V — COMPANY LAW

TYPES OF COMPANIES

1. **"Private company"** is defined in **section 3(1)(iii)** of the Act and it means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,

   a. restricts the right to transfer its shares, if any;

   b. limits the number of its members to fifty (50) not including —

      i. persons who are in the employment of the company; and

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

   c. prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company: and

   d. prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives:
   Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

2. **"Public company"** is defined in **section 3(1)(iv)** of the Act and it means a company which —

   a. is not a private company;

   b. has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

   c. is a private company which is a subsidiary of a company which is not a private company.

3. **"Government company"** is defined in **section 617** of the Act and it means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

   As provided by **section 620** of the Act, the Central Government may, by notification in the *Official Gazette*, exempt Government companies from certain provisions or certain provisions of the Act shall apply to them with exceptions, modifications and adaptations.

4. **"Foreign company"** is defined in **section 591** of the Act and it means a company which

   a. is incorporated outside India and
   b. has established a place of business within India.

   Within 30 days of establishment of such place of business within India, the Foreign Company is required to submit documents/ details under section 592. Alterations and changes in these documents/details are required to be notified within 30 days.

   The provisions of sections 118 (right to obtain copies of trust deed), 124 to 145 (registration of charges), 159 (annual returns to be made by company), 209 (Books of account to be kept by company), 209A (inspection of books of account of company), 233A (power of Central Government to direct special audits in certain cases), 233B (audit of cost accounts in certain cases), 234 to 246 (power of Registrar to call for information etc.) apply to such foreign company.

5. **"Company limited by guarantee"** is defined in **section 12(2)(b)** of the Act and it means a company having the liability of its members limited by the memorandum to such amount as the

members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Such company could be a **"company limited by guarantee and not having share capital"** or a **"company limited by guarantee and having a share capital".**

The Memorandum and Articles of Association of such companies are as per Tables C and D of Schedule I of the Act, respectively.

6. **"Unlimited Company"** is defined in **section 12(2)(c)** of the Act and it means a company not having any limit on the liability of its members. The liability of a member extends to the whole amount of company's debts and liabilities but the member will be entitled to claim contribution from other members. The Memorandum and Articles of such company is as per Table E of Schedule I of the Act.

7. **"Producer Company"** is defined in **section 581A** of the Act and it means a body corporate having objects or activities specified in **section 581B** and registered as Producer Company under this Act.

Section 581B

1. The objects of the producer company shall relate to all or any of the following matters, namely–

    a. production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.

       Provided that Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.

    b. processing including preserving, drying, distilling, brewing, venting, canning and packaging of produce of its members.

    c. manufacture, sale or supply of machinery, equipment or consumables mainly to its members.

    d. providing education on the mutual assistance principles to its members and others;

    e. rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interest of its members;

    f. generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

    g. insurance of producers or their primary produce;

    h. promoting techniques of mutuality and mutual assistance;

    i. welfare measures or facilities for the benefit of members as may be decided by the Board;

    j. any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner;

    k. financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its members.

2. Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

8. Companies with licence under section 25

1. Where it is proved to the satisfaction of the Central Government that an association—

    a. is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and
    b. intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the word "Private Limited".

2. The association may thereupon be registered accordingly and on registration shall enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

Such companies are generally associations, clubs or chambers of commerce.

The Central Government has conferred powers under **section 25(6)** to exempt or modify certain provisions of the Act in relations to such companies.

9. Holding & Subsidiary Company

According to **Sec. 2(19)** "holding company" means a holding company within the meaning of section 4 of the Act;

According to **Sec. 2(47)** "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of Section 4 of the Act.

Sec. 4. of the Act states,

1. For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), **be deemed to be a subsidiary** of another if, but only if —

    a. that other controls the composition of its Board of directors; or
    b. that other —

        i. where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;
        ii. where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

    c. the first-mentioned company is a subsidiary of any company which is that **other's subsidiary.**

IMPORTANT DEFINITIONS UNDER COMPANIES ACT, 1956

Sec. 2(8) "book and paper" and "book or paper" includes accounts, deeds, vouchers, writings and documents.

Sec. 2(15) "document" includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise.

Sec. 2(15A) "employees stock option" means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price.

Sec. 2(17) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not:

Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938).

Sec. 2(26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with [substantial powers of management] which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called:

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

Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors.]

Sec. 2(27) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114.

Sec. 2(29A) "net worth" means the sum total of the paid-up capital and free reserves after deducting the provisions or expenses as may be prescribed.

Explanation— for the purposes of this clause, "free reserves" means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation.

Sec. 2(30) "officer" includes any director, manager or secretary, or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act.

Sec. 2(31) "officer who is in default", in relation to any provision referred to in section 5, has the meaning specified in that section.

Sec. 5. Meaning of **"officer who is in default"** — For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely –

a. the managing director or managing directors;

b. the whole-time director or whole-time directors;
c. the manager;
d. the secretary;
e. any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
f. any person charged by the Board with the responsibility of complying with that provision: **Provided that** the person so charged has given his consent in this behalf to the Board;
g. where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:
Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

Sec. 2(36) "prospectus" means [any document described or issued as a prospectus and includes any] notice, circular, advertisement or other document [inviting deposits from the public or] inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;

Sec. 2(38) "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881 (26 of 1881):

Provided that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting;

Sec. 2(41) "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others.

Sec. 6. Meaning of "relative" — A person shall be deemed to be a relative of another if, and only if,

a. they are members of a Hindu Undivided Family; or
b. they are husband and wife; or
c. the one is related to the other in the manner indicated in Schedule IA.

Schedule IA specifies the list of relatives as under:

1. Father 2. Mother (including step mother) 3. Son (including step son) 4. Son's wife 5. Daughter (including step daughter) 6. Father's father 7. Father's mother 8. Mother's mother 9. Mother's father 10. Son's son 11. Son's son's wife 12. Son's daughter 13. Son's daughter's husband 14. Daughter's husband 15. Daughter's son 16. Daughter's son's wife 17. Daughter's daughter 18. Daughter's daughter's husband 19. Brother (including step brother) 20. Brother's wife 21. Sister (including step sister) 22. Sister's husband

Sec. 2(45AA) "securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and includes hybrids;

Sec. 2(h) of Securities Contracts (Regulation) Act defines "securities" as follows:

"Securities" include —

i. shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

    a. derivative
    b. units or any other instrument issued by any collective investment scheme to the

investors in such schemes.

c. security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

d. units or any other such instrument issued to the investors under any mutual fund scheme.

ii. Government securities.

a. such other instruments as may be declared by Central Government to be securities; and

iii. rights or interest in securities.

Sec. 2(46AA) "sick industrial company" means an industrial company which has —

i. the accumulated losses in any financial year equal to fifty per cent or more of its average net worth during four years immediately preceding such financial year; or
ii. failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company.

Sec. 2(48) "total voting power", in regard to any matter relating to a body corporate, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of such body, if all the members thereof and all other persons, if any, having a right to vote on that matter are present at the meeting, and cast their votes.

IMPORTANT DEFINITIONS OTHER THAN THOSE COVERED UNDER SECTION 2

Sec. 4A Public Financial Institutions —

1. Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely —

   i. the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);

   ii. the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

   iii. the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

   iv. the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

   v. the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963);

   vi. the Infrastructure Development Finance Company Limited, a company formed and registered under this Act.

2. Subject to the provisions of sub-section (1), the Central Government may, by notification in the *Official Gazette*, specify such other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless –

i. it has been established or constituted by or under any Central Act, or

ii. not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government.

Sweat Equity Shares as referred to in **section 79A,** is defined in Explanation II of that section as follows:

— For the purposes of this Act, the expression "sweat equity shares" means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Small shareholders: as referred to in **Sec. 252** is defined in explanation to that section as follows:

— For the purpose of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.

Office or place of profit: as referred to in **Sec. 314(3)** is defined as follows:

Any office or place shall be deemed to be an office or place of profit under the company [within the meaning of this section] —

a. in case the office or place is held by a director, if the director holding it [obtains from the company anything] by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise;

b. in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it [obtains from the company anything] by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

FORMATION OF COMPANIES

INCORPORATION OF A NEW COMPANY INVOLVES

- Approval of the Name
- Preparation of documents
- Stamping of Documents and submission for vetting by the concerned Registrar of Companies
- Corrections in the documents as advised the Registrar of Companies
- Uploading of the pre-vetted documents and payment of requisite filing fees
- Submission of the physical copies of the documents uploaded.
- Approval of Registration

NAME APPROVAL

- **eForm : 1A**
- **Information required :**
    - Information about the applicant — Name, address, occupation and email id.
    - Names (Maximum 6), in order of preference, of the proposed company.
    - Significance of the names
    - Main object of the proposed company
    - Names of the Promoters. In case of a Private Limited Company — minimum 2 and in case of a Public Limited Company minimum 7 names are required.
    - Information of the Proposed Directors :
        - Director Identification No. (DIN)
        - Name of Father/Husband
        - Corporate Identity No. (CIN), in case already a Director/Promoter of an existing company.
        - Date of Birth
        - Permanent & Present Residential Address
    - Proposed Authorised Capital
- **Points to be kept in mind**
    - All the proposed Directors should have valid Director Identification No. (DIN).
    - In case any Director is not having DIN, apply for DIN and thereafter make an application for name approval.
    - The applicant should be having valid Digital Signature Certificate (Class 2 or above) from one of the approved Certifying Authorities e.g. MTNL, TCS.
    - The names should be indicative of the activities/main object of the proposed company.
    - Ensure that the name does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950). The MCA Portal provides the facility of online checking of the names of existing companies/names already approved.
    - The use of words in the name of Company like "National", "Global", "Industries", "Enterprises", "Universal", "International", "Hindustan", "India", "Corporation" etc. is

allowed only if Authorised Capital of Company is large enough. For details refer Circular F. No. 27/1/87 dated 13-3-1989.

- **Steps**

  - Register with MCA Portal as "Registered User" and remember user name and the Password.
  - Electronically File application in completed eForm 1A.
  - Make the payment online, through payment gateway or generate challan, for Rs. 500/- for off line payment.
  - In case of off line payment, make the payment of challan, through designated branches of the authorized bank.
  - The online payment should be preferred for faster clearance, as the application can not be processed till the payment has been made.
  - The name approval is conveyed through email to the applicant. The status can also be checked online through the user id used for efiling of Form 1A.
  - The name approval is valid for 60 days only. In case further steps for the incorporation of the company could not be completed, Make application for renewal of name, Renewal is for one month and if, thereafter require fresh application should be made in Form 1A.

PREPARATION AND SUBMISSION OF DOCUMENTS

- Following Documents are required :

  - **eForm 1** —- Declaration of compliance of all provisions on Stamp paper of Rs 100/- (Ensure that stamp paper is not in name of company but in name of any of the Applicant)
  - **Memorandum of Association (MOA)** — It should contain following clauses:

    - The name of the proposed company — It should be the same as given in the name approval letter.
    - Domicile of the company; i.e., the state in which the proposed company is sought to be registered.
    - **Objects Clause** should be consist of

      a. **Main Object:** It should clearly State the activities to be carried on by the company upon incorporation. Generally, ROC does not allow more than one or two clauses under this Clause.

      b. **Objects Ancillary or incidental to the main Objects of the Company.** This should contain objects, which are required to be carried out to attain the Main Objects of the company.

      c. **Other Objects:** These are the objects, which the company is likely to carry out either along with the Main Objects or in place of Main Objects.

      d. These clauses should be drafted carefully to avoid frequent amendments.

    - **The Capital Clause** should show the Authorised Capital of the company , in case the company is being registered with share capital. It should also state that the paid-up capital of the company shall be minimum Rs. 1 lakh [5 lakhs in case of Public company]. In case the liability of the members is limited, the same should be mentioned in the Memorandum of Association. The Stamp Duty and ROC fees are payable based on the Authorised Capital.

- **The Subscription clause** should be signed by all the subscribers (Minimum two in case of Private Company & Seven in case of Public Company) and mentioning in their own handwriting, name, address, occupation and number of shares agreed to be subscribed before a witness. Witness also has to write his details in his own handwriting.
- **The Liability clause** should mention the fact that the liability of the company is limited (by shares or by Guarantee as the case may be).

- **Articles of Association (AOA)** – For all companies, to the extent applicable:
  - A/A, if filed, may contain clauses like capital structure, power to issue further shares, make call, forfeit, issue bonus shares, or buy back of shares including power to increase, convert, cancel, consolidate and/or spilt the shares etc.
  - A/A must not be *ultra vires* the Act or the M/A
  - The relationship of promoters *inter se* or rights — powers duties of each promoter may be described in A/A.
  - Any MoU or shareholders agreement etc. between promoting groups may be suitably referred to in A/A, if it is desired that company should take cognizance of such MoU etc.
  - The method and mode of valuation of shares, further allotment etc., if desired, may be enclosed in A/A.
  - Minimum/maximum number of Directors, their rights, and duties can be contained in A/A.
  - Appointment/Reappointment, Retirement, Re-muneration of Directors may also be mentioned in A/A.
  - A public company limited by shares may adopt fully or partly "Table A" as its A/A. A Private company must file and register A/A mentioning the restraints as per S. 3(1)(iii). For other clauses, "Table A" may be adopted.
  - Restraints u/s 3(1)(iii) in case of Private Limited Company :
    a. The right to transfer the shares is restricted.
    b. Number of members not to exceed 50 (excluding employees).
    c. Prohibition of invitation to public to subscribe shares/debentures.
    d. Prohibition of invitation/acceptance of deposits from persons other than members, directors or their relatives.

- **eForm 18** – for situation of the registered office :
  - Address of Registered Office
  - Address of Jurisdictional Police Station also to be mentioned.
  - Form 1A reference number is also to be given.
  - It is to be digitally signed by any one of the directors.

- **eForm 32**- for appointment of the first Directors
  - Director Identification No. (DIN)
  - The eForm 32 comes with "Pre-Fill" button. The name, Father's Name and Address of the Director will be filled automatically.
  - It is to be digitally signed by any one of the directors.
  - Ensure that none of the Directors is disqualified.

- **Power of Attorney**

  - To be executed by all the subscribers on Stamp paper of Rs 100/- (Ensure that stamp paper is not in name of company but in name of any of the Subscriber).
  - To contain power to make alterations and also to collect certificate of incorporation.

STAMPING OF DOCUMENTS AND SUBMISSION FOR VETTING BY THE CONCERNED REGISTRAR OF COMPANIES :

- Following Documents are to be Stamped :

  1. **Memorandum of Association** — Rs. 200/- on first page of MOA.
  2. **Articles of Association** — Stamp duty will vary depending upon the Authorised Capital
  3. **Form 1** – Rs. 100
  4. **Power of Attorney** — Rs. 100

- Following Documents to be Submitted to the concerned ROC, for vetting :

  1. Memorandum of Association
  2. Articles of Association
  3. Power of Attorney
  4. Form 1
  5. Form 32
  6. Form 18

CORRECTIONS IN THE DOCUMENTS AS ADVISED THE REGISTRAR OF COMPANIES :

- Make all the corrections in the documents, as advised by the ROC. Ensure that the originals returned by the ROC bears the stamp of Pre-scrutiny by ROC.

UPLOADING OF THE PRE-VETTED DOCUMENTS AND PAYMENT OF REQUISITE FILING FEES

- Following forms to be uploaded/eFiled :

  - Form 1 : with following attachments :

    - Scanned copy of MOA — ensure that the stamp duty payment and ROC Pre-Scrutiny by ROC are visible.
    - Scanned copy AOA — ensure that the stamp duty payment and ROC Pre-Scrutiny by ROC are visible.
    - Scanned copy of First page of Form 1 – showing payment of stamp duty
    - Annexure containing detail of subscribers

  - Form 18
  - Form 32

- Generate Challan/make on line payment for filing of the above Forms.
- **<u>Points to be kept in mind</u>**

  - All the scanned documents should be saved in "PDF" format. The MCA portal does not accept files in any other format.
  - The First page of MOA, AOA, & Form 1, bearing Stamps for payment of Stamp duty & pre-scrutiny by ROC, should be scanned in colour/black and white (both are valid).

- Other pages can be scanned in Black & white, to reduce the size of file.
- The eforms being used, should be latest version. There should not be much time gap between downloading of the blank form and uploading of the duly filled in form. The user may face difficulties in uploading, if there is a time gap of more than 3-4 days.
- After efiling, the user should regularly visit MCA portal to check the status of the documents filed. The queries raised , in respect of documents filed, are normally mentioned as "remarks".

SUBMISSION OF THE PHYSICAL COPIES OF THE DOCUMENTS UPLOADED

- After eFiling of the documents as described above following documents are required to be submitted to the concerned ROC :
  - Original, stamped copy, of MOA
  - Original, Stamped copy of AOA
  - Copy of challan, duly paid, as an evidence of completed efiling of the documents.

APPROVAL OF REGISTRATION

- The concerned ROC generates the Corporate Identity No. (CIN) on satisfactory completion of all the formalities. The Promoter, or Power of Attorney holder can collect the original certificate of incorporation. Otherwise it is directly sent to the Promoter.

PRIVILEGES ENJOYED BY A PRIVATE LIMITED COMPANY

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Section	***Description of the matter***
3(1)(iii)	A Private Company (Pvt. Co.) can operate with Minimum paid-up capital of Rs. 1 lakh as against Rs. 5 lakhs for Public Company.
12(1)	A Pvt. Co. can be formed by only two persons as against requirement of at least seven persons in case of Public Company.
58A	Deposit taken by Pvt. Co. from members enjoys total exemption from the clutches of this section. *Kindly note that as per the provisions of sec. 58A read with rule 2(b) of the Companies (Acceptance of Deposits) Rules, 1975 — amount received from its shareholders by a private company (provided the shareholder concerned furnishes at the time of giving the money to the company, a declaration that the amount is not being given out of funds acquired by him by borrowing or accepting from others) is not included in the meaning of deposit. If the depositor ceases to be a shareholder, the deposits made by him cease to qualify for exemption from the date of such cessation*
70(3)	A Pvt. Co. need not file Statement in lieu of Prospectus with ROC.
77(2 & 3)	*There is no restriction for Pvt. Co. which is not a subsidiary of a public company to provide financial assistance to anyone for purchasing or subscribing for its own shares or of its holding company.*
81	A Pvt. Co. can issue further shares in any manner; i.e., rights shares to the existing shareholders need not be offered.
85 to 90	The restrictions relating to kinds of share capital, issue of shares with differential voting rights, etc. do not apply to Pvt. Co.
111	Appeal against refusal to register a transfer or transmission of shares.
149	Procedures for obtaining certificate of commencement of business do not apply to Pvt. Co. *A Pvt. Co. can commence its business as soon as the certificate of incorporation is issued.*
165	Pvt. Co. is not required to hold statutory meeting or prepare any statutory report.
170 to 186	Relaxation in the length of Notice for calling General Meeting, contents and manner of Service of Notices, Explanatory Statements, Quorum for meeting, Chairman of meeting, Restrictions of voting rights etc. *to the extent to which the company makes its own provisions by its articles.*.
192A	Passing of resolution by Postal Ballot not relevant for Pvt. Co.
198	Ceiling on overall managerial remuneration not applicable to Pvt. Co.
204	No restriction on appointment of any firm, body corporate to office or place of profit.
220	*Inspection of* P & L A/c of a Pvt. Co. by Public is not permitted.
224(1B)	Limit of appointment of Auditors are exclusive of Pvt. Cos.
252 & 252A	Minimum Directors for Pvt. Co. is 2 (two) against 3 (three) in case of Public Co. Requirement of Independent Directors or Small Shareholders' Directors not applicable to Pvt. Co.
255	No proportion of directors to retire by rotation every year.
256	A Pvt Co. need not adopt the procedure relating to appointment, retirement, reappointment of directors etc. applicable to a public company.
257	The provision requiring the giving of 14 days notice by new candidates seeking election as directors and deposit of certain amount (Rs. 500) are not applicable to Pvt. Cos.
259	Central Government approval for increasing number of directors beyond the

	permissible maximum (presently 12) not required.
262	The provision relating to manner of filling casual vacancy among directors and the duration of the period of office of those so appointed do not apply to Pvt. Co.
263(1)	Appointment of two or more persons as directors by a single resolution can be done by Pvt. Co.
264	No requirement of filing consent by the directors to be filed with the Registrar to act as director.
266(5)	Restrictions on appointment of director and qualification of shares not applicable to Pvt. Co.
268, 269	Central Government approval for amendment relating to appointment/reappointment of a whole-time director/director not liable to retire by rotation.
270-273	Requirements of holding share qualification by directors and fixing the time within which the qualification is to be acquired and filing with the Registrar a declaration of his share qualification by each director is not applicable to Pvt. Co.
274(1)(g)	The prohibition against person disqualified u/s. 274(1) clause (g) does not apply to director of Pvt. Co..
275, 278	Person not to become director of more than 15 companies (Directorships of Pvt. Co. not to be counted for this limit.)
292A	Provisions relating to formation of Audit Committee not applicable.
293	Restriction in relation to certain acts on powers of Board of directors is not applicable to Pvt. Co.
295	Restriction on loans to directors/relatives etc. does not apply to Pvt. Co.
300	No restriction on interested directors from participating in the proceedings of the Board and exercising their votes.
309, 310, 311	Payment of remuneration to the directors or increase in their remuneration; Procedures like filing Form 25C not required in case of Pvt. Co.
316, 317	No restriction on period of appointment of managing director / manager for more than 5 years at a time.
349,350	Provision relating to the determination of net profits and ascertainment of depreciation shall not apply.
372A	No restrictions on giving loans or guarantees to other companies or on making investment in the shares of the other companies.
386,388	No. of companies on which a person may be appointed manager, the remuneration of a manager and the application of sections 269, 310 to 312 and 317 in relation to managers do not apply.
409(3)	Powers given to the Central Government to prevent change in the Board of directors not applicable to Pvt. Co.
416(1)	Contract by agents of the company in which the company is the undisclosed principal shall not apply.

ANNUAL AND OTHER OBLIGATIONS

OBLIGATIONS UNDER THE COMPANIES ACT, 1956 WITH RESPECT TO E-FILING OF FORMS, RETURNS AND DOCUMENTS WITH REGISTRAR OF COMPANIES

The Companies Act, 1956 ("the Act") provides for and casts an obligation on Companies incorporated under the Act to file various forms, returns and documents under various sections with the Registrar of Companies (ROC) in an electronic mode within the prescribed time along with the prescribed fees or with payment of additional fees in the event of delayed filing.

