REFERENCER
ON
COMPANY LAW

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REFERENCER ON COMPANY LAW

C O N T E N T S

PART B – NATIONAL COMPANY LAW TRIBUNAL

PART C – COMPILATION OF OTHER RECENT CHANGES AND AMENDMENTS IN COMPANY LAW

PART D – SEBI UPDATES

REFERENCER ON COMPANY LAW

PART A

PRODUCER COMPANIES

Introduction

The Companies (Amendment) Act, 2002 has inserted Part IX A to the Companies Act, 1956 and introduced the concept of Producer Companies.

The newly inserted provision not only provides an opportunity to the co-operative sector to corporatise itself but also opens up new avenues for them. The conversion to producer companies will enable them to invite greater investments and modernize themselves. They can take advantage of the provisions to reinvent themselves, and function more efficiently. Accordingly, it is specified that a 'producer' shall mean any person engaged in any activity connected with or relatable to any primary produce. The amendment also seeks to provide a comprehensive meaning to primary produce which shall encompass produce of farmers, arising from agriculture (including animal husbandry, horticulture, etc.) produce of persons engaged in handloom, handicraft, any product resulting from any of the above activities or from an ancillary activity and any activity which is intended to increase the production or quality of anything referred above.

The Amendment Act includes the insertion of the provisions which enables the conversion of an existing co-operative society into a company as also the incorporation of a Producer Company. This part contains specific provisions relating to incorporation, management, meetings, share capital etc. of Producer Companies.

Objects of Producer Company

The objectives for which Producer Companies may be formed are laid down in Section 581B. These include *inter alia*, production, marketing, export/import of primary produce of members, processing, packaging of produce of its members; manufacture, sale of machinery etc. mainly to its members, generation and distribution of power, insurance of producers/primary produce, rendering technical/ consultancy services, promoting mutual assistance, welfare measures and any other activity for the benefit of members.

Formation of Producer Company and its Registration

Section 581C of the Act provides that, any ten or more individuals, each of them being a producer or two or more Producer institutions or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company may form an incorporated company having its objects, specified in Section 581B as Producer Company under this Act after complying with the requirements and the provisions of the Act in respect of registration. 'Producer institution' means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not, having any of the objects referred to in Section 581B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.

The Registrar on being satisfied that all requirements relating to registration and incidental matters have been complied with, shall register the memorandum, articles and other documents and issue a certificate of incorporation within 30 days of the receipt of the documents for registration. On registration, the Producer Company shall be deemed to be a private company limited by shares without any limit on the number of members.

The direct costs incurred by promoters for promotion and registration of the company may be reimbursed by the Producer Company.

Membership and voting rights of members of Producer Company

Section 581D of the Act provides that where the Producer Company consists only of individuals, every member shall have a single vote. In case, where the company consists solely of Producer Institutions, the voting rights of such institutions shall be based on their previous year's participation in the business of the company. However, during the first year of its regulation the voting rights in a Producer Company shall be determined on the basis of shareholding by producer institutions.

Where the membership of Producer Company consists of a combination of individuals and Producer Institutions, every member shall exercise a single vote. The Articles may however, authorize the Producer Company to restrict the voting rights to active members only. Active member for this purpose is a member fulfilling the quantum and period of patronage of Producer Company.

No person, who has any business interest which conflicts with the business of Producer Company, shall become a member of that company and if subsequently a member acquires any business interest which is in conflict with the business of the Producer Company, he shall cease to be a member.

Benefits to Members

Section 581E states that, initially every member shall receive only such value of the produce or products pooled and supplied as is determined by the Board of Producer Company and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares. Every such member shall be entitled to receive a limited return and may be allotted bonus shares. 'Withheld price' for this purpose means part of the price due and payable for goods supplied by any member to the Producer Company, and as withheld by the Producer Company for payment on a subsequent date.

Patronage bonus may be disbursed proportionately, if any, surplus remains after making provision for limited return and reserves. Patronage bonus refers to the payment by Producer Company out of its surplus income to the members in proportion to their respective patronage.

The approval of Board of directors is necessary for disbursing 'withheld price' whereas for disbursing the 'patronage bonus', either in cash or by way of allotment of equity shares or both, has to be decided by the members at the general meeting.

Memorandum of Association, Articles of Association and their amendment

The Memorandum of Association and the Articles of Association of the Producer Company, duly signed by the subscribers are required to be presented to the registrar of the state where the Company's registered office is proposed to be set up.

The memorandum and articles shall contain the disclosures as provided in Section 581F and 581G respectively.

Amendment in the memorandum can be done by way of passing a special resolution as per Section 581H, whereas, the amendment in the articles is required to be proposed by not less than two-third of the elected directors or by not less than one-third of the members and adopted by passing a special resolution in the general meeting under Section 581-I.

A copy of the amended memorandum or articles along with a duly certified copy of special resolution thereof are to be filed with the registrar of companies within thirty days from the date of its adoption at the general meeting.

Option to Inter-State Co-operative Societies to become Producer Companies

An 'Inter-State Co-operative Society' means a Multi-State Co-operative Society as defined in Section 3(p) of Multi-State Co-operative Societies Act, 2002; and includes any co-operative society registered under any other law in force and which has after its formation, extended any of its objects to more than one state.

Section 581J provides that any Inter-State Co-operative Society whose objects are not confined to one state may submit an application together with the prescribed documents to the registrar for registration as Producer Company. The registrar on being satisfied, that all the requirements relating to registration have been complied with, shall within 30 days of receipt of the application issue a certificate of incorporation and the words "Producer Company Limited" shall form a part of its name to show its identity.

The 'Inter-State Co-operative Society' shall, upon registration stand transformed into a Producer Company, and shall be governed by the provisions of Part IX-A of the Companies Act, 1956.

Vesting of undertaking in Producer Company

Section 581L provides that all properties, assets, movable or immovable, and all rights, debts, liabilities, interests, privileges and obligations of the Inter-State Co-operative Society shall vest in the Producer Company with effect from the transformation date.

Similarly all sums of money due to Inter-State Co-operative Society immediately before the transformation date, shall be deemed to be due to the Producer Company. Every organisation managed by the co-operative society shall be henceforth managed by Producer Company.

Every organisation getting financial, managerial or technical assistance from the Inter-State Co-operative Society before the 'transformation date', may continue to get such assistance by the Producer Company.

Any pending suit, arbitration, appeal or other legal proceeding, of whatever nature, by or against, the Inter-State Co-operative Society on transformation date may be continued, prosecuted and enforced by or against the Producer Company.

Concession, etc. to be deemed to have been granted to Producer Company

All fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Inter-State Co-operative Society in connection with its affairs and business under any law for the time being in force shall be deemed to have been granted from transformation date to the Producer Company.

Provisions in respect of Officers and other Employees of Inter-State Co-operative Society

As per Section 581N all directors in the Inter-State Co-operative Society before the incorporation of Producer Company, shall continue to be in office for a period of one year from the date of transformation.

Every other officer or employee of such a society (other than a director, chairman or managing director) shall continue to hold office in the Producer Company for the same tenure, remuneration and terms and conditions as he would have held in the Inter-State Co-operative Society.

Any officer or employee of the society opting not to be in employment of the Producer Company shall be deemed to have resigned.

Officers and employees who have been so transferred from their services shall not be provided any compensation. Similarly no compensation shall be provided to any director, chairman or managing director of the society on account of premature termination of their contract with the society.

Retired officers and employees of the co-operative society shall continue to receive the same benefits, rights or privileges from the Producer Company.

Number of directors

Section 581-O provides that, every Producer Company shall have minimum five and not more than fifteen directors. Provided that for a period of one year after incorporation of Inter-State Co-operative Society as a Producer Company, such company may have more than fifteen directors.

Appointment of Directors

The subscribers of the memorandum and articles may designate therein, the Board of directors (not less than five) who shall govern the affairs of Producer Company until directors are elected in accordance with the provisions of Section 581P(2).

The election of directors shall be conducted within a period of ninety days of registration of Producer Company, provided that, in the case of an Inter-State Co-operative Society, which has been registered as a Producer Company, the period of "Ninety days" shall be substituted by "three hundred and sixty-five days".

A director shall hold office as such for not less than one year but not exceeding five years and every director who retires shall be eligible for re-appointment. The tenure of such directors shall not exceed such period as may be specified in the articles.

Vacation of Office by Directors

The office of director of a Producer Company shall become vacant under the following circumstances provided in Section 581Q of the Act viz.:

(a) if he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereto with imprisonment for not less than six months;

(b) if the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;

(c) if he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;

(d) if the Producer Company, in which he is a director:

   (i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002; or

   (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;

(e) if default is made in holding election for the office of director, in the Producer company in which he is a director, in accordance with the provisions of the Companies Act and articles;

(f) if the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of the Act except due to natural calamity or such other reasons.

The above provisions shall also, apply to the director of a Producer Institution, who is a member of a Producer Company.

Powers and functions of Board

The Board of directors of a Producer Company shall exercise all such powers and do all such acts and things, as a Producer Company is authorized so to do.

Without prejudice to the generality of the foregoing powers, directors may exercise the following powers:

(a) determination of the dividend payable;

(b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting;

(c) admission of new Members;

(d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans;

(e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles;

(f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it;

(g) cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors;

(h) acquisition or disposal of property of the Producer Company in its ordinary course of business;

(i) investment of the funds of the Producer Company in the ordinary course of its business;

(j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative;

(k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.

All the above powers can be exercised only by means of a resolution passed by the board at its meeting on behalf of the Producer Company.

Matters to be transacted at the General Meeting

Section 581S states that the following powers shall be exercised by the Board of directors on behalf of the company only by means of passing of resolutions at the annual general meeting of the company:

(a) approval of budget and adoption of annual accounts;

(b) approval of patronage bonus;

(c) issue of bonus shares;

(d) declaration of limited return and decision on the distribution of patronage;

(e) specify the conditions and limits of loans that may be given by the Board to any director; and

(f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

Liability of Directors

Section 581T, provides that anything done by the directors, whether by way of voting on a resolution or approving by any other means, anything, in contravention of the provisions of this Act or any other law for the time being in force, or the articles, shall make them jointly and severally liable to the Company to make good the loss or damage suffered by the company.

Where as a result of the above, such director has made any profit, the Producer Company shall have the right to recover an amount equal to the profit from the director.

The liability so imposed shall be in addition and not in derogation of a liability imposed under this Act or any other law for the time being in force.

Committee of Directors

The Board may constitute such number of committees as it may deem fit for purpose of assisting the Board in efficient discharge of its functions under Section 581U. However, the Board of directors shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee of directors.

The committee of the Board may, with the approval of the Board, co-opt such number of persons, as it deems fit, as the members of the committee. Provided that the Chief Executive appointed under Section 581W or a director of Producer Committee shall be a member of such committee.

Every such committee shall function under general superintendence, direction and control of the Board. Further the fees and allowances to be paid to the members of the committee and the tenure of the committee shall be such as determined by the Board. The minutes of every Committee meeting shall be placed before the next Board meeting.

Meetings of the Board and Quorum

The Board meeting of a Producer Company shall be held at least once in every three months and at least four such meetings in every year. The Chief Executive shall give notice to every director for the time being in India, and at his usual address in India to every other director at least seven days prior to the date of meeting. However, a Board meeting may also be called at a shorter notice after recording reasons thereof in writing.

The quorum for the meeting shall be one-third of the total strength of directors, subject to a minimum of three.

Unless otherwise provided in the Articles, sitting fees may be provided to the directors attending the meetings as decided by the members.

Chief Executive and his functions

As per Section 581W, the full time Chief Executive appointed by the Board by whatever name called, shall not be a member of the company. He shall be the ex-officio director, and shall not retire by rotation. The qualifications, experience and the terms and conditions shall be such as may be given in the Articles or otherwise determined by the Board. The chief executive, entrusted with substantial powers of management, shall manage the affairs subject to the superintendence, direction and control for the Board and be accountable to the Board for the performance of the company.

The various functions that may be discharged by a chief executive may *inter alia* include managing the day to day affairs of the company, maintaining proper books of accounts, furnishing members with periodic information, assisting the Board with respect to legal and regulatory matters and discharge such other functions as may be delegated by the Board.

Secretary of Producer Company

Section 581X of the Act provides every Producer Company having an average annual turnover exceeding five crore rupees in each of three financial years shall appoint a member of the Institute of Company Secretaries of India as a whole-time Secretary of the company. If a Producer Company fails to appoint Company Secretary, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Quorum of the General Meeting

Section 581Y of the Act provides that unless articles of association require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

Voting Rights

Section 581Z states that except as provided in Section 581D(1) (regarding voting rights of individual members and producer institutions), and 581D(3) (regarding voting rights to active members), every member of the Producer Company shall have one vote. In the case of equality of votes, the Chairman or the person presiding shall have a casting vote, except in the matter of election of the Chairman.

Annual General Meetings

Every Producer Company shall hold its first Annual General Meeting (AGM) within a period of ninety days from the date of its incorporation.

Not more than fifteen months shall elapse between the date of one AGM (not being first AGM) and that of the next AGM. The Registrar may, for any special reason, permit the extension of time for holding an AGM (not being the first AGM) by a period not exceeding three months. Notice in writing indicating date, time and place of the meeting given at least fourteen days before the meeting and accompanied by the following documents shall be sent to every member and auditor of the company:

(a) agenda of the meeting;

(b) minutes of the previous annual general meeting or extraordinary general meeting;

(c) names and qualifications of candidates for election of directors;

(d) audited balance sheet, profit and loss account and Board's report of the company and its subsidiaries, if any;

(e) draft resolution for appointment of auditors;

(f) draft resolution for proposed amendment, if any, in memorandum or articles.

The Annual General Meeting shall be held during business hours, on a day not being a public holiday at the registered office of the company or at any other place within the city, town or village where the registered office of the company is situated.

Unless the articles provide for a larger number, the quorum of the general meeting shall be one-fourth of the total number of members.

Within sixty days from the date of the annual general meeting, the company is required to file the proceedings of the meeting, the audited balance sheet, the profit and loss account and the Director's report along with the filing fees with the Registrar.

On the requisition made in writing and duly signed by not less than one-third of the members, the Board of directors shall call an EGM in accordance with the provisions of Section 169 and Section 186 of this Act.

Where a Producer Company is formed by Producer Institutions such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf, except in case of default under Section 581Q(1).

Share Capital

As per Section 581ZB of the Act, a Producer Company's share capital shall consist of equity shares only and the shares held by members shall be in proportion to the patronage of that company.

Transferability of shares and attendant rights

A member of the Producer Company may, transfer whole or part of his shares along with any special rights, to an active member at par value only after obtaining the previous approval of the Board under Section 581ZD. Special rights for this purpose means any rights relating to supply of additional produce by the active member or any other rights relating to his produce conferred on him by the Board.

Within three months from the date of his becoming a member, such person shall nominate his nominee, to whom the shares shall vest in the event of his death.

Books of account

Every producer company shall keep at its registered office proper books of account with respect to matters specified under Section 581ZE of the Act. The balance sheet and profit and loss account of the Producer Company shall be prepared in accordance with Section 211.

Internal Audit

As per Section 581ZF of the Act, every Producer Company shall have internal audit of its accounts as may be specified in its articles, by a chartered accountant.

Donations or subscription by Producer Company

Section 581ZH provides that a Producer Company may, by passing a special resolution make donation for promoting social and economic welfare and mutual assistance principles in a financial year to the extent of three percent of the net profit of the company in the preceding financial year. However, a Producer Company is strictly prohibited from making donation for political purposes.

General and other reserves

In addition to other reserves, the Producer Company shall maintain general reserve in every financial year as stipulated by Section 581ZI.

Loan, etc., to Members

The Board may, subject to provisions made in the articles, provide financial assistance to the members. However, any loan or advance to any director or his relative shall be granted only after the approval of members by a resolution.

Investment in other companies, formation of subsidiaries etc.

The Producer Company may invest its general reserves in approved securities, fixed deposit, units, bonds issued by the government or a cooperative or scheduled bank or in such other mode as may be prescribed. It may, for promotion of its objectives also acquire shares of another Producer Companies. However, special resolution is required to be passed for acquisition of shares of any other Producer Company or entering into agreement for the formation of subsidiaries or joint venture.

Investment in shares of any other company other than Producer Company cannot exceed thirty per cent of the aggregate of its paid-up capital and free reserves, except where a special resolution has been passed and the prior approval of the Central Government has been obtained. For disposal of any investments, special resolution shall be passed. A register containing prescribed particulars of all investment shall be kept in the registered office and shall be open to members for inspection and taking extracts therefrom.

Amalgamation, merger or division, etc., to form new Producer Companies

Section 581ZN provides a comprehensive scheme of amalgamation, merger or division etc. of Producer Company.

A Producer Company may, by a resolution passed at its general meeting:

(a) transfer its assets and liabilities, wholly or partly, to any other Producer Company, for any of the objectives specified in Section 581B; if other Producer Company so agrees by passing a resolution at its general meeting;

(b) divide itself into two or more Producer Companies;

Also, two or more Producer Companies may, by a resolution passed at general or special meetings of its members, decide to:

(a) amalgamate and form a new Producer Company; or

(b) merge one Producer Company with another Producer Company.

The resolutions referred to above shall be passed by not less than two-thirds of its members present. However, prior to such resolution a copy of proposed resolution shall be forwarded to all the members and creditors for their consent.

Disputes

As per Section 581ZO, any dispute relating to the formation, management or business of a Producer Company shall be settled by conciliation or by arbitration.

Strike off name of Producer Company

Section 581ZP states that the Registrar can after making an inquiry strike off the name of a company where the company:

(i) has failed to commence its business within one year of its registration;

(ii) ceases to transact business;

(iii) is no longer carrying on its objectives;

(iv) is not following the mutual assistance principles.

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

Re-conversion of producer company to Inter-State Co-operative Society

Any Producer Company may make an application, after a resolution has been passed in the general meeting by not less than two-third of its members present and voting or on request by its creditors representing three-fourth of its value of creditors, to the High Court for its re-conversion to Inter-State Co-operative Society, and follow the procedure as laid down in Section 581ZS of the Act.

Producer Companies (General Reserves) Rules, 2003

DCA has introduced Producer Companies (General Reserves) Rules, 2003 vide *Notification no. GSR 641(E) dated 7.8.03*, which includes *inter alia*, the manner of investing from and out of the general reserves of a Producer Company.

The rules read as under:

1. Short title and commencement—(1) These rules may be called the Producer Companies (General Reserves) Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Applicability–– These rules shall apply to a company formed and registered under Section 581C of the Companies Act, 1956.

3. Definition –– "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

4. Investment of general reserves—A producer company formed and registered under Section 581C of the Companies Act, 1956, shall make investments from and out of its general reserves in the following manner, namely :-

(a) in approved securities, fixed deposits, units and bonds issued by the Central or State Governments or co-operative societies or scheduled bank;

(b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or

(c) with any other scheduled bank;

(d) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882; or

(e) in the shares or securities of any other multi-State Co-operative society or any co-operative society; or

(f) in the shares, securities or assets of public financial institutions specified under Section 4A of the Companies Act, 1956.

PART B

NATIONAL COMPANY LAW TRIBUNAL

Introduction

Companies (Second Amendment) Act, 2002 was notified on 14th January, 2003. However, only the provisions of Sections 2 and 6 of the Companies (Second Amendment) Act, 2002 have come into force with effect from 1st April, 2003.

Section 6 of the said Act provides for the constitution of a National Company Law Tribunal (NCLT) and a National Company Law Appellate Tribunal, wherein appeals to the orders of NCLT shall lie in the prescribed manner.

The Central Government has been empowered to constitute the National Company Law Tribunal which shall exercise and discharge such powers and functions conferred on it by or under the Act or any other law for the time being in force.

The NCLT shall have powers and jurisdiction of the Board for Industrial and Financial Reconstruction (BIFR), the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), Company Law Board, High Courts relating to compromises, arrangements, mergers, amalgamations and reconstruction of companies, winding up etc. Thus, multiplicity of litigation before various courts or quasi-judicial bodies or forums are sought be avoided and the same shall be decided by the Tribunal. The powers of the NCLT shall be exercised by the Benches constituted by its President.

The Central Government by notification in the Official Gazette shall also set up a National Company Law Appellate Tribunal wherein the appeals against the orders passed by the NCLT, shall lie. Further, appeal against the orders passed by the National Company Law Appellate Tribunal shall lie to the Supreme Court.

Summing up, the constitution of NCLT aims at expediting the disputes relating to companies since it assumes the powers of a High Court. However, the date of implementation of the scheme of NCLT is yet to be announced.

Dissolution of the Company Law Board (Section 10FA)

On and from the commencement of the relevant sections of the Companies (Second Amendment) Act, 2002, the Board of Company Law Administration (CLB) constituted under Section 10E of Companies Act, 1956 shall stand dissolved and persons appointed as Chairman, Vice Chairman, members, officers and employees holding office as such, on its dissolution shall, vacate their respective offices. Provided that every officer or employee appointed on deputation basis to that Board shall on such dissolution stand reverted to his parent cadre, ministry or department as the case may be.

Every officer or other employee of the Company Law Board employed on a regular basis, on and from the dissolution of Company Law Board, shall be the officer and employee respectively of the Central Government with the same rights and privileges as would be admissible to him in relation to the Board, unless his employment is duly terminated or terms of his employment are duly altered.

Also, all matters or proceedings pending before CLB shall be transferred to NCLT.

It may be noted that notification to dissolve the CLB under Section 10FA has not yet been issued by the Central Government and till such notification is issued the Company Law Board shall continue to discharge its duties and exercise its powers under Companies Act, 1956.

Constitution of National Company Law Tribunal

Section 10FB of the Companies Act, 1956 (the Act) provides that the Central Government shall constitute a National Company Law Tribunal **(the Tribunal)** to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force by issuing a notification in the Official Gazette.

Composition of Tribunal

The Tribunal as stated in Section 10FC of the Act shall comprise of President of the Tribunal; Judicial Members, and Technical Members.

The maximum number of members of the Tribunal shall not exceed sixty-two. The actual number of members will be decided by the Central Government, and the appointment shall be done by the Government, by notification in the Official Gazette.

Qualifications for appointment of President and Members

1. A person who has been or is qualified to be appointed as a Judge of High Court, shall be appointed as the President of the Tribunal.
2. A person shall not be qualified for appointment as a Judicial Member unless he:
   (a) has held a judicial office in India for at least fifteen years; or
   (b) has for at least ten years been an advocate of High Court or has partly held judicial office and been in practice as advocate for a total period of fifteen years; or
   (c) has held the post of Group ‘A’ atleast for fifteen years or equivalent post under Central Government or State Government [including at least 3 years service as a member of Indian Company Law Service (Legal branch) in Senior Administrative Grade]; or
   (d) has held for atleast 15 years a Group ‘A’ Post or equivalent post under the Central Government (including at least three years of service as a member of the Indian Legal Services in Grade 1 of that service).
3. A person shall not be appointed as a Technical member unless:
   (a) he has held for at least fifteen years a Group ‘A’ post or equivalent post under Central Government or State Government [including at least three years of service as a member Indian Company Law Service (Accounts Branch) in Senior Administrative Grade in that service]; or
   (b) is, or has been a Joint Secretary to the Government of India under Central Staffing Scheme or held a Post under Central Government or State Government carrying scale of pay not less than that of a Joint Secretary for at least five years and has knowledge and experience in dealing with problems relating to Company Law; or
   (c) is or has been in practice for atleast fifteen years as a Chartered Accountant or a Cost Accountant; or

(d) is or has been, for atleast fifteen years working experience as a Secretary in whole-time practice and is a member of ICSI under Company Secretaries Act, 1980;

(e) is a person of ability, integrity and standing having special knowledge of and professional experience of at least twenty years in science, technology, economics, banking, industry, law, matters relating to industrial finance, industrial management, industrial reconstruction, administration, investment accountancy or marketing etc. which in the opinion of the Central Government would be useful to the Tribunal; or

(f) is or has been a Presiding Officer of a Labour Court, Tribunal or National Tribunal under Industrial Disputes Act, 1947; or

(g) is a person having special knowledge of and experience of not less than fifteen years in matters relating to labour. (Section 10FD).

Term of office of President and Members

The President and every other Member of the Tribunal shall be appointed for a term of three years and be eligible for re-appointment. The President or any other Member shall not hold office after he has attained the age of sixty-seven and sixty-five years respectively.

However, the President or other Member may retain his lien with his present Cadre/Ministry/Department as the case may be, while holding office as such. (Section 10FE).

Financial and administrative powers of Member Administration

Section 10FF lays down that the Central Government shall designate any Judicial Member or Technical Member as Member Administration to exercise such financial and administrative powers as may be vested in him as per rules made by the Central Government. However, the Member Administration may delegate his financial and administrative powers to any other officer of the Tribunal subject to the condition that such officer exercises such powers under the direction, superintendence and control of Member Administration.

Salary, allowances and other terms and conditions of service of President and other Members

The salary, allowances and other terms and conditions of service of the President and other Members of the Tribunal shall be such as may be prescribed and neither the salary and allowances nor other terms and conditions of service of the President and Members shall be varied to their disadvantage after their appointment. (Section 10FG).

Vacancy in Tribunal

Any vacancy caused due to death, resignation or otherwise in the office of the President of the Tribunal, shall be filled by the senior-most Member till a new President is appointed and enters upon his office.

When the President is unable to discharge his functions due to absence, illness or any other cause, the senior-most Member or, such one of the Members of the Tribunal, as the Central Government may authorise, shall discharge the functions of President till the date the President resumes his duties. Any vacancy other than temporary absence in the office of President or a Member, shall be filled by a person appointed by the Central Government in this regard. (Section 10FH).

Resignation of President or Member

Section 10FI provides that the President or a Member may by notice in writing to the Central Government, resign his office but shall, unless otherwise permitted by Central Government continue to hold office till the expiry of three months from the date of receipt of such notice, or till his successor assumes office, or until expiry of term of office, whichever is earlier.

Removal and suspension of President or Member

The Central Government may, for reasons specified under Section 10FJ of the Act and in consultation with the Chief Justice of India, remove the President or any Member of the Tribunal.

In other words, adjudication as an insolvent, conviction of offence involving moral turpitude, physical or mental incapability, acquiring of financial or other interests affecting his functions prejudicially, abuse of position, form the grounds of such removal.

However, such President or a Member shall not be removed from his office on any of the grounds specified above without giving him a reasonable opportunity of being heard.

The President or a Member can be removed or suspended from his office only on an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry in the prescribed manner has been conducted by the Judge of the Supreme Court and an opportunity has been given to the President or Member of being heard.

Officers and employees of Tribunal

The officers and other employees provided to the Tribunal by the Central Government shall discharge their functions under the general superintendence of the Member Administration. The salaries and allowances and other terms and conditions of the officers and employees shall be such as may be prescribed. (Section 10FK).

Benches of Tribunal

As per Section 10FL, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal consisting of one Judicial Member and a Technical Member. A single Member may also be authorised in this behalf to function as a single Member Bench and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President of the Tribunal may, by general or special order, specify.

If it appears to the Member of the Tribunal, at any stage of hearing of any case or matter, that it ought to be heard by a Bench of two Members, it may be referred to the President who may direct such case to be transferred to such Bench as he may deem fit.

The President shall, constitute one or more Special Benches for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies. The Special Benches shall consist of three or more Members, each of them being a Judicial Member, a Technical Member, and a member having special knowledge of

Labour Law matters. However, in pursuance of the winding up order passed by the Special Bench, proceedings in the matter may be conducted by a single Member bench.

If the Members of a Bench differ in opinion on any point or points, it shall be decided by majority. But, if the Members are equally divided, the case shall be heard by one or more other Members of the Tribunal referred by the President for hearing and decided by opinion of majority including those who first heard it.

The Central Government may notify the number of Benches to be constituted, and there shall be formed a Principal Bench at New Delhi, presided over by the President of the Tribunal. The Principal Bench shall have the power to transfer proceedings from any Bench to other Bench in the event of inability of any Bench from hearing proceedings for any reason. The transfer shall be made only after recording the reasons for doing so in writing.

Order of Tribunal

Section 10FM stipulates that the Tribunal may pass such orders as it may deem fit, after giving the parties to any proceeding before it, an opportunity of being heard.

The Tribunal may, within two years of date of order, rectify any mistake brought to its notice by the parties, apparent from the record, by amending the order and a copy of every such order passed by the Tribunal shall be sent to all parties concerned.

Power to review

Section10FN provides that the Tribunal shall have the powers to review its own orders.

Delegation of Powers

Section 10FO provides that the Tribunal may, by general or special order, delegate, subject to such conditions and limitations, as may be specified, such powers and duties as it considers necessary, to any Member or its officer or employee of the Tribunal or an authorized person to manage any industrial company or any industrial undertaking or any operating agency.

Power to seek assistance of Chief Metropolitan Magistrate and District Magistrate

Section 10FP of the Act provides that, the Tribunal or any operating agency on being directed by the Tribunal, may request in writing to the Chief Metropolitan Magistrate or District Magistrate having prescribed jurisdiction to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled. The Chief Metropolitan Magistrate or the District Magistrate as the case may be, on such request being made to him shall take possession of such property, etc.; and cause the same to be entrusted to the Tribunal or the operating agency, as the case may be.

For the above purposes, the Chief Metropolitan Magistrate or District Magistrate may take or cause to be taken such steps and use or cause to be use such force as may be considered necessary. The action taken or anything done in pursuance of this section shall not be called in question in any Court or before any authority on any ground whatsoever.

APPELLATE TRIBUNAL

Constitution of Appellate Tribunal

The Central Government shall, by notification in Official Gazette, constitute a "National Company Law Appellate Tribunal" (Appellate Tribunal) for hearing appeals against orders of the Tribunal consisting of a Chairperson and not more than two members.

The Chairperson of the Appellate Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court. A Member of the Appellate Tribunal shall be a person of ability, integrity and having special knowledge of, and professional experience of not less than twenty-five years in science and technology, economics, banking, industry, laws, matters relating to labour, finance etc. (Section 10FR).

Appeal against order of Tribunal

Section 10FQ suggests that any person aggrieved by an order or decision of the Tribunal may file an appeal to the Appellate Tribunal in the prescribed form along with requisite fees within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by him. The Appellate Tribunal may entertain an appeal after the expiry of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Appellate Tribunal shall give the parties an opportunity of being heard, and pass necessary orders. A copy of every such order shall be sent to the Tribunal and parties to the appeal. The Appellate Tribunal shall do or make an endeavour, to dispose of the appeal expeditiously and finally within six months from the date of the receipt of the appeal.

However, no appeal shall lie to the Appellate Tribunal against an order or decision made by the Tribunal with the consent of parties.

Staff of Appellate Tribunal

Section 10GA states that the Central Government shall provide the Appellate Tribunal with such officers and other employees as it thinks fit, who shall discharge their functions under the general superintendence of Chairperson of the Appellate Tribunal. The salaries, allowances and other conditions of services of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Salary, allowances and other terms and conditions of service of Chairperson and Members of Appellate Tribunal

The salary, allowances and other terms and conditions of service of Chairperson and Members of the Appellate Tribunal shall be such as may be prescribed by Central Government and shall not be varied to their disadvantage after their appointment. (Section 10FW).

Selection Committee

As per Section 10FX the appointment of Chairperson and Members of the Appellate Tribunal and the President and Members of the Tribunal shall be made by the Central Government on the recommendations of Selection Committee consisting of:

(a) Chief Justice of India or his nominee, who shall be the Chairperson

(b) Secretary in the Ministry of Finance and Company Affairs (Member)

(c) Secretary in the Ministry of Labour (Member)

(d) Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department) (Member)

(e) Secretary in the Ministry of Finance and Company Affairs (Department of Company Affairs) (Member)

(f) The Joint Secretary in the Ministry or Department of Central Government dealing with this Act shall be the Convenor of the Selection Committee.

Any appointment of the Chairperson and Members of the Appellate Tribunal and the President and Members of the Tribunal shall not be invalidated merely by reason of any vacancy or any defect in the constitution of Selection Committee.

Term of office of Chairperson and Members

Section 10FT states that the Chairperson or a Member of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office but shall be eligible for re-appointment for another term of three years.

However, no Chairperson or Member shall hold office after attaining the age of seventy or sixty-seven years respectively.

Resignation of Chairperson and Members

Section 10FU provides that the Chairperson or a Member of the Appellate Tribunal may by giving a notice in writing to the Central Government resign his office. However, he shall continue to hold office unless he is permitted by Central Government to relinquish his office earlier, until the expiry of three months from the date of receipt of such notice or until his successor assumes office or until the expiry of his term of office, whichever is the earliest.

Vacancy in Appellate Tribunal, etc.

Section 10FS provides that if any vacancy is caused by death, resignation or otherwise of the Chairperson of Appellate Tribunal, it shall be filled by the senior-most Member of the Appellate Tribunal who shall discharge functions of the Chairperson till a new Chairperson is appointed and enters upon his office.

Where the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member or, such one of the Member of the Appellate Tribunal, as the Central Government may, by notification, authorise, shall discharge the functions of the Chairperson until the Chairperson resumes his duties. A vacancy caused otherwise than by temporary absence in the office of Chairperson or a Member, shall be filled by the Central Government by appointing another person, in this behalf.

Removal and suspension of Chairperson and Members of Appellate Tribunal

Section 10FV states that the Central Government may, in consultation with the Chief Justice of India, remove the Chairperson or any Member of the Appellate Tribunal from his office, for reasons mentioned therein. (The reasons specified are adjacent to those in respect of NCLT.)

