the MCA-21 System. (8 marks)

(b) Discuss the following keeping in view the provisions of UK Companies Act, 2006.

(i) Approval and signing of accounts (4 marks each)

(ii) Secretary.
1. Draft the following:
   (i) A letter returning transfer deeds.
   (ii) Resolution to be passed at a general meeting of a listed company for approval to bonus shares.
   (iii) Board Resolution to fill the casual vacancy.
   (iv) Notice for book closure. (5 marks each)

2. (a) Choose the appropriate answer from the given options in respect of the following:
   (i) The Central Government has the power to order a _______ of accounts of a company in the circumstances mentioned in Section 233A.
   (ii) A member of the Institute of Company Secretaries of India may prefix_______ to his name.
   (iii) A manager appointed by the Board of Directors of a Company may be removed by the__________.
   (iv) No person shall hold office at the same time as small shareholders’ director in more than __________ companies.
   (v) Section _______ of the Companies Act, 1956 defines debentures.
   (vi) A _______ holding a valid certificate of registration is required to be appointed to manage the issue. (1 mark each)

(b) Re-write the following sentences after filling in the blanks spaces with appropriate word(s)/figure(s):
   (i) Application to the Central Government for exemption from attaching the accounts of subsidiary Companies shall be in e-form ________.
   (ii) Under e-filing system of MCA, Companies are required to file Compliance Certificate on-line with the Registrar of Companies within_________ days.
   (iii) Application moneys received by companies for allotment of any securities and due for refunds are transferred to__________.
   (iv) Secretarial standard (SS-3) relates to__________.
   (v) Section 124 of the Companies Act, 1956 states that “charge” includes____________.
(vi) An __________ is a notified document in electronic format for filing with MCA authorities through the internet. (1 mark each)

(c) Enumerate the charges registrable under the Companies Act, 1956. (4 marks)

3. (a) Give salient features of the following forms:
   (i) Form 23AC
   (ii) Form 8
   (iii) Form 2 (3 marks each)

(b) What are the rights of person aggrieved by the company having been struck off the register? (7 marks)

4. (a) Write short notes on:
   (i) Structure and functions of the Board under the Australian Corporations Act.
   (ii) Key Managerial Person. (4 marks each)

(b) State with reasons in brief whether the following statements are correct or incorrect:
   (i) The auditor of a Government Company shall be appointed or re-appointed by the Central Government.
   (ii) Every public company is required to have a minimum of two directors.
   (iii) Directors and Officers liability Insurance provides civil and Criminal Protection for the Directors and Officers of the Company.
   (iv) Private company may by its Article or otherwise refuse to register the transfer or transmission of shares. (2 marks each)

5. (a) A Shareholder living in Kolkata sent a transfer deed for registration of transfer of shares in a company having its registered office in Chennai. The share certificates duly endorsed in his name were not received by him even after the expiry of four months from the date of lodgement. He lodged a criminal complaint before the appropriate court dealing with economic offences at New Delhi. Can the Court in New Delhi entertain the complaint?

(b) The shareholders at an annual general meeting of a public limited company unanimously resolved for payment of dividend though the Board of Directors did not recommend payment of any dividend. State the legal position.

(c) A company started to sue the trade mark name of another company in the same family as its corporate name and started dealing in the products. Explain with the help of a decided case law, whether this practice can be allowed.
(d) Whether failure to obtain prior permission of the Central Government for removal of statutory auditor is a continuing offence. Explain with the help of a recent case law. (4 marks each)

6. (a) Distinguish between:
   (i) Annual General Meeting and Extraordinary General Meeting.
   (ii) Right Issue and Bonus Issue. (4 marks each)

   (b) Write short notes on:
   (i) Alteration of Share Capital.
   (ii) CAG audit. (4 marks each)
1. Draft the following resolutions stating the kind of resolution and also the type of resolution.

(i) Resolution for the appointment of first auditor.

(ii) Alteration of articles of the company to include an article authorizing the company to have its securities dematerialized.

(iii) Resolution for declaration of interim dividend on equity shares.

(iv) Resolution authorizing the Board to borrow for company’s business upto a limit beyond the company’s paid up capital and free reserves.

