

CORPORATE LAWS AND COMPLIANCE

FINAL

STUDY NOTES



The Institute of Cost Accountants of India

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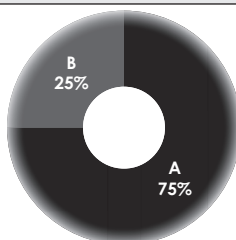
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Syllabus

PAPER 13: CORPORATE LAWS & COMPLIANCE (CLC)

Syllabus Structure

A	Corporate Laws	75%
B	Corporate Governance and Responsibilities	25%



ASSESSMENT STRATEGY

There will be written examination paper of three hours

OBJECTIVES

To gain an expert knowledge of Corporate functions in the context of Companies Act & related Corporate Laws. To be able to assess whether strategies and the organization is in compliance with established regulatory framework.

Learning Aims

The syllabus aims to test the student's ability to:

- Understand the principles of Corporate Laws relevant for compliance and decision-making
- Analyze and interpret the impact of allied laws
- Evaluate the essence of Corporate Governance for effective implementation
- Demonstrate the role of a Corporate in socio-economic development

Skill set required

Level C: Requiring skill levels of knowledge, comprehension, application, analysis, synthesis and evaluation.

Section A : Corporate Laws	75%
1. The Companies Act, 2013 (as amended from time to time) – rules, regulations prescribed there under with special reference to: <ul style="list-style-type: none"> (a) Company formation and conversion (b) Procedure for alteration of Memorandum and Articles (c) Procedure for Issue of Shares and Securities (d) Investment and loans (e) Audits under Companies Act (f) Dividends (g) Board of Directors (h) Board Meetings and Procedures (i) Inspection and investigation (j) Prevention of oppression and mismanagement (k) Revival and rehabilitation of sick industrial companies (l) Corporate winding up and dissolution (m) Companies incorporated outside India (n) Offences and penalties (o) E-governance 	

2. Laws and Procedures for Corporate Restructuring	
3. SEBI Laws and Regulations	
4. The Competition Act, 2002 and its role in Corporate Governance	
5. Laws related to Banking Sector	
6. Laws related to Insurance Sector	
7. Laws related to Power Sector	
Section B : Corporate Governance and Responsibilities	25%
8. Corporate Governance	
9. Social, Environmental and Economic Responsibilities of Business	

SECTION A: CORPORATE LAWS [75 MARKS]

1. The Companies Act, 2013 (as amended from time to time) – rules, regulations prescribed there under with special reference to:

- (a) Company formation and conversion
 - (i) Incorporation of private companies, public companies, company limited by guarantee and unlimited companies and their conversions/reconversion/re-registration
 - (ii) Nidhi Companies, Mutual Benefit Funds and Producer Companies – concept, formation, membership, functioning, dissolution
 - (iii) Formation of “Not-for-Profit” making companies
 - (iv) Procedure relating to Foreign Companies Carrying on Business in India
- (b) Procedure for alteration of Memorandum and Articles
 - (i) Alteration of various clauses of memorandum
 - (ii) Effects of alteration
- (c) Procedure for Issue of Shares and Securities
 - (i) Shares – public issue, Rights Issue, Bonus Shares, Issue of Shares at Par/Premium/Discount; issue of shares on preferential or private placement basis
 - (ii) Issue of Sweat Equity Shares, Employees Stock Option Scheme (ESOPs), Employees Stock Purchase Scheme (ESPS), Shares with differential voting rights
 - (iii) Issue and redemption of preference shares
 - (iv) Alteration of share capital – forfeiture of shares, reissue of forfeited shares, increase, consolidation, conversion and re-conversion into stock, subdivision, cancellation and surrender of shares
 - (v) Buy back of shares
 - (vi) Reduction of share capital
 - (vii) Issue of debentures and bonds, creation of security and debenture redemption reserve, redemption of debentures, conversion of debentures into shares
 - (viii) Transfer and transmission
- (d) Investment and loans
 - (i) Procedure for inter-corporate loans, investments, giving off guarantee and security
 - (ii) Acceptance of deposits, renewal, repayment, default and remedies
- (e) Audits under Companies Act
 - (i) CARO
 - (ii) Statutory Cost Auditor's and Statutory Financial Auditors – appointment, resignation, removal, qualification, disqualification, rights, duties and liabilities
 - (iii) Companies (Cost Accounting Record) Rules, 2011 and Companies (Cost Audit Report) Rules, 2011 (To be substituted by relevant Rules of 2014)
- (f) Dividends
 - (i) Profits and ascertainment of divisible profits
 - (ii) Declaration and payment of dividend
 - (iii) Unpaid and unclaimed dividend – treatment and transfer to Investor Education and Protection Fund
- (g) Board of Directors
 - (i) Directors and Managerial Personnel – appointment, reappointment, resignation, removal
 - (ii) Payment of remuneration to Directors and managerial personnel and disclosures thereof
 - (iii) Power, Managerial remuneration
 - (iv) Obtaining DIN

- (v) Compensation for loss of office
- (vi) Waiver of recovery of remuneration
- (vii) Making loans to Directors, Disclosure of interest of a Director, Holding of Office or Place of Profit by a Director/relative
- (viii) Interested Directors
- (h) Board Meetings and Procedures
 - (i) Board Meetings, Minutes and Registers
 - (ii) Powers of the Board
 - (iii) Corporate Governance & Audit Committee
 - (iv) Duties and Liabilities of Directors
 - (iv) Powers related to – political contributions, sole selling agent, loans to Directors, Interested Directors, Office or Place of Profit
- (i) Inspection and investigation
- (j) Prevention of oppression and mismanagement
 - (i) Majority Rule but Minority Protection
 - (ii) Prevention of Oppression and Mismanagement
- (k) Revival and rehabilitation of sick industrial companies
- (l) Corporate winding up and dissolution – issues related to winding up, powers of the Court, Official Liquidator
 - (i) Reconstruction under Members' Voluntary Winding up
 - (ii) Reconstruction under Creditors' Voluntary Winding up
 - (iii) Reconstruction by arranging with Creditors in Voluntary Winding up
- (m) Companies incorporated outside India
- (n) Offences and penalties
- (o) E-governance

2. Laws and Procedures of Corporate Restructuring leading to:

- (a) Mergers; Amalgamations, Takeovers / Acquisitions, Joint Ventures, LLPs, Corporate restructure, Demerger, Reorganization through compromise or an arrangement
- (b) Reconstruction Vs. Amalgamation
- (c) Sale of undertaking of the Company
- (d) Acquiring Shares in another company
- (e) Compulsory Amalgamation in public interest

3. SEBI Laws and Regulations:

- (a) The Securities and Exchange Board of India Act, 1992 – Rules, Regulations and Guidelines issued there under
- (b) The Securities Contracts (Regulation) Act, 1956
- (c) SEBI (Issue of Capital and Disclosure Regulations), 2009
- (d) Clause 49
- (e) Substantial Acquisition of Shares and Takeover Regulations

4. The Competition Act, 2002 and its role in Corporate Governance

- (a) Competition – Meaning, objectives, extent and applicability
- (b) Competition Commission of India
- (c) Areas affecting competition
- (d) MRTP Act vs. Competition Act
- (e) Other matters
- (f) Competition Act, 2002 and Corporate Governance

5. Laws related to Banking Sector:

- (a) The Banking Regulation Act, 1949;
- (b) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- (c) The Prevention of Money Laundering Act, 2002 – Role of Cost Accountants in Anti-Money Laundering (AML) Audits to check tax evasion and transfer of funds.
- (d) The Foreign Exchange Management Act, 1999

6. Laws related to Insurance Sector:

- (a) The Insurance Act, 1938;
- (b) The Insurance Regulatory and Development Authority Act, 1999

7. Laws related to Power Sector:

- (a) The Indian Electricity Act, 1910
- (b) Role of Central Electricity Regulatory Commission (CERC)

SECTION B: CORPORATE GOVERNANCE AND RESPONSIBILITIES [25 MARKS]

8. Corporate Governance

- (a) Overview-Issues and Concepts
- (b) Corporate Governance Practices/Codes in India, UK, Japan, Germany and USA
- (c) Corporate governance in family business
- (d) Corporate governance in state-owned business – the MOU system

9. Social, Environmental and Economic Responsibilities of Business.

- (a) National Voluntary Guidelines on Social, environmental and Economic Responsibilities of Business
- (b) Corporate Social Responsibility – Nature of activities; Evaluation of CSR projects
- (c) Whole life costing- assessment of socio-economic impact of strategic and operational decisions of business.

List of Amended Sections under respective Acts

Name of the Act	Sections
Companies Act, 2013	• 2(68) Modified
	• 2(71) Modified
	• 9 Modified
	• 11 Omitted
	• 12 Modified
	• 22 Modified
	• 46 Modified
	• 76A Inserted
	• 123 Modified
	• 124 Modified
	• 134(ca) Inserted
	• 136 Modified
	• 143 Modified
	• 177 Modified
	• 185(c) Inserted
	• 185(d) Inserted
	• 188 Modified
	• 212 Modified
	• 223 Modified
	• 248(b) Omitted
	• 435 Modified
	• 436 Modified
	• 462(2) Modified
	• 462(3) Inserted
	• 462(4) Inserted
Securities Contracts (Regulation) Act, 1956	• 2(ac) Modified
	• 2(bb) Inserted
	• 2(bc) Inserted
	• 2(ca) Inserted
	• 2(ea) Inserted
	• 2(k) Inserted
	• 18A Modified
	• 30A Inserted

SEBI (Issue of Capital and Disclosure Regulation), 2009	• Regulation 10	Modified
	• Regulation 12	Modified
	• Regulation 58	Modified
	• Regulation 60	Modified
	• Regulation 65	Modified
	• Regulation 106W	Inserted
	• Regulation 106X	Inserted
	• Regulation 106Y	Inserted
	• Regulation 106Z	Inserted
	• Regulation 106ZA	Inserted
SEBI (Issue of Capital and Disclosure Regulation), 2009	• Regulation 106ZB	Inserted
	• Regulation 106ZC	Inserted
	• Regulation 106ZE	Inserted
	• Regulation 106ZF	Inserted
SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	• Regulation 1	Modified
	• Regulation 10	Modified
The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002	• 2(c)	Modified
	• 5	Modified
	• 9	Modified
	• 13	Modified
	• 14	Modified
	• 18C	Inserted
	• 23	Modified
	• 26A	Inserted
	• 30	Modified
	• 31A	Inserted
Prevention of Money Laundering Act, 2012	• 2(fa)	Inserted
	• 2(ha)	Inserted
	• 2(ia)	Inserted
	• 2(ib)	Inserted
	• 2(ja)	Omitted
	• 2(l)	Modified
	• 2(n)	Modified
	• 2(q)	Modified
	• 2(ra)	Modified
	• 2(sa)	Inserted
	• 2(sb)	Inserted
	• 2(sc)	Inserted
	• 2(v)	Modified

Prevention of Money Laundering Act, 2012	• 2(va)	Inserted
	• 2(wa)	Inserted
	• 3	Modified
	• 4	Modified
	• 5	Modified
	• 8	Modified
	• 9	Modified
	• 10	Modified
	• 12	Modified
	• 13	Modified
	• 24	Modified
	• 26	Modified
The Insurance Act, 1938	• 2(1)	Modified
	• 2(1A)	Modified
	• 2(5A)	Omitted
	• 2(6C)	Inserted
	• 2(7A)	Modified
	• 2(8)	Omitted
	• 2(8A)	Modified
	• 2(9)	Modified
	• 2(10)	Modified
	• 2(11)	Modified
	• 2(12)	Omitted
	• 2(13)	Omitted
	• 2(15)	Omitted
	• 2(16)	Modified
	• 2(16A)	Inserted
	• 2(16B)	Inserted
	• 2(16C)	Inserted
	• 2(17)	Omitted
	• 2E	Omitted
	• 3	Modified
	• 3A	Modified
	• 4	Modified
	• 5	Modified
	• 6	Modified
	• 6A	Modified
	• 6AA	Omitted
	• 6B	Modified

The Insurance Act, 1938

• 6C	Omitted
• 7	Omitted
• 8	Omitted
• 9	Omitted
• 10	Modified
• 11	Modified
• 12	Modified
• 13	Modified
• 14	Modified
• 15	Modified
• 16	Omitted
• 17	Omitted
• 17A	Omitted
• 20	Modified
• 21	Modified
• 22	Modified
• 27	Modified
• 27A	Modified
• 27B	Modified
• 27C	Modified
• 27D	Modified
• 28	Modified
• 28A	Replaced
• 28B	Replaced
• 29	Modified
• 30	Modified
• 31	Modified
• 31A	Modified
• 31B	Modified
• 32	Omitted
• 32A	Modified
• 32B	Modified
• 32D	Inserted
• 33	Modified
• 34B	Modified
• 34C	Modified
• 34G	Omitted
• 34H	Modified
• 35	Modified