The Chairperson or a Member shall be removed from his office only on an order passed by the Central Government on grounds of proved misbehaviour or incapacity after proper inquiry has been conducted by the Judge of the Supreme Court and an opportunity has been given to the Chairperson or Member of being heard.

Procedure and powers of Tribunal and Appellate Tribunal

The Tribunal and Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (50 of 1908), but shall be guided by natural justice principles and be subject to provisions of this Act and rules made by the Central Government. The Tribunal and Appellate Tribunal shall have the powers to regulate their own procedure. For this purpose the Tribunal and the Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of matters specified in Section 10FZA.

Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein.

Power to punish for contempt

Section 10G provides that the Appellate Tribunal shall have the same jurisdiction, powers, and authority in respect of contempt of itself as the High Court has and it may for this purpose, exercise the provisions of Contempt of Courts Act, 1971 (70 of 1971), which shall have effect subject to the modifications that:

(a) the reference therein to the High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the reference to an Advocate-General in Section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

Civil Court not to have jurisdiction

A Civil Court shall have no jurisdiction to entertain any suit or proceedings relating to any matter in respect of which the Tribunal or Appellate Tribunal is empowered to determine by or under the Act or any other law for the time being in force. Further no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred to the Tribunal or Appellate Tribunal by or under any law for the time being in force. (Section 10GB).

Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings

Section 10GC states that any act or proceeding of the Tribunal or Appellate Tribunal shall not be questioned or invalidated merely on the ground of existence of any vacancy or defects in the establishment of the Tribunal or Appellate Tribunal.

Right to legal representation

According to Section 10GD, the applicant or the appellant may either appear in person, or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners or any officer to present his or its case before the Tribunal or Appellate Tribunal as the case may be.

Limitation

As per Section 10GE the provisions of Limitation Act 1963, as far as may be, shall apply to an appeal made to the Appellate Tribunal.

Appeal to Supreme Court

Section 10GF specifies that any person aggrieved by any order or decision of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of the decision or order.

However, the Supreme Court may allow a further period of sixty days for filing the appeal if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

PART C

COMPILATION OF OTHER RECENT CHANGES AND AMENDMENTS IN COMPANY LAW

Introduction

In the present volatile corporate scenario, multifarious developments and changes have taken place in the legal framework. In order to acquaint the students with the important changes therein, and to enable them to update their study materials accordingly, a compilation of the relevant amendments in the past two years in Companies Act, 1956 (the 'Act') and other allied Acts are given hereunder:-

[A] COMPANIES (CENTRAL GOVERNMENT'S) GENERAL RULES AND FORMS, 1956

(i) **Form 22.** The Companies (Central Government's) General Rules and Forms (Second Amendment) Rules, 2001, provides for amendment in Form 22 of the Companies (Central Government's) General Rules and Forms, 1956 by substituting the words, "sale of shares or debentures" for the words "sale of shares" in item 8. [GSR 35(E) dated 24.1.2001]

(ii) The Companies (Central Government's) General Rules and Forms (Third Amendment) Rules, 2001, provides for the insertion of Rule 4BBA after Rule 4BB, vide *Notification no. G.S.R 51(E) dated 31.01.01*. The inserted rule reads as under:

"**4BBA. Change of registered office within a State.—**(1) The company seeking confirmation from the Regional Director for shifting its registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State shall make an application in Form 1AD to the Regional Director alongwith a fee of Rs. 500.

(2) The Regional Director shall pass an order in writing confirming the change after giving necessary opportunity of being heard to the parties within four weeks from the date of receipt of application.

(3) The company shall file a copy of the confirmation order passed by the Regional Director with the concerned Registrar of Companies within two months from the date of the confirmation order and the Registrar shall make necessary changes in the register and transfer the records to the Registrar of Companies under whose jurisdiction the company has shifted its registered office."

(iii) After Form 1AC, the following Form shall be inserted, namely:-

"FORM 1AD

Application for the confirmation by Regional Director for change of registered office of the company within a State from the jurisdiction of one Registrar to the jurisdiction of another Registrar.

(See Rule 4BBA)

Registration Number of Company_________________
Nominal Capital Rs._____________________

1. Name of the Company and Address of its Registered Office:
2. The date of incorporation:
3. Details of Directors:
4. Reasons for change in place of the Registered Office:

5. The date of passing of Special Resolution:
   (Attach a copy duly certified)
6. Whether a copy of the Special Resolution has been filed with the Registrar in Form No. 23:
7. Date of filing the above Form with Registrar of Companies:
8. The number of members of the company at the time the decision for shifting was taken:
9. The proposal for shifting, if accepted, the number of the members who voted in favour of the proposal for conversion and their respective shareholdings:
10. The proposal for shifting, if accepted, the number of the members who voted against the proposal for conversion and their respective shareholdings. The grounds put forth by them, if any, so as to justify the opposition to the proposal should also be stated in detail. (A copy of the minutes of the meeting shall be attached).
11. Date of advertisement in the Newspaper:
    (Attach a copy of paper clipping)
12. Details of objection received in response to the advertisement:
13. Bank Draft evidencing payment of fee:
14. Particulars of Investors Grievances if any:
15. Details of prosecution filed against the Company and its Officers in default if any. Please furnish the details of the legal counsel(s) holding the matter:

(Signature of the Applicant)
**Designation/Description*

*State whether Managing/Whole-time/Director, Manager or Secretary.

Instructions:

(i) Bank Draft should be drawn in favour of Pay and Accounts Officer, Department of Company Affairs.

(ii) Application Form should be filed with the Registrar of Companies from where the company proposes to shift its Registered Office and copy for information to the Registrar of Companies under whose jurisdiction Registered Office is proposed to be shifted."

(iv) **Rule 4CCCA.**—A new Rule 4CCCA has been inserted in vide Companies (Central Government's) General Rules and Forms (Fourth Amendment) Rules, 2001 vide *Notification no. GSR 96(E) dated 14.2.01*. It provides that for the purpose of Section 60A(3) of the Act, the time limit for filing the information memorandum between the first offer of securities, previous offer and the succeeding offer of securities shall be three months.

(v) **Rule 5C.**—The Companies (Central Government's) General Rules and Forms (Second Amendment) Rules, 2003 vide *Notification No. GSR No. 479(E) dated 12th June, 2003* inserted the following clause (4) reading as under:

(4) "The debt equity ratio of listed Housing Finance Companies, for the purpose of Section 77A(2)(d) shall be such as may be specified by the National Housing Bank, being the regulator in consultation with the Central Government."

(vi) Companies (Central Government's) General Rules and Forms (Third Amendment) Rules, 2003: The DCA has substituted the existing **Rule 10B** of the Companies (Central Government's) General Rules and Forms, 1956 relating to

Section 310 of the Companies Act, 1956 (provision for increase in remuneration of any director to require government sanction) which now reads as under :

"For the purposes of the first proviso to Section 310, the amount of remuneration by way of fee for each meeting of the Board of directors or a committee thereof, shall be as under :

(a)	Companies with a paid-up share capital and free reserves of Rs.10 crore and above or turnover of Rs.50 crore and above.	Sitting fees not to exceed the sum of twenty thousand rupees.
(b)	Other companies	Sitting fees not to exceed the sum of ten thousand rupees.

(previously the specified sum was five thousand rupees). *[Notification No. GSR 580(E) dt. 24.7.03]*.

Form No. 25-A and 26

Form No. 25-A and 26 of Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2003 have been substituted vide *Notification No. GSR 5(E) dated 3rd January 2003*.

FORM NO. 25A

The Companies Act, 1956

Nominal Capital :…………….
Registration No. :…………… State where Registered :…………..

Form of application to the Central Government for approval of appointment/ re-appointment and remuneration payable to managing / whole-time director(s) or manager.

[Pursuant to Sections 198(4), 269, 309(3), 311, 387 and 388]

Details of application fee paid

(a) Payment is made by (i) treasury challan, (ii) demand draft
(b) Treasury challan No./demand draft No. and date
(c) Name of bank/treasury
(d) Fee paid

PART A

1. Particulars of company (in block letters)
   (a) Name of the company
   (b) Address of registered office
   (c) Date of registration under the Companies Act, 1956
   (d) Date of issue of certificate of commencement of business
   (e) Nature of business
   (f) Whether the company is covered under Section 4 of the Act. Yes/No.
   If yes, date from which it became so.
2. (a) Management structure (list of directors/managing directors/whole-time directors/manager) (in capital letters) :

Sl. No.	Name	Designation	Nationality	Date of Appointment

(b) Managerial remuneration paid during the last three years to be stated separately for each director/managing director/whole-time director/ manager :

Year	*Salary*	*Perqui-site*	*Commis-sion*	*Other*	*% age of net profits*	*Nature of ser-vice*	*Whether approval of Govt. rendered*	*If not reasons therefor obtained (Yes/ No)*
1	2	3	4	5	6	7	8	9

3. Effective capital as per audited balance sheet (as defined in Schedule XIII)

(Rs. in thousand)

Effective capital as on

(i) Paid-up share capital
Share premium account
Reserves and surplus
Long-term loans which are repayable after one year
Deposits
Total

(ii) Investments
Accumulated losses
Preliminary expenses not written off
Total
(i) – (ii)

4. Working results of the company during last five years

Financial parameters	*Years*
Turnover	
Net profit (as computed under Section 198)	
Net profit as per profit and loss account	
Amount of dividend paid	
Rate of dividend declared	

5. In the case of new companies, where the commercial production has not yet commenced, please furnish estimated project cost, the sources of finance, projections of turn over, net profits for the next three years.
6. Reasons for loss/inadequacy of profits, if any
7. Steps taken to improve the performance of the company, whether BIFR. Financial institutions/bank has approved any scheme for the revival of the

company. If so, furnish the details thereof and copy of the scheme, alongwith projection of turnover, net profit (as computed under Section 198) for the next three years.

8. Name and address of the present auditors of the company.
9. Shareholding pattern of the company
   (a) Details of shareholding as on

Equity shares (Nos.)	*(1) as % age of total shares*
(1)	(2)

   (b) Total number of Shares
   (c) Face value of the shares Rs.
   (d) Shares held by
      (i) Central/State Government
      (ii) Public financial institution/bank
      (iii) Foreign national
      (iv) Non-resident Indians
      (v) Directors/promoters/their relatives/friends, associates
      (vi) Indian public
      (vii) Body corporate (specify)
      (viii) Others (specify)
      Total

PART B

10. Proposal for which Central Government's approval is sought and justification thereof.
   (a) Proposal for : Appointment(s)/Reappointment(s)
   (b) For remuneration proposed to be paid to : Managing director/ manager Whole-time director(s)
   (c) Proposed remuneration (Furnish monetary value of each of the perquisites and allowances) per month

Period of Appoint-ment	*Salary*	*Perquisites*	*Commission*	*Others*	*Total*	*%age of net profits*	*Date from which approved by Remuneration committee, board/company*
1	2	3	4	5	6	7	8

   (d) Whether the application has been made in conformity with Section 269(2) of the Act. If not, furnish application under Section 637B of the Act alongwith requisite fee.
   (e) Which clause(s) of Schedule XIII is/are not satisfied due to which the present application is being made? Give full particulars.

(f) If the present proposal is for re-appointment was the earlier appointment made in accordance with the provisions of Schedule XIII or with the approval of the Central Government (furnish copy of Form 25C and/or earlier approval letter).

11. Nature of services to be rendered by the proposed appointee(s)
12. Whether the proposed appointee(s) suffers from any of the disqualification mentioned in Section 267 or 385. Yes/No
13. If yes, furnish details particulars of the proposed appointee
    (i) Name
    (ii) Designation
    (iii) Father's name
    (iv) Nationality
    (v) Date of birth
    (vi) Qualifications
    (vii) Experience
    (viii) Place of birth
    (ix) Income details during the last three years:

Organisation	*Designation*	*Duration from .. to..*	*Salary*	*Perquisites*	*Commission*	*Total*

    (ix) In case the proposed appointee is a foreigner, also furnish the following:
        (a) Country of origin
        (b) Passport No.
        (c) Date of issue
        (d) Period of validity of passport From……To…..
        (e) Purpose of visit
        (f) Copy of visa
14. Whether the proposal for which Government's approval has been sought:
    (a) is covered by the articles of association of the company: Yes/No.
    (b) has the company set up a remuneration committee as prescribed in Part II of Schedule XIII to the Act: Yes/No.
    (c) has been approved by the remuneration committee of the company: Yes/No.
    (d) has been approved by the Board of directors of the company: Yes/No.
    (e) has been approved by the company in general meeting: Yes/No.
    (f) date of resolution of the remuneration committee, Board and shareholders: Yes/No.
15. Is the appointee working in any other company as manager or managing director/whole-time director or as a managing partner of any firm or is in whole time employment anywhere else? If yes, please furnish the following:
    (a) (i) Name of the company/firm

(ii) Address

(iii) Whether registered firm/company

(iv) Nature of business

(v) Working results for the last four years

Financial parameters	*Year ending on*
Turnover Net profit (as computed under Section 198) Dividend paid Rate of dividend declared Effective capital (as defined in Schedule XIII)	

(b) Remuneration, if any, payable by the other company/firm

Organisation	*Designation*	*Duration from to*	*Salary*	*Perquisites*	*Commission*	*Total*

Whether rendering any professional services?

(c) Details of service rendered and remuneration.

(d) Justification for proposed appointment, when the appointee is already managing/whole-time director in another or a managing partner of a firm or whole time employee elsewhere.

(e) Whether the provisions of Section 316(2) have been complied with. If so furnish copy of Board resolution, specific notice given to all directors along with evidence of such notice. If not indicate the reasons therefor.

(f) Whether he is engaged in any other profession, if so details thereof.

16. Whether the company has made any default in repayment of its debts (including public deposit) or debentures or interest payable thereon as prescribed in Part II of Schedule XIII. If yes, details thereof. Yes/No.

17. State whether the proposed appointee was sentenced to imprisonment for any period or to a fine exceeding Rs.1000 on conviction for any offence under any of the 13 Acts mentioned in clause 1(a) of Part I of Schedule XIII. If so furnish the full details.

18. State whether the proposed appointee was detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. If so, details thereof.

19. (a) State the nature and extent of direct or indirect interest of director/ manager in selling/buying agencies, distribution, if any. (b) Financial benefits derived therefrom during the last 3 years.

20. The names of Newspapers in which notices under Section 640B have been published alongwith dates thereof (enclose paper cutting).

    Name of the news paper

    Date of publication

21. Whether the copy of the application together with the enclosures has been

sent to Registrar of Companies pursuant to Rule 20A(i) of the Companies (Central Government's) General Rules and Forms, 1956.

If yes, the date of admission Yes/No

22. The following documents are enclosed :

(i) Certified copy of memorandum and articles of association.

(ii) Certified copies of the annual accounts together with directors' report and auditors' report for the latest five financial years.

(iii) Certified copies of the resolution of remuneration committee, Board/shareholder(s) including resolution under Section 316(2) where applicable.

(iv) Certified copy of Scheme approved by BIFR/financial institutions/bank, for the revival of the company, if any.

(v) Certified copies of newspaper clipping of notices published under Section 640B, in original.

(vi) Copy of draft agreement entered into between the company and the proposed appointee.

(vii) Copies of FIPB/RBI approval in case of foreign investment/collaboration.

PART C

Application to the Central Government for approval to the payment of minimum remuneration or of remuneration in excess of the limits prescribed under Section 198(1)/309(3)

23. Whether the company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under Section 198(1)/309(3)?

If so, please furnish details of the proposal (enclose copies of the relevant resolution)

Note: Separate application fees to be paid in respect of the application under Part C. Please enclose original copy of treasury challan/demand draft in favour of Pay and Accounts Officer, Department of Company Affairs, New Delhi.

DECLARATION

To the best of our knowledge and belief, the information given in this application and its annexures is correct and complete.

………………
Signature
………………

Dated this ……day of …….. 200.. Designation

FORM NO. 26

The Companies Act, 1956

Nominal capital :………..

Registration No. : ……….. State where Registered :……………

Form of application to the Central Government for increase in remuneration of managing/whole-time director/manager.

[Pursuant to Sections 310, 311 and 388]

Details of application fee paid

(a) Payment is made by (i) treasury challan, (ii) demand draft

(b) Treasury challan No./demand draft No. and date

(c) Name of bank/treasury

(d) Fee paid Rs.

PART A

1. Particulars of company (in block letters)

   (a) Name of the company

   (b) Address of Registered Office

   (c) Date of registration under the Companies Act, 1956

   (d) Date of issue of Certificate of Commencement of Business

   (e) Nature of business

   (f) Whether the company is covered under Section 4 of the Act: Yes/No.

   If yes, date from which it became so.

2. (a) Management structure (list of directors/managing directors/whole-time directors/manager) (in capital letters) :

Sl. No.	*Name*	*Designation*	*Nationality*	*Date of Appointment*

(b) Managerial remuneration paid during the last three years to be stated separately for each director/managing director director/whole-time director/manager :

Year	*Salary*	*Perquisite*	*Commission*	*Other*	*%age of net profits*	*Nature of service*	*Whether approval of Govt. rendered*	*If not reasons therefor obtained (Yes/No)*

3. Effective capital as per audited balance sheet (as defined in Schedule XIII)

(Rs. in thousand)

Effective capital as on………

(i) Paid-up share capital

Share premium account

Reserves and surplus

Long-term loans which are repayable after one year

Deposits

Total

(ii) Investments

Accumulated losses

Preliminary expenses not written off

Total

(i) – (ii)

4. Working results of the company during last five years

Financial parameters	*Years*
Turnover	
Net profit (as computed under Section 198)	
Net profit as per profit and loss account	
Amount of dividend paid	
Rate of dividend declared	

5. In the case of new companies, where the commercial production has not yet commenced, please furnish estimated project cost, the sources of finance, projections of turn over, net profits for the next three years

6. Reasons for loss/inadequacy of profits, if any

7. Steps taken to improve the performance of the company, whether BIFR/financial institutions/bank has approved any scheme for the revival of the company. If so, furnish the details thereof and copy of the scheme, alongwith projection of turnover, net profit (as computed under Section 198) for the next three years.

8. Name and address of the present auditors of the company.

9. Shareholding pattern of the company.

(a) Details of shareholding as on

Equity shares (Nos.)	*(1) as %age of total shares*

(b) Total number of shares

(c) Face value of the shares Rs.

(d) Shares held by

(i) Central/State Government

(ii) Public financial institution/bank

(iii) Foreign nationals

(iv) Non-resident Indians
(v) Directors/promoters/their relatives/friends, associates
(vi) Indian public
(vii) Body corporate (specify)
(viii) Others (specify)
Total

PART B

10. State precisely the proposal of the company for which approval of Central Government is sought, *inter alia*, indicating the following :

(a) General information

Name	*Designation*	*Age*	*Nationality*	*Qualification*	*Experience (in number of months)*
1	2	3	4	5	6

(b) Present and proposed remuneration (furnish monetary value of each of the perquisites and allowances)

(i) Present remuneration :

Period of Appoint-ment	*Salary*	*Perqui-sites*	*Com-mission*	*Others*	*Total*	*%age of net profits*	*Date from which paid*
1	2	3	4	5	6	7	8

(ii) Proposed remuneration :

Period of Appoint-ment	*Salary*	*Perqui-sites*	*Com-mission*	*Others*	*Total*	*%age of net profits*	*Date from which paid*
1	2	3	4	5	6	7	8

(c) Detailed justification for the proposed increase in remuneration.

11. Details of appointment alongwith documentary proof
12. Which clause(s) of Schedule XIII is/are not satisfied due to which the present application is being made? Give full particulars.
13. The names of newspapers in which notices under Section 640B have been published alongwith dates thereof (enclose paper cutting).

Name of the Newspaper	*Date of publication*

14. (a) Whether a copy of the application together with the enclosures has been sent to Registrar of Companies pursuant to Rule 20A(i) of the (Central Government's) General Rules and Forms, 1956.

    (b) If yes, date of submission Yes/No.

15. The following documents are enclosed :

    (i) Certified copies of annual accounts together with directors' and auditors' report for the latest four financial years.

    (ii) Certified copies of the resolution of remuneration committee consisting of at least 3 independent directors as prescribed in Part II of Schedule XIII to the Act, Board/shareholders.

    (iii) Certified copies of newspaper clipping of notices published under 640B, in original.

    (iv) Copy of draft agreement entered into between the company and the proposed appointee.

    (v) Copies of FIPB/RBI approval in case of foreign investment/collaboration.

PART C

Application to the Central Government for approval to the payment of minimum remuneration or of remuneration in excess of the limits prescribed under Section 198(4) / 309(3)

[Pursuant to Section 198(4) /309(3) / 387]

16. Whether the company proposes to pay minimum remuneration in the absence of or inadequacy of profits or remuneration in excess of the limits prescribed under Section 198(4)/309(3)? Yes/No.

    If yes, please furnish details of the proposal (enclose copies of the relevant resolution)

Salary	*Perquisites*	*Commission*	*Others*	*Total Remuneration*

(Separate fees to be paid in respect of the application under Part-C. Please enclose orginal copy of treasury challan/demand draft in favour of Pay and Accounts Officer, Department of Company Affairs and certified newspaper clipping of notices published under Section 640B of the Act.)

DECLARATION

To the best of my/our knowledge and belief, the information given in this application and its annexures is correct and complete.

……………….
Signature
……………….

Dated this………day of ……..20……… Designation

[B] ISSUE OF SHARES WITH DIFFERENTIAL VOTING RIGHTS

Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 have been introduced vide *Notification no. G.S.R. 167(E) dated 9.3.01* which provides conditions for companies limited by shares to issue dividend or voting or otherwise with differential rights. The conditions prescribed are given here:

1. Short title and commencement.—(1) These rules may be called the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the contexts otherwise requires—

(a) "Act" means the Companies Act, 1956 (1 of 1956),

(b) "differential voting rights includes rights as to dividend or voting."

(c) "financial year" means financial year as defined under clause (17) of Section 2 of the Act.

(2) Words and expressions used and not defined in these rules but defined in the Companies Act, 1956 shall have the same meaning respectively assigned to them in that Act.

3. Conditions.—Every company limited by shares may issue shares with differential rights as to dividend, voting or otherwise, if—

1. The company has distributable profits in terms of Section 205 of the Companies Act, 1956 for preceding three financial years preceding the year in which it was decided to issue such shares.
2. The company has not defaulted in filing annual accounts and annual returns for three financial year of the year immediately preceding the financial year in which it was decided to issue such share.
3. The company has not failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend.
4. The Articles of Association of the company authorises the issue of shares with differential voting rights.
5. The company has not been convicted of any offence arising under, Securities Exchange Board of India Act, 1992; Securities Contracts (Regulation) Act, 1956; Foreign Exchange Management Act, 1999.
6. The company has not defaulted in meeting investors' grievances.
7. The company has obtained the approval of shareholders in General Meeting by passing resolution as required under the provision of sub-clause (a) of Sub-section (1) of Section 94 read with Sub-section (2) of the said section.
8. The listed public company obtained approval of shareholders through Postal Ballot.
9. The notice of the meeting at which resolution is proposed to be passed is accompanied by an explanatory statement stating—
   (a) the rate of voting rights which the equity share capital with differential voting right shall carry;
   (b) the scale or in proportion to which the voting rights of such class or type of shares will vary;
   (c) the company shall not convert its equity capital with voting rights into

equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;

(d) the shares with differential voting rights shall not exceed 25% of the total share capital issued;

(e) that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, right shares of the same class;

(f) the holders of the equity shares with different voting rights shall enjoy all other rights to which the holder is entitled to excepting right to vote as indicated in (a) above.

4. Register.—Every company referred to in Rule 3 shall maintain a register as required under Section 150 of the Act containing the particulars of differential rights to which the holder is entitled to.

The Central Government has further amended the aforesaid rules by passing the Companies (Issue of Share Capital with Differential Voting Rights) (Amendment) Rules, 2002 vide *Notification No. GSR 27(E) dated 11th January, 2002*.

Accordingly, in Rule 3(1), the words 'preceding three financial years' are substituted by the words 'three financial years'. Also in Rule 3(2), for the words 'the financial year of the year' the words "the financial year" shall be substituted.

[C] POSTAL BALLOT

Companies (Passing of Resolution by Postal Ballot) Rules, 2001 were issued vide *Notification No. G.S.R 337(E) dated 10.5.01* which lay down the list of businesses requiring resolutions to be passed by postal ballot and the procedure to be followed in this respect. The rules were further amended vide *Notification No. G.S.R. 773(E) dated 11.10.2001*.

The amended Rules have been given hereunder:-

1. Short title and commencement

(1) These rules may be called the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these Rules unless the context otherwise requires :-

(a) "Act" means the Companies Act, 1956,

(b) "Postal Ballot" includes voting by share holders by postal or electronic mode instead of voting personally by presenting for transacting business in a general meeting of the company.

(c) "Requisite majority" with regard to Special Resolution means votes cast in favour of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favour is more than the votes cast against.

2A. Method for sending notice

(a) The company may issue notice either:

  (i) under Registered Post Acknowledgement Due; or

(ii) under Certificate of Posting; and

(b) With an advertisement published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having despatched the ballot papers.

3. Application

These Rules shall be applicable to listed companies and in case of resolutions relating to such businesses as are specified under Rule 4.

4. List of business

List of business in which the resolutions shall be passed through Postal Ballot:

(a) alteration in the Object Clause of Memorandum;

(b) alteration of Articles of Associations in relation to insertion of provisions defining private company;

(c) buy-back of own shares by company under Sub-section (1) of Section 77A;

(d) issue of shares with differential voting rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of Section 86;

(e) change in place of Registered Office outside local limits of any city, town or village as specified in Sub-section (2) of Section 146;

(f) sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of Sub-section (1) of Section 293;

(g) giving loans or extending guarantee or providing security in excess of the limit prescribed under Sub-section (1) of Section 372A;

(h) election of a director under proviso to Sub-section (1) of Section 252 of the Act;

(i) [deleted]

(j) variation in the rights attached to a class of shares or debentures or other securities as specified under Section 106.

5. Procedure to be followed for conducting business through Postal Ballot

(a) The company may make a note below the notice of General Meeting for understanding of members that the transaction(s) at serial number requires consent of shareholders through postal ballot;

(b) The board of directors shall appoint one scrutinizer, who is not in employment of the company, may be a retired judge or any person of repute who, in the opinion, of the board can conduct the postal ballot voting process in a fair and transparent manner,

(c) The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots.

(d) The scrutinizer will be willing to be appointed and he is available at the Registered Office of the company for the purpose of ascertaining the requisite majority;

(e) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the Scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The Postal Ballot and all other papers relating to postal ballot will be under the safe custody of the Scrutinizer till the Chairman considers, approves and sign the minutes of the meeting. Thereafter, the Scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/register safely till the resolution is given effect to;

(f) The consent or otherwise received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.

However, the following points which have been clarified by the Department of Company Affairs should be noted in this regard :

(1) The above-mentioned rules are applicable after 15th June 2001.

(2) Advertisement giving the date of completion of dispatch of postal ballots is not mandatory under Section 192A. However, as a measure of good corporate governance, companies may publish it.

(3) The postal ballots should be serially numbered and have distinguishing water marks to avoid printing of duplicate ballot papers.

(4) The companies are required to specify the last date of receiving the postal ballots.

(5) The voting rights on postal ballots shall be in proportion to the shareholders' share of the paid-up equity capital.

(6) The Company Secretary with one of the functional directors shall be made responsible, by passing a Board resolution, for the postal ballot process.

A copy of the Board resolution along with the item to be included in the calendar of events should be dispatched within one week of passing of the Board resolution to the concerned ROC for information.

[D] DEPOSITS

(i) A company covered by Companies (Acceptance of Deposits) Rules, 1975 can not pay interest exceeding 12.5% p.a. [previously 15% and reduced to 14% vide *Notification No. GSR 385(E) dated 25.5.01*] at rests which shall not be shorter than monthly rest [Rule 3(1)]. [*Notification No. GSR 77(E) dated 4.2.2002*].

(ii) A new **Rule 8A** has been inserted in Companies (Acceptance of Deposits) Rules, 1975 which provides for the payment of penal rate of interest at the rate of 18% on deposits which have matured, are claimed but have remained unpaid. However, the interest rate is 20% compoundable on annual basis in case of deposits made by small depositors.

'Net owned fund' for the purpose of deposits has been assigned the same meaning as in RBI Act, 1934 *[Notification No. GSR 873(E) dated 28.11.2001]*.

(iii) DCA has issued guidelines for filing application for grant of extension of time to comply with or exemption from provisions of Section 58A(8). The guidelines are reproduced hereunder:

Guidelines for filing application for grant of extension of time to comply with, or exemption from, any of the provisions of Section 58A in terms of Sub-section (8) of the Section

An application submitted under Section 58A(8) of the Companies Act, 1956 ('the Act') should be in accordance with the Companies (Application for Extension of Time or Exemption under Sub-section (8) of Section 58A) Rules, 1979 and be accompanied by the following :

1. Application fee [*GSR 501 dated 6th July, 1999*] as per details given below :

Companies with authorised capital	*Amount of fee*
(a) Less than Rs. 25,00,000	Rs. 500
(b) Rs. 25 lakh or more but less than Rs. 5 crore	Rs. 1000
(c) Rs. 5 crore or more	Rs. 2000

   Application fee shall be paid by demand draft drawn in favour of Pay & Accounts Officer, Department of Company Affairs, New Delhi.

2. Copies of latest audited accounts and balance sheets of the company.

3. A copy of the memorandum and articles of association of the company.

4. Original newspaper clippings of the public notices published in English and vernacular language of the region in which registered office of the company is situated in manner specified in Form 2 appended to the Rules.

5. Certified copy of resolution of the Board of directors approving the proposal of the company.

6. Copy of previous approval/order, if any, obtained under Section 58A from the Central Government granting exemption/extension of time during last ten years.

7. Certificates from the statutory auditors :

   (a) To the effect that the company has not contravened any other provisions of Section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 except those for which the application is submitted.

   (b) To the effect that the deposits held by the company are within limits and that no contravention of the provisions of Section 58A of the Companies Act, 1956 and Companies (Acceptance of Deposits) Rules, 1976 exists at present.

8. Deposit position of the company at 31st March during the current year and the past two years showing details as under:

Year ended on	Rule under which accep-ted	B/F	Accep-ted/ Re-newed	Total	Re-paid	Balance out-standing	Net worth	Date on which relevant limits became available	Ex-cess, if any	Re-marks
1	2	3	4	5	6	7	8	9	10	11

9. One copy each of the advertisement issued in newspapers pursuant to Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975.

(iv) Companies (Acceptance of Deposits) (Amendment) Rules, 2003.

DCA has further amended the Companies (Acceptance of Deposits) (Amendment) Rules, 1975 to provide in Rule 2(b)(xii) that any amount received as loan from the National Dairy Development Board by the companies owned by it directly or through its subsidiary companies shall not be considered as deposit. [vide *Notification No. GSR 300(E) dated 03.04.03*].

[E] SECTION 274(1)(G) – CLARIFICATION

(i) The disqualification as provided in Section 274(1)(g) of the Act does not apply to special directors appointed by BIFR under Section 16(4) of SICA. (Clarification issued by DCA vide Circular No. 2/8/2001-CL.V; General Circular No. 11/2001 dated 25.5.2001).

(ii) Also, vide Circular No. 5 of 2003 dated 14.1.03, DCA has clarified that default of privately placed bonds/debentures/debt instruments by public financial institutions will not be considered as default for the purpose of Section 274(1)(g) of Companies Act, 1956.

[F] INVESTOR EDUCATION AND PROTECTION FUND

The Central Government vide *Notification No G.S.R 750(E) dated 1.10.01* has formulated the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. Such rules provide *inter alia* for the details regarding the amounts to be credited to the Fund, the manner of accounting of funds, the audit of the accounts of the Fund and provisions regarding constitution, functions, meetings, agenda and voting of the committee, minutes of the meetings of the committee and conditions for utilization of the amount lying in the Fund.

The above-mentioned Rules are given hereunder :-

Investor Education and Protection Fund (Awareness & Protection of Investors) Rules, 2001

1. Commencement

(1) These rules may be called the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules, unless the context otherwise requires:

(a) 'Act' means the Companies Act, 1956;

(b) 'Fund' means the Investor Education and Protection Fund (IEPF) established under Sub-section (1) of 205C of the Act, 1956 (1 of 1956);

(c) "Ministry" or "Department" means Ministry or Department of the Central Government dealing the Company Affairs;

(d) 'Committee'/Sub-Committee' means the Committee specified by Central Government under Sub-section (4) of Section 205C of the Act to administer the Fund;

(e) 'Form' means forms prescribed by these rules;

(f) Words and expressions used in these rules and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Credits to the Fund

(i) Any amount required to be credited by the companies to the Fund, as provided in the Act shall be remitted into the concerned specified branches of Punjab National Bank, within a period of thirty days of such amounts becoming due to be credited to the Fund and the amount so credited shall be accounted for as provided in Rule 4 below.

(ii) (a) The amount shall be tendered by the companies on behalf of the Central Government in such branches of Punjab National Bank along with Challan (in triplicate) and the Bank will return two copies duly stamped to the Company as token of having received the amount.

(b) Every Company shall file with the concerned Registrar of Companies one copy of the Challan referred to in (a) evidencing deposit of the amount to the Fund. The Company shall fill in the full description and the nature of the amount tendered and its Head of Account.