(5 marks each)

2. (a) Rewrite the following sentences after filling-in the blank spaces with appropriate word(s)/figures(s):

(i) ____________functionality envisages that MCA 21 System shall verify whether the___________ affixed in the eForm actually belong to signatory of the company and/or of a practicing professional.

(ii) By virtue of section 12 (2) (c) of the Companies Act, 1956, an ____________company is a company not having any limit on the ____________of its members.

(iii) Global Location Number (GLN) is allotted to___________ companies.

(iv) A company is not required to file a return of allotment of shares in case of ______of forfeited shares.

(v) Section 117C of the Act requires every company to create a__________ to which adequate amount shall be__________ out of its profits every year.

(vi) According to section 297 of the Companies Act, 1956, ____________sanction is required for certain contracts in which any ____________is interested. (1 mark each)

(b) State, with reasons in brief, whether the following statements are correct or incorrect:

(i) After the company is incorporated, it may acquire the assets and liabilities of any running business.

(ii) Shares offered to the existing shareholders of a company are called bonus shares.
(iii) A casual vacancy among the directors appointed by the Board can be filled by Board of Directors.

(iv) The total number of directors and additional directors can exceed the maximum strength of directors fixed for the Board by the articles of the company.

(v) A company can transmit shares in the name of heir of the deceased shareholder.  

3. (a) Choose the most appropriate answer from the given options in respect of the following:

(i) Which of the following is correct in respect of a public limited company in India —
   (a) Business can be commenced immediately on incorporation
   (b) No need to have more than two directors
   (c) There is no restriction on remuneration payable to directors
   (d) There is no limit on the number of members.

(ii) Out of the following statements, which one is incorrect as regard to the Director Identification Number (DIN) —
   (a) DIN is a unique identification number and once obtained is valid throughout the lifetime of a director.
   (b) DIN is mandatory for all directors of Indian companies whether they are citizens of India or not.
   (c) DIN is mandatory for directors of foreign company having branch offices in India.
   (d) A single DIN is required for an individual irrespective of number of directorships held by him.

(iii) The power to convert shares into stock and reconverting stock into shares is conferred on a company by
   (a) section 91
   (b) section 92
   (c) section 93
   (d) section 94

(iv) Section 2(27) excludes a bearer of a share-warrant of the company to be a ............
   (a) member
   (b) shareholder
   (c) director
   (d) none of the above.

(v) The first auditor of a company may be removed, if the company at a general meeting appoints another auditor, of whose nomination by
any member, notice has been given to the members not less than…… before the meeting.

(a) ten days  
(b) twelve days  
(c) fourteen days  
(d) twenty-one days  

(vi) Any general meeting held between two annual general meetings will be called  

(a) an extraordinary general meeting.  
(b) a board meeting.  
(c) A statutory meeting.  
(d) A class meeting. (1 mark each)  

(b) You are the Company Secretary of Maritime Containers Ltd., a listed company, and the Managing Director of your company wants to know the procedure for changing the name of the company. Prepare a note for him. (10 marks)  

4. (a) Total strength of the Board of Directors of your company is ten. How many directors are liable to retire by rotation at the next annual general meeting? (5 marks)  

(b) Your company has total twelve directors as under:  

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-retiring directors</td>
<td>3</td>
</tr>
<tr>
<td>Retiring directors</td>
<td>5</td>
</tr>
<tr>
<td>Additional directors</td>
<td>4</td>
</tr>
</tbody>
</table>

State the number of directors liable to retire by rotation at the Annual General Meeting and the total number of directors who shall vacate the office at the AGM. (5 marks)  

(c) The Board of Directors of a public company met on three times in the previous year, the fourth meeting though called could not be held for want of quorum on two occasions successively. Discuss whether any provisions of the Companies Act have been contravened. (6 marks)  

5. (a) Explain the guidelines for filling and filing e-forms. (10 marks)  

(b) The Board of Directors of ABC Ltd. constituted an audit committee comprising 6 members but did not fix the quorum. Can two members of the committee present at a duly convened meeting validly transact the business? (6 marks)  

6. (a) Describe the procedure for registration of transfer of shares. (8 marks)  