The Insurance Act, 1938	• 36	Modified
	• 37A	Modified
	• 38	Modified
	• 39	Modified
	• 40	Modified
	• 40A	Omitted
	• 40B	Modified
	• 40C	Modified
	• 41	Modified
	• 48A	Modified
	• 49	Modified
	• 52	Modified
	• 52A	Modified
	• 52BB	Modified
	• 52D	Modified
	• 52E	Modified
	• 52F	Modified
	• 52G	Modified
	• 52H	Omitted
	• 52 I	Omitted
	• 52J	Omitted
	• 52K	Omitted
	• 52L	Omitted
	• 52M	Omitted
	• 52N	Omitted
	• 53	Modified
	• 58	Modified
	• 59	Omitted
	• 64A	Omitted
	• 64B	Omitted
	• 64C	Modified
	• 64D	Modified
IRDA Act, 1999	• 2(1)(b)	Modified
	• 2(1)(f)	Modified
	• 3	Modified
	• 16	Modified

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Study Note - 1

THE COMPANIES ACT, 2013



This Study Note includes

- 1.1 Incorporation of Company and Matters Incidental Thereto
- 1.2 Prospectus and Allotment of Securities
- 1.3 Private Placement
- 1.4 Share Capital and Debentures
- 1.5 Acceptance of Deposits by Companies
- 1.6 Declaration and Payment of Dividend
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- 1.9 Appointment and Qualifications of Directors
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- 1.13 Removal of Names of Companies from the Register of Companies
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- 1.16 Companies Authorised to Register under this Act
- 1.17 Companies Incorporated Outside India
- 1.18 Registration Offices and Fees
- 1.19 NIDHIS
- 1.20 Special Courts
- 1.21 Miscellaneous
- 1.22 Incorporation of Producer Companies and other matters

SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION [Section 1]

- (1) This Act may be called the Companies Act, 2013.
- (2) It extends to the whole of India.
- (3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
- (4) The provisions of this Act shall apply to—
 - (a) companies incorporated under this Act or under any previous company law;
 - (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Definitions [Section 2]

In this Act, unless the context otherwise requires,—

- (1) “Abridged Prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) “Accounting Standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
- (3) “Alter” or “Alteration” includes the making of additions, omissions and substitutions;
- (4) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under section 410;
- (5) “Articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;
- (6) “Associate Company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.— For the purposes of this clause, “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement;

- (7) “Auditing Standards” means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
- (8) “Authorised Capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) “Banking Company” means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- (10) “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;
- (11) “Body Corporate” or “Corporation” includes a company incorporated outside India, but does not include—
 - (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
- (12) “Book and Paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
- (13) “Books of Account” includes records maintained in respect of—
 - (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

- (ii) all sales and purchases of goods and services by the company;
 - (iii) the assets and liabilities of the company; and
 - (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
- (14) "Branch Office", in relation to a company, means any establishment described as such by the company;
 - (15) "Called-up capital" means such part of the capital, which has been called for payment;
 - (16) "Charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
 - (17) "Chartered Accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
 - (18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;
 - (19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;
 - (20) "Company" means a company incorporated under this Act or under any previous company law;
 - (21) "Company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
 - (22) "Company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
 - (23) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by—
 - (a) the Tribunal in case of winding up by the Tribunal; or
 - (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
 - (24) "Company Secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;
 - (25) "Company Secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;
 - (26) "Contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.— For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

- (27) "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (28) "Cost Accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;

- (29) "Court" means—
- (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
 - (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;
 - (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;
 - (iv) the Special Court established under section 435;
 - (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;
- (30) "Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;
- (31) "Deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
- (32) "Depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;
- (33) "Derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (34) "Director" means a director appointed to the Board of a company;
- (35) "Dividend" includes any interim dividend;
- (36) "Document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
- (37) "Employees' Stock Option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
- (38) "Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
- (39) "Financial Institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;
- (40) "Financial Statement" in relation to a company, includes—
- (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):



Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

- (41) "Financial Year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

- (42) "Foreign Company" means any company or body corporate incorporated outside India which—

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

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

- (43) "Free Reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

- (44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

- (45) "Government Company" means any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

- (46) "Holding Company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

- (47) "Independent Director" means an independent director referred to in sub-section (5) of section 149;

- (48) "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

- (49) "Interested Director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

- (50) "Issued Capital" means such capital as the company issues from time to time for subscription;

- (51) "Key Managerial Personnel", in relation to a company, means—
- (i) the Chief Executive Officer or the managing director or the manager;
 - (ii) the Company Secretary;
 - (iii) the Whole-time Director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed;
- (52) "Listed Company" means a company which has any of its securities listed on any recognised stock exchange;
- (53) "Manager" 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, whether under a contract of service or not;
- (54) "Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.— For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

- (55) "Member", in relation to a company, means—
- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
 - (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
 - (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
- (56) "Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;
- (57) "Net Worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
- (58) "Notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
- (59) "Officer" includes any director, manager or key managerial personnel 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;
- (60) "Officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of



imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
 - (ii) key managerial personnel;
 - (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
 - (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
 - (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
 - (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
 - (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;
- (61) "Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;
- (62) "One Person Company" means a company which has only one person as a member;
- (63) "Ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
- (64) "Paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- (65) "Postal Ballot" means voting by post or through any electronic mode;
- (66) "Prescribed" means prescribed by rules made under this Act;
- (67) "Previous Company Law" means any of the laws specified below:—
- (i) Acts relating to companies in force before the Indian Companies Act, 1866;
 - (ii) the Indian Companies Act, 1866;
 - (iii) the Indian Companies Act, 1882;
 - (iv) the Indian Companies Act, 1913;
 - (v) the Registration of Transferred Companies Ordinance, 1942;
 - (vi) the Companies Act, 1956; and
 - (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—
 - (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or
 - (B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and

financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;

(viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and

(ix) the Registration of Companies (Sikkim) Act, 1961;

(68) "Private Company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

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

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

Provided further that—

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

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

shall not be included in the number of members; and

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

(69) "Promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) "Prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "Public Company" means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) "Public Financial Institution" means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;



- (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act; or
- (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

- (73) "Recognised Stock Exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (74) "Register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
- (75) "Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

- (76) "Related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any company which is—

- (A) a holding, subsidiary or an associate company of such company; or
- (B) a subsidiary of a holding company to which it is also a subsidiary;

- (ix) such other person as may be prescribed;

- (77) "Relative", with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

- (78) "Remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;
- (79) "Schedule" means a Schedule annexed to this Act;
- (80) "Scheduled Bank" means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;
- (81) "Securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (82) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
- (83) "Serious Fraud Investigation Office(SFIO)" means the office referred to in section 211;
- (84) "Share" means a share in the share capital of a company and includes stock;
- (85) "Small company" means a company, other than a public company,—
 - (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
 - (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
 - (B) a company registered under section 8; or
 - (C) a company or body corporate governed by any special Act;
- (86) "Subscribed Capital" means such part of the capital which is for the time being subscribed by the members of a company;
 - (87) "Subsidiary Company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
 - (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.— For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

General Circular No. 20/2013**Clarification with regard to holding of shares or exercising power in a fiduciary capacity - Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.**

it is hereby clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

General Circular No. 24/2014**Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013.**

In continuation of the General circular No. 20/2013 dated 27/12/2013, it is clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

General Circular No. 23/2014**Clarification relating to incorporation of a company i.e. company Incorporated outside India.**

it is clarified that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company as the case may be, without any change in the incorporation status of such company.

- (88) "Sweat Equity Shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- (89) "Total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;
- (90) "Tribunal" means the National Company Law Tribunal constituted under section 408;
- (91) "Turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
- (92) "Unlimited company" means a company not having any limit on the liability of its members;
- (93) "Voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
- (94) "Whole-time director" includes a director in the whole-time employment of the company;
- (95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

Some other Definitions

In exercise of the powers conferred under sub-clause (ix) of clause (76), sub-clause (iii) of clause (77) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government has issued following definitions under the rules as notified by Notification G.S.R 238 (E) dated 31st March, 2014 -

Definitions

(1) In these rules, unless the context otherwise requires,—

- (a) "Act" means the Companies Act, 2013 ;
- (b) "Certifying Authority" for the purpose of Digital Signature Certificate means a person who has been granted a licence to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 and the Certified Filing Center (CFC) under the Act;
- (c) "Digital Signature" means the digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000;
- (d) "Digital Signature Certificate" means a Digital Signature Certificate as defined under clause (q) of subsection (1) of section 2 of the Information Technology Act, 2000;
- (e) "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 and the rules made thereunder;

- (f) "e-Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;
- (g) "Electronic Mail" means the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable;
- (h) "Electronic Mode", for the purposes of clause (42) of section 2 of the Act, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -
 - (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
 - (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
 - (iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
 - (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
 - (v) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

- (i) "Electronic Record" means the electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;
- (j) "Electronic Registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;



- (k) "Executive Director" means a whole time director as defined in clause (94) of section 2 of the Act;
 - (l) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
 - (m) "Form" means a form set forth in the Act or the rules made thereunder which shall be used for the matter to which it relates;
 - (n) "Pre-fill" means the automated process of data input by the computer system from the database maintained in electronic registry of the Central Government;
 - (o) "Registrar's Front Office" means an office maintained by the Central Government or an agency authorised by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;
 - (p) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
 - (q) "Section" means the section of the Act;
 - (r) "Total Share Capital", for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the -
 - (a) paid-up equity share capital; and
 - (b) convertible preference share capital;
 - (s) For the purposes of clause (d) of sub-section (1) of Section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" means any offence in respect of which he has been convicted by a Court under this Act or the Companies Act, 1956;
- (2) The words and expressions used in these rules but not defined and defined in the Act or in (i) the Securities Contracts (Regulation) Act, 1956 or (ii) the Securities and Exchange Board of India Act, 1992 or (iii) the Depositories Act, 1996 or (iv) the Information Technology Act, 2000 or rules and regulations made thereunder shall have the meanings respectively assigned to them under the Act or those Acts.
- (3) **Related party** - For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.
- (4) **List of relatives in terms of clause (77) of section 2** - A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-
- (1) Father: Provided that the term "Father" includes step-father.
 - (2) Mother: Provided that the term "Mother" includes the step-mother.
 - (3) Son: Provided that the term "Son" includes the step-son.
 - (4) Son's wife.
 - (5) Daughter.
 - (6) Daughter's husband.
 - (7) Brother: Provided that the term "Brother" includes the step-brother;
 - (8) Sister: Provided that the term "Sister" includes the step-sister.

1.1 INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

e = e-Form & P = Physical Form

FORM NO./ FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
INC-1	e	Application for reservation of Name	4(4)	8,9	1.19
INC-2	e	One Person Company - Application for Incorporation	3(1), 7(1)	4,10,12,15	1.15, 1.23
INC-3	e	One Person Company -Nominee Consent Form	3(1)	4(2), (3), (4), (5), (6)	1.15
INC-4	e	One Person Company - Change in Member/ Nominee	3(1)	4(4), (5), (6)	1.15
INC-5	e	One Person Company - Intimation of Exceeding threshold	—	6(4)	—
INC-6	e	One Person Company - Application for Conversion	18	7(4)	1.35
INC-7	e	Application for Incorporation of Company (Other than OPC)	7(1)	10, 12, 14, 15	1.23
INC-8	P	Declaration	7(1)(b)	14	1.23
INC-9	P	Affidavit	7(1)(c)	15	1.23
INC-10	P	Form for verification of Signature of Subscribers	—	16(1)(q)	—
INC-11	P	Certificate of Incorporation	7(2)	8	1.23
INC-12	e	Application for grant of License under section 8	8(1), 8(5)	19,20	1.25
INC-13	P	Memorandum of Association	—	19(2)	—
INC-14	P	Declaration	7(1)(b)	19(3)(b)	1.23
INC-15	P	Declaration	—	19(3)(d)	—
INC-16	P	License under section 8(1) of the Companies Act, 2013	—	20	—
INC-17	P	License under section 8(5) of the Companies Act, 2013	—	20	—
INC-18	e	Application to Regional Director for conversion of section 8 company into company of any other kind	8(4)(ii)	21(3)	1.25
INC-19	P	Notice	—	22	—
INC-20	e	Intimation to Registrar of revocation/ surrender of license under section 8	8(4), 8(6)	23	1.25
INC-21	e	Declaration prior to the commencement of business or exercising borrowing powers	11(1)(a)	24	1.28
INC-22	e	Notice of situation or change of situation of Registered office	12(2), (4)	25,27	1.28,1.29
INC-23	e	Application to the Regional Director for approval to shift the Registered Office from one State to another State or from jurisdiction of one Registrar to another Registrar within the same State.	12(5), 13(4)	28,30	1.29, 1.32



INC-24	e	Application for approval of Central Government for change of name	13(2)	29(2)	1.32
INC-25	P	Certificate of Incorporation pursuant to change of Name	—	29	—
INC-26	P	Advertisement to be published in the newspaper for License for existing companies	—	30	—
INC-27	e	Conversion of public company into private company or private company into public company	14	33	1.33
INC-28	e	Notice of Order of the Court or any other competent authority	—	—	—

1.1.1 Formation of Company [Section 3]

(1) A company may be formed for any lawful purpose by—

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

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

Provided further that such other person may withdraw his consent in such manner as may be prescribed.