(c) (i) Every Company shall, when effecting a credit to the account of the Fund, will separately furnish to the concerned Registrar of Companies a statement in Form 1 duly certified by a chartered accountant or a company secretary or a cost accountant practising in India or by the statutory auditors of the company. Provided that each Company shall keep a record relating to folio number, Certificate Number etc. in respect of persons to whom the amount of unpaid or unclaimed dividend, application money, matured deposit or debentures, interest accrued or payable, for a period of three years and the Committee or Sub-Committee shall have powers to inspect such records of that period.

(ii) On receipt of this statement, the concerned Registrar of Companies shall enter the details of such receipt in a register and reconcile the amount so remitted and collected, with the concerned Pay and Accounts Officer, on monthly basis.

(iii) Each Registrar of Companies shall furnish an abstract of such receipt received during the month to Department of Company Affairs within seven days after the close of the month.

(iv) Department of Company Affairs shall maintain a consolidated abstract of receipts and shall reconcile them on a quarterly basis with Principal Pay and Account Office of the Department of Company Affairs.

4. Manner of Accounting

(i) (A) All amounts received shall be accounted for under the following Heads of account, which shall thereafter be transferred to the Fund.

MAJOR HEAD 0075—MISCELLANEOUS GENERAL SERVICES

Minor Head 104 – Unclaimed and unpaid dividends, deposits and debentures etc. of Investors in Companies

(a) Unpaid dividend

(b) Unpaid application money received by Companies for allotment of securities and due for refund.

(c) Unpaid Matured Deposit.

(d) Unpaid Matured Debentures.

(e) Interest accrued on (a) to (d).

  (i) Interest on unpaid dividend.

  (ii) Interest on unpaid application money received by Companies for allotment of securities and due for refund.

  (iii) Interest on unpaid matured deposits.

  (iv) Interest on unpaid matured debentures.

Note: (a) to (d) shall be sub-heads. e(i) to (iv) shall be detailed heads.

(i) (B) Grants and donations given to the fund by State Governments, Companies or any other Institutions will be credited under a separate Sub-head under the minor head '800 – Other Receipts below the Major head' '0075 – Miscellaneous General Services'.

(ii) All expenditure for the purposes of carrying out of the objects for which the Fund has been established shall be incurred under the functional head expenditure head of Department of Company Affairs and equivalent amount will be shown as deduct entry by transfer of amount from the fund.

(iii) Surplus amount, if any, from the fund accounts shall not, for the present, be utilised for investment purpose.

5. Expenses of the Committee

(a) The official member of the committee or sub-committee shall be entitled to Travelling Allowance according to the rules regulating their official position.

(b) For journeys performed by a non-official member of the Committee or sub-committee or a special invitee in connection with the work of the committee or a sub-committee shall be entitled for TA/DA as per supplementary Rules of Central Government.

(c) Committee shall have powers to recommend appointment/remuneration to any experts in such areas as may be considered necessary.

(d) Committee shall have powers to recommend appointment of Auditors and for scrutinizing the accounts of the voluntarily agencies registered with it.

6. Audit of Accounts

The accounts of the Fund shall be audited by internal audit party of the Department of Company Affairs every year and will also be subject to audit by the office of Comptroller and Auditor General of India.

7. Constitution and Functions of the Committee

(a) The Committee shall consist of ten members, excluding the chairperson who is Secretary, to the Department of Company Affairs. The members shall be nominated by Reserve Bank of India, the Securities and Exchange Board of India and or from any other Ministry or Department of Central Government dealing with investor protection activities and experts from the field of investors education and protection. The non-official Members shall hold office for a period of two years. The Official members shall hold office for a period of two years or until they occupy their position whichever is earlier. The constitution of the Committee shall be notified in the Official Gazette.

(b) Functions of the Committee

The Committee shall recommend the following activities relating to investors' education, awareness and protection:

(a) Education Programs through Media;

(b) Organizing Seminars and Symposia;

(c) Proposals for registration of Voluntary Associations or Institution or other Organizations engaged in investor Education and protection activities;

(d) Proposals for projects for Investors Education and Protection including research activities and proposals for financing such projects;

(e) Coordinating with institutions engaged in Investor Education, awareness and protection activities.

The Committee may also be entrusted with such other functions for carrying out the objects for which the Fund has been established.

(f) (i) The Committee may appoint one or more sub-committees whenever it considers necessary to facilitate efficient and speedy discharge of its functions.

(ii) Sub-committee shall be constituted from amongst the members.

(iii) The Chairperson of the Committee may nominate any one of the members of the sub-committee as its convenor and where no such nomination has been made, the members of the sub-committee elect a convenor amongst themselves.

(iv) The Committee may have Sub-Committee to examine the end use of grants and assistance and recommend release of funds.

8. Power to call upon a Company

(i) The Committee shall have *suo moto* powers to call upon any company to pay the amount due to the Fund.

(ii) Committee shall call upon any company to give estimates of the amounts to be credited to the Fund in Form 2.

9. Report by the Committee

The Committee shall furnish its activity report for every six month's period to the Central Government.

10. Meetings

(i) One third of the total members subject to five members in the case of meeting of committee and three members in case of sub-committee meeting shall constitute a quorum.

(ii) The Chairperson of the Committee and the convenor of a sub-committee, respectively, shall preside over the meetings of the Committee or the sub-committee as the case may be. In the event of the Chairperson or, as the case may be, the convenor being unable to attend the meeting for any reason, the members present may elect one amongst themselves to preside over the meeting.

(iii) The Chairperson of the Committee or the convenor of a sub-committee may, call meeting of the Committee or a sub-committee:

Provided that the Chairperson or the Convenor, as the case may be, shall also call a meeting if a requisition for that purpose is presented to him by at least five members in the case of the Committee and three members in the case of a sub-committee.

(iv) At least fourteen clear days' notice indicating the time and place of the meeting shall be sent to the members of the Committee or the Sub-committee as the case may be:

Provided that in case of urgency, a special meeting of the Committee or Sub-committee may be called at any time by the Chairperson or the convenor, who shall inform the members at least three clear days in advance of the subject matter for consideration at the meeting and the reasons for which he considers the meeting urgent;

Provided further that no other business shall be transacted at such a meeting.

(v) The Chairman or the convenor, as the case may be, may invite any person to attend any meeting of the Committee or sub-committee as a special invitee but such person shall not be entitled to vote.

11. Agenda

(i) At least seven clear days before any meeting of the Committee or a sub-committee, except meetings referred to in proviso to sub-rule (iv) to Rule 10, a list of business proposed to be transacted at the meeting shall be sent to the members of the Committee or of a sub-committee, as the case may be.

(ii) No business, not included in the list of business, shall be transacted at a meeting without the permission of the chairperson presiding over the meeting.

12. Voting

(i) Every question brought before any meeting of the Committee or sub-committee, as the case may be, shall be decided by a majority vote of members present and voting at the meeting. No member shall vote by proxy.

(ii) In the event of equality of votes, at a meeting, the Chairperson or the convenor, as the case may be or in his absence, the person presiding, shall have a second or casting vote.

13. Minutes

The minutes of the meeting of the Committee or Sub-Committee shall be caused to be recorded and circulated among the members.

14. Conditions for Utilization of Funds by the Committee

(i) The Committee may register from time to time various Associations or institutions or organisations engaged in activities relating to investor awareness, education and protection and proposing for Investors programme; organising seminar, symposia and undertake projects for

Investor Protection including research activities.

(ii) Application for registration by such organisations referred to in sub-rule (i) be made in Form 3.

(iii) Application for release of funds for the activities listed in Rule 7(i) from the organizations or Institutes registered with the Department of Company Affairs shall be made in Form 4.

(iv) A copy of the summary or recommendations of the seminar or programme conducted and copy of Accounts for such activity by such organisation e.g. registered associations or chambers of commerce or institutes shall be provided to the Committee within ten days of the conclusion of the seminar or programme.

(v) The organisation or Associations registered shall be considered for grant of funds as a grant-in-aid either as one time measure or in stages or by way of reimbursement depending upon the nature of the activity proposed.

(vi) The Committee shall be entitled to examine the end use of grants and assistance before recommending release of funds.

(vii) The Committee shall cause to draw at the end of each financial year, a statement of total receipts from various sources indicated in Section 205C of the Companies Act, 1956 and the grants disbursed or the expenditure incurred in connection with the activities organised by the Committee or Sub-Committee and other expenditure incurred for holding the meetings.

(viii) The Committee shall maintain the necessary records showing amount disbursed, date of disbursal, the name of Organisation or Voluntary agency, the activities of the agency for which such disbursal was made.

A. RAMASWAMY
Joint Secretary to the Govt. of India

FORM NO. 1

*(*See *Rule 3)*

Registration No. Authorised Capital: Rs.

Statement of Amounts Credited to Investor Education and Protection Fund

(To be submitted by the Company to the concerned Registrar of Companies along-with the copy of the challan)

1. Name of the company and Address of its registered office:
2. Date of payment of amount to the Fund:
3. Particulars of the Challan:

   Mode of payment (DD/Cash):

4. Details of the amount which are credited to the Fund:
   (a) amounts in the unpaid dividend accounts of companies;
   (b) the application moneys received by companies for allotment of any securities and due for refund;
   (c) matured deposits with companies;
   (d) matured debentures with companies;
   (e) interest accrued on the amounts referred to in clauses (a) to (d) be shown separately for each item, both in challan and in this Form.
   (f) Grants and donations.

   Financial year(s) to which the amount(s) relates.

5. Details of filing Form 1A under Section 205A(6) and (7) of the Companies Act, 1956.

Signature of Person
presenting the return

Place & date

Date Certificate from auditors

Verified and found correct.

Place

Date

Chartered Accountant/Cost Accountant/
Company Secretary/Statutory Auditor

FORM NO. 2

*(*See *Rule 8)*

Company Registration No.

Authorised Capital: Rs.

Statement of Amounts falling due for crediting to Investor Education and Protection Fund set up under Section 205C(2). During the year…..

1. Name of the Company
2. Registered Office
3. Financial Year
4. Total amount due as on 31st March of the relevant financial year
5. Details of amount credited to Investor Education and Protection Fund during the year
6. Details of amounts

   State the details of amounts remaining unclaimed for six years since becoming due for payment for the following:
   (a) Unpaid dividend
   (b) Unpaid application money
   (c) Unpaid matured deposit
   (d) Unpaid matured debentures
   (e) Interest in respect of (a) to (d).

7. Relevant financial year in which amount is due for payment or redemption.

Signature of Person presenting the return — Date & Place

Certificate from auditors

Verified and found correct.

Place — Chartered Accountant/Cost Accountant/

Date — Company Secretary/Statutory Auditor

FORM NO. 3

(See Rule 14)

Application for Registration

Note: (1) Submission of the registration form does not necessarily guarantee automatic registration or funding.

(2) Committee reserves the right to reject any application in its own discretion without assigning any reason thereof.

(3) Committee may call for additional details as and when required for the purpose of granting registration.

(4) Any false information furnished or false representation made shall make the application/registration liable for rejection/cancellation.

1. Name of Association:
2. Address:
   Tel. No./ Fax No./E-mail:
3. Year of Establishment:
   Registration No. and Date:
4. Principal office bearer.
   Address:
5. Organisational structure
   (a) Office Bearers:

Name	*Educational Qualifications*	*Occupation/ Profession*	*Experience (specify in number of years of experience as investor either in primary or secondary market)*	*Remuneration received from the Association*
President				
Vice President				
Secretary				
Treasurer				

(b) How elected or appointed or nominated and what is the frequency of election to the Board

(c) Total number of employees

(For the last three years)

6. Membership

(For last three years)

(a) Total Number

(b) Number of Members who are

(i) Investors

(ii) Connected with Investment activities

(iii) Professionals

7. Financial Information

(a) Source of Funds

(Information for last three years)

(i) Membership fees

(ii) Annual Subscription fees

(iii) Any other fees

(iv) Any other source of income

(b) Uses of funds

(i) Administrative expenses

(ii) Salary and wages

— Stationery and postage

— Miscellaneous

(iii) Expenses for holding seminars, meetings and other activities of the Fund

(iv) Any other expenses

Excess of income over expenditure.

8. Activities of the association

(a) Objectives of the Association.

(b) How has the Association met the objectives in the past/objectives of the present application.

(c) How does the Association communicates to the investors.

(d) Whether the Association holds meeting regularly (if yes, details of the number of meetings held during the last three years and the participation to be given).

(e) Number of shareholders/conferences/seminars held during the last three years.

(f) Whether representatives of the Association are sent to attend shareholders' meeting of companies.

(g) Whether the association handles investors grievances? (if yes, then number of grievances received and settled during the last 12 months to be given).

(h) Grievances redress system of the Association.

(i) House Journal/publication of the Association.

(j) Whether any representation has been made by the Association in the past to the Stock Exchanges/Government/Companies in the interests of the investors in general and the members in particular.

(k) Any other activity.

(l) Whether any suits/proceedings are pending against the association or any of its office bearers/members in any court of law, if so details may be given.

(m) Whether the association agrees to abide by the rules/regulations/ guidelines framed by Committee/Central Government from time to time for its effective functioning and better discipline.

(n) Whether any office bearer of the Association is a board member of any corporate entity.

9. Enclosures

(i) Copies of Memorandum and Articles of Association, rules/regulations/ bye laws.

(ii) Latest membership and their addresses.

(iii) Copies of the audited statement of accounts/annual report for the last three years.

(iv) Copies of last 3 issues of the House magazine/journal, if any.

(v) A copy of the statement authenticating registration of the Association.

(vi) A statement elaborating details of activities of the Association.

Signature
(with name)

President
Vice President
Secretary
Treasurer

FORM NO. 4

(See Rule 14)

Application for Funds for Services/Programmes

1. Name of Applicant:
2. Address:
   Registered Office:
   Corporate Office Address:
3. Constitution: (Whether Association/
   Chamber of Commerce/Institute/Individual)
4. Date of Incorporation/Registration:
5. Details (Number/Date) of recognition granted by Committee under Rule 14:
   Existing activities

   (i) Management:
   Board of Directors:

   (ii) Details relating to proposed seminar/programme/activity

Date when to be conducted:
Venue:
Brief Literature on subject matter:

6. Amount required for the proposed seminar/programme/activity and full justification for the same including following details:
   (i) The Nature of Activity.
   (ii) List of proposed Guests/VIPs who would chair the dais.
   (iii) Description of expenses proposed to be incurred for the activity.
   (iv) Venue expenses.
   (v) Travelling, Boarding and Lodging expenses of Guests for the activity.
   (vi) Other expenses.
   (vii) Expected number of people who would attend the activity.
   (viii) Any other information for the justification of the amount.

Signature
(with name)

President
Vice President
Secretary
Treasurer

Financial assistance from Investor Education and Protection Fund

DCA has issued guidelines for availing from Investor Education and Protection Fund which are as under :

Guidelines for availing of financial assistance from Investor Education and Protection Fund.

1. Any organisation/entity/person who has a viable project proposal on investors education and protection should be eligible for assistance from the fund.
2. The limit for each person/organisation for assistance from the fund should be subject to 5 per cent of the budget of investor education and protection fund ('IEPF') during that financial year and not exceeding 50 per cent of the amount to be spent on the proposed programme activity.
3. The associations or institutions or organizations already engaged in activities relating to investor awareness, education and protection and proposing to take up investors programmes, organizing seminars, symposia, etc., shall undertake projects for investor protection including research activities.
4. The associations or institutions or organizations shall be registered under the Societies Registration Act or formed as trusts or incorporated companies.
5. Associations or institutions or organizations shall, unless specific exemption has been made in this regard by the Committee on IEPF, be in existence for a minimum period of two years prior to its date of application for registration.
6. Associations or institutions or organizations shall have a minimum of 20 members and a proven record of two years.
7. The association or institution or organisation shall have rules, regulations and/or bye-laws for the governance and management of the association or institution or organisation. These rules, regulations and or bye-laws shall be

in conformity with the conditions of registration. The association or institution or organisation shall be managed by a governing Board/management committee.

8. No profit making association or institution or organisation shall be eligible for registration for the purposes of financial assistance from the fund.
9. Notwithstanding the above the committee on IEPF can give a project to any organisation.
10. The amount of grant assistance given from the fund shall be subject to an audit by the Department of Company Affairs to ensure its proper utilization.

[G] BUY-BACK OF SECURITIES

(i) The Companies (Amendment) Act, 2001 provides for the insertion of Section 77A(2)(b) which states that, where the Buy-back is or less than ten percent of the total of the paid-up equity capital and free reserves of the company, such buy-back shall be authorized by the Board by passing a board resolution at its meeting. Offer of buy-back for this purpose means the offer of buy-back made in pursuance of such Board resolution. Provided that, no further offer of buy-back shall be made within a period of three hundred and sixty-five days from the date of the preceding offer of buy-back, if any.

(ii) The amendment in Section 77A(4) of the Act provides that the buy-back should be completed within twelve months from the date of passing of the special resolution or Board resolution under Section 77A(2)(b). Section 77A(6) has been amended by providing that declaration of solvency should be filed with the Registrar of Companies in the prescribed manner, whether the company has passed a special resolution or Board resolution.

Further, under Section 77A(8), the time limit wherein further issue of shares after the completion of buy-back is prohibited has been reduced from twenty-four months to six months.

Section 292(1)(aa) has been also inserted which provides that the power of authorizing the buy-back referred to in the first proviso to Section 77A(2)(b) shall be exercised by the Board only at its meeting.

In Private Limited and Unlisted Public Company (Buy-back of Securities) (Amendment) Rules, 2003 issued by DCA vide Circular No. GSR 348(E) dt. 23.04.03 it is provided that in the letter of offer, the following disclosures shall also be made –

"the debt ratio of Housing Finance Companies, as may be specified by the National Housing Bank being the regulation in consultation with the Central Government". [clause (xxi) inserted in Schedule II].

SEBI has amended its regulations concerning buy-back of securities by listed companies by formulating SEBI (Buy-back of Securities) (Amendment) Regulations, 2001 vide *Notification No. S.O. 1181(E) dated 28.11.01.* The amendments are as below:

(a) after regulation 5, a new regulation 5A shall be inserted as under -

  (1) "Board resolution – 5A (1) A company, authorised by a resolution passed by the Board of Directors at its meeting, to buy back its securities under first proviso to clause (b) of Sub-section (2) of Section 77A of the Companies Act, 1956 as inserted by the Companies (Amendment) Ordinance, 2001 (No. 7 of 2001), may buy back its securities subject to the following conditions :

(a) before making a public announcement under sub-regulation (1) of regulation 8, a public notice shall be given in atleast one English national daily, one Hindi national daily and a regional language daily, all with wide circulation at the place where the registered office of the company is situated.

(b) the public notice shall be given within 2 days of the passing of the resolution by the Board of Directors;

(c) the public notice shall contain the disclosures as specified in Schedule I.

(2) A copy of the resolution passed by the Board of Directors at its meeting, authorizing buy back of its securities, shall be filed with the Board and the stock exchanges where the securities of the company are listed, within two days of the date of the passing of the resolution.

(b) in regulation 7,

(i) after the words 'the Companies Act" and before the words "shall contain the disclosures" the words "or the public notice under sub-regulation (1) of regulation 5A" shall be inserted.

(ii) after the words "regulation 5" and before the words "and also the following" the words "or regulation 5A" shall be inserted.

(c) in regulation 8, in sub-regulation (1), after the words "authorised by a special resolution" and before the words "shall before buy back" the words "or a resolution passed by the Board of Directors at its meeting" shall be inserted.

(d) in regulation 15, in clause (a), for the words "The special resolution referred to in regulation 5" the words "The special resolution referred to in regulation 5 or the resolution passed by the Board of Directors at its meeting as referred to in regulation 5A" shall be substituted.

(e) in regulation 17, in sub-regulation (1), in clause (a) after the words "The special resolution referred to in regulation 5" the words "or the resolution passed by the Board of Directors at its meeting, as referred to in regulation 5A" shall be added.

(f) in regulation 19, in sub-regulation (1), in clause (a), after the words "publicity material" and before the words "shall contain", the words "or public notice referred to in clause (a) of sub-regulation (1) of regulation 5A" shall be inserted.

3. In Schedule I of the principal regulations

(a) for the bracket "[under regulation 5(1)]" the bracket "[under regulation 5(1) and regulation 5A(1)(c)]" shall be substituted.

(b) in clause (a) of item (vii), after the words "the General Meeting" the words "or the Meeting of the Board of Directors" shall be added.

(c) in clause (a) of item (x), after the words "the General Meeting" and before the words "is conveyed", the words "or the Meeting of the Board of Directors" shall be inserted.

4. In Schedule II of the principal regulations, in item 5, after the words "approving the buy back was passed" the words "or the contents of public notice issued after the passing of the resolution by the Board of Directors authorizing the buy

back" shall be added.

5. In Schedule III of the principal regulations, in item 6, after the words, "approving the buy back was passed" the words "or the contents of public notice issued after the passing of the resolution by the Board of Directors authorizing the buy back" shall be added.

Clause 19 & 20 of listing agreement

Clause 19 of the listing agreement has been amended to provide that the companies shall be required to give prior notice of at least 7 days to the stock exchanges about the Board meetings at which the proposal for buy-back of securities is to be considered.

Clause 20 – relating to announcements after Board meetings has been amended to provide that companies shall be required to intimate the stock exchanges within 15 minutes of the closure of the Board meetings about the decision on buy-back of securities.

[H] COST AUDIT REPORT

In exercise of powers confined by Sub-section (4) of Section 233B read with Section 227(1) and Section 642(1) of the Act and suppression of Cost Audit (Report) Rules, 1996, the Central Government has issued Cost Audit (Report) Rules, 2001 vide *Notification No. G.S.R. 924(E) dated 27.12.01* containing *inter alia* provisions regarding the form of the Report, time limit of submission of the report, authentication of the annexure to the report, furnishing of records to the Cost auditor and penalties and action to be taken in case of contravention of the Rules.

The Cost Audit (Report) Rules, 2001 are as under :-

1. Short title and commencement – (1) These rules may be called the Cost Audit (Report) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

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

(a) "Act" means the Companies Act, 1956;

(b) "Cost Auditor" means an auditor directed to conduct an audit under Sub-section (1) of Section 233B of the Act;

(c) "Form" means the Form of the Cost Audit Report and includes auditor's observations and suggestions, Annexure and Proforma to the Cost Audit Report;

(d) "Report" means Cost Audit Report duly audited and signed by the Cost Auditor in the prescribed form of Cost Audit Report;

(e) "Product under reference" means the product or activity to which the Report relates;

(f) All other words and expressions used in these rules but not defined, and defined in the Act and rules made under clause (d) of Sub-section (1) of Section 209 of the Act shall have the same meanings as assigned to them in the Act or rules, as the case may be.

3. Application – These rules shall apply to every company in respect of which an audit of the cost accounting records has been ordered by the Central Government under Sub-section (1) of Section 233B of the Act. The Cost Audit Report submitted on or after 1st October, 2002, irrespective of the financial year of the company to which it relates, shall be in the form prescribed under these rules.

4. Form of the Report – (1) Every Cost Auditor, who conducts an audit of the cost accounting records of the company shall submit the report (a hard copy and a soft copy) along with auditor's observations and suggestions, Annexure and Proforma to the Central Government in the prescribed form and at the same time forward a copy of the report to the company.

(2) Every Cost Auditor, who submits a report under sub-rule (1), shall also give clarifications, if any, required by the Central Government on the Cost Audit Report submitted by him, within thirty days of the receipt of the communication addressed to him calling for such clarifications.

5. Time limit for submission of Report – The Cost Auditor shall forward his report referred to in sub-rule (1) of Rule 4 to the Central Government and to the concerned company within one hundred and eighty days from the close of the company's financial year to which the report relates.

6. Cost Auditor to be furnished with the cost accounting records etc. – Without prejudice to the powers and duties the Cost Auditor shall have under Sub-section (4) of Section 233B of the Act, the company and every officer thereof, including the persons referred to in Sub-section (6) of Section 209 of the Act, shall make available to the Cost Auditor within one hundred and thirty five days from the close of the financial year of the company, such cost accounting records, cost statements, other books and documents, Annexure and proforma to the Report, duly completed, as would be required for conducting the cost audit, and shall render necessary assistance to the Cost Auditor so as to enable him to complete the cost audit and submit his report within the time limit specified in Rule 5.

7. Authentication of Annexure to the Cost Audit Report – The Annexure and Proforma prescribed with the Cost Audit Report shall be approved by the Board of Directors before submitting the same to the Central Government by the Cost Auditor. The Annexure and Proforma, duly audited by the Cost Auditor, shall also be signed by the Company Secretary and at least one Director on behalf of the company. In the absence of Company Secretary in the company, the same shall be signed by at least two Directors.

8. Penalties – (1) If default is made by the Cost Auditor in complying with the provisions of Rule 4 or Rule 5, he shall be punishable with fine, which may extend to five thousand rupees.

(2) If the company contravenes the provisions of Rule 6 or Rule 7, the company and every officer thereof who is in default, including the persons referred to in sub-rule (6) of Section 209 of the Act, shall, subject to the provisions of Section 233B of the Act, be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which such contravention continues.

9. Saving of action taken or that may be taken for contravention of Cost Audit (Report) Rules, 1996 – It is hereby clarified that the supersession of the Cost Audit (Report) Rules, 1996, shall not in any way affect–

(i) any right, obligation or liability acquired, accrued or incurred thereunder;

(ii) any penalty, forfeiture or punishment incurred in respect of any contravention committed thereunder;

(iii) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and; any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if those rules had not been superseded.

FORM OF THE COST AUDIT REPORT

[See Rule 2(c) and Rule 4]

I/We,……….having been appointed as Cost Auditor(s) under Section 233B of the Companies Act, 1956 (1 of 1956) of …………(mention name of the company) having its registered office at ……..(mention registered office address of the company) (hereinafter referred to as the company), have examined the books of account prescribed under clause (d) of Sub-section (1) of Section 209 of the said Act, and other relevant records in respect of the unit…………(mention name and location of the unit) for the period/year……(mention the financial year) relating to ………(mention name of the product or activity) maintained by the company and report, in addition to my/our comments in para 3 relating to auditor's observations and suggestions, that—

1. (i) I/We have/have not obtained all the information and explanations, which to the best of my/our knowledge and belief were necessary for the purpose of this audit;
   (ii) proper cost accounting records, as prescribed under clause (d) of Sub-section (1) of Section 209 of the Companies Act, 1956, have/have not been kept by the company;
   (iii) proper returns adequate for the purpose of my/our Cost Audit have/have not been received from the branches not visited by me/us;
   (iv) the said books and records give/do not give the information required by the Companies Act, 1956 in the manner so required;
   (v) the cost statements in respect of product or activity under reference as specified in the Annexures/Proforma of Schedule I, Schedule II or Schedule III of the concerned Cost Accounting Records (**………..) Rules duly audited by me/us are kept in the company.
2. In my/our opinion the company's cost accounting records have/have not been properly kept so as to give a true and fair view of the cost of production, cost of sales and margin of the product under reference as prescribed under the rules.
3. Based on my/our examination of the records of the company subject to aforesaid qualifications, if any, I/We give my/our observations and suggestions on the following–
   (a) the adequacy or otherwise of the cost accounting system including inventory valuation in vogue in the company and suggestions for the improvement thereof. The Cost auditor shall also indicate the persistent deficiencies in the system, pointed out in earlier reports but not rectified;
   (b) the adequacy or otherwise of the budgetary control system, if any, in vogue in the company;
   (c) matters which appear to him to be clearly wrong in principle or

apparently unjustifiable;

(d) cases, where price charged for related party transactions as defined in the respective Cost Accounting Records Rules is different from normal price, Impact of such lower/higher price on margin of the product under reference shall be specified;

(e) areas where the company is incurring losses or where there is considerable decline in profitability, the cost auditor should comment on the reasons thereof including indicative break-even point. The cost auditor shall also comment on the default, if any on the payments due to the Government, financial Institutions and banks, penal interest levied thereon and its impact on the cost of sales and profitability;

(f) steps required to strengthen the company under the competitive environment especially with regard to need for protection from cheaper imports, if any;

(g) export commitments of the company vis-à-vis actual exports for the year under review. Also comment on comparative profitability and pricing policy of the company for domestic and export sales. Give impact of exports benefits/incentives offered by the Government on export profitability;

(h) the scope and performance of internal audit of cost records, if any, and comment on its adequacy or otherwise.

4. The Cost Auditor shall suggest measures for making further improvements in the performance in respect of cost control and cost reduction.

5. The Cost Auditor may also give his other observations and suggestions, if any, relevant to the cost audit.

Dated : This…date of …….200..at…..(mention name of place of signing this report).

Signature and Seal of the Cost Auditor(s)

Membership Number

Notes:

(1) Delete words not applicable.

(2) **Specify the title of the concerned Cost Accounting Records Rules made under clause (d) of Sub-section (1) of Section 209 of the Companies Act, 1956 which are applicable to the product or activity of the company.

(3) If as a result of the examination of the books of account, the Cost Auditor desires to point out any material deficiency or give a qualified report, he shall indicate the same against the relevant paras (i) to (vi) only in the prescribed form of the Cost Audit Report giving details of discrepancies he has come across.

(4) The report, suggestions, observations and conclusions given by the Cost Auditor under this paragraph shall be based on verified data, reference to which shall be made here and shall, wherever practicable, be included after the company has been afforded an opportunity to comment on them.

Participation of Cost Auditor in the meetings of Audit Committee

It was clarified vide Circular No. 6/2001 dt. 20.8.01 that the cost auditor wherever appointed shall also attend and participate at the meetings of Audit Committee but shall not have the right to vote.

Sub-section (5) of Section 292A provides that the auditors, internal auditors, if any, and the directors, incharge of finance, shall attend and participate at the meetings of audit committees without voting rights. The intention of providing for attending the meetings by auditors and internal auditors is to give an opportunity to the audit committee to hear their views. The cost auditor in his capacity an internal auditor can similarly participate in the meetings of the audit committee.

However, it has come to the notice of the Department that an interpretation is being made that cost auditor can be a member of audit committee. It is reiterated that the cost auditor cannot become member of audit committee and wherever appointed, can only attend and participate in the meeting without voting rights. Any other interpretation will be outside the purview of Section 292A and incorrect. [General Circular No. 2/2003 dated 9th January, 2003].

Cost audit – Soft copy cost audit report should be submitted by auditors in non-re-writable CD-ROM containing two files/parts

1. Para 4 of the Cost Audit Report Rules, 2001 provides that every auditor, who conducts an audit of the cost accounting records of company, shall submit the report (a hard copy and a soft copy) alongwith auditor's observations and suggestions, annexure and proforma to the Central Government in the prescribed form.
2. In order to have uniformity in the matter of submission of the audit reports by the cost auditors and for the sake of convenience management of data contained in these reports, the soft copy of the report shall henceforth be submitted in non-re-writable CD-ROM containing two files/parts.
3. Part I of the soft copy of the cost audit report (including annexure and proforma) shall be in PDF/Adobe Acrobat version 4.0 or above as an alternative, in Microsoft Office XLS format. The entire cost audit report shall be in one form only and shall not be in combination of both.
4. Part II of the software copy shall consist of para 4 to para 28 of an annexure to the cost audit report in worksheet form of Microsoft Office Excel or compatible format. These paras should strictly conform to the format prescribed in the Cost Audit Report Rules, 2001 and no reference whatsoever indicating the identity/location of the unit or the company should find a place in the soft copy.
5. The clarification comes into force with immediate effect and shall be followed strictly. [Circular No. 52/22/CAB-2000 dated 26.11.2002]

[I] REOPENING/REVISION OF ANNUAL ACCOUNTS AFTER ADOPTION IN ANNUAL GENERAL MEETING

DCA vide its Circular No. 1/2003 dated 13th January 2003 has clarified that a company could reopen and revise its accounts even after their adoption in the annual general meeting and filing with the Registrar of Companies in order to comply with technical requirements of any other law to achieve the object of exhibiting true and fair view. The revised annual accounts would be required to be adopted either in the extraordinary general meeting or in the subsequent annual general meeting and filed with the Registrar of Companies.

[J] SCHEDULE XIII

An explanation has been inserted to Part I of Schedule XIII vide *Notification No. GSR 670(E) dated 30.9.02*. Accordingly, the requirement of a person to be appointed as a managing director/whole-time director/manager to be a resident of India, does not apply to companies in Special Economic Zones. However, a non-resident Indian can be appointed as a managing director/whole-time director/manager, if he has entered India after obtaining proper Employment Visa from the concerned Indian mission abroad, and has furnished along with the visa application form, profile of the company, the principal employer and terms and conditions of his appointment.

Further, vide *Notification No. GSR 36(E) dated 16.1.2002* in the said Schedule, in **Part II, in Section II**, –

(a) for paragraph 1, the following shall be **substituted**, namely:-

"1. Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person by way of salary, dearness allowance, perquisites and any other allowances,–

(A) not exceeding the ceiling limit of Rs. 24,00,000 per annum or Rs. 2,00,000 per month calculated on the following scale :-

Where the effective capital of Company is	*Monthly remuneration payable shall not exceed (Rupees)*
(i) less than rupees 1 crore	75,000
(ii) rupees 1 crore or more but less than rupees 5 crores	1,00,000
(iii) rupees 5 crores or more but less than rupees 25 crores	1,25,000
(iv) rupees 25 crores or more but less than rupees 50 crores	1,50,000
(v) rupees 50 crores or more but less than rupees 100 crores	1,75,000
(vi) rupees 100 crores or more	2,00,000

Provided that the ceiling limits specified under this sub-paragraph shall apply, if–

(i) payment of remuneration is approved by a resolution passed by the Remuneration Committee;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person.