(b) Outline the procedure for removal of managing director/whole time director. (8 marks)
DECEMBER 2010

Time allowed: 3 hours
Maximum marks: 100

NOTE: 1. Answer SIX questions including Question No. 1 which is COMPULSORY.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1. Draft any five of the following:
   (i) Letter to directors for passing a resolution by circulation along with draft resolution.
   (ii) Resolution for declaring interim dividend.
   (iii) General meeting resolution for appointment of branch auditor.
   (iv) Notice by a member proposing another member’s name for directorship of the company.
   (v) Resolution approving the appointment of Managing Director, notwithstanding that he is already the Managing Director of another company.
   (vi) Resolution to give effect to consolidation of shares made by the company in its memorandum of association. (4 marks each)

2. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
   (i) A user can check the status of transactions by entering the ______________ on website of MCA-21.
   (ii) The Companies Act, 1956 allows a company to convert its fully paid-up shares into ______________.
   (iii) A ______________ is allotted at the time of registration of charge.
   (iv) The directors appointed by the principle of ______________ hold
office for __________________ and cannot be removed by the company in general meeting under section 284.

(v) Casual vacancy in the Board may arise from death, _______ and_________. (Mention any two other reasons.)

(vi) The declaration of bonus issue in lieu of _____________ is not permitted. (1 mark each)

(b) Choose the most appropriate answer from the given options in respect of the following:

(i) The minimum number of directors of the audit committee in the case of a listed company with 12 directors shall be —
   (a) 2 Directors
   (b) 3 Directors
   (c) 4 Directors
   (d) 5 Directors.

(ii) The Central Government may exempt any class of companies from complying with the provisions of Schedule VI of the Companies Act, 1956, if it is necessary to grant such exemption in the —
   (a) National interest
   (b) Public interest
   (c) Social interest
   (d) Company’s interest.

(iii) In a listed company with 11 directors, what is the quorum for the Board meeting —
   (a) 2 Directors
   (b) 3 Directors
   (c) 4 Directors
   (d) 5 Directors.

(iv) A casual vacancy arising out of resignation of company’s auditor can be filled by—
   (a) Company in general meeting by ordinary resolution
   (b) Company in general meeting by special resolution
   (c) Board of directors
   (d) Audit committee.

(v) Which one of the following sections of the Act specifies that the provisions of the Companies Act, 1956 override the provisions in the memorandum of association —
   (a) Section 2
   (b) Section 4
   (c) Section 9
   (d) Section 13. (1 mark each)

(c) Expand the following:

(i) EDIFAR
3. (a) State, with reasons in brief, whether the following statements are true or false:

(i) A fresh notice of every adjourned meeting is necessary.

(ii) A proxy shall not be entitled to vote on show of hands in a general meeting.

(iii) In terms of Clause 49 of the listing agreement, not less than 40% of the Board of directors shall consist of independent directors.

(iv) Resignation of a whole-time director shall take effect once it is tendered.

(v) Provisions of section 372A do not apply in the case of loan/guarantee by a company to another company in which it is holding 90% of the paid-up capital. (2 marks each)

(b) “Variation of members’ rights is hanging like Democles’ sword on the members in the present liberalised global economy.” Do you agree with this statement in Indian context? Support your answer with reasons. (6 marks)

4. (a) For consideration of certain items of business, special notice is required to be given. Comment. (4 marks)

(b) Discuss the procedure for removal of a director by the Central Government. (4 marks)

(c) It is mandatory that the Company Secretary shall be the compliance officer of a company. Comment. (4 marks)

(d) Discuss the terms of reference for audit committee. (4 marks)

5. (a) What is directors’ and officers’ liability insurance? (6 marks)

(b) How does a director resign from the Board of directors in a private limited company, if the Board fails to accept his resignation? (6 marks)

(c) The articles of association of a company incorporated in 2001 provided that a director should hold 2,000 shares of the value of ₹10 each as qualification shares. At the annual general meeting held in September, 2003, an ordinary resolution was passed increasing the share qualification of directors to 6,000 shares. The company then issued notice to the directors who did not hold 6,000 shares to acquire additional qualification shares within one month. Madhok, a director who was asked to acquire additional qualification shares, received the notice. He seeks your advice. What advice would you give him? (4 marks)