The Ministry of Corporate Affairs has introduced a new e-governance Project MCA-21 which is designed to fully automate all processes related to pro-active enforcement and compliance of legal requirements under the Companies Act, 1956. The major component of this project are front office and back office. The front office is administered through the portal www.mca.gov.in. since September 30, 2006. Physical filing of forms under Companies Act has been discontinued and the physical form discarded.. All filing after September 30, 2006 is through e-filing using specially designed e-forms.

The various documents, returns etc. that are required to be filed with the ROC could be categorized as those which are required to be filed once in a year (Annual Filing Obligations) and those which are required to be filed from time to time with ROC/Central Government as provided under the Act (Other Filing Obligations).

ANNUAL OBLIGATIONS WITH RESPECT TO FILING OF RETURNS/DOCUMENTS UNDER THE ACT WITH ROC

A. ANNUAL RETURN UNDER SECTIONS 159, 160

i. The annual return has to be filed with the ROC in an electronic mode within 60 days of the holding of the annual general meeting;

ii. Where annual general meeting has not been held, the return is required to be filed within 60 days from the date on which the annual general meeting should have been held;

iii. The return is to be duly signed digitally and the requisite certificates to be attached as per section 161;

iv. In case of a company whose shares are listed on a recognized stock exchange; the return is to be also signed digitally by a secretary in whole-time practice.

***Note*:** In case of an adjourned annual general meeting, the annual return incorporates the date of the original meeting.

Description	***e-Form***
Particulars of annual return for the company not having share capital	Form 21A
Form for filing annual return by a company having a share capital with the Registrar	Form 20B
Form of annual return of a foreign company having a share capital	Prescribed Form 20B

b. BALANCE SHEET, ETC., UNDER SECTION 220

i. the balance sheet, etc., to be adopted at the annual general meeting;

ii. copy of Annual report including Balance Sheet etc. to be e-filed with the ROC within 30 days of the date of the annual general meeting;

iii. where an annual general meeting (AGM) is not held, copy of balance sheet etc. to be e-filed within 30 days from the latest day on or before which the meeting should have been held and a statement of the fact and of the reasons thereof to be filed along with the balance sheet.

iv. where balance sheet etc., is laid before but not adopted at the AGM or the AGM was adjourned without adopting the balance sheet, a statement of the fact and reasons thereof was filed along with balance sheet, etc. to be e-filed within 30 days of the AGM.

Description	***e-Form***
Form for filing balance sheet and other documents with the Registrar	*Form 23AC*
Form for filing Profit and Loss account and other documents with the Registrar	*Form 23ACA*

C. COMPLIANCE CERTIFICATE UNDER SECTION 383A

i. The company to which proviso to sub-section (1) of section 383A is applicable, has to digitally file with the ROC a Certificate from a Company Secretary in whole time Practice in Form appended to the Companies (Compliance Certificate) Rules, 2001 within 30 days from the date of annual general meeting, along with the Annual Report.

ii. In case the annual general meeting of the company is not held for the year, the aforesaid Compliance Certificate to be digitally filed with the ROC within 30 days from the latest day on or before which that meeting should have been held.

Description	***e-Form***
Form for submission of compliance certificate with the Registrar	Form 66

OTHER OBLIGATIONS

APPROVAL SERVICES (HEADQUARTERS)

Description	***e-Form***
Application to Central Government for modification in the matters to be stated in the company's balance sheet or profit and loss account	Form 23AAA
Form for filing application or documents with Central Government	Form 65
Form for filing application for declaration as Nidhi Company	Form 63
Form of application to the Central Government for obtaining prior consent for holding of any office or place of profit in the company by certain persons	Form 24B
Form for filing application for giving loan, providing security or guarantee in connection with a loan	Form 24AB
Form of application to the Central Government for appointment of cost auditor	Form 23C
Application to Central Government for not providing depreciation	Form 23AAC
Application for exemption from attaching the annual accounts of the subsidiary companies	Form 23AAB
Form of application for approval for declaration of dividend out of reserves	Form
Form of application for removal of disqualification of directors	Form DD-C
Form of application for approval of the Central Government for the appointment of sole selling agents by the company	Form I
Form of application for approval of the Central Government for the appointment of sole buying agent by a company	Form II

APPROVAL SERVICES (REGIONAL DIRECTOR)

Description	***e-Form***
Application for confirmation by Regional Director for change of registered office of the company within the State from the juridiction of one Registrar to the jurisdiction of another Registrar	Form 1AD
Form for filing application for opening branch(s) by a nidhi company	Form 64
Form for filing application to Regional Director	Form 24A

APPROVAL SERVICES (REGISTRAR OF COMPANIES)

Description	***e-Form***
Application for approval of the Central Government for change of name or conversion of a public company into a private company	Form 1B
Form for filing an application with Registrar of Companies	Form 61

CHANGE SERVICES

Description	***e-Form***
Application form for availability or change of a name	Form 1A
Notice of (A) alteration in names and addresses of persons resident in India authorized to accept service on behalf of a foreign company (B) alteration in the address of principal place of business in India of a foreign company (C) list of places of business established by a foreign company (D) cessation to have a place of business in India	Form 52
Return of alteration in the charter, statute or memorandum and articles of association, address of the registered or principal office and directors and secretary of a foreign company	Form 49
Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares	Form 32
Notice of situation or change of situation of registered office	Form 18
Notice of consolidation, division, etc. or increase in share capital or increase in number of members	Form 5
Application for approval of the Central Government for change of name or conversion of a public company into a private company	Form 1B

CHARGE MANAGEMENT

Description	***e-Form***
Appointment or cessation of receiver or manager	Form 15
Particulars for creation or modification of charges (other than those related to debentures)	Form 8
Receiver’s or manager’s abstract of receipts and payments	Form 36
Particulars for satisfaction of charges	Form 17
Particulars for registration of charges for Debenture	Form 10

COMPANY REGISTRATION

Description	***e-Form***
Application or declaration for incorporation of a company	Form 1
Notice of situation or change of situation of registered office	Form 18
Application form for availability or change of a name	Form 1A
Declaration of compliance with the provisions of section 149(2)(b) of the Companies Act,1956	Form 20
Declaration of the compliance with the provisions of sections 149(2A) and (2B)	Form 20A
Declaration of compliance with the provisions of sections 149(i)(a), (b) and (c) of the Companies Act, 1956	Form 19
Documents delivered for registration by a foreign company	Form 44
Registration of an existing company as a limited company	Form 39
Application by an existing joint stock company or by an existing company (not being a joint stock company) for registration as a public limited or private limited or an unlimited company	Form 37
Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares	Form 32

COMPLIANCE RELATED FILING

Description	***e-Form***
Return of allotment	Form 2
Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash	Form 3
Statement of amount or rate per cent of the commission payable in respect of shares or debentures and the number of shares or debentures for which persons have agreed for a commission to subscribe for absolutely or conditionally	Form 4
Return in respect of buy Back of Shares	Form 4C
Statutory Report	Form 22
Registration of resolution(s) and agreement(s)	Form 23
Information by Auditor to Registrar	Form 23B
Return of appointment of managing director or whole time director or manager	Form 25C
Form for submission of documents with Registrar of Companies	Form 62
Statement of amounts credited to investor education and protection fund	Form 1
Form of application to the Central Government for appointment of cost auditor	Form 23C
Form for filing application or documents with Central Government	Form 65
Report by a public company	Form DD-B
Form of annual return of a foreign company having a share capital	Form
Form for filling cost audit report and other Documents with the Central Government	Form

INFORMATIONAL SERVICES

Description	***e-Form***
Particulars of person(s) or director(s) or changed or specified for the purpose of clause (f) or (g) of section 5	Form 1AA
Information to be furnished in relation to any offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company	Form 35A
Registration of resolution(s) and agreement(s)	Form 23
Notice of address at which books of account are maintained	Form 23AA
Form of return to be filed with the Registrar	Form 22B
Notice of the court or the Company Law Board order	Form 21

INVESTOR SERVICES

Description	***e-Form***
Form for filing complaint(s) against the company	Investor Complaint Form

PROVISIONS RELATED TO MANAGERIAL PERSONNEL

Description	***e-Form***
Form of application to the Central Government for increase in the number of directors of the company	Form 24
Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing or whole-time director(s) or manager and commission or remuneration or expression of opinion to directors	Form 25A
Form of application to the Central Government for approval to amendment of provisions relating to managing, whole time or non rotational director	Form 25B
Form of application for removal of disqualification of directors	Form DD-C
Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares	Form 32 Addendum

DIRECTOR IDENTIFICATION NUMBER (DIN)

Description	***e-Form***
Approved DIN is mandatory after July, 2007 (unless extended by notification). Provisional DIN will not be acceptable after July 1, 2007 and only approved DIN would be necessary. Any individual desiring become a director or be re-appointed is required to obtain DIN. (Sections 266A & 266B) How to obtain an Approved DIN i. The applicant is required to click and open the application form (Form DIN-1) on the portal www.mca.gov.in and fill-up various particulars on-line. Please ensure that you do not use any abbreviations or initials in the case of name; ii. Click on the '**Submit'** function and the system would automatically generate a provisional DIN in the space provided for in this form; fees of Rs. 100/- is required to be paid for submitting DIN App w.e.f. 1-7-2007 iii. Thereafter, the applicant is required to take a print-out of the two-page form, affix his photograph in the space provided, manually sign the undertaking at the end, enclose copies of the proof of identity and the proof of residence with the application form and get the requisite certifications from any of the authorities specified therein; iv. On completion of Step (iii) above, the applicant is required to send these papers by post to the Central DIN Processing Cell at NOIDA. Address is given on the DIN form.	DIN 1
Every existing director shall, within one month of the receipt of DIN from Central Government intimate his DIN to the company or all companies wherein he is a director. (Section 266D)	DIN 2
Every company shall, within one week of the receipt of intimation of DIN by director, furnish the DIN of all its directors to the ROC (Section 266E) Company incorporated after July 1, 2007 need not file DIN 3	DIN 3
Every director can inform changes (if any) in the personal particulars.	DIN 4

REGISTRATION OF DIGITAL SIGNATURE

Effective from July 1, 2007 the verification of credentials of authorised signatories and Professionals is proposed to be carried out during e-filing. MCA -21 system has sophisticated electronic 'pre-scrutiny' facilities that can verify the credentials of the signatory prior to acceptance of electronic documents. Therefore, documents that are digitally signed by the authorised signatories will be accepted by the system.

STEP BY STEP PROCESS FOR DIRECTOR/SECRETARY/PROFESSIONAL

Step 1: Log on to MCA portal

Step 2: Select Director/Secretary/Professional link and register the Certificate.

The information submitted by the professionals at the time of registering the digital signature certificate is verified by information in database and that submitted by the Professional Institute.

STATUTORY REGISTERS

LIST OF STATUTORY REGISTERS, BOOKS AND RECORDS REQUIRED TO BE MAINTAINED BY A COMPANY UNDER COMPANIES ACT, 1956

Sr.No.	***Relevant Sections***	***Register/Books/Returns***	***Inspection***	***Fees/Charges for Inspection, if any***
1.	49(7)	Register of investments in any shares or securities not held in names its own name	Members and Debenture holder	Without any fees
2	58A read with rule 7 of the Companies (Acceptance of Deposits Rules,1975) & RBI Directions	Registers of deposits	The Register is not open for Inspection	
3	77A(9)	Register of securities Bought Back	Not open for inspection	
4	143(1)	Register of charges	Member or Debenture holder or a creditor any other person	Without any fees On payment of requisite fees.
5	150(1)	Register of members	Member or Debenture holder Any other person	Without any fees On payment of requisite fees.
6	151(1)	Index to members	Member or debenture holder or any other person	Without any fees On Payment of requisite fees
7	152(2)	Register of debenture-holders	Member or Debenture holder or the trustee or Any person	Without any fees On payment of requisite fees.
8	152(2)	Index of debentures-holders	Member or Debenture holder or the trustee or any other person	Without any fees On payment of requisite fees
9	152A	Register & Index of Beneficial Owners	Any Member	Without any fees
10	157 and 158	Foreign register of members or debenture	Member or Debentures holders Any other person	Without any fees On payment of requisite fees

11	159-160	Copies of Annual Return	Member or Debenture holders any other person	Without any fees or on payment of requisite fees.
12	193	Minutes books of Board Meetings & any other meetings		
13	193/196	Minutes books of General Meetings	Any Member	Without any charge
14	209(1)(a)(b)(c) 209 (d)	Proper books of account and cost records	The Directors of the Company	Without any charge
15	301	Register of contracts, companies and firms in which directors are interested	Member	Without any fees
16	302(6)	Register of contracts entered into by the company for the appointment of Manager or Managing Director	Member	Without any fees
17	303(1)	Register of Director/Managing Director/Manager/Whole Time Director/Secretary	Member	Without any fees
18	307	Register of Directors' shareholdings, etc.	Member or Debenture Holders	Without any fees
19	370(1C)	Register of loans, etc., to companies under the same management	Member on payment of requisite fees.	
20	372(6)	Register of investments in shares of any body corporate	Member	Without any fees
21	372A	Register of loans made, guarantees given, securities provided or investment made by the company	Member or Debenture holder	Without any fees
22	Rule 7(2) of the Companies (Issue of Share Certificates) Rules, 1960	Register of renewed and duplicate Share certificates	Not open for inspection	
23	581-ZE(1)	Books of account of the Producer Company		
24	581-ZL(7)	Register of particulars of Investments of producer companies	Member	Without any fees
25	69-75	Register of Allotments	Member or Debenture holder	Without any fees
26	205	Dividend Register	Member	Without any fees
27	192A	Register of Postal Ballot		
28	285	Register of Directors' Attendance		
29	79A	Register of Sweat Equity Shares	Member	Without any fees

30	SEBI	Register of SEBI (Substantial Acquisition Regulations of Shares and Takeovers) Regulations		
31	176	Record of Proxies and representatives		
32		Register of Document executed under Common Seal		
33		Register of Inspection		
34		Register of destruction of records/documents		

ANNUAL ACCOUNTS AND BALANCE SHEET

1. According to section 209, every company shall keep at its registered office proper books of account. In case of a branch, the proper books of account relating to transactions effected at such branch, shall be kept at that office and proper summarized returns made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or such other place as may be decided by the Board of Directors.

2. The books of account and other books and other papers shall be open for inspection (sections 209/209A) during business hours to:

   i. Any Director
   ii. Registrar
   iii. Any officer duly authorized by the Central Government/SEBI

3. According to section 210 at every Annual General Meeting of a company held in pursuance with section 166, the Board of Directors shall lay before the company:

   i. Balance Sheet as at the end of the period.
   ii. Profit & Loss Account for the period.
   iii. In case of a company not carrying on business for profit, an Income & Expenditure A/c for the period ended.
   iv. Balance Sheet of holding company to include certain particulars as to its subsidiaries. (Section 212)

4. According to the section 210 the profit and loss account shall relate —

   a. In the case of the first Annual General Meeting of the company, to the period beginning with incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months.

   b. In the case of any subsequent Annual General Meeting of the company, to the period beginning with the day immediately after the period for which the accounts was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension has been granted for holding the meeting under the second proviso to the sub-section (1) of sec. 166, by more than six months and the extension so granted.

   c. The period to which the account relates is referred as a "Financial Year" and it may be less or more than a calendar year but shall not exceed fifteen months. It may be extended to eighteen months provided special permission has been obtained from the concerned Registrar of Companies.

   d. The company has to maintain the books of account together with the vouchers and preserve in good order for a period of not less than eight years immediately preceding the current year. (Section 209(4A))

5. If the Director of the company or a person not being a Director of the company having been charged by the Board of Directors with the duty of seeing that the provisions of this section are complied, fails to comply with the provisions of section 209/210 or take all the reasonable steps, he shall in respect of each offence, be punishable with imprisonment up to six months or a fine of up to ten thousand rupees or with both. Provided that in any proceedings against a person in respect of an offence, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section are complied with. Provided further that no person shall be sent to imprisonment for any such offence, unless it was committed wilfully. (Section 209(5))

6. Every Balance Sheet and every Profit & Loss Account of a company (other than a banking company) shall be signed by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one (Section 215). In

case of banking company, by persons specified as per the provisions of Banking Companies Act, 1949.

7. Every Profit & Loss Account of company shall be annexed to the Balance Sheet and the Auditor's Report (Section 216) and Board's Report (Section 217).

8. Three copies of the balance sheet and the profit & loss account for the period shall be filed (Section 220) with the concerned Registrar: —

    a. within thirty days from the date on which the balance sheet etc., were laid and adopted at the AGM; and

    b. where the AGM is not so held, within 30 days of the latest day on which the AGM should have been held.

SCHEDULE VI (SECTION 211)

PART I — FORM OF BALANCE SHEET

[The balance sheet of a company shall be either in horizontal form or vertical form:

A. HORIZONTAL FORM

BALANCE SHEET OF
....

(Name of the company) ....

AS AT.. (Date as at which it is made out)

Figures for the P.Y. (Rs.)	LIABILITIES	Figures for the C.Y. (Rs.)	Figures for the P.Y. (Rs.)	ASSETS	Figures for the C.Y. (Rs.)
	SHARE CAPITAL (Refer Note A) Authorised/Shares Of Rs.... each Issued/Shares Of Rs.... each Subscribed/Shares Of Rs.... each Called up Rs.... per Share Of the above shares **………** shares are allotted as fully paid-up pursuant to a contract with out payments being received in cash, ***Less:*** Unpaid calls 1. By directors. 2. By others. 3. By Managing agent or secretaries and treasures and where the managing agent or secretaries and treasures are a firm, by the partners there of, and the managing agent or secretaries and treasures are a private company, by the directors members of that company. ***Add:*** Forfeited shares (amount originally paid – up) **Reserves & Surplus (Refer Note B)**			**FIXED ASSETS (Refer to Note No. G)** Distinguishing as far as possible between expenditure upon 1. Goodwill 2. Land 3. Buildings 4. Leaseholds 5. Railway Sidings 6. Plant and Machinery 7. Furniture and Fittings 8.DevelopmenT of Property 9. Patents, trademarks and designs 10. Livestock 11. Vehicles etc. **INVESTMENTS (Refer Note H)** Showing nature of investment and the mode of valuation for example at cost or market value and distinguishing between:	

	1. Capital Reserves. 2. Capital Redemption Reserve. 3. Share Premium Account 4. Other Reserves specifying the nature of each reserve and the amount in respect thereof. ***Less:*** Debit balance in profit and loss account, if any 5. Balance in the profit and loss accounts after providing for proposed allocation namely Dividend, Bonus or Reserves 6. Proposal additions to Reserves 7. Sinking Funds **<u>SECURED LOANS</u> (Refer Note C)** 1. Debentures 2. Loans and Advances from Banks 3. Loans and Advances from Subsidiaries 4. Other Loans and Advances **<u>UNSECURED LOANS</u> (Refer Note D)** 1. Fixed Deposits 2. Loans and Advances from Subsidiaries 3. Short-term Loans and Advances: a. From Banks b. From others 4. Other Loans and Advances			1. Investments in Govt. or Trust Securities 2. Investments in shares, debentures or bonds 3. Immovable properties 4. Investments in the capital of partnership firms 5. Balance of unutilized monies raised by Issue **<u>CURRENT ASSETS, LOANS & ADVANCES</u> (Refer Note I)** **A. <u>Current Assets</u>** 1. Interest accrued on investments 2. Stores and spare parts 3. Loose tools 4. Stock-in-trade 5. Works-in-progress 6. Sundry debtors: a. Debts outstanding for a period exceeding 6 months b. Other debts ***Less:*** Provision 7. a. Cash balance on hand b. Bank balances: i. With Scheduled Banks ii. With Others. **B. <u>Loans and Advances</u>** 8. Advances and Loans a. To subsidiaries b. To partnership firms in which the co./its subsidiary is a partner	

	c. From Banks d. From others **<u>CURRENT LIABILITIES & PROVISIONS</u> (Refer Note E)** **A. Current Liabilities** 1. Acceptances 2. Sundry Creditors 3. Subsidiary companies 4. Advance payments and unexpired discounts for the portion for which value has still to be given e.g. in the case o f the following classes of companies:— Newspaper, Fire Insurance, theatres, clubs, banking, steamship, companies, etc. 5. Unclaimed Dividends 6. Other Liabilities 7. Interest Accrued but not due on loans **B. Provisions** 8. Provision for Taxation 9. Proposed Dividends 10. For contingencies 11. For Provident Fund Scheme 12. For Insurance, pension and similar staff benefit schemes 13. Other provisions (A foot note to the balance – sheet may be added to show separately: -			9. Bills of Exchange 10. Advances recoverable in cash or in kind or for value to be received; e.g., Rates, Taxes, Insurance, etc. 11. Balances with Customs, Port Trust, etc. (where payable on demand). **<u>MISCELLANEOUS EXPENDITURE</u>** (to the extent not written off or adjusted) 1. Preliminary Expenses 2. Expenses including commission/ brokerage on underwriting or subscription of shares or debentures 3. Discount allowed on issue of shares or debentures 4. Interest paid out of capital during construction (also stating the rate of interest) 5. Development expenditure not adjusted 6. Other items (Specifying nature) **PROFIT AND LOSS ACCOUNT**	

	CONTINGENT LIABILITIES (Refer Note F) 1. Claims against the company not acknowledged as debts 2. Uncalled liability on shares partly paid 3. Arrears of fixed cumulative dividends 4. Estimated amount of contracts remaining to be executed on capital account and not provided for 5. Other money for which the company is contingently liable				
	Total			**Total**	

A. SHARE CAPITAL

1. Terms of redemption or conversion (if any) of any redeemable preference shares must be stated, together with the earliest date of redemption or conversion.
2. Particulars of any option on unissued share capital should also be specified.
3. Particulars of the different classes of preference shares to be given.
4. In case of forfeited shares, amount originally paid-up should be shown. Any profit on reissue of forfeited shares should be transferred to capital reserve.
5. In case of subsidiaries companies, the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.