(B) not exceeding the ceiling limit of Rs.48,00,000 per annum or Rs.4,00,000 per month calculated on the following scale :-

Where the effective capital of Company is	*Monthly remuneration payable shall not exceed (Rupees)*
(i) less than rupees 1 crore	1,50,000
(ii) rupees 1 crore or more but less than rupees 5 crores	2,00,000
(iii) rupees 5 crores or more but less than rupees 25 crores	2,50,000
(iv) rupees 25 crores or more but less than rupees 50 crores	3,00,000
(v) rupees 50 crores or more but less than rupees 100 crores	3,50,000

(vi) rupees 100 crores or more	4,00,000

Provided that the ceiling limits specified under this sub-paragraph shall apply, if–

(i) payment of remuneration is approved by a resolution passed by the Remuneration Committee;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely :-

I. General Information:

(1) Nature of industry

(2) Date or expected date of commencement of commercial production

(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.

(4) Financial performance based on given indicators

(5) Export performance and net foreign exchange collaborations

(6) Foreign investments or collaborators, if any.

II. Information about the appointee:

(1) Background details

(2) Past remuneration

(3) Recognition or awards

(4) Job profile and his suitability

(5) Remuneration proposed

(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)

(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

(1) Reasons of loss or inadequate profits

(2) Steps taken or proposed to be taken for improvement

(3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

(1) The shareholders of the company shall be informed of the remuneration package of the managerial person.

(2) The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the annual report:-

(i) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension etc. of all the directors;

(ii) Details of fixed component and performance linked incentives along with the performance criteria;

(iii) Service contracts, notice period, severance fees;

(iv) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

(C) exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale :

Where the effective capital of Company is	*Monthly remuneration payable shall not exceed (Rupees)*
(i) less than rupees 1 crore	1,50,000
(ii) rupees 1 crore or more but less than rupees 5 crores	2,00,000
(iii) rupees 5 crores or more but less than rupees 25 crores	2,50,000
(iv) rupees 25 crores or more but less than rupees 50 crores	3,00,000
(v) rupees 50 crores or more but less than rupees 100 crores	3,50,000
(vi) rupees 100 crores or more	4,00,000

Provided that the ceiling limits specified under this sub-paragraph shall apply, if–

(i) payment of remuneration is approved by a resolution passed by the Remuneration Committee;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:-

I. General Information:

(1) Nature of industry

(2) Date or expected date of commencement of commercial production

(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.

(4) Financial performance based on given indicators

(5) Export performance and net foreign exchange collaborations

(6) Foreign investments or collaborators, if any.

II. Information about the appointee:

(1) Background details
(2) Past remuneration
(3) Recognition or awards
(4) Job profile and his suitability
(5) Remuneration proposed
(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

(1) Reasons of loss or inadequate profits
(2) Steps taken or proposed to be taken for improvement
(3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

(1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
(2) The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any attached to the annual report:-
   (i) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension etc, of all the directors;
   (ii) Details of fixed component and performance linked incentives along with the performance criteria;
   (iii) Service contracts, notice period, severance fees;
   (iv) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Provided further that the conditions specified in sub-paragraph (C) shall apply in the case the effective capital of the company is negative.

Provided also that the prior approval of the Central Government is obtained for payment of remuneration on the above scale.

Also, **Clause (D)** has been inserted in Part II, Section II of Schedule XIII vide *Notification No. GSR 565(E) dated 14.8.02*, which provides that in case of companies in Special Economic Zones having no profits or inadequate profits remuneration shall be paid to the managing director/whole-time director/manager not exceeding Rs.2,40,00,000 p.a. or Rs.20,00,000 p.m., provided, such companies have not raised any money by public issue of shares or debentures in India and not defaulted in repayment of debts, including public deposits, debentures or interest payable thereon for a continuous period of thirty days in any financial year.

(b) Vide Notification No. GSR 36(E) dated 16.1.2002 after Explanation III, the following Explanations have also be in inserted, namely, –

"Explanation IV :– For the purposes of this section, "Remuneration Committee" means that a committee which consists of at least three non-executive independent directors including nominee director or nominee directors, if any.

Explanation V :– For the purposes of this clause, the Remuneration Committee while approving the remuneration under this section, shall,–

(a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration etc.

(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation VI :– For the purposes of Paragraph 1, "negative effective capital" means the effective capital which is calculated :-

(a) in accordance with the provisions contained in Explanation-I of this Part;

(b) less than zero".

[K] DIRECTORS' REPORT – PARTICULARS OF EMPLOYEES

Section 217(2A)(1) of Companies Act, 1956 required that the Board's Report shall also include a statement showing the name of every employee of the company who if employed throughout the financial year, was in receipt of remuneration of not less than Rs.12,00,000 p.a. or if employment for a part of the financial year, received a remuneration not less than Rs.1,00,000 p.m.

By virtue of Companies (Particulars of Employees Amendment) Rules, 2002 the limit to be specified in this regard has been enhanced from Rupees twelve lakhs and one lakh to Rupees twenty-four lakhs and Rupees two lakhs respectively [vide *Notification No. GSR 288(E) dt. 17.4.2002*].

[L] DEBENTURE REDEMPTION RESERVE (DRR)

(i) Section 117C of the Act requires every company to create a DRR to which adequate amount shall be credited out of its profits every year until such debentures are redeemed and shall utilize the same exclusively for redemption of a particular set or series of debentures only. There is no obligation on the part of the company to create DRR if there is no profit for that particular year. However, vide Circular No.9/2002 dated 18th April 2002, Department of Company Affairs has clarified that:

(a) No DRR is required for debentures issued by AIFIs (All India Financial Institutes) regulated by Reserve Bank of India and banking companies for both public as well as privately placed debentures. For other FIs within the meaning of Section 4A of the Act, DRR will be as applicable to NBFCs registered with RBI.

(b) For NBFCs registered with the RBI under Section 45-IA of the RBI Act, 1997, the adequacy of DRR will be 50 per cent of the value of debentures issued through public issue as per present SEBI guidelines and no DRR is required in the case of privately placed debentures.

(c) For manufacturing and infrastructure companies, the adequacy of DRR will be 50 per cent of the value of the debentures issued through public issue and 25 per cent for privately placed debentures.

(d) Section 117C will apply to debentures issued and pending to be redeemed and as such DRR is required to be created for debentures issued prior to 13th December 2000 and pending redemption subject to clarifications issued herein.

(e) Section 117C will apply to non-convertible portion of debentures issued whether they are fully or partly convertible.

(ii) DCA has clarified that for housing finance companies registered with the National Housing Bank under Housing Finance Companies ("NHB") Directions, 2001 adequacy of DRR will be 50% of the value of debentures issued through public issues. No DRR is required in the case of privately placed debentures. (Circular No. 4/2003 dt. 16.2.03).

[M] FORM OF BALANCE SHEET (SCHEDULE VI)

In Schedule VI, in Part I, Form of Balance Sheet, in the first column relating to 'instructions in accordance with which liabilities should be made out' for the second paragraph against the sub-heading 'current liabilities and provisions' in the second column, the following shall be substituted :

'The name(s) of small scale industrial undertaking(s) to whom the company owes any sum together with interest outstanding for more than thirty days are to be disclosed', [GSR 376(E) dt. 22.5.02].

Schedule VI has been further amended vide *Notification No. GSR 762(E) dated 13.11.02*, which provides that under the heading 'liabilities' in sub-heading 'current liabilities and provisions' for (5) unclaimed dividends' the following shall be substituted namely–

(5) Investor Education and Protection Fund shall be credited by the following amounts namely:

(a) Unpaid dividend;

(b) Unpaid application money received by the companies for allotment of securities and due for refund;

(c) Unpaid matured deposits;

(d) Unpaid matured debentures;

(e) Interest accrued on (a) to (d) above.

[N] SCHEDULE V – ANNUAL RETURN

In Schedule V relating to 'annual return' in Part II, for clause (c) and the entries thereto, the following shall be substituted namely –

'(c) The whole of amounts envisaged in clause (a) to (e) of Sub-section (2) of Section 205C of the Companies Act, 1956 remaining unpaid or unclaimed for a period of seven years from the date they become payable by a company have been credited to the Investor Education and Protection Fund'.

[O] APPOINTMENT AND QUALIFICATIONS OF SECRETARY

Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2002 provides that in Rule 2 of the Companies (Appointment and Qualifications of Secretary) Amendment Rules, 1998 for the words 'rupees fifty lakh' at both the places where they occur, the words 'rupees two crores' shall be substituted. The appointment of company secretary has accordingly been made mandatory for companies having a paid-up share capital of Rs. 2 crores or more. Earlier the appointment was mandatory for companies with a paid-up share capital of Rs. 50 lakhs.

[P] COMPLIANCE CERTIFICATE

A Company Secretary in Practice who is entitled to issue compliance certificate pursuant to proviso to Section 383A(1) of the Companies Act, 1956 shall be deemed to be guilty of professional misconduct if he issues compliance certificate to more than 50 companies in a calendar year commencing from 1.01.03. However, in case of firm of Company Secretaries, the ceiling of 50 companies, as above shall apply to each partner therein who is so entitled to sign the certificate. [*Notification No. 1001/1/DR dated 27.02.03 issued by ICSI*].

[Q] DIRECTORS' RELATIVES (OFFICE OR PLACE OF PROFIT) RULES, 2003

In connection with Section 314 of the Companies Act, 1956, the Central Government has promulgated the Directors' Relatives (Office or Place of Profit) Rules, 2003 providing *inter alia* requirement of approval of Central Government in case of appointment of relatives etc. of directors. The Rules issued vide GSR 89(E) dated 5.2.2003, are as under:

1. Short title and Commencement.—These rules may be called the Director's Relatives (Office or Place of Profit) Rules, 2003.

They shall come into force on the date of their publication in Official Gazette.

2. Applicability.—These rules shall apply to all companies registered under the Companies Act, 1956 except as provided in these rules.

3. Approval of the Central Government in case of appointment of relatives etc. of directors.—No appointment for an office or place of profit in a company shall take effect, unless approved by the Central Government on an application in respect of –

(a) partner or relative of director or manager; or
(b) firm in which such director or manager, or relative either is a partner ; or
(c) private company of which such director or manager or relative of either is a director or member,

which carries a monthly remuneration exceeding Rs. 50,000 p.m.

4. Procedure of examination of applications.—The application under Rule 3 shall be examined with respect to the following in addition to all other requirements under the Companies Act, 1956:

(1) An undertaking from the appointee that he/she will be in the exclusive employment of the company and will not hold a place of profit in any other company.
(2) The monetary value of all allowances and perquisites and of total remuneration package (monthly/annually) proposed to be paid to the appointee and details of the services that will be rendered by him to the company.
(3) Shareholding pattern particularly the shareholding of the directors along with his/her/their relatives, the public holding, institutional holding (each institution separately).
(4) The educational qualification/experience, pay scale, allowances and other

benefits of similarly placed executives. In the case of the appointment of a relative, then an undertaking from the director or company secretary of the company that the similarly placed employees are getting the comparable salary shall also be enclosed along with the application.

(5) List/particulars of the employees who are in receipt of remuneration of Rs. 50,000 or more per month.

(6) The total number of relatives of all the directors either appointed as managing/whole-time director, manager or in any other position in the company, the total remuneration paid to each relative and the total remuneration paid to them altogether as a percentage of profits as calculated for the purpose of Section 198 of the Companies Act, 1956.

(7) The selection for appointment of a relative of a director for holding an office or place of profit in the company shall be approved by adopting the same procedure applicable to non-relatives. However, in the case of public companies, the selection of a relative of director for holding place or office of profit in the company shall have to be also approved by a Selection Committee.

Explanation: For the purposes of sub-rule (7) of Rule 4, the expression, "Selection Committee" means a Committee, the majority of which shall consist of independent directors and an expert in the respective fields from outside the company.

[R] DEFUNCT COMPANIES

Considering to provide an easy exit route to small non-functioning or defunct companies the DCA decided to introduce a Simplified Exit Scheme (SES), simplifying the procedures to be adopted by companies as well as Registrar of Companies (ROCs) in striking off the names of defunct companies with inbuilt safeguards to ensure that unscrupulous promoters/directors/managers do not escape their liabilities.

Department was of the view that there should be an incentive to the companies to exit and penalty for continuing to remain on the Register without complying with Section 6 of the Companies Act, 1956. It was also proposed that companies, which actually exit, may not be prosecuted under Circular of 11th December 2002, and if prosecutions have already been filed they may be withdrawn immediately after the name of the company is struck off from the Register.

Similarly, if there are any pending prosecutions for non-filing of annual return and balance sheet can be withdrawn. However, if there are other offences, prosecutions can only be withdrawn with the prior permission of the Department. On the other hand, such companies that continue to remain registered without complying with Section 3 should be prosecuted, vigorously.

It is hereby clarified that the SES will apply to all companies making an application under Section 560, and not just to companies who have not raised their capital to Rs.1 lakh and Rs. 5 lakh, respectively.

The SES will be as follows :

A company must apply to the ROC in the form prescribed (Annexure 'A') along with a fee of Rs. 2,000.

The applicant company must give the audited accounts for the year ending

March 2002, if applying before 31st March, 2003, and for the year ending March 2003, if applying thereafter. The audited accounts should show no assets and no liabilities.

The application should be accompanied by an affidavit of at least two directors, sworn before a Magistrate or an Executive Magistrate (who is not a notary), including that of a managing or whole-time director, if there is one, to the effect that the company has not carried on any business and has no assets or liabilities. Draft enclosed as Annexure 'B'.

The application should further be accompanied by an indemnity bond, duly notarized, from at least two directors, including managing or whole-time director, if there is one, to the effect that should there be any liabilities on the company, such liabilities will be met in full by them, even after the name of the company is struck off the register of the companies. Draft is enclosed as Annexure 'C'.

The ROC on receipt of application shall publish in the prescribed proforma (Annexure 'D') in one local and in one national daily, the list of companies that have applied, and are under consideration, for being struck off under Section 560.

ROCs shall sent this list of companies to the Department to enable it to put the list on the web sites of the Department/ICAI/ICSI; and also to Indian Banks Association ('IBA') at Unit Nos. 1, 2 and 4, 6th Floor, Center 1 Building, World Trade Centre Complex, Cuffe Parade, Mumbai-400005, for circulation amongst their constituents/members.

Thirty days after publication as aforesaid and forty-five days after dispatch of the proforma to IBA, if no objections are received, and if the case is otherwise in order, the ROC will strike off the name of the companies from the register and get them duly published in the Official Gazette.

The scheme will be in operation upto 31st December, 2003 from the date of issue of circular.

Within thirty days of the end of the Scheme, that is, by the 30th of January, 2004 all ROCs will sent to the Department of Company Affairs :

(a) List of companies struck off (in proforma at Annexure 'D')

(b) List of companies which applied, but could not be struck off, and reasons for the same (in proforma at Annexure 'E').

Clarifications on Simplified Exit Scheme, 2003

Issue No. 1: How will companies that have some minimal assets, such as cash balance, take advantage of the scheme? [para 9(ii) of the scheme].

Clarification : Assets and liabilities should be zero.

Issue No. 2: How often will the ROC publish the list of companies applying for SES? (para 10 of the scheme)

Clarification: ROC will do so on a monthly basis.

Issue No. 3: Who will pay the advertising charge ? (para 10 of the scheme)

Clarification: The ROC (Central Government).

Issue No. 4: Will publication of newspaper advertisement and reference to IBA be simultaneous? (para 11 of the scheme)

Clarification: Yes, Department will bind the ROCs to ensure that the letter to IBA is dispatched on the same day as the order for advertisement is placed with the newspapers. It is further directed to all ROCs that reference should also be made to financial institution besides IBA.

Issue No. 5: What happens to applications received on the last date of the validity of the scheme (para 14 of the scheme)

Clarification: All applications received till the last date will be duly processed. The intention of giving a last date for the scheme is only to indicate the last date for receipt of application.

Issue No. 6: If application is to be signed by a minimum of two directors, why have three boxes been provided? (application form – Annexure 'A')

Clarification: Because more than two directors may apply; in public companies it is likely that three directors will apply. If it is a private company and only two directors are applying, then the third photo box will simply remain empty.

Issue No. 7: What happens if any of the directors making the application does not have a PAN number. (Affidavit – Annexure 'B')

Clarification: Then, in his/her affidavit a paragraph has to be added stating that he/she has not been assigned a PAN number by the Income-tax Department.

Issue No. 8: Is NOC required from tax authorities/banks? (para 5 of the Affidavit – Annexure B)

Clarification: If the affidavit clearly states that there are no tax liabilities, and the indemnity bond clearly states that the directors will be responsible for any liabilities discovered or assigned subsequently, then no NOC is required.

Issue No. 9: Why does the indemnity bond have a column for worth of assets, when only zero asset companies are eligible for the scheme? (Indemnity Bond – Annexure 'C')

Clarification: This was a printer's devil and has already been corrected, including on the website. A clarification has been issued on 9th April, 2003 (General Circular No : 15/2003)

Issue No. 10: Why should director's liability remain unlimited and that too for an unlimited period? (Indemnity Bond – Annexure 'C')

Clarification: The directors are bye-passing the entire winding up procedure where the liabilities would have been judicially determined; the minimum comfort they have to provide in lieu of this is to be prepared to accept the liabilities if they have not brought such liability to notice when exiting from a limited liability company and extinguishing a juridical person. Regarding limitations, normal laws of limitation will apply. The liability is no different from what is provided in the proviso (a) to Sub-section (5) of Section 560 of the Companies Act, 1956.

Issue No. 11: Why cannot the affidavit be notarized instead of being sworn before a magistrate or executive magistrate? (Para 9(iii) of the scheme).

Clarification: The SES actually relies on the affidavit heavily, in respect of there being no liabilities. Individuals find it more difficult to swear false affidavits in front of a magistrate.

Issue No. 12: Whether applications received prior to SES will be required to come under SES even in cases where increase in capital as required in Section 3(3) and 3(4) have not been effected.

Clarification: SES is a new scheme and application will have to be made under the scheme itself. Companies have the option of withdrawing their regular Section 560 application and applying under the SES.

Issue No. 13: Whether company should draw a separate balance sheet for the year ending 31st March, 2002//2003 wherever they do not have uniform financial year.

Clarification: The intent of giving the date 31st March is to indicate end of financial year. If some companies' financial year ends in any other month, then naturally that cut off date will apply. In fact, the balance sheet to be filed with the scheme can be for a period after the close of the financial year also. For example, financial year of a company may have ended on 31st March, 2003. Yet, if the application is being filed, say, in July 2003, then the company is at liberty to file a balance sheet finalized for the period upto June 2003 also. In other words, it needs to be understood that what has to be filed is the last balance sheet, provided it pertains to a period which is not more than three months prior to filing of the application.

Issue No. 14: Can companies who have not raised their capital to the required minimum as required under Section 3(3) and 3(4) of the Companies Act, 1956 can avail of the scheme without increasing the capital.

Clarification: Yes. In fact, the circular clarified they need not even be prosecuted for not raising the capital in time, in case they take the SES route.

Issue No. 15: Can companies who have not taken even the commencement certificate avail of the scheme?

Clarification: Yes, of course. There cannot be a company more defunct than this. In fact, these are the companies that need to be struck off the register first.

– List of companies struck off (in proforma at Annexure 'D')

– List of companies which applied, but could not be struck off, and reasons for the same (in pro forma at Annexure 'E')

ANNEXURE A

Application Form for Striking of Name of Company under Section 560 of the Companies Act, 1956 under Simplified Exit Scheme

Affix Photo Stamp Size	*Affix Photo Stamp Size*	*Affix Photo Stamp Size*

No. of Company ………..
Name of the Company…………..
Address of the Company……………

To
The Registrar of Companies,
(Name of the State)

Sir,

The Company after carefully considering all aspects has duly resolved in the Board meeting held on….. to make an application for striking the name of the company off the Register under Section 560 of the Companies Act, 1956, if there is a deadlock of having one member in the Board due to demise of other directors, even a single alive director may constitute the Board as per regulation 75 of Table A.

(2) I/We furnish the following details and documents for considering the

application :

(i) Balance sheet and profit and loss account for the year ending showing no assets and liabilities.

(ii) An affidavit as per Annexure B of the General Circular No. 17/78/2003 CL.V dated 25th March, 2003 of Department of Company Affairs

(iii) An indemnity bond as per Annexure C of the General Circular No. 17/78/2001 CL.V dated 25th March, 2003 of Department of Company Affairs.

(3) Now, therefore, the undersigned request you to take action to strike off the name of the company from the register.

Yours faithfully,

……………………..

Names and address of applicant (directors)

……………………..

1. Signature

2. Signature

Date………………..

ANNEXURE B

AFFIDAVIT

We the following directors of ………Private/Limited, (hereinafter called "the Company"), incorporated on ……/……/… under the Companies Act, 1956 and having its Registered Office at ……………:

1. Shri………………S/o Shri ……………presently residing at……………… and having permanent address at ……..and having PAN No………
2. Shri……………..S/o Shri ………..…..presently residing at……………and having permanent address at …….. and having PAN No. ………….
3. Shri ……………….S/o Shri …………….presently residing at …….. and having permanent address at …….and having PAN No…..

do solemnly affirm as under:

1. The Company was incorporated on ………..with the object to carry on the business of…….
2. We are the directors of …………Private/Limited.
3. The Company has been inoperative right from the date of its incorporation/for the past …..years due to diverse reasons.
4. That a resolution has been passed to approach the Registrar of Companies to strike off the name of company under Section 560 of the Companies Act, 1956, in the meeting of directors held on………………….
5. As on date the company is not having any dues towards income-tax/sales tax/central excise/banks and financial institutions or any other Central or State Government departments/authorities or any local authorities.

6. That an application is hereby filed for action under Section 560 of the Companies Act, 1956, before the Registrar of Companies with necessary fees and required balance sheet.
7. In case of any loss(es) to any person or any valid claim from any person, if any, arising out of the striking off the name of the Company from the register companies, by the Registrar of Companies …………….….we, the Directors of the Company jointly and severally undertake to indemnify any person for any such losses and the indemnity bond to this effect is enclosed.

We solemnly affirm that this declaration is true to the best of our knowledge and belief and that it conceals nothing and that no part of it is false.

Place………

Signature

Date………

1. Shri………………….

[Delete wherever not applicable]

2. Shri………………….

3. Shri………………….

ANNEXURE C

INDEMNITY BOND

I/We Shri…………, s/o Shri ………., residing at ……….., Shri ………., s/o Shri …………., and Shri ………., s/o Shri ………., residing at …………., do hereby jointly and severally declare that :

(a) We are the directors of ……………………………Private/Limited, a company incorporated on…………. under the Companies Act, 1956 whose Registered Office is situated at………

(b) That we have made an affidavit dated ……. the ……., ………. duly sworn before Magistrate/Executive Magistrate affirming that the company………… Private/Limited has assets worth…………… and no liabilities.

(c) Further the company is not doing/carrying on any business right from the date of its incorporation and the company is also not intending to do any business or commercial activity as laid down in the main objects of its memorandum of association in future.

(d) Thus, the company is defunct and is requesting the Registrar of Companies ……. to strike off the name of the company from the Register of Companies in terms of Section 560 of the Companies Act, 1956.

In view of the above, we do hereby undertake in writing:

(a) to pay and settle all lawful claims arising out of the striking off the name of the company;

(b) to indemnify any person for any such losses that may arise pursuant to striking off the name of the company;

(c) to settle all lawful claims and liabilities which have not come to our notice at this stage, even after the name of the company has been struck off in Section 560 of the Companies Act, 1956.

Place :

Signature 1.

Date :

2.

3.

Witnesses :

1. Signature

2. Signature

Name:

Name :

Father's name :

Father's name :

Address :

Address :

Occupation :

Occupation:

ACCEPTED

Registrar of Companies

ANNEXURE D

…………………………

(ROC)

Government of India
(Department of Company Affairs)

…………………………

(Address of concerned ROC)

Notice is hereby given that following companies have applied to this office for striking off their names under the Simplified Section Scheme, 2003 dated 25th March, 2003 of Government of India, Department of Company Affairs during the period from …………. to……….

S.No.	*Name of the Company*	*Company No and Corporate Identity No. (CIN)*	*Date of incorpo-ration*	*Date of Application*	*Names of Persons/ directors who have made application on behalf of the company*

This notice is published pursuant to para 10 of General Circular 13/2003 dated 25th March, 2003 of Department of Company Affairs, Government of India.

Any person(s) having objection to the proposed striking off of above mentioned company(ies) may lodge his/their objections in writing duly substantiated to the undersigned within 30 days.

Sd/-
ROC

ANNEXURE E

…………………………
(ROC)
Government of India
(Department of Company Affairs)
…………………………
(Address of concerned ROC)

To

The Department of Company Affairs

List of companies which have applied to this office for striking off their names under the Simplified Section Scheme, 2003 dated 25th March, 2003 but which could not be struck off due to the reasons indicated below :-

S.No.	*Name of the Company*	*Company No and Corporate Identity No. (CIN)*	*Date of incorpo-ration*	*Date of Appli-cation*	*Names of Persons/ directors who have made application on behalf of the company*	*Reason**

*Indicate reasons specifically, e.g. :

(a) No fee or deficiency/shortage of fee
(b) Inadequate documentation (affidavit, indemnity bond or accounts not enclosed with)
(c) Objections from creditors or public or investors, etc.
(d) Any other reason

Sd/-
ROC

[S] SOLE-SELLING AGENTS (SSA)

DCA has issued guidelines for filing application for appointment of SSA in terms of Section 294AA of the Act. These guidelines read as under :

Guidelines for filing application for appointment of sole selling agents in terms of Section 294AA.

An application submitted under Section 294AA of the Companies Act, 1956 should be in accordance with the Companies (Appointment of Sole Agents) Rules, 1975 and be accompanied by the following :

1. Application fee [GSR 501 dated 6th July, 1999] as per details given below :

Companies with authorised capital	*Amount of fee*
(a) Less than Rs. 25,00,000	Rs. 500
(b) Rs.25 lakh or more but less than Rs.5 crore	Rs. 1000
(c) Rs.5 crore or more	Rs. 2000

   Application fee shall be paid by demand draft drawn in favour of Pay & Accounts Officer, Department of Company Affairs, New Delhi.
2. A copy each of the audited annual accounts of the applicant company and of the sole selling agents for the last three years.
3. A copy each of certified copies of Board of directors' resolution/and special resolution by members approving the proposal to appoint sole selling agent and the terms and conditions of appointment.
4. A copy of previous approval obtained from the Central Government in respect of appointment of the sole selling agents for earlier period, if any.
5. A certified copy of the marketing/sole selling agency agreement proposed to be entered into with the sole selling agent.
6. Percentage of shares held by the applicant company, its directors and their relatives in the sole selling agent/profit sharing ratio, if the proposed sole selling agent is a partnership firm.
7. Percentage of shares held by the sole selling agents, its directors and their relatives in the applicant company/their profit-sharing ratio.
8. Justification for variation, if any, of rate(s) of commission for earlier appointment and those proposed (in case of reappointment).

[T] PUBLIC COMPANIES (TERMS OF ISSUE OF DEBENTURES & RAISING OF LOANS WITH OPTION TO CONVERT SUCH DEBENTURE LOANS INTO SHARES) (AMENDMENT) RULES, 2003.

Vide *Notification No. G.S.R. 275(E) dated 31.3.03*, Public Companies (Terms of Issue of Debentures and Raising of Loans with option to convert such Debentures or Loans into Shares) Rules, 1977 have been amended to the effect that the definition of scheduled bank has been added as Rule 2(c). Accordingly, 'Scheduled bank' means a bank included in Second Schedule to the Reserve Bank of India Act, 1934 but does not include co-operative banks, regional rural banks and foreign banks.

The following proviso has also been inserted in Rule 3 at the end:

Provided that a public financial institution or a scheduled bank shall not convert all or any part of such debentures or loans unless –

(a) the company that has issued the debentures or raised the loan has defaulted in the repayment/redemption of, or payment of interest on, such loans or debentures; and

(b) such scheduled bank or pubic financial institution has given the company notice of its intention to convert such loans or debentures atleast 30 days prior to the intended date of conversion.

PART D – SEBI UPDATES

[A] INSIDER TRADING

SEBI (Insider Trading) Regulations, 1992 have been amended by formulation of SEBI (Insider Trading) Regulations, 2002 vide *Notification No. S.O. 221(E) dated 20.02.02* :

(i) These Regulations may be called the Securities and Exchange Board of India (Insider Trading) (Amendment) Regulations, 2002.

(ii) They shall come into force on the date of their publication in the Official Gazette.

(iii) In the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 (hereinafter referred to as "the Regulations"):

1. In the title, the words "Prohibition of" shall be inserted, before the words, "Insider Trading" in the bracket.
2. In Regulation 1, in sub-regulation (1), the words "Prohibition of" shall be inserted before the words "Insider Trading" in the bracket.
3. In Regulation 2 :

(a) In clause (c), in sub-clause (ii) :

(i) the words "whether temporary or permanent" shall be inserted after the words "and the company" and before the words "and who may reasonably";

(ii) "after sub-clause (ii), the following Explanation shall be inserted :

"Explanation : For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading."

(b) In clause (d),

(i) the word "subscribing", shall be inserted after the words "an act of" and before the words "buying"

(ii) the word "subscribe" shall be inserted after the words "or agreeing to" and before the words "to buy".

(c) In clause (e),

(i) The words "by virtue of such connection" appearing before the words "to unpublished price sensitive" shall be omitted.

(ii) for the word "the" appearing after the words Securities of and before the word 'company', the word "&" shall be substituted.

(d) In clause (h),

(i) for sub-clause (ii), the following sub-clause, shall be substituted, namely:

"(ii) is an intermediary as specificed in Section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation.

(ii) after sub-clause (vii), the following sub-clauses shall be inserted, namely:

"(viii) relatives of the connected person;

(ix) a concern, firm, trust, Hindu Undivided Family, Company, Association of Persons wherein the relatives of persons mentioned in sub-clauses (vi), (vii) and (viii) has more than 10% of the holding or interest."

(iii) After clause (h), the following clause and explanation shall be inserted, namely :

"(ha) 'price sensitive information' means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company;

Explanation : The following shall be deemed to be price sensitive information :

(i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);.
(iii) Issue of securities or buy-back of securities;
(iv) any major expansion plans or execution of new projects;
(v) amalgamation, mergers or takeovers;
(vi) disposal of the whole or substantial part of the undertaking; and
(vii) significant changes in policies, plans or operations of the company.

(e) In clause (j), the words "or Securities and Exchange Board of India" shall be inserted after the words "Central Government" and before the words, "under Section 4".

(f) For clause (k) the following clause and explanation shall be substituted namely :

"(k) Unpublished means information which is not published by the company or its agents and is not specific in nature.

Explanation: Speculative reports in print or electronic media shall not be considered as published information."

4. In regulation 3,-

(i) in clause (i), the words "on the basis of" appearing after the words "any stock exchange" and before the word "unpublished" shall be substituted with the words "when in possession of".

(ii) for clause (ii), the following clause shall be substituted, namely:

"(ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities.

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or under any law".

(iii) clause (iii) shall be omitted.

5. After the regulation 3, the following regulation shall be inserted, namely :

"3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information"

6. In regulation 4:

(i) The words, "or communicate any information or counsels any person dealing in securities", shall be omitted.

(ii) The words and figure “or 3A” shall be inserted after the word and figure, “regulation 3”,

7. In Chapter III, before regulation 5, the following regulation shall be inserted, namely:

“Power to make inquiries and inspection”

4A. (1) If the Board suspects that any person has violated any provision of these regulations, it may make inquires with such persons or any other person as mentioned in clause (i) of Sub-section (2) of Section 11 as deemed fit, to form a prima facie opinion as to whether there is any violation of these regulations.

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of Sub-section (2) of Section 11 for the purpose of sub-regulation (1).”

8. In regulation 5, in sub-regulation (i) :

(a) for the words “on the basis of written information in its possession is of the opinion”, the words, “is of *prima facie* opinion”, shall be substituted.

(b) the words “or any other person mentioned in clause (i) of Sub-section (1) of Section 11 of the Act” shall be inserted after the words “and documents of an insider and before the words “for any of the purposes specified in sub-regulation (2)”.

9. In regulation 6 :

In sub-regulation (3), the words “an insider or any other person mentioned in clause (i) of Sub-section (1) of Section 11 of the Act” shall be inserted after the words “books of account and the insider” and before the words “shall be bound”.

10. In regulation 7 :

(a) In sub-regulation (1), the words “or any other person mentioned in clause (i) of Sub-section (1) of Section 11 of the Act” shall be inserted after the words “who is being investigated” and before the words “to produce to the investigating authority”.

(b) In sub-regulation (2), the words “or any other person mentioned in clause (i) of Sub-section (2) of Section 11 of the Act” shall be inserted after the words “The insider” and before the words “shall allow the investigating authority to have reasonable access to the premises”.

(c) In sub-regulation (3), the words “or any other person mentioned in Clause (i) of Sub-section (2) of Section 11 of the Act” shall be inserted at the end of the sentence, after the words “insider”.