6. (a) Anmol Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution
by any one present in the meeting. Examine the validity of the appointment and subsequent acts of the Board of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if Anmol Ltd. is a government company? (8 marks)

(b) As a Company Secretary, draft a specimen notice of disqualification under Section 274(l)(g) for a director of your company who is otherwise eligible for re-appointment in the ensuing annual general meeting. (4 marks)

(c) Madhav, a chartered accountant, is a director in MNL Ltd. The company proposes to appoint/engage the firm M & Co., in which Madhav is a partner in one or more of the following capacities:
   (i) Consultants on regular retainer basis.
   (ii) Authorised representatives to appear before tribunals.

   Discuss whether the provisions of section 314 are attracted in the above situations. (4 marks)

7. (a) Enumerate the procedure for conversion of a public company into a private company. (8 marks)

(b) Write notes on any two of the following:
   (i) Filing of document in physical form in the context of MCA-21
   (ii) Corporate Identification Number (CIN)
   (iii) Directors’ responsibility statement. (4 marks each)

8. Distinguish between any four of the following:
   (i) ‘Preferential issue’ and ‘issue of preference shares’.
   (ii) ‘E-Form 20’ and ‘e-Form 20A


   (iv) Procedure for appointment of ‘cost auditor’ and ‘statutory auditor’.

   (v) Appointment of a Company Secretary by a private company under ‘the Indian Law’ and ‘the Law in the United Kingdom.’ (4 marks each)
JUNE 2011

NOTE: 1. Answer SIX questions including Question No.1 which is COMPULSORY.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1. Draft any five of the following. In case of resolution, mention the type of meeting and the nature of resolution, but no explanatory statement need to be given:

   (i) Resolution to alter the name clause in the memorandum of association (use appropriate names).

   (ii) Due diligence certificate to be submitted to SEBI for public issue of debentures (mention the authority to issue).

   (iii) Resolution approving re-issue of forfeited shares.

   (iv) Notice to Rajan, a director of XYZ Ltd., informing him that a notice under section 284 to remove him from directorship has been received from an eligible person.

   (v) Notice from Jolly, a shareholder of Bright Ltd., proposing the name of Virat as a director under section 257.

   (vi) Explanatory statement to expand the objects clause in the memorandum of association of a company engaged in manufacture of computer components under licence from a company in USA to include development of computer softwares. (4 marks each)

2. (a) Explain the legal position and suggested action for the following:

   (i) A company is ready with the printed annual report for despatch to all shareholders and there arises a need to hold an extra-ordinary general meeting. The company wants to despatch notice of the annual general meeting and the notice of extra-ordinary general meeting simultaneously in the same envelope.

   (ii) The articles of association of a private limited company provide that a director should make a fixed deposit of `5,000 for being qualified to be a director. (4 marks each)

(b) Write the most appropriate answer from the given options in respect of the following:

   (i) The maximum age limit for directors in case of private companies is—
        (a) 65 years
        (b) 70 years
        (c) 75 years
        (d) None of the above. (4 marks each)
(ii) Where title in shares of a company is in dispute, the matter has to be resolved by—
(a) Court
(b) Arbitrator
(c) Company Law Board
(d) Central Government.

(iii) Global Ltd. has the paid-up equity capital structure — Central Government: 38%; State Government : 10%; Subsidiary of a government company : 17.5%; and retail shareholders: remaining shares. Which of the following classes of companies would it belong to—
(a) Government company
(b) Non-government public company
(c) Deemed public company
(d) Deemed private company.

(iv) Contracts made after incorporation of a public company, but before issue of the certificate of commencement of business are—
(a) Provisional contracts
(b) Post-incorporation contracts
(c) Preliminary contracts
(d) Contracts in the normal course of business. (1 mark each)

(c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

(i) In public issue, the facility ‘ASBA’ stands for ________.

(ii) The proceedings of the meeting will be ________ if conducted in the absence of a quorum.

(iii) On satisfaction of complete charge, intimation is required to be given to the Registrar of Companies in prescribed form duly signed by the company and the concerned financial institution/bank.