   The Auditor is not required to certify the correctness of such shareholdings as certified by the management.
6. The 'issued capital' and 'subscribed capital' must be distinguished into various classes of capital; viz. preference and equity, and the particulars specified hereunder must be given separately for each of them.
7. Shares allotted as fully paid-up by way of bonus shares, should be separately disclosed. The source from which the bonus shares are issued must also be specified; e.g., by capitalisation of reserves or profits or from share premium account, etc.

B. RESERVES AND SURPLUS

1. Additions and deductions in the reserves since last balance sheet must be shown under each of the specified heads.
2. The word 'fund' in relation to any 'reserve' must be used only where such reserve is specifically represented by earmarked investments.
3. The item 'Share Premium Account' shall include the details of its utilization in the manner provided in S. 78 in the year of its utilization.

4. The debit balance in the profit and loss account should be shown as a deduction from the uncommitted reserves, if any.

C. SECURED LOANS

1. The nature of security must be specified in each case.
2. Terms of redemption or conversion (if any) of debentures issued must be stated together with earliest date of redemption or conversion.
3. Loans from directors and managers must be shown separately, under each sub-head.
4. Interest accrued and due on secured loans should be included under appropriate sub-heads under the head "SECURED LOANS".
5. Where loans have been guaranteed by directors and managers, a mention thereof shall also be made and also the aggregate amount of such loans under each head.
6. Particulars of redeemed debentures which the company has power to reissue should be given.
7. Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the company's books shall be stated.

D. UNSECURED LOANS

1. Loans from Directors; or Manager should be separately shown.
2. Interest accrued and due on unsecured loans must be included under the appropriate sub-heads under the head "UNSECURED LOANS".
3. Short-term loans will include those loans which are due for not more than 1 year as on the date of the balance sheet.
4. Where loans have been guaranteed by the managers and directors a mention thereof should be made and also the aggregate amount of such loans under each head

E. CURRENT LIABILITIES AND PROVISIONS

1. The name(s) of the small-scale undertaking(s) to whom the company owes a sum exceeding Rs. 1,00,000/- together with interest which is outstanding for more than 30 days are to be disclosed.
2. Current account balances with directors, and manager, shall be shown separately.

As per the Notification of Ministry of Corporate Affairs dated 16th November, 2007 Notification No.**GSR 719(E).—** In exercise of the powers conferred by sub-section (1) of section 641 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following further alterations in **Schedule VI** to the said Act, namely:—

1. In the said Schedule, in **"Part I** — Form of Balance-Sheet, under heading-A. Horizontal Form", —

   a. in the first column relating to "Instructions in accordance with which Liabilities should be made out", for the second paragraph appearing against the sub-heading "CURRENT LIABILITIES AND PROVISIONS", occurring in the second column, the following paragraph shall be substituted, namely : -

"The following shall be disclosed under notes to the accounts:—

a. the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

b. the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

c. the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;

d. the amount of interest accrued and remaining unpaid at the end of each accounting year; and

e. the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

b. in the second column, relating to "Liabilities", under the heading "current liabilities and provisions", after item (2), the following sub-items shall be substituted, namely:-

a. total outstanding dues of micro enterprises and small enterprises; and

b. total outstanding dues of creditors other than micro enterprises and small enterprises

c. In the "Notes" embodying General Instructions for preparation of balance sheet, for item (q), the following shall be substituted, namely:-

a. the terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall be as defined under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.

2. This notification shall come into force on the date of its publication in the Official Gazette; it was published in Official Gazette on 25th January, 2008.

F. CONTINGENT LIABILITIES

These are to be shown by way of a footnote and their amounts do not form part of the total of the balance sheet.

1. In case of arrears of fixed cumulative dividends, the period for which the dividends are in arrears or if there is more than one class of shares, the dividends on each of such class are in arrears, shall be stated separately. The amount shall be stated before deduction of income tax except that in the case of tax-free dividends the amount shall be shown free of income tax and the fact that it is so shown must be stated.

2. The amount of any guarantee given by the company on behalf of the directors or other officers of the company should be stated. The contingent liabilities with

their general nature and amount of each such contingent liability, if material, should be stated.

3. The Estimate amount of Contracts remaining to be executed on capital account & not provided for.

G. FIXED ASSETS

1. Under each head, the following details have to be separately given:

(a) Original cost of the asset.

(b) Additions thereto and deduction therefrom during the year.

(c) Total depreciation written off or provided up to the end of the year.

2. Where the original cost of fixed asset and additions and deductions thereto, relate to any fixed asset which as been acquired form a country outside India, and as a result of a change in the exchange rate after such acquisition of such asset, there has been an increase or reduction in the liability of the company, as expressed in Indian currency, for making payment towards the whole or part of the cost of the asset or for the repayment of the moneys borrowed by the company from any person directly or indirectly in any foreign currency specifically for purpose of acquiring the assets (being the date on which the change in rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to or as the case may be, deducted from the cost, and the resultant figure will be treated as the cost of the asset.

   Note from the Compilers: In view of AS 11 being revised (which are applicable to all the companies as per section 211(3)(c),) Forex fluctuations arising the liabilities outstanding for the fixed assets acquired will have to be charged to the profit and loss accounts. To that extent above requirement of Schedule VI is contradicting with the Accounting Pronouncement, however one need to follow Schedule VI.

3. Where the original cost of the asset cannot be ascertained without unreasonable expense or delay, the valuation shown by the books must be given. Such valuation shall be the net amount at which the asset stood in the company's books at the commencement of the Companies Act, 1956, after deduction for depreciation etc.

4. Where any sum has been written off on a reduction of capital or revaluation of assets, every balance sheet (after the first balance sheet) subsequent to such reduction or revaluation must show the reduced figures and the date of the reduction in place of original cost. For a period of five years, the amount of the reduction made shall also be stated.

5. Points (3) & (4) does not apply to any adjustment made in accordance with point (2).

6. Similarly, where sums have been added by writing up the asset, each subsequent balance sheet, shall show the increased figures with the date of the increase in place of original cost. For a period of five years, the amount of the increase shall also be stated.

7. Depreciation written off or provided should be allocated under the different heads of assets and deducted in arriving at the value of the fixed assets.

H. INVESTMENTS

1. Investments in shares, debentures or bonds must be classified into fully paid or partly paid and into different classes of shares and to also show investments in shares, debentures or bonds of subsidiary companies.

2. The investments shall be distinguished between quoted and unquoted investments and where quoted, the market value must be shown.

3. All unutilised monies out of the issue must be separately disclosed in the Balance Sheet of the company indicating the form in which such unutilised funds have been invested.

4. A statement of investment (whether shown under " Investment" or under "Current Assets" as stock–in-trade) separately classifying into trade investments and other investments should be annexed to the balance sheet, showing the names of bodies corporate (showing separately the names of the bodies corporate under the same management) in whose shares or debentures, investments have been made (including all investments, whether existing or not the date as at which the previous balance sheet was made out) and the nature and extent of the investment so made in each such body corporate; provided that in the case of an investment company, that is to say, a company whose principal business is the acquisition of shares, stock, debentures or other securities, it shall be sufficient if the statement shows only the investments existing on the date as at which the balance sheet has been made out. In regard to the investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

I. CURRENT ASSETS, LOANS AND ADVANCES

1. In case of stores and spare parts, stock-in-trade and work-in-progress, the mode of valuation shall be stated. Amount in respect of raw materials should be stated separately wherever practicable.

2. If, in the opinion of the Board, any of the current assets, loans and advances have not a value on realisation in the ordinary course of the business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.

3. In regard to sundry debtors particulars should be given separate in respect of:

   a. Debts considered good and in respect of which the company is fully secured.

   b. Debts considered good for which the company holds no security other than the debtor's personal security, and

   c. Debts considered doubtful or bad.

A separate disclosure should also be made in respect of following:

   d. debts due by —

      i. directors or other officers of the company or

      ii. any of them either severally or jointly with any other person or

      iii. debts due by firms or private companies respectively in which any director is a partner or a director or a member to be separately stated.

e. debts due from other companies under the same management within the meaning of sub-section (1B) of S. 370, to be disclosed together with the names of such cos.

f. the maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.

The term "Sundry Debtors" has been defined to include "the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations". It does not, however, include amounts which are in the nature of loans or advances.

The provision for bad and doubtful debts under the head ‘sundry debtors’ should not exceed the amount of debts stated to be considered bad or doubtful. Any surplus of such provision should be shown as reserve for bad or doubtful debts under the head ‘Reserves and Surplus’ on the liabilities side.

4. In regard to ‘bank balances’, the following particulars should be given:

   a. the balance lying with scheduled banks on current accounts, call accounts and deposit accounts;

   b. the names of the bankers (other than scheduled banks) and the balances lying with each such banker on current accounts, call accounts and deposit accounts, and the maximum amount outstanding at any time during the year from each such banker; and

   c. the nature of the interest, if any, of any director or his relative in each of the banks, referred to in (b) above.

5. All unutilised monies out of the issue must be separately disclosed in the balance sheet of the company indicating the form in which such unutilised funds have been invested.

6. In regard to loans and advances, all instructions regarding ‘Sundry Debtors’ would apply to "Loans and Advances" also.

   The amounts due from other companies under the same management within the meaning of S. 370(1B) shall be given with the names of such companies.

   The maximum amount due from every one of such companies at any time during the year must also be stated.

   Current accounts with directors and managers should be shown separately.

7. In case of investment in shares, debentures, etc. classified under current assets as stock-in-trade information as per paras 5 and 6 above under ‘Investment’ shall also be given separately.

J. PROFIT & LOSS ACCOUNT

The debit balance of profit and loss account should be shown as a deduction from the free or uncommitted reserves, if any.

K. OTHER GENERAL INSTRUCTIONS

1. If the required information cannot be given conveniently in the given in the balance sheet itself, it may be furnished in separate schedules annexed to and forming part of the balance sheet. This is recommended where items are numerous.

2. Naye Paise can also be given in addition to rupees, if desired.

3. Dividends declared by subsidiary companies after the date of the balance sheet should not be included unless they are in respect of the period which closed on or before the date of the balance sheet.

4. Any reference to benefits expected from contracts to the extent executed shall not be made in the balance sheet but shall be made in the Board's Report.

5. Except in the case of the first balance sheet laid before the company, the corresponding amounts for the immediately preceding financial year for all items shall also be shown. The requirements in this behalf shall, in the case of companies preparing quarterly or half yearly accounts, etc., relate to the balance sheet for the corresponding date in the previous year.

6. A small-scale industrial undertaking has the same meaning as assigned to it under clause (j) of sec. 3 of the Industries (Development and Regulation) Act, 1951.

7. The figures in the balance sheet may be rounded off as under:

Where the turnover of the company in any financial year is:	Round off permissible to the nearest
(i) Less than one hundred crore rupees	Hundreds or thousands, or decimals thereof.
(ii) One hundred crore rupees or more but less than five hundred crore upees	Hundreds, thousands, lakhs or millions, or decimals thereof.
(iii) Five hundred crore rupees or more lakhs,	Hundreds, thousands, millions, or crores or decimals thereof.

(Inserted by Notification No. GSR 545(E) dated 1-8-2002.)

B. VERTICAL FORM

Name of the company Balance Sheet as at					
			Sch. No.	***Figures as at the end of the current financial year (Rupees)***	***Figures as at the end of the previous financial year (Rupees)***
1 2			***3***	***4***	***5***
I. Sources of funds					
(a) Shareholders' Funds:					
(i) Capital					
(ii) Reserves and surplus					
(b) Loan funds					
(i) Secured loans					
(ii) Unsecured loan					
	TOTAL				
II. Application of funds					
(a) Fixed assets:					
(i) Gross block					
(ii) ***Less:*** Depreciation					
(iii) Net block					
(iv) Capital work-in-progress					
(b) Investments:					
(c) Current assets, loans and advances					
(i) Inventories					
(ii) Sundry debtors					
(iii) Cash and bank balances					
(iv) Other current assets					
(v) Loans and advances					
***Less*:** Current liabilities and provisions					
(i) Liabilities					
(ii) Provisions					
Net current assets					
(d) (i) Miscellaneous expenditure to the extent not written off or adjusted					
(ii) Profit and loss account					
	TOTAL				

Notes:

1. Details under each of the above items shall be given in separate Schedules. The Schedules shall incorporate all the information required to be given under A Horizontal Form read with notes containing general instructions for preparation of balance sheet.
2. The Schedules, referred to above, accounting policies and Explanatory notes that may be attached shall form an integral part of the balance sheet.
3. See the other requirements shall be as mentioned in Horizontal format to the extent they are applicable.

Note from the Compilers:

As per the requirements of the AS 22, "Accounting for Taxes on Income" issued by the Institute of chartered accountants of India, Any Deferred Tax Assets created as per the above standard, will have to be disclosed below the investments and above the current assets and Deferred Tax Liabilities will have to be disclosed below the unsecured loans. The above items are not prescribed in Schedule VI.

PART II — REQUIREMENTS AS TO PROFIT & LOSS ACCOUNT

1. The provisions of this part shall apply to the income & expenditure account referred to in sub-section (2) of section 210 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub–section.
2. The P & L A/c-
    a. Shall be so made out clearly to disclose the result of the working of the company during the period covered by the account and
    b. Shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring or exceptional transactions or transaction of exceptional nature.
3. The P & L A/C shall set out the various items relating to of I & E of the Co arranged under the most convenient heads and in particular, shall disclose the following information in respect of the period covered by the account:

(i) (a) Turnover: Aggregate amount of sales, showing amount and quantity of sales of each class of goods separately.

(b) Commission paid to sole selling agent within the meaning of section 294 of the Act

(c) Commission paid to other selling agents.

(d) Brokerage and Discount on sales (other than usual trade discount).

(ii) (a) In the case of manufacturing Companies, —

1. Item wise breakup of value and quantity of all-important basic raw materials consumed. (Items valuing 10% or more of the total value of the raw materials consumed shall be shown as a separate item). The intermediates or components procured from other manufacturers may be included in the breakup; (if their list is too large than it should be grouped under suitable heading without mentioning the quantities.

2. Value and quantity of opening and closing stocks of each class of goods produced.

(b) In case of trading companies:

Value and quantity of purchases, opening and closing stocks of each class of goods should be indicated.

(c) In case of service companies gross income derived from services rendered or supplied.

(d) In case of Company, which falls under more than one of the categories mentioned in a., b., & c. above, it shall be sufficient that the total amounts are shown in respect of opening and closing stocks, purchases, sales and consumption of raw materials with the value and quantitative break-up and the gross income form the services rendered is shown.

(e) In case of other companies, the gross income derived under different heads.

(iii) Works–in–progress at the commencement and at the end of the accounting period.

(iv) The amount provided for depreciation, renewals or diminution in value of fixed assets. Method adopted for making such provision should be given in case if provision is not made as per depreciation charge.

Depreciation, renewals or diminution in value of fixed assets. (If no provision is made, fact and quantum of arrears of depreciation u/s. 205(2) to be disclosed).

(v) The amount of interest on company's debentures and other loans for fixed periods, stating separately the amount of interest, if any paid or payable to the managing director, managing agents, secretaries, treasures and the manager, if any.

(vi) The amount of charge for income tax and other Indian taxation on profits imposed elsewhere to the extent of the relief, if any, from Indian income tax and distinguishing, where practicable, between income tax and other taxation.

(vii) Amounts reserved for repayment of share capital/loans.

(viii) (a) The aggregate, if material, of any amounts set aside or proposed to set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at which the balance sheet is made up.

(b) The aggregate, if material, of any amounts withdrawn from such reserves.

(ix) (a) The aggregate, if material, of any amounts set aside to provisions made for meeting specific liabilities, contingencies or commitment

(b) The aggregate, if material, of any amounts withdrawn from such provisions, as no longer required.

(x) Expenditure incurred on each of the following items, separately for each item:—

(a) Consumption of stores and spare parts

(b) Power and fuel

(c) Rent

(d) Repairs to building

(e) Repairs to machinery

(f) (1) Salaries, wages and bonus

(2) Contribution to other funds

(3) Workmen and staff welfare expenses (to the extent not adjusted from any of previous provision or reserves.)

Note 1: information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

(g) Insurance

(h) Rates and taxes, excluding taxes on income

(i) Miscellaneous expenses. (Exp. totalling 1% of total revenue of the Company or Rs. 5,000 whichever is higher shall be shown as a separate item.)

(xi) (a) The amount of income from investment, distinguishing between trade investments and other investments

(b) Other income by way of interest, specifying the nature of the income.

(c) The amount of income tax deducted if the gross income is stated under sub-paragraphs a & b above.

(xii) (a) Profit or losses on investments (extent of profit or loss on account of membership of a partnership firm) (to the extent not adjusted from any previous provision or reserve.

(b) Profit or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.

(c) Miscellaneous income

(xiii) (a) Dividend from subsidiary companies.

(b) Provisions for losses of subsidiary companies.

(xiv) The aggregate amount of the dividends paid, and proposed and stating whether such amounts are subject to deduction of income tax or not.

(xv) Amount, if material by which any items shown in the profit & loss account are affected by any change in the basis of accounting.

4. Payment to Directors including Managing Directors, managing agents, secretaries, treasurers & Manager, if any by the Company, subsidiary of the Company and any other person for following:

   Managerial remuneration u/s. 198. of the Act paid or payable during the financial year to the directors (including managing director).

   a. Expenses reimbursed to the managing agent under section 354.
   b. Commission or other remuneration payable separately to managing agent or his associate under sections 356, 357 and 358.
   c. Commission received of receivable under section 359 of the Act by the managing agent or his associate as selling or buying agent of the other concerns in respect of contract entered into such concerns with the company
   d. The money value of the contracts for the sale or purchase of goods and materials or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year.
   e. Other allowance and commission including guarantee commission (details to be given).
   f. Any other perquisite or benefits in cash or in kind. (Stating approximate money value where practicable)

g. Pension, gratuities, payments from provident funds, in excess of own subscription and interest thereon, compensation for loss of office, retirement consideration, etc.

4A. Computation of net profit u/s 349 with details of the commission payable as percentage of profits to the directors including Managing Directors/Manager (if any) should be stated by way of note.

4B. Payments to the Auditors (Whether as fees, expenses or otherwise for services rendered)

(a) As auditor;

(b) As adviser, or in any other capacity, in respect of

(i) Taxation matters;

(ii) Company law matter

(iii) Management services; and

(c) In any other manner.

4C. In case of manufacturing companies in respect of each class of goods manufactured, detailed quantitative information in regard to:

(a) The licensed capacity (where licence is in force)

(b) the installed capacity; and

(c) the actual production.

4D. Following information to be included by way of note;

(a) Value of imports on CIF basis in respect of

1. raw materials;

2. components and spare parts;

3. capital goods

(b) Expenditure in foreign currency for royalty, know-how, professional and consultation fees, interest and other matters.

(c) value of imported raw materials, spare parts and components consumed; value of indigenous raw materials, spare parts and components consumed; and percentage of each to total consumption.

(d) dividends remitted in foreign currencies; number of non-resident shareholders; number of shares held by them on which dividends are due and the year to which dividends relate.

(e) Earnings in foreign exchange, namely

Exports (F.O.B. basis)

Royalty, know-how, professional and consultation fees;

Interest and dividend

Other income, indicating the nature thereof.

5. (a) Except in the case of the first Profit & Loss A/c, the corresponding amounts for the immediately preceding financial year for all items shall also be shown.

(b) The requirements in sub–clause (1) shall, in the case of companies preparing quarterly or half yearly accounts, relate to the profit and loss account for the period which entered on the corresponding date of the previous year.

PART III — INTERPRETATION

6. (a) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires:

   i. the expression "provision" shall, subject to sub-clause (b) of this clause, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

   ii. the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

   iii. the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account; and the expression "revenue reserve" shall mean any reserve other than a capital reserve; and in this sub-clause the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(b) Where

   i. any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

   ii. any amount retained by way of providing for any known liability

is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

7. For the purposes aforesaid, the expression "quoted investment" means an investment in respect of which there has been granted a quotation or permission to deal on a recognized stock exchange, and the expression "unquoted investment" shall be construed accordingly.

8. The Central Government may direct that a company shall not be obliged to show the amount set aside to provisions other than those relating to depreciation, renewal or diminution in value of assets, If the Central Government is satisfied that the information should be disclosed in the public interest & would prejudice the company, but subject to the condition that in any heading stating an amount arrived at after taking into account the amount set aside as such, the provision shall not be so framed or marked as to indicate that fact.

PART IV — BALANCE SHEET ABSTRACT AND CO.'S GENERAL BUSINESS PROFILE

The format as given in the part IV of the schedule VI, in which Balance Sheet abstract and company's general business profile is to be given. The above Information is to be submitted as a part of the annual accounts.

Note: ITC Code, Product Description needs to be give

SCHEDULE IX

FORM OF PROXY

[Article 62 of the Table A and also section 176(6)]

I. GENERAL FORM

"....................... Name of Company

I/We.......................of ....in the district of,.......................being a member/members of above named company hereby appoint.......................of .... in the district of................or failing him..........................of .... in the district of................as ....my/our Proxy to vote for me /us on my/our behalf at the annual general meeting / general meeting (not being an annual general meeting) of the company to be held on the............day of ....and at any adjournment thereof.

Signed this ....day of ....20...."

II. FORM FOR AFFORDING AN OPPORTUNITY OF VOTING FOR OR AGAINST A RESOLUTION*

".......................Name of Company

I/We.......................of ....in the district of........................,being a member/members of the above named company, hereby appoint,....................... in the district of................or failing him..........................of .... in the district of.................,as my/our Proxy to vote for me /us on my/our behalf at the annual general meeting / general meeting (not being an annual general meeting) of the company to be held on the............day of ....20 ......and at any adjournment thereof

Signed this ....day of ....20...."

*This form is to issued +in favour of /+against the resolution. Unless otherwise instructed the proxy will act as he thinks fit.

+Strike out whichever is not desired.