(d) In sub-regulation (3), the words “or any other person mentioned in Clause (i) of Sub-section (2) of Section 11 of the Act” shall be inserted after the word “insider” and before the words “may be reasonably expected to give.”

11. In regulation 8, for the words “one month”, the words “reasonable time”, shall be substituted.

12. In regulation 9, for sub-regulations (1) and (2), the following sub-regulation shall be inserted, namely :

“9(1) The Board shall, after consideration of the investigation report communicate the findings to the person suspected to be involved in insider trading or violation of these regulations.

(2) The person to whom such findings has been communicated shall reply to the same within 21 days; and

(3) On receipt of such a reply or explanation, if any, from such person, the Board may take such measures as it deems fit to protect the interests of the investors and in the interests of the securities market and for the due compliance of the provisions of the Act, the Regulations made thereunder including the issue of directions under regulation 11".

13. In regulation 10 :

(i) the words "regulation 4A and" shall be inserted after the words "contained in" and before the figure "5".

(ii) the words "or any other person mentioned in clause (i) of Sub-section (1) of Section 11 of the Act" shall be inserted after the word "insider".

14. For Regulation 11 the following regulation shall be substituted, namely:

"The Board may without prejudice to its right to initiate criminal prosecution under Section 24 or any action under Chapter VIA of the Act, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulation made there under-issue any or all of the following order, namely".

(a) directing the insider or such person as mentioned in clause (i) of Sub-section (2) of Section 11 of the Act not to deal in securities in any particular manner;

(b) prohibiting the insider or such persons mentioned in clause (i) of Sub-section (2) of Section 11 of the Act from disposing of any of the securities acquired in violation of these Regulations;

(c) restraining the insider to communicate or counsel any person to deal in securities;

(d) declaring the transaction(s) in securities as null and void;

(e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller :

Provided that in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher shall be paid to the seller;

(f) directing the person who has dealt in securities in violation of these regulation to transfer an amount or proceeds equivalent to the cost price or market price or securities, whichever is higher to the Investor Protection Fund of a Recognised Stock Exchange.

15. Regulation 12 shall be renumbered as Regulation 15; and substituted by the following :

"15—Any person aggrieved by an order of the Board under these regulations may prefer an appeal to the Securities Appellate Tribunal."

16. After Regulation 11, the following Chapter and Regulations shall be inserted, namely :

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

"12. Code of internal procedures and conduct for listed companies and other

entities

(1) All listed companies and organisations associated with securities markets including :

(a) the intermediaries as mentioned in Section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in Section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies;

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule 1 of these Regulations.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations."

13. Disclosure of Interest or holding by directors and officers and substantial shareholders in listed companies

Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company, shall disclose to the company, the number of shares or voting rights held by such person, within 4 working days of becoming a director or officer of the company.

Continual disclosure

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings form the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rupees 5 lacs in value or 5000 shares

or 2% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of :

(a) the receipt of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be."

Disclosure by company to stock exchanges

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4).

Violation of provision relating to disclosure

14. (1) A person who violates provisions of Regulation 12 shall be liable for action under Section 11 or 11 B and/or Section 24 of the Act.

(2) A person who violates provisions of Regulation 13 shall be liable for action as specified in Regulation 11 or Sections 11, 11B or action under Chapter VIA or Section 24 of the Act.

15. After Regulation 15, following schedules shall be inserted, namely :

SCHEDULE I

[Under regulation –12(1)]

PART – A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.1 The listed company has appointed a compliance officer (senior level employee who shall report to the Managing Director/Chief Executive Officer).

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation: For the purpose of this schedule, the term 'designated employee' shall include :

(i) officers comprising the top three tiers of the company management and all employees in the finance department.

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

1.3 The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.

1.4 The compliance officer shall assist all the employees in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992 and the company's code of conduct.

2.0 Preservation of "Price Sensitive Information"

2.1 Employees/Directors shall maintain the confidentiality of all Price Sensitive Information. Employees/Directors shall not pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, i.e., Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and password etc.

3.0 Prevention of misuse of "Price Sensitive Information"

3.1 All directors/officers and designated employees of the company shall be subject to trading restrictions as enumerated below :

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called "Trading Window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2.3 The trading window shall be, *inter alia*, closed at the time of:

(a) Declaration of Financial results (quarterly, half-yearly and annually)

(b) Declaration of dividends (interim and final)

(c) Issue of securities by way of public/rights/bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company.

3.2.4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2.5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the period when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

3.2.6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the compliance officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, *inter alia*, the following clauses, as may be applicable :

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.
(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.
(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.
(d) That he/she has made a full and true disclosure in the matter.

4.0 Other restrictions

4.1 All directors/officers/designated employees shall execute their order in respect of securities of the company within one week after the approval of pre-clearance is given. If the order is not executed within one week after the approval is given, the employee/director must pre-clear the transaction again.

4.2 All directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days in order to be considered as being held for investment purposes. The holding period shall also apply to subscription in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.

4.3 In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his/her reasons in this regard.

5.0 Reporting Requirements for transactions in securities

5.1 All directors/officers/designated employees of the listed company shall be required to forward following details of their Securities transactions including the statement of dependent family members (as defined by the company) to the compliance officer :

(a) all holdings in securities of that company by directors/officers/designated employees at the time of joining the company;
(b) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the company. The company may also be free to decide whether reporting is required for trades where pre-clearance is also required); and
(c) annual statement of all holdings in securities.

5.2 The Compliance officer shall maintain records of all the declarations in the appropriate form given by the directors/officers/designated employees for a minimum period of three years.

5.3 The Compliance officer shall place before the Managing Director/Chief Executive Officer or a committee specified by the company, on a monthly basis all the details of the dealing in the securities by employees/director/officer of the company and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

6.0 Penalty for contravention of code of conduct

6.1 Any employee/director/officer who trades in securities or communicates any information for trading in securities in contravention of the code of conduct may be penalized and appropriate action may be taken by the company.

6.2 Employees/officers/directors of the company who violate the code of conduct shall also be subject to disciplinary action by the company, which may include wage freeze, suspension, intelligibility for future participation in employee stock option plans, etc.

6.3 The action by the company shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading), Regulations, 1992.

7.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992

7.1 In case it is observed by the company/Compliance officer that there has been a violation of SEBI (Prohibition of Insider Trading) Regulations, 1992, SEBI shall be informed by the company.

PART B

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR OTHER ENTITIES

1.0 Compliance Officer

1.1 The organisation/firm has a compliance officer (senior level employee) reporting to Managing Partner/Chief Executive Officer.

1.2 The Compliance officer shall be responsible for setting forth policies and procedures and monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of all designated employees and their dependents trades (directly or through respective department heads as decided by the organisation/firm), monitoring of trades and the implementation of the code of conduct under the overall supervision of the partners/proprietors.

1.3 The Compliance officer shall also assist all the employees/directors/partners in addressing any clarifications regarding SEBI (Prohibition of Insider Trading) Regulations, 1992 and the organisation/firm's code of conduct.

1.4 The Compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.

2.0 Preservation of "Price Sensitive Information"

2.1 Employees/directors/partners shall maintain the confidentiality of all Price Sensitive Information. Employees/directors/partners must not pass on such information directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, i.e. Price Sensitive Information should be disclosed only to those within the organisation/firm who need the information to discharge their duty and whose possession of such information will not give rise to conflict of interest or appearance of misuse of the information.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and pass word etc.

2.4 Chinese Wall

2.4.1 To prevent the misuse of confidential information the organisation/firm shall adopt "Chinese Wall" policy which separates those areas of the organisation/firm which routinely have access to confidential information, considered "inside areas" from those areas which deal with sale/marketing/investment advise or other departments providing support services, considered "public areas".

2.4.2 The employees in the inside area shall not communicate any Price Sensitive Information to a public area.

2.4.3 The employees in inside area may be physically segregated from employees in public area.

2.4.4 Demarcation of the various departments as inside area may be implemented by the organisation/firm.

2.4.5 In exceptional circumstances employees from the public areas may be brought "over the wall" and given confidential information on the basis of "need to know" criteria, under intimation to the Compliance officer.

3.0 Prevention of misuse of Price Sensitive Information

3.1 Employees/directors/partners shall not use Price Sensitive Information to buy or sell securities of any sort, whether for their own account, their relative's account, organisation/firm's account or a client's account. The following trading restrictions shall apply for trading in securities.

3.2 Pre-clearance of trades

3.2.1 All directors/officers/designated employees of the organisation/firm who intend to deal in the securities of the client company (above a minimum threshold limit to be determined by the organisation/firm) shall pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.2.2 An application may be made in such form as the organisation/firm may specify in this regard to the Compliance officer indicating the name and estimated number of securities that the designated employees/director/partner intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the organisation/firm in this behalf.

3.2.3 An undertaking shall be executed in favour of the organisation/firm by such designated employee/partners/directors incorporating, *inter alia*, the following clauses, as may be applicable:

(i) That the designated employee/director/partner does not have any access or has not received any "Price Sensitive Information "upto the time of signing the undertaking.

(ii) That in case the designated employee/director/partner has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the client company till the time such information becomes public.

(iii) That he/she has not contravened the code of conduct for prevention of insider trading as specified by the organisation/firm from time to time.

(iv) That he/she has made a full and true disclosure in the matter.

4.0 Restricted/Grey list

4.1 In order to monitor chinese wall procedures and trading in client securities based on inside information, the organisation/firm shall restrict trading in certain securities and designate such list as restricted/grey list.

4.2 Security of a listed company shall be put on the restricted/grey list if the organisation/firm is handling any assignment for the listed company or is preparing appraisal report or is handling credit rating assignment and is privy to Price Sensitive Information.

4.3 Any security which is being purchased or sold or is being considered for purchase or sale by the organisation/firm on behalf of its clients/schemes of mutual funds, etc. shall be put on the restricted/grey list.

4.4 As the restricted list itself is a highly confidential information it shall not be communicated directly, or indirectly to anyone outside the organisation/firm. The Restricted List shall be maintained by Compliance Officer.

4.5 When any securities are on the Restricted List-trading in these securities by designated employees/directors/partners may be blocked or may be dis-allowed at the time of pre-clearance.

5.0 Other restrictions

5.1 All directors/designated employees/partners shall execute their order within one week after the approval of pre-clearance is given. If the order is not executed within one week after approval is given the employee/director/partners must clear the transaction again.

5.2 All directors/officers/designated employees/partners shall hold their investments for a minimum period of 30 days in order to be considered as being held for investment purposes.

5.3 The holding period shall also apply to purchases in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.

5.4 In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the Compliance officer after recording in writing his/her reasons in this regard.

5.5 Analysts, if any, employed with the organisation/firm while preparing research reports of a client company(s) shall disclose their shareholdings/interests in such company(s) to the Compliance officer.

5.6 Analysts who prepare research report of a listed company shall not trade in securities of that company for thirty days from preparation of such report.

6.0 Reporting Requirements for transactions in securities

6.1 All directors/designated employees/partners of the organisation/firm shall be required to forward following details of their securities transactions including the statement of dependent family members (as defined by the organisation/firm) to the Compliance officer :

(a) all holdings in securities by directors/officers/designated employees/partners at the time of joining the organisation;
(b) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the firm or organisation). The organisation/firm may also be free to decide whether reporting is required for trades where pre-clearance is also required;
(c) annual statement of all holdings in securities.

6.2 The Compliance officer shall maintain records of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.

6.3 The Compliance officer shall place before the Chief Executive Officer/Partner or a committee notified by the organisation/firm, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organisation/firm and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

7.0 Penalty for contravention of code of conduct

7.1 Any employee/partner/director who trades in securities or communicates any information or counsels any person trading in securities, in contravention of the code of conduct may be penalized and appropriate action may be taken by the organisation/firm.

7.2 Employees/partners/directors of the organisation/firm who violate the code of conduct may also be subject to disciplinary action by the company, which may include wage freeze, suspension, etc.

7.3 The action by the organisation/firm shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

8.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations

8.1 In case it is observed by the organisation/firm/Compliance officer that there has been a violation of these Regulations, SEBI shall be informed by the organisation/firm.

9.0 Listed intermediaries to comply with both Part A and B of Schedule-I

9.1 The intermediaries such as credit rating agencies, Asset Management Companies, or broking companies etc. whose securities are listed in recognized stock exchange shall comply with both Part A and Part B of this Schedule in respect of its own securities and client's securities.

SCHEDULE II

[see under regulation 12(2)]

CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies.

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving investor access to their public announcements.

3.0 Overseeing and co-ordinating disclosure

3.1 Listed companies shall designate a senior official (such as Compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

3.3 Information disclosure/dissemination may normally be approved in advance by the official designated for the purpose.

3.4 If information is accidentally disclosed without prior approval, the person responsible may inform the designated officer immediately, even if the information is not considered price sensitive.

4.0 Responding to market rumours

4.1 Listed companies shall have clearly laid down procedures for responding to any queries or requests for verification of market rumours by exchanges.

4.2 The official designated for corporate disclosure shall be responsible for deciding whether a public announcement is necessary for verifying or denying rumours and then making the disclosure.

5.0 Timely Reporting of shareholdings/ownership and changes in ownership

5.1 Disclosure of shareholdings/ownership by major shareholders and disclosure of changes in ownership as provided under any Regulations made under the Act and the listing agreement shall be made in a timely and adequate manner.

6.0 Disclosure/dissemination of Price Sensitive Information with special reference to Analysts, Institutional Investors

Listed companies should follow the guidelines given hereunder while dealing with analysts and institutional investors :

(i) Only Public information to be provided

Listed companies shall provide only public information to the analyst/research persons/large investors like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.

(ii) Recording of discussion

In order to avoid misquoting or misrepresentation, it is desirable that at least two company representatives be present at meetings with Analyst, brokers or Institutional Investors and discussion should preferably be recorded.

(iii) Handling of unanticipated questions

A listed company should be careful when dealing with analysts questions that raise issues outside the intended scope of discussion. Unanticipated questions may be taken on notice and a considered response given later. If the answer includes price sensitive information, a public announcement should be made before responding.

(iv) Simultaneous release of information

When a company organises meetings with analysts, the company shall make a press release or post relevant information on its website after every such meet. The company may also consider live webcasting of analyst meets.

7.0 Medium of disclosure/dissemination

(i) Disclosure/dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination.

(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly.

(iii) Corporates may also facilitate disclosure through the use of their dedicated internet website.

(iv) Company websites may provide a means of giving investors a direct access to analyst briefing material, significant background information and questions and answers.

(v) The information filed by corporates with exchanges under continuous disclosure requirement may be made available on the company website."

8.0 Dissemination by stock exchanges

(i) The disclosures made to stock exchanges may be disseminated by the exchanges to investors in a quick and efficient manner through the stock exchange network as well as through stock exchange websites.

(ii) Information furnished by the companies under continuous disclosure requirements, should be published on the website of the exchange instantly.

(iii) Stock exchanges should make immediate arrangement for display of the information furnished by the companies instantly on the stock exchange website.

SEBI (Prohibition of Insider Trading) Regulations, 1992 have been further amended by SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2002 vide Notification No. GSR/245(E) dated 29.11.02.

1. Sub-clause (ix) of the definition of 'person deemed to be a connected person' includes concerns, firms, companies etc. in which other specified insiders have more than 10% of the holding or interest. The reference to holdings of relatives of such persons has been removed.
2. Any communication made in the ordinary course of profession or employment shall also be exempt from the prohibition of regulation 3(ii) in addition to those made in the ordinary course of business or under any law.
3. A new regulation 3B has been introduced to lay down certain defences in proceedings for violation of regulation 3A in specified circumstances. Sub-regulation (1) says that a company would not be liable under regulation 3A for entering into a transaction in securities while its officer or employee was in possession of unpublished price sensitive information relating to the securities, if the decision to deal was taken by a person other than that officer or employee, and there are systems and procedures in the company which ensure that such person cannot have access to such information or to advice regarding the transaction from that officer or employee and if the information or advice was in fact not communicated to such person. Sub-regulation (2) of regulation 3B gives exemption in case of an acquisition made in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
4. The continuous disclosure requirements in regulation 13(4) have now been made applicable only in a case where the change in holdings exceeds the lower of Rs.5 lacs in value, or 25000 shares or 1% of the total shareholding or voting rights.
5. The definition of 'designated employee' for the purpose of the Model Code of Conduct for Listed Companies does not now extend to all the employees of the finance department. Only employees who are in the top two tiers of management and those specifically designated by the company would be covered.
6. It has been clarified that the time of commencement of closure of the trading window in connection with certain specified events shall be decided by the company.
7. Some typographical changes have been incorporated in the Regulations.

[B] CLAUSES 24 AND 31 OF THE LISTING AGREEMENT

SEBI has issued amendments in the listing agreement regarding disclosures pertaining to schemes of arrangement/merger/amalgamation/reconstruction filed before the court. [SEBI/SMD/POLICY/LIST/CIR-17/2003 dt. 8.5.03 issued by SEBI

Secondary Market Department.]

1. In clause 24 of the Listing Agreement, three new sub-clauses (f), (g) and (h) shall be added as under :

"(f) The company agrees that it shall file any scheme/petition proposed to be filed before any court or tribunal under Sections 391, 394 and 101 of the Companies Act, 1956, with the stock exchange, for approval, at least a month before it is presented to the court or tribunal."

"(g) The company agrees to ensure that any scheme of arrangement/ amalgamation/merger/reconstruction/reduction of capital, etc., to be presented to any court or tribunal does not in any way violate, override or circumscribe the provisions of securities laws or the stock exchange requirements."

Explanation: For the purposes of this sub-clause, "securities laws" mean the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under Section 55A thereof, the rules, regulations, guidelines, etc., made under these Acts and the Listing Agreement."

"(h) The company agrees that in the explanatory statement forwarded by it to the shareholders under Section 393 or accompanying a proposed resolution to be passed under Section 100 of the Companies Act, 1956, it shall disclose the pre and post arrangement or amalgamation (expected) capital structure and shareholding pattern."

2. Clause 31(c) of the Listing Agreement shall be substituted as under :

"(c) Three copies of all the notices, call letters or any other circulars including notices of meetings convened under Section 391, or Section 394, read with Section 391 of the Companies Act, 1956, together with Annexures thereto, at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the press."

[C] CLAUSE 40A – LISTING AGREEMENT

SEBI substituted Clause 40A of the Listing Agreement relating to continuous listing in order to incorporate quantitative continuous listing conditions. The clause so incorporated by Circular No. SMDRP/POLIC/CIR-28/01 dated 2nd May 2001, is reproduced hereunder :-

40A. *Conditions for continued listing*

(i) The company agrees that in the event of the application for listing being granted by the Exchange, the company shall maintain on a continuous basis, the minimum level of non-promoter holding at the level of public shareholding as required at the time of listing.

(ii) Where the non-promoter holding of an existing listed company as on April 1, 2001 is less than the limit of public share holding required at the time of initial listing, the company shall within one year raise the level of non-promoter holding to atleast 10% in case the company fails to do so, it shall buy-back the public shareholding in the manner provided in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(iii) The company agrees that it shall not make preferential allotment or an offer to buy-back its securities, if such allotment or offer result in reducing the non-promoter holding below the limit of public shareholding specified under the SEBI (Disclosure and Investor Protection) Guidelines as applicable at the time of initial listing or the limit specified in sub-clause (ii) for the existing listed company, as the case may be.

(iv) The conditions stipulated in sub-clauses (i), (ii) and (iii) shall not apply to the companies referred to BIFR.

(v) The company agrees that the following shall also be the condition for continued listing —

(a) When any person acquires or agrees to acquire 5% or more of the voting rights of any securities, the acquirer and the company shall comply with the relevant provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(b) When any person acquires or agrees to acquire any securities exceeding 15% of the voting rights in any company or if any person who holds securities which in aggregate carries less than 15% of the voting rights of the company and seeks to acquire the securities exceeding 15% of the voting rights, such person shall not acquire any securities exceeding 15% of the voting rights of the company without complying with the relevant provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

[D] CLAUSE 32 & 41 OF LISTING AGREEMENT

Clause 32 has been amended to incorporate additional requirements of disclosure of loans/advances and investments in own shares by listed companies/ subsidiaries/Associates.

Clause 32: Disclosure of loans/advances and investment in its own shares by the listed companies, their subsidiaries, associates, etc.

1. The following disclosure requirements shall be prescribed for the listed companies in the annual accounts of the company :

S. No.	*In the accounts of*	*Disclosures of amounts at the year end and the maximum amount of loans/advances/investments outstanding during the year*
1.	Parent	—Loans and advances in the nature of loans to subsidiaries by name and amount.
		—Loans and advances in the nature of loans to associates by name and amount.
		—Loans and advances in the nature of loans where there is: (i) no repayment schedule or repayment beyond seven years, or (ii) no interest or interest below Section 372A of the Companies Act by name and amount.

		—Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
2.	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3.	Parent	Investment by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.
Notes: (1) For the purpose of the above disclosures, the terms 'parent' and 'subsidiary' have the same meaning as defined in the Accounting Standard on Consolidated Financial Statement (AS 21) issued by the ICAI. (2) For the purpose of the above disclosures, the terms 'associate' and 'related' shall have the same meaning as defined in the Accounting Standard on Related Party Disclosures (AS 18) issued by the ICAI. (3) For the purpose of above disclosures, 'interest' shall have the same meaning as given in Section 299 of Companies Act, 1956.		

The above disclosures shall be applicable to all listed companies and for listed banks.

Implementation – It has been decided to amend clause 32 of the Listing agreement to incorporate the above additional disclosure requirements.

Clause 41

SEBI has further amended Clause 41 of listing agreement vide SMD/POLICY/CIR 11/02 dated 10th May 2002. Accordingly,

I. The companies which opt to publish audited results for the entire year within 3 months instead of publishing un-audited results for the last quarter within 30 days shall be required to publish annual audited results in the format specified in Annexure I.

Disclosure of audit qualifications

II. (i) Audit qualifications shall be disclosed in the un-audited/audited financial results published by companies under clause 41 of the Listing Agreement along with impact of audit qualifications on the profit or loss.

(ii) When there is an audit qualification in the accounts of listed company, the stock exchanges shall ask the company to explain -

— why there is audit qualification in their accounts,

— why the company failed to publish accounts without audit qualifications, and

— when the company will remove the qualifications and publish account without qualifications.

The exchanges are advised to incorporate the above amendments in the Listing Agreement immediately and also confirm compliance.

ANNEXURE I

FORMAT FOR PUBLICATION ANNUAL AUDITED RESULTS

Particulars	*Figures for the 9 months*	*Figures for the last quarter*	*Figures for the corres-ponding quarter of the previous year*	*Audited figures for the current year*	*Audited figures for the previous year*
	(1)	(2)	(3)	(4)	(5)
1. Net sales/income from operations					
2. Other income					
*Total expenditure					
(a) increase/decrease in stock in trade					
(b) Consumption of raw materials					
(c) Staff cost					
(d) Other expenditure (any item exceeding 10 per cent to the total expenditure to be shown separately)					
3. Interest					
—Depreciation					
—Profit (+)/Loss (–) before tax (1+2-3-4-5)					
—Provision for taxation					
—Net profit (+)/Loss (–) (6-7)					
—Paid-up equity share capital (face value of the share shall be indicated)					
—Reserve excluding revaluation reserves (as per balance sheet) of previous accounting year to be given in column (5)					
—Basic and diluted EPS for the period, for the year to date and for the previous year (not to be annualised)					
—Applicable for half-yearly financial results Aggregate of non-promoting shareholding					

—Number of shares					
—Percentage of shareholding					
*Non-promoters shareholding – as classified under category B in the shareholding pattern in clause 35 of the Listing Agreement.					
Notes: All the notes applicable to the format of unaudited quarterly financial results specified under clause 41 of the Listing Agreement shall also be applicable to this format.					

Clause 41 has been amended to incorporate that unaudited quarterly results shall also be subjected to limited review and that publication of consolidated annual financial results along with stand alone financial results shall be mandatory. [Circular No. SMD/POLICY/CIR-2/2003 dt. 10.01.03]

Clause 41 of the Listing Agreement has been amended pursuant to recommendations made by the Accounting Standards.

Accounting Standards Committee of SEBI has recommended certain amendments in the clause 41 of the listing agreement.

Quarterly un-audited financial results

1. Alternative format for un-audited financial results: The manufacturing and trading/service companies which have followed functional (secondary) classification of expenditure in the annual profit and loss account in their most recent annual report may furnish un-audited financial results on a quarterly basis in the alternative format enclosed at Annexure I.

2. Qualifications in audit report: Companies shall be required to disclose the audit qualifications along with the audited financial results published under clause 41 of the listing agreement in addition to the explanatory statement as to how audit qualifications in respect of the audited accounts of the previous accounting year have been addressed in the financial results.

Exchanges are advised to incorporate the above amendments in the clause 41 of the listing agreement immediately and also confirm the compliance.

Clause 41: Quarterly review of un-audited results

2. It shall be prescribed for the listed companies that unaudited quarterly results shall be subjected to limited review from the quarter ending on or after 30th June, 2003.

Implementation – Currently only half-yearly results of listed companies are subjected to limited review by the auditors. It has been decided to amend clause 41 of the listing agreement to incorporate that un-audited quarterly results shall also be subjected to limited review from the quarters ending on or after 30th June, 2002. All the provisions of clause 41 relevant to half-yearly limited review shall not be applicable to limited review of un-audited quarterly results.

Publication of consolidated financial results along with stand-alone financial results

3. Requirement of publication of consolidated financial results along with stand-alone financial results shall be applicable on annual basis only. However, companies

may have option to publish consolidated financial results along with stand alone financial results on a quarterly/half-yearly basis.

Implementation - It has been decided to amend clause 41 of the listing agreement to provide that publication of consolidated annual financial results along with stand-alone annual financial results shall be mandatory and the companies shall continue to have the option to publish consolidated financial results along with stand alone financial report on a quarter/half-yearly basis.

Disclosures of audit qualifications and action thereon

4. The current provisions of the listing agreement requires companies to furnish details regarding audit qualifications and in case of audit qualifications, stock exchanges shall ask the companies to explain:

(a) why there is audit qualification in their accounts,

(b) why the company failed to publish accounts without audit qualifications, and

(c) when the company will remove the qualifications and publish account without qualifications.

In addition to the above the stock exchanges shall also be required to inform Securities and Exchange Board of India ('SEBI') in cases where companies have failed to remove audit qualifications.

Implementation - It has been decided that in addition to the present requirement of stock exchanges asking companies, in case of audit qualifications, to explain –

(a) why there is audit qualification in their accounts,

(b) why the company failed to publish accounts without audit qualifications, and

(c) when the company will remove the qualifications and publish account without qualifications.

Stock exchanges shall also be required to inform SEBI within 7 days from the date of submission of the relevant audited results of cases where companies have failed to remove audit qualifications.

[E] CLARIFICATION REGARDING SEGMENT REPORTING

The Accounting Standard-17 on Segment Reporting issued by the Institute of Chartered Accountants of India (ICAI) is mandatory with effect from 1 April 2001 and clarification has been sought whether companies, whose accounting year has commenced before 1 April, 2001 and to whom the Standard is not applicable for the current year, are required to disclose segmental information in respect of the previous quarters along with the un-audited financial results for the quarters ending on or after 30 September, 2001.

It is clarified that :

1. in respect of all the companies including companies whose accounting year has commenced before 1 April, 2001, segment information prescribed under clause 41 shall be given for the quarters ending on or after 30 September, 2001.
2. in respect of companies whose accounting year has commenced on or after 1 April, 2001, cumulative segment information (i.e. year to date figures) for the current year in addition to the segment information for the current quarter shall be given beginning with the quarter ended 30 September, 2001.

3. in respect of companies whose accounting year has commenced before 1 April, 2001, cumulative segment information shall be given for the period commencing from 1 July, 2001 (i.e. from 1 July, 2001 to the end of the current quarter) in addition to the segment information for the current quarter.

The Exchanges are advised to take note of the above clarifications regarding disclosure of segment information prescribed under clause 41of the Listing Agreement and ensure compliance by companies.

ANNEXURE I

ALTERNATIVE FORMAT OF UN-AUDITED FINANCIAL RESULTS FOR MANUFACTURING AND TRADING/SERVICE COMPANIES, WHICH HAVE FOLLOWED FUNCTIONAL SECONDARY CLASSIFICATION OF EXPENDITURE IN THE ANNUAL PROFIT AND LOSS ACCOUNT PUBLISHED IN THEIR MOST RECENT ANNUAL REPORT.

Unaudited financial results for the three months ended……. (Rs. in lakhs)

S. No.	*3 months ended*	*Corres-ponding 3 months in the previous year*	*Year to date figures for current period*	*Year to date figures for previous period*	*Previous accounting year*
	(1)	(2)	(3)	(4)	(5)
1.	Net income from sales/ services				
2.	Cost of sales/ services (a) Increase/ decrease in stock in trade (b) Consumption of raw materials (c) Other expenditure				
3.	Gross profit				
4.	General administrative expenses				
5.	Selling and distribution expenses				
6.	Operating profit before interest and depreciation				
7.	Interest				
8.	Depreciation				
9.	Operating profit after				

	interest and depreciation				
10.	Other income				
11.	Profit (+)/loss (–) before tax				
12.	Provision for taxation				
13.	Net profit (+)/loss (–)				
14.	Paid-up equity share capital				
15.	Reserves excluding revaluation reserves (as per balance sheet) of previous accounting year to be given in column (5)				
16.	Basic and diluted EPS for the period, for the year to date and for the previous year (not to be annualized)				
17.	Aggregate of non promoters shareholding (applicable for half yearly results) Number of shares Percentage of shareholding				

Non promoter shareholding as classified under Category B in the shareholding pattern in clause 35 of the listing agreement.

Notes:

(a) Indicate by way of note, total expenditure incurred on

(i) Staff cost

(ii) Any item of expenditure which exceeds 10% of the total expenditure

This information shall be given in respect of all the periods included in the above statement.

(b) Any event or transaction that is material to an understanding of the results in the quarter including completion of expansion and diversification programmes, strikes, lock-outs, change in management, change in capital structure etc, shall be disclosed. Similar material event or transactions subsequent to the end of the quarter, the effect whereof is not reflected in the result of the quarter shall also be disclosed.

(c) All material non-recurring/abnormal income/gain and expenditure/loss effect of all changes in accounting practices affecting the profits material must be disclosed separately.

(d) In case of companies whose revenues are subject to material seasonal variations, they shall disclose the seasonal nature of their activities and may also supplement their unaudited financial results with information for 12 months periods ended at the interim date (last day of the quarter) for the current and preceding years on a rolling basis.

(e) Company shall give the following information in respect of dividend paid or recommended for the year including interim dividends declared:

(i) Amount of dividend distributed or proposed distinguishing between different classes of shares and dividend per share also indicating nominal value per share.

(ii) Where dividend is paid or proposed pro-rata for shares allotted during the year, the date of allotment, number of shares allotted pro-rata, amount of dividend per share and the aggregate amount of dividend paid or proposed on pro-rata basis.

(f) The effect of changes in composition of the company during the quarter including business combinations, acquisitions or disposal of subsidiaries and long term investments, restructuring and discontinuing operations shall be disclosed.

(g) If there is any qualification by the auditors, in respect of the audited accounts of the previous accounting year which has a material impact on the profit disclosed in such accounts, then the company shall disclose the same along with the unaudited quarterly results and give explanation as to how such qualifications have been addressed in the unaudited financial results.

(h) If the company is yet to commence commercial production, then instead of the quarterly results, the company should give particulars of the status of the project, its implementation and the expected date of commissioning of the project.

(i) The un-audited results sent to stock exchange/s and published in newspapers should be based on the same set of accounting policies as those followed in the previous year. In case, there are changes in the accounting policies, the results of previous year will be recast as per the present accounting policies, to make it comparable with current year results.

(j) If the period of the financial year is more than 12 months and not exceeding 15 months, there will be 5 quarters and is more than 15 months, but not exceeding 18 months there will be 6 quarters and the financial results will be intimated to the Exchange and published in the newspapers accordingly. Half yearly results which are required to be subjected to the 'limited review' by the auditors shall be prepared for the first two quarters where the financial year does not exceed 15 months and for the first two quarters and also separately for the third and fourth quarters where the financial year exceeds 15 months.

[Circular No. SMDRP/Policy/Cir-47/01, issued by Securities and Exchange Board of India, dated 4 October, 2001]

[F] SHORTENING OF SETTLEMENT CYCLE

Circular No. D&CC/FITTC/CIR-19/2003 and 20/2003 dt. 4.03.03 issued by SEBI, Depositories and Custodial Division provides for the shortening of the settlement cycle from the existing T+3 rolling settlement to T+2 rolling settlement and the time schedule for implementation of the T+2 rolling settlement.

The time schedule is provided here under :

It has been decided to shorten the settlement cycle from the existing T+3 rolling settlement to T+2 rolling settlement with effect from 1st April, 2003 vide D&CC/FITTC/CIR-20/2003 dated 4th March 2003.

After detailed deliberations with various market participants, a time schedule for the implementation of T+2 rolling settlement from 1st April, 2003 was prescribed by SEBI on 3rd January, 2003. A summary of the time schedule is as follows :

S.No.	*Day*	*Time*	*Description of activity*
1.	T		Trade day
2.	T+1	By 11.00 a.m.	Confirmation of all trades (includes custodial trades). Facility of an exceptional window for late confirmations would be made available by the exchanges
		By 1.30 p.m.	Processing and downloading of obligation files to brokers/custodians
3	T+2	By 11.00 a.m.	Pay-in of securities and funds
		By 1.30 p.m.	Pay-out of securities and funds

The Custodians shall adhere to the following activities for implementation of T+2 rolling settlement with effect from 1st April, 2003:

(1) Confirmation of the institutional trades by the custodians latest by 11.00 AM on T+1. An exception window would be provided by the exchanges for late confirmations for an additional fee but in any case the confirmation should be made before 1.00 PM on T+1.