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed.

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(2) A company formed under sub-section (1) may be either—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

1.1.2 Nomination by the Subscriber or Member of One Person Company

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person in the prescribed form, who shall, in the event of the subscriber's

death or his incapacity to contract, become the member of that One Person Company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.

Provided that the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated.

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

1.1.3 Features of Incorporation of an One Person Company

- (1) Only a natural person who is an Indian citizen and resident in India-
 - (a) shall be eligible to incorporate a One Person Company;
 - (b) shall be a nominee for the sole member of a One Person Company.

Explanation.- The term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

- (2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- (3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.
- (4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- (5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- (6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- (7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

1.1.4 Effects of Failure to Comply with the Provision

If One Person Company or any officer of such company contravenes the provisions relating to incorporation of One Person Company, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

1.1.5 One Person Company to Convert itself into a Public Company or a Private Company in Certain cases

- (i) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
- (ii) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
- (iii) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
- (iv) The One Person Company shall within period of sixty days from the date of applicability of point (1), give a notice to the Registrar in Form No.INC. 5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in point (1).

Explanation.— “Relevant Period” means the period of immediately preceding three consecutive financial years;

- (v) If One Person Company or any officer of the One Person Company contravenes the provisions as stated above, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
- (vi) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

1.1.6 Conversion of Private Company into One Person Company

- (i) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (ii) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
- (iii) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.
- (iv) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
 - (a) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

- (b) the list of members and list of creditors;
 - (c) the latest Audited Balance Sheet and the Profit and Loss Account; and
 - (d) the copy of No Objection letter of secured creditors.
- (v) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

1.1.7 Memorandum [Section 4]

- (1) The memorandum of a company shall state—
- (a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company:
Provided that nothing above shall apply to a company registered under section 8;
 - (b) the State in which the registered office of the company is to be situated;
 - (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
 - (d) the liability of members of the company, whether limited or unlimited, and also state,—
 - (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
 - (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—
 - (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
 - (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;
 - (e) in the case of a company having a share capital,—
 - (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
 - (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
 - (f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.
- (2) The name stated in the memorandum shall not—
- (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
 - (b) be such that its use by the company—
 - (i) will constitute an offence under any law for the time being in force; or
 - (ii) is undesirable in the opinion of the Central Government.
- (3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains—
- (a) 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 Government or any State Government under any law for the time being in force; or

(b) such word or expression, as may be prescribed,

unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

(4) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

(ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;

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

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

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

(iii) make a petition for winding up of the company.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

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

1.18 Articles [Section 5]

(1) The articles of a company shall contain the regulations for management of the company.

(2) The articles shall also contain such matters, as may be prescribed:

Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.

(3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

- (5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
- (6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- (7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.
- (8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.
- (9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

1.1.9 Act to Override Memorandum, Articles, etc. [Section 6]

Save as otherwise expressly provided in this Act—

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

1.1.10 Affidavit from Subscribers and First Directors

The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in **Form No.INC.9**.

1.1.11 Signing of Memorandum and Articles

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

- (1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in".
- (2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.
- (3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.
- (4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized



in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership: Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

- (5) Where subscriber to the memorandum is a foreign national residing outside India-
- (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
 - (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
 - (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same;
 - (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.— For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

1.1.12 Particulars of Every Subscriber to be filed with the Registrar at the time of Incorporation

- (1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-
- (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
 - (b) Father's/Mother's/ name:
 - (c) Nationality:
 - (d) Date of Birth:
 - (e) Place of Birth (District and State):
 - (f) Educational qualification:
 - (g) Occupation:
 - (h) Income-tax permanent account number:
 - (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :
 - (j) Email id of Subscriber;
 - (k) Phone No. of Subscriber;
 - (l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

(m) Proof of Identity:

- For Indian Nationals:
PAN Card (mandatory) and any one of the following
Voter's identity card
Passport copy
Driving License copy
Unique Identification Number (UIN)
- For Foreign nationals and Non Resident Indians
Passport

(n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;

(o) Proof of nationality in case the subscriber is a foreign national.

(p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-

- (i) Name of the company;
- (ii) Corporate Identity Number;
- (iii) Whether interested as a director or promoter;

(q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.

(2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar -

- (a) Corporate Identity Number of the Company or Registration number of the body corporate, if any
- (b) GLN, if any;
- (c) the name of the body corporate
- (d) the registered office address or principal place of business;
- (e) E-mail Id;
- (f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;
- (g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;
- (h) the particulars as specified above for subscribers in terms of clause (e) of sub- section (1) of section 7 for the person subscribing for body corporate;



- (i) in case of foreign bodies corporate, the details relating to-
 - (i) the copy of certificate of incorporation of the foreign body corporate; and
 - (ii) the registered office address.

1.1.13 Incorporation of Companies [Section 7]

- (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—
 - (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
 - (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
 - (c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
 - (d) the address for correspondence till its registered office is established;
 - (e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;
 - (f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and
 - (g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
- (2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.
- (3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.
- (4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.
- (5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

- (6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.
- (7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
 - (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - (b) direct that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the register of companies; or
 - (d) pass an order for the winding up of the company; or
 - (e) pass such other orders as it may deem fit:Provided that before making any order under this sub-section,—
 - (i) the company shall be given a reasonable opportunity of being heard in the matter; and
 - (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

1.1.14 Application for Incorporation of Companies

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company.

General Circular No. 16/2014

Applicability of PAN Requirement for Foreign Nationals –

In continuation of the General Circular No. 12/2014 dated 22.05.2014 regards the above subject, it is clarified that the provisions of the said Circular are applicable to a Foreign National who is a subscriber/promoter at the time of incorporation of the Company.

In case the said subscriber/promoter, does not possess Permanent Account Number (PAN), he/she shall furnish a declaration in the prescribed proforma, as an attachment to the Incorporation Form (INC -7).

Further, it is clarified that, in case of a Resident Director of the proposed company he/she shall be required to submit PAN details at the time of incorporation.

1.1.15 Declaration by Professionals

For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8. Explanation (i) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section 1 of section 2 of the Chartered Accountants Act, 1949 (ii) "Cost Accountant" means a cost

accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) “company secretary” means a “company secretary” or “secretary” means as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

1.1.16 Formation of Companies with Charitable Objects, etc. [Section 8]

- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.
- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.
- (3) A firm may be a member of the company registered under this section.
- (4)
 - (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
 - (ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- (5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word “Limited”, or as the case may be, the words “Private Limited” from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.
- (6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word “Limited” or the words “Private Limited”, as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

Provided further that a copy of every such order shall be given to the Registrar.

- (7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
- (9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.
- (10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
- (11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both.

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

1.1.17 License Under Section 8 for Existing Companies

A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a licence under sub-section (5) of section 8.

The licence shall be in Form No.INC.16. or Form No.INC.17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

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

1.1.18 Submission of Documents

The application shall be accompanied by the following documents, namely:-

- (i) the memorandum and articles of association of the company;
- (ii) the declaration as given in Form No.INC.14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

- (iii) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (a) the financial statements, (b) the Board's reports, and (c) the audit reports, relating to existing companies
- (iv) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
- (v) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- (vi) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
- (vii) a declaration by each of the persons making the application in Form No.INC.15.

1.1.19 Conditions for Conversion of a Company Registered Under Section 8 into a Company of any other kind

- (i) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
- (ii) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-
 - (a) the date of incorporation of the company;
 - (b) the principal objects of the company as set out in the memorandum of association;
 - (c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
 - (d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
 - (e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.;
 - (f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- (iii) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.
- (iv) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in sub-rule (2) of rule 22 of Companies (Incorporation) Rules, 2014.
- (v) A copy of the application with annexure as filed with the Regional Director shall also be filed with the Registrar.

1.1.20 Intimation to Registrar of Revocation of License Issued Under Section 8

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in **Form No.INC.20** along with the fee to convert its status and change of name accordingly.

1.1.21 Effect of Registration [Section 9]

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all 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 of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

1.1.22 Effect of Memorandum and Articles [Section 10]

- (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- (2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

1.1.23 Commencement of Business, etc. [Section 11]

Omitted vide Companies (Amendment) Act, 2015

1.1.24 Registered Office of Company [Section 12]

- (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- (2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.
- (3) Every company shall—
 - (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
 - (b) have its name engraved in legible characters on its seal, if any;
 - (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
 - (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

- (4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.
- (5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—
 - (a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and
 - (b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.
- (6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.
- (7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of subsection (5) have been complied with and the change shall take effect from the date of the certificate.
- (8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

1.1.25 Shifting of Registered Office within the same State

- (i) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form no.INC.23 along with the fee.
- (ii) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.—
 - (a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
 - (b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice.

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application.

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

- (iii) The confirmation referred to in sub-section (5) of section 12 shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

1.1.26 Shifting of Registered Office from One State or Union Territory to Another State

- (i) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-
 - (a) a copy of the memorandum and articles of association;
 - (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
 - (c) a copy of the special resolution sanctioning the alteration by the members of the company;
 - (d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
 - (e) an affidavit verifying the application;
 - (f) the list of creditors and debenture holders entitled to object to the application;
 - (g) an affidavit verifying the list of creditors;
 - (h) the document relating to payment of application fee;
 - (i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
- (ii) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
 - (a) the names and address of every creditor and debenture holder of the company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities;

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

- (iii) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
- (iv) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.



- (v) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
- (vi) The company shall at least fourteen days before the date of hearing-
 - (a) advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
 - (b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
- (vii) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.
- (viii) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
- (ix) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.
- (x) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

1.1.27 Alteration of Memorandum [Section 13]

- (1) Save as provided in section 61, a company may, by a special resolution and Alteration of after complying with the procedure specified in this section, alter the provisions of its memorandum.
- (2) Any change in the name of a company shall be subject to the provisions of sub sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing.

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion there from, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

- (3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

- (4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
- (5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.
- (6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - (a) the special resolution passed by the company under sub-section (1);
 - (b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
- (7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.
- (8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
 - (i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
 - (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
- (9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.
- (10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
- (11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

1.1.28 Alteration of Memorandum by Change of Name

An application shall be filed in Form No.INC.24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No.INC.25 shall be issued to the company consequent upon change of name.

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

1.1.29 Alteration of Articles [Section 14]

- (1) A company may, by a special resolution, alter its articles including alterations having the effect of conversion of—
 - (a) a private company into a public company; or
 - (b) a public company into a private company.

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

- (2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

1.1.30 Alteration of Articles

For effecting the conversion of a private company into a public company or vice versa, the application shall be filed in Form No.INC.27 with fee.

A copy of order of the competent authority approving the alteration, shall be filed with the Registrar in Form No. INC.27 with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.

1.1.31 Alteration of Memorandum or Articles to be noted in Every Copy [Section 15]

- (1) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.
- (2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

1.1.32 Rectification of Name of Company [Section 16]

- (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—
 - (a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;
 - (b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change

its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

- (2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.
- (3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

1.1.33 Copies of Memorandum, Articles, etc., to be given to Members [Section 17]

- (1) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—
 - (a) the memorandum;
 - (b) the articles; and
 - (c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.
- (2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

1.1.34 Change of Objects for which Money is Raised through Prospectus

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

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

The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders. The notice shall also be placed on the website of the company, if any.