SCHEDULE OF FEES – SCHEDULE X OF THE COMPANIES ACT, 1956

APPLICABLE WITH EFFECT FROM MAY 1, 2000

I. FOR A COMPANY HAVING A SHARE CAPITAL

	FEES IN RS.
A. Registration –Memorandum of Association	
(a) Nominal Capital up to Rs. 1,00,000/-	4,000
(b) > Rs.1,00,000/- up to Rs. 5,00,000/- additional fees @ Rs. 300/- for every Rs. 10,000/- or Part thereof in excess of Rs. 1,00,000/-	
say for Capital of Rs. 3,00,000 (Rs. 4,000 plus Rs. 6,000/- additional fees)	10,000
say for Capital of Rs. 5,00,000/-	16,000
(c) > Rs. 5,00,000/- up to Rs. 50,00,000/- additional fees **@ Rs. 200/- for every Rs. 10,000/- or Part thereof in excess of Rs. 5,00,000/-**	
say for Capital of Rs. 10,00,000/-	26,000
say for Capital of Rs. 25,00,000/-	56,000
say for Capital of Rs. 50,00,000/-	106,000
(d) > Rs. 50,00,000/- up to Rs. 1,00,00,000/- additional fees **@ Rs. 100/- for every Rs. 10,000/- or Part thereof in excess of Rs. 50,00,000/-**	
say for Capital of Rs. 75,00,000/-	131,000
say for Capital of Rs. 100,00,000/-	156,000
(e) > Rs. 100,00,000/- additional fees @ Rs. 50/- for every Rs. 10,000/- or Part thereof in excess of Rs. 100,00,000/-	
say for Capital of Rs. 125,00,000/-	168,500
say for Capital of Rs. 200,00,000/-	206,000

Note: However, the additional fees calculated above on the basis of nominal capital shall not in any case exceed Rs. 2 crores.

B. In case of increase of authorized capital of the company, the difference between the fees payable on the increased authorized share capital and fees payable on the existing authorized capital.

C. Filing/Registering/Recording of Documents or Making a Record or Registering any fact

(a) Nominal Capital less than Rs. 1,00,000/- (No longer applicable)	100
(b) Nominal Capital Rs. 1,00,000/- or more but less than Rs. 5,00,000	200
(c) Nominal Capital Rs. 5,00,000/- or more but less than Rs. 25,00,000	300
(d) Nominal Capital Rs. 25,00,000/- or more	500

II. FOR A COMPANY NOT HAVING A SHARE CAPITAL

1. Registration

(a) Number of members as per Articles of Association up to 20	1,000
(b) Number of members as per Articles of Association >20 up to 100	2,500

(c) Number of members as per Articles of Association >100 Rs. 2,500 plus Rs. 10/- for every 50 members or less than 50 members after the first 100 members Subject to maximum of Rs. 5,000/- Say 200 members	2,520
(d) Number of members unlimited	5,000
2. Filing/Registration/Recording of Documents or making a record or registering any fact	50

Standardisation of additional fees u/s. 611(2) vide Circular No. 14/3/87 — CLV 21-3-95

Form	**Period of delay**	**Rate of Additional Fees***
5	Up to one year	2% of filing fees p.m. or part thereof of delay
	Exceeding one year	2.5% of filing fees p.m. or part thereof of delay
Any other form	up to 1 month	one time of the filing fee payable
	More than 1 month up to 3 months	two times of the filing fees payable
	More than 3 months up to 6 months	four times of the filing fee payable
	More than 6 months up to one year	six times of the filing fees payable
	More than 1 year up to 2 years	eight times of the filing fee payable
	More than 2 years	nine times of the filing fee payable

Note * the additional fees are payable over and above the normal filing fees.

In respect of filing of particulars and charges / modification of charges under section 125/135 of the Act, additional fee for delays up to 30 days will be payable by the Company as per the table above. Incase of delays exceeding 30 days in such cases and delay for filing particulars of satisfaction of charge u/s 138 of the Act will require condonation of delay by the Company Law Board u/s 141 of the Companies Act, 1956.

Fees on applications made to Central Government

For Applications made by Companies :	**Fees Payable (Rs.)**
Having Authorised Share Capital :	
Less than Rs. 25 lakhs	500
Rs. 25 lakhs to less than Rs. 5 crores	1,000
More than Rs. 5 crores	2,000
Limited by Guarantee – no share Capital	500
Association or proposed company for issue of licence u/s 25	500
Having valid Licence u/s 25	500
A Foreign Company	5,000

Fees on application made to Central Government u/s 108(1-D) :

Where the face value of the Shares involved in a transfer	**Amount of fees to be paid (Rs.)**
Does not exceed Rs. 5,000	50
Exceeds Rs. 5,000	100

Particulars	**Fees (Rs.)**
Fees for Inspection of Documents	50
Copy of Certificate of Incorporation etc.	50
For Copy of extract of other documents (other than those specified above) including hard copies of such documents on Computer readable media	25 per page
Name Availability Application – Form 1A	500
Form 1AD – for shifting of Registered office within the state but outside jurisdiction of one Registrar of Companies to another Registrar of Companies	500
Form u/s 205C of the Act for transfer of funds to Investor Education and Protection Funds	Nil
Application for Allotment of Director Identification Number (DIN-1) (w.e.f. 1st July, 2007)	100
Intimation of Director Identification Number by the company to the Registrar in Form DIN -3 (w.e.f. 1st July, 2007)	Based on Authorised Share Capital of the Company

Included 300 Days in place of 30 days vide circular dated 27th September, 2007: No. 13/2007 w.e.f. 27th October, 2007

** Application in prescribed format along with Stamp Paper of Rs. 20/ Rs. 50 and receipt of payment of fees has to be submitted to ROC office.

Honorable Company Law Board vide order dated 7th May, 2008 rescind the circular No.13/2007 dated 27th October, 2007 w.e.f. 6th July, 2008 i.e.Procedure for seeking condonation of delay in terms of Section 141 of the Companies Act, 1956 as it stood prior to 27-10-2007 would come into force from 6th July, 2008

SCHEDULE XIII — APPOINTMENT OF MANAGERIAL PERSONNEL

[SEE SECTIONS 198, 269, 310 & 311]

CONDITIONS TO BE FULLFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

PART I — APPOINTMENTS

No person shall be eligible for appointment as a managing/wholetime director/manager (hereinafter referred to as "managerial person") of a co., unless he satisfies following conditions :

a. he had not been sentenced to imprisonment for any period, or to a fine exceeding Rs. 1,000, for the conviction of an offence under any of the following Acts :

   i. The Indian Stamp Act, 1899 (2 of 1899),
   ii. The Central Excises Act, 1944 (1 of 1944),
   iii. The Industries (Development and Regulation) Act, 1951 (65 of 1951),
   iv. The Prevention of Food Adulteration Act, 1954 (37 of 1954),
   v. The Essential Commodities Act, 1955 (10 of 1955),
   vi. The Companies Act, 1956 (1 of 1956),
   vii. The Securities Contracts (Regulation) Act, 1956 (42 of 1956),
   viii. The Wealth-tax Act, 1957 (27 of 1957),
   ix. The Income-tax Act, 1961 (43 of 1961),
   x. The Customs Act, 1962 (52 of 1962),
   xi. The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),
   xii. The Foreign Exchange Regulation Act, 1973 (46 of 1973),
   xiii. The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),
   xiv. The Securities and Exchange Board of India Act, 1992 (15 of 1992),
   xv. The Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

b. he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):
   Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he has not been so convicted or detained subsequent to such approval;

c. he has completed the age of 25 years and has not attained the age of 70 years,
   Provided that where

   i. he has not completed the age of 25 years; but has attained the age of majority; or
   ii. he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment.

d. where he is a managerial person in more than one co., he draws remuneration from one or more cos. subject to the ceiling provided in S. III of Part II;

e. he is resident in India.

Explanation I — For the purpose of this Schedule resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,

i. for taking up employment in India, or
ii. for carrying on a business or vocation in India.

Explanation II — This condition shall not apply to the companies in the special economic zones notified by the Department of Commerce from time to time.

Provided that a person, being a Non-resident in India, shall enter India only after obtaining a proper employment visa from the concerned Indian Mission abroad. For this purpose, such persons shall be required to furnish along with the visa application, profile of the company, the principal employer and terms and conditions of such person's appointment (Inserted by Notification No. GSR 670(E) dated 30th September, 2002.)

PART II — REMUNERATION

Section I: Remuneration payable by companies having profits.

Subject to provisions of Ss. 198 and 309, a co. having profits in a F.Y. may pay any remuneration, by way of salary, D.A., perquisites, commission and other allowances, which shall not exceed 5% of its net profits for one such managerial person, and if there is more than one such managerial person, 10% for all of them together.

Section II : Remuneration payable by companies having no profits or inadequate profits

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 ceiling limit of Rs. 24,00,000/- p.a. or Rs. 2,00,000/- p.m. calculated on the following scale :

Where the effective capital of company is	***Monthly remuneration payable shall not exceed***
(i) Less than Rs. 1 crore	Rs. 75,000
(ii) Rs. 1 crore or more but less than Rs. 5 crores	Rs. 1,00,000
(iii) Rs. 5 crore or more but less than Rs. 25 crores	Rs. 1,25,000
(iv) Rs. 25 crores or more but less than 50 crores	Rs. 1,50,000
(v) Rs. 50 crores or more but less than 100 crores.	Rs. 1,75,000
(vi) Rs. 100 crores or more	Rs. 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***
(i) Less than Rs. 1 crore	Rs. 1,50,000
(ii) Rs. 1 crore or more but less than Rs. 5 crores	Rs. 2,00,000
(iii) Rs. 5 crore or more but less than Rs. 25 crores	Rs. 2,50,000
(iv) Rs. 25 crores or more but less than 50 crores	Rs. 3,00,000
(v) Rs. 50 crores or more but less than 100 crores.	Rs. 3,50,000
(vi) Rs. 100 crores or more	Rs. 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 the financial institute 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 w.e.t. 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. Reason of loss or inadequate profits

2. Steps taken or proposed to be taken for improvements

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 disclosure 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***
(i) Less than Rs. 1 crore	Rs. 1,50,000
(ii) Rs. 1 crore or more but less than Rs. 5 crores	Rs. 2,00,000
(iii) Rs. 5 crores or more but less than Rs. 25 crores	Rs. 2,50,000
(iv) Rs. 25 crores or more but less than 50 crores	Rs. 3,00,000
(v) Rs. 50 crores or more but less than 100 crores.	Rs. 3,50,000
(vi) Rs. 100 crores or more	Rs. 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 the financial institute 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 w.e.t. 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. Reason of loss or inadequate profits
2. Steps taken or proposed to be taken for improvements
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 disclosure 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.

D. Not exceeding Rs. 2,40,00,000 per annum or Rs. 20,00,000 per month in respect of companies if Special Economic Zones as notified by Department of Commerce from time to time

Provided that these companies have not raised any money by public issue of shares or debentures in India

Provided further that such companies have not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year

3. A managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in para I of this section:

    a. Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the I.T. Act, 1961,

    b. Gratuity payable at a rate not exceeding half month's salary for each completed year of service, and

    c. Encashment of leave at the end of the tenure.

4. In addition to the perquisites specified in para 2 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in para I of this section

    a. Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000/- per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of 2 children.

    b. Holiday passage for children studying outside India / family staying abroad: Return holiday passage once in a year by economy class or once in 2 years by 1st class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India with the managerial person.

    c. *Leave Travel Concession:* Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I — For purposes of Section II of this Part, "effective capital" means aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc. and other short-term arrangements) as reduced by the aggregate of any investments (except in the case investment by an investment co. whose principal business is acquisition of shares, stock debentures or other securities) accumulated losses and preliminary expenses not written off.

Explanation II

a. Where the appointment of the managerial person is made in the year in which the company has been incorporated, the effective capital shall be calculated as on the date of such appointment;

b. In any other case, the effective capital shall be calculated as on the last date of the F.Y. preceding the F.Y. in which the appointment of the managerial person is made.

Explanation III

For the purposes of section II of this Part, family means the spouse, dependent children and dependent parents of the managerial person.

Section III: *Remuneration payable to a managerial person in two cos.*

Subject to provisions of sections I and II, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from both the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

SCHEDULE XIV — RATES OF DEPRECIATION

Nature of Assets		W.D.V(%)	S.L.M(%)
(1)		(2)	(3)
I. a. BUILDINGS (other than factory buildings) [NESD]	Single Shift	5	1.63
b. FACTORY BUILDINGS	Single Shift	10	3.34
c. PURELY TEMPORARY ERECTIONS such as wooden structures	Single Shift	100	100
II. PLANT AND MACHINERY			
i. General rate applicable to,			
a. plant and machinery (not being a ship) other than continuous process plant for which no special rate has been prescribed under (ii) below	Single Shift	13.91	4.75
	Double Shift	20.87	7.42
	Triple Shift	27.82	10.34
b. continuous process plant, other than those for which no special rate has been prescribed under (ii) below (NESD)	Single Shift	15.33	5.28
ii. Special Rates			
A.			
1. Cinematograph films — Machinery used in the production and exhibition of cinematograph films (NESD)			
a. Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs	Single Shift	20	7.07
b. Projecting equipment of film exhibiting concerns			
2. Cycles (NESD)	Single Shift	20	7.07
3. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical diagnostic equipments, namely, Catscan, Ultrasound Machine, ECG Monitors, etc. (NESD)	Single Shift	20	7.07
4. Juice boiling pans (karhais) (NESD)	Single Shift	20	7.07
5. Motor-cars, motor cycles, scooters and other mopeds (NESD)	Single Shift	25.89	9.5
6. Electrically operated vehicles including battery powered or fuel cell powered vehicles (NESD)	Single Shift	20	7.07

	7. Sugarcane crushers (indigenous kolhus and belans) (NESD)	Single Shift	20	7.07
	8. Glass manufacturing concerns except direct fire glass melting furnaces — recuperative and regenerative glass melting furnaces	Single Shift Double Shift Triple Shift	20 30 40	7.07 11.31 16.21
	9. Machinery used in the manufacture of electronic goods or components	Single Shift Double Shift Triple Shift	15.62 23.42 31.23	5.38 8.46 11.87
B.				
	1. Aeroplanes, Aeroengines, simulators, visual system and quick engine change equipment (NESD) 2. Concrete pipes manufacture moulds (NESD) 3. Drum container manufacture dies (NESD) 4. Earth-moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. (NESD) 5. Glass manufacturing concerns except direct fire glass melting furnaces - Moulds (NESD) 6. Moulds in iron foundries (NESD) 7. Mineral oil concerns — Field operations (above ground) — portable boilers, drilling tools, well-head tanks, rigs, etc. (NESD) 8. Mines and quarries — Portable underground machinery and earth moving machinery used in open cast mining (NESD) 9. Motor buses and motor lorries other than used in a business of running them on hire 9A.. Motor tractors, harvesting combines (NESD) 10. Patterns, dies and templates (NESD) 11. Ropeway structures — Rope-ways, ropes and trestle sheaves and connected parts (NESD)	Single Shift	30	11.31
	12. Shoes and other leather goods factories — wooden lasts used in the manufacture of shoes	Single Shift Double Shift Triple Shift	30 45 60	11.31 18.96 29.05
C.				
	1. Motor buses, motor lorries and motor taxies used in a business or running them on hire (NESD) 2. Rubber and plastic goods factories — Moulds (NESD) 3. Data Processing Machines including computers (NESD) 4. Gas cylinders including valves and regulators (NESD)	Single Shift	40	16.21

D.			
1. Artificial silk manufacturing machinery wooden parts	Single Shift	100	100
2. Cinematography films — Bulbs of studio lights 3. Flour Mills — Rollers 4. Glass manufacturing concerns Direct fire glass melting furnaces	Single Shift	100	100
4a. Float Glass Melting Furnaces (NESD)	Single Shift	27	10
5. Iron and steel industries —Rolling mills rolls 6. Match factories — Wooden match frames 7. Mineral oil concerns — a. Plant used in field operations (below ground) — Distribution returnable packages b. Plant used in field operations (below ground) but not including assets used in field operations (distribution) — Kerbside pumps including nderground tanks and fittings 8. Mines and quarries — a. Tubs, windings ropes, haulage ropes and sand stowing pipes b. Safety lamps **9.** Salt works — salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material 10. Sugar works — Rollers	Single Shift	100	100
III. FURNITURE AND FITTINGS			
1. General rates (NESD)	Single Shift	18.1	6.33
2. Rate for furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries, welfare centres, meeting halls, cinema houses, theatres and circus, and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions (NESD)	Single Shift	25.88	9.5
IV. SHIPS —			
1. Ocean-going ships —			
i. Fishing vessels with wooden hull (NESD)	Single Shift	27.05	10
ii. Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes(NESD)	Single Shift	19.8	7

iii.	Other ships (NESD)	Single Shift	14.6	5
2. Vessels ordinarily operating on inland waters —				
i.	Speed boats (NESD)	Single Shift	20	7.07
ii.	Other vessels (NESD)	Single Shift	10	3.34

Notes

1. "Buildings" include roads, bridges, culverts, wells and tubewells.
2. "Factory buildings" does not include offices, godowns, officers' and employees' quarters, roads, bridges, culverts, wells and tubewells.
3. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.
4. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
5. The following information should also be disclosed in the accounts :

   a. depreciation methods used; and

   b. depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the Schedule.

6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the year. For this purpose, the normal number of working days during the year shall be deemed to be :

   a. in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the year or 180 days, whichever is greater;

   b. in any other case, the number of days on which the factory or concern actually worked during the year or 240 days, whichever is greater.

The extra shift depreciation shall not be charged in respect of any item of machinery or plant which has been specifically, excepted by inscription of the letters "NESD" (meaning "No Extra Shift Depreciation") against it in sub-items above and also in respect of the following items of machinery and plant to which the general rate of depreciation of 13.91% applies

1. Accounting machines.
2. Air-conditioning machinery including room air-conditioners.
3. Building contractor's machinery.
4. Calculating machines.
5. Electrical machinery — switchgear and instruments, transformers and other stationary plant and wiring and fitting of electric light and fan installations.
6. Hydraulic works, pipelines and sluices.
7. Locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns.
8. Mineral oil concerns field operations

i. Prime movers
ii. Storage tanks (above ground)
iii. Pipelines (above ground)
iv. Jetties and dry docks

9. Mineral oil concerns — field operations (distribution) — Kerbside pumps, including underground tanks and fittings.
10. Mineral oil concerns refineries:

    i. Prime movers
    ii. LPG plant

11. Mines and quarries

    i. Surface and underground machinery (other than electrical machinery and portable underground machinery).
    ii. Head-gears
    iii. Rails
    iv. Shafts and inclines
    v. Tramways on the surface

12. Neo-post franking machines
13. Office machinery
14. Overhead cables and wires
15. Railway sidings
16. Refrigeration plant containers, etc. (other than racks)
17. Ropeways structures

    i. Trestle and station steel work
    ii. Driving and tension gearing

18. Salt works — Reservoirs, condensers, salt pans, delivery channels and piers if constructed of masonry, concrete, cement, asphalt or similar materials; barges and floating plant; piers, quays and jetties; and pipelines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials.
19. Surgical instruments
20. Tramways, electric and tramways run by internal combustion engines — permanent way cars — car trucks, car bodies, electrical equipment and motors; tram cars including engines and gears.
21. Typewriters
22. Weighing machines
23. Wireless apparatus and gear, wireless appliances and accessories.

7. "Continuous Process Plant" means a plant which is required and designed to operate 24 hours a day.

8. Notwithstanding anything mentioned in this Schedule, depreciation on assets, whose actual cost does not exceed Rs. 5,000 shall be provided depreciation @ 100%.

Provided that where the aggregate actual cost of individual items of plant and machinery costing Rs. 5,000 or less constitutes more than 10% of the total actual cost of plant and machinery, rates of depreciation applicable to such item shall be the rates as specified in Item 11 of the Schedule.

The Research Committee of the Institute of Chartered Accountants of India has issued a Guidance Note on Significant issues arising from the amendments made by Notification dated 16-12-1993 issued by the Department of Company Affairs. The Guidance Note *inter alia* covers the following issues in supplement to the earlier Guidance Note and supersedes the same.

"Continuous Process Plant"

In case of the plant which is designed to operate for 24 hours a day but is required to shut down for some reasons like lack of demand or maintenance etc., the relevant rate for Continuous Process Plant would be applicable. However, in case of Plant which may work for 24 hours in a day but which is not technically designed to work as such, extra shift rates prescribed in the schedule would be applicable.

A Continuous Process Plant is distinguished from repetitive process plant or assembly-line type plants. Such plants do not involve significant shut down and/or start up costs. Hence they are not technically required and designed to operate 24 hours a day.

An ancillary equipment/plant which is an integral part of the Continuous Process Plant should be depreciated along with the main Continuous Process Plant.

It is not necessary for the whole concern to be defined as a Continuous Process Plant.

Depreciation on low value items

In respect of the assets acquired prior to December 16, 1993, the amount of write off depends on the alternative chosen to depreciate the asset.

Depreciation be provided on *pro rata* basis from the date of additions even in case of low value items. However, a company can write off fully, low value items on the Consideration of Materiality after disclosing appropriately such accounting policies in the accounts.