(2) The Custodians shall issue instructions in the physical form upto 4 PM and in electronic form upto 6 PM on T+1 to the DPs for pay-in of securities.

(3) Pay-in to be made before 10.30 AM on T+2.

The Depositories shall adhere to the following activities as per the prescribed time to implement the above time schedule for T+2 rolling settlement. The

Depositories would in turn advise the depository participants ('DPs') to adhere to the designed activities within the prescribed time limits and therefore, the earlier Circular No. D&CC/FITTC CIR-07/2002 dated 8th April, 2002 stands modified with effect from 1st April, 2003 as under:

(1) DPs shall accept instructions for pay-in of securities from clients in the physical form at least upto 4 PM and in electronic form at least upto 6 PM on T+1.

(2) DPs shall complete execution of pay-in instructions latest by 10.30 AM on T+2.

(3) Depositories would download the processed pay-in files to the exchange/ clearing house/clearing corporation latest by 11.00 AM on T+2.

(4) Pay-out of securities by the exchange/clearing house/clearing corporation to the Depositories by 1.30 PM on T+2.

(5) Pay-out of securities to be completed by the Depositories by 2.00 PM on T+2.

(6) All Instructions received by the Depository Participants must have an execution date. The execution date can be current date or future date. Instruments will be valid till the pay-in deadline or till 'end of day' ('EOD') of the execution date, whichever is earlier. DPs would bring this to the notice of the client while accepting instructions. In case the account does not have sufficient balance before pay-in deadline or till EOD, such instructions will fall.

Further in order to ensure the smooth implementation of T+2 rolling settlement by 1st April, 2003 and to facilitate the implementation of T+1 rolling settlement from 1st April, 2004, the Depositories shall initiate the following steps :

(1) Implementation of real time online connectivity between the Depositories.

(2) Depositories would be required to design a system so that the exchanges/ clearing house/clearing corporation would be able to implement a system of online transmission of client wise pay-in obligations to the depository so that the depository in turn could download the security pay-in instructions to DPs in respect of the investor maintaining account with them.

(3) Depositories are also required to put up systems to facilitate settlement of transactions by the clearing house/clearing corporation arising out of securities lending and borrowing to meet shortages of pay-in obligations.

[DCC/FITTC/CIR-19/2003 dated 4.3.03.]

[G] CLAUSE 49 OF LISTING AGREEMENT

Clause 49(1)(A) of the listing agreement has been amended to provide that "Institutional directors on the Boards should be considered as independent directors whether the institution is an unlisting or a lending institution". [SMDRP/POLICY/CIR-53/01 dated 31.12.01].

Clause 49 has been further amended vide SEBI/MRD/SE/31/2003/26/08 dated 26th August, 2003. The amended clause is given hereunder:

Clause 49 - Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

(A) Composition of Board

(i) The board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend on whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors.

Explanation (i): For the purpose of this clause, the expression 'independent director' shall mean non-executive director of the company who:

(a) apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies;

(b) is not related to promoters or management at the board level or at one level below the board;

(c) has not been an executive of the company in the immediately preceding three financial years;

(d) is not a partner or an executive of the statutory audit firm or the internal audit firm that is associated with the company, and has not been a partner or an executive of any such firm for the last three years. This will also apply to legal firm(s) and consulting firm(s) that have a material association with the entity.

(e) is not a supplier, service provider or customer of the company. This should include lessor-lessee type relationships also; and

(f) is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.

Explanation (ii): Institutional directors on the boards of companies shall be considered as independent directors whether the institution is an investing institution or a lending institution.

(B) Non executive directors' compensation and disclosures

(i) All compensation paid to non-executive directors shall be fixed by the Board of Directors and shall be approved by shareholders in general meeting. Limits shall be set for the maximum number of stock options that can be granted to non-executive directors in any financial year and in aggregate. The stock options granted to the non-executive directors shall vest after a period of at least one year from the date such non-executive directors have retired from the Board of the Company.

(ii) The considerations as regards compensation paid to an independent director shall be the same as those applied to a non-executive director.

(iii) The company shall publish its compensation philosophy and statement of entitled compensation in respect of non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report. Company shall disclose on an annual basis, details of shares held by non-executive directors, including on an “if-converted” basis.

(iv) Non-executive directors shall be required to disclose their stock holding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should accompany their notice of appointment.

(C) Independent Director

(i) Independent Director shall however periodically review legal compliance reports prepared by the company as well as steps taken by the company to cure any taint. In the event of any proceedings against an independent director in connection with the affairs of the company, defence shall not be permitted on the ground that the independent director was unaware of this responsibility.

(ii) The considerations as regards remuneration paid to an independent director shall be the same as those applied to a non executive director.

(D) Board Procedure

(i) The board meeting shall be held at least four times a year, with a maximum time gap of four months between any two meetings. The minimum information to be made available to the board is given in Annexure–IA.

(ii) A director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

Explanation: For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies (i.e. private limited companies, foreign companies and companies under Section 25 of the Companies Act, etc) shall be excluded.

(iii) Further only the three committees viz. the Audit Committee, the Shareholders’ Grievance Committee and the Remuneration Committee shall be considered for this purpose.

(E) Code of Conduct

(i) It shall be obligatory for the Board of a company to lay down the code of conduct for all Board members and senior management of a company. This code of conduct shall be posted on the website of the company.

(ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The annual report of the company shall contain a declaration to this effect signed by the CEO and COO.

Explanation: For this purpose, the term “senior management” shall mean personnel of the company who are members of its management/operating council (i.e. core management team excluding Board of Directors). Normally, this would comprise all members of management one level below the executive directors.

(F) Term of Office of Non–executive directors

(i) Person shall be eligible for the office of non-executive director so long as the term of office did not exceed nine years in three terms of three years each, running continuously.

II. Audit Committee

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up and shall comply with the following:

(i) The audit committee shall have minimum three members. All the members of audit committee shall be non-executive directors, with the majority of them being independent.

(ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation (i): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

(iii) The Chairman of the Committee shall be an independent director;

(iv) The Chairman shall be present at Annual General Meeting to answer shareholder queries;

(v) The audit committee should invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and when required, a representative of the external auditor shall be present as invitees for the meetings of the audit committee;

(vi) The Company Secretary shall act as the secretary to the committee.

(B) Meeting of Audit Committee

The audit committee shall meet at least thrice a year. One meeting shall be held before finalization of annual accounts and one every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors.

(C) Powers of Audit Committee

The audit committee shall have powers which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.

3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

(D) Role of Audit Committee

(i) The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.
3. Reviewing with management the annual financial statements before submission to the board, focusing primarily on;
   (a) Any changes in accounting policies and practices.
   (b) Major accounting entries based on exercise of judgment by management.
   (c) Qualifications in draft audit report.
   (d) Significant adjustments arising out of audit.
   (e) The going concern assumption.
   (f) Compliance with accounting standards.
   (g) Compliance with stock exchange and legal requirements concerning financial statements
   (h) Any related party transactions
4. Reviewing with the management, external and internal auditors, the adequacy of internal control systems.
5. Reviewing the adequacy of internal audit function, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
6. Discussion with internal auditors any significant findings and follow up there on.
7. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
8. Discussion with external auditors before the audit commences about nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
9. Reviewing the company's financial and risk management policies.
10. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

Explanation (i): The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

Explanation (ii): If the company has set up an audit committee pursuant to provision of the Companies Act, the company agrees that the said audit committee shall have such additional functions / features as is contained in the Listing Agreement.

(E) Review of information by Audit Committee

(i) The Audit Committee shall mandatorily review the following information:

1. Financial statements and draft audit report, including quarterly / half-yearly financial information;
2. Management discussion and analysis of financial condition and results of operations;
3. Reports relating to compliance with laws and to risk management;
4. Management letters / letters of internal control weaknesses issued by statutory / internal auditors; and
5. Records of related party transactions
6. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee

III. Audit Reports and Audit Qualifications

(A) Disclosure of Accounting Treatment

In case it has followed a treatment different from that prescribed in an Accounting Standards, management shall justify why they believe such alternative treatment is more representative of the underlined business transactions. Management shall also clearly explain the alternative accounting treatment in the footnote of financial statements.

IV. Whistle Blower Policy

(A) Internal Policy on access to Audit Committees:

(i) Personnel who observe an unethical or improper practice (not necessarily a violation of law) shall be able to approach the audit committee without necessarily informing their supervisors.

(ii) Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, etc. The employment and other personnel policies of the company shall contain provisions protecting “whistle blowers” from unfair termination and other unfair or prejudicial employment practices.

(iii) Company shall annually affirm that it has not denied any personnel access to the audit committee of the company (in respect of matters involving alleged misconduct) and that it has provided protection to “whistle blowers” from unfair termination and other unfair or prejudicial employment practices.

(iv) Such affirmation shall form a part of the Board report on Corporate Governance that is required to be prepared and submitted together with the annual report.

(v) The appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the Audit Committee.

V. Subsidiary Companies

(i) The company agrees that provisions relating to the composition of the Board of Directors of the holding company shall be made applicable to the composition of the Board of Directors of subsidiary companies.

(ii) At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of the subsidiary company.

(iii) The Audit Committee of the holding company shall also review the financial statements, in particular the investments made by the subsidiary company.

(iv) The minutes of the Board meetings of the subsidiary company shall be placed for review at the Board meeting of the holding company.

(v) The Board report of the holding company should state that they have reviewed the affairs of the subsidiary company also.

VI. Disclosure of contingent liabilities

(i) The company agrees that management shall provide a clear description in plain English of each material contingent liability and its risks, which shall be accompanied by the auditor's clearly worded comments on the management's view. This section shall be highlighted in the significant accounting policies and notes on accounts, as well as, in the auditor's report, where necessary.

VII. Disclosures

(A) Basis of related party transactions

(i) A statement of all transactions with related parties including their basis shall be placed before the Audit Committee for formal approval/ratification. If any transaction is not on an arm's length basis, management shall provide an explanation to the Audit Committee justifying the same.

(B) Board Disclosures –Risk management

(i) It shall put in place procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.

(ii) Management shall place a report certified by the compliance officer of the company, before the entire Board of Directors every quarter documenting the business risks faced by the company, measures to address and minimize such risks, and any limitations to the risk taking capacity of the corporation. This document shall be formally approved by the Board.

(C) Proceeds from Initial Public Offerings (IPOs)

(i) When money is raised through an Initial Public Offering (IPO) it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/ prospectus. This statement shall be certified by the independent auditors of the company. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

(D) Remuneration of Directors

(i) All pecuniary relationship or transactions of the non-executive director's *vis-a-vis* the company shall be disclosed in the Annual Report.

(ii) Further the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the annual report.

  (a) All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension etc.

  (b) Details of fixed component and performance linked incentives, along with the performance criteria.

  (c) Service contracts, notice period, severance fees.

  (d) Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.

(E) Management

(i) As part of the directors' report or as an addition there to, a Management Discussion and Analysis report should form part of the annual report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:

  (a) Industry structure and developments.

  (b) Opportunities and Threats.

  (c) Segment–wise or product-wise performance.

  (d) Outlook.

  (e) Risks and concerns.

  (f) Internal control systems and their adequacy.

  (g) Discussion on financial performance with respect to operational performance.

  (h) Material developments in Human Resources / Industrial Relations front, including number of people employed.

Management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

(F) Shareholders

(i) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

  (a) A brief resume of the director;

  (b) Nature of his expertise in specific functional areas; and

  (c) Names of companies in which the person also holds the directorship and the membership of Committees of the board.

(ii) Information like quarterly results, presentation made by companies to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

(iii) A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as 'Shareholders/Investors Grievance Committee'.

(iv) To expedite the process of share transfers the board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

VIII. CEO/CFO certification

(i) CEO (either the Executive Chairman or the Managing Director) and the CFO (whole-time Finance Director or other person discharging this function) of the company shall certify that, to the best of their knowledge and belief:

(a) They have reviewed the balance sheet and profit and loss account and all its schedules and notes on accounts, as well as the cash flow statements and the Directors' Report;

(b) These statements do not contain any materially untrue statement or omit any material fact nor do they contain statements that might be misleading;

(c) These statements together present a true and fair view of the company, and are in compliance with the existing accounting standards and / or applicable laws / regulations;

(d) They are responsible for establishing and maintaining internal controls and have evaluated the effectiveness of internal control systems of the company; and they have also disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of internal controls, if any, and what they have done or propose to do to rectify these;

(e) They have also disclosed to the auditors as well as the Audit Committee, instances of significant fraud, if any, that involves management or employees having a significant role in the company's internal control systems; and

(f) They have indicated to the auditors, the Audit Committee and in the notes on accounts, whether or not there were significant changes in internal control and / or of accounting policies during the year.

IX. Report on Corporate Governance

(i) There shall be a separate section on Corporate Governance in the annual reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement i.e. which is part of the listing agreement with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in Annexure-1B and list of non-mandatory requirements is given in Annexure–1C.

(ii) The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given below. The report shall be submitted either by the Compliance Officer or the Chief Executive Officer of the company after obtaining due approvals.

Format of Quarterly Compliance Report on Corporate Governance

Name of the Company:
Quarter ending on:

Particulars	*Clause of Listing Agreement*	*Compliance Status (Yes/No/N.A.)*	*Remarks*
1	*2*	*3*	*4*
I. Board of Directors	49 I		
(A) Composition of Board	49 (IA)		
(B) Non-executive Directors' compensation & disclosures	(IB)		
(C) Independent Director	(IC)		
(D) Board Procedure	9 (ID)		
(E) Code of Conduct	9 (IE)		
(F) Term of office of non-executive directors	49 (IF)		
II. Audit Committee	9 (II)		
(A) Qualified & Independent Audit Committee	9 (IIA)		
(B) Meeting of Audit Committee	9 (IIB)		
(C) Powers of Audit Committee	9 (IIC)		
(D) Role of Audit Committee	II(D)		
(E) Review of Information by Audit Committee	49 (IIE)		
III. Audit Reports and Audit Qualifications	49 (III)		
IV. Whistle Blower Policy	49 (IV)		
V. Subsidiary Companies	49 (V)		
VI. Disclosure of contingent liabilities	49 (VI)		
VII. Disclosures	49 (VII)		
(A) Basis of related party transactions	(II A)		
(B) Board Disclosures	(VIIB)		
(C) Proceeds from Initial Public offerings	49 (VIIC)		
(D) Remuneration of Directors	49 (VIID)		
1	*2*	*3*	*4*
(E) Management	(VIIE)		
(F) Shareholders	49 (VIIF)		
VIII. CEO/CFO Certification	49 (VIII)		
IX. Report on Corporate Governance	49 (IX)		

Note:

(1) The details under each head shall be provided to incorporate all the information required as per the provisions of the clause 49 of the Listing Agreement.

(2) In the column No.3, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the clause 49 I of the Listing Agreement, “Yes” may be indicated. Similarly, in case the company has not come out with an IPO, the words “N.A.” may be indicated against 49 (VIIC).

(3) In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the AGM/EGM, it might be indicated in the “Remarks” column as – “will be complied with at the AGM”. Similarly, in respect of matters which can be complied with only where the situation arises, for example, “Report on Corporate Governance” is to be a part of Annual Report only, the words “will be complied in the next Annual Report” may be indicated.

X. Compliance

The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors’ report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual returns filed by the company.

Schedule of implementation

(1) The provisions of the revised clause 49 shall be implemented as per the schedule of implementation given below:

   (i) By all entities seeking listing for the first time, at the time of listing.

   (ii) By all companies which were required to comply with the requirement of the erstwhile clause 49 i.e. all listed entities having a paid up share capital of Rs 3 crores and above or net worth of Rs 25 crores or more at any time in the history of the entity. These entities shall be required to comply with the requirement of this clause on or before March 31, 2004.

(2) The non-mandatory requirement given in Annexure–1C shall be implemented as per the discretion of the company. However, the disclosures of the adoption/non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

ANNEXURE 1A

Information to be placed before Board of Directors

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business

segments.

4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory nature or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

ANNEXURE 1B

Suggested List of Items to Be Included In the Report on Corporate Governance in the Annual Report of Companies

1. A brief statement on company's philosophy on code of governance.
2. Board of Directors:
   (i) Composition and category of directors, for example, promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as lender or as equity investor.
   (ii) Attendance of each director at the BoD meetings and the last AGM.
   (iii) Number of other BoDs or Board Committees in which he/she is a member or Chairperson.
   (iv) Number of BoD meetings held, dates on which held.
3. Audit Committee.
   (i) Brief description of terms of reference
   (ii) Composition, name of members and Chairperson

(iii) Meetings and attendance during the year

4. Remuneration Committee.
    (i) Brief description of terms of reference
    (ii) Composition, name of members and Chairperson
    (iii) Attendance during the year
    (iv) Remuneration policy
    (v) Details of remuneration to all the directors, as per format in main report.
5. Shareholders Committee.
    (i) Name of non-executive director heading the committee
    (ii) Name and designation of compliance officer
    (iii) Number of shareholders' complaints received so far
    (iv) Number not solved to the satisfaction of shareholders
    (v) Number of pending complaints
6. General Body meetings.
    (i) Location and time, where last three AGMs held.
    (ii) Whether any special resolutions passed in the previous 3 AGMs
    (iii) Whether any special resolution passed last year through postal ballot – details of voting pattern
    (iv) Person who conducted the postal ballot exercise
    (v) Whether any special resolution is proposed to be conducted through postal ballot
    (vi) Procedure for postal ballot
7. Disclosures.
    (i) Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
    (ii) Disclosure of accounting treatment, if different, from that prescribed in Accounting standards with explanation.
    (iii) Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
    (iv) Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
8. Means of communication.
    (i) Half-yearly report sent to each household of shareholders.
    (ii) Quarterly results
    (iii) Newspapers wherein results normally published
    (iv) Any website, where displayed
    (v) Whether it also displays official news releases; and
    (vi) The presentations made to institutional investors or to the analysts.
    (vii) Whether MD&A is a part of annual report or not.
9. General Shareholder information

(i) AGM : Date, time and venue

(ii) Financial Calendar

(iii) Date of Book closure

(iv) Dividend Payment Date

(v) Listing on Stock Exchanges

(vi) Stock Code

(vii) Market Price Data : High., Low during each month in last financial year

(viii) Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.

(ix) Registrar and Transfer Agents

(x) Share Transfer System

(xi) Distribution of shareholding

(xii) Dematerialization of shares and liquidity

(xiii) Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity

(xiv) Plant Locations

(xv) Address for correspondence

ANNEXURE 1C

Non-Mandatory Requirements

1. Chairman of the Board

A non-executive Chairman should be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.

2. Remuneration Committee

(i) The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.

(ii) To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors should comprise of at least three directors, all of whom should be non-executive directors, the chairman of committee being an independent director.

(iii) All the members of the remuneration committee should be present at the meeting.

(iv) The Chairman of the remuneration committee should be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

3. Shareholder Rights

The half-yearly declaration of financial performance including summary of the significant events in last six-months, should be sent to each household of shareholders.

4. Postal Ballot

Currently, though there is requirement for holding the general meeting of shareholders, in actual practice only a small fraction of the shareholders of that company do or can really participate therein. This virtually makes the concept of corporate democracy illusory. It is imperative that this situation which has lasted too long needs an early correction. In this context, for shareholders who are unable to attend the meetings, there should be a requirement which will enable them to vote by postal ballot for key decisions. Some of the critical matters which should be decided by postal ballot are given below:

(i) Matters relating to alteration in the memorandum of association of the company like changes in name, objects, address of registered office etc;

(ii) Sale of whole or substantially the whole of the undertaking;

(a) Sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%;

(b) Making a further issue of shares through preferential allotment or private placement basis;

(c) Corporate restructuring;

(d) Entering a new business area not germane to the existing business of the company;

(e) Variation in rights attached to class of securities;

(f) Matters relating to change in management.

5. Audit qualifications

Company may move towards a regime of unqualified financial statements.

6. Training of Board Members

Company shall train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

7. Mechanism for evaluating non-executive Board Members

The performance evaluation of non-executive directors should be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer Group evaluation should be the mechanism to determine whether to extend/continue the terms of appointment of non-executive directors.

[H] SWEAT EQUITY

The SEBI (Issue of Sweat Equity) Regulations, 2002 introduced by *Notification No. S.O.1031 (E) dated 24.9.02* contains provisions relating to issue of sweat equity shares by listed companies, obligations of the companies, and the procedural aspects in this respect.

The Regulations are reproduced hereunder :

CHAPTER I

PRELIMINARY

1. Short title and commencement

(a) These regulations shall be called the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.

(b) These regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions

(1) In these regulations, unless the context otherwise requires :

(a) 'Act' means the Securities and Exchange Board of India Act, 1992;

(b) 'associate' includes a person,

  (i) who directly or indirectly by himself or in combination with relatives, exercises control over the company; or,

  (ii) whose employee, officer or director is also a director, officer or employee of another company;

(c) 'Board' means the Board as defined in clause (a) of Sub-section (1) of Section 2 of the Act;

(d) '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 or voting agreements or in any other manner;

(e) 'company' means a company as defined in the Companies Act, 1956;

(f) 'director' means, a director as defined in Sub-section (13) of Section 2 of the Companies Act, 1956;

(g) 'employee' means;

  (i) a permanent employee of the company working in India or abroad, or

  (ii) a director of the company, whether a whole time director or not.

(h) 'ESOS' means an Employees Stock Option Scheme as defined in Securities and Exchange Board of India (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999;

(i) 'insider' means an insider as defined in clause (e) of Regulation 2 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;

(j) 'merchant banker' means a merchant banker registered under Section 12 of the Act;

(k) 'promoter' means promoter as defined in clause (h) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;

(l) 'registrar' means a registrar to an issue and includes a share transfer agent registered under Section 12 of the Act;

(m) 'securities' means securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(n) 'statutory auditor' means an auditor appointed by a company under Section 224 of the Companies Act, 1956 (1 of 1956);

(o) 'Recognised Stock Exchange' means a stock exchange which has been granted recognition under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(p) 'sweat equity shares' means sweat equity shares as defined in Explanation II of Sub-section (1) of Section 79A of the Companies Act, 1956;

(q) "Schedule" means a schedule to these Regulations;

(r) 'valuer' means a Chartered Accountant or a merchant banker appointed to determine the value of the intellectual property rights or other value addition;

(2) Words and expressions not defined in these regulations shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956, or any statutory modification or re-enactment thereof, as the case may be.

3. Applicability

Nothing contained in these regulations shall apply to an unlisted company.

Provided the unlisted company coming out with initial public offering and seeking listing of its securities on the stock exchange, pursuant to issue of sweat equity shares, shall comply with the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.

CHAPTER II

ISSUE OF SWEAT EQUITY BY A LISTED COMPANY

4. Sweat equity shares may be issued to employee, promoter

A company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares in accordance with Section 79A of Companies Act, 1956 and these Regulations to its-

(a) Employees

(b) Directors

5. Special Resolution

(1) For the purposes of passing a special resolution under clause (a) of Sub-section (1) of Section 79A of the Companies Act, 1956 the explanatory statement to be annexed to the notice for the general meeting pursuant to Section 173 of the Companies Act, 1956 shall contain disclosures as specified in the Schedule.

(2) The issue of sweat equity shares to promoters shall be subject to the requirements specified in Regulation 6 of these Regulations.

6. Issue of Sweat Equity Shares to promoters

(1) In case of issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting.

Provided that for passing such resolution, voting through postal ballot as specified under Companies (Passing of the resolution by Postal Ballot) Rules, 2001 shall also be adopted.

Provided further that the promoters to whom such Sweat Equity Shares are proposed to be issued shall not participate in such resolution.

(2) Each transaction of issue of Sweat Equity shall be voted by a separate resolution.

(3) The resolution for issue of Sweat Equity shall be valid for a period of not more than twelve months from the date of passing of the resolution.

(4) For the purposes of passing the resolution, the explanatory statement shall contain the disclosures as specified in the Schedule.

7. Pricing of Sweat Equity Shares

(1) The price of sweat equity shares shall not be less than the higher of the following :

(a) The average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or

(b) The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.

Explanation: "relevant date" for this purpose means the date which is thirty days prior to the date on which the meeting of the General Body of the shareholders is convened, in terms of clause (a) of Sub-section (1) of Section 79A of the Companies Act, 1956.

(2) If the shares are listed on more than one stock exchange, but quoted only on one stock exchange on the given date, then the price on that stock exchange shall be considered.

(3) If the share price is quoted on more than one stock exchange, then the stock exchange where there is highest trading volume during that date shall be considered.

(4) If shares are not quoted on the given date, then the share price on the next trading day shall be considered.

8. Valuation of intellectual Property

(1) The valuation of the intellectual property rights or of the know-how provided or other value addition mentioned in Explanation II of Sub-section (1) of Section 79A of the Companies Act, 1956 shall be carried out by a merchant banker.

(2) The merchant banker may consult such experts and valuers, as he may deem fit having regard to the nature of the industry and the nature of the property or other value addition.

(3) The merchant banker shall obtain a certificate from an independent Chartered Accountant that the valuation of the intellectual property or other value addition is in accordance with the relevant accounting standards.

9. Accounting Treatment

(1) Where the sweat equity shares are issued for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company:

(a) Where the non-cash consideration takes the form of the depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the relevant accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the relevant accounting standards.

10. Placing of Auditors Certificate before Annual General Meeting

In the general meeting subsequent to the issue of sweat equity, the Board of Directors shall place before the shareholders, a certificate from the auditors of the company that the issue of sweat equity shares has been made in accordance with the Regulations and in accordance with the resolution passed by the company authorizing the issue of such sweat equity shares.

11. Ceiling on Managerial Remuneration

The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of Sections 198, 309, 310, 311 and 387 of the Companies Act, 1956 if the following conditions are fulfilled :

(i) the sweat equity shares are issued to any director or manager; and,

(ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

12. Lock-in of sweat equity shares

(1) The sweat equity shares shall be locked in for a period of three years from the date of allotment.

(2) The Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, on public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued sweat equity.

13. Listing

The Sweat Equity issued by a listed company shall be eligible for listing only if such issue is in accordance with these regulations.

14. Applicability of Takeover

Any acquisition of sweat equity shares shall be subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

CHAPTER III
GENERAL OBLIGATIONS

15. Obligations of the Company

(1) The Company shall ensure that -

(a) The Explanatory Statement to the notice for general meeting shall contain certain disclosures as are specified under clause (b) of Sub-section (1) of Section 79A of the Companies Act, 1956 and sub-regulation (1) of Regulation 5.

(b) Auditor's certificate as required under Regulation 10 shall be placed in the general meeting of shareholders.

(c) The company shall within seven days of the issue of sweat equity, issue or send statement to the recognized stock exchange, disclosing :

  (i) number of sweat equity shares;

  (ii) price at which the sweat equity shares are issued;

  (iii) total amount invested in sweat equity shares;

  (iv) details of the persons to whom sweat equity shares are issued; and

(v) the consequent changes in the capital structure and the shareholding pattern after and before the issue of sweat equity.

16. Action against intermediaries

The Board may, on failure of the merchant banker to comply with the obligations under these regulations or failing to observe due diligence in respect of valuation of intellectual property or value addition, initiate action against the merchant banker in terms of Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

CHAPTER IV

PENALTIES AND PROCEDURE

17. Power of the Board to order inspection or investigation

(1) The Board may, *suo-motu* or upon information received by it, cause an inspection to be made of the books of account or other books and papers of any company or an investigation to be made in respect of the conduct and affairs of any person associated with the process of Sweat Equity, by appointing an officer of the Board :

Provided that no such inspection or investigation shall be made except for the purposes specified in sub-regulation (2).

(2) The purpose referred to in sub-regulation (1) are the following, namely :

(a) to ascertain whether there are any circumstances which would render any person guilty of having contravened any of these regulations or any directions issued thereunder;

(b) to investigate into any complaint of any contravention of the regulation, received from any investor, or any other person;

(3) An order passed under the sub-regulation (1) shall be sufficient authority for the Inspecting or Investigating Officer to undertake the inspection or investigation, as the case may be and on production of an authenticated copy of the order, the person concerned shall be bound to carry out the duty imposed in Regulation 18.

18. Duty to produce records, etc.

(1) It shall be the duty of every person in respect of whom an inspection or investigation has been ordered under regulation 17, to produce before the inspecting or the investigating officer such book, accounts and other documents in his custody or control and furnish him with such statements and information as the said officer may require from the purpose of the inspection or investigation.

(2) Without prejudice to the generality of the provisions of sub-regulation (1), such person shall -

(a) extend to the Inspecting or Investigating Officer reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the inspection or investigation;

(b) provide such Inspecting or Investigating Officer copies of such books, accounts and records which, in opinion of the Officer, are relevant to the inspection or investigation or, as the case may be, allow him to take out computer printouts thereof.

(c) provide such assistance and co-operation as may be required in connection with the inspection or investigation and furnish information relevant to such inspection or investigation as may be sought by such officer.

(3) The Inspecting or Investigating Officer shall for the purpose of inspection or investigation, have the full powers;

(a) of summoning and enforcing the attendance of persons;

(b) to examine orally and to record on oath the statement of the persons concerned, any director, partner, member or employee of such person.

19. Submission of Report to the Board

(1) The Inspecting or Investigating Officer shall, on completion of the inspection or investigation after taking into account all relevant facts and circumstances, submit a report to the Board.

(2) On the receipt of report under sub-regulation (1), the Board may initiate such action as it may be deemed fit to do in the interests of investors and the securities market.

20. Power of the Board to issue directions

The Board may in the interests of the securities market and without prejudice to its right to initiate action including criminal prosecution under Section 24 of the Act or Section 621 of Companies Act, 1956 give such directions as it deems fit including:

(a) directing the person concerned not to further deal in securities in any particular manner;

(b) directing the person concerned to sell or divest the sweat equity shares acquired in violation of the provisions of these Regulations or any other law or regulations;

(c) prohibiting the persons concerned, from accessing the securities market;

(d) directing the disgorgement of any ill-gotten gains or profit or avoidance of loss.

(e) restraining the company from making a further offer for sweat equity.

SECURITIES AND EXCHANGE BOARD OF INDIA

(Issue of Sweat Equity) Regulations, 2002

SCHEDULE

[Under Regulation 6(4)]

The explanatory statement to the notice and the resolution proposed to be passed in the general meeting for approving the issuance of sweat equity shall, *inter alia*, contain the following information :

(a) The total number of shares to be issued as sweat equity.

(b) The current market price of the shares of the company.

(c) The value of the intellectual property rights or technical know how or other value addition to be received from the employee or director along with the valuation report/basis of valuation.

(d) The names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.

(e) The consideration to be paid for the sweat equity.

(f) The price at which the sweat equity shares shall be issued.

(g) Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.

(h) A statement to the effect that the company shall conform to the accounting policies as specified by the Board.

(i) Diluted Earning Per Share pursuant to the issue of securities to be calculated in accordance with International Accounting Standards/standards specified by the institute of Chartered Accountants of India.

[I] CLAUSE 51 OF LISTING AGREEMENT

SEBI has introduced Clause 51 in the listing agreement to provide for online filing of documents, on the website. The clause 51 reads as under:

1. "[*Clause 51-EDIFAR Filing*—(1) The company agrees that it shall file the following information, statements and reports on the EDIFAR website maintained by the NIC, on-line, in such manner and format and within such time as may be specified by SEBI :

— Full version of annual report including the balance sheet, profit and loss account, director's report and auditor's report; cash flow statements; half-yearly financial statements quarterly financial statements.

— Corporate governance report.

— Shareholding pattern statement

— Statement of action taken against the company by any regulatory agency

— Such other statement, information or report as may be specified by SEBI from time to time in this regard:

Provided that the requirement of this clause shall be in addition to and not in derogation from the requirements of other clauses of this listing agreement, which may require filing of any statements, reports and information in the physical or other form with the exchange.]

(2) The company agrees that it shall appoint a compliance officer who shall be responsible for filing the above information in the EDIFAR system. The compliance officer and the company shall ensure the correctness and authenticity of the information filed in the system and that it is in conformity with applicable laws and terms of the listing agreement.

(3) The company undertakes that while filing the information in the EDIFAR system, it shall make the following disclaimer clause:

'The information furnished above is certified by [company's name] to be true, fair and accurate (except in respect of errors in or omissions from documents filed electronically that result solely from electronic transmission errors beyond our control and in respect of which we take corrective action as soon as it is reasonably practicable after becoming aware of the error or the omission). SEBI, the stock exchanges or the NIC do not take any responsibility for the accuracy, validity, consistency and integrity of the data entered and updated by it. The name of the compliance officer with his designation and the company's name shall be displayed immediately below the disclaimer clause.'

Companies would be required to file these information/statements and reports on EDIFAR with effect from 15th July, 2002 and would be filed simultaneously with the information being filed with the stock exchanges. In case any of the Company included in the list, files any of these information/statements and reports physically with the stock exchanges between 1st July, 2002 and 13th July, 2002, such companies should also file the same information electronically on EDIFAR by 15th July, 2002. The manner and format has been provided in the operational manual available on the web site.