1.1.35 Conversion of Companies already Registered [Section 18]

- (1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the act.
- (2) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions as applicable to the transaction applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.
- (3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

1.1.36 Subsidiary Company not to hold Shares in its Holding Company [Section 19]

- (1) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

- (2) The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

1.1.37 Service of Documents [Section 20]

- (1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

- (2) Save as provided in this Act or the rules made there under for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

1.1.38 Authentication of Documents, Proceedings and Contracts [Section 21]

Save as otherwise provided in this Act,—

- (a) a document or proceeding requiring authentication by a company; or
- (b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

1.1.39 Execution of Bills of Exchange, etc. [Section 22]

- (1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.
- (2) A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

- (3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

1.2 PROSPECTUS AND ALLOTMENT OF SECURITIES

PART - I

Public Offer

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
PAS-1	P	Advertisement giving details of notice of special resolutions for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued	27(1)	7(2)	1.44
PAS-2	e	Information Memorandum	31(2)	10	1.45
PAS-3	e	Return of Allotment	39(4), 42(9)	12, 14	1.49, 1.51
PAS-4	P	Private placement offer letter	42	14(1)	1.50
PAS-5	P	Record of a private placement offer to be kept by the company	42(7)	14(3)	1.51



1.2.1 Public Officer and Private Placement [Section 23]

- (1) A public company may issue securities—
 - (a) to public through prospectus; or
 - (b) through private placement; or
 - (c) through a rights issue or a bonus issue and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.
- (2) A private company may issue securities—
 - (a) by way of rights issue or bonus issue; or
 - (b) through private placement.

Explanation.— For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

1.2.2 Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc. [Section 24]

- (1) The provisions contained in Chapter III, Chapter IV and in section 127 shall,—
 - (a) in so far as they relate to —
 - (i) issue and transfer of securities; and
 - (ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

- (b) in any other case, be administered by the Central Government.

Explanation.— For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

- (2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.

1.2.3 Document Containing offer of Securities for Sale to be Deemed Prospectus [Section 25]

- (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale

to the public if it is shown—

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
 - (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.
- (3) Section 26 as applied by this section shall have effect as if —
- (i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
 - (a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
 - (b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;
 - (ii) the persons making the offer were persons named in a prospectus as directors of a company.
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

1.2.4 Matters to be Stated in Prospectus [Section 26]

- (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall —
- (a) state the following information, namely:—
 - (i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
 - (ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
 - (iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
 - (iv) details about underwriting of the issue;
 - (v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
 - (vi) the authority for the issue and the details of the resolution passed there for;
 - (vii) procedure and time schedule for allotment and issue of securities;
 - (viii) capital structure of the company in the prescribed manner;
 - (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
 - (x) main objects and present business of the company and its location, schedule of implementation of the project;

- (xi) particulars relating to—
 - (A) management perception of risk factors specific to the project;
 - (B) gestation period of the project;
 - (C) extent of progress made in the project;
 - (D) deadlines for completion of the project; and
 - (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
 - (xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
 - (xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
 - (xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution.
- (b) set out the following reports for the purposes of the financial information, namely:—
- (i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;
 - (ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed
- Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;
- (iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:
- Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and
- (iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;
- (c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under; and
- (d) state such other matters and set out such other reports, as may be prescribed.
- (2) Nothing in sub-section (1) shall apply—
- (a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has

a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.— The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

1.2.5 Information Relating to Capital Structure of the Company Stated in Prospectus

The capital structure of the company shall be presented in the following manner, namely:—

(i) (a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);

(b) the size of the present issue;

(c) the paid up capital—

(A) after the issue;

(B) after conversion of convertible instruments (if applicable);

(d) the share premium account (before and after the issue);

- (ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration.

Provided that in the case of an initial public offer of an existing company, the details regarding individual allotment shall be given from the date of incorporation of the issuer and in the case of a listed issuer company, the details shall be given for five years immediately preceding the date of filing of the prospectus.

Provided that the issuer company shall also disclose the number and price at which each of the allotments were made in the last two years preceding the date of the prospectus separately indicating the allotments made for considerations other than cash and the details of the consideration in each case.

1.2.6 Information relating to details of Directors of the Company Stated in Prospectus

The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interests in the company shall be disclosed in the following manner, namely:—

- (i) the name, designation, Director Identification Number (DIN), age, address, period of directorship, details of other directorships;
- (ii) the remuneration payable or paid to the director by the issuer company, its subsidiary and associate company; shareholding of the director in the company including any stock options; shareholding in subsidiaries and associate companies; appointment of any relatives to an office or place of profit;
- (iii) the full particulars of the nature and extent of interest, if any, of every director:
 - (a) in the promotion of the issuer company; or
 - (b) in any immoveable property acquired by the issuer company in the two years preceding the date of the Prospectus or any immoveable property proposed to be acquired by it.
- (iv) where the interest of such a director consists in being a member of a firm or company, the nature and extent of his interest in the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to help him qualify as a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the issuer company shall be disclosed.

1.2.7 Information relating to Sources of Promoter's Contribution Stated in Prospectus

The sources of promoters' contribution, if any, shall be disclosed in the following manner, namely:—

- (i) the total shareholding of the promoters, clearly stating the name of the promoter, nature of issue, date of allotment, number of shares, face value, issue price or consideration, source of funds contributed, date when the shares were made fully paid up, percentage of the total pre and post issue capital;
- (ii) the proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters;
- (iii) the disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan, financial assistance etc , if any, by promoters for making such contributions and in case of own sources, complete details thereof.

1.2.8 Other Matters and Reports to be Stated in the Prospectus

The prospectus shall include the following other matters and reports, namely:—

- (1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be

applied directly or indirectly—

- (a) in the purchase of any business; or
- (b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company shall become entitled to an interest in either the capital or profits and losses or both, in such business exceeding fifty per cent. thereof, a report made by a chartered accountant (who shall be named in the prospectus) upon—
 - (i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and
 - (ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;
- (c) in purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to even third parties, disclosures regarding—
 - (i) the names, addresses, descriptions and occupations of the vendors;
 - (ii) the amount paid or payable in cash, to the vendor and, where there is more than one vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;
 - (iii) the nature of the title or interest in such property proposed to be acquired by the company; and
 - (iv) the particulars of every transaction relating to the property, completed within the two preceding years, in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2) (a) If -

- (i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or are to be applied directly or indirectly and in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate shall become a subsidiary of the company, a report shall be made by a Chartered Accountant (who shall be named in the prospectus) upon -
 - (A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and
 - (B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall -

- (i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer company and what allowance would have been required to be made, in relation to assets and liabilities so dealt with for the holders of the balance shares, if the issuer company had at all material times held the shares proposed to be acquired; and



- (ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as provided in sub-clause (ii) of clause (a).
- (3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.
- (4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company which is a promoter of the issuer company and by the directors of the issuer company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.
- (5) The matters relating to -
 - (A) Material contracts;
 - (B) Other material contracts;
 - (C) Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.
- (6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under -
 - (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made ;
 - (b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer company or any of its parent companies was a party.

Provided that the disclosures for related party transactions for the period prior to notification of these rules shall be to the extent of disclosure requirements as per the Companies Act, 1956 and the relevant accounting standards prevailing at the said time.
- (7) The summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remarks.
- (8) The details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous companies law in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.
- (9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.
- (10) A fact sheet shall be included at the beginning of the prospectus which shall contain -
 - (a) the type of offer document ("Red Herring Prospectus" or "Shelf Prospectus" or "Prospectus").
 - (b) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its telephone number, fax number, details of contact person, website address, e-mail address;
 - (c) the names of the promoters of the issuer company;
 - (d) the nature, number, price and amount of securities offered and issue size, as may be applicable;

- (e) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;
- (f) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;
- (g) the issue schedule -
 - (i) date of opening of the issue;
 - (ii) date of closing of the issue;
 - (iii) date of earliest closing of the issue, if any.
- (h) the credit rating, if applicable;
 - (i) all the grades obtained for the initial public offer;
- (j) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;
- (k) the details about eligible investors;
- (l) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.

1.2.9 Variation in Terms of Contract or Objects in Prospectus [Section 27]

- (1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation.

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

- (2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

1.2.10 Offer of Sale of Shares by Certain Members of Company [Section 28]

- (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.
- (2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made there under as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.
- (3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

1.2.11 Public Offer of Securities to be in Dematerialised Form [Section 29]

- (1) Notwithstanding anything contained in any other provisions of this Act,—
 - (a) every company making public offer; and
 - (b) such other class or classes of public companies as may be prescribed,shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

1.2.12 Advertisement of Prospectus [Section 30]

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

1.2.13 Shelf Prospectus [Section 31]

- (1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

- (3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression “shelf prospectus” means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

1.2.14 Red Herring Prospectus [Section 32]

- (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- (2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- (3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

- (4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

1.2.15 Issue of Application Forms for Securities [Section 33]

- (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
 - (b) in relation to securities which were not offered to the public.
- (2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
 - (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

1.2.16 Refund of Application Money

- (1) If the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.
- (2) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

1.2.17 Return of Allotment

- (i) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.
- (ii) There shall be attached to the Form PAS-3 a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.
- (iii) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS-3 a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration.
- (iv) Where a contract referred to in sub-rule (3) of rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014 is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

- (v) A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).
- (vi) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3.
- (vii) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62 by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognised stock exchange, there shall be attached to Form PAS-3, the valuation report of the registered valuer.

Explanation.— Pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

1.2.18 Payment of Commission

A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:

- (a) the payment of such commission shall be authorized in the company's articles of association;
- (b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
- (d) the prospectus of the company shall disclose —
 - (i) the name of the underwriters;
 - (ii) the rate and amount of the commission payable to the underwriter; and
 - (iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
- (e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- (f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

1.2.19 Criminal Liability for Mis-Statements in Prospectus [Section 34]

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

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

1.2.20 Civil Liability for Mis-Statements in Prospectus [Section 35]

- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) is a promoter of the company;
- (d) has authorised the issue of the prospectus; and
- (e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

- (2) No person shall be liable under sub-section (1), if he proves—
 - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

1.2.21 Punishment for Fraudulently Inducing Persons to Invest Money [Section 36]

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
 - (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
 - (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,
- shall be liable for action under section 447.

1.2.22 Action by Affected Persons [Section 37]

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

1.2.23 Punishment for Personation for Acquisition, etc., of Securities [Section 38]

- (1) Any person who—
 - (a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
 - (b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or



(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

- (2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
- (3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.
- (4) The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

1.2.24 Allotment of Securities by Company [Section 39]

- (1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.
- (2) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- (3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.
- (4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.
- (5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

1.2.25 Securities to be Dealt with in Stock Exchanges [Section 40]

- (1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
- (2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.
- (3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
 - (a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or
 - (b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.
- (4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

- (5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
- (6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

1.2.26 Global Depository Receipt [Section 41]

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions as may be prescribed.

1.3 PRIVATE PLACEMENT

1.3.1 Offer or Invitation for Subscription of Securities on Private Placement [Section 42]

- (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.
- (2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.— For the purposes of this section, the expression—

- (i) “qualified institutional buyer” means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.
 - (ii) “private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.
- (3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
 - (4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.
 - (5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
 - (6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the



application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day.

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

- (a) for adjustment against allotment of securities; or
 - (b) for the repayment of monies where the company is unable to allot securities.
- (7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.
 - (8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.
 - (9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.
 - (10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

1.4 SHARE CAPITAL AND DEBENTURES

e = e-Form & P = Physical Form

FORM NO./ FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
SH-1 P	Share Certificate	46(3)	5(2)	1.55
SH-2 P	Register of Renewed and Duplicate Share Certificates	46(3)	6(3)(a)	1.55
SH-3 P	Register of Sweat Equity Shares	54	8(14)	1.59
SH-4 P	Securities Transfer Form	56	11(1)	1.61
SH-5 P	Notice for transfer of partly paid securities	56(3)	11(3)	1.61
SH-6 P	Register of Employee Stock Options	62(I)(b)	12(10)	1.70
SH-7 e	Notice to Registrar of any alteration of share capital	64(1)	15	1.71
SH-8 e	Letter of Offer	68	17(2)	1.74
SH-9 e	Declaration of Solvency	68(6)	17(3)	1.75
SH-10 P	Register of Shares or Other Securities bought back	68(9)	17(12)	1.75
SH-11 e	Return in respect of buy-back of securities	68(10)	17(13)	1.75
SH-12 P	Debenture Trust Deed	71(13)	11	1.79
SH-13 P	Nomination Form	72	19(1)	1.80
SH-14 P	Cancellation or Variation of Nomination	72(3)	19(9)	1.80
SH-15 P	Certificate of Compliance in respect of buy back of securities	—	17(14)	—

1.4.1 Kinds of Share Capital [Section 43]

The share capital of a company limited by shares shall be of two kinds, namely:—

- (a) equity share capital—
 - (i) with voting rights; or
 - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
- (b) preference share capital.