QUARTERLY AUDITED / UNAUDITED RESULTS AND LIMITED REVIEW BY LISTED COMPANIES

Every listed company under Clause 41 of the Listing Agreement is required to furnish un-audited quarterly results on a quarterly basis in the prescribed format to the concerned Stock Exchanges within one month of the end of the quarter. Under the Amendment clause 41, listed companies have been given the option to furnish either audited or unaudited results within a month from the end of the respective quarter (other than the last quarter). Thus, Companies which are ready with audited financial results within a month after the end of the respective quarter will be able to disclose such results without bothering to first disclose un-audited results. However, the audited results shall be accompanied by the audit report. The following relevant provisions should be noted:-

1. The company shall intimate to the Stock Exchange (normally through Fax, e-mail etc.) within 15 minutes of the closure of the Board meeting in which the unaudited/audited financial results are placed.
2. Further the company shall publish within 48 hours of the said meeting the un-audited/audited results in the prescribed format in at least one national English newspaper and one regional language daily newspaper.
3. The Board of Directors or its sub-committee should take on record the un-audited/audited quarterly results, which shall be signed by Managing Director/Director.
4. The company shall inform the Stock Exchange where its securities are listed about the date of the Board Meeting at least 7 days in advance and shall also issue immediately a press release in at least one national English newspaper and one regional language newspaper about the date of the aforesaid Board or its sub-committee meeting.
5. The company will furnish segment wise revenue, results and capital employed along with the quarterly unaudited financial results with effect from quarters ending on or after September 30, 2001 as per the prescribed format.
6. In case of change of name of the company, the new activity of business, turnover and the income from the said new activity shall be separately disclosed for a period of three years from the date of such change.
7. The quarterly report should be prepared on the basis of accrual accounting policy and in accordance with the uniform accounting practices adopted for all quarters.
8. Where the company opts to furnish un-audited financial results, there is a provision to provide explanation for variation between items of un-audited and audited quarterly/ year to date/ annual results if such variation exceeds a particular limit. This provision has been simplified in the revised clause 41. Accordingly, now the listed companies are required to provide explanation for variation between items of un-audited and audited quarterly/ year to date/ annual results only in respect of net profit or loss after Tax and for exceptional/ extraordinary items instead of providing explanation for variation in any of the items in the proforma as exited earlier. Further, the regulator has mandated that such variation should not be more than 10% or Rs. 10 lakh whichever is higher in place of earlier stipulation of 20% or more.
9. Unaudited quarterly reports for the last quarter need not be published if the company informs the stock exchange in advance that it will publish audited results within 3 months from the end of the accounting year.
10. The company will have the option to publish consolidated quarterly results in addition to the unaudited quarterly results of the parent company.
11. The quarterly unaudited results are subject to limited review by the auditors' w.e.f. quarter ending on or after June, 2003

FORMAT OF QUARTERLY AUDITED/ UNAUDITED FINANCIAL RESULTS
FORMAT OF FINANCIAL RESULTS
(ANNEXURE I CLAUSE 41 OF THE LISTING AGREEMENT)

S. No.	*Particulars*	*3 months ended (dd/mm /yyyy)*	*Corresponding 3 months ended in the previous year (dd/mm/yyyy)*	*Year to date figures for current period year ended (dd/mm/yyyy)*	*Year to date figures for previous year ended (dd/mm/yyyy)*	*Previous Accounting year (dd/mm/ yyyy)*
		(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	Net Sales/Income from Operations					
2.	Other Income					
3.	Total Income (1 + 2)					
4.	Expenditure a. Increase/Decrease in stock-in-trade and work in progress b.Consumption of Raw Material c. Purchase of traded goods d. Employee cost e. Depreciation f. Other Expenditure g. Total [Any item exceeding 10% of total expenditure to be shown separately]					
5.	Interest					
6.	Exception items					
7.	Profit (+) / Loss (-) from Ordinary Activities before Tax (3) - (4 + 5 + 6)					
8.	Tax expenses					
9.	Net Profit (+) / Loss (-) from Ordinary Activities after tax (7-8)					
10.	Extraordinary Items (net of tax expenses Rs._____)					
11.	Net Profit (+) / Loss (-) for the period					
12.	Paid-up Equity Share Capital [face value of the share will be indicated]					
13.	Reserves excluding Revaluation Reserves as per Balance Sheet of previous accounting year					

14.	Earnings Per Share (EPS) a. Basic and diluted EPS before Extraordinary items for the period for the year to date and for the previous year (not to be annualized) b. Basic and diluted EPS after Extraordinary items for the period for the year to date and for the previous year (not to be annualized)					
15.	Public shareholding • Number of Shares • Percentage of shareholding					

* Strike off whichever is not applicable

FORMAT OF THE REVIEW REPORT OF THE COMPANY (EXCEPT BANKS)

"We have reviewed the accompanying statement of unaudited financial results of ………………………… ………………………………… (name of the company) for the period ended ……………………….. This statement is the responsibility of the company's management and has been approved by the Board of Directors.

A review of interim financial information consists principally of applying analytical procedures for financial data and making inquiries of persons responsible for financial and accounting matter. It is substantially less in scope than an audit conducted in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review conducted as above, nothing has come to our notice that causes us to believe that the accompanying statement of unaudited financial results prepared in accordance with accounting standards and other recognised accounting practices and policies has not disclosed the information required to be disclosed in terms of clause 41 of the Listing Agreement including the manner in which it is to be disclosed, or that it contains any material misstatement."

In respect of the half yearly results, if the company intimates in advance to the Stock Exchange/s that it will be publish audited half yearly financial results within two months of the close of the half year then in such a case unaudited results and limited review need not be published/ given to the stock exchange/s.

In respect of results for the last quarter of the financial year, if the company intimates in advance to the stock exchange/s that it will publish audited results within a period of 3 months from the end of the last quarter of the financial year, in such a case unaudited results for the last quarter need not be published/ given to the Stock Exchange/s.

The companies which opt to publish audited results for the entire year within 3 months instead of publishing unaudited results for the last quarter within 30 days shall be required to publish annual audited results.

The manufacturing and trading/ services companies which have followed functional (secondary) classification of expenditure in the Annual profit & Loss Account in their most recent Annual report may furnish results on a quarterly basis in this alternative format.

***Note*:** For detailed information please refer to Circular No. SEBI/CFD/DIL/LA/3/2007/10/07 DATED JULY 10, 2007 of SEBI. The same is available on the web site of SEBI i.e., sebi.gov.in

The Company will furnish segment wise revenue, results and capital employed along with the quarterly un audited financial results w. e. f. quarters ending on or after 30th September, 2001as per the format given below.

FORMAT FOR QUARTERLY REPORTING OF SEGMENT WISE REVENUE, RESULTS AND CAPITAL EMPLOYED, UNDER CLAUSE 41 OF THE LISTING AGREEMENT:

S. No.	***Particulars***	***3 months ended***	***Corresponding 3 months ended in the previous year***	***Year to date figures for current period***	***Year to date figures for the previous year***	***Previous Accounting year***
		(1)	***(2)***	***(3)***	***(4)***	***(5)***
1.	Segment Revenue (net sale/income from each segment should be disclosed under this head). (a) Segment – A (b) Segment – B (c) Segment – C (d) Others Total Less : Inter segment revenue Net sales/income from operations					
2.	Segment Results (Profit)(+)/loss(-) before tax and interest from each segment)* (a) Segment – A (b) Segment – B (c) Segment – C (d) Others Total Less : (i) Interest** (ii) Other unallocable expenditure net off unallocable income. Total Profit Before Tax					
3.	Capital Employed (Segment assets–Segment Liabilities). (a) Segment – A (b) Segment – B (c) Segment – C (d) Others Total					
*Profit/Loss before tax and after interest in case of segments having operations which are						

primarily of financial nature.
**Other than the interest pertaining to the segments having operations which are primarily of financial nature.

NOTE:

1. Segment Revenue, Segment Results, Segment assets and Segment liabilities shall have the same meaning as defined in the Accounting Standards on Segment Reporting (AS-17) issued by ICAI.
2. The above information shall be furnished for each of the reportable primary segments as identified in accordance with AS-17, issued by ICAI.
3. For the quarters ending up to September 30, 2002, reporting of figures for the previous year under column 2, 4 and 5 is not mandatory.

DIVIDENDS AND BONUS SHARES

DIVIDENDS

The following aspects may generally be kept in mind in the matter of dividend on shares.

1. Dividends can be declared or paid for a financial year out of profits of that financial year or previous years after providing for at least the prescribed depreciation or the losses for each of those years, whichever is less.

2. In case of inadequacy of profits, the Company may declare dividends out of accumulated reserves provided the following conditions are satisfied with:-

    a. The rate of dividend shall not exceed the average rate at which dividends are paid in the preceding 5 financial years or 10% whichever is less.

    b. The total amount used from reserves shall not exceed 10% of the paid-up capital and free reserves and such amount shall first be used to set off against losses of that financial year.

    c. The remaining reserves shall not fall below 15% of its paid-up share capital.

3. Before declaration/payment of dividends, a Company shall transfer to reserves at least the following percentage of its profits after depreciation:—

Dividend as % of paid-up capital	**% of profits to be transferred to reserves**
0-10%	Nil
10-12.50%	2.50%
12.50-15%	5.00%
15-20%	7.50%
>20%	10.00%

4. A Company can transfer to reserves more than 10% of its profits

(i) Where dividend is declared, —

  a. dividend is declared/ paid at a rate equal to the average rate of dividend in the preceding three years.

  b. in case bonus shares were issued during this period of 3 preceding financial years, then the dividend declared/paid during that financial year shall be an amount at least equal to the average amount of dividend declared over the 3 years immediately preceding the financial year,

Provided that where net profits after tax are

(i) lower by 20 per cent or

(ii) more than the average net profits after tax of the two financial years immediately preceding,

Conditions in this paragraph will not apply.

(ii) Further, where the Company does not declare any dividend,—

the Company can make transfers to reserves from profits of that year of an amount not exceeding the average amount of dividends distributed in the three preceding financial years.

5. The dividend declared shall be transferred within 5 days of declaration in a separate bank account. Dividends not paid/ claimed within 30 days of such declaration shall be transferred to a separate bank account.

6. Dividends shall be payable only in cash.

BONUS SHARES

1. Generally, fully paid-up bonus shares can be issued out of free reserves, share premium account and capital redemption reserve.

2. The SEBI (Disclosure & Investor Protection) Guidelines 2000 also provide conditions for such issue, which, in particular include the following:—

   a. When there are any convertible debentures pending conversion, similar benefit shall be extended through reservation to such holders.

   b. Revaluation reserves cannot be used for issue of bonus shares.

   c. Bonus shares cannot be issued in lieu of dividend.

   d. Before issuing bonus shares, the Company shall ensure that all partly paid-up shares are made fully paid-up.

   e. The company should not have defaulted in the repayment of fixed deposits, interest or principal on debentures and payment of statutory dues such provident fund, etc.

MEETINGS AND RESOLUTIONS

Every company is required to conduct various important type of meetings, viz., Statutory, Annual General Meetings and Board Meetings. There are also other types of meetings such as Extraordinary General Meetings, meetings called by court, etc.

1. Board Meetings should be held at least once in every three months and 4 times in a year.
2. Quorum is one-third of board strength or two, whichever is higher.
    a. The one-third directors should be non-interested directors.
    b. In case of lack of quorum, the meeting is to be adjourned automatically to the same day in the next week, at the same time and place, unless that day is a public holiday, in which case, to the next succeeding working day.
3. A Director shall disclose the nature of his interest in any transaction being considered by the Board.
4. In case of a public company, interested Director shall not participate in the discussion relating to transaction in which he is interested nor vote thereon, nor his presence be counted for quorum for this purpose.

RESOLUTIONS

a. Unless prohibited by law, resolutions can also be passed by circulation.

b. However, following resolutions have to be passed only at meetings of the Board (except those in (iv)-(vi) which can be delegated in the manner prescribed):—

    i. Making calls on shares,
    ii. Buy-back of shares by Board if such buy-back is or less than 10% of the total paid-up Equity capital and free reserves of the company,
    iii. To issue debentures,
    iv. To borrow moneys, otherwise than on debentures,
    v. To invest the funds of the company, and
    vi. To make loans

c. For public companies, the following powers have to be exercised on at general meeting:—

    i. Power to sell, lease or dispose of the whole or substantially the whole of any undertaking of the company.
    ii. Power to remit or give time for repayment of any debt of a director.
    iii. Invest other than in trust securities proceedings of any undertaking compulsorily acquired.
    iv. Borrow moneys where borrowings cumulative exceed the total of paid-up capital and free reserves.
    v. Contribute to charitable and other funds of an amount exceeding Rs. 50,000 or 5% of its average net profits of last 3 years, whichever is higher.

CORPORATE GOVERNANCE

Corporate Governance, is a set of standards, which aims to improve the Company's image, efficiency, effectiveness and social responsibilities. According to KUMAR MANGALAM BIRLA COMMITTEE 'The fundamental objective of Corporate Governance is the enhancement of the shareholders value, keeping in view the interest of other stakeholders.' In fact, Corporate Governance is an Endeavour to become a model corporate citizen. Aristotle said: "it is not the same thing to be a good man and a good citizen." One may be a good man because he is nice to his near and dear ones. But unless one is nice to the large body of the unseen people (i.e., Society), he is not a good citizen. Thus, in essence, Corporate Governance translate into conducting the affairs of a Company in a manner that ensures fairness to customers, employees, shareholders, fund providers, suppliers, the regulators and the society as a whole.

The Companies (Amendment) Act, 2000 has introduced good Corporate Governance leading to more transparent, ethical and fair business practice to be adopted by Corporate at large. The following provisions may be noted:

Section 217(2AA) deals with Directors Responsibility Statement to be included in the Directors Report.

Section 292A provides for constitution of Audit Committee.

Section 274(1)(g) debars a person to act as a Director of a public Company if default in filing Annual Return/Accounts for continuous three financial years or repayment of deposits/ interest/debentures/dividend has taken place, and such failure continues for a period of one year or more.

Section 275 provides for appointment of a person as a Director in a maximum of 15 companies.

Clause 49 of the Listing Agreement of the Stock Exchanges also provides for promoting and raising the standards of Corporate Governance in respect of listed companies.

DIRECTORS RESPONSIBILITY STATEMENT (DRS) (SECTION 217(2AA))

The Directors Report shall now include a DRS on the following aspects:

1. Applicable accounting standards have been followed in preparation of financial statements along with proper reasons/explanations for material departures.
2. Accounting policies as prescribed are consistently applied.
3. Judgments and estimates are made in a reasonable and prudent manner to ensure true and fair view of the state of affairs and of the Profit & Loss Account.
4. Adequate accounting records are maintained in accordance with the provisions of the Companies Act, 1956 for safeguarding the assets of the Company and for preventing and detecting frauds and other irregularities.
5. Financial statements have been drawn up on a going concern basis.

SALIENT FEATURES OF SECTION 292A

Every listed Public Company and unlisted companies having a paid-up capital of at least Rs. 5 crores shall constitute a Committee of the Board to be known as Audit Committee. The provisions in respect of the same are as follows:

1. The Committee shall have at least three (3) members.
2. Two-thirds (2/3) of the members shall be non-executive directors other than managing director or whole-time director.
3. The Board of Directors shall prescribe the Committee's terms of reference in writing.

4. The members of Audit Committee shall elect a Chairman from amongst themselves.
5. The statutory auditor, the internal auditor and director-in- charge of finance shall attend every meeting of the Audit Committee but shall not have the right to vote.
6. Half-yearly and Annual accounts will be discussed by the Audit Committee with auditors before presenting the same to the Board.
7. The Audit Committee shall have the right to investigate any matter covered by the terms of reference.
8. The recommendations of the Audit Committee on any matter relating to financial management will be binding on the Board. Though the Board is a superior body, yet it cannot override the recommendation of the Committee.
9. In case the Board does not accept the recommendations of the Audit Committee, it will have to record the reasons and communicate the same to the shareholders.
10. The Chairman of the Audit Committee shall attend the annual general meeting to provide clarifications on matters relating to audit.
11. The composition of the Audit Committee shall be disclosed in the annual report of the Company.
12. The minutes of the Audit Committee are required to be placed before the next Board Meeting.
13. Provision regarding quorum of the Audit Committee, needs to be laid down by the Board while constituting the Committee, If not spelt out, the whole of the committee, it appears must meet. [Liverpool Household Stores Association Ltd. (1890) 59 LJ Ch 616, ref. Companies Act by A. Ramaiya page 2620 of 2001 edn.]
14. Any default in complying the said provisions may entail prosecution up to one year or fine up to Rs. 50,000 or both. The prosecution lies against the Company and every officer of the Company who is in default. The offence is compoundable u/s 621A.
15. The provisions in clause 49 of the Listing Agreements as required by the Stock Exchanges are not identical with the above provisions. It seems that all listed companies having a paid-up capital of minimum Rs. 5 crores will have to follow two sets of requirements. Detailed provisions of clause 49 are available on websites of Stock Exchanges.

APPOINTMENT & CHANGE OF AUDITORS

PROCEDURE FOR APPOINTMENT AND REAPPOINTMENT OF AUDITORS

APPOINTMENT OF FIRST AUDITORS

1. A Board meeting should be conveyed within one month of the date of registration of the Company and a Resolution should be passed appointing and fixing remuneration of the first Auditors who shall hold office until the conclusion of first Annual General Meeting (AGM).

2. The person being appointed as the first Auditors of the Company should not hold any security carrying voting right of that Company. If the Board fails to appoint first Auditors within one month after the registration, then a General Meeting should be held by issuing 21 days notice with relevant explanatory statement and Auditor can be appointed by passing ordinary resolution.

3. In case of listed Public Limited Company for such appointment of Auditors in General Meeting, 3 copies of the notice and copy of the proceedings of the General Meeting should be forwarded promptly to the Stock Exchange where such shares of the Company are listed.

APPOINTMENT OF RETIRING AUDITORS

1. An Auditor is normally being reappointed at the A.G.M. Therefore, the Company should obtain a written certificate from the Auditor that the re-appointment, if made, will be in accordance with the limits specified in Section 224(IB).

2. Though the limits as specified in section 224(1B) does not apply to a Private Company after Companies (Amendment) Act, 2000, as per Institute's Code of Ethics the limit continues to apply, which should be borne in mind while accepting the audit.

3. The Company convening the AGM, (after issuing notices in writing at least 21 days before the meeting along with the Explanatory statement), should pass ordinary resolution in the A.G.M. appointing the retiring Auditor as Auditor of the Company, who shall be holding the office till the conclusion of next A.G.M. and the resolution should also contain details of his remuneration.

4. Three copies of the notice and proceedings of A.G.M. should be sent to the Stock Exchange, where such shares of the Company are listed.

5. Instead of Ordinary Resolution, a Special Resolution by 3/4th majority is required to be passed in case of a Company in which not less than 25% of the subscribed share capital is held singly or in any combination by Government Company/Central Government/State Government, Nationalised Banks/Insurance Company/Financial Institution etc. [Section 224A(1)]

6. The Company should intimate the Auditor about his appointment within 7 days of the passing of the Resolution appointing him.

7. The Auditor should inform the Registrar of Companies in Form No. 23B within one month of the receipt of the intimation from the Company that he has accepted or refused to accept his appointment.

APPOINTMENT OF BRANCH AUDITOR

1. The accounts of the branch office of a Company, if any, is required to be audited by the Company's auditor appointed u/s. 224 or by a person qualified for appointment as auditor u/s. 226. Where the branch office is situated outside India, the accounts to be audited either by the Company's auditor or by an accountant duly qualified to act as an auditor in accordance with the laws of that country. The shareholders may authorise the Board to appoint the branch auditors in consultation with the Company's auditors. However the Central Government is empowered to make such rules as it may deem fit for the matters specified in relation to the branch auditors.

2. Notwithstanding that the accounts of the branch are audited by a person other than the Company's auditor, the Company's auditor shall have the right to visit the branch and have access to the book and accounts and vouchers of the Company. However, in case of a banking Company having a branch outside India, the Company's auditor may have right to access of copies and extracts of the books of account.

3. The branch auditors shall have the same powers and duties as that of Company's auditors. The branch auditor shall forward his report to the Company's auditors.

APPOINTMENT OF AN AUDITOR OTHER THAN THE RETIRING ONE

1. The Company must receive a Special Notice from a member/shareholder not less than 14 days before the ensuing A.G.M. indicating his intention to move a resolution for changing the existing Auditor of the Company and for appointing another Auditor in his place.

2. The Company must send forthwith a copy of such notice to the existing auditor of the Company.

3. A certificate in writing should be obtained from the proposed new Auditor to the effect that his appointment, if made, will be in accordance with the limits as specified in Sec. 224(1B).

4. The Company must issue notice in writing at least 21 days before the date of A.G.M. stating about the Special Notice received and proposing the ordinary resolution for change of the Auditor along with Explanatory statement.

5. The retiring Auditor has a right to make representation either in writing to the Company or orally at the A.G.M. If the representation is received from the Auditor the same should be enclosed along with notice. If the representation could not be sent along with the notice for being received late, it should be sent later at any time, being reasonable time, but before the A.G.M.

6. In case it is not possible to send special notice and representation in the notices of the A.G.M., then the Company should inform the shareholders by advertisement in newspaper having appropriate circulation or by any other mode as allowed by the Articles of Association not less than 7 days before such A.G.M.

7. However, if a copy of such representation by the retiring auditor is not possible to be sent as aforesaid, because they were received too late or because of the default of the Company, such written representation shall be read out at the meeting. This is without prejudice to the right of the Auditor to be heard orally in the A.G.M. But in certain circumstances the Company Law Board can exempt the Company from sending or reading out such representation of the retiring Auditor on the application either of the Company or of any of the persons, who claims to be aggrieved.

8. Three copies of such notices to be forwarded to the Stock Exchange, where such shares of the Company are listed.

9. The Company should then hold a General Meeting and pass a Resolution.

10. Only after such Resolution is passed in the A.G.M. the new Auditor shall be considered as duly appointed in place of the Retiring Auditor.

11. The new Auditor should inform the concerned Registrar of Companies in Form No. 23B about his accepting the appointment within one month from the receipt of Intimation of his appointment from the Company.

REMOVAL OF AN AUDITOR BEFORE THE EXPIRY OF HIS TERM

1. An Auditor is appointed at the A.G.M. and he holds the position till the conclusion of the next A.G.M. However, circumstances may permit a Company to remove the Auditor before the expiry of his term.

2. For this, Board of Directors, should convene a meeting after giving notice to all the Directors, to approve the draft of the application to be sent to the Central Government for the removal of the Auditor.

3. Such an application is to be made to the Regional Director of the concerned Region seeking approval of the removal of the Auditor before the expiry of his term. Such application should be made on the letterhead of the Company mentioning the details and reasons.

4. Necessary formalities of enclosing documents, payment of fees etc. are to be complied with.

5. The Regional Director after considering the merit of the application and based on facts and circumstances of the case, may approve such removal of the Auditor.

6. On receipt of such approval a meeting should be called of Board of Directors to fix the date, time, place and agenda of the Meeting where the previous Auditor will be removed and a new Auditor will be appointed in his place.

7. Notice should be issued in writing at least 21 days before the date of A.G.M. and ordinary resolution should be passed appointing new Auditor in the place of previous Auditor at the A.G.M.

CODE OF ETHICS ON CHANGE OF AUDITORS

1. Part I of the First Schedule of Chartered Accountants Act, 1949 deals with the Code of Ethics of the Profession of Chartered Accountancy. As per clause 8, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he accepts the position of Auditor previously held by another Chartered Accountant without first communicating with him in writing.

2. It is important to remember that every client has an inherent right to choose his Auditor. But underlying objective of this clause is that besides the professional courtesy the member being removed must have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing Auditor. Therefore the new Auditor, who is being appointed in place of Retiring Auditor should not accept the audit unless he communicates with the previous Auditor and ensure that such communication in writing has reached to the Retiring Auditor. Therefore, a letter under U.P.C. is not considered as effective communication and the same should be sent by Registered Post Acknowledgement Due letter or hand delivery. The professional reasons for not accepting an Audit in place of the Retiring Auditor would be:

   i. Non-compliance of the provisions of sections 224 and 225 of the Companies Act;
   ii. Undercutting of fees;
   iii. Non-payment of undisputed audit fees by auditees (other than in case of sick units) for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and
   iv. Issuance of a qualified report.

CARO 2003

PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY PART II, SECTION 3 — SUB-SECTION (I) BY THE MINISTRY OF FINANCE (DEPARTMENT OF COMPANY AFFAIRS) ON 12TH JUNE, 2003 (AND AS AMENDED BY NOTIFICATION NO. GSR 766(E) DT. 25-11-2004)

G.S.R. 480(E).— In exercise of the powers conferred by sub-section (4A) of section 227 of the Companies Act, 1956 (1 of 1956), read with the Notification of the Government of India in the Department of Company Affairs, number G.S.R. 443(E), dated 18th October, 1972, as amended from time to time and in supersession of order number G.S.R. 909(E), dated 7th September, 1988, published in the Gazette of India, part II, section 3, sub-section (i), except as respects things done or omitted to be done before the supersession, and after consultation with the Institute of Chartered Accountants of India [constituted under the Chartered Accountants Act, 1949 (38 of 1949)], in regard to class of companies to which this order applies and other ancillary matters, the Central Government hereby makes the following Order, namely:-—

1. Short title, application and commencement

1. This order may be called the Companies (Auditor's Report) Order, 2003.
2. It shall apply to every company including a foreign company as defined in section 591 of the Act, except the following :—
   i. a Banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
   ii. an insurance company as defined in clause (21) of section 2 of the Act;
   iii. a company licensed to operate under section 25 of the Act; and
   iv. *a private limited company with a paid-up capital and reserves not more than fifty lakh rupees and does not have loan outstanding* exceeding Rupees Twenty Five *lakhs from any bank or financial institution and does not have a turnover exceeding five crores rupees* at any point of time during the financial year
3. It shall come into force on the 1st day of July, 2003.

2. Definitions

In this Order, unless the context otherwise requires:

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

b. "chit fund company", "nidhi company" or "mutual benefit company" means a company engaged in the business of managing, conducting or supervising as a foreman or agent of any transaction or arrangement by which it enters into an agreement with a number of subscribers that every one of them shall subscribe to a certain sum of installments for a definite period and that each subscriber, in his turn, as determined by lot or by auction or by tender or in such other manner as may be provided for in the agreement, shall be entitled to a prize amount, and includes companies whose principal business is accepting fixed deposits from, and lending money to members.

3. Auditor's report to contain matters specified in paragraphs 4 and 5

Every report made by the auditor under section 227 of Act, on the accounts of every company examined by him to which this Order applies for every financial year ending on any day on or after the commencement of this Order, shall contain the matters specified in paragraphs 4 and 5.

4. Matters to be included in the Auditor's Report

The auditor’s report on the account of a company to which this Order applies shall include a statement on the following matters, namely:—

i. (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;

(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

(c) if a substantial part of fixed assets have been disposed of during the year, whether it has affected the going concern;

ii. (a) whether physical verification of inventory has been conducted at reasonable intervals by the management;

(b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;

(c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;

iii. (a) *has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and amount involved in the transactions, and*

(b) *whether the rate of interest and other terms and conditions of loans given by the company, secured or unsecured, are* prima facie *prejudicial to the interest of the company; and*

(c) *whether receipt of the principal amount and interest are also regular; and*

(d) *if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery/payment of the principal and interest;*

(e) *has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and amount involved in the transactions. And*

(f) *whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are* prima facie *prejudicial to the interest of the company; and*

(g) *whether payment of the principal amount and interest are also regular; and*

iv. *is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system;*

v. (a) *whether particulars of contracts or arrangements referred to in section 301 of the Act have been entered in the register required to be maintained under that section*; and

(b) *whether transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time;*

(This information is required only in case of transactions exceeding the value of five lakh rupees in respect of any party and in any one financial year)

vi. in case the company has accepted deposits from the public, whether the directives issued by the Reserve Bank of India and the provisions of *sections 58A, 58AA or any relevant provisions of the Act* and the rules framed there under, where applicable, have been complied with. If not, the nature of contraventions should be stated; If an order has been passed by *Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal*, whether the same has been complied with or not?

vii. in the case of listed companies and/or other companies having a paid-up capital and reserves exceeding Rs. 50 lakhs as at the commencement of the financial year concerned, or having an average annual turnover exceeding five crores rupees for a period of three consecutive financial years immediately preceding the financial year concerned, whether the company has an internal audit system commensurate with its size and nature of its business;

viii. where maintenance of cost records has been prescribed by the Central Government under clause (d) of sub-section (1) of section 209 of the Act, whether such accounts and records have been made and maintained;

ix. (a) is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, Income-tax, Sales-tax, Wealth Tax, *Service Tax*, Custom Duty, Excise Duty, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.

(b) *in case dues of income tax/sales tax/wealth tax/service tax/ customs duty/ excise duty/cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the Department shall not constitute the dispute).*

x. whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and *in the immediately preceding financial year;*

xi. whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;

xii. whether adequate documents and records are maintained in cases where the company has granted loans and advances on the basis of security by way of pledge of shares, debentures and other securities; If not, the deficiencies to be pointed out;

xiii. whether the provisions of any special statute applicable to chit fund have been duly complied with? In respect of nidhi/mutual benefit fund/societies;

a. whether the net-owned funds to deposit liability ratio is more than 1:20 as on the date of balance sheet;

b. whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/*doubtful*/loss assets;

c. whether the company has adequate procedures for appraisal of credit proposals/requests, assessment of credit needs and repayment capacity of the borrowers;

d. whether the repayment schedule of various loans granted by the nidhi is based on the repayment capacity of the borrower;

xiv. if the company is dealing or trading in shares, securities, debentures and *other investments*, whether proper records have been maintained of the transactions and contracts and whether timely entries have been made therein; also whether the shares, securities, debentures and other *investments* have been held by the company, in its own name except to the extent of the exemption, if any, granted under section 49 of the Act;

xv. whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;

xvi. whether term loans were applied for the purpose for which the loans were obtained;

xvii. whether the funds raised on short-term basis have been used for long-term investment; If yes, the nature and amount is to be indicated;

xviii. whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under section 301 of the Act and if so whether the price at which shares have been issued is prejudicial to the interest of the company;

xix. whether *security or charges* has been created in respect of debentures issued?

xx. whether the management has disclosed on the end use of money raised by public issues and the same has been verified;

xxi. whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.

5. Reasons to be stated for unfavourable or qualified answers

Where, in the auditor's report, the answer to any of the questions referred to in paragraph 4 is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified answer, as the case may be. Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

(*Note* : The amendments made by Notification GSR 766(E) dated 25-11-2004 have been incorporated in the original Order. The said amendments are included above in italics and are effective w.e.f. publication thereof in the Gazette.)

SPECIMEN AUDITORS REPORT (WHERE CARO APPLICABLE)

The Members of (name of the Company)[1]

1. We have audited the attached balance sheet of *(name of the company),* as at 31st March, 20XX, the profit and loss account and also the (cash flow statement)[2] for the year ended on that date annexed thereto. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

2. We conducted our audit in accordance with the auditing standards generally accepted in India. Those Standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

3. As required by the Companies (Auditor's Report) Order, 2003[3] issued by the Central Government of India in terms of sub-section (4A) of section 227 of the Companies Act, 1956. we enclose in the Annexure[4] a statement on the matters specified in paragraphs 4 and 5 of the said Order.

4. Further to our comments in the Annexure referred to above, we report that:

i. We have obtained all the information and explanations, which to the best of our knowledge and belief were necessary for the purposes of our audit;

ii. In our opinion. proper books of account as required by law have been kept by the company so far as appears from our examination of those books (and proper returns adequate for the purposes of our audit have been received from the branches not visited by us. The Branch Auditor's Report(s) have been forwarded to us and have been appropriately dealt with)[5];

iii. The balance sheet, profit and loss account and (cash flow statement)[6] dealt with by this report are in agreement with the books of account (and with the audited returns from the branches)[7];

iv. In our opinion, the balance sheet, profit and loss account and (cash flow statement)[8] dealt with by this report comply with the accounting standards referred to in sub-section (3C) of section 211 of the Companies Act, 1956;

v. On the basis of written representations received from the directors, as on 31st March, 20XX and taken on record by the Board of Directors, we report that none of the directors is disqualified as on 31st March, 20XX from being appointed as a director in terms of clause (g) of sub-section (1) of section 274 of the Companies Act, 1956;

vi. In our opinion, and to the best of our information and according to the explanations given to us, the said accounts give the information required by the Companies Act, 1956 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India:

  a. in the case of the balance sheet, of the state of affairs of the company as at 31st March, 20XX;

  b. in the case of the profit & loss account, of the profit/loss[9] for the year ended on that date; and

  c. (in the case of the cash flow statement, of the cash flows for the year ended on that date)[10]

For ABC and Co.
Chartered Accountants
Signature
(Name of the Member Signing the Audit Report)
(Designation)[11]
Membership Number

Place of Signature:

Date:

ANNEXURE

Re ___________________________________Limited

Referred to in paragraph 3 of our report of even date,

i. (a) The company has maintaining proper records showing full particulars, including quantitative details and situation of fixed assets.

(b) All the assets have not been physically verified by the management during the year but there is a regular programme of verification which, in our opinion, is reasonable having regard to the size of the company and the nature of its assets. No material discrepancies were noticed on such verification.

(c) During the year, the company has disposed of a substantial part of the plant and machinery. According to the information and explanations given to us, we are of the opinion that the sale of the said part of plant and machinery has not affected the going concern status of the company.

ii. (a) The inventory has been physically verified during the year by the management. In our opinion, the frequency of verification is reasonable.

(b) The procedures of physical verification of inventory followed by the management are reasonable and adequate in relation to the size of the company and the nature of its business.

(c) The company is maintaining proper records of inventory. The discrepancies noticed on verification between the physical stocks and the book records were not material.

iii. (a) The company has granted loans to two companies covered in the register maintained under section 301 of the Companies Act, 1956. The maximum amount involved during the year was Rs. 20 crores and the year-end balance of loans granted to such parties was Rs. 20 crores.

(b) In our opinion, the rate of interest and other terms and conditions of such loans are not, *prima facie*, prejudicial to the interest of the company.

(c) The parties have repaid the principal amounts as stipulated and have also been regular in the payment of interest to the company.

(d) There is no overdue amount in excess of Rs. 1 lakh in respect of loans granted to companies, firms or other parties listed in the register maintained under section 301 of the Companies Act, 1956.

(e) The company had taken loan from five companies covered in the register maintained under section 301 of the Companies Act, 1956. The maximum amount involved during the year was Rs. 50 crores and the year-end balance of loans taken from such parties was Rs. NIL.

(f) In our opinion, the rate of interest and other terms and conditions on which loans have been taken from companies, firms or other parties listed in the register maintained under section 301 of the Companies Act, 1956 are not, *prima facie*, prejudicial to the interest of the company.

(g) The company is regular in repaying the principal amounts as stipulated and has been regular in the payment of interest.

iv. In our opinion and according to the information and explanations given to us, there exists an adequate internal control system commensurate with the size of the company and the nature of its business, with regard to purchase of inventory, fixed assets and with regard to the sale of goods and services. During the course of our audit, we have not observed any continuing failure to correct major weaknesses in internal control system of the company.

v. (a) According to the information and explanations given to us, we are of the opinion that the particulars of all contracts or arrangements that need to be entered into the register maintained under section 301 of the Companies Act, 1956 have been so entered.

(b) In our opinion and according to the information and explanations given to us, the transactions made in pursuance of contracts or arrangements entered in the register maintained under section 301 of the Companies Act, 1956 and exceeding the value of rupees five lakhs in respect of any party during the year have been made at prices which are reasonable having regard to prevailing market prices at the relevant time.

vi. In our opinion and according to the information and explanations given to us, the company has complied with the provisions of sections 58A and 58AA and other relevant provisions of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 with regard to the deposits accepted from the public. No order has been passed by the Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal.

vii. In our opinion, the company has an internal audit system commensurate with the size and nature of its business.

viii. We have broadly reviewed the books of account relating to materials, labour and other items of cost maintained by the company pursuant to the Rules made by the Central Government for the maintenance of cost records under section 209(1)(d) of the Companies Act, 1956 and we are of the opinion that *prima facie* the prescribed accounts and records have been made and maintained.

ix. (a) The company is regular in depositing with appropriate authorities undisputed statutory dues including provident fund, investor education fund, employees' state insurance, income tax, sales tax, wealth tax, service tax, custom duty, excise duty and other material statutory dues applicable to it.

Further, since the Central Government has till date not prescribed the amount of cess payable under section 441A of the Companies Act, 1956, we are not in a position to comment upon the regularity or otherwise of the company in depositing the same.

(b) According to the information and explanations given to us, no undisputed amounts payables in respect of income tax, sales tax, wealth tax, service tax, customs duty and excise duty were in arrears, as at ………. For a period of more than six months from the date they became payable.

(c) According to the information and explanations given to us, there are no dues of income tax, sales tax, service tax, customs duty and excise duty which have not been deposited on account of any dispute.

x. In our opinion, the accumulated losses of the company are not more than fifty per cent of its net worth. Further, the company has not incurred cash losses during the financial year covered by our audit and the immediately preceding financial year.

xi. In our opinion and according to the information and explanations given to us, the company has not defaulted in repayment of dues to a financial institution, bank or debentures holders.

xii. We are of the opinion that the company has maintained adequate records where the company has granted loans and advances on the basis of security by way of pledge of shares, debentures and other securities.

xiii. In our opinion, the company is not a chit fund or a nidhi mutual benefit fund/society. Therefore, the provisions of clause 4(xiii) of the Companies (Auditor's Report) Order, 2003 are not applicable to the company.

xiv. In our opinion, the company is not dealing in or trading in shares securities, debentures and other investments. Accordingly, the provisions of clause 4(xiv) of the Companies (Auditor's Report) Order, 2003 are not applicable to the company.

xv. In our opinion, the terms and conditions on which the company has given guarantees for loans taken by others from banks or financial institutions are not prejudicial to the interest of the company.

xvi. In our opinion, the term loans have been applied for the purpose for which they were raised.

xvii. According to the information and explanations given to us and on an overall examination of the balance sheet of the company, we report that the no funds raised on short-term basis have been used for long-term investment.

xviii. According to the information and explanations given to us, the company has made preferential allotment of shares to parties and companies covered in the register maintained under section 301 of the Act. In our opinion, the price at which shares have been issued is not prejudicial to the interest of the company.

xix. According to the information and explanations given to us during the period covered by our audit report, the company had issued 1,00,000 debentures of Rs. 100 each. The company has created security in respect of debentures issued.

xx. We have verified the end use of money raised by public issue from the draft prospectus filed with SEBI, the offer document and as disclosed in the notes to the financial statements.

xxi. According to the information and explanations given to us, no fraud on or by the company has been noticed or reported during the course of our audit.

For ABC and Co.
Chartered Accountants
Signature
(Name of the Member Signing the Audit Report)
(Designation)[12]
Membership Number

Place of Signature :

Date :

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1. Reference may also be made to the Auditing and Assurance Standard (AAS) 28. The Auditor's Report on Financial Statements, Statement on Qualifications in the Auditor's Report and the Guidance Note on sections 227(3)(e) and (f) of the Companies Act, 1956, issued by the Institute of Chartered Accountants of India.
2. Wherever applicable.
3. All references made in this Specimen Auditor's Report to Companies (Auditor's Report) Order, 2003 should be construed as being to the Companies (Auditor's Report) Order, 2003 as amended by Companies (Auditor's Report) (Amendment) Order, 2004
4. Alternatively, in lead of giving the comments on Companies (Auditor's Report) Order, 2003 in an Annexure, the comments may be contained in the body of the main report.
5. Wherever applicable.
6. Wherever applicable.
7. Wherever applicable.
8. Wherever applicable.
9. Wherever applicable.
10. Wherever applicable.
11. Partner or proprietor, as the case may be.
12. Partner or Proprietor, as the case may be.

SECRETARIAL COMPLIANCE CERTIFICATE RULES

SALIENT FEATURES

The Central Government has issued the Companies (Compliance Certificate) Rules, 2001 vide Notification No. GSR 52(E) dtd. 31-1-2001. The salient features are as under:

1. Every Company not required to employ a whole time secretary under sections 383A(1) and 642(1) of the Act and having a paid-up share capital of Rs. 10,00,000/- or more but less than Rs. 2,00,00,000/- shall obtain a Secretarial Compliance Certificate from a company secretary in whole time practice and shall be laid by the company in its annual general meeting.

2. The said company shall file with ROC the said Secretarial Compliance Certificate in the prescribed form or as near thereto as circumstances admit in respect of each financial year along with the filing of accounts within thirty days from date on which its annual general meeting was held. Where the annual general meeting of such company for any year has not been held, such Secretarial Compliance Certificate has be filed with the Registrar within thirty days from the last day on or before which that meeting should have been in accordance with the provision of the Act.

3. Every secretary in whole time practice for the purpose of issue of Secretarial Compliance Certificate shall have right to access at all times to the registers, books, papers, documents and records of the company whether kept in pursuance of the Companies Act, 1956 or any other Act or otherwise and shall be entitled to require from the officers or agents of the company, such information and explanations as the secretary in whole time practice may think necessary for the purpose of such Secretarial Compliance Certificate.

4. As per Notification No. 1001/1/DR, dated 27-2-2003 issued by The Institute of Company Secretaries of India, a secretary in whole time practice cannot issue Secretarial Compliance Certificates to more than 50 Companies in any calendar year commencing from 1st January, 2003.

5. Pursuant to section 383A of the Companies Act, 1956, and rule 3(2) of the Companies (Compliance Certificate) Rules, 2001 the companies have to file Form 66 and attach the Secretarial Compliance Certificate to the said Form. Form 66 can be downloaded from the MCA portal.

SPECIMEN SECRETARIAL COMPLIANCE REPORT

SECRETARIAL COMPLIANCE CERTIFICATE

IN TERMS OF SECTION 383A(1) OF THE COMPANIES ACT, 1956

To

The Members

____

I have examined the registers, records, books and papers of _______________Private Limited/Limited as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder and also the provisions contained in the Memorandum and Articles of Association of the Company for the financial year ended on _________. In my opinion and to the best of my information and according to the examinations carried out by me and explanations furnished to me by the company, its officers and agents, I certify that in respect of the aforesaid financial year:

1. The company has kept and maintained all registers as stated in Annexure 'A' to this certificate, as per the provisions and the rules made thereunder and all entries therein have been duly recorded.
2. The company has duly filed the forms and returns as stated in Annexure 'B' to this certificate, with the Registrar of Companies, Regional Director, Central Government, Company Law Board or other authority within the time prescribed under the Act and the rules made thereunder.
3. The company being a private limited company has the minimum prescribed paid-up capital and its maximum number of members during the said financial year was ____ excluding its present and past employees and the company during the year under scrutiny:
   i. has not invited public to subscribe for its shares or debentures; and
   ii. has not invited or accepted any deposits from persons other than its members, directors or their relatives.
4. The Board of Director duly met _____ times on __________________ (dates) in respect of which meetings proper notices were given and the proceedings were properly recorded and signed including the circular resolutions passed in the Minutes Book maintained for the purpose.
5. The company closed its Register of Members and/or Debenture holders from _____ to _____ and necessary compliance of Section 154 has been made.
6. The Annual General Meeting for the financial year ended on ___________ was held on ___________ after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in Minutes Book maintained for the purpose.
7. ____ Extraordinary General Meeting/s was/were held during the financial year after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in the Minutes Book maintained for the purpose.
8. The company has advanced loan amounting Rs. ________ to its directors and/or persons or firms or companies referred in the section 295 of the Act, after complying with the provisions of the Act.
9. The company has duly complied with the provisions of Section 297 of the Act in respect of contracts specified in that section.
10. The company was made any necessary entries in the register maintained under section 301 of the Act.

11. The company has obtained necessary approvals from the Board of Directors, members and previous approval of the Central Government pursuant Section 314 of the Act wherever applicable.

12. The Board of Directors or duly constituted Committee of Directors has approved the issue of duplicate share certificates.

13. The company has

    i. delivered all the certificates on allotment of securities and on lodgment thereof for transfer/transmission or any other purpose in accordance with the provisions of the Act.

    ii. deposited the amount of dividend declared including interim dividend in a separate bank account on ___ which is within five days from the date of declaration of such dividend.

    iii. paid/posted warrants for dividends to members within a period of thirty days from the date of declaration of dividend and that unclaimed/unpaid dividend has been transferred to Unpaid Dividend Account of the company with _________ Bank on __________.

    iv. transferred the amounts in unpaid dividend account, application money due for refund, matured deposits, matured debentures and the interest accrued thereon which have remained unclaimed or unpaid for a period of seven years to Investor Education and Protection Fund.

    v. duly complied with the requirements of Section 217 of the Act.

14. The Board of Directors of the company is duly constituted and the appointment of directors, additional directors, alternate directors and directors to fill casual vacancies have been duly made.

15. The appointment of Managing Director/Wholetime Director/Manager has been made in compliance with the provisions of Section 269 read with Schedule XIII to the Act and approval of the Central Government has been obtained in respect of appointment of _____ not being in terms of Schedule XIII.

16. The appointment of sole-selling agents was made in compliance of the provisions of the Act.

17. The company has obtained necessary approvals of the Central Government, Company Law Board, Regional Director, Registrar or such other authorities as may be prescribed under the various provisions of the Act as detailed below.

18. The Directors have disclosed their interest in other firms/ companies to the Board of Directors pursuant to the provisions of the Act and the rules made thereunder.

19. The company has issued ______ Shares/debentures during the financial year ending __________ complied with the provisions of the Act.