[J] SEBI (DELISTING OF SECURITIES) GUIDELINES, 2003

SEBI has issued guidelines for delisting of Securities in order to protect the interest of investors. These guidelines provide *inter alia* the procedure for voluntary delisting, compulsory delisting, re-instatement of delisted securities, etc.

The guidelines are as under :

These guidelines shall be called "Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003".

These guidelines are being issued under Section 11(1), read with Sub-section (2) of Section 11A of Securities and Exchange Board of India Act, 1992, with the objective to protect the interest of investors in the securities market.

Definitions

In these Guidelines, unless the context otherwise requires :

(a) 'Act' means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) 'Authority' means the Central Listing Authority established under the Securities and Exchange Board of India (Central Listing Authority) Regulations, 2003;

(c) 'Board' means the Securities and Exchange Board of India established under Section 3 of the Act;

(d) 'compulsory delisting' means delisting of the securities of a company by an exchange;

(e) 'delisting exchange' means the exchange from which the securities of the company are proposed to be delisted in accordance with these Guidelines;

(f) 'exchange' means any stock exchange which has been granted recognition under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(g) 'promoter' means a promoter as defined in clause (h) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and includes a person who is desirous of getting the securities of the company delisted under these Guidelines;

(h) 'public shareholding' means the shareholding in a company held by persons other than the promoter, the acquirer or the persons acting in concert with him as defined in regulation 2(1)(j) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the term 'public holders of securities' shall be construed accordingly;

(i) 'Schedule' means a schedule appended to these Guidelines;

(j) 'voluntary delisting' means delisting of securities of a body corporate voluntarily by a promoter or an acquirer or any other person other than the stock exchange(s).

3.1 Words and expressions not defined in these Guidelines shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956, or any statutory modification or re-enactment thereof, as the case may be.

Applicability

4.1 These Guidelines shall be applicable to delisting of securities of companies and specifically shall apply to -

(a) voluntary delisting being sought by the promoters of a company;

(b) any acquisition of shares of the company (either by a promoter or by any other person) or scheme or arrangement, by whatever name referred to, consequent to which the public shareholding falls below the minimum limit specified in the listing conditions or listing agreement that may result in delisting of securities;

(c) promoters of the companies who voluntarily seek to delist their securities from all or some of the stock exchanges;

(d) cases where a person in control of the management is seeking to consolidate his holdings in a company in a manner which would result in the public shareholding in the company falling below the limit specified in the listing conditions or in the listing agreement that may have the effect of company being delisted;

(e) companies which may be compulsorily delisted by the stock exchanges.

4.2 Provided that company shall not be permitted to use the buy-back provision to delist its securities.

Delisting of securities (voluntary) of a listed company

5.1 A company may delist from stock exchange where its securities are listed :

Provided that the securities of the company have been listed for a minimum period of 3 years on any stock exchange :

Provided further that an exit opportunity has been given to the investors for the purpose of which an exit price shall be determined in accordance with the 'book building process' described in clauses 7-10 and 13 and 14 of these Guidelines.

5.2 An exit opportunity need not be given in cases where securities continue to be listed in a stock exchange having nationwide trading terminals.

Explanation: For the purpose of these Guidelines, stock exchange having nationwide trading terminals means the Stock Exchange, Mumbai, the National Stock

Exchange and any other stock exchange, which may be specified by the Board.

Procedure for voluntary delisting

6.1 Any promoter or acquirer desirous of delisting securities of the company under the provisions of these Guidelines shall –

(a) obtain the prior approval of shareholders of the company by a special resolution passed at its general meeting;
(b) make a public announcement in the manner provided in these Guidelines;
(c) make an application to the delisting exchange in the form specified by the exchange, annexing therewith a copy of the special resolution passed under sub-clause (a); and
(d) comply with such other additional conditions as may be specified by the concerned stock exchanges from where securities are to be delisted.

Public announcement for voluntary delisting

7.1 Before making application for delisting, the promoters or the acquirers of the company shall make a public announcement.

7.2 The public announcement shall contain, *inter alia*, information specified in Schedule I.

7.3 Before making the public announcement, the promoter shall appoint a merchant banker registered with the Board, who is not an associate of the promoter.

Exit price for voluntary delisting of securities

8.1 Any promoter of a company which desires to delist from the stock exchange shall determine an exit price for delisting of securities in accordance with the book building process described in Schedule II of these Guidelines.

8.2 The offer price shall have a floor price, which will be the average of 26 weeks traded price quoted on the stock exchange where the shares of the company are most frequently traded preceding 26 weeks from the date of the public announcement and without any ceiling of maximum price.

8.3 In the case of infrequently traded securities the offer price shall be as per Regulation 20(5) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the infrequently traded securities shall be determined in the manner explained under Regulation 20(5) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

8.4 The stock exchange(s) shall provide the infrastructure facility for display of the price at the terminals of the trading members to enable the investors to access the price on the screen to bring transparency to the delisting process.

8.5 In the event of securities being delisted, the acquirer shall allow a further period of 6 months for any of the remaining shareholders to tender securities at the same price.

8.6 The stock exchanges shall monitor the possibility of price manipulation and keep under special watch the securities for which announcement for delisting has been made.

8.7 To ascertain the genuineness of physical securities if tendered and to avoid the bad delivery, registrar and transfer agent shall co-operate with the clearing house/clearing corporation to determine the quality of the papers upfront.

8.8 If the quantity eligible for acquiring securities at the final price offered does not result in public shareholding falling below required level of public holding for continuous listing, the company shall remain listed.

8.9 The paid up share capital shall not be extinguished as in the case of buyback of securities.

8.10 In the case of partly paid-up securities, the price determined by the book building process shall be applicable to the extent the call has been made and paid.

8.11 The amount of consideration for the tendered and accepted securities shall be settled in cash.

Right of promoter

9.1 The promoter may not accept the securities at the offer price determined by the book building process.

9.2 Where the promoter decides not to accept the offer price so determined, -

(a) he shall not make an application to the exchange for delisting of the securities; and

(b) the promoter shall ensure that the public shareholding is brought up to the minimum limits, specified under the listing conditions within a period of 6 months from the date of such decision, by any of the modes specified in sub-clause 9.3.

9.3 For the purpose of sub-clause 9.2(b), the public shareholding may be increased by any of the following means :

(a) by issue of new shares by the company in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;

(b) by the promoter making an offer for sale of his holdings in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;

(c) by the promoter making sale of his holdings through the secondary market in a transparent manner.

9.4 In the event of the promoter not being able to raise the public shareholding in accordance with sub-clause 9.3 within six months, he shall offer for sale to the public such portion of his holdings as would bring up the public shareholding to the minimum limits specified in the listing agreement or the listing conditions at the price determined by the Central Listing Authority.

Public announcement of final price

10.1 On determination of the final price pursuant to the book building, the promoter or the acquirer shall, within a period of two working days from such determination -

(a) make a public announcement in the newspapers of the final price as discovered by the book building process and whether or not the promoter or the acquirer has accepted the price; and

(b) communicate to exchange or exchanges from which delisting is sought to be made, the final price discovered and whether the promoter has accepted the price.

Delisting from one or more stock exchanges

11.1 When a company, which is listed on any stock exchange or stock exchanges other than the stock exchanges having nationwide trading terminals, seeks delisting, an exit offer shall be made to the shareholders in accordance with these Guidelines.

11.2 There shall not be any compulsion for the existing company to remain listed on any stock exchange merely because it is a regional stock exchange.

Minimum number of shares to be acquired

12.1 Where the offer for delisting results in acceptance of a fewer number of shares than the total shares outstanding and as a consequence the public shareholding does not fall below the minimum limit specified by the listing conditions or the Listing Agreement, the offer shall be considered to have failed and no securities shall be acquired pursuant to such offer.

Payment of consideration

13.1 The payment of consideration for delisting of securities shall be paid in cash by the promoter or acquirer.

Delisting of one or all class of securities

14.1 A company may delist one or all of its class of securities subject to the provisions of this clause.

14.2 If the equity shares of a company are delisted, the fixed income securities may continue to remain listed on the stock exchange.

14.3 A company which has a convertible instrument outstanding, it shall not be permitted to delist its equity shares till the exercise of the conversion options.

Compulsory delisting of companies by stock exchanges

15.1 The stock exchanges may delist companies which have been suspended for a minimum period of six months for non-compliance with the Listing Agreement.

15.2 The stock exchanges may also delist companies as per the norms provided in Schedule III.

15.3 The stock exchange shall give adequate and wide public notice through news papers (including one English national daily of wide circulation) and through display of the notice on the notice board/website/trading systems of the exchange.

15.4 The stock exchange shall give a show cause notice to a company or adopt procedure provided under Part B of Schedule III for delisting under sub-clause 15.1 and 15.2.

15.5 The exchange shall provide a time period of 15 days within which representation may be made to the exchange by any person who may be aggrieved by the proposed delisting.

15.6 The stock exchange shall ensure that adequate and wide public notice is given through newspapers and on the notice boards/trading systems of the stock exchanges after the period of show cause is over.

15.7 The stock exchange shall display the name of such company on its website.

Rights of securities holders in case of compulsory delisting

16.1 Where the securities of the company are delisted by an exchange, the promoter of the company shall be liable to compensate the security holders of the company by paying them the fair value of the securities held by them and acquiring their securities, subject to their option to remain security holders with the company.

Explanation: For the purposes of this sub-clause, fair value shall be determined by the arbitrator having regard to the factors mentioned in Regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

16.2 The security holders may enforce their claim to compensation/fair value under this clause through the arbitration mechanism of the exchange in the manner laid down in its bye-laws.

Delisting pursuant to rights issue

17.1 In the case of rights issue, allotment to the promoters or the persons in control of the management shall be allowed even if they subscribe to unsubscribed portion which may result in public shareholding falling below the permissible minimum level :

Provided further that they agree to buy out the remaining holders at the price of rights issue or make an offer for sale to bring the public shareholding at the level specified in the listing conditions or listing agreement to remain listed.

17.2 In case the rights issue is not fully subscribed, which may result in the public shareholding falling below the permissible minimum level as specified in the listing condition or Listing Agreement, the promoter(s) of the company shall be required to delist by providing an exit opportunity in the manner specified in clause 17.1 of these Guidelines or may be required to make offer for sale of their holdings so that the public shareholding is raised to the minimum level specified in the listing agreement or in the listing conditions within a period of 3 months.

Reinstatement of delisted securities.

18.1 Reinstatement of delisted secusrities should be permitted by the stock exchanges with a cooling period of 2 years. In other words, relisting of securities should be allowed only after 2 years of delisting of the securities. It would be based on the respective norms/criteria for listing at the time of making the application for listing and the application will be initially scrutinised by the Central Listing Authority.

SCHEDULE I

[See Guideline 7.2]

CONTENTS OF THE PUBLIC ANNOUNCEMENT

1. The floor price and how it was reached.
2. The dates of opening and closing of the bidding.

3. The name of the exchange or exchanges from which the securities are sought to be delisted.
4. The names and addresses of the trading members as well as the bidding terminals and centers through which bids can be placed.
5. Description of the methodology to be adopted for determination of acceptable price.
6. Period for which the offer shall be valid.
7. The necessity and the object of the delisting.
8. A full and complete disclosure of all material facts.
9. The proposed time table from opening of the offer till the settlement of the transfers.
10. Details of the escrow account and the amount deposited therein.
11. Listing details and stock market data :
    (a) High, low and average market prices of the securities of the company during the preceding three years;
    (b) Monthly high and low prices for the six months preceding the date of the public announcement; and
    (c) The volume of securities traded in each month during the six months preceding the date of public announcement.
12. Present capital structure and shareholding pattern.
13. The likely post-delisting capital structure.
14. The aggregate shareholding of the promoter group and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company.
15. Name of compliance officer of the company.
16. It should be signed and dated by the promoter.

SCHEDULE II

[See Guideline 8.1]

THE BOOK BUILDING PROCESS

1. The book building process shall be made through an electronically linked transparent facility.
2. The number of bidding centers shall not be less than thirty, including all stock exchange centers and there shall be at least one electronically linked computer terminal at all bidding centers.
3. The promoter shall deposit in an escrow account, 100 percent of the estimated amount of consideration calculated on the basis of the floor price indicated and the number of securities required to be acquired. The provisions of clause 10 of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 shall be applicable *mutatis mutandis* to such escrow account.
4. The offer to buy shall remain open to the security holders for a minimum period of three days. The security holders shall have a right to revise their bids before the closing of the bidding.

5. The promoter or acquirer shall appoint ‘trading members’ for placing bids on the on-lines electronic system.
6. Investors may approach trading members for placing offers on the on line electronic system. The format of the offer form and the details that it must contain shall be specified.
7. The security holders desirous of availing the exit opportunity shall deposit the shares offered with the trading members prior to placement of orders. Alternately, they may mark a pledge for the same to the trading member. The trading members in turn may place these securities as margin with the exchanges/clearing corporations.
8. The offers placed in the system shall have an audit trail in the form of confirmations which gives broker ID details with time stamp and unique order number.
9. The final offer price shall be determined as the price at which the maximum number of shares has been offered. The acquirer shall have the choice to accept the price. If the price is accepted, then the acquirer shall be required to accept all offers upto and including the final price, but may not have to accept higher priced offers, subject to clause 15. An illustration is given below :

Offer quantity	*Offer price*	*Remarks*
50	120	Floor price
82	125	Final price (as quantity offered is maximum)
108	130	
27	135	
5	140	

10. If final price is accepted, the acquirer shall have to accept offers upto and including the final price, i.e., 240 shares at the final price of Rs. 130.
11. At the end of the book building period, the merchant banker to the book building exercise shall announce in the press and to the concerned exchanges the final price and the acceptance (or not) of the price by the acquirer.
12. The acquirer shall make the requisite funds available with the exchange/clearing corporation on the final settlement day (which shall be three days from the end of the book building period). The trading members shall correspondingly make the shares available. On the settlement day the funds and securities shall be paid out in a process akin to secondary market settlements.
13. The entire exercise shall only be available for demat shares. For holders of physical certificates the acquirer shall keep the offer opens for a period of 15 days from the final settlement day for the shareholders to lodge the certificates with custodian(s) specified by the merchant banker.

SCHEDULE III

[See Guideline 17.1]

NORMS AND PROCEDURE FOR DELISTING OF SECURITIES
BY THE STOCK EXCHANGES

A. Norms

1. The percentage of equity capital (floating stock) in the hands of public investors. This may be seen with reference to -
   - — Existing paid-up equity capital
   - — Market lot
   - — Share price-very high, medium, low
   - — Market capitalisation
   - — Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997-Regulation 21(3)
   - — Clause 40A of the Listing Agreement
2. The minimum trading level of shares of a company on the exchanges. There should be some liquidity in every trading cycle. There should be some volume of trading for price discovery on the market. The company should appoint market makers. Criteria of no-trading may be considered.
3. Financial aspect/Business aspects :
   - (a) The company should generate reasonable revenue/income/profits. It should be operational/working. It must demonstrate earning power through its financial results, profits, reserves, dividend payout for last 2/3 years.
   - (b) If there is hardly any public interest in the securities of the company, then it is for consideration whether its 'listed company' label needs to be retained any more.
   - (c) The company should have some tangible asset. It is for consideration as to what value of assets the company should own in order to be listed continuously listed.
4. Track records of compliance of the Listing Agreement requirements for the past three years:
   - — Submission of audited/unaudited results, annual report, other documents required to be furnished to the exchange
   - — Book closure, record date with due notice
   - — Payment of listing fee
   - — Service to investors especially with regard to timely return of shares duly transferred, timely payment of dividend, communication of price sensitive information, etc.
   - — Failure to observe good accounting practices in reporting earnings and financial position.
   - — Publishing half-yearly unaudited/audited results.
   - — Frequent changes in
     - — Accounting year
     - — Share transfer agent
     - — Registered office

— Name

5. Promoters'/directors' track record especially with regard to insider trading, manipulation of share prices, unfair market practices (e.g., returning of share transfer documents under objection on frivolous grounds with a view to creating scarcity of floating stock in the market causing unjust aberrations in the share prices, auctions, close-out, etc. (depending upon the trading position of directors or the firms).
6. If whereabouts of the company, its promoters directors are not available and even the letters sent by the exchange return undelivered and the company fails to remain in touch with the exchange.
7. The company has became sick and unable to meet current debt obligations or to adequately finance operations, or has not paid interest on debentures for the last 2-3 years, or has become defunct, or there are no employees, or liquidator appointed, etc.
8. On the basis of the above norms and other relevant information available about the company, its promoters/directors, project, litigations, etc., a profile of the company should be prepared and then a decision on delisting should be taken by an exchange.

B. Procedure

1. The decision on delisting should be taken by a panel to be constituted by the exchange comprising the following:
   (a) Two directors/officers of the exchange (one director to be a public representative),
   (b) One representative of the investors,
   (c) One representative from the Central Government (Department of Company Affairs)/Regional Director/Registrar of Companies,
   (d) Executive director/Secretary of the exchange.
2. Due notice of delisting and intimation to the company as well as other stock exchanges where the company's securities are listed to be given.
3. Notice of termination of the Listing Agreement to be given.
4. An appeal against the order of compulsory delisting may be made to the SEBI.

[K] SEBI (CENTRAL LISTING AUTHORITY) REGULATIONS, 2003

CHAPTER I

PRELIMINARY

Short title and commencement

These Regulations shall be called Securities and Exchange Board of India (Central Listing Authority) Regulations, 2003.

These Regulations shall come into force on the date of their publication in the Official Gazette.

Definitions

In these Regulations, unless the context otherwise requires -

‘Act’ means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

‘Authority’ means the Central Listing Authority established under regulation;

‘Board’ means the Securities and Exchange Board of India established under Section 3 of the Act;

‘Exchange’ means a stock exchange, which has been granted recognition under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

‘Listing application’ means an application made by a body corporate, mutual fund or collective investment scheme to an exchange for the purpose of getting its securities listed therein.

The words and expressions not defined in these regulations shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof, as the case may be.

CHAPTER II

THE CENTRAL LISTING AUTHORITY

Establishment of the Central Listing Authority

With effect from such date as may be specified by the Board there shall be established for the purposes of these Regulations, a self-regulatory authority by the name of the Central Listing Authority.

The office of the Authority shall be located in Mumbai.

Constitution of the Authority

(1) Authority shall consist of the following members, namely:

(a) President; and,

(b) not more than ten other Members.

(2) The President and the Members shall be appointed by the Board from amongst persons having integrity, outstanding ability drawn from the judiciary, the lawyers, academicians, the exchanges, persons having expertise in securities market regulation, financial experts and investor associations:

Provided that at least four Members shall be representatives of stock exchanges.

(3) A person shall not be qualified for re-appointment as the President or as a Member of the Authority if he has already been a Member for two terms of three years each.

(4) The remuneration and the terms and conditions of appointment of the President and the Members shall be such as may be specified by the Board :

Provided that the Members who are representatives of stock exchanges shall not draw any remuneration from the Authority.

The Authority may appoint such officers and staff as it considers necessary for the efficient discharge of its functions under these Regulations.

Vacancies, etc., not to invalidate proceedings

5. No proceedings before or order of the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority:

Provided that a minimum of four members shall form the quorum for proceedings of the Authority:

Provided further that while considering an application for letter of recommendation under Regulation 12, at least more than one half of the Members present shall be those other than representatives of stock exchanges.

Team of office

6. The President or a Member shall hold office as such for a term of three years from the date on which he enters upon his office :

Provided that no President or Member shall hold office as such after he has attained the age of sixty five years.

Resignation and removal

7. (1) The President may, by notice in writing under his hand addressed to the Board, resign his office.

(2) A Member may, by notice in writing under his hand addressed to the President, resign his office.

(3) The President or a Member shall not be removed from his office except by an order of the Board.

(4) The Board or the Authority shall not pay or shall not be liable to pay any compensation for loss of office to a member removed under sub-regulation (3).

Fund

8. (1) The Authority shall constitute a fund to be called the Central Listing Authority General Fund and there shall be credited thereto—

(a) any processing fees charged and received by the Authority under Sub-regulation (3) of Regulation 11;

(b) all sums received by the Authority from such other sources as may be decided upon by the Board.

(2) The Fund shall be applied for meeting-

(a) The remuneration, if any, of the President, Members and other employees of the Authority;

(b) the expenses of the Authority in the discharge of its functions under these Regulations.

CHAPTER III

FUNCTIONS OF THE AUTHORITY

Functions of the Authority

9. The Authority shall discharge the following functions under these Regulations:

(a) processing the application made by any body corporate, mutual fund or collective investment scheme for the letter of recommendation;

(b) making recommendations as to listing conditions; and,

(c) any other functions as may be specified by the Board from time to time.

Letter of recommendation for listing

10. (1) No body corporate, mutual fund or collective investment scheme shall make an application for listing of its securities to a recognized stock exchange unless it has obtained a letter of recommendation for listing from the Authority.

(2) No exchange shall consider any listing application made by a body corporate, mutual fund or collective investment scheme, unless it is accompanied by a letter of recommendation granted by the Authority.

Application for the letter of recommendation

11. (1) An applicant desirous of obtaining a letter of recommendation from the Authority shall make an application to the Authority in such form and in such manner as may be specified by the Authority.

(2) The application shall specify the exchange or exchanges where the body corporate, mutual fund or collective investment scheme is desirous of listing its securities.

(3) The application shall be accompanied by such fees as may be specified by the Authority.

Procedure on receipt of application

12. (1) On receipt of an application, the Authority may direct the applicant to furnish such further information or clarification as may be required by it, for the purpose of processing the application.

(2) The Authority after examining the application and the information or clarification called for, may, either grant or refuse to grant the letter of recommendation, within thirty days of the making of the application or of furnishing of the information or clarification by the applicant, as the case may be:

Provided that the Authority shall not refuse to grant the letter of recommendation unless the applicant is given an opportunity of making representations.

(3) Where a letter of recommendation is granted by the Authority, it shall specify the exchange or exchanges mentioned in the application, where the applicant shall be eligible to make a listing application.

(4) The Authority shall, after the order passed under sub-regulation (2) is signed, cause it to be communicated to the applicant and to the exchange or exchanges to which listing application was sought to be made by the applicant.

(5) In processing the application, the Authority shall take into consideration the following factors:

(a) compliance with relevant provision of the Companies Act, 1956 (1 of 1956);

(b) compliance with the Guidelines or Regulations of the Board relating to Disclosure and Investor Protection;

(c) compliance with the Securities and Exchange Board of India (Mutual Funds)

Regulations, 1996 or the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, where applicable;

(d) compliance with the listing conditions specified under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder and those specified by the exchanges; and

(e) where granting of listing would be in the interests of investors and the securities market.

Power of the Board to direct listing

13. (1) Where the Authority refuses to grant the letter of recommendation under Sub-regulation (2) of Regulation 12, the applicant may, within ten days of receipt of such refusal, make written submissions to the Board to direct the Authority to grant the letter of recommendation applied for by the applicant.

(2) On receipt of written submissions made by any applicant under Sub-regulation (1), the Board may issue the direction as prayed for, or decline to issue such direction, within 15 days of receipt of such submissions.

(3) On issuance of any direction by the Board under Sub-regulation (2) -

(a) a copy each of the direction shall be sent as soon as it is signed, to the applicant, to the concerned exchange or exchanges, as the case may be, and to the Authority; and

(b) the Authority shall grant the letter of recommendation as directed by the Board, within seven days.

Application to the Exchange for listing

14. (1) On receipt of the letter of recommendation from the Authority, the applicant may make a listing application to the exchange or exchanges in respect of which the letter was granted, enclosing therewith the letter of recommendation.

(2) On receipt of the listing application, the recognized stock exchanges(s) shall proceed with it as provided in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules and bye-laws made thereunder.

Refusal of listing and appeal

15. (1) The exchange shall take into consideration the letter of recommendation of the Authority while exercising its powers under Section 22A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

(2) A body corporate, mutual fund or collective investment scheme may prefer an appeal to the Securities Appellate Tribunal as provided in Section 22A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) against the decision of the exchange refusing the listing.

Recommendations as to listing conditions

16. (1) The Authority may, from time to time, review the listing conditions or the provisions of the listing agreement, for the purpose of making recommendations to the Board for their amendment.

(2) The Board shall consider the recommendations of the Authority in the exercise of its power to specify the listing conditions or the provisions of the listing

agreement.

Power of the Authority to regulate its own procedure

17. (1) Subject to the provisions of these regulations and with the previous approval of the Board, the Authority shall have power of regulate its own procedure.

(2) Without prejudice to the generality of its power under Sub-regulation (1), the Authority may, with the previous approval of the Board, frame operational guidelines for the performance of its functions.

Body corporate, mutual fund or collective investment scheme to comply with listing conditions or listing agreement.

18. (1) A body corporate, mutual fund or collective investment scheme whose securities are listed shall comply with the listing conditions and the listing agreement entered into with any exchange.

(2) An Exchange in which any securities of a body corporate, mutual fund or collective investment scheme are listed shall comply with the listing agreement.

(3) If the body corporate, mutual fund or collective investment scheme fails or neglects to furnish any information or document which is required to be furnished to the Board, to the Authority or to an exchange as per these Regulation, the listing conditions or the listing agreement, it shall be liable to penalty as specified in Section 15A or Section 15HB of the Act.

CHAPTER IV

MISCELLANEOUS

Power of the Board to supersede the Authority

19. (1) If at any time the Board is of the opinion-

(a) that on account of grave emergency, the Authority is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that circumstances exist which render it necessary in the interest of investors or the securities market or in the public interest so to do, the Board may, by order, supersede the Authority for such period as may be specified in the order.

(2) Upon the publication of a notification under sub-regulation (1) superseding the Authority,-

(a) all the Members shall, as from the date of supersession, vacate their offices as such; and

(b) all the powers functions and duties which may, by or under the provisions of the Act, be exercised or discharged by or on behalf of the Authority, shall until the Authority is reconstituted under sub-regulation (3), be exercised and discharged by such person or persons as the Board may direct;

(3) On the expiration of the period of supersession specified in the notification issued under sub-regulation (1), the Board may reconstitute the Authority by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-regulation (2), shall not be deemed disqualified for appointment :

Provided that the Board may, at any time, before the expiration of the period of supersession, take action under this sub-regulation.

Reports

20. (1) The Authority shall furnish to the Board at such time and in such form and manner as is directed by the Board such returns and statements as the Board may require.

(2) Without prejudice to the provisions of sub-regulation (1), the Authority shall within thirty days after the end of each calendar quarter, submit to the Board a report in such form as may be specified by the Board, giving a true account of its activities during the previous quarter.

Records of the Authority

21. The Authority shall maintain such books, records and documents and for such period as may be specified by the Board.

11. Secretarial Audit

According to Circular No. D&CC/FITTC/CIR-16/2002 dt. 31.12.02 issued by SEBI Depository and Custodial Division Issue companies shall subject themselves to a secretarial audit to be undertaken by a qualified chartered accountant/company secretary for purpose of reconciliation of the total admitted capital with both the depositories and the total issued and listed capital. The circular provides that :

It has been decided that all issuer companies shall subject themselves to a secretarial audit to be undertaken by a qualified chartered accountant or a company secretary for the purposes of reconciliation of the total admitted capital with both the depositories and the total issued and listed capital. The audit shall cover the following aspects and certify among others:

1. That the total of the shares held in NSDL, CDSL and in the physical form tally with the issued/paid-up capital.
2. That the register of members (RoM) is updated.
3. That the dematerialisation requests have been confirmed within 21 days and state the shares pending confirmation for more than 21 days from the date of requests and reasons for delay.
4. The details of changes in share capital (due to rights, bonus, preferential issue, IPO, buy-back, capital reduction, amalgamation, demerger, etc) during the quarter and certify in case of listed companies whether in principle approval for listing from all stock exchanges was obtained is respect of all further issues.

The issuer companies shall submit the audit report on a quarterly basis to the stock exchange(s) where they are listed. Any difference observed in the admitted, issued and listed capital shall be immediately brought to the notice of SEBI and both the Depositories by the stock exchanges. The first report is regard to the capital as on 31st December, 2002 shall be submitted to all the stock exchanges where the issuer company are listed within 60 days, thereafter it shall be submitted every quarter starting from 31st March, 2003, within 30 days of the end of each quarter. This report shall also be placed before the Board of directors of the issuer company.

Any non-compliance by the issuer company shall be viewed seriously and suitable action shall be initiated under the Depositories Act, 1996 against the issuer company and its directors.

(ii) SEBI (Central Listing Authority) (Amendment) Regulations, 2003

In SEBI (Central Listing Authority) Regulations, 2003, proviso to Regulation 6 shall be omitted. [S.O. 443(E) dt. 17.04.03] issued by SEBI.

[L] SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000

SEBI Primary Market Department has issued RMB (Compendium) Series Circular No. 9 dt. 2.05.03, wherein modifications have been made in the guidelines pertaining to promoter's contributions and lock-in requirements, contents of offer documents and preferential issue.

The amendments pertaining to Chapter IV and Chapter XIII of the guidelines shall come into force with immediate effect and the amendments pertaining to Chapter VI, shall be applicable to all draft of documents filed with SEBI on and after the date of this circular.

CHAPTER IV – PROMOTERS CONTRIBUTION AND LOCK-IN REQUIREMENTS

1. The existing clause 4.16.1 shall be substituted by the following:

"4.16.1 Inter se transfer of locked-in securities

(a) Shares held by the person other than the promoters, prior to initial public offering ('IPO'), which are locked in as per clause 4.14 of these Guidelines, may be transferred to any other person holding shares which are locked in as per clause 4.14 of these Guidelines subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as applicable.

(b) Shares held by promoter(s) which are locked in as per the relevant provisions of this chapter, may be transferred to and amongst promoter/promoter group or to a new promoter or persons in control of the company, subject to continuation of lock-in in the hands of transferred for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as applicable."

CHAPTER VI – CONTENTS OF OFFER DOCUMENT

1. In clause 6.1, a new sub-clause 6.1.2 shall be inserted as following :

"6.1.2 The draft offer document and final offer document shall be approved by the Board of directors of the issuer company and signed by all the directors (including the managing director), chief executive officer and chief financial officer of the issuer company. They shall also certify that all the disclosures made in the offer document are true and correct."

2. The existing clause 6.13.1 shall be substituted by the following :

"6.13.1 Following information shall be disclosed for all issues irrespective of the issue price :

(a) Earnings per share, i.e., EPS pre-issue for the last three years (as adjusted for changes in capital)

(b) P/E pre-issue

(c) Average return on net worth in the last three years

(d) Minimum return on increased net worth required to maintain pre-issue EPS

(e) Net asset value per share based on last balance sheet

(f) Net asset value per share after issue and comparison thereof with the issue price.

(g) An illustrative format of disclosure in respect of basis for issue price is given in Schedule XV

(h) Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e., companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken).

Provided that the projected earnings shall not be used as a justification for the issue price in the offer document.

Provided further that the accounting ratios disclosed in the offer documents in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised."

3. The existing clause 6.27 (i) shall be substituted by the following :

"6.27 (i) Following information shall be disclosed for all issues irrespective of the issue price :

(a) Earnings per share, i.e., EPS pre-issue for the last three years (as adjusted for changes in capital)

(b) P/E pre-issue

(c) Average return on net worth in the last three years

(d) Minimum return on increased net worth required to maintain pre-issue EPS

(e) Net asset value per share based on last balance sheet

(f) Net asset value per share after issue and comparison thereof with the issue price

(g) Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e., companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken):

Provided that the projected earnings shall not be used as a justification for the issue price in the offer document:

Provided further that the accounting ratios disclosed in the offer documents in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised."

CHAPTER XIII – GUIDELINES FOR PREFERENTIAL ISSUES

1. The existing clause 13.3.2 shall be substituted by the following :

"13.3.2 These locked in shares/instruments may be transferred to and amongst promoter/promoter group or to a new promoter(s) or person(s) in control of the company, subject to continuation of lock-in in the hands of transferee(s) for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as applicable.

8. Deposit position of the company as at 31st March during the current year and the past two years showing the details as under :

Year ended	*Rule under which accep-ted*	*B/F*	*Accep -ted Re-newed*	*Total*	*Re-paid*	*Balance out-standing*	*Net worth*	*Date on which rele-vant limits be-came availa ble*	*Ecess, if any*	*Re-marks*

9. One copy each of the advertisement issued in newspapers pursuant to Rule 4 of the Deposits Rules.

[M] SEBI (DEPOSITORIES AND PARTICIPANTS) (AMENDMENT) REGULATION, 2003

Aforesaid regulation have amended the SEBI (Depositories and Participants) Regulation, 1996 wherein Regulation 19 concerning consideration of application for grant of certificate of registration, has been amended vide S.O. 696(E) dt. 16.06.03. Accordingly, in Regulation 19(a)(viii) (where a Stock broker having certificate of registration by the Board) a further proviso has been amended after the first proviso stipulating that –

"Provided further that where a stock broker has a minimum net worth of Rs.10 crore the limits on the aggregate value of the portfolio securities of the beneficial owners held in dematerialized form in a depository through whom shall not be applicable."

Also, a Registrar to an issue a share transfer agent having minimum net worth of Rs.10 crore (previously Rs.50 lakh) and having a certificate of registration by the

Board, shall be substituted in existing clause (x) of the Regulation 19(a).

[N] SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2002

SEBI has made the following amendments to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 vide Notification No. SO 954(E) dated 09.09.2002.