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

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

1.4.2 Equity Shares with Differential Rights

- (1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:—
 - (a) the articles of association of the company authorizes the issue of shares with differential rights;
 - (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
 - (c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;



- (d) the company having consistent track record of distributable profits for the last three years;
 - (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
 - (f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
 - (g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
 - (h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.
- (2) The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars, namely:-
- (a) the total number of shares to be issued with differential rights;
 - (b) the details of the differential rights ;
 - (c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
 - (d) the reasons or justification for the issue;
 - (e) the price at which such shares are proposed to be issued either at par or at premium;
 - (f) the basis on which the price has been arrived at;
 - (g) (i) in case of private placement or preferential issue-
 - (a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;
 - (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
 - (ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
 - (h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
 - (i) the scale or proportion in which the voting rights of such class or type of shares shall vary;
 - (j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
 - (k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

- (l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.
- (3) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
- (4) The Board of Directors shall, inter alia, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-
 - (a) the total number of shares allotted with differential rights;
 - (b) the details of the differential rights relating to voting rights and dividends;
 - (c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
 - (d) the price at which such shares have been issued;
 - (e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;
 - (f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
 - (g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;
 - (h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.
- (5) The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
- (6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Explanation.- For the purposes of this rule it is hereby clarified that equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956 and the rules made thereunder, shall continue to be regulated under such provisions and rules.

1.4.3 Nature of Shares or Debentures [Section 44]

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

1.4.4 Numbering of Shares [Section 45]

Every share in a company having a share capital shall be distinguished by its distinctive number.

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

1.4.5 Certificate of Shares [Section 46]

- (1) A certificate, issued under the common seal if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.
- (2) A duplicate certificate of shares may be issued, if such certificate —
 - (a) is proved to have been lost or destroyed; or

- (b) has been defaced, mutilated or torn and is surrendered to the company.
- (3) The manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.
- (4) Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
- (5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

1.4.6 Certificate of Shares (Where Shares are not in DEMAT Form)

- (1) Where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except-
 - (a) in pursuance of a resolution passed by the Board; and
 - (b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares.

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

- (2) Every certificate of share or shares shall be in Form No. SH.1 or as near thereto as possible and shall specify the name(s) of the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid-up thereon.
- (3) Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-
 - (a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and
 - (b) the secretary or any person authorised by the Board for the purpose.

Provided that, in companies wherein a Company Secretary is appointed under the provisions of the Act, he shall deemed to be authorised for the purpose of this rule.

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director.

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

Explanation.- For the purposes of this sub-rule, a director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

- (4) The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

General Circular No. 19/2014

Clarifications on Rules Prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg.

Share Transfer Forms Executed before 1st April, 2014:

It is clarified that since transaction relating to transfer of shares is a contract between two or more persons/shareholders, any share transfer form executed before 1st April, 2014 and submitted to the company concerned within the period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such share transfer form, executed prior to 1st April, 2014, is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. In case a company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within time provided under section 56(4) (c) of the Act.

1.4.7 Issue of Renewed or Duplicate Share Certificate

- (1) the certificate of any share or shares shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company.

Provided that the company may charge such fee as the Board thinks fit, not exceeding fifty rupees per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.

- (a) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government:
- (b) A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to compliance with clause (a) of sub-rule (1) rule 5, sub-rule (2) of rule 5 and sub-rule (3) of rule 5.
- (2) (a) The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, without the prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding rupees fifty per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced:
- (b) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is "duplicate issued in lieu of share certificate No..... ". and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate:
- (c) In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.

- (3) (a) The particulars of every share certificate issued in accordance with sub-rules (1) and (2) shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in Form No. SH.2 indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column.
- (b) The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.
- (c) All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate under the provisions of sub-rule (3) of rule 5.

General Circular No. 19/2014

Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg.

Delegation of Powers by Board Under Rule 6(2)(a):

It is clarified that a committee of director may exercise the powers of the Board provided under rule 6(2)(a) of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of duplicate share certificates subject to any regulations imposed by the Board in this regard.

1.4.8 Voting Rights [Section 47]

- (1) Subject to the provisions of section 43 and sub-section (2) of section 50,—
- (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and
- (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.
- (2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

1.4.9 Variation of Shareholders' Rights [Section 48]

- (1) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

- (2) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
- (4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.
- (5) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

1.4.10 Calls on Shares of Same Class to be Made on Uniform Basis [Section 49]

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

1.4.11 Company to Accept Unpaid Share Capital, Although not Called Up [Section 50]

- (1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
- (2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

1.4.12 Payment of Dividend in Proportion to amount Paid-Up [Section 51]

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

1.4.13 Application of Premiums received on Issue of Shares [Section 52]

- (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.



- (2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—
 - (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
 - (b) in writing off the preliminary expenses of the company;
 - (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
 - (e) for the purchase of its own shares or other securities under section 68.
- (3) The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—
 - (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
 - (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
 - (c) for the purchase of its own shares or other securities under section 68.

1.4.14 Prohibition on Issue of Shares at Discount [Section 53]

- (1) Except as provided in section 54, a company shall not issue shares at a discount.
- (2) Any share issued by a company at a discounted price shall be void.
- (3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

1.4.15 Issue of Sweat Equity Shares [Section 54]

- (1) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—
 - (a) the issue is authorised by a special resolution passed by the company;
 - (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
 - (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
 - (d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.
- (2) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

1.4.16 Disclosure Requirement in Director's Report in relation to Issue of Sweat Equity Shares

The Board of Directors shall disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

- (i) the class of director or employee to whom sweat equity shares were issued;
- (ii) the class of shares issued as Sweat Equity Shares;
- (iii) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- (iv) the reasons or justification for the issue;
- (v) the principal terms and conditions for issue of sweat equity shares, including pricing formula;
- (vi) the total number of shares arising as a result of issue of sweat equity shares;
- (vii) the percentage of the sweat equity shares of the total post issued and paid up share capital;
- (viii) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- (ix) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

1.4.17 Issue and Redemption of Preference Shares [Section 55]

- (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.
- (2) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders.

Provided further that -

- (a) Out of the profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;
- (b) Redeemed of fully paid share only;
- (c) If redeemed out of the profits of the company, then a sum equal to the nominal amount of the shares to be redeemed, transfer to the Capital Redemption Reserve Account; and
- (d) (i) in case of a companies on which provision of section 133 is apply, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.

If premium is payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

- (ii) in a case not falling under sub-clause (i) above, if the premium is payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

- (3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

- (4) The capital redemption reserve account may be applied by the company for issue of fully paid bonus shares.

Explanation.—For the purposes of sub-section (2), the term "infrastructure projects" means the infrastructure projects specified in Schedule VI.

1.4.18 Issue and Redemption of Preference Shares by Company in Infrastructural Projects

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

1.4.19 Transfer and Transmission of Securities [Section 56]

- (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

- (2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.
- (3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.
- (4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted —
- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
- (c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture.

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

- (5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.
- (6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
- (7) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

1.4.20 Instrument of Transfer

- (1) An instrument of transfer of securities held in physical form shall be in Form No.SH. 4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.
- (2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.
- (3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH. 5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

1.4.21 Issue of Employee Stock Options

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

- (1) the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Explanation: For the purposes of clause (b) of sub-section (1) of section 62 and this rule "Employee" means-

- (a) a permanent employee of the company who has been working in India or outside India; or
- (b) a director of the company, whether a whole time director or not but excluding an independent director; or
- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-



- (i) an employee who is a promoter or a person belonging to the promoter group; or
 - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.
- (2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-
 - (a) the total number of stock options to be granted;
 - (b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
 - (c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
 - (d) the requirements of vesting and period of vesting;
 - (e) the maximum period within which the options shall be vested;
 - (f) the exercise price or the formula for arriving at the same;
 - (g) the exercise period and process of exercise;
 - (h) the Lock-in period, if any ;
 - (i) the maximum number of options to be granted per employee and in aggregate;
 - (j) the method which the company shall use to value its options;
 - (k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
 - (l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
 - (m) a statement to the effect that the company shall comply with the applicable accounting standards .
- (3) The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
- (4) The approval of shareholders by way of separate resolution shall be obtained by the company in case of-
 - (a) grant of option to employees of subsidiary or holding company; or
 - (b) grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.
- (5)
 - (a) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.
 - (b) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.
- (6)
 - (a) There shall be a minimum period of one year between the grant of options and vesting of option:
Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option

Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

- (b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
 - (c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- (7) The amount, if any, payable by the employees, at the time of grant of option-
- (a) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or
 - (b) the amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.
- (8)
- (a) The option granted to employees shall not be transferable to any other person.
 - (b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
 - (c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.
 - (d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
 - (e) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.
 - (f) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.
- (9) The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:
- (a) options granted;
 - (b) options vested;
 - (c) options exercised;
 - (d) the total number of shares arising as a result of exercise of option;
 - (e) options lapsed;
 - (f) the exercise price;
 - (g) variation of terms of options;
 - (h) money realized by exercise of options;
 - (i) total number of options in force;
 - (j) employee wise details of options granted to:-
 - (i) key managerial personnel;

- (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.
 - (iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;
- (10) (a) The company shall maintain a Register of Employee Stock Options in Form No. SH.6 and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.
- (b) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.
 - (c) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.
- (11) Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued; in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

1.4.22 Issue of Shares on Preferential Basis

- (1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Explanation.- For the purposes of this rule,

- (i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;
 - (ii) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.
- (2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:-
 - (a) the issue is authorized by its articles of association;
 - (b) the issue has been authorized by a special resolution of the members;
 - (c) the securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.
 - (d) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

- (i) the objects of the issue;
- (ii) the total number of shares or other securities to be issued;
- (iii) the price or price band at/within which the allotment is proposed;
- (iv) basis on which the price has been arrived at along with report of the registered valuer;
- (v) relevant date with reference to which the price has been arrived at;
- (vi) the class or classes of persons to whom the allotment is proposed to be made;
- (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;
- (viii) the proposed time within which the allotment shall be completed;
- (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- (x) the change in control, if any, in the company that would occur consequent to the preferential offer;
- (xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
- (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- (xiii) The pre issue and post issue shareholding pattern of the company in the following format-

Sr. No.	Category	Pre Issue		Post Issue	
		No. of Shares held	% of share holding	No. of shares held	% of share holding
A	Promoters' holding :				
1	Indian :				
	Individual				
	Bodies Corporate				
	Sub Total				
2	Foreign Promoters				
	Sub Total (A)				
B	Non-Promoters' holding :				
1.	Institutional Investors				
2.	Non-Institution :				
	Private Corporate Bodies				
	Directors and Relatives				
	Indian Public				
	Others (Including NRIs)				
	Sub Total(B)				
	GRAND TOTAL				

- (e) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of twelve months from the date of passing of the special resolution.
- (f) if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- (g) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;
- (h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;
- (i) where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;
- (j) where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (ii) where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

Explanation.- For the purposes of these rules, it is hereby clarified that, till a registered valuer is appointed in accordance with the provisions of the Act, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having a minimum experience of ten years".

- (3) The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer."

1.4.23 Punishment for Personation of Shareholders [Section 57]

If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.4.24 Refusal of Registration and Appeal against Refusal [Section 58]

- (1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

- (2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable.

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

- (3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.
- (4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
- (5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), may, after hearing the parties, either dismiss the appeal, or by order—
 - (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
 - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.
- (6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.4.25 Rectification of Register of Members [Section 59]

- (1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.
- (2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.
- (3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.
- (4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

- (5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

1.4.26 Publication of Authorized, Subscribed and Paid-Up Capital [Section 60]

- (1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.
- (2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

1.4.27 Power of Limited Company to Alter its Share Capital [Section 61]

- (1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—
- (a) increase its authorised share capital by such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
 - (c) convert all or any of its fully paid-up shares into stock, and reconvert 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.
- (2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

1.4.28 Further Issue of Share Capital [Section 62]

- (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—
- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—
 - (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
 - (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed

to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;
 - (b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or
 - (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
- (2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.
- (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

- (4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

- (5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.
- (6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

1.4.29 Issue of Bonus Shares [Section 63]

- (1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

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

- (2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—
 - (a) it is authorised by its articles;
 - (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
 - (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
 - (f) it complies with such conditions as may be prescribed.
- (3) The bonus shares shall not be issued in lieu of dividend.

1.4.30 Notice to be given to Registrar for Alteration of Share Capital [Section 64]

- (1) Where—
 - (a) a company alters its share capital in any manner specified in sub-section (1) of section 61;
 - (b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
 - (c) a company redeems any redeemable preference shares,the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
- (2) If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

1.4.31 Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company [Section 65]

An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

1.4.32 Reduction of Share Capital [Section 66]

- (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by

shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- (b) either with or without extinguishing or reducing liability on any of its shares,—
 - (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - (ii) pay off any paid-up share capital which is in excess of the wants of the company,alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

- (2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice.

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

- (3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

- (4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.
- (5) The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a minute approved by the Tribunal showing—
 - (a) the amount of share capital;
 - (b) the number of shares into which it is to be divided;
 - (c) the amount of each share; and
 - (d) the amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

- (6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.
- (7) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.
- (8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the

company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,—

- (a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and
- (b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

(10) If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction;
 - (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
 - (c) abets or is privy to any such concealment or misrepresentation as aforesaid,
- he shall be liable under section 447.

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

1.4.33 Restrictions on Purchase by Company or giving of Loans by it for Purchase of its Shares [Section 67]

- (1) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.
- (2) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
- (3) Nothing in sub-section (2) shall apply to—
 - (a) the lending of money by a banking company in the ordinary course of its business;
 - (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
 - (c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

- (4) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

- (5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

1.4.34 Power of Company to Purchase its Own Securities [Section 68]

- (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities hereinafter referred to as buy-back) out of—

- (a) its free reserves;
- (b) the securities premium account; or
- (c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- (2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—

- (a) the buy-back is authorised by its articles;
- (b) a special resolution has been passed at a general meeting of the company authorising the buy-back.

Provided that nothing contained in this clause shall apply to a case where—

- (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and
 - (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
- (c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

- (d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

- (e) all the shares or other specified securities for buy-back are fully paid-up;
- (f) the buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
- (g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

- (3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating—
- (a) a full and complete disclosure of all material facts;
 - (b) the necessity for the buy-back;
 - (c) the class of shares or securities intended to be purchased under the buy-back;
 - (d) the amount to be invested under the buy-back; and
 - (e) the time-limit for completion of buy-back.
- (4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2).
- (5) The buy-back under sub-section (1) may be—
- (a) from the existing shareholders or security holders on a proportionate basis;
 - (b) from the open market;
 - (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
- (6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.
- Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.
- (7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.
- (8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.
- (9) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.
- (10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

- (11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purposes of this section and section 70, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purposes of this section, “free reserves” includes securities premium account.

1.4.35 Disclosure Requirements relating to Buy-Back of Shares or Other Securities in Explanatory Statement to be Annexed to the Notice of the General Meeting

The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 in relation to buy-back of shares or other securities by the private companies and unlisted public companies shall contain the following disclosures, namely:-

- (a) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;
- (b) the objective of the buy-back;
- (c) the class of shares or other securities intended to be purchased under the buy-back;
- (d) the number of securities that the company proposes to buy-back;
- (e) the method to be adopted for the buy-back;
- (f) the price at which the buy-back of shares or other securities shall be made;
- (g) the basis of arriving at the buy-back price;
- (h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- (i) the time-limit for the completion of buy-back;
- (j)
 - (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;
 - (ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
 - (iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date;
- (k) if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back –
 - (i) the quantum of shares proposed to be tendered;
 - (iii) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- (l) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference



shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

- (m) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
 - (i) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
 - (ii) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
 - (iii) the directors have taken into account the liabilities (including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013.
- (n) a report addressed to the Board of directors by the company's auditors stating that-
 - (i) they have inquired into the company's state of affairs;
 - (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;
 - (iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and
 - (iv) the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

1.4.36 Transfer of Certain Sums to Capital Redemption Reserve Account [Section 69]

- (1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
- (2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

1.4.37 Prohibition for Buy-Back in Certain Circumstances [Section 70]

- (1) No company shall directly or indirectly purchase its own shares or other specified securities –
 - (a) through any subsidiary company including its own subsidiary companies;
 - (b) through any investment company or group of investment companies; or
 - (c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

- (2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

1.4.38 Debenture [Section 71]

- (1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

- (2) No company shall issue any debentures carrying any voting rights.
- (3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.
- (4) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
- (5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.
- (6) A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
- (7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

- (8) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.
- (9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.
- (10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.
- (11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.
- (12) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

- (13) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

1.4.39 Issue of Secured Debenture

The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

- (a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

Provided that the following classes of companies may issue secured debentures for a period exceeding ten years but not exceeding thirty years,

- (i) Companies engaged in setting up of infrastructure projects;
 - (ii) 'Infrastructure Finance Companies' as defined in clause (viiia) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
 - (iii) 'Infrastructure Debt Fund Non-Banking Financial companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011".
- (b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
- (d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-
- (i) any specific movable property of the company (not being in the nature of pledge); or
 - (ii) any specific immovable property wherever situate, or any interest therein.

1.4.40 Creation of Debenture Redemption Reserve

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

- (a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-
- (i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.
 - (ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997 and for Housing Finance Companies registered with the National Housing Bank, 'the adequacy' of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

- (iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.
- (c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-
 - (i) in deposits with any scheduled bank, free from any charge or lien;
 - (ii) in unencumbered securities of the Central Government or of any State Government;
 - (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
 - (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;
 - (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above:

Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
- (d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

1.4.41 Power to Nominate [Section 72]

- (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.
- (2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.
- (4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

1.5 ACCEPTANCE OF DEPOSITS BY COMPANIES

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DPT-1	P	Circular in the Form of advertisement inviting deposits	73(2)(a), 76	4(1), 4(2)	1.81, 1.86
DPT-2	P	Deposit Trust Deed	—	7(2)	—
DPT-3	P	Return of deposits	—	16	—
DPT-4	P	Statement regarding deposits existing on the commencement of the Act	—	20	—

1.5.1 Prohibition Acceptance of Deposits from Public [Section 73]

- (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

- (2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—
- issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards 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;
 - filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
 - depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
 - providing such deposit insurance in such manner and to such extent as may be prescribed;
 - certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
 - providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

- (3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

- (4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
- (5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

1.5.2 Terms and Conditions of Acceptance of Deposits by Companies

- (1) On and from the commencement of these rules,—
 - (a) no company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit.

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that—

 - (i) such deposits shall not exceed ten per cent, of the aggregate of the paid up share capital and free reserves of the company, and
 - (ii) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.
- (2) Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".
- (3) No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds twenty five per cent, of the aggregate of the paid-up share capital and free reserves of the company.
- (4) No eligible company shall accept or renew—
 - (a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent, of the aggregate of the paid-up share capital and free reserves of the company;
 - (b) any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds twenty-five per cent, of aggregate of the paid-up share capital and free reserves of the company.
- (5) No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent, of the aggregate of its paid up share capital and free reserves of the company.
- (6) No company referred to in sub-section (2) of section 73 or any eligible company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Explanation:- For the purposes of this sub-rule, it is hereby clarified that the person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these rules.

- (7) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

1.5.3 Manner and Extent of Deposit Insurance

- (1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.

Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015.

- (2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract.

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

- (3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.
- (4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent, interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

1.5.4 Creation of Security

- (1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance.

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

Explanation. I - For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

- (2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:
- (a) specific movable property of the company, or
 - (b) specific immovable property of the company wherever situated, or any interest therein.

1.5.5 Appointment of Trustee for Depositors

- (1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits:

Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

- (2) The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- (3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -
- (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
 - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (c) has any material pecuniary relationship with the company;
 - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
 - (e) is related to any person specified in clause (a) above.

- (4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

1.5.6 Duties of Trustees

It shall be the duty of every trustee for depositors to-

- (a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
- (b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
- (c) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
- (d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
- (e) take steps to call a meeting of the holders of deposits as and when such meeting is required to be held;
- (f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
- (g) do such acts as are necessary in the event the security becomes enforceable;
- (h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

1.5.7 Meeting of Depositors

The trustee for depositors shall call a meeting of all the depositors on-

- (a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;



- (b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

1.5.8 Repayment of Deposits, etc., Accepted before Commencement of this Act [Section 74]

- (1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—
- (a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and
 - (b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.
- (2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
- (3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

1.5.9 Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits.

Provided that the amount remaining deposited shall not at any time fall below fifteen per cent, of the amount of deposits maturing, until the end of the current financial year and the next financial year.

1.5.10 Registers of Deposits

- (1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:—
- (a) name, address and PAN of the depositor/s;
 - (b) particulars of guardian, in case of a minor;
 - (c) particulars of the nominee;
 - (d) deposit receipt number;
 - (e) date and the amount of each deposit;
 - (f) duration of the deposit and the date on which each deposit is repayable;
 - (g) rate of interest or such deposits to be payable to the depositor;
 - (h) due date for payment of interest;
 - (i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;

- (j) date or dates on which the payment of interest shall be made;
 - (k) details of deposit insurance including extent of deposit insurance;
 - (l) particulars of security or charge created for repayment of deposits;
 - (m) any other relevant particulars;
- (2) The entries specified in sub-rule (1) shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.
- (3) The register referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

1.5.11 Damages for Fraud [Section 75]

- (1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
- (2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

1.5.12 Acceptance of Deposits from Public by Certain Companies [Section 76]

- (1) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

- (2) The provisions of this Chapter shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.

1.5.13 Punishment for contravention of section 73 or section 76 [Section 76A]

Where a company accepts or invites or allows or cause any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, -

- (a) The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees, and



- (b) Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

1.6 DECLARATION AND PAYMENT OF DIVIDEND

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DIV- 5	P	Statement of amounts credited to investor education and protection fund	—	—	—

1.6.1 Declaration of Dividend [Section 123]

- (1) No dividend shall be declared or paid by a company for any financial year except—
- (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or
 - (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

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

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

- (2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.
- (3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

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

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

- (5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash. Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company. Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.
- (6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

Summary at Glance

- Dividend can be declared out of the current year profit or accumulated profit arrived after providing depreciation or out of both; or Dividend can also be declared out of money provided by the Central Government or a State Government for the payment of dividend;
- Before the declaration of any dividend in any financial year, transfer such percentage of profits for that financial year as it may consider appropriate to the reserves of the company;
- Interim dividend subject to surplus in P/L account;
- Deposit amount of dividend in scheduled bank in separate account within 5 days;
- Dividend to be paid to registered shareholder only;
- Mode of payment – by cheque or warrant or in any electronic mode;
- No dividend can be declared during violation of provision of section 73 & 74.

1.6.2 Declaration of Dividend Out of Reserves

In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the following conditions, namely:—

- (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
- (2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
- (5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

1.6.3 Unpaid Dividend Account [Section 124]

- (1) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
- (2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last



known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

- (3) If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.
- (4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.
- (5) 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 along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.
- (6) All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

Explanation – For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund

- (7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Summary at Glance

- Where any dividend has not been paid or claimed within thirty days, then within seven days transfer the total amount of the dividend in any schedule bank in Unpaid Dividend Account;
- After making transfer of any amount in Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company;
- If default is made in transferring the any amount, then interest @12% p.a. is payable;
- Person entitle for unpaid dividend may apply to the company for payment of money claim;
- Any money unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued to Investor Education and Protection Fund.
- Default

Company - ₹5 lakhs to ₹25 lakhs

Every Officer – punishable with fine ₹1 lakhs to ₹5 lakhs.

1.6.4 Investor Education and Protection Fund [Section 125]

- (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(2) There shall be credited to the Fund—

- (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) such other amount as may be prescribed.

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

- (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed.

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.

Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

- (4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.
- (5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.
- (6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.
- (7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.
- (8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.
- (9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).
- (10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.
- (11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

1.6.5 Right to Dividend, Rights Shares and Bonus Shares to be held in abeyance pending Registration of Transfer of Shares [Section 126]

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

- (a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- (b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

1.6.6 Punishment for Failure to Distribute Dividends [Section 127]

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Provided that no offence under this section shall be deemed to have been committed:—

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

1.7 ACCOUNTS OF COMPANIES

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
AOC-1 P	Statement containing salient features of the financial statement of subsidiaries/ associate companies/joint ventures	129(3)	5	1.94
AOC-2 P	Form for disclosure of particulars of contracts/ arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain arms length transactions under third proviso thereto	134(3)(h)	8(2)	1.99
AOC-3 P	Statement containing salient features of Balance Sheet and Profit and Loss Account	136(1)	10	1.108
AOC-4 P	Form for filing financial statement and other documents with the Registrar	137	12(1)	1.109

1.7.1 Books of Account, etc., to be Kept by Company [Section 128]

- (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place.

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

- (2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

- (3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed.

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

- (4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.
- (5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

- (6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Summary at Glance

- Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement;
- Such books shall be kept on accrual basis and according to the double entry system of accounting;
- In case of branch office in India or outside India, it shall be sufficient if periodically summarized returns are sent by the branch office to the registered office;
- All books of accounts shall be open for inspection by any director of the company;
- Books of accounts shall be kept for not less than 8 years or where the company had been in existence for a period of less than 8 years, all the preceding years;
- Contravention of the provision of this act by managing director, the whole time director in charge of the finance, the Chief Financial Officer or any other person of the company charged by the board with the duty of complying with the duty provision of this section, punishable with imprisonment upto 1 year or with fine not less than ₹50,000 to ₹5,00,000.

1.7.2 Financial Statement [Section 129]

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

Provided that the items contained in such financial statements shall be in accordance with the accounting standards.

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

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

- (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
 - (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
 - (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
 - (d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.
- (2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.
- (3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation. For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

- (4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).
- (5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.
- (6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.
- (7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

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

Summary at Glance

- Financial statements of the company shall comply with the accounting standards;
- Provision of sub-section (1) shall not be apply to any insurance or banking company or any company engaged in the generation or supply of electricity;
- At every annual general meeting, financial statement shall discussed;
- If the company has one or more subsidiaries, the holding company should prepared consolidated financial statement along with stand alone financial statement;
- All subsidiary company shall prepared financial statement in same form or manner as prepared by holding company;
- Act applicable to standalone financial statement relating to preparation, adoption and audit of the financial statements are also apply to consolidated financial statements;
- where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation;
- The Central Government may exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder.

1.7.3 Re-Opening of Accounts on Court's or Tribunal's Orders [Section 130]

- (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

- (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

1.7.4 Voluntary Revision of Financial Statements or Board's Report [Section 131]

- (1) If it appears to the directors of a company that—
- (a) the financial statement of the company; or
 - (b) the report of the Board,

do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.

Provided that the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year.

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

- (2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
 - (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
 - (b) the making of any necessary consequential alternation.
- (3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
 - (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
 - (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
 - (c) require the directors to take such steps as may be prescribed.

1.7.5 Constitution of National Financial Reporting Authority [Section 132]

- (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
 - (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- (3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed.

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related



consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

- (4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- (iv) issuing commissions for examination of witnesses or documents;

- (c) where professional or other misconduct is proved, have the power to make order for—

- (A) imposing penalty of—

- (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
- (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

- (B) debarbing the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Explanation. For the purposes of this sub-section, the expression “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

- (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed.
- (6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.
- (7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.

- (8) The fee for filing the appeal shall be such as may be prescribed.
- (9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.
- (10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
- (11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.
- (12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
- (13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.
- (14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.
- (15) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

1.7.6 Central Government to prescribe Accounting Standards [Section 133]

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

1.7.7 Financial Statement, Board's Report, etc. [Section 134]

- (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—
 - (a) the extract of the annual return as provided under sub-section (3) of section 92;
 - (b) number of meetings of the Board;



- (c) Directors' Responsibility Statement;
 - (ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.
 - (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
 - (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
 - (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report;
 - (g) particulars of loans, guarantees or investments under section 186;
 - (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
 - (i) the state of the company's affairs;
 - (j) the amounts, if any, which it proposes to carry to any reserves;
 - (k) the amount, if any, which it recommends should be paid by way of dividend;
 - (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
 - (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
 - (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
 - (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
 - (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
 - (q) such other matters as may be prescribed.
- (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- (5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—
 - (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 - (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

- (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (d) the directors had prepared the annual accounts on a going concern basis; and
- (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.— For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- (6) The Board’s report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
 - (7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—
 - (a) any notes annexed to or forming part of such financial statement;
 - (b) the auditor’s report; and
 - (c) the Board’s report referred to in sub-section (3).
 - (8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

General Circular No. 05/2014

To make things absolutely clear it is hereby notified that the financial statements (and documents required to be attached thereto), auditors report and Board’s report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/ Schedules/ rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply.

1.7.8 Matters to be included in Board’s Report

- (1) The Board’s Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.
- (3) The report of the Board shall contain the following information and details, namely:-

(A) Conservation of Energy-

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilising alternate sources of energy;
- (iii) the capital investment on energy conservation equipments;

(B) Technology Absorption-

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - (a) the details of technology imported;
 - (b) the year of import;
 - (c) whether the technology been fully absorbed;
 - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign Exchange Earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

- (4) Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- (5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain –
 - (i) the financial summary or highlights;
 - (ii) the change in the nature of business, if any;
 - (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
 - (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
 - (v) the details relating to deposits, covered under Chapter V of the Act,-
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year;
 - (ii) maximum during the year;
 - (iii) at the end of the year;
 - (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

1.7.9 Manner of Circulation of Financial Statements in Certain Cases

In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

- (a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;
- (b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and
- (c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

1.7.10 Corporate Social Responsibility [Section 135]

- (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,—
 - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
 - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in sub-section (1) shall,—
 - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
 - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

Summary at Glance

- Company having
 - Net Worth \geq ₹500 Crores, or
 - Turnover \geq ₹1,000 Crores, or
 - Net Profit \geq ₹5 Crores
- Constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting at least 3 directors, out of which at least one director shall be an independent director;
- CSR Committee shall make CSR policy which shall indicate the activities to be undertaken, recommend the amount of expenditure to be incurred and monitor the CSR policy;
- The Board shall approved CSR policy and disclose contents of such policy in its report;
- Company should spend atleast 2% of average net profit of the company made during the three immediately preceding financial years as per the policy;
- If fails to spend such amount, the board shall, in its report specify the reason for not spending the amount.

General Circular No. 21/2014

Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR')) are as under:-

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- (iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
- (vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.
- (viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Annexure Referred to at para (i) of General Circular No. 21/2014 dated 18.06.2014

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	<p>Promotion of Road Safety through CSR:</p> <p>(i) (a) Promotion of Education, "Education the masses and Promotion of Road Safety awareness in all facets of road usage.</p> <p>(b) Drivers' training,</p> <p>(c) Training to enforcement personnel,</p> <p>(d) Safety traffic engineering and awareness through print, audio and visual media" should be included.</p> <p>(ii) Social Business projects: "giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<p>(a) Schedule VII (ii) under "Promoting education".</p> <p>(b) For drivers training etc. Schedule VII (ii) under "vocational skills".</p> <p>(c) It is establishment functions of government (cannot be covered).</p> <p>(d) Schedule VII (ii) under "promoting education".</p> <p>(ii) Schedule VII (i) under 'promoting health care including preventive health care'.</p>
2.	Provisions for aids and appliances to the differently- able persons - 'Request for inclusion	Schedule VII (i) under 'promoting health care including preventive health care.'
3.	<p>The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:</p> <p>(a) Capacity building for farmers covering best sustainable farm management practices.</p> <p>(b) Training Agriculture Labour on skill development.</p> <p>(c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices. (Applied research) with a focus on water management.</p> <p>(d) To do Product Life Cycle analysis from the soil conservation point of view.</p>	<p>Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development".</p> <p>(a) "Vocational skill" livelihood enhancement projects.</p> <p>(b) "Vocational skill"</p> <p>(c) 'Ecological balance; 'maintaining quality of soil, air and water'</p> <p>(d) "Conservation of natural resource" and 'maintaining quality of soil, air and water;</p>

4.	<p>To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).</p> <p>(i) Providing effective consumer grievance redressal mechanism.</p> <p>(ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution.</p> <p>(iii) Consumer protection activities.</p> <p>(iv) Consumer Rights to be mandated.</p> <p>(v) all consumer protection programs and activities" on the same lines as Rural Development, Education etc.</p>	<p>Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".</p>
5.	<p>(a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility.</p> <p>(b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.</p>	<p>Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".</p>
6.	<p>Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and technology.</p>	<p>Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.</p>
7.	<p>Disaster Relief</p>	<p>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,</p> <p>(i) Medical aid can be covered under 'promoting health care including preventive health care.'</p> <p>(ii) food supply can be covered under eradicating hunger, poverty and malnutrition.</p> <p>(iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.</p>

8.	Trauma care around highways in case of road accidents.	Under 'health care'.
9.	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10.	Supplementing of Govt. schemes like mid-day meal by corporate through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.
16.	Renewable energy projects	Under 'Environmental sustainability, ecological balance and conservation of natural resources',
17.	(i) are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2 (c) (ii) of the Final Rules, they will count)?	(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	No.

1.7.11 Other aspects of Corporate Social Responsibility

Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act.

Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to -

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

1.7.12 Computation of Net Profit

“Net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely :-

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act.

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of subsection (1) of section 381 read with section 198 of the Act.

1.7.13 CSR Activities

- (1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.
- (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.

Provided that—

- (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
 - (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.
- (3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.
- (4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs' or activities undertaken in India only shall amount to CSR Expenditure.
- (5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act. 892 GI/w-v.
- (6) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overheads shall not exceed five percent, of total CSR expenditure of the company in one financial year.

- (7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

1.7.14 CSR Committees

- (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under:-
- (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;
 - (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;
 - (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.
- (2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

1.7.15 CSR Policy

- (1) The CSR Policy of the company shall, inter-alia, include the following, namely :-
- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
 - (b) monitoring process of such projects or programs.
- Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.
- Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.
- (2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

1.7.16 CSR Expenditure

CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

1.7.17 Right of Member to Copies of Audited Financial Statement [Section 136]

- (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the

company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements.

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

Provided also that every company having a subsidiary or subsidiaries shall,—

- (a) place separate audited accounts in respect of each of its subsidiary on its website, if any;
 - (b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.
- (2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.
- (3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

In case of Section 8 Companies in sub section (1) of section 136, for the words “twenty one days”, the words “fourteen days” shall be substituted

1.7.18 Copy of Financial Statement to be Filed with Registrar [Section 137]

- (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

- (2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general

meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

- (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Summary at a Glance

- A copy of the financial statement, including consolidated financial statement shall be file with the Registrar within 30 days of the date of annual general meeting with such fees or additional fees as may be prescribed;
- One Person Company shall file a copy of the financial statements duly adopted by its member within one hundred eighty days from the closure of the financial year;
- Where the annual general meeting of a company for any year has not been held, the financial statements duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held with such fees or additional fees as may be prescribed;
- If a company fails to file the copy of the financial statements before the expiry of the period specified in section 403, the company shall be punishable with fine of ₹100 per day during which the failure continues but which shall not be more than ₹10 lakhs and the managing director and the Chief Financial Officer of the company or any other director as may be prescribed shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ₹1 lakhs but which may extend to ₹5 lakhs, or with both.

1.7.19 Internal Audit [Section 138]

- (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
- (2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

1.7.20 Companies required to appoint internal Auditor

- (1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-
- (a) every listed company;
 - (b) every unlisted public company having-
 - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one

hundred crore rupees or more at any point of time during the preceding financial year;
or

- (iii) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

- (i) turnover of two hundred crore rupees or more during the preceding financial year; or
(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

Explanation.- For the purposes of this rule –

- (i) the internal auditor may or may not be an employee of the company;
(ii) the term “Chartered Accountant” shall mean a Chartered Accountant whether engaged in practice or not.

- (2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

1.8 AUDIT AND AUDITORS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
ADT-1 P	Notice of appointment of auditor by the company	—	4(2)	—
ADT-2 P	Application for removal of auditor(s) from his/ their office before expiry of term	—	7(1)	—
ADT-3 P	Notice of Resignation by the Auditor	—	8	—
ADT-4 P	Report to the Central Government	—	13(4)	—

1.8.1 Appointment of Auditors [Section 139]

- (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed.

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.— For the purposes of this Chapter, “appointment” includes re-appointment.

- (2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
- (a) an individual as auditor for more than one term of five consecutive years; and
 - (b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act.