(iv) Increase in authorised capital of the company permitted by the articles of association requires resolution to be passed under section ________ of the Companies Act, 1956. (1 mark each)

3. (a) State, with reasons in brief, whether the following statements are true or false. Attempt any two:

(i) The non-confirmation of minutes of the meeting by the Board of directors in the next subsequent meeting does not affect the validity of the decision taken in the previous Board meeting.

(ii) The doctrine of indoor management is not an exception to the rule of constructive notice.

(iii) Annual return of a public company must necessarily be filed annually. (2 marks each)
(b) Assume data and draft the notice of an annual general meeting of a listed public company including therein at least one of the special business items. (8 marks)

(c) During a period of about past one and a half decades, a number of countries in the world have engaged themselves in modernising their respective company laws. Can you identify the motivating factors underlying this effort? Mention Indian scene in particular. (4 marks)

4. (a) Prepare directors’ report for Anand Entertainment Ltd., including inter alia response to a qualification by auditors of the company for non-payment to creditors from small scale industries sector amounting to ₹5,000. (State only major headings of directors’ report without giving any details except for the qualification.) (8 marks)

(b) Elucidate the relevance of Secretarial Standard-4 on registers and records and state its current status. (4 marks)

(c) The case of Dilip Pendse vs. SEBI is highly revealing the susceptibility to misuse of the SEBI (Prohibition of Insider Trading) Regulations, 1992. Briefly give your views. (4 marks)

5. (a) Assume yourself to be a Company Secretary in whole-time practice engaged in formation of a public limited company and you are required to give the declaration under section 33(2) in respect of compliance with the relevant provisions of the Companies Act, 1956 and rules framed thereunder as regards registration of the company. By reference to e-form 1, write down the declaration you would be making (keep the space for names blank). (6 marks)

(b) What is bonus issue of shares and how is it authorised and done? Bring out at least ten important/fundamental conditions to be fulfilled by a listed company to make a bonus issue. (10 marks)

6. (a) Explain as to how the provisions of the Companies Act, 1956 relating to audit committee will help in achieving some of the objectives of good Corporate Governance. (5 marks)

(b) Will the term ‘remuneration’ cover ESOS or ESOP for determining managerial remuneration? (5 marks)

(c) What are the requirements under the listing agreement relating to publication of unaudited quarterly results? (6 marks)

7. (a) A reputed public company had validly loaned certain sum of money to one of its directors on certain terms and conditions fixing the time limit for repayment thereof. Now, the director concerned has approached the company with a request to extend the time limit for repayment of the balance of loan amounting to ₹12 lakh by another six months. You are required to answer the following with reference to the provisions of the Companies Act, 1956:

(i) Who is authorised to grant the extension as requested by the director?
(ii) Draft an appropriate notice for the meeting where such extension may be granted. \( (6\) marks) 

(b) A complaint was filed against the petitioner and others under section 220 read with section 162 in their capacity as the officers of a company who had failed to file the balance sheet and profit and loss account in the prescribed form with the Registrar of Companies (ROC). The petitioner being accused No.3 contended that he had held the post of a non-executive director and had resigned long back. It was submitted that in his replies to the earlier show cause notices, this fact was conveyed to the ROC and no communication had been received from the ROC. The petitioner produced his resignation letter to the company and also the minutes of meeting of the Board of directors of the company wherein his resignation was recorded. Decide. \( (4\) marks) 

(c) A company has 100 members. It sends notice of the general meeting to all of them. 20 members do not attend the meeting. Out of 80 members who are present, 20 members abstain from voting. How many members should vote in favour of a resolution, if it is to be passed as a special resolution? \( (3\) marks) 

(d) Account for the significance of Hong Kong as a vibrant business centre, having some special advantage. Name the law that governs companies in Hong Kong. \( (3\) marks) 

8. Write notes on any four of the following:
   
   (i) Online inspection of documents
   (ii) Corporate social responsibility
   (iii) Resolution requiring special notice
   (iv) Chinese wall policy in areas of price sensitive information
   (v) Board meeting through video conferencing. \( (4\) marks each)