20. The company has bought back ______ shares during the financial year ending ________ after complying with the provisions of the Act.

21. The company has redeemed _____ preference shares/debentures during the year after complying with the provisions of the Act.

22. The company wherever necessary has kept in abeyance the rights to dividend, right shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act.

23. The company has complied with the provisions of Sections 58A and 58AA read with the Companies (Acceptance of Deposit) Rules, 1975/applicable directions issued by the Reserve Bank of India/any other authority in respect of deposits accepted including unsecured loans taken amounting to Rs. _______ raised by the company during the year and the company has filed the copy of Advertisement/ Statement in lieu of Advertisement/ necessary particulars as required with the Registrar of Companies, _______ on ___________. The Company has also filed return of deposits with the Registrar of Companies/ Reserve Bank of India/other authorities.

24. The amount borrowed by the company from Directors, members, public, financial institutions, banks and others during the financial year ending ___________ is/are within the borrowing limits of the company and that necessary resolutions as per Section 293(1)(d) of the Act have been passed in duly convened annual/extraordinary general meeting.

25. The company has made loans or advances or given guarantees or provided securities to other bodies corporate during the year in compliance with the provisions of the Act and has made necessary entries in the Register kept for the purpose.

26. The company has altered provisions of memorandum with respect to situation of the company's registered office from one state to another during the year under scrutiny after complying with the provisions of the Act.

27. The company has altered provisions of memorandum with respect to the objects of the company during the year under scrutiny and complied with the provisions of the Act.

28. The company has altered provisions of memorandum with respect to name of the company during the year under scrutiny and complied with the provisions of the Act.

29. The company has altered provisions of memorandum with respect to share capital of the company during the year under scrutiny and complied with the provisions of the Act.

30. The company has altered its Articles of Association after obtaining approval of members in the general meeting held on ______ and the amendments to the Articles of Association have been duly registered with the Registrar of Companies.

31. A list of prosecution initiated against or Show Cause Notice received by the company, for alleged offences under the Act and also fines and penalties or any other punishment imposed on the company in such cases is attached.

32. The company has received Rs. __________ as security from its employees during the year under certification and the same has been deposited as per provisions of Section 417(1) of the Act.

33. The company has deposited both employees' and employer's contribution to Provident Fund with prescribed authorities pursuant to Section 418 of the Act.

Note: The Qualification, reservation or adverse remarks, if any, may be stated at the relevant place(s)

Place : Mumbai

Date :

Signature
Name of the Company
Secretary
C.P. No.:

Annexure - A

Statutory Registers maintained by

1. ______________ under section ____________________
2. ______________ under section ____________________
3. ______________ under section ____________________

Annexure - B

Forms and Returns as filed by the company with the Registrar of Companies, Regional Director, Central Government or other authorities during the financial year ending __________.

1. ______________ filed under section ________ for ______________
2. ______________ filed under section ________ for ______________
3. ______________ filed under section ________ for ______________

SPECIAL AUDIT UNDER SECTION 233-A

1. The Central Government may order a special audit of the company's accounts, in the following cases:
   a. when the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practice; or
   b. when any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or
   c. when the financial position of any company is such as to endanger its solvency.
2. The Government may appoint the company's auditor or any other chartered accountant to conduct the audit. The auditor so appointed shall have the same powers and duties as an auditor of the company. However such auditor shall submit his/her report to the Central Government.
3. On receipt of the report, the Central Government may take such action as it considers necessary in accordance with the provisions of the Companies, Act, 1956 or any other law. However if no action is taken within four months from the date of receipt of the report, it shall send the copy of the report or the relevant extracts therefrom, for circulation to the members of for placing the same at the next general meeting.
4. The cost of the audit shall be borne by the company, in case of default, the same would be recovered as an arrear of land revenue.

COST AUDIT UNDER SECTION 233-B

1. Under Section 209(d) a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, may be required by the Central Government to keep books of account showing such particulars relating to utilization of material or labour or to items of cost as may be prescribed.
2. The Central Government may, whenever it is necessary so to do, direct that an audit of cost accounts of the company be conducted in such manner as it may specify in the order.
3. The auditor shall be a cost accountant with the meaning as defined in Cost and Works Accountants Act, 1959.

4. The auditor may be appointed by the Board of Directors with the previous approval of the Central Government. He shall have the same powers and duties as that of an auditor of the company u/s 227(1) of the Act.

5. The Cost auditor shall make his report to the Central Government with a copy to the company.

6. The company shall within thirty days of the receipt of the report furnish the Central Government with full information and explanations on every reservation/qualification contained in the report.

7. On receipt of the report, the Central Government may take such action as it considers necessary in accordance with the provisions of the Companies, Act, 1956 or any other law. Alternatively it may send the copy of the report for circulation, of whole or such portion thereof, as it may specify in this behalf, to the members along with the notice of the annual general meeting to be held for the first time after the submission of the report.

DUTIES AND RESPONSIBILITIES OF INDEPENDENT DIRECTOR

Independent Director means Director who apart from receiving directors remuneration, do not have any maternal/ pecuniary relationship or transaction with the company, its promoters, its management or its subsidiaries, which in judgment of the Board may affect independence of judgment of the Director.

Independent Director plays an active role in various committees to be set up by a company to ensure good governance. Listed companies are required to set up audit committees of minimum three directors, on which, two-thirds should be Independent Director. The audit committee chaired by an Independent Director shall inspect the company's financial statements and can also recommend replacement of the statutory auditor.

Independent Directors are responsible for formulating and implementing business strategies on behalf of shareholders and have to ensure that the business activities of the company are compatible with all legal requirements. They have to perform crucial governance functions.

As per the Companies Act, 1956 the Independent Director should satisfy the following criteria:

1. He should not be a relative of the Chairman, Managing Director, Whole time Director or Secretary of the Company.
2. He should not hold 2% or more shares, of the company, presently or even in past.
3. He should not have been a supplier, vendor or customer of the company.
4. He should not have been an auditor, internal auditor, or legal advisor or consultant of the Company during any of the three preceding financial years.
5. He should not have held any position in the Company; i.e., ex-employee.
6. He should not have been a Director for continuous period of nine years.

As per revised clause 49 of the Listing Agreement the definition of the term 'independent directors' would mean a non-executive director who:

1. Does not have a pecuniary relationship with the company, its promoters, senior management or affiliate companies.
2. Is not related to promoters or the senior management.
3. Has not been an executive with the company in the immediately three preceding financial years.
4. Is not a partner or executive of the auditors/lawyers/consultants of the company for the last three years.
5. Is not a supplier, service provider or customer of the company.
6. Does not hold 2 per cent or more of the shares of the company.

Normally Nominee Directors of Bank or Financial Institution will not be considered as independent Director as per the Companies Act. However under Clause 49 of the Listing Agreement issued by SEBI such Directors are considered as independent Director.

The duties and responsibilities of independent Directors are normally as they are of director of the Company viz.

1. He should furnish information in the prescribed form to the company about disclosure of General Notice of directorship, membership of body corporate and other entities.
2. He should also inform the Company about any change in the details submitted subsequently.

3. He should provide a list of his relatives as defined in the Companies Act and their directorship and interest in other concerns.
4. The Director shall have fiduciary duty to act in goodsfaith and in the interest of the company.
5. It is the duty of the Independent Director to acquire proper understanding of the business of the Company.
6. He should act only within the powers laid down by the Memorandum of Association and Articles of Association and by applicable law and regulations.
7. He should not be a Director of more than fifteen Companies.

Such an Iindependent Director could be working as member of Audit Committee prescribed under Section 292A of the Companies Act. In such situation he has to look into the obligations of Audit Committee and perform the duty.

The role and responsibility of an Independent Director arising out clause 49 requirements of role of audit committee would include

1. Oversight of company financial reporting process and disclosure of its financial information
2. Recommending to Board on the appointment, re-appointment and if required replacement or removal of statutory auditor and fixation of audit fees.
3. Review with management, the annual financial statements before approval by the board with particular reference to Directors Responsibility Statement, changes in accounting policy, major accounting estimates, audit findings adjustments, compliance with listing and other legal requirements, disclosure of related party transactions and qualification in the draft audit report.
4. Review of quarterly financial statements
5. Review with management, performance of statutory and internal auditors, adequacy of internal control systems, adequacy of internal audit function including their structure, frequency, reporting.
6. Discussing significant finding of internal auditors, including internal investigations made by them into areas of fraud, irregularities or major failures of internal control systems.
7. Discussing with auditors on the scope of the audit
8. Reviewing reasons for defaults into payments
9. Reviewing the whistle blower mechanism
10. Mandatory review must be made of related party transactions and internal control weaknesses.
11. Review financial statements of subsidiary companies with special attention to investments made by them
12. Review uses/application of funds from public issues, rights issues, preferential issues etc,
13. Disclose shareholdings in the listed company

MCA 21 — ONLINE FILING OF COMPANY LAW FORMS

WHAT IS MCA 21?

The project code named **MCA 21** was conceived and implemented by the Ministry of Company Affairs in association with Tata Consultancy Services Limited to usher in E-Governance in the field of Company Law.

The Ministry has issued Notification No. GSR 56(E) on February 10, 2006 and has notified a completely new set of e-forms replacing all of the earlier paper forms required to be filed under various provisions of the Companies Act. From 28th February, 2006 no Form in the earlier formats were valid.

From 16th September, 2006 completely online filing is introduced and paper forms or forms without digital signatures are no more accepted anywhere in the country.

A dedicated website, known as the MCA Portal is launched to facilitate e-filing of various forms. The url of this website is *www.mca.gov.in*.

The MCA portal contains detailed instructions about the scheme, various forms and a lot more information.

OVERVIEW OF MCA 21

Key components

a. A new set of electronic forms or e-Forms are created and notified to suit e-filing. The new forms are periodically changed by the Ministry and hence only latest forms should be uploaded for effective filing of the form.

b. Electronic Payment mechanisms are evolved to enable immediate e-filing. The traditional payment facility at the Bank counter will also continue to be available. Five Banks, including two private banks, with 200 branches nationwide have been authorised to accept all MCA payments.

c. Use of Digital Signatures Certificates is mandatory to ensure authenticity and maximum security of documents to be filed electronically.

d. Facilitation Centres (Physical Front Offices or **PFO**) are established in all major cities including the ROC office locations and 8 Special Economic Zones (SEZs) to support those needing assistance in e-filing.

e. Digitization by scanning and electronic storage, of about six crore sheets of documents all over the country (including Memorandum and Articles of Association, other permanent documents, charge related documents and annual statutory filing of the previous two years) has already been completed and made available on the MCA portal for easy access over the Internet.

f. At a later date, Stamp Duty is also proposed to be collected for all relevant transactions along with other MCA payments, subject to authorizations from the respective State Governments. This will eliminate the use of physical stamp papers.

THE FIVE STEP E-FILING PROCESS

You can carry out e-filing through a five steps process outlined below:

Step 1: Register Yourself

Only registered users are allowed to do e-filing. Registration is a simple, one-time process.

Step 2: Download e-Form

a. The new e-Forms are in the ‘PDF’ format. They are freely downloadable and instructions for filling each of the e-Forms are also available alongside the e-Forms. E-forms are categorised in different sections according to the use of the form.

b. It is not necessary to download the e-Form each time but since ***they are frequently revised just make sure that you are using the latest e-Forms version currently in use***.

Step 3: Complete e-Form

a. You may choose to fill-in an e-Form either online or offline.

b. Online form filling will need you to keep your Internet connection active whereas offline form filling can be done without staying connected.

Filing e-Form

a. These e-Forms can be filled-in and signed digitally using the software called Acrobat Reader version 7.0.5 or any version above it. This software is freely downloadable and is also available on the MCA portal.

b. Certain fields can be filled-up automatically by the System (to the extent such data is available in the database of MCA) by selecting the "pre-fill" option that is available in the form. You can also do "automated pre-scrutiny", a step that will ensure that your e-Form is complete in all respects and is good for e-filing.

c. You can also attach supporting documents, where applicable. You have to make sure that these are also in PDF format. Support for conversion of popular formats such as Microsoft Office into PDF is made available on the MCA 21 portal.

d. You must make sure to keep the size of your attachments to the minimal; in any case not more than 2.5 MB per form including the attachment thereto, if the file size is bigger, break the file in multiple files by making separate files for separate pages.
Form including the attachments larger than this size will not be uploaded.

e. The e-form must be signed using the Digital Signature Certificate (DSC). If more than one signatory is involved (as would normally be the case as most of the forms are required to be countersigned by any specified professional), you can send the e-form either on suitable media or as an email attachment or transfer a file over the network to other individuals who can also sign digitally. While applying multiple signatures you have to also make sure that contents of the e-form are not altered after it has been first signed digitally by any one. In case of subsequent alteration the document will become invalid and will be rejected during the e-filing process. After all individuals have digitally signed the form, it is ready for submission.

Step 4: Submit e-Form

a. A connection to the Internet will be required to carry out e-filing. Submission will need to be made at the MCA 21 portal using specialized functionality that is provided.

b. Sending the e-Form by email is not permitted.

c. Submission of e-Form should normally take a couple of minutes and will depend on the size of e-form/ attachments and the speed/quality of your Internet connection — better the connection, faster the process.

d. If the e-form is identified as defective by the MCA 21 system, it will be rejected on submission and the user informed with prescrutiny error.

e. A copy of the document that has been submitted shall remain in your possession and you may keep this as a part of your records.

Step 5: Make payment

a. Fee calculation will be done automatically by the system as applicable under law and the fee for the service will be displayed to the user.

b. You can choose to make payment through your Credit Card, Internet Banking Account or through Challans payable at designated bank counters. A total of two hundred branches of five banks have been authorized to collect MCA payment.

c. In the case of Credit Card and Internet Banking it is to be noted that the charges/commissions towards this facility, as may be levied by the Bank, will be charged in addition to MCA payments by the concerned Bank and will need to be borne by you. System will generate a receipt that you can retain as a part of your records.

d. In the case of challan payment, a fully completed challan will be generated by the system that can be printed by you and taken to any of the nearest authorized branch. You may choose to pay either through cash (limits as stipulated by Law will be applicable) or through a local cheque or DD.
The acknowledged copy of the challan will serve as your receipt. The payment should be made on or before the expiry date stated on the challan generated.

e. Once you have made the payment in the Bank following the challan payment system, the filing is complete. Based on confirmation of payment by the bank to the MCA 21 system, the document is transmitted to the Back Office for further processing.

f. In case you are approaching the last day of time-bound filing (e.g., in the case of filing of registration of Charges or Annual Returns and Balance Sheets) you have to ensure that you complete the payment process on or before the last day failing which you will have to pay the delayed filing fees.

g. In case you do not make payment within the period stipulated in the challan, your request submitted earlier will automatically expire. If you want to file a document that has expired, you have to start the process from Step 4 or Step 3 if any changes to the e-Form are required.

The status of the payment after the same is made can be checked out on the site.

COMPLETION OF E-FILING

The e-filing process will be completed once the necessary payment is remitted after which the documents filed will be electronically forwarded to the concerned ROC office (also referred to as Back Office) for further processing within two working days. You will also be provided a facility at MCA 21 portal to check if the e-filing has been completed successfully. The Service Request Number (SRN) is printed on the challan or the computer generated receipt and is used to track your service request.

What infrastructure and basic details you will need for e-Filing?

System Requirements

Your computer, at the minimal, should have the following:

a. Windows 2000/XP operating system or above versions. Please note that the e-filing will not work on Windows 98 or 95 platforms and you will have to upgrade your operating system.

b. Internet Explorer version 6.0 and above (by default it is available with the above operating systems).

c. Adobe Reader version 7.0.5 or higher version. **Please take note that earlier versions of Acrobat Reader are not compatible with the new e-forms and they will not work with Acrobat Reader version 5 or 6.** You can also download the Acrobat Reader 7.0.5 software from the MCA website.

ACQUIRING A DIGITAL SIGNATURE CERTIFICATE (DSC)

1. Anyone engaged in signing or attestation of e-documents will need to obtain a DSC from any of the authorized agencies by the Government. A list of authorized agencies is provided on the website of Controller of Certifying Authorities ***www.cca.gov.in. Presently the following agencies are authorized:***

   a. Tata Consultancy Services (TCS) [www.tcs-ca.tcs.co.in]

   b. National Informatics Centre (NIC) [www.nic.in]

   c. IDRBT Certifying SAuthority [www.idrbtca.org.in]

   d. SafeScrypt CA Services, Sify Communications Ltd. [www.safescrypt.com],

   e. (n) Code Solutions CA [www.gnfc.com]

   f. MTNL Trust Line [www.mtnltrustline.com]

   g. Customs & Central Excise [www.icert.gov.in]

2. MCA has notified that minimum class II certificate is required for MCA 21.

3. There is a cost associated with the first time procurement and subsequent renewal of these DSCs that is to be borne by you.

4. It is sufficient that you procure one DSC irrespective of the role you play; i.e., Director or professional in practice, as long as there is no conflict of interest. What it means is that the professionals will not be able to attest documents of the companies if they serve as directors in the same company.

REGISTRATION OF DSC

You will also need to register your DSC with the MCA 21 portal using your personalized login. In case you have multiple DSCs or renew your DSC, you will need to register these as well. Thereafter, you can also use your DSC to login to the MCA 21 system directly.

What is Corporate Identity Number (CIN) and how to obtain it?

The ***Corporate Identity Number (CIN)*** is a unique identifier of a company just like PAN number. Each company is provided this number which consists of identifier components for year of formation, the Registrar of Companies having jurisdiction over the company, type of company whether public, private listed or unlisted and the company number given at the time of incorporation. You can search for the CIN on the MCA website using the company registration No. or its name or old CIN etc. **This** is required to fill the various e-forms.

The CIN of the Company may change over a period of time due to change of name, transfer of registered office, merger etc. System only displays the current name and CIN. In case of change of CIN, the user is required to enter previous (inactive) CIN and the system displays corresponding active CIN. In case of change of name, the user is required to enter old name and the system displays corresponding current name. This facility can be used without logging into the system.

DIRECTOR IDENTIFICATION NUMBER (DIN)

It is a unique identification number for an existing Director or a person intending to become the Director of a company. DIN is pre-requisite for filing of certain company related documents. Anyone who is a director or intends to become a director of a Company must apply for DIN. The detailed procedure to apply for DIN including the online application is hosted on the MCA website.

Step by step process to be followed by the applicant is as under:

a. Click and open the application form (Form DIN-1) on the portal **www.mca.gov.in** and fill-up the particulars on-line. Do not use any abbreviations or initials in the case of name.

b. Click on the 'Submit' function. The system would automatically generate a provisional DIN in the space provided for in this form. This provisional DIN can be used for e-filing until the final disposal of your DIN application. After Generation of Pro. DIN of filing fees of Rs. 100 to be paid.

c. Take a print-out of the filled in DIN-1 Form, affix the applicant's photograph in the space provided, get the undertaking at the end manually signed.

d. Enclose copies of the proof of identity and the proof of residence with the application form. Get the photograph and the documents attested by any of the authorities specified therein.

e. Send the completed application in DIN-1 along with the documents by post to the Central DIN Processing Cell at NOIDA at the following address:

(For Reg./Speed Post & Other Courier)
MCA DIN Cell,
A-14, Sector - I, PDIL Bhawan,
Noida, Uttar Pradesh
Phone: 0120-6522477/78

Or

(For normal Posted mail)
MCA DIN Cell
Post Box No. 03
Noida, Uttar Pradesh - 201 301

PROCESSING OF THE APPLICATION BY MCA

The application is examined and processed in the DIN Processing Cell in the office of Regional Director (NR) at NOIDA. After it is found to be in order, a DIN approval letter is generated and dispatched under Postal Certificate to the applicant at the address given by him in the application form. The 'provisional' status of DIN is converted into a regular DIN and activated in the system. DIN, once allotted, is permanent and does not change.

Steps after the DIN is allotted

a. The Director, to whom a DIN is allotted, is required to inform the Companies, on which he is a Director, about the Director Identification Number allotted to him/her in Form DIN-2 within a period of one month of allotment of the DIN.

b. The Companies, thereafter, are required to inform the Director Identification Numbers of their Directors to the Registrar of Companies in Form DIN-3 (online in paperless mode, to be made available after notification by the Ministry in this regard) within a period of seven days after receipt of DIN-2 from the Directors.

c. For incorporating any changes in the personal particulars of a Director, including his address, after he has submitted the information initially in Form DIN-1, the required changes are to be intimated to the Government of India [Regional Director (Northern Region) at NOIDA] in Form

DIN-4 (to be made available after notification by the Ministry). DIN-4 is to be manually filled in mode as in the case of Form DIN-1.

d. As per the newly enacted The Companies (Amendment) Act, 2006 every director is required to obtain DIN. Failure to obtain/intimate DIN will disqualify the director from directorship and make him also liable for prosecution.

PUBLIC FACILITATION CENTRES/physical front office (PFC/PFO)

If you do not have access to necessary computing infrastructure or you are not familiar with the process of
e-filing, you may seek the services of a Facilitation Centre. At the PFO, the following facilities are available:

1. Kiosk facility where you can download and fill in the e-Form.
2. Assistance to help you digitally sign the e-Forms and submit the same. For this, you have to bring your Digital Signature Certificate along with you.
3. Scanning facility for attachments.
4. A challan copy generated by the system will be provided to you to make necessary payment.

At Mumbai, the PFO, which was hitherto located at Cuffe Parade, Colaba, is now relocated to:

Mehta Trade Centre, 1, Shivaji Colony, Sir Mathuradas Vissanji Road, Andheri (East), Mumbai 400 099

Phone 022 – 6450 6000; 6516 1996

CERTIFIED FILING CENTRES

In order to provide a wider reach to MCA 21 services using the services of professionals at prescribed charges, this scheme is notified. The salient features of this scheme are as follows:

1. CA, CS, ICWA, any of the CA/CS/ICWA Institutes and Firms/Bodies corporate with these professionals as partners/directors can make application to be granted recognition as CFC.
2. In case of professional member minimum requirements are two years practice/no misconduct.
3. Minimum Infrastrucure requirements are 2 computers/Printer/Scanner/Internet/Fax/Phone/Staff etc.
4. The licence will be granted initially for 3-year period.
5. List of CFCs is hosted on website of MCA.
6. Application procedure is available on MCA website as well as ICAI website.
7. CFCs can charge at prescribed rates for providing e-filing related services.
8. CFCs are subject to inspection and regulation by MCA and must keep the prescribed records.

The addresses of the approved CFCs are also available on the mca website.

Detailed process handbook and other notifications etc. are available on the accompanying CD.

BUY-BACK OF SHARES AND OTHER SPECIFIED SECURITIES

1. As an alternative mode of buy-back but without requiring approval of the Court/NCLT, a company can carry out buy-back of shares and other specified securities (section 77A and related provisions). The conditions and requirements for carrying out buy-back of securities are as follows:
    a. The buy-back has to be out of free reserves/securities premium account or out of proceeds of issue of shares or other specified securities other than the type of the same kind of securities.
    b. Further, the company cannot make issue of the same type of securities as bought back within six months of buy-back.
    c. Where the buy-back is from free reserves/securities premium account, the Company is required to transfer to Capital Redemption Reserve an amount equal to the face value of the shares bought back.
2. The Articles of Association of the company should authorise the buy-back in.
3. The company should pass a special resolution for authority for buy-back except in following cases;
    a. Where buy-back is for 10% or less than of the total paid-up equity capital and free reserves, the buy-back can be authorized by the Board without approval by special resolution. In such case, further, there should be gap of 365 days between two such buy-backs; and
    b. The authority by way of special of Board resolution will be valid for twelve months.
4. The buy-back should be up to 25% of the total paid-up capital and free reserves and in any case the buy-back of equity shares should not exceed 25% of the paid-up equity share capital in a financial year.
5. The debt equity ratio post buy-back should not exceed 2:1. For this purpose, the term "debt" includes all secured as well as unsecured debt.
6. Buy-back can be only of fully paid-up securities.
7. Listed companies have to comply additionally with SEBI Regulations for buy-back and unlisted companies have to follow Guidelines prescribed by the Central Government.
8. The buy-back can be on proportionate basis or of odd lots or through open market or of ESOPs.
9. The company will have to file a solvency certificate in Form 4A to be signed by at least two Directors including the Managing Director.
10. Shares bought back have to be extinguished/physically destroyed within seven days.
11. Further issue of same kind of securities cannot be made by the company for a period of six months except as bonus shares or sweat equity shares or discharge of subsisting obligations like on conversion or stock option.
12. Buy-back cannot be done —
    a. Through any subsidiary company
    b. Through any investment company or group of investment companies.
    c. Where a company has defaulted in repaying deposits or interest thereon or in paying dividends or in redeeming debentures or preference shares or in repaying any term loans (or interest thereon) from banks/financial institutions.
    d. In case a company that has not complied with section 159, 207 or 211.
13. There are detailed provisions for disclosures in the notice of general meeting, filing of "post buy-back" reports, maintenance of registers, etc.

14. Forms:

   a. Form 4A – Form of Declaration of Solvency

   b. Form 4B – Form of Register of Buy-back

   c. Form 4C – Form of Return to be filed with ROC/SEBI within 30 days of buy-back

15. Penal provisions in case of default – Two years' imprisonment or a fine of Rs. 50,000/- or both to every person connected with the default.

COMPANY DEPOSITS

Companies are restricted from accepting "deposits". The restrictions for non-banking financial companies (NBFCs) are notified by the Reserve Bank of India and for other companies (non-NBFCs) mainly by the Central Government.

The term "deposits" is defined very widely and except for specified exclusions, all monies received by a Company would be deposits.

From the term — 'Deposits', following are excluded namely amounts received from/by way of :

a. Government Local authority, foreign government or any other foreign person or citizen or authority or any amount guaranteed by Government.

b. Banks

c. Various government or semi-government financial companies or Corporation/insurance companies or a public financial institution as

d. Any other company

e. Security deposit from an employee

f. Security or advance from any purchasing, selling or other agents in the course of business or any advance received against orders for supply of goods, properties or services.

g. Subscription to any share, stock, bonds or debentures pending allotment. Any amount received by way of calls in advance so long as this is not repayable under the Articles.'

h. Amounts in trust or in transit

i. Deposits from shareholders, directors or relatives in case of private company.

j. Directors or members out of his/their own funds, by the company. Such director/member has to furnish a declaration in writing to the effect that the funds are not being given out of funds acquired by him by borrowing or accepting from others.

k. Issue of bonds or debentures secured by the mortgage of any immovable property or convertible into shares, subject to certain conditions.

l. Unsecured loans promoters pursuant to an agreement with financial institutions for loans, as long as the loan from such financial institutions are outstanding.

The relevant provisions of sections 58A, 58AA, 58AAA and 58B contain relevant general provisions for protection of depositors, disclosures, etc., mainly for non-fiancial companies.

Restrictions on Acceptance of Deposits:

a. Private companies cannot, vide their articles, accept deposits except from members, directors or their relatives.

b. Companies having a Net Owned Funds (as defined) of less than Rs. 1 crore cannot invite deposits.

c. A company which is in default in repayment of any deposit or part thereof and any interest thereon (applicable w.e.f March 1, 1997).

Acceptance of deposits in violation of section 58A can result in hefty fine for the company concerned and imprisonment up to 5 years and fine for the officers in default.

Penal interest @ 18% for overdue period in respect of deposits matured and claimed but remaining unpaid.

Return of deposits to be filed with the ROC with a copy to RBI on or before 30th June every year in the prescribed form.

Exemption to SSIs :- Vide Notification 2-2-1996 issued by Dept. of Company Affairs SSIs are granted exemption from the provisions of section 58A and rules made thereunder provided : (i) they are registered as SSIs with the Directorate of SSI; (ii) investment in plant and machinery does not exceed Rs. 300 lakhs; (iii) deposits are accepted from not more than 100 persons; (iv) total deposits accepted do not exceed Rs. 20 lakhs or the paid-up capital of the company, whichever is less.

SPECIAL PROVISIONS IN RELATION TO DEPOSITS BY SMALL DEPOSITORS (SECTION 58AA)

- Small depositors are persons who have deposited in a year amounts not exceeding Rs. 20,000 as deposits with a company.
- Companies, including NBFCs are required to report on monthly basis of the default in repayment of deposits of small depositors. The Tribunal may take *suo motu* action against such defaulting companies and pass orders in this regard.
- Companies that make default to small depositors in respect of their deposits cannot accept further deposits from small depositors.

Depositors can make nomination in the manner provided in sections 109A/B in respect of their deposits.

Companies that default in repaying deposits suffer several disabilities such as prohibition in making inter-corporate loans and investments, buy-back of shares,

Companies (Acceptance of Deposits) Rules, 1975 – important features

1. Several sources and types of deposits excluded from definition and hence not covered by these rules. Important of such exclusions are:-

    a. Deposits from government, local authority and from foreign government or authority, and foreign citizens and persons.
    b. Deposits from specified banks and financial institutions.
    c. Deposits from other companies.
    d. Security deposits from employees.
    e. Deposits from Directors for the Company.
    f. Deposits from its shareholders or directors or relatives of directors.
    g. Deposits against security of specified types.

2. All inclusive brokerage between 1 and 2% depending upon term of deposits can be paid.

3. Limits of acceptance of deposit:

as % of paid-up capital and free reserves* as per latest audited balance Sheet	
(1) Short-term deposit for a period of 3 or more months	10
(2) Deposit from shareholders in case of public company or deposits guaranteed by Directors or deposits against unsecured debentures	10
(3) Public deposits	25

* Free reserves do not include – reserve created for payment of future liability for depreciation or for bad debts or created by revaluation of assets.

4. Limits on deposits as a percentage of "net worth" as defined:—

   a) Deposits against unsecured debentures or from shareholders or deposits guaranteed by directors – 10%

   b) Other deposits – 25%.

5. The term of deposits, generally, cannot be less than six months and more than thirty-six months. Short-term deposits payable not earlier than three months can however be accepted to the extent of 10% of "net worth".

6. Companies accepting deposits need to maintain unencumbered "liquid assets" in specified type of securities/ accounts to the extent of 15% of deposits that would mature in that financial year. To be used only for repaying such deposits but even after such use, such liquid assets shall not fall below 10% of the remaining maturing deposits during that financial year.

7. Advertisement containing prescribed disclosures has to be made for invitation of deposit. Where deposits are accepted without invitation, a statement in lieu of advertisement has to be filed.

8. If deposits and mature and are claimed but not paid, a penal interest of 18% would be charged for the period of delay. For delay to small deposits, the penal interest is 20%.

9. Annual returns with certificate from auditors in prescribed forms has to be filed with the Registrar of Companies by 30th June of each year with a copy sent to the Reserve Bank of India.

DIRECTIONS OF THE RESERVE BANK OF INDIA TO NON-BANKING FINANCIAL COMPANIES

Non-banking financial companies RBI Directions – Important provisions

NBFC DIRECTIONS, 1998

1. Directions as notified by the RBI and applicable to NBFCs:

    a. NBFCs Acceptance of Public Deposits (Reserve Bank) Directions, 1998 [AOPDRBD][Notified on 31-1-1998]

    b. Non–Banking Financial Companies (Deposit Accepting or Holding) Prudential Norms (Reserve Bank) Directions, 2007 [PN(D)RBD] [Notified on 22-2-2007]; and Non–Banking Financial Companies (Non-Deposit Accepting or Holding) Prudential Norms (Reserve Bank) Directions, 2007 [PN(ND)RBD] [Notified on 22-2-2007];

    c. Non-banking Financial Companies Auditor's Report (Reserve Bank) Directions, 1998 [ARRBD] [Notified on 2-1-1998]

The principal on which Directions are issued is that they are aimed at deposit accepting NBFCs and are applicable in a restrictive manner (with a lot of compliance requirements) to NBFCs accepting/holding deposits, and in a limited manner (with least compliance requirements to NBFCs not accepting deposits.

2. Classification as an NBFC

    The Reserve Bank of India has clarified that for a company to be classified as an NBFC, to decide on its principal business, it will have to satisfy the two tests of assets and income. The financial assets should be more than 50% of the total assets (netted off by intangible assets) and the income from financial assets should be more than 50% of the gross income. Both these tests need to be satisfied for a company to be regarded as an NBFC.

3. Registration Requirement

    An NBFC cannot commence/carry on its business without—

    (a) Obtaining the certificate of registration from the Reserve Bank of India; and

    (b) Having NOF of Rs. 25 lakhs (Rs. 200 lakhs for companies applying for registration after 21-4-1999)

4. Definition of "Public Deposits"

    The definition of "Public Deposits" has been amended by the AOPDRBD to provide for exclusion therefrom of the following items:

    a. Inter-corporate deposits;
    b. Deposits from shareholders of a private Co. and from Directors of a limited Co. or from relative of Director of the NBFC.
    c. Amount received on issue of Optionally Convertible Debentures;
    d. Amount received from promoters based on Financial Institution stipulations.

    The above four categories of deposits remain restrictive deposits, and are hence, exempt.

5. Net Owned Fund (NOF) is defined in S. 45-1A of the Reserve Bank of India Act, 1934 and includes

    a. paid-up equity capital,

    b. free reserves, and

    c. paid-up preference share capital that is compulsorily convertible into equity.

    From these items, one has to reduce,

    - accumulated balance of loss;
    - deferred revenue expenditure;
    - intangible assets; and
    - Excess of 10% of paid-up capital and "free reserves" over;
    - investment in shares of subsidiaries / group companies / other NBFCs; and
    - investment in debentures / bonds/ loans and advances (including HP / Lease Finance) made to subsidiaries / group Cos.

6. Deposit Acceptance Ceiling and Credit Rating

    Deposit acceptance is now related to Credit Rating and compliance of all the Prudential Norms contained in the PNRBD.

7. NBFC with NOF less than Rs. 1 crore cannot accept deposits.

8. Entitlement to hold / accept public deposits w.e.f. 18-12-1998 as under:

NOF (Lakhs)	**Equipment Leasing Company (ELC) / Hire Purchase Finance Company (HPFC)**	**Loan Company (LC) / Investment Company (IC)**
<25	NIL	NIL
>25	1.5 times subject to Rs. 10 crores	NIL
>25 with MIG Rating	if CRAR* 15% 4 times s.t. CRAR* of 10% (on 31-3-1998) & 12% (on 31-3-1999) *= CRAR is Capital to Risk Asset Ratio	1.5 times subject to CRAR* of 15%

9. Liquidity Norms

    9.1 NBFCs accepting / holding public deposits are required to invest in unencumbered approved securities as a percentage of deposits accepted u/s 45 IB of the RBI Act, 1934 ranging from a percentage of 5% and 25% (as may be notified from time to time by the RBI) of the deposits outstanding at the close of the business of the business of last day of the 2nd preceding quarter. A Quarterly Return is required to be submitted by an NBFC within 15 days of the month succeeding the quarter to which it relates. The liquidity requirement limits are as under:

Type of NBFCs	To invest in unencumbered Approved securities
(a) ELC / HPFC	15% of deposits (pursuant to AOPDRBD)
(b) Registered IC/LC	- do -
(c) Other NBFCs	15% of deposits (pursuant to AOPDRBD)

Non-compliance with the liquidity requirements is liable to penal interest on the shortfall @ 3% above the Bank Rate for delay of one quarter and delay beyond that @ 5% above Bank Rate.

10. The ceiling of rate of interest is specified at 12.50% per annum w.e.f. 24th April 2007
11. A NBFC shall have its accounting year as the financial year ending on 31st March every year.
12. Returns to be filed by NBFC to RBI:
    a. Annual Return of Deposits in the prescribed form within 6 months of the financial year.
    b. Half yearly return on prudential norms in Form NBS2 within 3 months of the end of half year.
    c. Quarterly Return in form NBS-5 Monetary an Supervisory Return by all NBFCs holding public deposits of Rs.20 crores and above.

Note : NBFCs not holding / accepting public deposits are not required to file returns at (b) and (c) above.

13. Ceiling on payment of brokerage: Brokerage / commission/ incentive/ any other benefits by whatever name called up not to exceed 2% of the deposits collected. In additions, reimbursement of expenditure can be made up to 0.5% of the deposits collected.
14. The maturity period for public deposits is minimum 12 months and maximum 60 months.
15. Premature encashment of deposits within 3 months is not permitted. However, interest rate on premature encashment are;

Period Held	Rate
3-6 months	No interest
6-12 months	Up to 10% p.a.
12 months up-to-date of maturity	1% less than contract rate

16. The auditors are required to report upon 17 matters notified by the RBI Directives, in case of accounts finalized of the NBFC and in case of any qualified/adverse/unfavourable reporting, the Report is also to be sent, by the auditors, to the concerned Regional Office of the Department of Non-banking Supervision, RBI where the registered office of the NBFC is situated. Contravention of RBI Act/Directions is also required to be forming part of statutory audit report to shareholders u/s 227(2) of the Companies Act,1956.
17. The Auditor of NBFC has to verify on a continuous basis compliance of capital adequacy ratio requirement.
18. A Schedule as per format prescribed in the notification No. DIVBS 167/GGM (OPA)-2003 dt. 29-3-2003 should be given.

MERGERS, AMALGAMATION AND ACQUISITIONS

The term "mergers" and "amalgamation" are practically synonymous while acquisitions usually refer to acquisition of undertakings though all these three terms are often used interchangeably in common parlance. For this material, however, mergers/amalgamation will refer to amalgamation of companies carried out pursuant to section 394 of the Companies Act, 1956 while acquisition will refer to acquisition of undertakings. Note that a typical restructuring transaction such as amalgamation or acquisition has many implications apart from the requirements of the Companies Act, 1956 but some of such implications are also referred to herein.

MERGERS/AMALGAMATIONS

Depending upon the type of companies, their assets and individual features, the issue and procedures involved will be different. Some of the important steps and issues that one needs to keep in mind before and while carrying out the amalgamation are as follows.

BUSINESS AND STRATEGIC ISSUES

1. Need and rationale for merger and preparation of cost-benefit ratio including financials.
2. Carefully evaluating implications of amalgamation under various laws including income-tax, stamp duty, etc.
3. Carefully evaluating the need, time frame and costs for various activities and approvals.
4. Deciding on date from which amalgamation is to take effect.
5. Due diligence of transferor company.
6. Valuation and exchange ratio.

INDICATIVE CHECKLIST OF SOME IMPORTANT PROCEDURES AND APPROVALS

1. Preparation of Scheme and other documents.
2. Check power in Memorandum of both companies for amalgamation and, if not, incorporate such powers. Check also whether transferee company has powers to carry on business of transferor company.
3. Approval at Board Meetings including related matters.
4. To intimate the Stock Exchanges where the companies are listed and also to obtain approvals and generally carry out other compliances under the Listing Agreement.
5. Filing of petitions with Court (based on the location of the registered office of the company, there may be application in different courts or a common high court).
6. Getting audit done by auditor appointed by Official Liquidator.
7. Meeting objections, if any, by Regional Director.
8. Calling and holding of general meetings of shareholders and creditors, as ordered by court.
9. Issue of advertisements relating to the amalgamations.
10. Filing of report by Chairman of individual meetings.
11. Obtaining sanction of Court for the amalgamation.
12. Payment of stamp duty, as applicable.
13. Carry out post-merger formalities including filing of order of amalgamation within 30 days with Registrar of Companies, transfer of employees, etc..
14. Issue of shares and/or other consideration to the shareholders of the transferor company.
15. Proper accounting of the amalgamation as per Accounting Standard 14 and generally disclosure in Board’s report regarding the amalgamation.

ACQUISITIONS

Acquisitions in business and substantive terms is similar to an amalgamation except for legal implications and procedures. Hence, refer to points under "Business and Strategic Issues" for amalgamations also. In particular, a study of the undertaking and surrounding facts should reveal special features and issues that would need consideration and compliance.

INDICATIVE CHECKLIST OF SOME IMPORTANT PROCEDURES AND APPROVALS

1. Check power in memorandum of association to carry out acquisitions and to carry on business of seller Company.
2. Valuation of the undertaking.
3. Board approval for the acquirer company.
4. Board and shareholder approval for the transferor company.
5. Documentation for the transfer.
6. Consideration and payment of applicable stamp duty.
7. Payment of consideration and formalities therefore, depending upon the type of consideration.
8. Post acquisition issues including accounting, disclosure, transfer of employees, etc.

DEMERGERS

Demerger is when a company hives of or separates one or more industrial undertaking into another company or to an existing company. the company to which the industrial undertaking is transferred is the Resulting company and the company which transfers the industrial undertaking would be the Demerged Company.

INDICATIVE CHECKLIST OF SOME IMPORTANT PROCEDURES AND APPROVALS

1. Check power in Memorandum of Association to demerge or sell or transfer the assets and liabilities of the company.
2. Valuation of the undertaking.
3. Board approval for the demerger.
4. Obtain necessary consents/approvals, if any prior to the demerger.
5. Prepare Scheme of Arrangement.
6. Apply to the Court/NCLT in prescribed forms. (Refer Form Nos. 33-40).
7. Shareholder’s approval at the general meeting concerned for the purpose.
8. File the approval of the court with the ROC within 30 days.
9. Documentation for the transfer.
10. Allot the securities in the resulting company to the shareholders of the transferor or demerged company.

SLUMP SALE

Slump sale means the transfer of one or more undertakings as a result of a sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale.

Indicative checklist of some important procedures and approvals

1. Check power in Memorandum of Association to sell or transfer the assets and liabilities of the company.

2. Valuation of the business to be sold on slump sale basis.
3. Board approval for the slump sale and the consideration thereof. Intimate concerned stock exchanges.
4. Ascertain tax liability under Income tax/sales tax etc..
5. Prepare Slump Sale Agreement.
6. Obtain Shareholders' approval as special resolution if the same is by postal ballot, comply rules thereof. File the special resolution with the ROC.
7. Execute the Agreement.

INTER-CORPORATE LOANS AND INVESTMENTS (SECTION 372A)

1. The provisions of the Companies Act, 1956 would need consideration when a Company makes a loan to or invests in another body corporate. The provisions of section 372A are considered here.
2. The section applies to the following type of transactions (by say, Company A) :—
   a. Loan by Company A to any other body corporate. "Loans" include inter-corporate deposits and debentures.
   b. Giving by Company A of guarantee of provision of security in connection with a loan made by:—

      (i) Any other person to any other body corporate of

      (ii) To any other person by any other body corporate.
   c. Acquisition by Company A, by way of subscription, purchase or otherwise the securities of any other body corporate. "Securities" for this purpose would be as defined under section 2(h) of the Securities Contracts (Regulation) Act.
3. The section applies to public companies only and thus not to private companies. The section also does not apply loans, etc. made by the following companies:—
   a. Banking, insurance or housing companies, in the ordinary course of their business;
   b. Companies established with the object of financing industrial enterprises or of providing infrastructural facilities.
   c. Company whose principal business is the acquisition of shares, stock, debentures or other securities.
4. The section also **does not apply** to the following transactions:—
   a. Investment in shares allotted pursuant to section 81(1)(a).
   b. Loans by holding companies to its wholly owned subsidiary. Guarantees/securities by holding companies for loans to its wholly owned subsidiary. Investments in securities by Holding Company of its wholly owned subsidiary.
5. A company make loans, etc. up to the **higher** of the following:—
   a. 60% of its paid-up share capital and free reserves.
   b. 100% of its free reserves.

"free reserves" for this purpose means reserves free for distribution as dividends and share premium but excluding shares application money.

6. For loans, etc. beyond this limit, the company would need approval by way of special resolution where the prescribed disclosures should be made in respect of the proposed loan, etc.
7. For any loans, etc., approval shall be taken of the company at a Board meeting with the consent of all the directors present at the meeting and also the prior approval of the public financial institution whose term loan to the company is subsisting. However, where the loan, etc. is not beyond 60% of the company's paid-up share capital and free reserves and there is no default in

repayment loan or payment of interest, the prior approval of the public financial institution would not be required.

8. Loans shall not be made at lower than the prevailing bank rate, as defined.
9. Companies that have subsisting defaults of section 58A cannot make loans, etc.
10. The company should maintain a register of loans, etc. with prescribed details.
11. For contravention of provisions of this section (other than the requirements relating to maintenance of register), imprisonment or fine is provided for. However, such term of imprisonment/ amount of fine would be reduced to the extent to which the loan, investment, etc. is recovered.