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

- (3) Subject to the provisions of this Act, members of a company may resolve to provide that—
- (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
 - (b) the audit shall be conducted by more than one auditor.
- (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

Explanation.— For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

- (5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.
- (6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

- (7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.
- (8) Any casual vacancy in the office of an auditor shall—
- (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;
 - (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days.
- Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.
- (9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—
- (a) he is not disqualified for re-appointment;
 - (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
 - (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
- (10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.
- (11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Summary at Glance

First Auditor

- First auditor of the company, other than a Government company, shall be appointed by the BOD within 30 days from the date of registration of the company;
- If BOD fails to appoint, by the member of the company within 90 days at an extraordinary general meeting appoint the first auditor;
- In case of Government company, first auditor shall be appointed by CAG within 60 days from the date of registration;
- If CAG fails to appoint, by the BOD of the company within next 30 days;
- If again BOD fails to appoint the first auditor of the company, by the member of the company within 60 days at an extraordinary general meeting;
- Tenure of the first auditor of the company in both the above cases till the conclusion of the first annual general meeting;

Subsequent Auditor

- At the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting;
- Before such appointment, the written consent of the auditor to such appointment and a certificate from him shall be in accordance with the condition as may be prescribed;
- Within 15 days of the meeting the company shall file a notice of such appointment with the registrar;
- No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
 - (a) an individual as auditor for more than one term of five consecutive years; and
 - (b) an audit firm as auditor for more than two terms of five consecutive years;

Cooling Period

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.
- At the time of rotation of auditors, incoming audit firms/ auditor having common partner/s with the erstwhile audit firm shall not be eligible for appointment;
- Firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008;
- In the case of Government company, CAG in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of the company within a period of 180 days from the commencement of the financial year who shall hold the office till the conclusion of the AGM;

Re-appointment

- A retiring auditor may be re-appointed at an annual general meeting, if—
 - (a) he is not disqualified for re-appointment;
 - (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
 - (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed;
- Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company;
- Where provision of section 177 is applied, all appointments, including the filling of a casual vacancy of an auditor shall be made after taking into account the recommendations of such committee.

General Circular No. 33/2014

Clarification with Regard to Applicability of Provisions of Section 139(5) and 139(7) of the Companies Act, 2013

1. it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act.
2. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.

1.8.2 Class of Companies

For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- (b) all private limited companies having paid up share capital of rupees twenty crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

1.8.3 Manner of Rotation of Auditors by the Companies on Expiry of their Term

- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.
- (3) For the purpose of the rotation of auditors-
 - (i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
 - (ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

Explanation. I - For the purposes of these rules the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Explanation. II - For the purpose of rotation of auditors,-

- (a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;
- (b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Illustration Explaining Rotation in Case of Individual Auditor**Illustration 1.**

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Note:

1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
2. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Illustration Explaining Rotation in Case of Audit Firm**Illustration 2.**

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Note:

1. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
2. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.

- (4) Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

1.8.4 Removal, Resignation of Auditor and giving of Special Notice [Section 140]

- (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

- (2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

- (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

- (4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation 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 representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

- (5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly

or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word “auditor” includes a firm of auditors.

Summary at Glance

Removal

- By a special resolution of the company and after obtaining the previous approval of the central Government, the auditor appointed under section 139 may be remove from his office before the expiry of his term;

Resignation

- The auditor shall file within 30 days from the date of resignation, a statement in prescribed form with the company and the registrar;
- In case of Government company, the auditor shall send such statement with the CAG, indicating the reason and other facts with regards to his resignation;
- If fails to comply with sub-section (2), punishable with fine not less than ₹50,000 but may extend to ₹5,00,000;

Special notice

- Special notice for resolution at an annual general meeting for appointment of auditor other than a retiring auditor;
- On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor;
- Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
 - (a) in any notice of the resolution given to members of the company, state the fact of the representation 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 representation by the company,
- If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may require that the representation shall be read out at the meeting.

1.8.5 Eligibility, Qualifications and Disqualifications of Auditors [Section 141]

- (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

- (2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

- (3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

- (4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

1.8.6 Remuneration of Auditors [Section 142]

- (1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.

Provided that the Board may fix remuneration of the first auditor appointed by it.

- (2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

1.8.7 Powers and Duties of Auditors and Auditing Standards [Section 143]

- (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—
- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
 - (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
 - (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
 - (d) whether loans and advances made by the company have been shown as deposits;
 - (e) whether personal expenses have been charged to revenue account;
 - (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

- (2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.
- (3) The auditor's report shall also state—
- (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
 - (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
 - (c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

- (d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
 - (e) whether, in his opinion, the financial statements comply with the accounting standards;
 - (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
 - (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
 - (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
 - (i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
 - (j) such other matters as may be prescribed.
- (4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.
- (5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.
- (6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—
- (a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and
 - (b) comment upon or supplement such audit report.
- Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
- (7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.
- (8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the

company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed.

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

- (9) Every auditor shall comply with the auditing standards.
- (10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

- (11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.
- (12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed.

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

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

- (13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.
- (14) The provisions of this section shall mutatis mutandis apply to—
- (a) the cost accountant in practice conducting cost audit under section 148; or
 - (b) the company secretary in practice conducting secretarial audit under section 204.
- (15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

1.8.8 Other Matters to be included in Auditor's Report

The auditor's report shall also include their views and comments on the following matters, namely:-

- (a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- (b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

1.8.9 Duties and Powers of the Company's Auditor with reference to the Audit of the Branch and the Branch Auditor

- (1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.
- (2) The branch auditor shall submit his report to the company's auditor.
- (3) The provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

1.8.10 Reporting of Frauds by Auditor

- (1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below.
 - (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;
 - (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days of receipt of such reply or observations;
 - (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.
- (2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.
- (3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (4) The report shall be in the form of a statement as specified in Form ADT-4.
- (5) The provision of this rule shall also, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

1.8.11 Auditor not to render Certain Services [Section 144]

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case maybe, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;

- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed.

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—

- (i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;
- (ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

1.8.12 Auditor to Sign Audit Reports, etc. [Section 145]

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

1.8.13 Auditors to attend General Meeting [Section 146]

All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

1.8.14 Punishment for Contravention [Section 147]

- (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.
- (2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

- (3) Where an auditor has been convicted under sub-section (2), he shall be liable to—
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

- (4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.
- (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

1.8.15 Central Government to Specify Audit of Items of Cost in respect of Certain Companies [Section 148]

- (1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies.

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

- (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- (3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records.

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.— For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

- (4) An audit conducted under this section shall be in addition to the audit conducted under section 143.
- (5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

- (6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

- (7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.
- (8) If any default is made in complying with the provisions of this section,—
- the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;
 - the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

1.8.16 Remuneration of the Cost Auditor

For the purpose of sub-section (3) of section 148,—

- in the case of companies which are required to constitute an audit committee—
 - the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
 - the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;
- in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

1.9 APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DIR-1	P	Application for inclusion of name in the databank of Independent directors	150	6(4)	1.131
DIR-2	P	Consent to act as a director of company	152(5)	8	1.134
DIR-3	e	Application for Allotment of Director Identification Number	153	Rule 10 of Limited Liability Partnership, Rules, 2009	1.135
DIR-4	P	Verification of Applicant for Application for DIN	153	9(3)(a)(iv)	1.135
DIR-5	P	Application for Surrender of Director Identification Number	153	11(f)	1.135
DIR-6	e	Intimation of change in particulars of Director to be given to the Central Government	—	12(1)	

DIR-7	P	Verification of Applicant for change in DIN particulars	—	12(1)(i)	—
DIR-8	P	Intimation by Director	164(2)	14(1)	1.140
DIR-9	P	Report by company to Registrar	164(2)	14(2)	1.140
DIR-10	P	Form of Application for removal of disqualification of directors	164(2)	14(5)	1.140
DIR-11	e	Notice of resignation of a director to the Registrar	168(1)	16	1.142
DIR-12	e	Particulars of appointment of directors and the key managerial personnel and the changes among them	7(1) (c), 168, 170(2)	17	1.23, 1.142, 1.143

1.9.1 Company to have Board of Directors [Section 149]

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
 - (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
 - (b) a maximum of fifteen directors.

Provided that a company may appoint more than fifteen directors after passing a special resolution.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
- (3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.
- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.— For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).
- (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
 - (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
 - (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
 - (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - (e) who, neither himself nor any of his relatives—
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
 - (f) who possesses such other qualifications as may be prescribed.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation.— For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

- (8) The company and independent directors shall abide by the provisions specified in Schedule IV.
- (9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.— For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

- (i) an independent director;
- (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Summary at Glance

(1) Minimum no. of Directors

Public Company	: 3 directors
Private Company	: 2 directors
One Person Company	: 1 director

(2) Maximum no. of Directors : 15 directors

A company may appoint more than 15 directors after passing a special resolution.

(3) Such class or classes of companies as may be prescribed, shall have at least 1 woman director.

Every company existing on or before the date of commencement of this Act shall within 1 year from the date of commencement of the Act has been provided to comply with the provision of sub-Section(1).

(4) Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

(5) Independent Director

- (i) In every listed company = $\frac{1}{3}$ of the total number of directors;
- (ii) An independent director means a director other than a managing director or a whole-time director or a nominee director;
- (iii) At the first meeting of the board or first meeting of the board of any financial year, give a declaration that he meets the criteria of independence;
- (iv) An independent director shall not be entitled to any stock option, remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members;
- (v) An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company;
- (vi) No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director;
- (vii) Provision relating to retirement of directors by rotation shall not be applicable to appointment of independent directors.

General Circular No. 25/2014

Clarification on Applicability of Requirement for Resident Director

- (i) It is clarified that the residency requirement¹ would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014. The first ,previous calendar year, for compliance with these provisions would, therefore, be Calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31st December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar year 2014, shall exceed 136 days.
- (ii) Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

1.9.2 Woman Director on the Board

The following class of companies shall appoint at least one woman director-

- (i) every listed company;
- (ii) every other public company having -
 - (a) paid-up share capital of one hundred crore rupees or more; or
 - (b) turnover of three hundred crore rupees or more.

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

1.9.3 Number of Independent Directors

The following class or classes of companies shall have at least two directors as independent directors -

- (i) the Public Companies having paid up share capital often crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

Explanation.— For the purposes of this rule, it is hereby clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

1.9.4 Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors [Section 150]

- (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors.

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

- (2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
- (3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.
- (4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under section 149.

General Circular No. 14/2014

Matters relating to appointment and qualifications of directors and Independent Directors - reg.

Clarifications on the following points are hereby given:-

(i) Section 149(6)(c): "Pecuniary Interest in Certain transactions" :

- (a) This provision inter alia requires that an Independent Director (ID) should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary/ associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter has been examined and it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases.

- (b) Whether receipt of remuneration, (in accordance with the provisions of the Act) by an ID' from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

The matter has been examined in consultation with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.

(ii) Section 149: Appointment of “IPs” :

Clarification has been sought if IDs' appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the new Act.

The matter has been examined in the light of the relevant provisions of the Act, particularly section 149(5) and 149(10) & (11). Explanation to section 149(11) clearly provides that any tenure of an ID' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act. In view of the transitional period of one year provided under section 149(5), it is hereby clarified that it would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.

(iii) Section 149(10)&(11) - Appointment of IDs' for less than 5 years:

Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years.

It is clarified that section 149(10) of the Act provides for a term of “upto five consecutive years” for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

(iv) Appointment of 'IDs' through letter of appointment:

With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'?

The matter has been examined. In view of the specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

1.9.5 Appointment of Director Elected by Small Shareholders [Section 151]

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Explanation.— For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

1.9.6 Small Shareholders' Director

- (1) A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholder's director elected by the small shareholders.

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo - motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

- (2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures verifying the name, address, shares held and folio



number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

- (3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating —
 - (a) his Director Identification Number;
 - (b) that he is not disqualified to become a director under the Act; and
 - (c) his consent to act as a director of the company
- (4) Such director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
- (5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that—
 - (a) such director shall not be liable to retire by rotation;
 - (b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
 - (c) on the expiry of the tenure, such director shall not be eligible for re-appointment.
- (6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.
- (7) A person appointed as small shareholders' director shall vacate the office if—
 - (a) the director incurs any of the disqualifications specified in section 164;
 - (b) the office of the director becomes vacant in pursuance of section 167;
 - (c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
- (8) No person shall hold the position of small shareholders' director in more than two companies at the same time.

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

- (9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

1.9.7 Appointment of Directors [Section 152]

- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

- (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.
- (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed.

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

- (6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—
 - (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
 - (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
- (b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.
- (c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.
- (d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
- (e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.— For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

- (7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—
 - (i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
 - (ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
 - (iii) he is not qualified or is disqualified for appointment;
 - (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or