1. By virtue of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulation, 2001 vide Notification No. S.O. 1058(E), Regulation 7(1A) has been inserted which provides that any acquirer who has acquired 15% or more or but less than 75% shares or voting of rights of a company, shall make disclosures of such acquisition as well as the aggregate of his pre and post acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights.
2. Amendment to Regulation 11 substitutes 10% in place of 5% and hence provides that any person who acquires 15% or more but less than 75% of the shares or voting rights of the company entitling him to exercise more than 10% of the voting rights only after making a public announcement to acquire shares in accordance to the regulations.
3. Amendment to Regulation 23 vide Notification No. S.O. 875(E) dt. 12.9.01 provides that the following restrictions shall not be applicable in case of shares of a Public Sector Undertaking, the Central Government [or State Government] and the agreement to sell contains a clause to the effect that in case of non-compliance of any of the provisions of the regulations by the acquirer, transfer of shares or the change of management or control of the Public Sector Undertaking shall vest back with the Central Government or State Government and the acquirer shall be liable to such penalty as may be imposed by the Central Government [or State Government].

   The restrictions may be:

   (i) for appoint of directors on the Board of the target company by the acquirer under Regulation 22(7);

   (ii) for acting on agreement under Regulation 22(16);

   (iii) for appointment of directors by the target company under Regulation 22(3)(a);

   (iv) for on transfer of securities or changes in the Board of Directors of the target company under Regulation 22(6).
4. Amendment to Regulation 25(2A) provides that no public announcement for a competitive bid shall be made after an acquirer has already made public announcement under Regulation 14(1) pursuant to entering into a share purchase or shareholders' agreement with the Central Government [or State Government] for acquisition of shares or voting rights or control of a public sector undertaking.
5. The following proviso added to Regulation 3 of SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 1997, vide notification no. S.O. 127(E) provides that exemption as specified in Regulation 3 shall not be applicable if a government company acquires shares or voting rights or control of a listed public sector undertaking through the competitive bidding process of the Central Government or [State

Government] for the purpose of disinvestments.

6. Sub-regulation (3A) added to Regulation 20 vide Notification No. S.O. 127(E) provides that in case of disinvestments of a public sector undertaking whose shares are infrequently traded, the minimum offer price shall be the price paid by the successful bidder to the central government, arrived at after the process of competitive bidding of the central government for the purpose of disinvestments.

   The definition of 'Promoter' as defined in clause (h) of Regulation 2 of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 have been substituted. As per the amendment, the definition of 'promoter' means:

   (i) the person or persons who are in control of the company, directly or indirectly, whether as a shareholder, director or otherwise; or

   (ii) person or persons named as promoters in any document of offer of securities to the public or existing shareholders, and includes,

      (a) where the promoter is an individual,

         (1) a relative of the promoter within the meaning of Section 6 of the Companies Act, 1956 (1 of 1956);

         (2) any firm or company, directly or indirectly, controlled by the promoter or a relative of the promoter or a firm or Hindu undivided family in which the promoter or his relative is a partner or co-parcener or a combination thereof;

         Provided that in case of partnership firm, the share of the promoter or his relative, as the case may be, in such firm should not be less than 50%.

      (b) where the promoter is a body corporate:

         (a) a subsidiary or holding company of that body; or

         (b) any firm or company, directly or indirectly, controlled by the promoter or that body corporate or by his relative or a firm or Hindu undivided family in which the promoter or his relative is a partner or co-parcener or a combination thereof:

         Provided that, in case of a partnership firm, the share of such promoter or his relative, as the case may be, in such firm should not be less than 50%.

7. Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 deals with acquisition of shares when such acquisition together with holdings already in the company result in a person acquiring more than 5% or 10% or 14% of shares or voting rights. In respect of such acquisitions, the reporting has to be done by the acquirer within two days of such acquisition by allotment or purchase to the company. The company is required to furnish this information within two days to the concerned stock exchange.

8. The amended Regulation 12 provides that a *special resolution* passed by the shareholders in a general meeting relating to change in control, will not trigger in the resolution.

   Provided that, for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of Resolutions by Postal Ballot) Rules, 2001 shall also be provided.

9. Regulation 21(2) containing the condition that the acquirer shall deposit a

sum of 50% of the consideration payable under public offer in cash in the escrow account, has been omitted, vide Notification No. S.O. 954(E) dated 09.09.00.

10. A new sub-regulation 3(a) has been substituted that provides that in case as a result of acquisition, the public holding is reduced to 10% or less, the acquirer is required to either make an offer to buy the outstanding shares remaining with the shareholders in accordance with the guidelines specified by the Board in respect of delisting of securities.
11. Regulation 27(1)(a) providing the condition when public offer can be withdrawn has been deleted vide notification as mentioned above.
12. Sub-regulation 5A has been inserted to Regulation 22 vide the above notification, that provides the shareholder shall have the option to withdraw acceptance tendered by him up to three working days prior to the date of closure of the offer.
13. Sub-regulation 19 has been inserted to Regulation 22 which provides that the acquirer and the persons acting in concert with him shall be jointly and severally responsible for fulfillment of obligations under these regulations.
14. An explanation to clause 4 of Regulation 23 has been added to it, which provides that restriction on issue of securities shall not affect the issue or allotment of shares pursuant to public or rights issue in respect of which the offer document has already been filed with the ROC or Stock Exchange, as the case may be.
15. Sub-regulation (4) to Regulation 14 relating to issuing of public announcement of offer has been added that provides that in case of indirect acquisition or change in control, a public announcement shall be made by the acquirer within three months of consumption of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India.
16. A further proviso has been added to Regulation 16(ix) that provides that the acquirer shall not sell, dispose of or otherwise encumber any substantial asset of the target company except with the prior approval of the shareholders.
17. A new regulation (ixa) has been inserted that provides the public announcement shall also contain an undertaking that the acquirer shall not sell, dispose of or otherwise encumber any substantial asset of the target company except with the prior approval of the shareholders.
18. Regulation 11A providing for the forfeiture of the amount in escrow account in case of failure by the acquirer to obtain shareholders' approval as required under Regulation 20(3), has been inserted.

[O] SEBI (EMPLOYEE STOCK OPTION SCHEME AND EMPLOYEE STOCK PURCHASE SCHEME) GUIDELINES, 1999 ARE AMENDED.

The amended guidelines are provided hereunder:

1. Short title and commencement

1.1 These Guidelines have been issued by Securities and Exchange Board of India under Section 11 of the Securities and Exchange Board of India Act, 1992.

1.2 These Guidelines may be called the Securities and Exchange Board of India

(Employee Stock Option Scheme and Employee Stock Purchase Scheme), Guidelines, 1999.

2. Definitions

2.1 In these Guidelines, unless otherwise defined:

(1) "employee" means:

(a) a permanent employee of the company working in India or out of India; or

(b) a director of the company, whether a whole time director or not; or

(c) an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company.

(2) "employee compensation" means the total cost incurred by the company towards employee compensation including basic salary, dearness allowance, other allowances, bonus and commissions including the value of all perquisites provided, but does not include:

(a) the fair value of the option granted under an Employee Stock Option Scheme; and

(b) the discount at which shares are issued under an Employee Stock Purchase Scheme.

(2A) "employee stock option" means the option given to the whole-time directors, officers or employees of a company which gives such directors, officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.

(3) "employee stock option scheme (ESOS)" means a scheme under which a company grants employee stock option.

(4) "employee stock purchase scheme (ESPS)" means a scheme under which the company offers shares to employees as part of a public issue or otherwise.

(4a) "ESOS shares" means shares arising out of exercise of options granted under ESOS.

(4b) "ESPS shares" means arising out of grant of shares under ESPS.

(5) "exercise" means making of an application by the employee to the company for issue of shares against option vested in him in pursuance of the ESOS.

(6) "exercise period" means the time period after vesting within which the employee should exercise his right to apply for shares against the option vested in him in pursuance of the ESOS.

(7) "exercise price" means the price payable by the employee for exercising the option granted to him in pursuance of ESOS.

(7(a) "fair value" of an option means the fair value calculated in accordance with Schedule III.

(8) "grant" means issue of option to employees under ESOS.

(9) "independent director" means a director of the company, not being a whole time director and who is neither a promoter nor belongs to the promoter group.

(9a) "intrinsic value" means the excess of the market price of the share at the date or grant of the option under ESOS over the exercise price of the option (including up-front payment, if any).

(10) “market price” of a share on a given date means the average of the two weeks high and low price of the share preceding the date of grant of option on the stock exchange on which the shares of the company are listed. If the shares are listed on more than one stock exchange, then the stock exchange where there is highest trading volume during the aforesaid period should be considered.

(11) “option grantee “means an employee having right but not an obligation to exercise in pursuance of the ESOS.

(12) “promoter” means:

(a) the person or persons who are in over-all control of the company;

(b) the person or persons who are instrumental in the formation of the company or programme pursuant to which the shares were offered to the public;

(c) the persons or persons named in the offer document as promoter(s). Provided that a director or officer of the company if they are acting as such only in their professional capacity will not be deemed to be a promoter.

[*Explanation:* Where a promoter of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of the company.]

(13) “promoter group” means:

(a) an immediate relative of the promoter (i.e. spouse of that person, or any parents, brother, sister or child of the person or of the spouse);

(b) persons whose shareholding is aggregated for the purpose of disclosing in the offer document “shareholding of the promoter group”.

(14) “share” means equity shares and securities convertible into equity shares and shall include American Depository Receipts (ADRs), Global Depository Receipts (GDRs) or other depository receipts, representing underlying equity shares or securities convertible into equity shares.

(15) “vesting” means the process by which the employee is given the right to apply for shares of the company against the option granted to him in pursuance of ESOS.

(16) “vesting period” means the period during which the vesting of the option granted to the employee in pursuance of ESOS takes place.

2.2 All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Securities and Exchange Board of India Act, 1992 or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines, or any statutory modification or re-enactment thereof, as the case may be.

3. Applicability

3.1 These Guidelines shall apply to any company whose shares are listed on any recognised stock exchange in India.

PART A – ESOS

4. Eligibility to participate in ESOS

4.1 An employee shall be eligible to participate in ESOS of the company.

4.2 An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESOS.

4.3 A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

5. Compensation Committee

5.1 No ESOS shall be offered unless the disclosures, as specified in Schedule IV are made by the company to the prospective option grantees and the company constitutes a Compensation Committee for administration and superintendence of the ESOS.

5.2 The Compensation Committee shall be a Committee of the Board of directors consisting of a majority of independent directors.

5.3 The Compensation Committee shall, *inter alia*, formulate the detailed terms and conditions of the ESOS including:

(a) the quantum of option to be granted under an ESOS per employee and in aggregate.

(b) the conditions under which option vested in employees may lapse in case of termination of employment for misconduct;

(c) the exercise period within which the employee should exercise the option and that option would lapse on failure to exercise the option within the exercise period;

(d) the specified time period within which the employee shall exercise the vested options in the event of termination or resignation of an employee.

(e) the right of an employee to exercise all the options vested in him at one time or at various points of time within the exercise period;

(f) the procedure for making a fair and reasonable adjustment to the number of options and to the exercise price in case of corporate actions such as rights issues, bonus issues, merger, sale of division and others. In this regard following shall be taken into consideration by the compensation committee:

    (i) the number and the price of ESOS shall be adjusted in a manner such that total value of the ESOS remains the same after the corporate action.

    (ii) for this purpose global best practices in this area including the procedures followed by the derivative markets in India and abroad shall be considered.

    (iii) the vesting period and the life of the options shall be left unaltered as far as possible to protect the rights of the option holders.

(g) the grant, vest and exercise of option in case of employees who are on long leave and

(h) the procedure for cashless exercise of options.

5.4 The Compensation Committee shall frame suitable policies and systems to ensure that there is no violation of:

(a) Securities and Exchange Board of India (Insider Trading) Regulations, 1992; and

(b) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, by any employee.

6. Shareholder approval

6.1 No ESOS can be offered to employees of a company unless the shareholders of the company approve ESOS by passing a special resolution in the general meeting.

6.2 The explanatory statement to the notice and the resolution proposed to be passed in general meeting for ESOS shall, *inter alia*, contain the following information:

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

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

(c) requirements of vesting and period of vesting;

(d) maximum period (subject to clause 9.1) within which the options shall be vested;

(e) exercise price or pricing formula;

(f) exercise period and process of exercise;

(g) the appraisal process for determining the eligibility of employees to the ESOS;

(h) maximum number of options to be issued per employee and in aggregate;

(i) a statement to the effect that the company shall conform to the accounting policies specified in clause 13.1;

(j) the method which the company shall use to value its options whether fair value or intrinsic value;

(k) the following statement:

'In case the company calculates the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed in the Directors' report and also the impact of this difference on profits and on EPS of the company shall also be disclosed in the Directors' report.

6.3 Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:

(a) grant of option to employees of subsidiary or holding company and,

(b) grant of option to identified employees, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

7. Variation of terms of ESOS

7.1 The company shall not vary the terms of the ESOS in any manner, which may be detrimental to the interests of the employees.

7.2 The company may by special resolution in a general meeting vary the terms of ESOS offered pursuant to an earlier resolution of a general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the option holders.

7.3 The provisions of clause 6.3 shall apply to such variation of terms as they do to the original grant of option.

7.4 The notice for passing special resolution for variation of terms of ESOS shall disclose full details of the variation, the rationale therefor, and the details of the employees who are beneficiary of such variation.

7.5 A company may re-price the options which are not exercised if ESOSs were rendered unattractive due to fall in the price of the shares in the market.

Provided that the company ensures that such re-pricing shall not be detrimental to the interest of employees and approval of shareholders in General Meeting has been obtained for such re-pricing.

8. Pricing

8.1 The companies granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies specified in clause 13.1

Provided that in case the company calculates the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed in the Directors report and also the impact of this difference on profits and on Earning Per Share of the company shall also be disclosed in the Directors' report.

9. Lock-in period and rights of the option-holder

9.1 There shall be a minimum period of one year between the grant of options and vesting of option.

9.2 The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

9.3 The employee 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 him, till shares are issued on exercise of option.

10. Consequence of failure to exercise option

10.1 The amount payable by the employee, if any, at the time of grant of option:

(a) may be forfeited by the company if the option is not exercised by the employee within the exercise period; or

(b) the amount may be refunded to the employee if the option are not vested due to non-fulfillment of condition relating to vesting of option as per the ESOS.

11. Non transferability of option

11.1 Option granted to an employee shall not be transferable to any person.

11.2 (a) No person other than the employee to whom the option is granted shall be entitled to exercise the option.

(b) Under the cashless system of exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provision of the Companies Act.

11.3 The option granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

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

11.5 In case the employee suffers a permanent incapacity while in employment, all the option granted to him as on the date of permanent incapacitation, shall vest in him on that day.

11.6 In the event of resignation or termination of the employee, all options not vested as on that day shall expire. However, the employee shall, subject to the provision of clause 5.3(b) shall be entitled to retain all the vested options.

12. Disclosure in the Directors' Report

12.1 The Board of Directors, shall, *inter alia*, disclose either in the Directors' Report or in the annexure to the Director's Report, the following details of the ESOS:

(a) options granted;
(b) the pricing formula;
(c) options vested;
(d) options exercised;
(e) the total number of shares arising as a result of exercise of option;
(f) options lapsed;
(g) variation of terms of options;
(h) money realised by exercise of options;
(i) total number of options in force;
(j) employee wise details of options granted to:
  (i) senior managerial personnel;
  (ii) any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year.
  (iii) identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions of the company at the time of grant;
(k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance with International Accounting Standard (IAS) 33.

(l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.

(m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock on the grant date.

(n) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted-average information:

   (1) risk-free interest rate,

   (2) expected life,

   (3) expected volatility,

   (4) expected dividends, and

   (5) the price of the underlying share in market at the time of option grant.

13. Accounting Policies

13.1 Every company that has passed a resolution for an ESOS under clause 6.1 of these guidelines shall comply with the accounting policies specified in Schedule I.

13.2 Where a scheme provides for graded vesting, the vesting period shall be determined separately for each portion of the option and shall be accounted for accordingly.

14. Certificate from Auditors

14.1 In the case of every company that has passed a resolution for an ESOS under clause 6.1 of these guidelines, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme has been implemented in accordance with these guidelines and in accordance with the resolution of the company in the general meeting.

15. Options outstanding at Public Issue

15.1 The provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines prohibiting initial public offering by companies having outstanding warrants and financial instruments shall not be applicable in case of outstanding option granted to employees in pursuance of ESOS.

15.2 If any option is outstanding at the time of an initial public offering by a company, the promoters' contribution shall be calculated with reference to the enlarged capital which would arise on exercise of all vested options.

15.3 If any options granted to employees in pursuance of ESOS are outstanding at the time of initial public offering, the offer document of the company shall disclose all the information specified in clause 12.1.

PART B – ESPS

16. Eligibility to participate in ESPS

16.1 An employee shall be eligible to participate in the ESPS.

16.2 An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESPS.

16.3 A director who either by himself or through his relatives or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESPS.

17. Shareholder Approval

17.1 No ESPS shall be offered to employees of the company unless the shareholders of the company approve ESPS by passing special resolution in the meeting of the general body of the shareholders.

17.2 The explanatory statement to the notice shall specify:

(a) the price of the shares and also the number of shares to be offered to each employee.

(b) the appraisal process for determining the eligibility of employee for ESPS.

(c) Total number of shares to be granted.

17.3 The number of shares offered may be different for different categories of employees.

17.4 The special resolution shall state that the company shall conform to the accounting policies specified in clause 19.2.

17.5 Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:

(a) allotment of shares to employees of subsidiary or holding company and,

(b) allotment of shares to identified employees, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of allotment of shares.

18. Pricing and Lock-in

18.1 The company shall have the freedom to determine price of shares to be issued under an ESPS, provided they conform to the provisions of clause 19.2.

18.2 Shares issued under an ESPS shall be locked in for a minimum period of one year from the date of allotment.

18.3 If the ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employee pursuant to ESPS shall not be subject to any lock-in.

19. Disclosure and Accounting Policies

19.1 The Directors' Report or Annexure thereto shall contain, *inter alia*, the following disclosures:

(a) the details of the number of shares issued in ESPS;

(b) the price at which such shares are issued;

(c) employee-wise details of the shares issued to:

  (i) senior managerial personnel;

  (ii) any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;

  (iii) identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;

(d) diluted Earning Per Share (EPS) pursuant to issuance of shares under ESPS; and

(e) consideration received against the issuance of shares.

19.2 Every company that has passed a resolution for an ESPS under clause 17.1 of these guidelines shall comply with the accounting policies specified in Schedule II.

20. Preferential Allotment

20.1 Nothing in these guidelines shall apply to shares issued to employees in compliance with the Securities and Exchange Board of India Guidelines on Preferential Allotment.

21. Part D of Clarification XIV of DIP Guidelines.

22. Listing

22.1 The shares arising pursuant to an ESOS and shares issued under at ESPS shall be listed immediately upon exercise in any recognized stock exchange where the securities of the company are listed subject to compliance of the following:

(a) The ESOS/ESPS is in accordance with these Guidelines.

(b) In case of an ESOS the company has also filed with the concerned stock exchanges, before the exercise of option, a statement as per Schedule V and has obtained in-principle approval from such Stock Exchanges.

(c) As and when ESOS/ESPS are exercised the company has notified the concerned Stock Exchanges as per the statement as per Schedule VI.

22.2 The shares arising upon exercise of option issued by an unlisted company which are to be vested or be exercised after the company is listed, may be listed after the initial public offering by such company subject to fulfillment of the following requirements:

(i) Ratification of the resolution passed for issuance of ESOS or ESPS – Earlier resolution passed for issuance of ESOS/ESPS shall be ratified by the shareholders of listed company in the General Meeting. The notice for ratification of earlier resolution shall include all the relevant disclosures required in terms of these Guidelines.

(ii) Disclosure in the offer document – Following disclosures shall be made in the offer document for IPO:

  (a) A disclosure about the intention of the holders of shares allotted on exercise of option granted under ESOS or allotted under ESPS, to sell their shares within three (3) months after the date of listing of shares in such initial public offering (aggregate number of shares intended to be sold by option holders) to be disclosed. In case of ESOS the same shall be disclosed regardless of whether the shares arise out of options exercised before or after the initial public offering.

(b) Specific disclosures about the intention of sale of ESOS or ESPS shares within three (3) months after the date of listing, by directors, Senior Managerial personnel and employees having ESOS or ESPS shares amounting to more than 1% of the issued capital (excluding outstanding warrants and conversions) which *inter alia* shall include name, designation and quantum of ESOS or ESPS shares and quantum they intend to sell within three (3) months.

(c) A disclosure in line with the clause 12 and 19 of these guidelines, regarding all the options/shares issued in last three (3) years (separately for each year) and on a cumulative basis for all the options/shares issued prior to date of the prospectus.

22.3 For listing of shares issued pursuant to ESOS or ESPS the company shall make application to the Central Listing Authority as per SEBI (Central Listing Authority Regulations, 2003 and obtain the in-principle approval from Stock Exchanges where it proposes to list the said shares.

22.4 The existing provisions of lock-in specified in SEBI (Disclosure and Investor Protection) Guidelines 2000 shall not be applicable on the pre-initial public offering ESOS options/shares, ESPS options/shares held by employees other than promoters provided that the earlier resolution is ratified by the shareholders in General Meeting and disclosures in the prospectus for IPO is made as mentioned in clause 22.2(i) & (ii).

22.5 The ESOS/ESPS shares held by the promoters prior to Initial Public offering shall be subject to lock-in as per the provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000.

22.6 The listed companies shall file the ESOS or ESPS Schemes through EDIFAR filing.

22.7 When holding company issues ESOS/ESPS to the employee of its subsidiary, the cost incurred by the holding company for issuing such options/shares shall be disclosed in the ‘notes to accounts’ of the financial statements of the subsidiary company.

22.8 The Company shall appoint a registered Merchant Banker for the implementation of ESOS and ESPS as per these guidelines.

22A. ESOS/ESPS through Trust Route

22A.1 In case of ESOS/ESPS are administered through a Trust Route, the ESOS, ESPS Trust shall be consolidated with the company in accordance with the Accounting Standard (AS 21) specified by the Institute of Chartered Accountants of India and these Guidelines shall be applicable to the consolidated entity.

23. Commencement of the Guidelines

23.1 These guidelines shall come into force with effect from 19th June, 1999 and will be applicable to the options/shares granted/allotted on or after 19th June, 1999 unless otherwise specified in the Guidelines.

SCHEDULE I
(Clause 13.1)

Accounting Policies for ESOS

(a) In respect of options granted during any accounting period, the accounting value of the options shall be treated as another form of employee compensation in the financial statements of the company.

(b) The accounting value of options shall be equal to the aggregate, over all employee stock options granted during the accounting period, of the intrinsic value of the option or, if the company so chooses, the fair value of the option.

(c) Where the accounting value is accounted for as employee compensation in accordance with 'b', the amount shall be amortised on a straight-line basis over the vesting period.

(d) When an unvested option lapses by virtue of the employee not conforming to the vesting conditions after the accounting value of the option has already been accounted for as employee compensation, this accounting treatment shall be reversed by a credit to employee compensation expenses, equal to the amortized portion of the accounting value of the lapsed options and a credit to deferred employee compensation expense equal to the unamortized portion.

(e) When a vested option lapses on expiry of the exercise period, after the fair value of the option has already been accounted for as employee compensation, this accounting treatment shall be reversed by a credit to employee compensation expenses.

SCHEDULE II
(Clause 19.2)

Accounting Policies for ESPS

(a) In respect of shares issued under an ESPS during any accounting period, the accounting value of the shares so issued shall be treated as another form of employee compensation in the financial statements of the company.

(b) The accounting value of shares issued under ESPS shall be equal to the aggregate of price discount over all shares issued under ESPS during any accounting period:

For this purpose:

Price discount means the excess of the market price of the shares at the date of issue over the price at which they are issued under the ESPS.

SCHEDULE III
(Clause 2.1)

(i) The fair value of a stock option is the price that shall be calculated for that option in an arm's length transaction between a willing buyer and a willing seller.

(ii) The fair value shall be estimated using an option-pricing model (for example, the Black-Scholes or a binomial model) that takes into account as of the grant date the exercise price and expected life of the option, the current price in the market of the underlying stock and its expected volatility expected dividends on the stock, and the risk-free interest rate for the expected term of the option.

(iii) The fair value of an option estimated at the grant date shall not be subsequently adjusted for changes in the price of the underlying stock or its volatility, the life of the option, dividends on the stock, or the risk-free interest rate.

(iv) Where the exercise price is fixed in Indian Rupees, the risk-free interest rate used shall be the interest rate applicable for a maturity equal to the expected life of the options based on the zero-coupon yield curve for Government Securities.

(v) The expected life of an award of stock options shall take into account the following factors:

(a) The expected life must at least include the vesting period.

(b) The average lengths of time similar grants have remained outstanding in the past. If the company does not have a sufficiently long history of stock option grants, the experience of an appropriately comparable peer group may be taken into consideration.

(c) The expected life of ESOSs should not be less than half of the exercise period of the ESOSs issued until and unless the same is supported by historical evidences with respect to ESOSs issued by the company earlier.

(vi) If the company does not have a sufficiently long history of traded stock prices to estimate the expected volatility of its stock, it may use an estimate based on the estimated volatility of stocks of an appropriately comparable peer group.

(vii) The estimated dividends of the company over the estimated life of the option may be estimated taking into account the company's past dividend policy as well as the mean dividend yield of an appropriately comparable peer group.

(viii) Justification shall be given for significant assumptions. If at the time of further issue of ESOS/ESPS there are any changes in the assumptions reasons for the same shall be given.

SCHEDULE IV

Disclosure Document
(Clause 5.1)

Part A : Statement of Risks

All investments in shares or options on shares are subject to risk as the value of shares may go down or go up. In addition, employee stock options are subject to the following additional risks:

1. Concentration: The risk arising out of any fall in value of shares is aggravated if the employee's holding is concentrated in the shares of a single company.
2. Leverage: Any change in the value of the share can lead to a significantly larger change in the value of the option as an option amounts to a levered position in the share.

3. Illiquidity: The options cannot be transferred to anybody, and therefore the employees cannot mitigate their risks by selling the whole or part of their options before they are exercised.
4. Vesting: The options will lapse if the employment is terminated prior to vesting. Even after the options are vested, the unexercised options may be forfeited if the employee is terminated for gross misconduct.

Part B : Information about the company

1. Business of the company: A description of the business of the company on the lines of item V(a) of Part I of Schedule II of the Companies Act.
2. Abridged financial information: Abridged financial information for the last five years for which audited financial information is available in a format similar to that required under item B(1) of Part II of Schedule II of the Companies Act. The last audited accounts of the company should also be provided unless this has already been provided to the employee in connection with a previous option grant or otherwise.
3. Risk Factors: Management perception of the risk factors of the company in accordance with item VIII of Part I of Schedule II of the Companies Act.
4. Continuing disclosure requirement: The option grantee should receive copies of all documents that are sent to the members of the company. This shall include the annual accounts of the company as well as notices of meeting and the accompanying explanatory statements.

Part C : Salient Features of the Employee Stock Option Scheme

This Part shall contain the salient features of the employee stock option scheme of the company including the conditions regarding vesting, exercise, adjustment for corporate actions, and forfeiture of vested options. It shall not be necessary to include this Part if it has already been provided to the employee in connection with a previous option grant, and no changes have taken place in the scheme since then. If the option administrator (whether the company itself or an outside securities firm appointed for this purpose) provides advisory services to the option grantees in connection with the exercise of options or sale of resulting shares, such advice must be accompanied by an appropriate disclosure of concentration and other risks. The option administrator should conform to the code of conduct appropriate for such fiduciary relationships.

SCHEDULE V
(Clause 22.1)

INFORMATION REQUIRED IN THE STATEMENT TO BE FILED WITH STOCK

Description of Stock Option Scheme

1. Authorized Share Capital of the Company:
2. Issued Share Capital of the Company as on date of Institutional of the Scheme/amending of the Scheme.
3. Date of Institution of the Scheme/amending of the Scheme
4. Validity period of the Scheme

5. Date of notice of AGM/EGM for approving the Scheme/for amending the Scheme/for approving grants under Clause 6.3(a) or (b) of the SEBI (ESOS & ESPS) Guidelines.

6. Date of AGM/EGM approving the Scheme/amending the Scheme/approving grants under Clause 6.3(a) or (b) of the SEBI (ESOS & ESPS) Guidelines.

7. Kind of security granted as Options under the Scheme

8. Identity of classes of persons eligible under the scheme.

   — Permanent employees

   — Permanent employees outside India

   — Permanent employees of subsidiary

   — Permanent employees of holding

   — Whole-time directors

   — Independent directors

9. Total number of securities reserved under the scheme:

10. Number of securities entitled under each option

11. Total number of options to be granted:

12. Maximum number of Options to be granted per employee in each grant and in aggregate:

13. Exercise price or pricing formula:

14. Whether any amount payable at the time of grant of the Options? If so, quantum of such amount.

15. Lock-in period under the Scheme

    — Lock-in period between grant and vesting

    — Lock-in period after exercise

16. Vesting period under the Scheme

17. Maximum period within which the options shall be vested.

18. Exercise Period under the plan:

19. Whether employee can exercise all the Options Vested at one time? Yes/No

20. Whether employee can exercise vested Options at various points of time within the exercise period? Yes/No

21. Whether scheme provides for the procedure for making a fair and reasonable adjustment to the number of options and to the exercise price in case of right issues, bonus issues and other corporate actions? Clause in Scheme describing such

adjustment:

22. Description of the appraisal process for determining the eligibility of employees under the scheme.

23. The specified time period within which vested options are to be exercised in the event of termination or resignation of an employee.

24. The specified time period within which options are to be exercised in the event of the death of the employee:

25. Whether Plan provides for conditions under which option vested in employees may lapse in case of termination of employment for misconduct? Clause in Scheme describing such adjustment:

26. Whether Plan provides for conditions for the grant, vesting and exercise of option in case of employees who are on long leave? Clause in scheme describing such adjustment.

27. Whether amount paid/payable by the employee at the time of the grant of the Option will be forfeited if the employee does not exercise the option within the exercise period? Clause in scheme describing such adjustment:

28. Details of approval of shareholders pursuant to Clause 6.3 of the SEBI (ESOS & ESPS) Guidelines with respect to:
    — Grant of options to employees of subsidiary or holding company.
    — Grant of options to identified employees, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of the option:

29. Details of the variation made to the scheme along with the rationale therefore and details of the employees who are beneficiary of such variation:

Company Secretary

Place:
Date:

Documents to be filed with registration statement

— Copy of Stock Option Scheme/Amended Stock Option Scheme, certified by company secretary.

— Copy of Notice of AGM/EGM for approving the Scheme/for amending the Scheme/for approving grants under Clause 6.3(a) or (b) of the SEBI (ESOS & ESPS) Guidelines, certified by the the company secretary.

— Copy of resolution of shareholders for approving the Scheme/for amending the scheme/for approving grants under Clause 6.3(a) or (b) of the SEBI

(ESOS & ESPS) Guidelines, certified by the company secretary.

— List of Promoters as defined under the SEBI (ESOS & ESPS) Guidelines.

— Copy of latest Annual Report.

— Certificate of Auditor on compliance with SEBI (ESOS and ESPS) Guidelines.

— Specimen copy of Share certificate.

— Any other relevant documents.

Undertakings

A. The undersigned company hereby undertakes:

(1) To file, a post-effective amendment to this statement to include any material information with respect to the scheme of distribution not previously disclosed in the statement or any material change to such information in the statement.

(2) To notify, the concerned stock exchanges on which the securities of the company are listed, of such issue of securities pursuant to the exercise of options under the scheme mentioned in this statement, in the prescribed form, as amended from time to time.

(3) That the company shall conform to the accounting policies specified in clause 13.1 of the SEBI (ESOS & ESPS) Guidelines.

(4) That the Scheme confirms to the SEBI (ESOS & ESPS) Guidelines.

(5) That the company has in place systems/codes/procedures to comply with the SEBI (Insider Trading) Regulations.

Signatures

Pursuant to the requirements of the SEBI Act/guidelines, the company certifies that it has reasonable grounds to believe that it meets all the requirements for the filing of this form and has duly caused this statement to be signed on its behalf by the undersigned, thereunto, duly authorized.

Name of the company
Sd/-
Name of the Compliance Officer
Designation

Date:
Place:

SCHEDULE VI
(Clause 22.1)

Format of Notification for Issue of Shares under the Stock Option Plans

1. Company Name and Address of Registered Office :
2. Name of the Exchanges on which the company's shares are listed :
3. Filing date of the Statement referred in clause 22.1.b of guidelines with stock exchange :
4. Filing Number, if any :

5. Title of the Stock Option Scheme pursuant to which shares are issued, if any :
6. Kind of Security to be listed :
7. Par value of the shares :
8. Date of issue of shares :
9. Number of shares issued :
10. Share Certificate no., if applicable :
11. Distinctive number of the share, if applicable :
12. ISIN Number of the shares if issued in Demat :
13. Exercise Price per share :
14. Premium per share :
15. Total Issued Shares after this issue :
16. Total Issued Share capital after this issue :
17. Details of any lock-in on the shares :
18. Date of expiry of lock-in :
19. Whether shares identical in all respects to existing shares. If not, when will they become identical? :
20. Details of Listing fees, if payable :

Signature of Company Secretary/Compliance Officer

Date:
Place: