

# Members' Ready Referencer

## 2016 - 17

### Eastern India Regional Council

The Institute of Chartered Accountants of India

CD Inside



# President, Vice-President, ICAI & Team EIRC 2016 – 17



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## **Eastern India Regional Council of The Institute of Chartered Accountants of India.**

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MEMBERS' READY REFERENCER 2016-17

# ABOUT THE ICAI

The Institute of Chartered Accountants of India is a statutory body established by an Act of Parliament viz., The Chartered Accountants Act, 1949 in the year 1949 for regulating the profession of Chartered Accountancy in the country. The Institute, which functions under the administrative control of Ministry of Corporate Affairs, Government of India, has five Regional Councils at Mumbai, Chennai, Kanpur, Kolkata and New Delhi. It presently has 155 Branches covering the length and breadth of the country, 22 Chapters outside India and an overseas office in Dubai.

Founded 66 years ago with just seventeen hundred members, the Institute has grown to cross mark of 2,46,000 members and 9,35,000 students as of now. A significant majority of our membership is in practice and a good deal of specialisation in traditional areas of direct/indirect taxes and in emergent specialism's inter-alia, in financial services, information technology, insurance sector, joint ventures, mutual funds, exchange risk management, risk and assurance service environment/energy/quality audits, investment counseling, corporate structuring and foreign collaborations. The other half was/is in employment, many occupying senior positions such as CMDs in Banks/ Financial Institutions, CEOs in leading and reputed public/private sector companies etc.

One of the important elements of the developmental role of the Institute is to make contributions to Government authorities and Regulations viz., the Ministry of Corporate Affairs, Trade Policy Division of the Ministry of Commerce, CBDT, RBI, IRDA, C&AG, SEBI etc. to name a few, on relevant matters of importance to the economy and profession.

On International front, the Institute, a permanent member of International and Regional Accounting bodies, like International Federation of Accountants(IFAC), International Accounting Standards Board(IASB), Confederation of Asian and Pacific Accountants(CAPA) and South Asian Federation of Accountants(SAFA) has made its presence felt through its effective and sustained contribution Professional bodies like American Institute of Certified Public Accountants(AICPA) in U.S.A. The Institute of Chartered Accountants in England and Wales(ICAEW) in U.K. and a host of similar bodies in many other countries have signed MOUs with our Institute for professional collaboration in areas such as education, examination, training etc. and on issues confronting the accounting profession worldwide.

The Institute, being a statutory body, is administered by a Council which is the highest policy making body of the chartered accountancy profession. The Council is comprised of 40 members of whom 32 are elected from among its members spread all over the country. The remaining eight members are nominated by the Central Government representing such authorities as the Comptroller and Auditor General of India, Ministry of Finance, Ministry of Corporate Affairs and persons of eminence from the fields of law, banking, economic, business, finance, industry, management, public affairs etc.

# ABOUT EIRC

In 1952, Eastern India Regional Council (EIRC of ICAI) was constituted with its jurisdiction on West Bengal, Orissa, Assam, Tripura, Sikkim, Arunachal Pradesh, Mehalaya, Nagaland, Manipur, Mizoram and the Union Territory of Andaman & Nicobar Islands. The founder Chairman was Mr. Molay Deb and the office of EIRC was located in the 2nd Floor of 7, Hastings Street(Now renamed as Kiron Shankar Roy Road).

On 10th December, 1975, the foundation stone of the present EIRC Building at 7, Russell Street (Now renamed as Anandilal Poddar Sarani) was led by the then Chief Justice, Calcutta High Court, Hon'ble Justice Shankar Prasad Mitra. On 14th April, 1977, the building was inaugurated by the then Hon'ble Governor of West Bengal, His Excellency Shri A.L. Dias.

On 17th January, 2014, the Second State of Art Building at 382/A, Prantik Pally, Rajdanga, Kasba, Kolkata-700107 has been inaugurated and the same is in operation to cater its dedicated service to its more than 23,005 Members and 83,690 Students.

EIRC has 13 Branches, 18 Study Circles, 5 Study Circles for Members in Industry, 8 CPE Chapters and 9 Study Groups.

EIRC has the privilege and pride in presenting 10 Presidents to ICAI and each one of them has enriched and empowered the profession through their visionary leadership and innovative dynamism.

The cherished dream of EIRC is to kindle the spark within the fraternity and to make the members world class professionals as well as good human beings – to contribute as an active partner in the nation building exercise.

# PRESIDENT'S MESSAGE



In the emerging time which is throwing up newer challenges and opportunities with globalisation, emerging technologies and rules being continuously rewritten, knowledge will be power and success will be for those who will innovate. To innovate, learning process has to be continuous. *'There is no wealth like knowledge, and no poverty like ignorance.'*, said Lord Buddha. These words perfectly describe the importance of knowledge. However, knowledge in itself is not sufficient to achieve success. Wisdom should be attained out of that knowledge. One should be aware about the developments around us as the proverb goes, *'To acquire knowledge, one must study; but to acquire wisdom, one must observe.'*

With the aim to provide our members a single point resource to acquire knowledge and wisdom, the Eastern Indian Regional Council (EIRC) of the ICAI is releasing Ready Referencer 2016-17 which covers relevant acts, rules, regulations and updated information relating to varied subjects like accounting, auditing, tax and corporate laws etc. for the benefit of all. My best compliments to all associated with the compilation and finalization of this Referencer.

I am sure all the members will find the Referencer beneficial and useful in their day to day professional activities.

With best wishes,

**CA. M. Devaraja Reddy**

President,

The Institute of Chartered Accountants of India

# VICE PRESIDENT'S MESSAGE



Knowledge is unlimited and has no peripheries. It is for us to identify the ways and means of attaining it and making its best possible use. In today's globalised world, the opportunities are exponentially increasing. But along with opportunities there come the challenges and sky shooting expectations of the stakeholders. In a rapidly changing world, Chartered Accountants have evolved as a professional group with new concepts and procedures to meet the varied demand made by society on their skills. In view of this, it is essential for any dynamic and service oriented profession like ours to keep abreast with changing needs and expectations of the society.

In this technological world also, where everything is available on the click, the everlasting importance of books can't be underestimated. Describing the significance of books, the great philosopher Confucius once said, "No matter how busy you may think you are, you must find time for reading, or surrender yourself to self-chosen ignorance." In this direction, a Referencer is one point source which carries whole gamut of information for the benefit of professionals such as Chartered Accountants Act & Regulations, Accounting & Auditing Standards, provisions of code of ethics, guidance and information on direct taxes, indirect taxes, company law, other laws, etc.

I am pleased to note that the Eastern India Regional Council (EIRC) of the ICAI, every year comes out with a Members Ready Referencer and 2016-17 version of the same is being released herewith. My compliments to all expressly to Chairman and Office bearers of EIRC who are involved in the development, updation and finalization of this Referencer. I am sure this will fulfill the objectives of its release and members will find it greatly useful in their day-to-day professional activities.

**CA. Nilesh S. Vikamsey**  
Vice-president

# CHAIRMAN'S MESSAGE



The profession of Chartered Accountancy, in time has evolved to become more challenging, demanding and also additionally onerous due to various mandatory compliances. We Chartered Accountants are facing these in every phase of our professional assignments. Appreciating the above we at the helm of affairs has put in our endeavour to extend our helping hand to the professionals in presenting them with a kind of material/handbook which will benefit them in seeking useful information at a click of a mouse or a glimpse.

As a responsible professional, it is expected of the CA fraternity that they are constantly and regularly updated with the requisite knowledge and skills so that they can offer the best services to their clients even in this changing paradigm. Thus we have come up with the **Members Ready Referencer 2016-17** giving insights on the various topics of professional interest. This Referencer has been compiled lucidly and contains various topics which are applied in our professional life. Going by our initiative of GO – GREEN we have also come out with a CD on the same.

I wish to acknowledge the contribution and all out support by my colleagues in the Regional and Central Council in bringing out this Members Ready Referencer with a special mention of CA Nitesh Kumar More, Chairman, Research Committee, EIRC and the various contributors who have put in their earnest efforts in bringing out this Referencer enabling the same to be launched at the 41st Regional Conference of EIRC. I am also thankful to the Chairperson WIRC alongwith her whole team for extending their support and assistance in compiling various sections of this very Referencer which would be of immense benefit to all the readers at large.

I would request the readers to send their suggestions so that the same can be updated in the future Referencers making the same more useful. I wish all a great learning experience and I am sure that this ready referencer would be found extremely useful by all the readers.

Date: 19th December, 2016  
Place: Kolkata

**CA Anirban Datta**  
Chairman, EIRC

# CHAIRMAN - RESEARCH COMMITTEE'S MESSAGE



*“The elevator of success is out of order. You’ll have to use the stairs...one step at a time.”—Joe Girard*

With these words, I would like to present to our esteemed members the Members Ready Referencer 2016–17. As the Chairman of the Research Committee it was my dream to serve the fraternity by providing them the best material which they can refer while discharging their professional responsibilities. This referencer is a step in that direction which contains various topics of professional interest.

In today’s rapidly changing scenario, it is imperative that the CA fraternity remain at the cutting edge, well equipped with the knowledge of various amendments to rules and regulations through various notifications promulgated from time to time. Hence we have come out with this concise ready referencer which I believe will be a beacon of light for the various users, wherein they will get not only for various references but also the guidance to finalise their responses and to arrive at solutions.

I would like express my sincere gratitude to CA Anirban Datta, Chairman, EIRC for giving me all out support in bringing out this Referencer. I express my sincere thanks to my central council and other regional council members for their guidance and support. I would like to thank all the professionals who have worked hard in making this referencer a reality. Adequate care has been taken to make this referencer error free, but chances of some errors can’t be ruled out. I request you to send your suggestions at [eirc.material@icai.in](mailto:eirc.material@icai.in) so that it can be incorporated in the future referencers.

Date : 19th December, 2016  
Place : Kolkata

CA Nitesh Kumar More  
Chairman, Research Committee, EIRC



# ACKNOWLEDGEMENT

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CA Jyoti Luharuka, Executive Officer, EIRC

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# THE CHARTERED ACCOUNTANTS ACT AND REGULATIONS

## THE CHARTERED ACCOUNTANTS ACT, 1949 (THE ACT)

It is an Act enacted by Parliament w.e.f. 1st July 1949 as amended by Chartered Accountant (Amendment) Act, 2006 for the regulation of the profession of Chartered Accountancy in India. The regulation is exercised through the Institute of Chartered Accountants of India. For the management of the affairs and for discharging the functions assigned to it by the Act, there is a Council of the Institute.

The Act has eight chapters, which deal with provisions relating to membership of the Institute, Council and Regional Councils, misconduct, penalties, power to make various regulations etc.

The Act also has two Schedules relating to professional misconduct.

By virtue of Section 30 of the Chartered Accountants Act, 1949, the Council of the Institute has made Regulations, which are called the Chartered Accountants Regulations (1988). The Regulations have been amended from time to time. The Council has issued guidelines for the members pursuant to the provisions of the Chartered Accountants Act, 1949. Important aspects of these guidelines have been suitably covered under appropriate heads of the Chartered Accountants Regulations, 1988.

Some of the important regulations relevant for members and students are given herein below.

### REQUIREMENTS FOR BECOMING A CHARTERED ACCOUNTANT

Under the existing chartered accountancy scheme of education, training and examination, the requirements for becoming a chartered accountant are as follows:

- (i) Enroll with the Institute for **Common Proficiency Test (CPT)** after passing class 10th examination conducted by an examining body constituted by law in India or an examination recognized by the Central Government as equivalent thereto.
- (ii) Appear in CPT after appearing in the **Senior Secondary Examination (10+2 Examination)** conducted by an examining body constituted by law in India or an examination recognized by the Central Government as equivalent thereto and after completion of specified period (60 days) from the date of registration for CPT with the Board of Studies as on the first day of the month in which examination is to be held, viz., students registered on or before 1st April/1st October will be eligible to appear in June/December examination, as the case may be. However, candidate should pass both CPT and 10+2 before registering for Integrated Professional Competence Course (IPCC).
- (iii) Enroll for Group I or Group II or for both Group I and Group II of Integrated Professional Competence Course (IPCC).
  - (a) Commerce Graduates/Post Graduates with 55 percent marks and non commerce graduates / post graduates with 60 percent marks in aggregate in the examination conducted by any recognized University or candidates passing Intermediate level examination conducted by the Institute of Cost Accountants of India or The Institute of Company Secretaries of India can register directly to IIPC Course.
- (iv) Successfully complete 8 months of study course from the date of IPCC registration.

Successfully complete Orientation Course of 15 days spanning 90 hours and covering topics, such as personality development, communication skills, office procedure, business environment, general commercial knowledge, etc., before commencement of articulated training.

- (a) (The Council has decided to dispense with the General Management and Communication Skills (GMCS) – I Course and merge its syllabus with Orientation Programme. Hence forthwith, it will be known as Orientation Course. Accordingly, it has been decided to conduct an Orientation Course with a duration of 15 days (90 hours) for students enrolling to the batches commencing from July 1, 2016 onwards in accordance with the new syllabus and new guidelines.

- (b) Students registered for practical training on or after May 1, 2012 (since the date of commencement of GMCS-I) till December 31, 2014 would be required to undergo GMCS-I uptill December 31, 2016, if not done earlier. Rest all categories of the students who have already completed the old Orientation Programme (35 hours) are not required to do GMCS-I and will be deemed to have fulfilled the aforesaid requirements.
- (v) Successfully complete 100 hours Information Technology Training (ITT) before commencement of articulated training.
- (vi) Appear and pass Group I as well as Group II of Intermediate ( Integrated Professional Competence) Examination (IPCE). Group I is composed of four papers and Group II is composed of three papers.
- (vii) Register as Articled Assistant for a period of 3 years, on passing either Group I or both the Groups of IPCE.
  - (a) Graduates/Post Graduates securing requisite % of marks mentioned above in aggregate in the examination conducted by any recognized University, can join as an articled assistant after completion of ITT, Orientation course as mentioned under point v and vi above. Such candidates can appear Intermediate (Integrated Professional Competence) Examination after completion of nine months of practical training (including study course for a period of eight months commencing from date of registration to the course).
- (ix) Register for **CA Final Course** and prepare for CA Final Examination.
- (x) Undergo Advanced ITT Training and General Management and Communication Skills (GMCS) (15 days) before applying for membership.
  - (xa.) (The nomenclature of GMCS-II would be changed to GMCS which the students would be mandatorily required to undergo before applying for membership of the Institute.)
- (xi) Complete 3 years period of articulated training.
- (xii) Appear in the Final Examination on completion of the practical training or while serving last 6 months of articulated training on or before the last day of the month preceding the month in which the examination is to be held.
- (xiii) Pass final examination and complete GMCS, if not completed earlier.
- (xiv) Enroll as a member of ICAI and designate as "Chartered Accountant "".

## ENTITLEMENT TO TRAIN ARTICLED ASSISTANT BY A MEMBER (REG. 43)

Eligibility requirement for member giving practical training

- a) Member should be in full time practice.
- b) No. of trainees (articled assistant) given below:

No. of years in Practice	No.
An associate or fellow in continuous practice for a period up to 3 years	1
An associate or fellow in continuous practice for any period from 3 years to 5 years	3
An associate or fellow in continuous practice for any period from 5 years to 10 years	7
An associate or fellow in continuous practice for any period from 10 years	10

In addition to the above full-time salaried employees who have continued as employee with the same firm for a continuous period of three years as on the date of registering as articled assistant shall also be entitled to give practical training as under —

Total number of members — irrespective of whether associate or fellow, who are full time salaried employees	Entitlement for articled trainees
Up to 100	1 articled assistant per employee
Between 101 and 500	100 articled assistants + 50% of the number of such employees above 100 (i.e., a maximum of 300)
From 501 or more	300 articled assistants + 20% of the number of such employees above 500

## STIPEND FOR ARTICLED ASSISTANT (REG. 48)

Minimum monthly stipend as shown below (w.e.f. 23rd January 2015)

Population of normal place of service	1st Year	2nd Year	Remaining period
20 lakhs and above	2000	2500	3000
4 lakhs and above but below 20 lakhs	1500	2000	2500
Less than 4 lakhs	1000	1500	2000

1. Payment to be made by account payee cheque or credit to bank account of articled assistant. Stamped receipt to be obtained by principal.
2. Population figures on the basis of last published census figures.

Explanation 1

For the purposes of this regulation, no stipend shall be payable for any excess leave taken.

## TRAINING IN INDUSTRY (REG, 51)

1. Eligibility: Articled assistant passing Intermediate/ PE-II/PCC/IIPC Examination
2. Period: Between last 9 and 12 months during last year of practical training.
3. Only with recognised financial/commercial/ industrial undertaking with minimum fixed assets of ` 1 crore or minimum total turnover of ` 10 crores or a minimum paid-up share capital of ` 50 lakhs or in any other institution or organisation approved by the Council.
4. Training under a member of the Institute who has been a member for a continuous period of at least three years. Associate Member can train 1 trainee. Fellow Member can train 2 trainees.
5. Intimation of intention to principal under whom serving earlier, at least three months in advance.
6. Agreement in triplicate in Form 104 to be executed.

## **TRANSFER/TERMINATION OF ARTICLESHIP**

Every articled assistant executing the deed of articles for the full period of articled training prescribed under these regulations, shall be required to complete such articles only with the member, who has engaged him.

Students may take termination subject to the following conditions

- 1) Less than 1 year – Any justifiable ground with the consent of Principal
- 2) After 1 year – on permissible ground as per circular in ICAI website with the consent of the principal

## **LEAVE TO AN ARTICLED ASSISTANT (REG.59)**

An articled assistant shall earn leave at the rate of one- sixth of the period for which he has actually served excluding from such period, the period for which he has been on leave subject to a maximum of

Entitlement of leave =  $\frac{1}{6}$ th of the actual period served i.e Period worked – leave taken \ 6

Calculation of excess leave:

a) Total period served during 3 years	= 1095 days
b) Leave taken during the above period	= 210 days
c) Period actually served (a-b)	= 885 days
d) Leave Entitled/Earned $-(\frac{1}{6}$ th of 885 days(c))	= 147 days
e) Excess Leave (b - d)	= 63 days

(Refer Training Guide issued by the Institute)

For the purpose of preparing for CA Exam, the article clerk shall be granted leave by the Principal for 3 months or to the extent due, whichever is less, provided an application for the leave has been made at least 15 days in advance.

The days(including intervening holidays) on which the article clerk appears for any CA exam shall not be treated as leave but would be treated as period served under articleship.

## **Following documents are required to be maintained by the Principal for imparting articleship training to the students:**

- a) Common Attendance record of the article assistant
- b) The original deed of articles in Form 102 executed on non-judicial stamp paper (min Rs 65/-)
- c) Certified copy of the work diary of the article assistant
- d) Monthly Stipend details with evidence in the form of Bank Pass book/statement
- e) A copy of form 103

## **WORKING HOURS OF AN ARTICLED ASSISTANT (REG.60)**

The working hours of an articled assistant shall be 35 hours per week excluding lunch break. His working hours shall not start before 9 am or after 11 am and end before 5 pm or after 7 pm. The working hours of all the articled assistants serving under a practicing chartered accountant must be uniform.

The articled assistant should undergo practical training in accordance with provisions of the Chartered Accountants Regulations and Guidelines as framed by the Council of the Institute from time to time. Breach of aforesaid regulations/guidelines may lead to serious disciplinary action against the articled assistant.

## **PRACTICAL TRAINING RECORDS (REG. 64)**

The principal imparting training to articled assistants shall ensure that the training imparted is of such an order that the quality and standing of the profession are maintained as well as enhanced. For that purpose, he shall



maintain a record about the progress and nature of training imparted by him to the articled assistant, in such form and manner, as may determined by the Council.

(Refer Training Guide issued by the Institute)

### **STUDY OF OTHER COURSES AND ENGAGEMENT IN OTHER OCCUPATION DURING PERIOD OF TRAINING (REG.65)**

Prior permission of the Council to pursue only one additional approved course of study at a time either through correspondence, private or regular is to be obtained by submitting application in form. no 112. During the working hours, the articled is not permitted to attend college/other institutions for pursuing any course including graduation and coaching classes Accordingly, the timings of such classes should not be such (after taking into account time required to commute) which clashes with the normal working hours of the articled training.

An articled assistant is not allowed to engage in any other business/occupation employment excepting sleeping partner/nominal director in family business concern which was in existence before his joining the CA Course and lectureship in college (not exceeding 9 hours per week) in subjects useful for CA course. Prior permission for such engagement is to be obtained by submitting application in form no 112 with relevant documents.

### **MISCELLANEOUS — SECONDMENT OF ARTICLED ASSISTANTS (REG.54)**

A principal may with the consent of the articled assistant, second him to other member/s in practice or industry for a minimum period of four months and an aggregate period for not more than one year with a view to provide the articled assistant an opportunity to receive training in an area which is not available with the principal.

### **COMMONLY USED FORMS**

#### **For Members**

Sr.No.	Contents	Form
1.	Enrolment as Member .....	Form - 2
2.	Certificate of Practice .....	Form - 6
3.	Admission as a Fellow .....	Form - 3
4.	Restoration of Name .....	Form - 9
5.	Restoration of C.O.P .....	Form - 101
6.	Approval of Trade / Firm Name .....	Form - 117
7.	Registration of Trade / Firm Name .....	Form - 18
8.	Forms of Networking .....	Form A, B, C, D
9.	Forms of Merger & Demerger .....	Form E, F
10.	Form for MCS Company .....	Form G, H

#### **For Students (Article Assitants)**

Sl.No.	Subject	Form
1.	Deed of Articles and Registration Form .....	102, 103
2.	For use where articles are assigned .....	106
3.	Deed of Supplementary Articles .....	107
4.	Completion of articled Service .....	108
5.	Termination of Articled Service	
	i. by mutual consent .....	109

ii.	in the case of death of employee	
	(a) to be issued by the legal representative (for Proprietorship / sole proprietorship firm) .....	110
	(b) by a surviving partner ( for Partnership firm) .....	111
6.	Application for permission to study other course / engagement in business .....	112
7.	Particulars of the Audit Assistant to be submitted for registration .....	113
8.	Certificate of Audit Service .....	114
9.	Service Certificate of audit service in the case of death of employer	
	(a) To be issued by the legal representative .....	115
	(b) by a surviving partner .....	116
10.	Form for intimation of change of status of Principal. ....	118
11.	Form for request by the Articled for issuance of Service Certificate in event of Completion of article .....	119
12.	Form for request by the Articled for issuance of Service Certificate inevent of termination of articles .....	120
13.	Apprenticeship Deed for Industrial Training .....	104
14.	Service certificate for Industrial Training .....	105

## CODE OF ETHICS — SALIENT PROVISIONS

### A Chartered Accountant in practice is PROHIBITED:

- to pay commission/brokerage or share of profits of his professional business to/with any person other than a member of the Institute.
- from soliciting clients or professional work by circular, advertisement etc. except for advertisement as per the guidelines dt.14th May, 2008 issued by the Council
- from being Director of a Holding Company in whose subsidiary he is the auditor.
- from responding to advertisements inviting application for appointment of auditors, tenders or circulars or enquiry (made to more than one member) inviting quotation restricted to CA.
- *However members can respond to tenders in the areas where they compete with non CAs. They can also respond to tenders in the audit field outside the country provided the fees are received in foreign currency. The members are permitted to pay a reasonable amount as price for tender/ bid document. In general no earnest money/security deposit is permissible in areas which are exclusive to Chartered Accountants as per Law. However, in non-exclusive area the members are permitted to pay earnest money/security deposit. If only Chartered Accountants are invited in non-exclusive area, the members are permitted to pay reasonable amount towards earnest money/security deposit.*
- From expressing his opinion on financial statements of any business or enterprise in which one or more persons who are his 'relatives' within the meaning of Section 6 of the Companies Act, 1956 have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

### A Chartered Accountant in practice CANNOT:

- Use any designation other than Chartered Accountant on professional documents, visiting cards, letterheads or signboard.

The Council has also decided that a member of the institute shall not be permitted to use initials "CPA" (standing for Certified Public Accountant) on his visiting card.

- Charge fees on a percentage of profits or which are contingent upon the findings, or results of such work provided that.
    - a. In the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets.
    - b. In the case of an auditor of a co-operative society the fees may be based on a percentage of the paid up capital or the working capital etc.
    - c. In the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.
  - Engage in any business other than the profession of chartered accountants unless permitted by the Council.
  - Accept position as auditor previously held by another chartered accountant without first communicating with him in writing.
  - Accept any other work/assignment/service on a remuneration, which exceeds the fees payable for statutory audit of the same undertaking . *(Applicable only in respect of statutory audits of public sector undertaking/ Govt. Companies/Listed companies/other public companies with turnover of ` 50 crores or more in a year for appointments after 1st April, 2002*
- Ref: Notification No. 1-CA(7)/60/2002 published in CA Journal-March, '02 issue).*
- Accept or carry out any audit work involving receipt of audit fees (excluding reimbursement of expenses, if any) for such work of an amount less than what is specified hereunder: *(notification No.1-CA(7)/93/2006 published in CA journal on page 652 of October, '06 issue):*

**Provided** that such restrictions shall not apply in respect of the following:

- i. Audit of accounts of charitable institutions, clubs, provident funds etc. where the appointment is honorary; i.e., without fees;
- ii. statutory audit of branches of banks including regional rural banks;
- iii. audit of newly formed concerns relating to two accounting years from the date of commencement of their operations;

Sl. No.	Cities	Practicing firm having 5 or more partners but	Practicing firm having 10 or more partners less than 10 partners
(i)	in cities with population of 3 million and above	Rs. 6,000/- p.a	Rs. 12,000/- p.a.
(ii)	in cities / towns with population of less than 3 million	Rs. 3,500/- p.a.	Rs. 8,000/- p.a.

- iv. certification or audit under Income-Tax Act or other attestation work carried out by the Statutory Auditor;
- v. Sales Tax Audit and VAT Audit

#### **A CHARTERED ACCOUNTANT SHOULD NOT**

- Accept appointment as an auditor of an entity in case the undisputed audit fees of outgoing auditor for carrying out statutory audit has remained unpaid. This is not applicable in case of sick units.
- Accept in a financial year, more than forty-five tax audit assignments under Section 44AB of the Income Tax Act, 1961
- Accept appointment as auditor of a concern while indebted to the concern or has given a guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases amount exceeding `10,000.
- Accept the appointment as Cost auditor of a company under Section 233B of the Companies Act, 1956 while he
  - a. is an auditor of a Company appointed under Section 224 of the Companies Act or
  - b. is an officer or employee of the Company; or
  - c. is a partner, of any employee or officer of the Company; or
  - d. is a partner or is in the employment of the Company's auditor appointed under Section 224 of the Companies Act, 1956; or
  - e. is indebted to the Company for an amount exceeding one thousand rupees, or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding one thousand rupees.

A member cannot accept appointment as Cost Auditor if after his appointment as Cost Auditor he becomes subject to any of the disabilities stated in points (a) to (e) above.

- Hold at anytime appointment of more than thirty audit assignments of Companies under Section 224 and/or Section 228 of the Companies Act, 1956.
- Accept the appointment as statutory auditor of Public Sector undertaking(s)/Government Company(ies) having turnover of ` 50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same undertaking(s)/Company(ies) on a remuneration which in total exceeds the fee payable carrying out the statutory audit of the same Undertaking/ Company however in case appointing authority(ies)/ regulatory body(ies) lay down more stringent condition(s) restriction(s), the same shall apply instead of the conditions/restrictions specified under these Guidelines.

The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together.

- Without following the direction given by the Council or an appropriate committee or on behalf of any of them, accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s)
- The Council has recently decided that CA's have to mention firms registration no. allotted by ICAI in the audit report signed by them.

Resolution regarding appointment of statutory auditor also should bear firms registration no.

CA's have to mandatorily inform to the Secretary, Administrative Reforms, ICAI, regarding International Affiliation of their firm.

## **A CHARTERED ACCOUNTANT IN PRACTICE CAN**

- Use the Logo(released by the Institute on 1st July 2007) which consists of the letters 'CA' and a tick mark upside down inside a rounded rectangle with white background.( members can use this Logo as per Institute's guideline available on its website/ Refer The CA Journal July 2007).
- Advertise through a write up setting out their particulars of their firms and services provided by them subject to the Guidelines No.1CA (7)/council guidelines/01/2008, Dated 14th May, 2008 issued by the Council pursuant to Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. (Refer The CA Journal July, 2008 for the detailed guidelines).
- Give his name and his firms name under specified groups in telephone directory viz., Yellow Pages brought by telephone authorities.
- Use the designation 'C.A.' as well as the name of the firm in greeting cards and invitation cards.
- Be a director simpliciter in a company without permission of the Council.
- Be a promoter director in a company without prior permission of the Council. Render Management Consultancy and Other Services in Corporate form, subject to the guidelines issued by the Institute in this regard. (Decision in the 261st Council meeting. Published on page 629 of October 2006 issue of C.A. Journal).
- Create his own website subject to overall guidelines laid down by the Council and should ensure that their websites are run on a "pull" and not "push" method.

\*\*\* The members of ICAI who are also members of AICPA and are eligible to sign the financial statements as CPAs (i.e., as members of the AICPA), may do so. So far as ethical standards are concerned, the ICAI ethical standards will apply. When the ICAI members sign the financial documents as CPAs, they should indicate in an appropriate manner, that their firm is an Indian accounting firm registered with the Institute of Chartered Accountants of India under the Chartered Accountants Act, 1949 (Decision in the 257th Council meeting. Published on page 145 of July 2006 issue of C.A. Journal). \*\*\*

## **SELF REGULATORY MEASURES**

Branch Audits of a Company not to be conducted by its statutory auditors consisting of ten or more members but to be entrusted to local firm of auditors consisting of less than 10 members except where accounting records of branches are maintained at the Head Office of the Company or significant operations are carried out at the branch office.

Where large Companies desire to appoint firm with less than five partners as joint auditors, the senior audit firms should not object to the same.

A practicing firm of CAs engaged in audit work should have at least one member for five non-qualified members of the staff, excluding articled clerks, typists, peons and other persons not engaged directly in such professional work.

As a good and healthy practice, auditors should make a disclosure of payments received by them for other services through the medium of a different firm or firms in which the said auditor may be either partner or proprietor.

To ensure professional independence, fees for audit and other services received by a firm, its partners individually and by any other firm in which a partner or partners are partners, from one or more clients or companies under same management should not exceed 40% of the gross annual fees of firm, other firms and partners referred above. This restriction does not apply in cases where such fees do not exceed ` 2 lakhs from the group or where fees relate to audit of government companies or where appointment is made by the Government.

## MINIMUM RECOMMENDED SCALE OF FEES FOR THE PROFESSIONAL ASSIGNMENTS DONE BY THE CHARTERED ACCOUNTANTS

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), ICAI has taken a major initiative for prescribing the Minimum Recommended Scale of Fees for the professional assignments done by the members of ICAI. The recommendation is about the fee to be charged as per the work performed for various professional assignments and the amount quoted under respective heads of professional work. The fee has been recommended separately for Metro and Non Metro Cities. The prescribed Minimum Recommended Scale Fees will enhance the productivity and capacity Building of Practitioners & CA Firms will largely benefit in SMP segment.

## REVISED MINIMUM RECOMMENDED SCALE OF FEES FOR THE PROFESSIONAL ASSIGNMENTS DONE BY THE CHARTERED ACCOUNTANTS

The Revised Minimum Scale of fees for professional assignments done by CAs is available at the ICAI link [http://icai.org/post.html?post\\_id=7252](http://icai.org/post.html?post_id=7252).

PARTICULARS	RATES	
	For Class A Cities Revised Minimum Recommended scale of Fees	For Class B Cities Revised Minimum Recommended scale of Fees
<b>I) ADVISING ON DRAFTING OF DEEDS/AGREEMENTS</b>		
(a) i) Partnership Deed	Rs. 10,500/- & Above	Rs. 7,000/- & Above
ii) Partnership Deed (With consultation & Tax Advisory)	Rs. 15,000/- & Above	Rs. 10,000/- & Above
(b) Filing of Forms with Registrar of Firms	Rs. 4,500/- & Above per form	Rs. 3,000/- & Above per form
(c) Supplementary / Modification in Partnership Deed	Rs. 9,000/- & Above	Rs. 6,000/- & Above
<b>II) INCOME TAX</b>		
A. Filing of Return of Income		
I) For Individuals/ HUFs etc.		
(a) Filing of Return of Income with Salary/ Other Sources/Share of Profit	Rs. 6,000/- & Above	Rs. 4,000/- & Above
(b) Filing of Return of Income with detailed Capital Gain working		
i) Less than 10 Transactions (For Shares & Securities)	Rs. 9,000/- & Above	Rs. 6,000/- & Above
ii) More than 10 Transactions (For Shares & Securities)	Rs. 15,000/- & Above	Rs. 10,000/- & Above
(c) Filing of Return of Income for Capital Gain on Immovable property	Rs. 30,000/- & Above	Rs. 20,000/- & Above
(d) Filing of Return of Income with Preparation of Bank Summary, Capital A/c & Balance Sheet.	Rs. 10,500/- & Above	Rs. 7,000/- & Above
II) (a) Partnership Firms/Sole Proprietor with Advisory Services	Rs. 12,000/- & Above	Rs. 8,000/- & Above
(b) Minor's I.T. Statement	Rs. 6,000/- & Above	Rs. 4,000/- & Above
(c) Private Ltd. Company :		
i) Active	Rs. 22,500/- & Above	Rs. 15,000/- & Above
ii) Defunct	Rs. 10,500/- & Above	Rs. 7,000/- & Above
(d) Public Ltd. Company		
i) Active	Rs. 60,000/- & Above	Rs. 40,000/- & Above
ii) Defunct	Rs. 22,500/- & Above	Rs. 15,000/- & Above
B. Filing of Forms Etc.	(Quarterly Fees)	(Quarterly Fees)
(a) Filing of TDS/TCS Return (per Form)		

	i) With 5 or less Entries	Rs. 3,000/- & Above	Rs. 2,000/- & Above
	ii) With more than 5 Entries	Rs. 7,500/- & Above	Rs. 5,000/- & Above
	(b) Filing of Form No. 15-H/G ( per Set)	Rs. 3,000/- & Above	Rs. 2,000/- & Above
	(c) Form No. 49-A/49-B	Rs. 3,000/- & Above	Rs. 2,000/- & Above
	(d) Any other Forms filed under the Income Tax Act	Rs. 3,000/- & Above	Rs. 2,000/- & Above
<b>C.</b>	<b>Certificate</b>		
	Obtaining Certificate from Income Tax Department	Rs. 12,000/- & Above	Rs. 8,000/- & Above
<b>D.</b>	<b>Filing of Appeals Etc.</b>		
	(a) First Appeal"Preparation of Statement of Facts, Grounds of Appeal, Etc."	Rs. 30,000/- & Above	Rs. 20,000/- & Above
	(b) Second Appeal (Tribunal)	Rs. 60,000/- & Above	Rs. 40,000/- & Above
<b>E.</b>	<b>Assessments Etc.</b>		
	(a) Attending Scrutiny Assessment/Appeal		
	(i) Corporate	See Note 1	See Note 1
	(ii) Non Corporate	Rs. 30,000/- & Above	Rs. 20,000/- & Above
	(b) Attending before Authorities	Rs. 9,000/- & Above per visit	Rs. 6,000/- & Above per visit
	(c) Attending for Rectifications/Refunds/ Appeal effects Etc.	Rs. 6,000/- & Above per visit	Rs. 4,000/- & Above per visit
	(d) Income Tax Survey	Rs. 75,000/- & Above	Rs. 50,000/- & Above
	(e) T.D.S. Survey	Rs. 45,000/- & Above	Rs. 30,000/- & Above
	(f) Income Tax Search and Seizure	See Note 1	See Note 1
	(g) Any other Consultancy	See Note 1	See Note 1
<b>III)</b>	<b>CHARITABLE TRUST</b>		
	(a) (i) Registration Under Local Act	Rs. 22,500/- & Above	Rs. 15,000/- & Above
	(ii) Societies Registration Act	Rs. 30,000/- & Above	Rs. 20,000/- & Above
	(b) Registration Under Income Tax Act	Rs. 22,500/- & Above	Rs. 15,000/- & Above
	(c) Exemption Certificate U/s 80G of Income Tax Act	Rs. 18,000/- & Above	Rs. 12,000/- & Above
	(d) Filing Objection Memo/other Replies	Rs. 9,000/- & Above	Rs. 6,000/- & Above
	(e) Filing of Change Report	Rs. 9,000/- & Above	Rs. 6,000/- & Above
	(f) Filing of Annual Budget	Rs. 9,000/- & Above	Rs. 6,000/- & Above
	(g) Attending before Charity Commissioner including for Attending Objections	Rs. 7,500/- & Above per visit	Rs. 5,000/- & Above per visit
	(h) (i) F.C.R.A. Registration	Rs. 30,000/- & Above	Rs. 20,000/- & Above
	(ii) F.C.R.A. Certification	Rs. 7,500/- & Above	Rs. 5,000/- & Above
<b>IV)</b>	<b>COMPANY LAW AND LLP WORK</b>		
	(a) Filing Application for Name Approval	Rs. 6,000/- & Above	Rs. 4,000/- & Above
	(b) Incorporation of a Private Limited Company/LLP	Rs. 30,000/- & Above	Rs. 20,000/- & Above
	(c) Incorporation of a Public Limited Company	Rs. 60,000/- & Above	Rs. 40,000/- & Above
	(d) (i) Company's/LLP ROC Work, Preparation of Minutes, Statutory Register & Other Secretarial Work	See Note 1	See Note 1
	(ii) Certification (Per Certificate)	Rs. 9,000/- & Above	Rs. 6,000/- & Above
	(e) Filing Annual Return Etc.	Rs. 9,000/- & Above per Form	Rs. 6,000/- & Above per Form
	(f) Filing Other Forms Like : F-32, 18, 2 etc.	Rs. 3,000/- & Above per Form	Rs. 2,000/- & Above per Form
	(g) Increase in Authorised Capital		
	Filing of F-5, F-23, preparation of Revised Memorandum of Association/Article of Association/LLP Agreement	Rs. 22,500/- & Above	Rs. 15,000/- & Above
	(h) DPIN/DIN per Application	Rs. 3,000/- & Above	Rs. 2,000/- & Above
	(i) Company Law Consultancy including Petition drafting	See Note 1	See Note 1
	(j) Company Law representation including LLP before RD and CLB	See Note 1	See Note 1
	(k) ROC Representation	See Note 1	See Note 1
<b>V)</b>	<b>V.A.T./ PROFESSIONAL TAX</b>		
<b>A.</b>	<b>Registration Work</b>		
	(a) Registration Under V.A.T. & C.S.T.		
	Corporate	See Note 1	See Note 1
	Non Corporate	Rs. 15,000/- & Above	Rs. 10,000/- & Above
	(b) Professional Tax Registration (PTR)	Rs. 6,000/- & Above	Rs. 4,000/- & Above
	(c) Professional Tax Enrollment (per Application)	Rs. 3,000/- & Above	Rs. 2,000/- & Above

B.	Filing of Return (V.A.T.)		
(a)	Monthly Challans with Annual Return	Rs. 3,000 + (Per Month)	Rs. 2,000/- + (Per Month)
(b)	Quarterly Challans with Annual Return	Rs. 4,500 + (Per Quarter)	Rs. 3,000/- + (Per Quarter)
(c)	Six Monthly Challans with Annual Return	Rs. 6,000 + (Per 6 Months)	Rs. 4,000/- + (Per 6 Months)
(d)	Yearly Composition Return	Rs. 9,000/- & Above	Rs. 6,000/- & Above
C.	Assessments/Appeals		
(a)	Attending V.A.T./Commercial Tax Assessments	Rs. 15,000/- + 7,500/- (Per Visit)	Rs. 10,000/- + 5,000/- (Per Visit)
(b)	Attending V.A.T./Commercial Tax Appeals	Rs. 15,000/- + 9,000/- (Per Visit)	Rs. 10,000/- + 6,000/- (Per Visit)
D.	Filing of Appeal/Appeals Drafting		
(a)	First Appeal (AC/DC)	Rs. 15,000/- & Above	Rs. 10,000/- & Above
(b)	Second Appeal	Rs. 22,500/- & Above	Rs. 15,000/- & Above
E.	Miscellaneous Work		
(a)	Professional Tax Returns & Assessment	Rs. 7,500/- & Above	Rs. 5,000/- & Above
(b)	Obtaining C/F/H Forms under V.A.T./Commercial Tax	(Per Application)	(Per Application)
(i)	First Time	Rs. 6,000/- & Above	Rs. 4,000/- & Above
(ii)	Renewal	Rs. 3,000/- & Above	Rs. 2,000/- & Above
<b>VI)</b>	<b>AUDIT AND OTHER ASSIGNMENTS</b>		
	Rate per day would depend on the complexity of the work and the number of days spent by each person		
(i)	Principal	Rs. 15,000/- & Above per day	Rs. 10,000/- & Above per day
(ii)	Qualified Assistants	Rs. 7,500/- & Above per day	Rs. 5,000/- & Above per day
(iii)	Semi Qualified Assistants	Rs. 3,000/- & Above per day	Rs. 2,000/- & Above per day
(iv)	Other Assistants	Rs. 1,500/- & Above per day	Rs. 1,000/- & Above per day
	Subject to minimum indicative Fees as under:		
(i)	Tax Audit	Rs. 37,500/- & Above	Rs. 25,000/- & Above
(ii)	Company Audit		
(a)	Small Pvt. Ltd. Co. (Turnover up to Rs. 2 Crore)	Rs. 45,000/- & Above	Rs. 30,000/- & Above
(b)	Medium Size Pvt. Ltd. Co./ Public Ltd. Co.	Rs. 75,000/- & Above	Rs. 50,000/- & Above
(c)	Large Size Pvt. Ltd. Co./Public Ltd. Co.	See Note 1	See Note 1
(iii)	V.A.T. Audit	Rs. 22,500/- & Above	Rs. 15,000/- & Above
(iv)	Review of TDS Compliance	Rs. 22,500/- & Above	Rs. 15,000/- & Above
(v)	Transfer Pricing Audit	See Note 1	See Note 1
<b>VII)</b>	<b>INVESTIGATION, MANAGEMENT SERVICES OR SPECIAL ASSIGNMENTS</b>		
	Rate per day would depend on the complexity of the work and the number of days spent by each person		
(a)	Principal	Rs. 30,000/- & Above + per day charge	Rs. 20,000/- & Above + per day charge
(b)	Qualified Assistant	Rs. 15,000/- & Above + per day charge	Rs. 10,000/- & Above + per day charge
(c)	Semi Qualified Assistant	Rs. 7,500/- & Above + per day charge	Rs. 5,000/- & Above + per day charge
<b>VIII)</b>	<b>CERTIFICATION WORK</b>		
(a)	Issuing Certificates under the Income Tax Act i.e. U/s 80IA/80IB/10 A/10B & other Certificates	See Note 1	See Note 1
(b)	Other Certificates For LIC/Passport/Credit Card/Etc.	Rs. 7,500/- & Above	Rs. 5,000/- & Above
(c)	Other Attestation (True Copy)	Rs. 1,500/- per form	Rs. 1,000/- per Form
(d)	Net worth Certificate for person going abroad	Rs. 1,5000/- & Above	Rs. 10,000/- & Above
<b>IX)</b>	<b>WEALTH TAX</b>		
(a)	Per statement	Rs. 15,000/- & Above	Rs. 10,000/- & Above
(b)	Statement & Filing Return	Rs. 20,000/- & Above	Rs. 15,000/- & Above



**X) CONSULTATION & ARBITRATION**

Rate per hour would depend on the complexity of the work and the number of hours agent by each person.

(a) Principal	Rs. 30,000/- & Above (initial fees) + additional fees @ Rs. 7,500/- & Above per hour	Rs. 20,000/- & Above (initial fees) + additional fees @ Rs. 5,000/- & Above per hour
(b) Qualified Assistant	Rs. 5,300/- & Above per hour	Rs. 3,500/- & Above per hour
(c) Semi Qualified Assistant	Rs. 2,300/- & Above per hour	Rs. 1,500/- & Above per hour

**XI) NBFC/RBI MATTERS**

(a) NBFC Registration with RBI	See Note 1	See Note 1
(b) Other Returns	Rs. 15,000/- & Above	Rs. 10,000/- & Above

**XII) SERVICE TAX**

(a) Registration	Rs. 15,000/- & Above	Rs. 10,000/- & Above
(b) Registration with Consultation	See Note 1	See Note 1
(c) Tax Advisory & Consultation i.e. about value, taxability, classification etc.	See Note 1	See Note 1
(d) Monthly Challan with Half Yearly Return	Rs. 15,000/- & Above + (Rs.3,000/- Per Month)	Rs. 10,000/- & Above + (Rs.2 ,000/- Per Month)
(e) Quarterly Challan with Half Yearly Return	Rs. 15,000/- & Above + (Rs. 4,500/- Per Quarter)	Rs. 10,000/- & Above + (Rs.3 ,000/- Per Quarter)
(f) Adjudication	Rs. 45,000/- & Above	Rs. 30,000/- & Above
(g) Appeal & show cause notice drafting/ reply	Rs. 30,000/- & Above	Rs. 20,000/- & Above

**XIII) FEMA MATTERS**

1 Filing Declaration with RBI in relation to transaction by NRIs/OCBs	Rs. 30,000/- & Above	Rs. 20,000/- & Above
2 Obtaining Prior Permissions from RBI for Transaction with NRIs/OCBs	Rs. 45,000/- & Above	Rs. 30,000/- & Above
3 Technical Collaboration: Advising, obtaining RBI permission, drafting and preparing technical collaboration agreement and incidental matters	See Note 1	See Note 1
4 Foreign Collaboration: Advising, obtaining RBI permission, drafting and preparing technical collaboration agreement and incidental matters (incl. Shareholders Agreement)	See Note 1	See Note 1
5 Advising on non Resident Taxation Matters including Double Tax Avoidance Agreements including FEMA	See Note 1	See Note 1

**(XIV) PROJECT FINANCING**

(a) Preparation of CMA Data	See Note 1	See Note 1
(b) Services relating to Financial sector	See Note 1	See Note 1

**Notes:**

- 1) Fees to be charged depending on the complexity and the time spent on the particular assignment.
- 2) The above recommended minimum scale of fees is as recommended by the Committee for Capacity Building of CA Firms & Small and Medium Practitioners (CCBCAF&SMP) of ICAI and duly considered by the council.
- 3) The aforesaid table states recommendatory minimum scale of fees works out by taking into account average time required to complete such assignments. However, members are free to charge varying rates depending upon the nature and complexity of assignment and time involved in completing the same.
- 4) Office time spent in travelling & out-of-pocket expenses would be chargeable. The Committee issues for general information the above recommended scale of fees which it considers reasonable under present conditions. It will be appreciated that the actual fees charged in individual cases will be matter of agreement between the member and the client.
- 5) Service Tax should be collected separately wherever applicable.
- 6) The Committee also recommends that the bill for each service should be raised separately and immediately after the services are rendered.
- 7) Class A Cities here includes Delhi, Mumbai, Calcutta, Chennai, Pune, Hyderabad, Bangalore and Ahmedabad. Class B Cities includes all other cities not included in "Class A".
- 8) The amount charged will be based on the location of the service provider.

## **PEER REVIEW**

The term “Peer” means a person of similar standing. The term “review” means a general survey or assessment of subject or thing. The term “Peer review” would then mean review of work done by a professional, by another professional of similar standing.

In its proactive pursuit to upgrade and maintain audit quality standards, the Council of the Institute of Chartered Accountants of India took initiative as far back as 1998 to introduce a system of review of the work of professionals and subsequently the Indian accountancy profession took a giant leap forward with the establishment of Peer Review Board in July 2002. Such an endeavour of the Council of the Institute of Chartered Accountants of India (ICAI) aims to maintain and enhance the quality of attestation services and to guide its members in improving their performance and ensuring adherence to various technical standards issued by it from time to time. It is the Institute’s endeavour to meet the demands of high quality assurance, consistency and greater transparency. The Statement on Peer Review was released in early 2002 which lays down the framework for conduct of peer reviews by setting up the Peer Review Board (the Board). The objective of the Review is to enhance quality of professional work and has no relationship whatsoever with any disciplinary or any other regulatory mechanism. The review begins with the assumption that professionals work professionally, and ends with an enhancement of those attributes of professionalism that serve to keep the profession of Chartered Accountancy in India in the forefront of the accounting and auditing profession in the world. The details of Peer Review can be found at [peerreview.com](http://peerreview.com)

## **QUALITY REVIEW BOARD**

Government of India has, in exercise of the powers conferred by Sec. 28A of the Chartered Accountants Act, 1949, consequent to the Chartered Accountants

(Amendment) Act, 2006 by Notification GSR. 448 (E) dated 28th June, 2007, constituted a Quality Review Board consisting of a Chairperson and ten other members. Central Government has re-constituted the Quality Review Board vide Notification No. GSR 38(E) dated 19th January, 2011.

Five members of the Board shall be nominated by the Council of the Institute of Chartered Accountants of India and other five members shall be nominated by the Central Government. The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

## **FUNCTIONS OF THE BOARD**

As per Sec. 28B of the Chartered Accountants Act, 1949, the Board shall perform the following functions:-

- i) to make recommendations to the Council with regard to the quality of services provided by the members of Institute
- ii) to review the quality of services provided by the members of the Institute including audit services; and
- iii) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements

## **CAPACITY BUILDING/NETWORKING FOR PRACTISING CAs PRESENT STATUS OF PRACTISING CA’s**

Our Chartered Accountants have world class competency in accountancy profession not only in India but also in world service sector. However Indian CA firms have certain limitations which we need to look into. A major impediment is probably the size of our firms. More than 70% of CA firms are proprietary firms and about 23% of them have 2 to 3 partners. Firms having partners between 4 and 10 are hardly 6% and firms having partners more than 10 are just 0.44%. Thus we see that large firms constitute a very minuscule percentage of the total firms registered with ICAI.

A number of barriers and limitations plug the growth of small firms into large firms. In the globalized world the demand of service users includes multi locational and integrated “One Stop Shop” services. Most of the clients demand a “Single Window Point” or one firm to handle their all business issues, relating to the various assignments. The clients now expect a quicker and globally accepted solution.

Needless to say that this is the high time we should accept a change in our mindset and move forward for developing size of the firm through Networking & Merger. This option is always better than to have proprietary and small firms. Considering competition, prospective clients’ need, demographics and market trends ICAI has taken capacity building measures to empower Indian Chartered Accountant firms.

The concept of capacity building measures basically includes: -

- (i) Networking
- (ii) Merger & Demerger
- (iii) Practice in Corporate Form
- (iv) Limited Liability Partnership (LLP)

## **NETWORKING**

The Institute of Chartered Accountants of India has announced the rules for networking amongst the firms of chartered accountants.

In Network, one does not need to be partner but one can have affiliation with a CA firm bearing advantages of partnership alike and benefits of building capacity to serve the clients at different locations or in different areas of the services. The ICAI in the rules of networking defines the Network as “Network amongst two or more firms means an arrangement to facilitate the better functioning of the affiliate member firms in the interest of the profession and not for acquisition of any gain. Such Network shall include the formal Network to use the collective resources such as turnover, infrastructures, manpower, and location for execution of Professional services of one or more type.”

Formal network means a network amongst two or more firms registered with ICAI, where the object of network is to use the collective resources of the affiliates for execution of professional services of one or more types at one and/ or at multi-locational points.

The resources would include financial, technical and other logistic support required to execute the professional assignments. In such type of network, the common resources may be pooled and exhibited together before the service user as those belonging to one particular set of professionals.

Explanation —

1. An affiliation as referred to above shall also include:
  - i. having an association with an accounting entity within or outside India such that it results directly or indirectly in a common professionals economic or beneficial interest.
  - ii. one or more of the entities holding out that it is so affiliated or networked.
2. An entity shall not be treated as an affiliate of another merely for the reason that they
  - a. share professional knowledge and data base;
  - b. refer certain professional assignments or authorize the other to represent certain specific matters.
3. If different Indian firms are networked with a common Multi-National Accounting Firm (MAF) then irrespective of the presence/absence of any ‘affiliate’ relationship between the Indian firms inter se, they shall be considered as part of a network.

## **NAME FOR NETWORK**

The Network may have distinct name, which should be approved by the Institute. To distinguish a “Network” from a “firm” of Chartered Accountants, the word “& Affiliates” should be used after the name of the network and the words & “Co.”/”& Associates” should not be used. The prescribed format of application for approval of Name for Network is as per the Form ‘A’.

Standards prescribed in Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is provided and subsequently it is found that the same is undesirable then, the said name can be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of name of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit. The network is not permitted to advertise nor to use logo. The firms constituting the network are permitted to use the words “Affiliates/Members of ...” (a network of Indian CA firms) on their professional stationery. Network may work without a Name also.

## **REGISTRATION FOR THE NETWORK**

Formal Network is required to be registered with the Institute as per the prescribed Form B. Referral Practice requires no registration. Referral Practice means a practice to refer professional work by a firm to one of its associate/ affiliate either situated at a different place or rendering professional services not provided by it, to the user of the services. The purpose behind such a network is not to pool in their collective resources and exhibit them as those belonging to one particular set of professionals.

If different Indian Firms are networked with a common Multinational Accounting Firm (MAF) then irrespective of the presence/absence of any 'affiliate' relationship between the Indian Firms inter se, they shall be considered as a part of network. As such for these firms the registration with the Institute is not mandatory. It is only if these Indian Firms decide to constitute a formal network, then the registration with the Institute is mandatory.

## **ETHICAL COMPLIANCE**

It will be necessary for the networked firms to comply with all applicable ethical requirements prescribed by Institute. Thus if one firm of the network is the statutory auditor of an entity then the associate firm should not accept internal audit or book keeping or such other professional assignment which are prohibited for the statutory auditor firm. The ceiling of charging non audit fees; i.e., three times of the statutory audit fees is collectively applicable in relation to the networking firms. In those cases where rotation is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring. However, this restriction shall not apply in case of appointment as Statutory Central Auditor of Government agencies/Undertaking such as Public Sector Undertakings (PSUs), Public Sector Banks and Financial Institutions etc.

## **CONSTITUTION**

The Network can be between proprietary, partnership firms and individual members. A proprietary, partnership firms and individual members are allowed to join only one formal network. Firms having common partners shall join only one network.

## **SCOPE**

The Network itself will not carry on any business for acquisition of gain for itself and only act as a facilitator for its members/constituent Member firms to pursue their professional jobs. Only one Firm/Member can apply on behalf of the Network showing the collective strength of all the constituent firms of the Network, when responding to any enquiry. Only the firm(s)/Member(s) forming Network are eligible to issue/sign/attest any certificate/report/professional document/assignment.

## **BYE-LAWS**

To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

- i. Appointment of a Managing Committee, from among the managing partners of the member firms of the network and the terms and conditions under which it should function. The minimum and maximum number of members of the Managing Committee shall also be agreed upon.
- ii. Administration of the network
- iii. Contribution of membership fees to meet the cost of the administration of the network.
- iv. Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner).
- v. Dispute settlement procedures through arbitration and conciliation.
- vi. Development of training materials for members of the network.
- vii. Issue of Newsletters for staff and clients.
- viii. Development of software for different types of assignments.
- ix. Development and maintenance of databases relevant for different types of assignments.
- x. Library.

- xi. Appointment of a technical director to whom references can be made.
- xii. Determining the methodology for drawing resources from each member firm.
- xiii. Determining compensation to member firms for resources to be drawn from them.
- xiv. Peer review of the member firms.

## **EXIT**

A constituent Member firm/Member of a Network can exit from the network by sending the declaration in Form 'C' to the Institute and also to each and every constituent of the network. The concurrence/acceptance of the same by other firms forming part of the network firm shall not be required.

## **WHY NETWORKING**

This sort of Networking would be stepping stone for the mergers and acquisitions of the firms. The Institute has also announced the rules for the same. Once one is comfortable with these networking one can go for merger. This will help the firms to build competitive advantage over others. The firms will also be able to build up their brands.

The survival of small chartered accountants firms depends on their ability to re-engineer themselves. This type of networking will be one of the ways of re-engineering of the firms. Let us make the best out of the facility provided by the Institute.

## **MERGER & DEMERGER**

In the corporate world, merger and demerger have become universal practices for securing survival, growth, expansion and globalization of enterprise and achieving multitude of objectives. Merger is the fusion of two or more existing companies. On the other hand, demerger signifies a movement in the company just opposite to merger. 'Demerger' is also used to describe spinning off of an "undertaking" of a Corporate entity.

### **MERGER**

In order to have an orderly and sustainable growth of the CA firms, it is desirable that the coming together of the firms begins with networking and then matures to mergers. Networking will enable the firms to develop working relationships with each other.

However, it is not to suggest that there cannot be mergers without networking.

The mergers should be effected to develop core competencies and to render professional services of a larger range spread over bigger geographical area. A merged big entity will always be superior to a network arrangement.

To effectuate merger, a merger agreement in Form 'E' is to be filed with the Institute within 30 days from the date of the agreement.

The re-constitution agreement/partnership deed shall be filed with the Registrar of Firms. Upon the merger of the firms, the Institute will freeze the names of the merging firms and shall not allot the same names to any other firm.

### **DEMERGER**

The merger has to precede the demerger and demerger can be demanded within a period of 5 years from the date of merger.

The merger agreement itself shall contain the terms and conditions for demerger. Therefore no concurrence/acceptance is required from the continuing partners. The merger agreement shall stipulate that in case 75% or more of the continuing partners of one of the erstwhile firm(s) are willing to demerge then they can do so after giving due notice in Form 'F' to the other partners and to the Institute. In case 75% or more of the continuing partners of one of the erstwhile merging firm have demerged after giving due notice to the other partners, then in such case, the merger shall come to an end and if the remaining erstwhile merging firms/partners of the erstwhile merged firm decided to continue, then they should enter into a fresh Merger/ Partnership Agreement.

The Constitution Certificate issued by the Institute to the demerged firm shall state the original date of establishment, the date of its merger and the date of the demerger. For the purpose of computing the seniority of the firm, the total period will be reckoned from the original date of establishment.

The Demerged Firm is entitled to practice in its old trade name, which existed at the time of merger.

## **GUIDELINES FOR PRACTICE IN CORPORATE FORM**

To empower the members to face the emerging challenges in the service sector as well as to equip them for the opportunities in the non-audit service area, the Council decided to allow members in practice to hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act, 1956 provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council in pursuance to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard.

The members can retain full time Certificate of Practice besides being the Managing Director, Whole-time Director or Manager of such Management Consultancy Company. There will be no restriction on the quantum of the equity holding of the members, either individually and/or along with the relatives, in such Company. Such members shall be regarded as being in full-time practice and therefore can continue to do attest function either in individual capacity or in Proprietorship/Partnership firm. They are also entitled to train articled/audit assistants.

Management Consultancy Company means a Company which complies with the Guidelines for Practice in Corporate Form issued by the Institute. Management Consultancy & Other Services or MCS means 'Management Consultancy & Other Services' permitted by the Council in pursuance to Section 2(2)(iv) of the Chartered Accountants Act, 1949. The expression "Management Consultancy and other Services" shall not include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following:

1. Financial management planning and financial policy determination.
2. Capital structure planning and advice regarding raising finance.
3. Working capital management.
4. Preparing project reports and feasibility studies.
5. Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.
6. Budgeting including capital budgets and revenue budgets.
7. Inventory management, material handling and storage.
8. Market research and demand studies.
9. Price-fixation and other management decision making.
10. Management accounting systems, cost control and value analysis.
11. Control methods and management information and reporting.
12. Personnel recruitment and selection.
13. Setting up executive incentive plans, wage incentive plans, etc.
14. Management and operational audits.
15. Valuation of shares and business and advice regarding amalgamation, merger and acquisition.
16. Business Policy, corporate planning, organisation development, growth and diversification.
17. Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.
18. Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.
19. Acting as advisor or consultant to an issue, including such matters as:

- a. Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
- b. Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
- c. Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.
- d. Advice on the post issue activities, e.g., follow up steps which include listing of instruments and despatch of certificates and refunds, with the various agencies connected with the work.

Explanation: For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.

20. Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
21. Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
22. Quality Audit.
23. Environment Audit.
24. Energy Audit.
25. Acting as Recovery Consultant in the Banking Sector.
26. Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

#### **NAME OF MANAGEMENT CONSULTANCY COMPANY**

The Management Consultancy Company shall have a distinct name which shall be approved by the Institute. The prescribed format of application for approval of name for Management Consultancy Company is at Form 'G'. The name of Management Consultancy 1.18.

Company may indicate the area of 'Management Consultancy & Other Services' permitted by the Council from time to time.

Standards prescribed in Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of the Management Consultancy Company.

However, even if a name is provided and subsequently it is found that the same is undesirable then, the said name can be withdrawn at any time by the Institute. The provisions in respect of name of companies as prescribed in the Companies Act, 1956 shall be applicable in letter and spirit. The Management Consultancy Company shall neither be permitted to advertise nor to use logo.

#### **REGISTRATION OF MCs**

After approval of the name under Guideline 3 and incorporation under the Companies Act, 1956, the Management Consultancy Company is required to be registered with the Institute in a prescribed Form 'H'.

#### **ETHICAL COMPLIANCE BY MCs**

Once the Management Consultancy Company is registered with the Institute as per the Guidelines, it will be necessary for such a Company to comply with the following requirements: -

- i. If the individual practitioner/sole-proprietorship firm/partnership firm is the statutory auditor of an entity then the Management Consultancy Company should not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.

- ii. Chapter IX of the Council General Guidelines No. 1-CA(7)/02/2008 dated August 8, 2008 in respect of ceiling on Non-audit fees is applicable in relation to a Management Consultancy Company.
- iii. The Management Consultancy Company shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.
- iv. The Management Consultancy Company shall give an undertaking that it shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.

### **APPLICABILITY OF LAWS TO MCs**

All the provisions of the Companies Act, 1956 and other laws that are applicable to a Company formed under the Companies Act, 1956 shall be applicable to the Management Consultancy Company. The Guidelines are in addition to the provisions contained in the Companies Act, 1956.

### **Object of Management Consultancy Company:**

The Management Consultancy Company shall engage itself only in Management Consultancy & Other Services. The Management Consultancy Company shall give an undertaking that it shall render only Management Consultancy & other Services permitted by the Council in pursuance to section 2(2)(iv) of the Chartered Accountants Act, 1949. The Object Clause should restrict itself only to the Management Consultancy & other services prescribed by the council pursuant to powers under section 2(2)(iv) of the Chartered Accountants Act, 1949.

Benefits available to members if the Guidelines framed are complied with:

- i) The member can retain full time Certificate of Practice besides being the Managing Director/ Whole-time Director/Manager of Management Consultancy Company.
- ii) The member will be entitled to train articled/audit assistant(s).
- iii) There will be no restrictions on the quantum of the equity holding of the member, either individually and /or along with his relatives, in such a company.

### **LIMITED LIABILITY PARTNERSHIP (LLP)**

In terms of LLP Act, ICAI has permitted the members to form LLP CA Firms. A CA Firm can also be converted in LLP. ICAI records approval and incorporation of LLP Firm as registered by ROC on the basis of submission of Form 117, Form 18 along with documents of approval and incorporation certificates issued by ROC. In case of a CA Firm to be registered with suffix as Chartered Accountant it needs prior approval by ICAI. A CA firm registered as LLP can render all professional services usually permitted to a CA Firm. ROC requires NOC from the applicant for incorporation of LLP which can be obtained from ICAI filling an application and form 117.

### **POST QUALIFICATION COURSES OFFERED BY ICAI**

ICAI offers a number of post qualification courses as under:

- Management Accountancy Course (MAC)
- Corporate Management Course (CMC)
- Insurance & Risk Management (IRM)
- Information System Audit (ISA)

The CA Act & Regulations

- International Trade Laws & WTO
- International Financial Reporting Standard

There are also CPE courses on Computer Accounting and Auditing Techniques (CAAT) & ERP courses on SAP FA & MA Module, Microsoft Dynamics NAV.



## Members- Other Certificate Course

- Certificate Course on Enterprise Risk Management
- Certificate Course on Master in Business Finance
- Certificate Course on International Taxation
- Certificate Course on Forensic Accounting & Fraud Detection using IT & CAATs
- Certificate Course on International Financial Reporting Standards
- Certificate Course on Forex and Treasury Management
- Certificate Course on Derivatives
- Certificate Course on Valuation
- Certificate Course on Arbitration
- Certificate Course on Concurrent Audit
- Certificate Course on Indirect Tax

## OTHERS

1. Firm registration number allotted by ICAI is required to be mentioned in the audit report and certificate issued by the Firm/member.
2. Resolution regarding appointment of statutory auditors should bear Firm's registration number.
3. Indian CA firms having tie-up/affiliation with international entities/network to furnish certain documents/details to the Institute (For details refer 'The Chartered Accountant', November 2010 issue page 805). In case, the Institute comes to know of any firms which have international tie-up/affiliation, but yet had not come forward to disclose the same and submit the documents/details called for, then necessary action under the provisions of the Chartered Accountants Act, 1949 shall be taken against them.
4. Maintenance of record of Audit Assignments

A chartered accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of chartered accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible, in the following format:

Sr. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance	Date on which Form 23-B filed with Registrar of Companies
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## CAPACITY BUILDING / NETWORKING FOR PRACTISING CAs

The Committee for Capacity Building of Members in Practice is a Non-Standing Committee of the Institute. The objective of the Committee is to rejuvenate practice portfolio of members and CA firms by strengthening their professional strength through Networking and Merger among CA firms as well as assisting in setting up of LLP as well as corporate form of Practice (MCS). The Committee also provides platform for knowledge sharing and updation through release of technical publications on various matters of professional interest.

To support the Members in Practice the Committee has also arranged for Audit and Accounting software, Antivirus Protection software, Medical and Health Insurance, Professional Indemnity Insurance and Loan Schemes at very competitive cost for the members and students of ICAI.

To keep the member abreast in their professional field, Committee regularly organises Seminar, conferences, Interactive Sessions, Workshops regularly throughout the Country.

The Committee in diverse to popularise and promote various Capacity Building Measures i.e. Networking, Merger of Firms and setting up LLP as well as MCS Company to strengthen SMPs for creating world class competency in the professional field.

Website of the Committee: [www.icai.org.in](http://www.icai.org.in)  
[www.ssp.icai.org](http://www.ssp.icai.org)  
[www.seniormembers.icai.org](http://www.seniormembers.icai.org)

### **Certificate Course on Wealth Management and Financial Planning**

The Committee for Capacity Building of Members in Practice (CCBMP), ICAI has facilitated specialised education in the Wealth Management and Financial Planning for the members. The course is designed to help Chartered Accountants to gain proficiency in financial Services and to render world class wealth management solutions to the clients. The course curriculum includes: Financial Planning & Investment, Estate Planning, Risk Analysis & Insurance Planning, Retirement Planning & employee benefits, Investment planning & Returns Taxation & legalities, Advanced financial planning and HNI Wealth Management, Technical Analysis. The course fee is • 15,000/- and consists of 20 sessions on weekends i.e. Saturday and Sunday having oral coaching and practical exercise followed by test.

### **Knowledge Sharing**

- Declaration of Result - CCBMP - Certificate Course on Wealth Management and Financial Planning - Mumbai Batch
- Flexi Hours Working Portal [www.seniormembers.icai.org](http://www.seniormembers.icai.org) for Senior Members of ICAI for professional opportunities.
- Quick Insight 2014 on professional matters and regulating provisions.
- Certificate Course on Wealth Management and Financial Planning.
- Facility for Creation of Website by CA firms through the committee exclusive website [www.icai.org.in](http://www.icai.org.in)
- Revised Guidelines of Network of CA firms for easy adoption.
- Revised Minimum Recommended Scale of Fees for the Professional Assignments done by the Chartered Accountants for Class 'A' and Class 'B' cities.
- Handbook on Project Financing as an area of practice for Small and Medium Practitioners.
- E-newsletter 'Practiquer' for January, 2015 issue containing update information on committee initiative and information.
- Publication on "Companies Act, 2013: Perspective of Small & Medium Practitioners & CA Firms.
- Publication on 'Financial Statements Presentation under Companies Act, 2013: Practitioner's Perspective'.

### **Technical Publications of the Committee**

The Committee has released various publications on professional subjects and technical issues which are highly beneficial to the Members in Practice,

- ICAI Knowledge Bank DVD containing all publications of Transfer Pricing Compliances : A Practitioner's Handbook
- Handbook on Project Financing as an Area of Practice for Small and Medium Practitioners
- Companies Act. 2013: Perspective of Small & Medium Practitioners & CA Firms
- Financial Statements under Companies Act. 2013
- LLP & OPC:A Practitioner's Perspective
- Ready Reckoner on Loan Schemes for Professionals
- Ready Reckoner for Members in Practice
- ICAI and relevant Govt. agencies
- ICAI Knowledge Bank DVD – Commercial Acts & Tax Laws
- Guide to Management of Practice for Small and Medium Sized Practitioners

- Service Tax : A Practitioner's Perspective
- Basics for service tax and scope for profession
- A Bird's eye view of micro small and medium enterprises and Small and Medium Practitioners
- External Commercial Borrowings: A Practitioner's Guide
- Full Fledged Money Changer (FFMC):A Practitioner's Perspective
- Partnership and HUF: A Practitioners' Perspective
- Revised Schedule VI: A Practitioner's Guide

### **Initiatives of the Committee**

To bring computer aided advantage of practice, the Committee has arranged various Software and Audit pack tools including Antivirus Protection Facility for PC and Android.

#### **Arrangement for Software:**

- CLOUD BASED SVT, TDS SOFTWARE & PDF SIGNER AT SPECIAL PRICE THROUGH KDK SOFTWARE (INDIA) PVT. LTD.  
*[http://www.icai.org/post.html?post\\_id=9915](http://www.icai.org/post.html?post_id=9915)*
- TAX SUITE SOFTWARE AT SPECIAL PRICE THROUGH KDK SOFTWARE (INDIA) PVT. LTD.  
*[http://www.icai.org/new\\_post.html?post\\_id=933&c\\_id=41#](http://www.icai.org/new_post.html?post_id=933&c_id=41#)*
- XBRL SOFTWARE AT SPECIAL PRICE THROUGH KDK SOFTWARE (INDIA) PVT. LTD.  
*[http://www.icai.org/new\\_post.html?post\\_id=8143&c\\_id=240](http://www.icai.org/new_post.html?post_id=8143&c_id=240)*
- IT AUDITOR SOFTWARE AT SPECIAL PRICE THROUGH KDK SOFTWARE PVT. LTD.  
*[http://www.icai.org/post.html?post\\_id=9916](http://www.icai.org/post.html?post_id=9916)*
- SINGLE DVD OF CTR LIBRARY OF TAX CASES (COMPREHENSIVE COVERAGE ON DIRECT TAXES) AT SPECIAL PRICE THROUGH WOLTERS KLUWER (INDIA) PVT. LTD.  
*[http://www.icai.org/post.html?post\\_id=9911](http://www.icai.org/post.html?post_id=9911)*
- INDIA FINANCIAL REPORTING MANAGER (IFRM) AT DISCOUNTED PRICE THROUGH WOLTERS KLUWER (INDIA) PVT. LTD.  
*[http://www.icai.org/post.html?post\\_id=9787](http://www.icai.org/post.html?post_id=9787)*
- ACCOUNTING SOFTWARE AT DISCOUNTED PRICE THROUGH BUSY INFOTECH PVT. LTD.  
*[http://www.icai.org/post.html?post\\_id=9805](http://www.icai.org/post.html?post_id=9805)*
- ANTIVIRUS PROTECTION FACILITY: QUICK HEAL TOTAL SECURITY ANTIVIRUS SOFTWARE FOR PC AT SPECIAL PRICE  
*[http://www.icai.org/post.html?post\\_id=11505](http://www.icai.org/post.html?post_id=11505)*
- QUICK HEAL TOTAL SECURITY SOFTWARE FOR ANDROID ENABLED MOBILE PHONES AT SPECIAL PRICE  
*[http://www.icai.org/post.html?post\\_id=11019](http://www.icai.org/post.html?post_id=11019)*

#### **Insurance Scheme (Members may independently apply on the given link)**

The Committee has also arranged Insurance against Medical, Motor Vehicle, and Professional Indemnity etc.

- PERSONAL ACCIDENT INSURANCE SCHEME THROUGH ORIENTAL INSURANCE COMPANY LIMITED  
*[http://www.icai.org/post.html?post\\_id=10630](http://www.icai.org/post.html?post_id=10630)*

- HOUSEHOLDER'S INSURANCE SCHEME THROUGH ORIENTAL INSURANCE COMPANY LIMITED  
*[http://www.icaai.org/post.html?post\\_id=10631](http://www.icaai.org/post.html?post_id=10631)*
- HEALTH INSURANCE SCHEME WITH NEW INDIA ASSURANCE CO. LTD.  
*[http://www.icaai.org/post.html?post\\_id=8061](http://www.icaai.org/post.html?post_id=8061)*
- PROFESSIONAL INDEMNITY INSURANCE AT DISCOUNTED PREMIUM BY NEW INDIA ASSURANCE CO. LTD.  
*[http://www.icaai.org/post.html?post\\_id=9442](http://www.icaai.org/post.html?post_id=9442)*
- OFFICE PROTECTION SHIELD INSURANCE SCHEME AT SPECIAL PREMIUM BY NEW INDIA ASSURANCE CO. LTD.  
*[http://www.icaai.org/post.html?post\\_id=10097](http://www.icaai.org/post.html?post_id=10097)*

### **Loan Scheme**

- PROFESSIONAL LOAN SCHEME THROUGH CORPORATION BANK.  
*[http://www.icaai.org/post.html?post\\_id=7261](http://www.icaai.org/post.html?post_id=7261)*
- SPECIALISED LOAN FOR MEMBERS AND CONCESSIONAL LOAN FOR LADY MEMBERS THROUGH BHARATIYA MAHILA BANK LTD.  
*[http://www.icaai.org/post.html?post\\_id=10449](http://www.icaai.org/post.html?post_id=10449)*
- EDUCATIONAL LOAN FOR STUDENTS OF ICAI AND CONCESSIONAL LOAN FOR LADY STUDENTS THROUGH BHARATIYA MAHILA BANK LTD.  
*[http://www.icaai.org/post.html?post\\_id=10448](http://www.icaai.org/post.html?post_id=10448)*

### **Committee Secretariat**

#### Committee for Capacity Building of Members in Practice

The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)

A-29, First Floor, Administrative Block, ICAI Bhawan  
Sector-62, Noida (U.P.), P.C.-201 301  
E-mail: [ccbcaf@icaai.in](mailto:ccbcaf@icaai.in)  
Phone No. : 0120-3045994 (Direct)

# CPE HOURS REQUIREMENTS

## FOR THE BLOCK PERIOD OF 3 YEARS (1-1-2014 TO 31-12-2016) TO BE COMPLIED WITH BY DIFFERENT CATEGORIES OF MEMBERS

- A. All the members (aged less than 60 years) who are holding Certificate of Practice (except all those members who are residing abroad) are required to:**
- a) Complete at least 90 CPE credit hours in a rolling period of three-years.
  - b) Complete minimum 20 CPE credit hours of structured learning in each calendar year.
  - c) Out of the 90 CPE Credit Hours as mentioned above, 30 CPE credit hours can be completed either through Structured or Unstructured learning (as per Member's choice).
- B. All the members (aged less than 60 years) who are not holding Certificate of Practice are required to:**
- a) Complete at least 45 CPE credit hours either structured or unstructured learning (as per Member's choice) in rolling period of three-years.
  - b) Complete minimum 10 CPE credit hours of either structured or unstructured learning (as per member's choice) in each calendar year.
- C. All the members (aged 60 years & above) who are holding Certificate of Practice, are required to:**
- a) Complete at least an aggregate of 70 CPE credit hours of either Structured or Unstructured Learning (as per member's choice) in a rolling period of three years.
  - b) Complete minimum of 10 CPE credit hours being an aggregate of either Structured or Unstructured Learning in the first calendar year i.e. 2014.
  - c) Complete minimum of 20 CPE credit hours being an aggregate of either Structured or Unstructured Learning (as per member's choice) in the second and third calendar years i.e. 2015 & 2016.
- D. All the members who are residing abroad, as per ICAI records whether holding Certificate of Practice or not are required to**
- a) Complete at least 45 CPE credit hours either structured or unstructured learning (as per Member's choice) in rolling period of three-years.
  - b) Complete minimum 10 CPE credit hours of either structured or unstructured learning (as per member's choice) in each calendar year.
- E. The following class of members are exempted from CPE credit hours requirement:**
- a) All the members (aged 60 years and above) who are not holding Certificate of Practice.
  - b) Judges of Supreme Court, High Court, District Court and Tribunal
  - c) Members of Parliament/MLAs/MLCs
  - d) Governors of States
  - e) Centre and State Civil Services
  - f) Entrepreneurs (owners of Business (manufacturing) organizations other than professional services)
  - g) Judicial Officers
- F. Temporary Exemptions**
- a) Female members for one Calendar year on the grounds of pregnancy
  - b) Physically disabled members on case to case basis having permanent disability of not less than 40% and above (Supported with medical certificates from any doctor registered with Indian Medical Council with relevant specialisation as evidenced by Post Qualifications (M.D., M.S. etc.).

## CPE ADVISORY ON STRUCTURED LEARNING ACTIVITIES

### Structured CPE Learning Activities

#### A. INTRODUCTION

The CPE learning activities, which are eligible for CPE Credit hours are divided into Structured Learning Activities (SLAs) and Unstructured Learning Activities (ULAs). This Advisory is meant as guidance and direction to the members who want to avail CPE Credit hours through SLAs.

#### B. Eligible Structured Learning Activities and CPE Credit Hours

1. The indicative list of eligible CPE Structured Learning Activities and eligible CPE Credit hours thereof is as under:

Sl. No.	CPE Learning Activity	CPE Credit Hours
1.	CPE Programmes in the form of Conferences, Seminars, Workshops, Modular Training Programmes, Refresher Programmes, Certificate Courses, Conventions and Symposia organised by POUs	Time devoted to technical sessions (subject to a maximum of 6 CPE hours per day)
2.	Participation in the activities of Study Groups constituted by Council/Regional Councils/Central Committees of ICAI for specific purposes provided that the terms of reference of such Study Groups including the expected output are approved for eligibility by the Central CPE Committee and also provided that the output of the Study Group is submitted to the Central CPE Committee for granting of CPE credit.	Maximum of 2 hours per meeting per day subject to a maximum of 6 CPE hours in total
3.	Publication of article in the ICAI Journal, 'The Chartered Accountant'.	4
4.	A member who acts as faculty in a CPE structured programme/ act as Moderators of teleconferencing programmes	Twice the quantum of the duration of the technical session, subject to a maximum of 4 hours or as per the actual hours of the sessions(s).
5.	Chairman of technical session(s) in CPE structured programmes	Twice the quantum of the duration of the technical session, subject to a maximum of 4 hours or as per the actual hours of the sessions(s).
6.	Members who participate Teleconferencing programmes in the CPE	As allotted to the programme
7	Members who participate in Working Groups/Study Groups/ Technical Committees of the Government Departments / agencies or regulatory bodies / authorities, professional bodies on application to the CPEC by the member/Committee of the ICAI, as the case may be.	Two hours per meeting (subject to a minimum meeting duration of two hours) per day
8	Members who participate in technical discussions in the Council/Technical Committees of the Institute	Upto six hours for the whole day, with a minimum discussion of one hour per day and the Committee Chairman's certification of the duration of the discussion.
9.	Prepared technical books/material which has been published by the Institute or technical books published by other publishers	8
10.	Vetted, reviewed, updated the background material/technical material which has been published by the Institute (including publications of ICAI but excluding material prepared for seminars, conferences, programmes etc.)	4
11.	e?Learning Courses conducted and monitored by ICAI and its Central Committees	Maximum of 3 CPE hours per e-Learning module on a particular topic subject to a maximum of 6 hours per annum
12.	Preparation of article published in any professional Journal/National News Paper/Regional language Paper	4
13.	Participation at Conferences/Seminars and other educational programmes organized by any international professional accountability bodies registered with IFAC as full members except: 1. Accounting Bodies for Certified Management Accountants 2. Chartered Institute of Management Accountants 3. Association of Chartered Certified Accountants 4. Accounting Bodies for Certified Auditors 5. Accounting Bodies for Certified Accountants 6. Cost Accounting Bodies 7. Accounting Bodies for Certified General Accountants	CPE hours as approved by concerned international professional bodies.

	8. Cost and Works Accounting Bodies 9. Cost and Management Accounting Bodies 10. Accounting Bodies for Chartered Financial Analysts 11. Company Secretaries bodies	
14.	Inhouse training sessions/programmes organized for employees by their employers, as may be approved by the CPEC from time to time based on the criteria as may be determined. <b>(w.e.f 01-01-2017)</b>	CPE hours for such programmes may be limited to maximum of 4 Structured CPE hours per day and a maximum of 15 structured CPE hours in a year, as approved by the CPEC Secretariat.
15.	Peer Review and Quality Review undertaken by the Peer/Quality Reviewers <b>(w.e.f 01-01-2017)</b>	Maximum of 6 Structured CPE hours per day of the days of review undertaken at the Practising Unit subject to a maximum of 18 structured CPE hours per year. Similarly, members of the practicing units who are directly associated with the Peer Review / Quality Review will also be eligible for 6 Structured CPE Hours per day for the review at their Practising Unit subject to a maximum of 18 Structured CPE hours per year for a maximum of two members associated with the firm on a full time basis, based on the declarations submitted by them, in this regard, within 6 months of the completion of the review or before the cutoff date for reporting of the CPE requirements for the relevant calendar year, whichever is earlier, to the CPEC Secretariat.
16.	Technical Reviewers and members of the Financial Reporting Review Group (FRRG) of the Financial Reporting Review Board (FRRB) <b>(w.e.f 01-01-2017)</b>	3 CPE credit hours to the Technical Reviewers; and 4 CPE credit hours for each day of meeting and 2 CPE credit hours for half day of the meeting to the members of the Financial Reporting Review Group(s), subject to a maximum of 18 Structured CPE hours per year.
17.	Such other activities, as may be prescribed in these regards from time to time, by the CPEC.	As recommended by the CPEC

## CPE ADVISORY ON UNSTRUCTURED LEARNING ACTIVITIES

### Unstructured CPE Learning Activities

#### A Introduction

1. The CPE learning activities, which are eligible for CPE Credit hours are divided into Structured Learning Activities (SLAs) and Unstructured Learning Activities (ULAs). This Advisory is meant as guidance and direction to the members who want to avail CPE Credit hours through ULAs.
2. The indicative list of Unstructured CPE Learning Activities that are eligible for CPE Credit hours is as follows:
  - i. Self-learning modules and courses (use of audiotapes, videotapes, correspondence courses, computer based learning programmes)
  - ii. Reading and individual home study
    - Reading and Individual Home Study may constitute reading articles in the Journal, 'The Chartered Accountant' of the Institute, reading technical, professional, financial or business literature.
  - iii. Group or bilateral discussion on technical issues
  - iv. Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National Importance
  - v. Participation in CPE Teleconferencing Programmes without the supervision of the POU
  - vi. Providing solutions to questionnaires / puzzles available on Web / Professional Journals
  - vii. Internal Training Programmes being organised by firms of Chartered Accountants having seven or more partners
  - viii. Viewing of programmes hosted on the web channel of ICAI
  - ix. Such other activities as may be prescribed in these regards from time to time by the CPEC

3. The Members would be required to fulfill the documentation requirements as mentioned in this advisory, to avail respective CPE Credit hours. The Members would also be required to maintain and retain proper records of ULAs undertaken by them, i.e. type of unstructured activity, topic, date and the number of CPE hours requested by them.
4. The members are required to submit a Self-Declaration Form to the concerned Decentralized Office once in a year to avail the CPE Credit hours for the ULAs undergone by them.

**B. 1. Basic Components of Unstructured Learning Activities (ULAs)**

The members are advised to devote time to ULAs in continuity so as to maximize the benefits of learning activities.

2. The topics studied should be of relevance to the work profile of member/s and/or Chartered Accountancy Profession. The indicative list of topics is given in the CPE Calendar, which is announced by the CPE Committee every year.
3. The study material used for ULAs like Self-Learning Modules / Courses and Individual home study etc., should be of adequate standards and comprehensive in nature.

**C. 1 Self-Declaration Form**

2. A blank Self-Declaration Form would be sent to the members along with the Membership Fee Circular or the same could be downloaded by the members from the CPE Portal ([www.cpeicai.org](http://www.cpeicai.org)).
3. The Members are required to indicate the time devoted to the ULAs along with topic and date in the Self Declaration Form which is to be completely filled and signed by the members.

**D. 1 Submission of Self-Declaration Form by the member \***

The members are required to submit their Self-declaration in the form as annexed with this Advisory, once in a year on or before 31st May, to avail the CPE Hours Credit for the ULAs undergone by them in the previous calendar year. These forms would have to be submitted to the concerned Decentralized Offices. The members could also submit the same to the Sub-Decentralized Offices for onward submission to the concerned Decentralized Offices.

The above clause will be substituted as under w.e.f 1st January 2017“The members are required to submit their Self-declaration in the format specified, if any, either online or manually on or before 31st May or such other time as may be prescribed, pertaining to the previous calendar year, to avail the CPE Hours Credit for the Unstructured Learning Activities undergone by them in the previous calendar year. For manual submission, the members are required to submit their self-declaration in the form as annexed with this advisory to the concerned designated offices of the ICAI. Members are not required to submit any evidence along with the self-declaration. However, the members are required to submit evidences in support of declarations submitted in this regard, if so desired, by the CPEC/ICAI. If a member fails to provide appropriate evidence to the satisfaction of CPEC Secretariat or if the CPEC Secretariat is of the opinion that such claims cannot be entertained, it can forfeit or deny the unstructured CPE credit awarded, if any.

Any delay in submission of the self-declaration within a specified date can only be condoned by the CPEC at its discretion, provided it is satisfied with the reason(s) and the genuineness of the learning activities, based on which only the Member will be entitled for unstructured CPE hours.

Any delayed declaration has to be submitted in physical forms to the CPEC Secretariat directly within a specified date, as may be prescribed from time to time, with or without fee, as may be decided by the CPEC.”

**E. 1. Monitoring and Recording of CPE Credit Hours of Unstructured Learning Activities (ULAs)**

The Decentralized Offices of the Institute are entrusted with the task of monitoring and recording the CPE Credit hours for the ULAs. On the basis of Self Declaration submitted by the Members, the concerned Decentralized Offices would enter the CPE Credit Hours on the CPE Portal under the Head

‘Unstructured Learning Activities (ULAs)’. The necessary provision for recording the CPE Credit Hours for the ULAs has been provided on the CPE Portal.



# ACCOUNTING STANDARDS

## 1. CRITERIA FOR CLASSIFICATION OF NON-CORPORATE ENTITIES AS DECIDED BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

### Level I Entities

Non-corporate entities which fall in any one or more of the following categories, at the end of the relevant accounting period, are classified as Level I entities:

- i. Entities whose equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India.
- ii. Banks (including co-operative banks), financial institutions or entities carrying on insurance business.
- iii. All commercial, industrial and business reporting entities, whose turnover (excluding other income) exceeds rupees fifty crore in the immediately preceding accounting year.
- iv. All commercial, industrial and business reporting entities having borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year.
- v. holding and subsidiary entities of any one of the above.

### Level II Entities (SMEs)

Non-corporate entities which are not Level I entities but fall in any one or more of the following categories are classified as Level II entities:

- i. All commercial, industrial and business reporting entities, whose turnover (excluding other income) exceeds rupees forty lakh but does not exceed rupees fifty crore in the immediately preceding accounting year.
- ii. All commercial, industrial and business reporting entities having borrowings (including public deposits) in excess of rupees one crore but not in excess of rupees ten crore at any time during the immediately preceding accounting year.
- iii. Holding and subsidiary entities of any one of the above.

### Level III Entities (SMEs)

Non-corporate entities which are not covered under Level I and Level II are considered as Level III entities.

## 2. Criteria for classification of companies under the Companies (Accounting Standards) Rules, 2006

Small and Medium-Sized Company (SMC) as defined in Clause 2(f) of the Companies (Accounting Standards) Rules, 2006:

- (f) "Small and Medium Sized Company" (SMC) means, a company-
- i. whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;
  - ii. which is not a bank, financial institution or an insurance company;
  - iii. whose turnover (excluding other income) does not exceed rupees fifty crore in the immediately preceding accounting year;
  - iv. which does not have borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year; and
  - v. which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation: For the purposes of clause (f), a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

### Non-SMCs

Companies not falling within the definition of SMC are considered as Non-SMCs.

## **HARMONISATION OF DIFFERENCES BETWEEN THE ACCOUNTING STANDARDS ISSUED BY THE ICAI AND THOSE NOTIFIED BY THE CENTRAL GOVERNMENT**

The Central Government, on December 7, 2006, notified Accounting Standards in the Companies (Accounting Standards) Rules, 2006. These have been amended twice once in year 2008 with respect to accounting of employee benefits and secondly in year 2009 with respect to accounting of exchange fluctuation. These Accounting Standards were different in certain respects from the Accounting Standards issued by the council of ICAI. It has now been decided to harmonise these differences and clarify as to the applicability of both the sets of Accounting Standards to various entities.

### **Harmonisation of Differences caused by Accounting Standards Interpretations (ASIs)**

The consensus portion of most of the ASIs has been included as 'Explanation' to the relevant paragraphs in the notified Accounting Standards. The Council has decided to follow the same. Accordingly, Standards issued by ICAI will also have these ASIs inbuilt in the standard itself. Thus, the Standards are being amended to incorporate the consensus portion of the ASIs as explanation to the relevant paragraphs.

### **Withdrawal of Accounting Standards Interpretations**

ASI 2, Accounting for Machinery Spares (Re. AS 2 and AS 10) and ASI 11, Accounting for Taxes on Income in case of an Amalgamation (Re. As 22) have been withdrawn. These ASIs would not be included in the standards.

### **Issuance of Guidance Notes in lieu of ASIs**

The Council decided to withdraw the following ASIs and issue the same as Guidance Notes.

- ASI 12 Applicability of AS 20 (Re. AS 20)
- ASI 23 Remuneration paid to key management personnel — whether a related party transaction (Re. AS 18)
- ASI 27 Applicability of AS 25 to Interim Financial Results (Re. AS 25)
- ASI 29 Turnover in case of Contractors [Re. AS 7 (Revised 2002)]

### **Harmonisation of Definition of Smaller Companies**

- The under mentioned Accounting Standards shall be applicable to all corporate entities for accounting periods commencing on or after December 7, 2006
- For Non-Corporate entities, it shall be applicable from 1st April 1, 2008 (with standards which are being amended to incorporate changed definitions of SMEs and the consensus portion of the ASIs)

## **APPLICABILITY OF ACCOUNTING STANDARDS - AN OVERVIEW**

Accounting Standards	To all Corporate Entities [As per Companies (Accounting Standards) Rules]	To all Non-Corporate entities [As per ICAI Accounting Standards]
AS 1 Disclosure of Accounting Policies	Y	Y
AS 2 Valuation of Inventories	Y	Y
AS 4 Contingencies and Events Occurring After the Balance Sheet Date	Y	Y
AS 5 Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies	Y	Y
AS 6 Depreciation Accounting	Y	Y
AS 7 Construction Contracts (Revised 2002)	Y	Y
AS 9 Revenue Recognition	Y	Y
AS 10 Accounting for Fixed Assets	Y	Y
AS 11 The Effects of Changes in Foreign Exchange Rates (Revised 2003)	Y	Y
AS 12 Accounting for Government Grants	Y	Y
AS 13 Accounting for Investments	Y	Y
AS 14 Accounting for Amalgamations	Y	Y
AS 15 Employee Benefits (Refer Note 1)	Y	Y
AS 16 Borrowing Costs	Y	Y
AS 18 Related Party Disclosures	Y	Not applicable to Level III
AS 19 Leases (Refer Note 2)	Y	Y

AS 20 Earnings Per Share (Refer Note 3)	Y	Y
AS 22 Accounting for Taxes on Income	Y	Y
AS 24 Discontinuing Operations	Y	Not applicable to Level III
AS 25 Interim Financial Reporting	Y	Y
AS 26 Intangible Assets	Y	Y
AS 28 Impairment of Assets (Refer Note 4)	Y	Y
AS 29 Provisions, Contingent Liabilities and Contingent Assets (Refer Note 5)	Y	Y

*Note: The Notes referred to in the previous table are given in the table titled "Relaxations of certain requirements for SMCs/Level II & Level III enterprises" below.*

*Note : AS-3 , AS-17, AS-18, AS-21, AS-23, AS-25, AS-27, AS-30, AS-31, AS-32 are applicable to Level -I Enterprises only.*

The Exemptions available to both, SMCs (i.e., governed by the Rules) and also available to Level II and Level III Enterprises (i.e., governed by the ICAI Accounting Standards) in entirety are given in the following table:

AS 3	Cash Flow Statements
AS 17	Segment Reporting
AS 21*	Consolidated Financial Statements
AS 23*	Accounting for Investments in Associates in Consolidated Financial Statements
AS 27*	Financial Reporting of Interests in Joint Ventures (to the extent of requirement relating to Consolidated Financial Statements)

*Note: \* AS 21, 23 and 27 are applicable only when relevant regulator requires compliance of these standards*

## **RELAXATIONS OF CERTAIN REQUIREMENTS FOR SMCS / LEVEL II & LEVEL III ENTERPRISES:**

Note No.	Accounting Standards	Relaxations available to Small and Medium Companies, Level II Enterprises and Level III Enterprises
1	<b>AS 15, Employee Benefits</b>	<p><b>Paragraphs 11-16 dealing with recognition and measurement</b> of short term accumulating compensated absences which are non-vesting</p> <p><b>Paragraphs 46 and 139 dealing with discounting of amounts</b> that fall due more than 12 months after the balance sheet date</p> <ul style="list-style-type: none"> <li>• <b>Paragraphs 50–116 dealing with Defined Benefit plans</b></li> <li>• <b>Paragraphs 117–123 dealing with actuarial valuations</b></li> <li>• <b>Paragraphs 129-131 in respect of other long-term benefits</b></li> </ul> <p><i>Note: AS 15 (Revised 2005) issued by ICAI exempts Level II enterprises having less than 50 employees from the application of PUC method, i.e., these enterprises can use other rational method for accrual of liabilities.</i></p> <p>However, the Companies (Accounting Standards) Rules, 2006 do not contain such exemption.</p>
2	<b>AS 19, Leases</b>	<ul style="list-style-type: none"> <li>• Requirements relating to disclosures as given in paragraphs 22(c), (e) and (f); 25(a), (b) and (e); 37(a) and (f); and 46(b) and (d) are not applicable to SMCs and level II/III enterprises.</li> <li>• Further to these relaxations, Level III enterprises are also not required to give Paragraphs 37(g) and 46(e) disclosures.</li> </ul>
3	<b>AS 20, Earnings Per Share</b>	<ul style="list-style-type: none"> <li>• <b>Diluted earnings per share (both including and excluding extraordinary items)</b> is not required to be disclosed for SMCs and level II/III non corporate enterprises.</li> <li>• <b>Further, Information required by paragraph 48(ii) of AS 20 regarding disclosures</b> for parameters used in calculation of EPS, are also not required to be disclosed by Level III entities.</li> </ul>
4	<b>AS 28, Impairment</b>	<ul style="list-style-type: none"> <li>• <b>Value in use can be based on reasonable estimate instead of of Assets computing</b> it by present value technique. Further, information required by paragraph 121(g) relating to discount rate used, need not be disclosed.</li> </ul>
5	<b>AS 29, Provisions, Contingent Liabilities and Contingent Assets</b>	<ul style="list-style-type: none"> <li>• <b>Paragraphs 66 and 67 relating to disclosures for amount and description</b> for each class of provision are not required to be disclosed.</li> </ul>

## **AS-1 — DISCLOSURE OF ACCOUNTING POLICIES**

1. Significant Accounting Policies followed in preparation of accounts should form part of the financial statements and be disclosed at one place thereon.
2. Any material change and impact of such change should be disclosed.
3. Fundamental accounting assumptions i.e going concern, consistency and accrual, are to be followed in the preparation of financial statements. If there is any departure from these assumptions, that should be disclosed .
4. Accounting Policies adopted by the enterprise should represent true and fair view of the state of affairs of the financial statements
5. Major considerations governing selection and application of accounting policies are: i) Prudence, ii) Substance over form and iii) Materiality.
6. Note – In relation to derivative contracts (e.g. foreign exchange forward contracts) the Institute interpreted on the principles of prudence that the loss (net), if any on each reporting date shall be provided through the statement of profit and loss account.

## **AS-2 (REVISED) — VALUATION OF INVENTORIES**

1. Inventories are assets a) held for sale in the ordinary course of business (finished goods) b) in the process of production for such sale (work in progress c) in the form of materials or supplies to be consumed in the process of production or in the rendering of services(raw materials and loose tools including stores & spares).
2. Inventories do not include spare parts, servicing equipment and standby equipment which meet the definition of property, plant and equipment as per AS 10, "Property, Plant and Equipment." Such items are accounted for in accordance with Accounting Standard (AS) 10, "Property, Plant and Equipment."
3. The cost of inventories should comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.
4. Costs of conversion include costs directly related to the production like direct labour cost. They also include a systematic allocation of fixed and variable overheads incurred in conversion of materials into finished goods.
5. Inventories are valued at cost or net realisable value whichever is lower. Net Realisable Value is the estimated selling price less the estimated costs of completion and estimated costs necessary to make the sale.
6. Specific identification method is required when goods are not ordinarily interchangeable. In other circumstances, the enterprise may adopt either weighted average cost method or FIFO methods whichever approximates the fairest possible approximation of cost incurred.
7. Standard Costing Method or Retail Inventory Method can be adopted only as a techniques of measurement provided where the results of these measurements approximates the results that would be arrived at after adopting specific identification method or weighted average method or FIFO method as may be applicable to the circumstances.
8. The disclosures required in the financial statement are:
  - a) the accounting policies adopted in measuring inventories, including the cost formula used; and
  - b) the total carrying amount of inventories and its classification appropriate to the enterprise.

Inventories are generally classified into raw materials and components, work in progress, finished goods, stores & spares and loose tools. The disclosure requirements of AS 2 have been amended so as to align them with Schedule III of The Companies Act, 2013. Common Classification of Inventories now includes two new categories: a) Stock-in-trade(in respect of goods acquired for trading)b) Others(specify nature). However, in practice, the above mentioned will not have a material effect while preparing the financial statements, as Schedule II of The Companies Act, 2013 has always superseded AS 2.

## AS-3 — CASH FLOW STATEMENTS

This standard requires that when the Cash Flow statement is prepared it should disclose movement in cash and cash equivalents by classifying activities into operating, investing and financing activities. It also requires certain specific items to be addressed in the cash flows and certain supplemental disclosures for non-cash transactions.

**Cash** comprises cash on hand and demand deposits with banks.

**Cash equivalents** are short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value.

**Cash flows** are inflows and outflows of cash and cash equivalents.

**Operating activities** are the principal revenue-generating activities of the enterprise and other activities that are not investing or financing activities. Examples, cash receipts from the sale of goods and the rendering of services; cash receipts from royalties, fees, commissions and other revenue; cash payments to suppliers for goods and services; cash payments to and on behalf of employees.

**Investing activities** are the acquisition and disposal of long-term assets and other investments not included in cash equivalents. Examples, cash payments to acquire fixed assets (including intangibles). These payments include those relating to capitalised research and development costs and self-constructed fixed assets; cash receipts from disposal of fixed assets (including intangibles); cash payments to acquire shares, warrants or debt instruments of other enterprises and interests in joint ventures (other than payments for those instruments considered to be cash equivalents and those held for dealing or trading purposes).

**Financing activities** are activities that result in changes in the size and composition of the owners' capital (including preference share capital in the case of a company) and borrowings of the enterprise. Example, cash proceeds from issuing shares or other similar instruments; cash proceeds from issuing debentures, loans, notes, bonds, and other short or long-term borrowings; and cash repayments of amounts borrowed.

Additionally certain items are required to be disclosed separately, like Income Tax, Dividends, etc.

The enterprise can choose either direct method or indirect method for presentation of its cash flows from operating activities.

For Investing and financing activities Cash Flow statement should be prepared using the direct method.

Direct Method requires disclosure of gross receipts and gross cash payments.

Indirect method requires net profit or loss before tax before tax and extraordinary items be adjusted for the effects of non-cash transactions and items of income or expense associated with investing or financing cash flows.

Cash flows arising from transactions in a foreign currency should be recorded in an enterprise's reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the cash flow. A rate that approximates the actual rate may be used if the result is substantially the same as would arise if the rates at the dates of the cash flows were used. The effect of changes in exchange rates on cash and cash equivalents held in a foreign currency should be reported as a separate part of the reconciliation of the changes in cash and cash equivalents during the period.

## AS-4 (REVISED) — CONTINGENCIES AND EVENTS OCCURRING AFTER THE BALANCE SHEET DATE

**Contingencies** Replaced with AS-29

### Events occurring after the Balance Sheet Date

- Assets and liabilities should be adjusted for events occurring after the balance sheet date that provide additional evidence to assist the estimation of amounts relating to conditions existing at the balance sheet date or that indicate that the fundamental accounting assumption of going concern (i.e., the continuance of existence or substratum of the enterprise) is not appropriate.
- If an enterprise declares dividends to shareholders after the balance sheet date, the enterprise should not recognise those dividends as a liability at the balance sheet date unless a statute requires otherwise. Such dividends should be disclosed in notes.

- Disclosure should be made in the report of the approving authority of those events occurring after the balance sheet date that represent material changes and commitments affecting the financial position of the enterprise.

## Disclosure

- If disclosure of events occurring after the balance sheet date in the report of the approving authority is required by the Standard then it shall disclose; the nature of the event, an estimate of the financial effect, or a statement that such an estimate cannot be made.

## AS-5 — NET PROFIT/LOSS FOR THE PERIOD, PRIOR PERIOD ITEMS AND CHANGES IN ACCOUNTING POLICIES

- Prominent definitions includes; Ordinary activities are any activities which are undertaken by an enterprise as part of its business and such related activities in which the enterprise engages in furtherance of, incidental to, or arising from, these activities. Extraordinary items are income or expenses that arise from events or transactions that are clearly distinct from the ordinary activities of the enterprise and, therefore, are not expected to recur frequently or regularly. Prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods. Accounting policies are the specific accounting principles and the methods of applying those principles adopted by an enterprise in the preparation and presentation of financial statements.

### Accounting treatment and disclosures

- **Ordinary Activities:** When items of income and expense within profit or loss from ordinary activities are of such size, nature or incidence that their disclosure is relevant to explain the performance of the enterprise for the period, the nature and amount of such items should be disclosed separately.
- **Extraordinary Items** should be disclosed in the statement of profit and loss as a part of net profit or loss for the period. The nature and the amount of each extraordinary item should be separately disclosed in the statement of profit and loss in a manner that its impact on current profit or loss can be perceived.
- **Prior Period:** The nature and amount of prior period items should be separately disclosed in the statement of profit and loss in a manner that their impact on the current profit or loss can be perceived.
- **Accounting Estimate:** The effect of a change in an accounting estimate should be included in the determination of net profit or loss in; (a) the period of the change, if the change affects the period only; or (b) the period of the change and future periods, if the change affects both.
- **Accounting Policy:** Any change in an accounting policy which has a material effect should be disclosed. The impact of, and the adjustments resulting from, such change, if material, should be shown in the financial statements of the period in which such change is made, to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact should be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the current period but which is reasonably expected to have a material effect in later periods, the fact of such change should be appropriately disclosed in the period in which the change is adopted.
- A change in accounting policy consequent upon the adoption of an Accounting Standard should be accounted for in accordance with the specific transitional provisions, if any, contained in that Accounting Standard. However, disclosures required by paragraph 32 of the Statement should be made unless the transitional provisions of any other Accounting Standard require alternative disclosures in this regard.
- Where any policy was applied to immaterial items in any earlier period but the item is material in the current period, the change in accounting policy, if any, shall not be treated as a change in accounting policy and accordingly no disclosure is required e.g., gravity booked on cash basis in earlier period for relatively insignificant number of employees which in current period has become material and thus provided on basis of report of Actuary.

## AS-6 — DEPRECIATION ACCOUNTING

It may be mentioned that the standard has been withdrawn w.e.f. 01-04-2017.

## **AS-7 (REVISED 2002) — ACCOUNTING FOR CONSTRUCTION CONTRACTS**

- It may be mentioned that the standard is applicable in accounting of contracts in the books of the contractor. It is not applicable for construction project undertaken by the entity on behalf of its own, for example, a builder constructing flats to be sold. It is also not applicable to Service Contracts which are not related to the construction of asset.
- Construction contract may be for construction of a single/combination of interrelated or interdependent assets
- According to AS-7 (Revised) the enterprise should follow only percentage completion method.
- Where in case the contract revenue or the stage of completion cannot be determined reliably, the cost incurred on the contract may be carried forward as work in progress.
- All foreseen losses must be fully provided for.

When it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognized as an expense immediately.

- Change in estimate to be accounted for as per AS 5.
- Under percentage of completion method, appropriate allowance for future contingencies shall be made.
- Disclosures required by an enterprise-
  - a) contract revenue recognised in the period
  - b) method used to determine required contract revenue.
  - c) method used to determine stage of completion of contracts in progress.

For contracts in progress, an enterprise should disclose

- a) the aggregate amount of costs incurred and recognized profits less recognized losses up to the reporting date
- b) amount of advances received
- c) amount of retention.
- d) gross amount due from customers for contract work as an asset
- e) gross amount due to customers for contract work as a liability.

## **AS-8 — ACCOUNTING FOR RESEARCH AND DEVELOPMENT**

- Salaries, wages, personnel costs, depreciation, cost of materials and services etc. related to research and development, payment to outside institutions, reasonable allocation of overhead costs and amortization of patents and licenses be included in R & D cost, and be disclosed in Profit & Loss Account.
- Such cost to be charged as an expense unless the product or process is separately identifiable. It may be then deferred for allocation in future years on systematic basis and to be separately disclosed in Balance Sheet and reviewed at the end of each accounting year. Once written off, it should not be reinstated.

It may be mentioned that the standard has been withdrawn w.e.f. 1-4-2004. The accounting provisions of this standard are taken.

## **AS-9 — REVENUE RECOGNITION**

- This accounting standard is not applicable for recognition of revenue arising from construction contracts, hire purchase and lease agreements, government grants and other similar subsidies and revenue of insurance company from insurance contracts.

**Revenue from sales or service transactions** should be recognised when the requirements as to performance as set out are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

- In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:
  - (i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.
- In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished.
- Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service.
- Revenue arising from the use of other enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists. These revenues are recognised on the following bases:
  - (i) Interest: on a time proportion basis taking into account the amount outstanding and the rate applicable.
  - (ii) Royalties: on an accrual basis in accordance with the terms of the relevant agreement.
  - (iii) Dividends from investments in shares: when the owner's right to receive payment is established.

## **Disclosure**

- In addition to the disclosures required by Accounting Standard 1 on 'Disclosure of Accounting Policies' (AS-1), an enterprise should also disclose the circumstances in which revenue recognition has been postponed pending the resolution of significant uncertainties.
- In cases where revenue cycle of the entity involves collection of excise duty the enterprise is required to disclose revenue at gross as reduced by excise amount thereby finally arriving net sales on the face of the profit and loss account.
- The standard is followed by an appendix that though is not part of the Standard; illustrate the application of the Standard to a number of commercial situation deals with various situations in an endeavor to assist in clarifying application of the Standard.

## **AS-10 (REVISED) — ACCOUNTING FOR PROPERTY, PLANT AND EQUIPMENT**

- This Accounting Standard is applicable w.e.f. 01-04-2017.
- Fixed asset is an asset held for producing or providing goods and/or services and is not held for sale in the normal course of the business.
- The cost of an item of property, plant and equipment should be recognised as an asset if, and only if:
  - (a) It is probable that future economic benefits associated with the item will flow to the enterprise; and
  - (b) The cost of the item can be measured reliably.
- The cost of a fixed asset should comprise its purchase price and any attributable cost of bringing the asset to its working condition for its intended use.
- Self-constructed asset shall be accounted at cost.
- In case of exchange of asset, fair value of asset acquired or the net book value of asset given up whichever is more clearly evident shall be considered.
- Revaluation is permitted provided it is done for the entire class of assets. The basis of revaluation should be disclosed.



- Increase in value on revaluation shall be credited to Revaluation Reserve while the decrease should be charged to Profit and Loss Account.
- Goodwill to be accounted only when paid for.
- Gross and net book values at beginning and end of year showing additions, deletions and other movements is required to be disclosed.
- Assets should be eliminated from books on disposal or when of no utility value.
- Profit/loss on disposal should be recognized to Profit and Loss Account.
- Machinery spares that can be used only in conjunction of specific asset shall be capitalized.
- Where an entity has incurred expenditure in past which is now eligible to be included in the cost of a project for construction of property, plant and equipment, it may do so retrospectively for such a project. The effect of such retrospective application of this requirement should be recognised net-of-tax in revenue reserves.
- Replacement cost of an item of property, plant and equipment is capitalised if replacement meets the recognition criteria. Carrying amount of items replaced is derecognised in accordance with the derecognition criteria.
- Cost of major inspections is recognised in the carrying amount of property, plant and equipment as a replacement, if recognition criteria are satisfied and any remaining carrying amount of the cost of previous inspection is derecognised.
- Bearer plants are accounted for in the same way as self-constructed items of property, plant and equipment before they are in the location and condition necessary to be capable of operating in the manner intended by management.
- The cost of an item of property, plant and equipment is the cash price equivalent at the recognition date. If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit unless such interest is capitalised in accordance with AS 16, Borrowing Costs.
- The residual value, the useful life of an asset, and the depreciation method shall be reviewed at least at each financial year-end.
- The disclosure requirements of AS 10 have been significantly enhanced. Some of them are given below.

The financial statements should disclose:

- a) The existence and amounts of restrictions on title, and property, plant and equipment pledged as security for liabilities;
- b) The amount of expenditure recognised in the carrying amount of an item of property, plant and equipment in the course of its construction;
- c) The amount of contractual commitments for the acquisition of property, plant and equipment;
- d) If it is not disclosed separately on the face of the statement of profit and loss, the amount of compensation from third parties for items of property, plant and equipment that were impaired, lost or given up that is included in the statement of profit and loss; and
- e) The amount of assets retired from active use and held for disposal.

#### **AS-11 (REVISED-2003) — ACCOUNTING FOR EFFECTS OF CHANGES IN FOREIGN EXCHANGE RATES**

- Applicable to all enterprises for which accounting period commences on or after 1-4-2004. It is applicable to transactions in foreign currency and translating financial statements of foreign subsidiary/branches.
- Monetary items denominated in Foreign Currency shall be reported using closing rates.
- Non-monetary items carried in terms of historical cost in foreign currency shall be reported at the exchange rate on the date of the transaction.

- Exchange differences shall be recognised as income/ expenses in the period in which they arise except in case of fixed assets and differences on account of forward contracts.
- Translation of foreign exchange transaction of revenue items except opening/closing inventories and depreciation shall be made by applying rate at the date of the transactions. For convenience purposes an average rate or weighted average rate may be used, provided it approximates the rate of exchange. Opening and closing inventories shall be translated at rates prevalent on opening and closing dates, respectively and depreciation amount shall be converted by applying the rate used for translation of the asset.
- Translation gains and losses for branches/subsidiaries forming integral part of operations of the entity shall be accounted as stated in above. However translation gains and losses for non-integral operations shall be directly credited to reserves. It may be mentioned that that the method of arriving translation gains or losses shall be different from that stated above; i.e., all assets and liabilities are converted at closing rates and revenue items are converted at average rates, where it approximates the rates at the date of transactions.
- Integral foreign operation is a foreign operation, the activities of which are an integral foreign operation is a foreign operation, the activities of which are an integral part of those of the reporting enterprise.
- Exchange differences arising on repayment of liabilities incurred for purchase of fixed assets shall be expensed through profit and loss account. {Note, in case of a Company, where the fixed asset is purchased from outside India, the related exchange gains and loss, if any, are required to be capitalized}. Also in case of a company, other exchange differences arising out of long term monetary items can be initially deferred and later amortized over the period upto March 31, 2020 or the life of the related long term monetary asset whichever is lower with corresponding adjustments in balance sheet through "Foreign Currency Monetary Item Translation Difference Account".
- Gains or losses on accounting of forward contracts is recognised through profit and loss account (unless it relates to fixed assets as described in above for a Company). However, measurement of gains or losses on forward contract depends upon the intention for which it is taken. Where it is not for trading or speculative purposes the premium/ discount is amortised over the term of the contracts. Where these are held for either speculative or trading purposes, the gain or loss is arrived at each reporting date after comparing the FAIR VALUE of contract for its remaining term of maturity with the carrying amount at the reporting date.
- Profit/Loss on cancellation or renewal of forward exchange contract shall be recognised as income/ expenses of the respective period (unless it relates to fixed assets as described in above for a Company).
- Amount of exchange difference included in Profit & Loss Account adjusted in carrying forward or amount of fixed assets or due to forward contracts recognised in Profit & Loss Account for one or more accounting period must be disclosed.

## **AS-12 — ACCOUNTING FOR GOVERNMENT GRANTS**

- Grants should not be recognised unless reasonably assured to be realised. Grants towards specific assets be presented as deduction from its gross value. Alternatively, be treated as deferred income in Profit & Loss Account on rational basis over the useful life of the asset when depreciable. For non-depreciable asset requiring fulfillment of any obligations, it be credited to Profit & Loss Account during the concerned period to fulfill obligations.
- Balance of deferred income be disclosed appropriately as to promoter's contribution, be credited to capital reserves and considered as shareholders' funds.
- Grants in the form of non-monetary assets given at concessional rate be accounted at their acquisition cost. Asset given free of cost be recorded at nominal value.
- Grants receivable as compensation of losses/ expenses incurred be recognised and disclosed in Profit & Loss Account in the year it is receivable and shown as extraordinary item if appropriately read with AS-5.
- Contingency related to grant be treated in accordance with AS-4. Grants when become refundable, be shown as extraordinary item read with AS-5.

- Grants related to revenue on becoming refundable be adjusted first against unamortised deferred credit balance of the grant and then be charged to Profit & Loss Account.
- Grants against specific assets on becoming refundable be recorded by increasing the value of the respective assets or by reducing Capital Reserve/Deferred Income balance of the grant. Any such increase in the value of the asset shall be depreciated prospectively over the residual useful life of the asset.
- Grant to promoter's contribution when refundable be reduced from the Capital Reserve.
- Accounting policy adopted for grants including method of presentation, extent of recognition in financial statements, accounting of non-monetary assets at concession/free of cost be disclosed.

### **AS-13 — ACCOUNTING FOR INVESTMENTS**

- Current investments and long-term investments shall be disclosed distinctly with further sub-classification.
- Cost of investment to include acquisition charges, e.g., brokerage, fees and duties.
- Current investments shall be disclosed at lower of costs and fair value.
- Long-term investments shall be disclosed at cost.
- Provision for decline (other than temporary) to be made.
- If an investment is acquired by issue of shares/securities or in exchange of an asset, the cost of investment is the fair value of securities issued or the assets given up. Acquisition cost may be determined considering the fair value of the investments acquired. Changes in the carrying amount and in case of disposal, the difference between the carrying amount and the net proceeds should be credited to the P& L A/c.
- An investment property is accounted for in accordance with cost model as prescribed in Accounting Standard (AS) 10, Property, Plant and Equipment. The cost of any shares in a co-operative society or a company, the holding of which is directly related to the right to hold the investment property, is added to the carrying amount of the investment property.
- Investments classified as current investments should be carried in the financial statements at the lower of cost and fair value determined either on an individual investment basis or by category of investment, but not on an overall (or global) basis.
- Investments classified as long term investments should be carried in the financial statements at cost. However, provision for diminution shall be made to recognise a decline, other than temporary, in the value of the investments, such reduction being determined and made for each investment individually.
- Adequate disclosure is required for: the accounting policy adopted — classification of investments — income from investments, profit/loss on disposal and changes in carrying amount of such investment
- aggregate amount of quoted and unquoted investments giving aggregate market value of quoted investments.
- Significant restrictions on right of ownership, realisation of investment and remittance of income and proceeds of disposal thereof be disclosed.

### **AS-14 (REVISED) — ACCOUNTING FOR AMALGAMATION**

- Amalgamation means an amalgamation pursuant to the provisions of the Companies Act, 2013 or any other statute which may be applicable to companies and includes 'merger'.
- The accounting method to be adopted depends whether the amalgamation is in the nature of merger or not as defined in para 3(e) of the Standard. The definitions list out five criteria, all of which must be satisfied for an amalgamation to be accounted on the basis of "Pooling of Interest Method". If any criterion is not met then the amalgamation is accounted on by using "Purchase Method". It may be mentioned that these criteria relates to mode of payment of consideration of merger, shareholding pattern pre and Post Merger, intention to carry-on business after the merger, pooling of all assets and liabilities after the merger and an intention to continue to carry the carrying amounts of assets and liability after the merger.

- Under Purchase Method, all assets and liabilities of the transferor company is recorded either at existing carrying amount or consideration is allocated to individual identifiable assets and liabilities on basis of its fair values at date of amalgamation. The excess or shortfall of consideration over value of net assets is recognised as goodwill or capital reserve.
- Any non-cash item included in the consideration on amalgamation should be accounted at fair value.
- Under the Pooling of Interest Method, assets, liabilities and reserves of the transferor company be recorded at existing carrying amount and in the same form as on date of amalgamation. In case of conflicting accounting policies existing in transferor and transferee company a uniform policy be adopted on amalgamation, as per AS-5.
- As per the amended provisions of the rule, paragraph 23 shall not apply to any scheme of amalgamation approved under the Companies Act, 2013. Thus, even the disclosure related points paragraph 42 will not apply and the enterprise will not be required to disclose the following:
  1. A description of the accounting treatment given to the reserves and the reasons for following the treatment different from that prescribed in this Standard.
  2. Deviations in the accounting treatment given to the reserves as prescribed by the scheme of amalgamation sanctioned under the statute as compared to the requirements of this Standard that would have been followed had no treatment been prescribed by the scheme.
  3. The financial effect, if any, arising due to such deviation.
- Certain specific disclosures as discussed in the questionnaire below are required to be made in financial statements after amalgamation. In case of amalgamation affected after Balance Sheet date but before issue of financial statements of either party, the event be only specifically disclosed and not given effect in such statements.
- In accordance with the amendment, where the requirements of the relevant statute for recording the statutory reserves in the books of the transferee company are complied with, statutory reserves of the transferor company should be recorded in the financial statements of the transferee company. The corresponding debit should be given to a suitable account head (e.g., 'Amalgamation Adjustment Reserve') which should be presented as a separate line item (previously disclosed as a part of 'miscellaneous expenditure' or other similar category in the balance sheet).

#### **AS-15 (REVISED 2005) — EMPLOYEE BENEFITS**

- The method of accounting of retirement benefits depends on the nature of retirement benefits and in practice it may not be incorrect to say that it also depends on the mode of funding.
- On the basis of nature, a retirement benefit scheme can be classified either as defined benefit plan or defined contribution plan.

Defined contribution schemes are schemes where the amounts to be paid as retirement benefits are determined by contributions to a fund together with earnings thereon; e.g., provident fund schemes. Defined benefit schemes are retirement benefit schemes under which amounts to be paid as retirement benefits are determinable usually by reference to employee's earnings and/or years of service; e.g., gratuity schemes.

For defined contribution schemes, contribution payable by employer is charged to Profit & Loss Account.

- For defined benefit schemes, accounting treatment will depend on the type of arrangements which
- If payment for retirement benefits is made out of employers funds, appropriate charge to Profit & Loss Account to be made through a provision for accruing liability, calculated according to actuarial valuation.
- If liability for retirement benefit is funded through creation of trust, the excess/shortfall of contribution paid against amount required to meet accrued liability as certified by actuary is treated as pre-payment or charged to Profit & Loss Account.
- If liability for retirement benefit is funded through a scheme administered by an insurer, an actuarial certificate or confirmation from insurer is obtained. The excess/shortfall of the contribution paid against

the amount required to meet accrued liability as confirmed by insurer is treated as pre-payment or charged to Profit & Loss Account.

- Any alteration in the retirement benefit cost should be charged or credited to Profit & Loss Account and change in actuarial method is to be disclosed.
- Financial statements to disclose method by which retirement benefit cost have been determined.
- The institute has issued AS-15 which is broadly on lines of IFRS-19. It is applicable for accounting periods commencing after December 7, 2007. The standard improves the existing practices mainly in the following areas :
  - o It is broad in its applicability as it covers all short-term and long term employee benefits. For example, annual paid leave (though not encashable), long-term service rewards, subsidized goods or services, etc. are also covered
  - o Additional disclosures are required in relation to any defined benefits plans including:
    - (i) The reconciliation of (opening to closing) of Projected Benefit Obligation.
    - (ii) The reconciliation of (opening to closing) of Fair Value of Plan Assets.
    - (iii) The reconciliation of (opening to closing) of Net Liability/Prepaid Asset.
    - (iv) Components of charge during the year.
    - (v) Principal actuarial assumptions.

#### **AS-16 — BORROWING COSTS**

- Borrowing costs that are directly attributable to the acquisition, construction or production of any qualifying asset (assets that takes a substantial period of time to get ready for its intended use or sale) should be capitalised.
- Borrowing costs that can be capitalised are interest and other costs that are directly attributable to the acquisition, construction and production of a qualifying asset.
- Income on the temporary investment of the borrowed funds to be deducted from borrowing costs.
- Capitalisation of borrowing cost should commence when expenditure for acquisition, construction or production is being incurred, borrowing costs are incurred and activities necessary to prepare the asset for its intended use or sale are in progress.
- Capitalisation of borrowing costs should be suspended during extended periods in which development is interrupted.
- Capitalisation should cease when completed substantially or if completed in parts, in respect of that part, all the activities for its intended use or sale are complete.
- Statement does not deal with the actual or imputed cost of owner's equity/preference capital are treated as borrowing costs.
- Financial statements to disclose accounting policy adopted for borrowing cost and also the amount of borrowing costs capitalised during the period.

#### **AS-17 — SEGMENT REPORTING**

- Requires reporting of financial information about different types of products and services an enterprise provides and different geographical areas in which it operates.
- A business segment is distinguishable component of an enterprise providing a product or service or group of products or services that is subject to risks and returns that are different from other business segments.
- A geographical segment is distinguishable component of an enterprise providing products or services in a particular economic environment that is subject to risks and returns that are different from components operating in other economic environments.

- Internal financial reporting system is normally the basis for identifying the segments.
- The dominant source and nature of risk and returns of an enterprise should govern whether its primary reporting format will be business segments or geographical segments.

A business segment or geographical segment is a reportable segment if (a) revenue from sales to external customers and from transactions with other segments exceed 10% of total revenues (external and internal) of all segments; or (b) segment result, whether profit or loss is 10% or more of (i) combined result of all segments in profit or (ii) combined result of all segments in loss whichever is greater in absolute amount; or (c) segment assets are 10% or more of all the assets of all the segments.

- If there is reportable segment in the preceding period (as per criteria), same shall be considered as reportable segment in the current year.
- If total external revenue attributable to reportable segment constitutes less than 75% of total revenues then additional segments should be identified.
- Under primary reporting format for each reportable segment the enterprise should disclose external and internal segment revenue, segment result, amount of segment assets and liabilities, cost of fixed assets, acquired, depreciation, amortisation of assets and other non-cash expenses.
- Interest expenses (on operating liabilities) identified to a particular segment (not of a financial nature) will not be included as part of segment expense.
- Reconciliation between information about reportable segments and information in financial statements of the enterprise is also to be provided.
- Secondary segment information is also required to be disclosed. This includes information about revenues, assets and cost of fixed assets acquired.
- When primary format is based on geographical segments, certain further disclosures are required.
- Disclosures are also required relating to intra-segment transfers and composition of the segment.
- In case, by applying the definitions of 'business segment' and 'geographical segment', contained in AS-17, it is concluded that there is neither more than one business segment nor more than one geographical segment, segment information as per AS-17 is not required to be disclosed.
- It may be mentioned that the illustrative disclosure attached to Standard as appendix (though not forming part of the Standard) illustrate in detail; determination of reportable segments, information about business segments and summary of required disclosures.

## **AS-18 — RELATED PARTY DISCLOSURES**

- Parties are considered to be related if, at any time during the reporting period, one party has ability to control or exercise significant influence over the other party in making financial and/or operating decisions.
- The statement deals with following related party relationships: (a) Enterprises that directly or indirectly, through one more intermediaries, control or are controlled by or are under common control with the reporting enterprise (b) Associates, Joint Ventures of the reporting entity, investing party or venturer in respect of which reporting enterprise is an associate or a joint venture, (c) Individuals owning voting power giving control or significant influence over the enterprise and relatives of any such individual, (d) Key management personnel and their relatives, and (e) Enterprises over which any of the persons in (c) or (d) are able to exercise significant influence. Other relationship is not covered by this Standard.
- Following are not deemed related parties (a) Two companies simply because of common director, (b) Customer, supplier, franchiser, distributor or general agent merely by virtue of economic dependence; and (c) Financiers, trade unions, public utilities, government departments and bodies merely by virtue of their normal dealings with the enterprise.
- Disclosure under the Standard is not required in the following cases (i) If such disclosure conflicts with duty of confidentiality under statute, duty cast by a regulator or a component authority; (ii) In consolidated financial statements in respect of intra group transactions, and (iii) In case of State-controlled enterprises regarding related party relationships and transactions with other State-controlled enterprises.

- Relative (in relation to an individual) means spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in dealings with the reporting entity.
- Standard also defines inter alia control, significant influence, associate, joint venture and key management personnel.
- If there are transactions between the related parties, during the existence of relationship, certain information is to be disclosed, viz.; name of the related party, description of the nature of relationship, nature of transaction and its volume (as an amount or proportion), other elements of transaction if necessary for understanding, amount or appropriate proportion outstanding pertaining to related parties, provision for doubtful debts from related parties, amounts written off or written back in respect of debts due from or to related parties.
- Names of the related party and nature of related party relationship to be disclosed even where there are no transactions but the control exists.
- Items of similar nature may be aggregated by type of the related party.
- A non-executive director will not be considered as a key management person for the purpose of this standard. Unless a) he is in a position to exercise significant influence by virtue of owning an interest in the voting power or b) he is responsible and has the authority for directing and controlling the activities of the reporting enterprise. Mere participation in the policy making process will not attract the provisions of AS 18.

### **AS-19 — LEASES**

- The Standard applies in accounting for all leases other than —
  - a. lease agreements to explore for or use natural resources,
  - b. licensing agreements for items such as motion pictures, films, video recordings plays etc. and
  - c. lease agreements to use lands.
- Leases are classified as finance lease or operating lease.
- A finance lease is defined to mean a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Examples of situations which normally lead to a lease being classified as a finance lease are —
  - a. lessor transferring the ownership at the end of the lease term,
  - c. lessee has an option to purchase the asset at a price which is sufficiently lower than the fair value at the date the option becomes exercisable, lease term is for substantial part of economic life of the asset,
  - d. present value of minimum lease payment at the inception of the lease is substantially equal to the assets fair value and
  - e. the asset leased is of specialised nature such that only lessee can use it without major modifications made to it.
- An operating lease is defined to mean a lease other than a finance lease.

### **Treatment in the books of lessee**

In case of finance lease —

- At the inception of the finance the lessee should recognise the lease as an asset and a liability. The asset should be recognised at an amount equal to the fair value of leased asset at the inception. If the fair value exceeds the present value of the minimum lease payment from the stand point of the lessee, the amount to recorded as asset and liability reckoned with the present value of the minimum lease payments that may be calculated on the basis of interest rate implicit in the lease, if practicable to determine and if not, then at lessee's incremental borrowing rate.

- Lease payments should be apportioned between finance charges and the reduction of outstanding.
- The depreciation policy for leased asset should be consistent with that for depreciable assets that are owned. AS-6 (Depreciation Accounting) applies in such cases.
- Disclosure should be made of —
  - a. assets acquired under finance lease,
  - b. net carrying amount at the balance sheet date,
  - c. reconciliation between the total minimum lease payments at balance sheet date and their present value,
  - d. total minimum lease payments at balance sheet date and their present value for periods specified,
  - e. contingent rent recognised as income,
  - f. the total of future minimum sublease payments expected to be received and
  - g. general description of significant leasing arrangements.

**In case of operating lease —**

- The lease payments should be recognised as an expense on straight line basis, unless other systematic basis is more representative of the time pattern of the user's benefit.
- Disclosures should be made of —
  - a. the total of future minimum lease payments for the periods specified,
  - b. the total of future minimum sublease payments expected to be received,
  - c. lease payments recognised in the statement of Profit & Loss, with separate amounts of minimum lease payments and contingent rents,
  - d. sublease payments recognised in the statement of Profit & Loss and
  - e. general description of significant leasing arrangements.

**Treatment in the books of lessor**

**In case of finance lease —**

- The lessor should recognise the asset in its balance sheet as a receivable at an amount equal to net investment in the lease.
- The recognition of finance income should be based on a pattern reflecting a constant periodic return on the net investment of the lessor outstanding.
- In case of any reduction in the unguaranteed residual values, income allocation over the remaining lease term should be revised
- Initial direct cost are either recognised immediately in the profit and loss statement or allocated against the finance income over the lease term.
- Disclosure should be made of —
  - a. total gross investment in lease and the present value of the minimum lease payments at specified periods and a reconciliation thereof at the balance sheet date,
  - b. unearned finance income,
  - c. accruing unguaranteed residual value benefit,
  - d. accumulated provision for uncollectible minimum lease payments receivable,



- e. contingent rent recognised,
- f. general description of significant leasing arrangements and
- g. accounting policy adopted in respect of initial direct costs.

#### **In case of operating lease —**

- Lessors to present an asset given on lease under fixed assets. Lease income should be recognised on a straight line basis over the lease term or other systematic basis, if representative of the time pattern over which benefit derived gets diminished.
- Costs, including depreciation, incurred are recognised as an expense.
- Initial direct cost are either deferred and allocated to income over the lease term in proportion to rent income recognised or are recognised immediately in the profit and loss statement.
- Disclosure should be made of —
  - a. gross carrying amount of the leased assets, accumulated depreciation and impairment loss at the balance sheet date and depreciation and impairment loss recognised or reversed for the period,
  - b. the future minimum lease payments in aggregate and for the periods specified,
  - c. total contingent rent recognised as income,
  - d. a general description of the significant leasing arrangements and
  - e. accounting policy for initial direct costs.

#### **Lease by Manufacturer or Dealer**

- The manufacturer or dealer lessor should recognise the transaction in accordance with policy followed for outright sales. Initial direct costs should be recognised as an expense at the inception of the lease. Artificial low rates of interests are quoted, profit on sale should be restricted to that which would apply if a commercial rate of interest were charged.

#### **Sale and leaseback transactions**

- If the transaction of sale and leaseback results in a finance lease, any excess or deficiency of sale proceeds over the carrying amount, it should be deferred and amortised over the lease term in proportion to the depreciation of the leased assets.

If the transaction result in an operating lease and it is clearly established to be at fair value, profit or loss should be recognised immediately. If the sale price is below the fair value, any profit or loss should be recognised immediately, except that, if the loss is compensated by future lease payments at market price, it should be deferred and amortised in proportion to the lease payments over the period for which asset is expected to be used. If the sales price is above fair value, the excess over the fair value should be deferred and amortised over period of expected use of asset.

- In an operating lease, if the fair value at the time of sale and leaseback transaction is less than the carrying amount of the asset, a loss equal to the amount of the difference between the carrying amount and fair value should be recognised immediately.

#### **AS-20 — EARNINGS PER SHARE**

- Basic and diluted EPS is required to be presented on the face of Profit and Loss Statement with equal prominence for all the periods presented. EPS is required to be presented even when it is negative.
- Basic EPS should be calculated by dividing net profit or loss for the period attributable to equity shareholders by weighted average of equity shares outstanding during the period.
- In case of enterprise presenting consolidated financial statements EPS to be calculated on the basis of consolidated information.

- ASI-12 clarifies that every company which is required to give information under Part IV of schedule VI to the Companies Act 1956, should calculate and disclose Diluted EPS in accordance with AS-20, irrespective of its equity shares or potential equity shares are listed on a recognized stock exchange in India.
- In arriving earnings (excluding extraordinary items) attributable to equity shareholders preference dividend for the period and the attributable tax are to be excluded.
- The weighted average number of shares, for all the periods presented, is adjusted for bonus issue or any element thereof in rights issue, share split and consolidation of shares.
- For calculating diluted EPS, net profit or loss attributable to equity shareholders and the weighted average number of shares are adjusted for the effects of dilutive potential equity shares (i.e., assuming conversion into equity of all dilutive potential equity).
- Potential equity shares are treated as dilutive when, and only when, their conversion into equity would result in a reduction in profit per share from continuing ordinary operations.
- In calculating diluted EPS each issue of potential equity share is considered separately and in sequence from the most dilutive to the least dilutive.
- The effects of anti-dilutive potential equity shares are ignored in calculating diluted EPS.
- For the purpose of calculating diluted EPS, the net profit or loss for the period attributable to equity shareholders and the weighted average number of shares outstanding during the period should be adjusted for the effects of all dilutive potential equity shares.
- If the number of equity shares or potential equity shares outstanding, increases or decreases on account of bonus, splitting or consolidation during the year or after the balance sheet date but before the approval of financial statements, then basic and diluted EPS are recalculated for all periods presented. The fact is also disclosed.
- The amounts of earnings used as numerators for computing basic and diluted EPS and a reconciliation of those amounts with Profit and Loss Statement, the weighted average number of equity shares used as the denominator in calculating the basic and diluted EPS and the reconciliation between the two EPS and the nominal value of shares along with EPS per share figure need to be disclosed.
- It has been clarified that if an enterprise discloses EPS for complying with requirements of any source or otherwise, it should calculate and disclose EPS as per AS 20. Disclosure under Part IV of Schedule VI to the Companies Act 1956 should be in accordance with AS 20.

#### **AS-21 (REVISED) — CONSOLIDATED FINANCIAL STATEMENTS**

- To be applied in the preparation and presentation of consolidated financial statements for a group of enterprises under the control of a parent.
- Control means the ownership of more than one-half of the voting power of an enterprise or control of the composition of the board of directors or such other governing body.
- Control of composition implies power to appoint or remove all or a majority of directors.
- Consolidated financial statements to be presented in addition to separate financial statements.
- All subsidiaries, domestic and foreign to be consolidated except where control is intended to be temporary or the subsidiary operates under severe long-term restriction impairing transfer of funds to the parent.
- Consolidation to be done on a line by line basis by adding like items of assets, liabilities, income and expenses which involve.
- Elimination of cost to the parent of the investment in the subsidiary and the parent's portion of equity of the subsidiary at the date of investment.
- Excess of cost over parent's portion of equity, to be shown as goodwill.
- Where cost to the parent is less than its portion, of equity, difference to be shown as capital reserve.

- Minority interest in the net income to be adjusted against income of the group.
- Minority interest in net assets to be shown separately as a liability.
- Intra group balances and intra-group transactions and resulting unrealised profits should be eliminated in full. Unrealised Losses should also be eliminated unless cost cannot be recovered.
- Where two or more investments are made in a subsidiary, equity of the subsidiary to be generally determined on a step by step basis.
- Financial statements used in consolidation should be drawn up to the same reporting date. If reporting dates are different, adjustments for the effects of significant transactions/events between the two date to be made.
- Consolidation should be prepared using same accounting policies. If the accounting policies followed are different, the fact should be disclosed together with proportion of such items.
- In the year in which parent subsidiary relationship ceases to exist, consolidation to be made up-to-date of cessation.
- Disclosure is to be of all subsidiaries giving name, country of incorporation, residence, proportion of ownership and voting power if different, nature of relationship between parent and subsidiary, effect of the acquisition and disposal of subsidiaries on the financial position, names of subsidiaries whose reporting dates are different than that of the parent.
- When the consolidated statements are presented for the first time figures for the previous year need not be given.
- While preparing consolidated financial statements, the tax expense to be shown in the consolidated financial statements should be the aggregate of the amounts of tax expense appearing in the separate financial statements of the parent and its subsidiaries.
- 'Near Future' should be considered as not more than twelve months from acquisition of relevant investments unless a longer period can be justified on the basis of facts and circumstances of the case.
- CFS normally includes Consolidated Balance Sheet, consolidated P&L, notes and other statements necessary for preparing a true and fair view. Cash Flow only in case, parent presents Cash Flow statement.
- Where an enterprise does not have a subsidiary but has an associate and/or a joint venture such an enterprise should also prepare consolidated financial statements in accordance with Accounting Standard (AS) 23, Accounting for Associates in Consolidated Financial Statements, and Accounting Standard (AS) 27, Financial Reporting of Interests in Joint Ventures respectively.
- When there are more than one investor in a company in which one of the investors controls the composition of board of directors and some other investor holds more than half of the voting power, both these investors are required to consolidate the accounts of the investee in accordance with this Standard.

*Note: Not all the notes appearing in standalone financial statements is required to be disclosed in the consolidated financial statements. Typically notes that are not required to be included are, managerial remuneration, CIF value of import, capacity, quantitative details, etc.*

## **AS-22 — ACCOUNTING FOR TAXES ON INCOME**

- This statement should be applied in accounting for taxes on income. This includes the determination of the amount of the expense or saving related to taxes on income in respect of an accounting period and the disclosure of such an amount in the financial statements.
- The expense for the period, comprising current tax and deferred tax should be included in the determination of the net profit or loss for the period.
- Deferred tax should be recognised for all the timing differences, subject to the consideration of prudence in respect of deferred tax assets as set out in paragraph below.
- Except in the situations stated in paragraph 5, deferred tax assets should be recognised and carried forward only to the extent that there is a reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realised.

- Where an enterprise has unabsorbed depreciation or carry forward of losses under tax laws, deferred tax assets should be recognised only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which such deferred tax assets can be realised.
- Current tax should be measured at the amount expected to be paid to (recovered from) the taxation authorities, using the applicable tax rates and tax laws. Deferred tax assets and liabilities should be measured using the tax rates and tax laws that have been enacted or substantively enacted by the balance sheet date.
- Deferred tax assets and liabilities should not be discounted to their present value. Deferred tax to be measured using the regular tax rates for companies that pay tax u/s 115JB of the Act.
- The carrying amount of deferred tax assets should be reviewed at each balance sheet date. An enterprise should write-down the carrying amount of a deferred tax asset to the extent that it is no longer reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available against which deferred tax asset can be realised. Any such writedown may be reversed to the extent that it becomes reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available.
- An enterprise should offset assets and liabilities representing current tax if the enterprise:
  1. Has a legally enforceable right to set off the recognised amounts; and
  2. Intends to settle the asset and the liability on a net basis.
- An enterprise should offset deferred tax assets and deferred tax liabilities if:
  1. The enterprise has a legally enforceable right to set off assets against liabilities representing current tax; and
  2. The deferred tax assets and the deferred tax liabilities relate to taxes on income levied by the same governing taxation laws.
- Deferred tax assets and liabilities should be distinguished from assets and liabilities representing current tax for the period. Deferred tax assets and liabilities should be disclosed under a separate heading in the balance sheet of the enterprise, separately from current assets and current liabilities. DTA should be disclosed after the head "Investments" and DTL should be disclosed under the head "Unsecured Loans".
- The break-up of deferred tax assets and deferred tax liabilities into major components of the respective balances should be disclosed in the notes to accounts.
- The nature of the evidence supporting the recognition of deferred tax assets should be disclosed, if an enterprise has unabsorbed depreciation or carry forward of losses under tax laws.
- The deferred tax assets and liabilities, should not be recognized to the extent of deduction allowed from the total income during the tax holiday period, if the timing differences, in respect of which they arise, originate and are reversed during the same tax holiday period. However, if the timing differences reverse after the tax holiday period, DTA and DTL should be recognized in the year in which the timing differences originate.
- Timing differences which originate first, should be considered for reversal first.
- On the first occasion that the taxes on income are accounted for in accordance with this statement, the enterprise should recognize, in the financial statement, the deferred tax balance that has accumulated prior to the adoption of this statement as deferred tax asset/ liability with a corresponding credit/charge to the revenue reserve, subject to the consideration of prudence in case of deferred tax assets. The amount so credited/charged to the revenue reserve should be the same as that which would have resulted if this statement had been in effect from the beginning.

## AS-23 — ACCOUNTING FOR INVESTMENT IN ASSOCIATES IN CONSOLIDATED FINANCIAL STATEMENT

- This statement states out principles and procedures for recognizing in Consolidated Financial Statements, the effects of investments in associates, on the financial position and operating results of the group.
- Associate means enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor.
- Significant influence (ordinarily having 20% or more of the voting power) is termed as power to participate in the financial/operating policy decisions but does not have control over such policies. The potential equity shares held by the investee should not be taken into account for determining the voting power of the investor.
- This statement should be applied in accounting for investments in associates in the preparation and presentation of consolidated financial statements by an investor. An investment in an associate should be accounted for in a consolidated financial statement under the equity method except when:
  1. The investment is acquired and held exclusively with a view to its subsequent disposal in the near future, or
  2. The associate operates under severe long-term restrictions that significantly impair its ability to transfer funds to its investors. Investment in such associates should be accounted for in accordance with the Accounting Standard (AS)-13, Accounting for Investments. The reason for not applying the equity methods in accounting for investments in an associate should be disclosed in the consolidated financial statements.
- An investor should discontinue the use of equity method from the date that:
  - (a) It ceases to have significant influence in an associate but retains, either in whole or in part, its investments, or
  - (b) The use of the equity method is no longer appropriate because the associate operates under severe long-term restrictions that significantly impair its ability to transfer funds to the investors. From the date of discontinuing the use of equity method, investments in such associates should be accounted for in accordance with Accounting Standard (AS)-13, Accounting for Investments. For this purpose, the carrying amount of investments at that date should be regarded as the cost thereafter.
- Provision for proposed dividend made by the associate, in its financial statements, should not be considered for the computation of the investor's share of the results of operations of the associate.
- Goodwill/capital reserve arising on the acquisition of an associate by an investor should be included in the carrying amount of investment in the associate but should be disclosed separately.
- In using equity method for accounting for investment in an associate, unrealised profits and losses resulting from transactions between the investor (or its consolidated subsidiaries) and the associate should be eliminated to the extent of the investor's interest in the associate. Unrealised losses should not be eliminated if and to the extent the cost of the transferred asset cannot be recovered.
- If associate has outstanding preference shares held outside the group, preference dividends whether declared or not, be adjusted in arriving at the investors share of profit or loss.
- If investors share of losses in an associate equals or exceeds the carrying amount of investment, the investor will discontinue its share of loss and will show its investment at nil value.
- The carrying amount of investment in an associate should be reduced to recognise a decline, other than temporary, in the value of the investment, such reduction being determined and made for each investment individually.
- In addition to the disclosures required by paragraphs ..... and 4, an appropriate listing and description of associates including the proportion of ownership interest and, if different, the proportion of voting power held should be disclosed in the consolidated financial statements.

- Investments in associates accounted for using the equity method should be classified as long-term investments and disclosed separately in the consolidated balance sheet. The investor's share of the profits or losses of such investments should be disclosed separately in the consolidated statement of profit and loss. The investor's share of any extraordinary or prior period items should also be separately disclosed.
- The name(s) of the associate(s) of which reporting date(s) is/are different from that of the financial statements of an investor and the differences in reporting dates should be disclosed in the consolidated financial statements.
- In case an associate uses accounting policies other than those adopted for the consolidated financial statements for transactions and events in similar circumstances and it is not practicable to make appropriate adjustments to the associate's financial statements, the fact should be disclosed along with a brief description of the differences in the accounting policies.
- On the first occasion when investment in an associate is accounted for in consolidated financial statements in accordance with this statement, the carrying amount of investment in the associate should be brought to the amount that would have resulted had the equity method of accounting been followed as per this statement since the acquisition of the associate. The corresponding adjustment in this regard should be made in the retained earning in the consolidated financial statements.
- Adjustments to the carrying amount of investment in an associate arising from changes in the associate's equity that have not been included in the statement of profit and loss of the associate should be directly made in the carrying amount of investment without routing it through the consolidated statement of profit and loss. The corresponding debit/credit should be made in the relevant head of the equity interest in the consolidated balance sheet. For example, in case the adjustment arises because of revaluation of fixed assets by the associate, apart from adjusting the carrying amount of investment to the extent of proportionate share of the investor in the revalued amount, the corresponding amount of revaluation reserve should be shown in the consolidated balance sheet.

#### **AS-24 — DISCONTINUING OPERATIONS**

- The objective of this statement is to establish principles for reporting information about discontinuing operations, thereby enhancing the ability of users of financial statements to make projections of an enterprise's cash flows, earnings-generating capacity, and financial position by segregating information about discontinuing operations from information about continuing operations.
- A discontinuing operation is a component of an enterprise that the enterprise, pursuant to a single plan, is: (1) disposing of substantially in its entirety, such as by selling the component in a single transaction or by demerger or spin-off of ownership of the component to the enterprise's shareholders; or (2) disposing of piecemeal, such as by selling off the component's assets and settling its liabilities individually; or (3) terminating through abandonment; and that represents a separate major line of business or geographical area of operations; and that can be distinguished operationally and for financial reporting purposes.
- With respect to a discontinuing operation, the initial disclosure event is the occurrence of one of the following, whichever occurs earlier (a) the enterprise has entered into a binding sale agreement for substantially all of the assets attributable to the discontinuing operation; or (b) the enterprise's board of directors or similar.
- For period subsequent to initial disclosure event period, description of any significant changes in amount or timing of cash flow is required to be disclosed.
- The disclosures to continue upto the period in which the discontinuance is completed i.e. discontinuance plan is substantially completed or abandoned.
- In case discontinuance plan is abandoned, the disclosure is required of this fact, reason therefore and its effect on the financial statements..
- An enterprise should apply the principles of recognition and measurement that are set out in other Accounting Standards for the purpose of deciding as to when and how to recognise and measure the changes in assets and liabilities and the revenue, expenses, gains, losses and cash flows relating to a discontinuing operation.

- When an enterprise disposes of assets or settles liabilities attributable to a discontinuing operation or enters into binding agreements for the sale of such assets or the settlement of such liabilities, it should include, in its financial statements, the following information when the events occur (a) for any gain or loss that is recognised on the disposal of assets or settlement of liabilities attributable to the discontinuing operation, (i) the amount of the pre-tax gain or loss and (ii) income tax expense relating to the gain or loss; and (b) the net selling price or range of prices (which is after deducting expected disposal costs) of those net assets for which the enterprise has entered into one or more binding sale agreements, the expected timing of receipt of those cash flows and the carrying amount of those net assets on the balance sheet date.
- Any disclosures required by this statement should be presented separately for each discontinuing operation. The disclosures requirements may be quickly assessed by referring to questionnaire below.
- An appendix to the Standard (though not a part of the Standard) sets out detailed illustration explaining significant disclosure requirements of the Standard.
- In case the initial disclosure event occurs between the balance sheet date and the date on which the financial statement for that period are approved by the Board of Directors, disclosures required by AS 4 are made.

## **AS-25 — INTERIM FINANCIAL REPORTING**

- Accounting Standard (AS)-25, 'Interim Financial Reporting', issued by the Council of the Institute of Chartered Accountants of India, comes into effect in respect of accounting periods commencing on or after 1-4-2002. If an enterprise is required to prepare and present an interim financial report, it should comply with this Standard.
- Interim Financial Reports (IFR) are financial statements (complete or condensed) for an interim period that is shorter than a full financial year.
- The objective of this Statement is to prescribe the minimum content of an interim financial report and to prescribe the principles for recognition and measurement in a complete or condensed financial statements for an interim period. Timely and reliable interim financial reporting improves the ability of investors, creditors, and others to understand an enterprise's capacity to generate earnings and cash flows, its financial condition and liquidity.
  - a Interim period is a financial reporting period shorter than a full financial year. Interim financial report means a financial report containing either a complete set of financial statements or a set of condensed financial statements (as described in this Statement) for an interim period.
- An interim financial report should include, at a minimum, the following components
  - a condensed balance sheet;
  - b condensed statement of profit and loss;
  - c condensed cash flow statement; and
  - d selected explanatory notes.
- IFR should include at least each of the heading and sub headings that were included in the most recent annual financial statements.
- Earnings per share if disclosed is to be calculated and presented as per AS 20.
- An enterprise should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report:
  - a) a statement that the same accounting policies are followed in the interim financial statements as those followed in the most recent annual financial statements or, if those policies have been changed, a description of the nature and effect of the change;
  - b) explanatory comments about the seasonality of interim operations; the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their

nature, size, or incidence, net profit or loss for the period, prior period items and changes in accounting policies);

- c) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence, net profit or loss for the period, prior period items and changes in accounting policies);
  - d) the nature and amount of changes in estimates of amounts reported in prior interim periods of the current financial year or changes in estimates of amounts reported in prior financial years, if those changes have a material effect in the current interim period;
  - e) issuances, buy-backs, repayments and restructuring of debt, equity and potential equity shares; (f) dividends, aggregate or per share (in absolute or percentage terms), separately for equity shares and other shares;
  - f) segment revenue, segment capital employed (segment assets minus segment liabilities) and segment result for business segments or geographical segments, whichever is the enterprise's primary basis of segment reporting (disclosure of segment information is required in an enterprise's interim financial report only if the enterprise is required, in terms of AS-17, Segment Reporting, to disclose segment information in its annual financial statements);
  - g) the effect of changes in the composition of the enterprise during the interim period, such as amalgamations, acquisition or disposal of subsidiaries and long-term investments, restructurings, and discontinuing operations; and
  - h) material changes in contingent liabilities since the last annual balance sheet date.
  - i) Interim reports should include interim financial statements (condensed or complete) for periods as:
    - a. balance sheet as of the end of the current interim period and a comparative balance sheet as of the end of the immediately preceding financial year;
    - b. statements of profit and loss for the current interim period and cumulatively for the current financial year to date, with comparative statements of profit and loss for the comparable interim periods (current and year-to-date) of the immediately preceding financial year;
    - c. cash flow statement cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year.
- Interim measurements may rely on estimates.
  - For final interim period, separate report not necessary as annual statements are presented.
  - Estimates to be measured in such a way that resulting information is reliable and all material information disclosed.
  - An enterprise should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements. However, the frequency of an enterprise's reporting (annual, half-yearly, or quarterly) should not affect the measurement of its annual results. To achieve that objective, measurements for interim reporting purposes should be made on a year-to-date basis.
  - In case of change in accounting policies, other than one for which transition is specified by an accounting standard, figures of prior interim periods of current financial year to be restated.
  - Users may refer four appendices attached to the Standard (which though not a part of the Standard) set out detailed illustrations explaining inter alia;
    - 1. Illustrative format of Condensed Balance Sheet, Condensed Profit and Loss Account, Condensed Cash Flows.
    - 2. Illustration of periods required to be presented.
    - 3. Examples of applying the recognition and measurement principles.



- Examples of use of estimates. It may be mentioned that the companies required to disclose quarterly results are not required to follow the disclosure-related requirements of the Standard. Thus presentation format is not mandatory. However, it is a normal practice to adopt the recognition and measurement principles.

## **AS-26 — INTANGIBLE ASSETS**

- The Standard is applicable w.e.f. April 1, 2003, to enterprises that are listed companies and/or having turnover exceeding Rs.50 crores. For all other enterprises these are applicable from April 1, 2004.
- This Standard should be applied by all enterprises in accounting for intangible assets, except intangible assets that are covered by another Accounting Standard; financial assets; mineral rights and expenditure on the exploration for, or development and extraction of minerals, oil, natural gas and similar non-regenerative resources; intangible assets arising in insurance enterprises from contracts with policyholders and expenditure in respect of termination benefits.
- Prominent concepts introduced/emphasized by the standard includes; An asset is a resource; (a) controlled by an enterprise as a result of past events; and (b) from which future economic benefits are expected to flow to the enterprise. An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes. Research is original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding. Development is the application of research findings or other knowledge to a plan or design for the production of new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.
- Useful life is a period of time over which an asset is expected to be used or the number of production units expected to be obtained from the asset.
- Impairment loss is the amount by which the carrying amount exceeds its recoverable amount.
- An acquired intangible asset is recognised if it is (a) identifiable, (b) controllable by enterprise, (c) where future benefit is expected and (d) cost of acquisition can be measured reliably.
- An intangible asset should be initially measured at cost.
- Internally generated goodwill, brands, mastheads, publishing titles etc. should not be recognized as an asset.

Expenditure on an intangible item that cannot be treated as an asset, should be recognized as an expense and treated as goodwill (capital reserve), in case of amalgamation(AS 14).

- Expenditure on an intangible item recognized as an expense should not form part of cost of an intangible asset at a later date.
- Subsequent expenditure to be added to cost only if it is probable that the expenditure will generate future benefits in excess of the original estimates.
- An intangible asset should be carried at its cost less any accumulated amortization and any accumulated impairment losses.
- An intangible asset should be amortized over its useful life on a systematic basis, to reflect the pattern in which the economic benefits are consumed or if the pattern cannot be determined reliably, on the straight-line method.
- There is rebuttable presumption for useful life of an intangible asset-not exceeding 10 years from the date it is available for use. In case of intangible assets in form of legal rights, the useful life is not to exceed the period of legal rights, unless renewable which is virtually certain.
- Residual value to be taken as zero unless a commitment to purchase the asset or an active market exists.
- The amortization period and method to be reviewed at each financial year end and any change to be accounted for as per As 5.

- Any impairment losses to be recognized.
- An intangible asset to be derecognised on disposal or when no future economic benefits are expected from its use and gain or loss recognized.
- Expenditure incurred on internally generated intangible asset is expensed to the extent that it related to Research Phase.
- An intangible asset arising from development (or from the development phase of an internal project) should be recognised if, and only if, an enterprise can demonstrate all of the following:
  1. The technical feasibility of completing the intangible asset so that it will be available for use or sale;
  2. Its intention to complete the intangible asset and use or sell it;
  3. Its ability to use or sell the intangible asset;
  4. How the intangible asset will generate probable future economic benefits. Among other things, the enterprise should demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it is to be used internally, the usefulness of the intangible asset;
  5. The availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and
  6. Its ability to measure the expenditure attributable to the intangible asset during its development reliably.
- The standard is supplemented with two appendix one of which covers exhaustive illustration on accounting of website development cost and software generated for internal use and other one covers various examples on application of various aspect of the standard.
- Disclosures for each class of intangibles, their useful lives, amortization, amount and method, carrying amount (gross and net), accumulated amortization, any addition, retirements, impairment losses recognized or reversed and any other changes.
- In case of useful life of an intangible asset exceeding ten years, proper disclosure of the reasons for the same should be given.

## **AS - 27 — FINANCIAL REPORTING OF INTERESTS IN JOINT VENTURES**

- The standards define what a joint venture is. Some of the important concepts include; joint venture is a contractual arrangement whereby two or more parties undertake an economic activity, which is subject to joint control. Joint control is the contractually agreed sharing of control over an economic activity.
- Control is the power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.
- A venturer is a party to a joint venture and has joint control over that joint venture.
- A joint venture is a contractual arrangement whereby two or more parties undertake an economic activity that is subject to Joint Control.
- An investor in a joint venture is a party to a joint venture and does not have joint control over that joint venture.

Proportionate consolidation is a method of accounting and reporting whereby a venturer's share of each of the assets, liabilities, income and expenses of a jointly controlled entity is reported as separate line items in the venturer's financial statements.

- The accounting treatments depends on the nature of joint venture which can be one of the three, i.e. Jointly Controlled Entity or Joint Controlled Operations or Jointly Controlled Assets.
- In respect of its interests in jointly controlled operations, a venturer should recognise in its separate financial statements and consequently in its consolidated financial statements: (a) the assets that it controls and the liabilities that it incurs; and (b) the expenses that it incurs and its share of the income that it earns from the joint venture.

- In respect of its interest in jointly controlled assets, a venturer should recognise, in its separate financial statements, and consequently in its consolidated financial statements: its share of the jointly controlled assets, classified according to the nature of the assets; any liabilities which it has incurred; its share of any liabilities incurred jointly with the other venturers in relation to the joint venture; any income from the sale or use of its share of the output of the joint venture, together with its share of any expenses incurred by the joint venture; and any expenses which it has incurred in respect of its interest in the joint venture.
- In respect of jointly controlled operations the accounting treatment depends upon whether it is to be accounted in stand-alone financial statements or consolidated financial statement. In case of standalone financial statements the investments are accounted at cost in accordance with AS-13 whereas in case of consolidated financial statements where these are prepared (or required to be prepared) the investment in joint venture is accounted using proportionate consolidation method unless these are subsidiaries in which case these are consolidated under AS-21.
- In case of sale of assets by a venturer to the joint venture, the venturer should recognize only that portion of gain or loss as attributable to the interests of that other venturers. Full loss to be booked in case of evidence of reduction in the net realizable value of current assets or on impairment loss.
- In case of purchase of assets by a venturer from a joint venture, the venturer should recognize its share of profit only on the resale of the asset to an independent party. Loss to be booked in case of reduction in net realizable value of current asset or impairment loss.
- In case of transactions between venturer and joint venture the above principles to be followed only in consolidated financial statements.
- Investor to follow AS 13, AS21 and AS 23 as appropriate for investments in joint ventures.
- Operators/managers of joint ventures to account for fees as per AS 9.
- A venturer to disclose, in respect of the joint venture, contingent liabilities and capital commitments.
- A venturer to disclose list of joint ventures and interests in significant joint ventures.
- A venturer to disclose aggregate amounts of each of the assets, liabilities, income and expenses related to the interests in the jointly controlled entities.

## **AS-28 — IMPAIRMENT OF ASSETS**

This Standard should be applied in accounting for the impairment of all assets, other than: 1) Inventories (see AS-2, Valuation of Inventories); 2) Assets arising from construction contracts (see AS-7, Accounting for Construction Contracts); 3) Financial assets, including investments that are included in the scope of AS-13, Accounting for Investments; and 4) Deferred tax assets (see AS-22, Accounting for Taxes on Income). – Prominent concepts introduced by the standards includes:

An impairment loss is the amount by which the carrying amount of an asset exceeds its recoverable amount. Recoverable amount is the higher of an asset's net selling price and its value in use. – Value in use is the present value of estimated future cash flows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life. – Carrying amount is the amount at which an asset is recognized in the balance sheet after deducting any accumulated depreciation (amortization) and accumulated impairment losses thereon. A cash-generating unit is the smallest identifiable group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets. Cash generating units should be identified consistently from period to period for the same asset or types of assets, unless a change is justified.

- Corporate assets are assets other than goodwill that contribute to the future cash flows of both the cash-generating unit under review and other cash-generating units.
- At each balance sheet date it needs to be assessed as to whether there is triggering event that requires the impairment testing to be made. Triggering event shall be assessed based on external information like fall in interest rate or industry growth rate, change in law, etc., and internal information like forecasts, obsolescence, damage, etc. Where there is a triggering event the impairment loss needs to be assessed at the level of each Cash Generating Unit. Where all the assets of the enterprise are allocated to cash generating unit, only bottom-up testing method is applied and in case there is some portion of asset that

is not allocated or corporate assets, then bottom-up testing method coupled with and followed by top-down testing method is applied. In measuring value in use the Standard specifies certain factors that need to be considered in arriving the discount rate and cash flow projection.

- Discount rate shall be independent of capital structure of the enterprise or its incremental borrowing cost. As a starting point, the enterprise may take into account the following rates: the enterprise's weighted average cost of capital determined using techniques such as the Capital Asset Pricing Model; the enterprise's incremental borrowing rate; and other market borrowing rates. These rates are adjusted: to reflect the way that the market would assess the specific risks associated with the projected cash flows; and to exclude risks that are not relevant to the projected cash flows.
- The discount rate should be a pretax rate that reflects current market assessments of the time value of should not reflect risks for which future cash flow estimates have been adjusted.
- An impairment loss should be recognized as an expense in the Profit & Loss account immediately. Impairment loss of a revalued asset should be treated as a revaluation decrease as per AS 10.
- If the estimated impairment loss is greater than the carrying amount of the asset, recognize a liability, if and only if, required by another AS.
- Cash flow projections should be based on reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the remaining useful life of the asset. Greater weight should be given to external evidence; cash flow projections should be based on the most recent financial budgets/forecasts that have been approved by management. Projections based on these budgets/forecasts should cover a maximum period of five years, unless a longer period can be justified; and cash flow projections beyond the period covered by the most recent budgets/ forecasts should be estimated by extrapolating the projections based on the budgets/forecasts using a steady or declining growth rate for subsequent years, unless an increasing rate can be justified. This growth rate should not exceed the long-term average growth rate for the products, industries, or country or countries in which the enterprise operates, or for the market in which the asset is used, unless a higher rate can be justified. Project cash flows shall not consider impact of future capital expenditure or restructuring unless these are committed.
- Reversal of impairment loss is allowed to an extent that would be additional carrying amount of asset had there be no impairment.
- The detailed text of the standard spreads across 124 paragraphs and is supplemented with 8 examples (which are not part of the Standard). Users are expected to go through it in detail before applying the Standard.

## **AS-29 (REVISED) — PROVISIONS, CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

The Standard prescribes the accounting and disclosure for all provisions, contingent liabilities and contingent assets, except:

- a. Those resulting from financial instruments that are carried at fair value;
- b. Those resulting from executory contracts, except where the contract is onerous. Executory contracts are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent;
- c. Those arising in insurance entities from contracts with its policyholders; or
- d. Those covered by another Standard.

### **Provisions**

The Standard defines provisions as a liability which can be measured only by using a substantial degree of estimation.

#### **– A provision should be recognized when, and only when:**

1. An entity has a present obligation (legal or constructive) as a result of a past event;

2. It is probable (i.e. more likely than not) that an outflow of resources embodying economic benefits will be required to settle the obligation; and
  3. A reliable estimate can be made of the amount of the obligation. The Standard notes that it is only in extremely rare cases that a reliable estimate will not be possible.
- The amount recognised as a provision should be the best estimate of the expenditure required to settle the present obligation at the balance sheet date.
  - The provisions shall not be discounted.

This provision has been amended to insert an exception whereby the provision for decommissioning, restoration and similar liabilities that are recognized as cost of Property, Plant and Equipment shall be discounted to its present value. The discount rate (or rates) should be a pre-tax rate (or rates) that reflect(s) current market assessments of the time value of money and the risks specific to the liability. The discount rate(s) should not reflect risks for which future cash flow estimates have been adjusted. Periodic unwinding of discount should be recognised in the statement of profit and loss. The transitional provision states that such discounting should be done prospectively.

- Gains from the expected disposal of assets should not be taken into account, even if the expected disposal is closely linked to the event giving rise to the provision.
- An entity may expect reimbursement of some or all of the expenditure required to settle a provision (for example, through insurance contracts, indemnity clauses or suppliers' warranties). An entity should:
  - (a) recognise a reimbursement when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The amount recognised for the reimbursement should not exceed the amount of the provision; and
  - (b) recognise the reimbursement as a separate asset. In the income statement, the expense relating to a provision may be presented net of the amount recognised for a reimbursement.
- Provisions should be reviewed at each balance sheet date and adjusted to reflect the current best estimate. If it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.
- A provision should be used only for expenditures for which the provision was originally recognised.
- Provisions should not be recognised for future operating losses. An expectation of future operating losses is an indication that certain assets of the operation may be impaired. In this case, an entity tests these assets for impairment under AS-28 Impairment of Assets.
- The Standard defines a restructuring as a programme that is planned and controlled by management, and materially changes either: (a) the scope of a business undertaken by an entity; or (b) the manner in which that business is conducted.
- A provision for restructuring costs is recognised only when the general recognition criteria for provisions are met.

### **Contingent Liabilities**

The Standard defines a contingent liability as:

- (a) A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the entity; or
- (b) A present obligation that arises from past events but is not recognised because:
  - (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
  - (ii) the amount of the obligation cannot be measured with sufficient reliability. An entity should not recognise a contingent liability.

## **Contingent Assets**

Contingent asset is a possible asset that arises from past events, the existence of which will be confirmed only by the occurrences or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise.

A contingent liability is not recognized in financial statements but is disclosed.

A contingent asset is not recognized in financial statements.

## **AS 30, 31, & 32 — FINANCIAL INSTRUMENTS (It has become Mandatory from Accounting period commencing on or after 1.4.2012 for Level I Enterprises only)**

### **Applicability of AS 30, 31 and 32**

These standards are not mandatory but earlier adoption is encouraged. It may be mentioned that it has not been adopted by NACAS and thus in case of a company an earlier adoption of these standards might not comply with certain standards.

### **ICAI Clarification – Principle of Prudence**

Under situation where an item of financial instrument is suffering from losses, than based on principle of prudence the entity shall provide for such losses through its profit and loss account.

### **Objectives and Scope**

Financial instruments are addressed in three standards: AS 31, which deals with distinguishing debt from equity and with netting; AS 30, which contains requirements for recognition and measurement; and AS 32, which deals with disclosures. The objective of the three standards is to establish requirements for all aspects of accounting for financial instruments, including distinguishing debt from equity, netting, recognition, derecognition, measurement, hedge accounting and disclosure. The scope of the standards is wide-ranging. The standards cover all types of financial instrument, including receivables, payables, investments in bonds and shares, borrowings and derivatives. They also apply to certain contracts to buy or sell non-financial assets (such as commodities) that can be net settled in cash or another financial instrument.

### **Nature and Characteristics of Financial Instruments**

Financial instruments include a wide range of assets and liabilities. They can mostly be exchanged for cash. They are recognised and measured according to AS 30 requirements and are disclosed in accordance with AS 32. Financial instruments represent contractual rights or obligations to receive or pay cash or other financial asset. A financial asset is cash; a contractual right to receive cash or another financial asset; a contractual right to exchange financial assets or liabilities with another entity under conditions that are potentially favourable; or an equity instrument of another entity. A financial liability is a contractual obligation to deliver cash or another financial asset or to exchange financial instruments with another entity under conditions that are potentially unfavourable. An equity instrument is any contract that evidences a residual interest in the entity's assets after deducting all its liabilities. A derivative is a financial instrument that derives its value from an underlying price or index, requires little or no initial investment and is settled at a future date. In some cases contracts to receive or deliver a company's own equity can also be derivatives.

### **Embedded Derivatives in Host Contracts**

Some financial instruments and other contracts combine, in a single contract, both a derivative element and a non-derivative element. The derivative part of the contract is referred to as an 'embedded derivative' and its effect is that some of the cash flows of the contract will vary in a similar way to a standalone derivative. For example, the principal amount of a bond may vary with changes in a stock market index. In this case, the embedded derivative is an equity derivative on the relevant stock market index.

Embedded derivatives that are not 'closely related' to the rest of the contract are separated and accounted for as if they were stand-alone derivatives (i.e., measured at fair value, generally with changes in fair value recognised in profit or loss). An embedded derivative is not closely related if its economic characteristics and risks are different from those of the rest of the contract. AS 30 sets out examples to help determine when this test is (and is not) met. Analyzing contracts for potential embedded derivatives and accounting for them is one of the more challenging aspects of AS 30.

## Classification of Financial Instruments

The way that financial instruments are classified under AS 30 drives how they are subsequently measured and where changes in measurement are accounted for.

There are four classes of financial asset under AS 30: available for sale, held to maturity, loans and receivables, and fair value through profit or loss. The factors taken into account in classifying financial assets include:

- The cashflows arising from the instrument – are they fixed or determinable? Does the instrument have a maturity date?
- Are the assets held for trading; does management intend to hold the instruments to maturity?
- Is the instrument a derivative or does it contain an embedded derivative?
- Is the instrument quoted on an active market?
- Has management designated the instrument into a particular classification at inception?

Financial liabilities are classified as fair value through profit or loss if they are so designated (subject to various conditions) or if they are held for trading. Otherwise they are classed as 'other liabilities'. Financial assets and liabilities are measured either at fair value or at amortised cost, depending on this classification. Changes are taken to either the income statement or directly to equity.

## Financial Liabilities and Equity

The classification of a financial instrument by the issuer as either a liability (debt) or equity can have a significant impact on an entity's reported earnings, its borrowing capacity, and debt-to-equity and other ratios that could affect the entity's debt covenants. The substance of the contractual arrangements of a financial instrument, rather than its legal form, governs its classification. This means, for example, that since a preference share redeemable (puttable) by the holder is economically the same as a bond, it is accounted for in the same way as the bond. Therefore, the redeemable preference share is treated as a liability rather than equity, even though legally it is a share of the issuer. The critical feature of debt is that under the terms of the instrument the issuer is, or can be, required to deliver either cash or another financial asset to the holder and cannot avoid this obligation. For example, a debenture, under which the issuer is required to make interest payments and redeem the debenture for cash, is a financial liability.

An instrument is classified as equity when it represents a residual interest in the issuer's assets after deducting all its liabilities. Ordinary shares or common stock, where all the payments are at the discretion of the issuer, are examples of equity of the issuer. A special exception exists to the general principal of classification for certain subordinated redeemable (puttable) instruments that participate in the corporate net assets of the entity. Where specific criteria are met such instruments would be classified as equity of the issuer. Some instruments contain features of both debt and equity. For these instruments, an analysis of the terms of each instrument in light of the detailed classification requirements will be necessary. Such instruments, such as bonds that are convertible into a fixed number of equity shares either mandatorily or at the holder's option, must be split into debt and equity (being the option to convert) components.

A financial instrument, including a derivative, is not an equity instrument solely because it may result in the receipt or delivery of the entity's own equity instruments. The classification of contracts that will or may be settled in the entity's own equity instruments is dependent on whether there is variability in either the number of own equity delivered and/or variability in the amount of cash or other financial assets received, or whether both are fixed. The treatment of interest, dividends, losses and gains in the income statement follows the classification of the related instrument. So, if a preference share is classified as debt, its coupon is shown as interest. But the dividend payments on an instrument that is treated as equity are shown as a distribution.

## Recognition and Derecognition

**Recognition** Recognition issues for financial assets and financial liabilities tend to be straightforward. An entity recognises a financial asset or a financial liability at the time it becomes a party to a contract.

**Derecognition** Derecognition is the term used for ceasing to recognise a financial asset or financial liability on an entity's balance sheet. The rules here are more complex.

**Assets** An entity that holds a financial asset may raise finance using the asset as security for the finance, or as the primary source of cash flows from which to repay the finance. The derecognition requirements of AS 30 determine whether the transaction is a sale of the financial assets (and, therefore, the entity ceases to recognise the assets) or whether finance secured on the assets has been raised (and the entity recognises a liability for any proceeds received). This evaluation might be straightforward. For example, it is clear with little or no analysis that a financial asset is derecognised in an unconditional transfer of it to an unconsolidated third party with no risks and rewards of the asset being retained. Conversely, it is clear that derecognition is not allowed where an asset has been transferred, but it is clear that substantially all the risks and rewards of the asset have been retained through the terms of the agreement. However, in many other cases, the analysis is more complex. Securitisation and debt factoring are examples of more complex transactions where derecognition will need careful consideration.

**Liabilities** An entity may only cease to recognize (derecognise) a financial liability when it is extinguished – that is, when the obligation is discharged, cancelled or expired, or when the debtor is legally released from the liability by law or by the creditor agreeing to such a release.

### **Measurement of Financial Assets and Liabilities**

Under AS 30, all financial instruments are measured initially at fair value. The fair value of a financial instrument is normally the transaction price — that is, the amount of the consideration given or received. However, in some circumstances, the transaction price may not be indicative of fair value. In that situation, an appropriate fair value is determined using data from current observable transactions in the same instrument or based on a valuation technique whose variables include only data from observable markets.

The measurement of financial instruments after initial recognition depends on their initial classification. All financial assets are measured at fair value except for loans and receivables, held-to-maturity assets and, in rare circumstances, unquoted equity instruments whose fair values cannot be measured reliably or derivatives linked to and which must be settled by the delivery of such unquoted equity instruments that cannot be measured reliably. Loans and receivables and held-to-maturity financial assets are measured at amortised cost.

The amortised cost of a financial asset or liability is measured using the 'effective interest method'. Available-for-sale financial assets are measured at fair value with changes in fair value recognised in equity. For available-for-sale debt securities, interest is recognised in income using the 'effective interest method'. Available-for-sale equity securities dividends are recognised in income as the holder becomes entitled to them. Derivatives (including separated embedded derivatives) are measured at fair value. All fair value gains and losses are recognised in profit or loss except where they qualify as hedging instruments in cash flow hedges. Financial liabilities are measured at amortised cost using the effective interest method unless they are measured at fair value through profit or loss. Financial assets and liabilities that are designated as hedged items may require further adjustments under the hedge accounting requirements. All financial assets, except those measured at fair value through profit or loss, are subject to review for impairment. Therefore, where there is objective evidence that such a financial asset may be impaired; the impairment loss is calculated and recognised in profit or loss.

### **Hedge Accounting**

'**Hedging**' is the process of using a financial instrument (usually a derivative) to mitigate all or some of the risk of a hedged item. 'Hedge accounting' changes the timing of recognition of gains and losses on either the hedged item or the hedging instrument so that both are recognised in profit or loss in the same accounting period. To qualify for hedge accounting, an entity (a) at the inception of the hedge formally designates and documents a hedge relationship between a qualifying hedging instrument and a qualifying hedged item; and (b) both at inception and on an ongoing basis, demonstrates that the hedge is highly effective.

### **There are three types of Hedge Relationship**

- Fair value hedge: a hedge of the exposure to changes in the fair value of a recognised asset or liability, or a firm commitment.
- Cash flow hedge: a hedge of the exposure to variability in cash flows of a recognised asset or liability, a firm commitment or a highly probable forecast transaction.
- Net investment hedge: a hedge of the foreign currency risk on a net investment in a foreign operation.



For a fair value hedge, the hedged item is adjusted for the gain or loss attributable to the hedged risk. That element is included in the income statement where it will offset the gain or loss on the hedging instrument. For a cash flow hedge, gains and losses on the hedging instrument, to the extent it is an effective hedge, are initially included in equity. They are reclassified to the profit or loss when the hedged item affects the income statement. If the hedged item is the forecast acquisition of a non-financial asset or liability, the entity may choose an accounting policy of adjusting the carrying amount of the non-financial asset or liability for the hedging gain or loss at acquisition.

Hedges of a net investment in a foreign operation are accounted for similarly to cash flow hedges.

### **Presentation and Disclosure**

There have been significant developments in risk management concepts and practices in recent years. New techniques have evolved for measuring and managing exposures to risks arising from financial instruments. The need for more relevant information and improved transparency about an entity's exposures arising from financial instruments and how those risks are managed has become greater. Financial statement users and other investors need such information to make more informed judgements about risks that entities run from the use of financial instruments and their associated returns. However, the disclosures in IAS 30 (disclosure requirements for banks and similar financial institutions) and AS 31 were no longer in keeping with such developments, and there was a need to revise and enhance the disclosure framework for risks arising from financial instruments. AS 32, 'Financial instruments: disclosures', was issued to address this need. AS 32 sets out disclosure requirements that are intended to enable users to evaluate the significance of financial instruments for an entity's financial position and performance and to understand the nature and extent of risks arising from those financial instruments to which the entity is exposed. AS 32 does not just apply to banks and financial institutions. All entities that have financial instruments are affected, even simple instruments such as borrowings, accounts payable and receivable, cash and investments.

### **List of Applicable Guidance Note on Accounting Aspects**

- Guidance Note on Combined and Carve-Out Financial Statements (September 2016)
- Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable)
- Guidance Note on Accounting for Depreciation in companies in the context of Schedule II to the Companies Act, 2013
- Guidance Note on Accounting for Derivative contracts (Issued 2015)
- Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities (Issued May 15, 2015)
- Guidance Note on Accounting for Oil and Gas Producing Activities (revised 2013)
- Guidance Note on Accounting for Corporate Dividend Tax
- Guidance Note on Accounting Treatment for Excise Duty
- Guidance Note on Accounting for Employee Share-based Payments
- Guidance Note on Accounting for State-level Value Added Tax
- Guidance Note on Accounting by Schools
- Guidance Note on Accounting for Credit Available in Respect of Minimum Alternative Tax under the Income-tax Act, 1961
- Guidance Note on Accounting for Real Estate Transactions (Revised 2012)
- Guidance Note on Measurement of Income Tax for Interim Financial Reporting in the context of AS 25.
- Guidance Note on Accounting Treatment for MODVAT/CENVAT
- Guidance Note on Applicability of AS 25 to Interim Financial Results
- Guidance Note on Turnover in case of Contractors

- Guidance Note on Accounting for Rate Regulated Activities
- Guidance Note on Accounting for Self-generated Certified Emission Reductions (CERs) (Issued 2012)
- Guidance Note on Accounting and Auditing of Political Parties
- Guidance Note on Terms Used in Financial Statements
- Guidance Note on Accrual Basis of Accounting
- Guidance Note on Accounting by Dot-Com Companies

# RECENT UPDATES IN ACCOUNTING STANDARDS – CASAR 2016

- **Companies Accounting Standards Amendment Rules 2016 (CASAR)** to amend the C(AS)R 2006, w.e.f FY 2016-17, March 30 2016 – AS 2, 4, 10, 29
- **Companies (Indian Accounting Standards) (Amendment) Rules, 2016, (March 30, 2016)** - Notification of IND AS 11, 18 --- IND AS 115 – Omitted

## Roadmap for Banks, NBFC & Insurance Companies (BFSI) –

- BFSI & NBFC with NW => INR 500 Cr , holding, associate, JV, subsidiary – April 2018
- BFSI & NBFC with NW (Listed / unlisted ) < INR 500 cr , H/S/JV/A –April 2019
- Banks to disclose IND AS strategy roadmap in Annual Reports for FY 2016-17 & 17-18

The MCA on 6 April 2016, amended Schedule III to include general instructions for preparation of FS of a company whose financial statements are required to comply with Ind AS. The amendment divides Schedule III into two parts i.e. **Division I and II**

- **Division I** - financial statements are required to comply with AS (CASR 2006)
- **Division II** - financial statements are drawn up in compliance with Ind AS.
- In situations where compliance with the requirements of the 2013 Act including Ind AS requires any change in treatment or disclosure (including addition, amendment, substitution or deletion in the head/sub-head or any changes in the financial statements or statements forming part thereof) in the formats given in Schedule III, then Schedule III permits such changes to be made and the requirements of Schedule III would stand modified accordingly.

## Companies (Indian Accounting Standards) (Amendment) Rules, 2016

Key highlights of the Amendment –

- Amendment to **IND AS 1** regarding - 'Materiality', 'Disaggregations & subtotals', 'Notes structure' and 'Disclosure'
- Amendment to **Ind AS 34**, 'Interim financial reporting'
- Amendment to **IND AS 28, 112 and 110**
- **Notification of IND AS 11, 18**
- **IND AS 115 - Omitted**
- Furthermore, the rules also amended existing Ind AS to reflect the amendments made by IASB to the IFRS

The Rules also amended Ind **AS 101**, 'First-time adoption of Indian Accounting Standards', to remove the option to use fair value for investment property as the deemed cost on the date of transition.

- **Materiality** - The amendments clarify that an entity must not reduce the understandability of its financial statements by obscuring material information with immaterial information or by aggregating material items that have different natures or functions.

## Key changes – AS 2

- As per pre-revised AS -2 , machinery spares used in connection with fixed assets and used infrequently - -- accounting as per AS 10
- Revision – AS -2 not to include spare parts, servicing equipment, standby equipments which meet definition of PPE
- Stock in trade – w.r.t. goods acquired for trading – to be disclosed separately
- Residual category added - "Others" ( para 27)
- AS -2 – aligned with AS 10 for spare parts accounting

**AS -4** – dividend declared post Balance Sheet date – in Notes

### **Key changes – AS 13**

- Pre-revised AS 13, para 30 – enterprise having investment property to account for them as Long term investments – to be carried at Cost. Provisions for diminutions in value may be applied.
- Investment property will now be accounted for as per Cost model in Revised AS 10 instead of AS 13

### **Key changes – AS 14**

- Pre-revised AS 14- Amalgamation means – pursuant to provisions of Companies Act 1956
- Revised AS 14 – pursuant to CA 2013 & includes ‘merger’.
- Footnote – para 23 & 42 dealing with treatment of reserves in a scheme of amalgamation – not to apply in scheme of amalgamation approved under CA 2013
- ‘Amalgamation Adjustment Reserve’ to be presented as line item as sub-heading like ‘ Misc expenditure’ cannot be used in Sch III

### **Key changes - AS 10**

- ‘FA’ replaced by ‘PPE’
- PPE = tangible items used for production, rendering of service, rental or admin purposes, expected to be used for a period > 12 months
- ‘Component accounting’ based on ‘significant cost’ criteria -- mandatory ( inline with CA 2013 w.e.f April 1, 2015)
- CA 2013 Schedule II – residual value up to 5 % of original cost & provides for component depreciation
- Depreciation to be based on estimated useful life & residual value & systematic allocation
- Major Overhaul & Inspection costs – to be included in PPE
- Cost of previous major inspections , included in carrying value of FA on B/S date – to be expensed out – derecognized
- PPE to include - initial estimate of ‘ decommissioning, site restoration & similar liabilities ‘ ( dismantling cost, removal cost, restoring site)
- Pre-revised AS 10- recognized ‘revaluation’ but no requirement of adoption of fair value basis as its accounting policy
- Revised AS-10 – Entities to choose either Cost model or Revaluation model as accounting policy to be applied to entire class of PPE
- Pre-revised AS 10- ‘periodic review’ of residual value, useful life recommended  
Revised AS -10 : ‘annual review’ of residual value, useful life recommended at end of FY

### **Key Changes – AS 21**

- Pre-revised AS 21- Consolidation for all subsidiaries unless – control is temporary or subsidiary subject to severe long term restrictions
- Revised AS 21- Consolidation for Associates also – as per AS 23,
- Consolidation for JV – as per AS 27

### **Key Changes – AS 29**

- Pre-revised AS 29– Provision – best estimate of expenditure to settle present obligation on B/S date – no discounting or provision allowed.
- Revised AS 29- provisions not to be discounted except for –
- Decommissioning, site restoration & similar liabilities recognized as part of cost of PPE
- Discount rate = pre-tax current market rate of Time value of money & adjusted to specific risks of the liability.

# INTERNAL FINANCIAL CONTROLS (IFC)

- Audit Committee is required to evaluate Company's "IFCFR" Sec.177 (4)(vii)
- Directors' Responsibility Statement, in the case of listed companies, to include a statement that they have laid down IFC to be followed by the company and that such IFC are adequate and were operating effectively – Section 134 (5)(e).
- The report of the Board shall also contain the details in respect of adequacy of IFCFR with reference to the Financial Statements - Rule 8(5) (viii)
- Auditors required to report on whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls – Sec.143(3)(i)
- Standards on Auditing (SA) 700 issued by the ICAI, specifically required the auditor to state that the auditor's consideration of the internal controls in the entity are not for the purpose of expressing an opinion on the effectiveness of the entity's internal control
- Reporting on IFCFR deferred for one year i.e., upto 31.03.2015. applicable from FY 15-16
  - *Management Responsibility – Establish Internal Control over Business Operations.*
  - *Auditor Responsibility – Report on Internal Control over Financial Reporting*

## IFC – Regulatory requirements

1. **DRS** – Section 134(5)(e) (IFC) - In the case of a listed company, the Director's Responsibility states that directors, have laid down IFC to be followed by the company and that controls are adequate and operating effectively ( ALL controls)
2. **Independent Directors** – Schedule IV (IFCFR) - The independent directors should satisfy themselves on the integrity of financial information and ensure that financial controls and systems of risk management are robust and defensible- public listed and public unlisted (Paid up Share Capital >= INR 10 Cr , Turnover >=100 Cr, Loans & Borrowing in Aggregate >= 50 crore)
3. **Board of Directors - BOD -Rule 8(5)(viii) of Companies ( Accounts Rules) 2014 – Contents of Boards Report as per Companies Act,2013 : IFC w.r.t. Financial Statements only – IFCFR – applicable for ALL companies**
4. **Clause 49 IX(C) of Equity Listing Agreement** requires CEO's of listed entities to certify effectiveness of internal control systems pertaining to financial reporting
5. **Auditor – Section 143(3)(i) (IFCFR)** - Effectiveness of IFCFR and Adequate Framework – The auditor's report should also state whether the company has adequate IFC system in place and the operating effectiveness of such controls.
  - Applicable from FY 2015-16 - all companies
6. **Audit Committee ( ACM)- Section 177 (IFCFR)** – public listed / unlisted

# STANDARDS ON AUDITING

In order to facilitate understanding of the scope and authority of the pronouncements of the Auditing and Assurance Standards Board ('AASB'), the ICAI has issued revised preface viz., Preface to Standards on Quality Control for Auditing, Review, Other Assurance and Related Services, which has come into effect from 1st April, 2008. Standards of the following nature issued by the AASB shall be collectively known as 'the Engagement Standards':

Standards on Quality Control (SQC) are applicable to the auditing firms which performs Audits and Reviews of Historical Financial information and other Assurance and related services engagements.

Standards on Auditing (SAs), to be applied in the audit of historical financial information.

Standards on Review Engagements (SREs), to be applied in the review of historical financial information.

Standards on Assurance Engagements (SAEs), to be applied in assurance engagements, dealing with subject matters other than historical financial information.

Standards on Related Services (SRSs), to be applied to engagements involving application of agreed upon procedures to information, compilation engagements, and other related services engagements, as may be specified by the ICAI.

Auditing and Assurance Standard ('AAS') have been re-numbered and classified in the above five categories as Standards on Auditing:

## AUDITS AND REVIEWS OF HISTORICAL FINANCIAL INFORMATION

SA	Title of Standard on Auditing	Effective from
SQC1	Quality control for Firms that perform audits and reviews of historical financial information and other assurance and related services engagement	1-4-2009
<b>SA</b>	<b>Standards on Auditing (SAs)</b>	
<b>100 – 199</b>	<b>Introductory Matters</b>	
<b>200 – 299</b>	<b>GENERAL PRINCIPLES AND RESPONSIBILITIES</b>	
200	Overall objectives of the Independent Auditor and the conduct of an audit, in accordance with standards on auditing	1-4-2010
210	Agreeing the Terms of Audit Engagements	1-4-2010
220	Quality Control for an Audit of Financial Statements	1-4-2010
230	Audit Documentation	1-4-2009
240	The Auditor's Responsibilities relating to Fraud in an Audit of Financial Statements	1-4-2009
250	The Auditor's Responsibilities relating to Laws and Regulations in an Audit of Financial Statements	1-4-2009
260	Communications with those Charged with Governance	1-4-2009
265	Communicating Deficiencies in internal control to those charged with Governance and management	1-4-2010
299	Responsibilities of Joint Auditors	1-4-1996
<b>300 – 499</b>	<b>RISK ASSESSMENT AND RESPONSE TO ASSESSED RISKS</b>	
300	Planning and Audit of Financial Statements	1-4-2008
315	Identifying and Assessing the Risks of Material Misstatement through understanding the Entity and its Environment	1-4-2008
320	Materiality in Planning and performing an audit	1-4-2010
330	The Auditor's Responses to Assessed Risks	1-4-2008
402	Audit Considerations Relating to an Entity Using a Service Organisation	1-4-2010
450	Evaluation of misstatements identified during the audit	1-4-2010
<b>500 – 599</b>	<b>AUDIT EVIDENCE</b>	
500	Audit Evidence	1-4-2009
501	Audit Evidence – Specific Considerations for selected Items	1-4-2010
505	External Confirmations	1-4-2010
510	Initial Audit Engagements – Opening Balances	1-4-2010
520	Analytical Procedures	1-4-2010

530	Audit Sampling	1-4-2009
540	Auditing Accounting Estimates, including fair value estimates, and related disclosures	1-4-2009
550	Related Parties	1-4-2010
560	Subsequent Events	1-4-2009
570	Going Concern	1-4-2009
580	Written Representation	1-4-2009
<b>600 – 699</b>	<b>USING WORK OF OTHERS</b>	
600	Special consideration audits of group financial statements under (including the work of component auditors) consideration of the Board	
610	Using the Work of Internal Auditor	1-4-2010
620	Using the Work of an auditor's Expert	1-4-2010
<b>700 – 799</b>	<b>AUDIT CONCLUSIONS AND REPORTING</b>	
700	Forming an Opinion and Reporting on Financial Statements	1-4-2012
705	Modifications to the Opinion in the Independent Auditor's Report	1-4-2012
706	Emphasis of matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report	1-4-2012
710 Revised	Comparative Information – corresponding figures and Comparative financial Statements	1-4-2011
720	Auditor's Responsibility in Relation to Other Information in Documents containing Audited Financial Statements	1-4-2010
<b>800 – 899</b>	<b>SPECIALISED AREAS</b>	
800	Special Considerations- Audits of Financial Statements prepared in accordance with special purpose framework	1-4-2011
805	Special Considerations – Audits of single purpose financial statements and specific elements, accounts, or items of a financial statement	1-4-2011
810	Engagements to report on summary financial statements	1-4-2011
<b>SRE 2000 – 2699</b>	<b>STANDARDS ON REVIEW ENGAGEMENTS (SREs)</b>	
2400	Engagements to Review Financial Statements	1-4-2010
2410	Review of Interim Financial Information performed by the independent auditor of the entity	1-4-2010
<b>ASSURANCE ENGAGEMENTS OTHER THAN AUDITS OR REVIEWS OF HISTORICAL FINANCE INFORMATION</b>		
<b>SAE 3000 – 3699</b>	<b>STANDARDS ON ASSURANCE ENGAGEMENTS (SAEs)</b>	
3000 – 3399	APPLICABLE TO ALL ASSURANCE ENGAGEMENTS	
3400 – 3699	SUBJECT SPECIFIC STANDARDS	
3400	The Examination of Prospective Financial Information	1-4-2007
3410	Assurance report on controls at a service organisation	1-4-2011
<b>RELATED SERVICES</b>		
<b>SRS 4000 – 4699</b>	<b>STANDARDS ON RELATED SERVICES (SRSs)</b>	
4400	Engagements to Perform Agreed-upon Procedures Regarding Financial Information	1-4-2004
4410	Engagements to Compile Financial Information	1-4-2004

**(SQC) 1 – Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and other Assurance and Related Services Engagements** (Effective for all engagements relating to accounting periods beginning on or after April 1, 2009)

## Introduction

The firm should establish a system of quality control designed to provide it with reasonable assurance that the firm and its personnel comply with professional standards, regulatory, legal requirements, and that reports issued by the firm or engagement partner(s) are appropriate in the circumstances.

## Elements of a System of Quality Control

The firm's system of quality control should include policies and procedures on the following elements:

- Leadership responsibilities for quality within the firm.

- Ethical requirements.
- Acceptance and continuance of client relationships and specific engagements.
- Human resources.
- Engagement performance.
- Monitoring.

Policies and procedures should be documented and communicated.

### **Leadership Responsibilities for Quality**

Within the firm policies and procedures should be designed to promote an internal culture that quality is essential in performing engagements. It should require that if appropriate, the firm's highest authority to assume ultimate responsibility for the system of quality control.

Any person or persons assigned responsibility for quality control system should have sufficient and appropriate experience, ability, and the necessary authority.

### **Ethical Requirements**

Policies and procedures to provide with reasonable assurance that all concerned comply with relevant ethical requirements. Policies and procedures should emphasize the fundamental principles, e.g. the leadership of the firm, education and training, monitoring, and a process for dealing with non-compliance.

### **Independence**

Establish policies and procedures to provide with reasonable assurance that all concerned, maintain independence where required by the Code. It should enable the firm to:

- Communicate its independence requirements and
- Identify and evaluate circumstances and relationships that create threats to independence, and to take appropriate action to eliminate or reduce those threats to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the engagement.

Such policies and procedures should require:

- Personnel to provide the firm with relevant information about client engagements, the scope of services, to evaluate the overall impact on independence requirements;
- Personnel to promptly notify circumstances and relationships that create a threat to independence for taking appropriate action and
- Accumulate and communicate relevant information to appropriate personnel so that:
  - all can readily determine about satisfaction of independence requirements;
  - maintain and update records relating to independence; and
  - take appropriate action regarding identified threats to independence.

Provide reasonable assurance that it is notified about breaches of independence requirements, and to enable it to take appropriate actions to resolve such situations, which include:

- All to promptly notify on becoming aware about the breaches of independence;
- All to promptly communicate identified breaches of these policies and procedures to:
  - the one who needs to address the breach; and
  - those who need to take appropriate action; and
- Promptly communicate to all about the actions taken to resolve the matter.



- Annually, the firm should obtain written confirmation of compliance with its policies and procedures on independence from all firm personnel
- Setting out criteria for determining the safeguards to reduce the familiarity threat to an acceptable level over a long period of time; and
- For all audits of financial statements of listed entities, requiring the rotation of the engagement partner after a specified period in compliance with the Code. Partner should be rotated after a pre-defined period, normally not more than seven years.

### **Acceptance and Continuance of Client Relationships and Specific Engagements**

Policies and procedures for the acceptance and continuance of client relationships and specific engagements, designed to provide it with reasonable assurance to undertake or continue relationships and engagements only where it:

- Has considered the integrity of the client
- Is competent, capable and has time and resources to do so; and
- Can comply with the ethical requirements and it should document how the issues regarding ethical requirements were resolved.

Policies and procedures on the continuance of the engagement and the client relationship should include consideration of:

- a. The professional and legal responsibilities that apply to the declining engagement circumstances, including whether there is a requirement to report to the person who made the appointment or, to regulatory authorities; and
- b. The possibility of withdrawing from the engagement or from both the engagement and the client relationship.

### **Human Resources**

Policies and procedures designed to provide it with reasonable assurance that it has sufficient personnel with the capabilities, competence, and commitment to ethical principles necessary to perform its engagements in accordance with professional standards and regulatory and legal requirements, and to enable all to issue reports that are appropriate in the circumstances.

### **Assignment of Engagement Teams**

The firm should assign responsibility for each engagement to an engagement partner. with policies and procedures requiring that:

- The identity and role of the engagement partner are communicated to key members of the client's management and those charged with governance;
- The engagement partner has the appropriate capabilities, competence, authority and time to perform the role; and
- The responsibilities of the engagement partner are clearly defined and communicated to that partner.

The firm should assign appropriate staff with capabilities, competence and time to perform engagements with professional standards and regulatory and legal requirements.

### **Engagement Performance**

Policies and procedures designed to provide with reasonable assurance that engagements are performed in accordance with professional standards and regulatory and legal requirements,

### **Consultation**

Policies and procedures designed to provide with reasonable assurance that:

- Appropriate consultation takes place on difficult or contentious matters;
- Sufficient resources are available to enable appropriate consultation;
- The nature and scope of consultations are documented; and
- Conclusions from consultations are documented and implemented.

## **Differences of Opinion**

Policies and procedures for dealing with and resolving differences of opinion within the engagement team, with those consulted. Conclusions should be documented and implemented.

## **Engagement Quality Control Review**

- Require an engagement quality control review for all audits of financial statements of listed entities;
- Set out criteria against which all other audits and reviews of historical financial information, and other assurance and related services engagements should be evaluated to determine whether an engagement quality control review should be performed; and
- Require an engagement quality control review for all engagements meeting the criteria established in compliance with sub-paragraph.

Policies and procedures setting out

- The nature, timing and extent of an engagement quality control review;
- Criteria for the eligibility of engagement quality control reviewers; and
- Documentation requirements for an engagement quality control review.

## **Nature, Timing and Extent of the Engagement Quality Control Review Criteria for the Eligibility of Engagement Quality Control Reviewers**

Policies and procedures should address the appointment of engagement quality control reviewers and establish their eligibility through:

- The technical qualifications, experience and authority; and
- The degree to which an quality control reviewer can be consulted on the engagement without compromising the reviewer's objectivity.

## **Documentation of the Engagement Quality Control**

### **Review**

Policies and procedures on documentation of the engagement quality control review should require that:

- The procedures quality control reviewer have been performed;
- The quality control review completed before the report is issued; and
- The reviewer is not aware of any unresolved matters about inappropriate conclusions.

## **Engagement Documentation**

Completion of the Assembly of Final Engagement Files.

Policies and procedures for engagement teams to complete the assembly of final engagement files on a timely basis after the engagement reports have been finalised.

## **Confidentiality, Safe Custody, Integrity, accessibility and Retrievability of Engagement Documentation**

Policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation.

## **Retention of Engagement Documentation**

Policies and procedures should be in place for the retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation, which should be not be shorter than 7 years from the date of report.

## **Ownership of Engagement Documentation**

## Monitoring

Policies and procedures relating to the system of quality control are relevant, adequate, operating effectively and complied with in practice. Such policies and procedures should include an ongoing consideration and evaluation of the firm's system of quality control, including a periodic inspection of a selection of completed engagements.

Evaluate the effect of deficiencies noted as a result of the monitoring process and should determine

- Instances that do not necessarily indicate that system of quality control is insufficient to provide it with reasonable assurance that it complies with professional standards and regulatory and legal requirements, and are appropriate in the circumstances; or
- Systemic, repetitive or other significant deficiencies that require prompt corrective action.

The firm should communicate to relevant engagement partners and other appropriate personnel deficiencies noted as a result of the monitoring process and recommendations for appropriate remedial action.

The firm's evaluation of each type of deficiency should result in recommendations for one or more of the following:

- Taking appropriate remedial action in relation to an individual engagement or personnel;
- The communication of the findings to those responsible for training and professional development;
- Changes to the quality control policies and procedures; and
- Disciplinary action against those who fail to comply with the policies and procedures of the firm, especially those who do so repeatedly.

Firm should determine what further action is appropriate to comply with relevant professional standards and regulatory and legal requirements including obtaining legal advice.

Annually, the firm should communicate the results of the monitoring of its quality control system to appropriate individuals within the firm, including the firm's chief executive officer or, if appropriate, its managing partner(s) to enable them to take prompt and appropriate action necessary in accordance with their defined roles and responsibilities. Information communicated should include the following:

- A description of the monitoring procedures performed.
- The conclusions drawn from the monitoring procedures.
- Where relevant, a description of systemic, repetitive or other significant deficiencies and of the actions taken to resolve or amend those deficiencies.

## Complaints and Allegations

Policies and procedures to provide it with reasonable assurance:

- Complaints and allegations that the work performed by the firm fails to comply with professional standards and regulatory and legal requirements; and
- Allegations of non-compliance with the firm's system of quality control.

## SA – 230: Audit Documentation

**Scope:** This standard deals with auditors responsibilities in preparation of audit documentation while auditing financial statements. Specific documentation requirements of other Standards on auditing do not limit its scope.

**Nature and Purpose:** Audit Documentation provides evidence as to whether the overall objective of the auditor was achieved as well as whether it was planned and performed in accordance with Standards of Auditing as also applicable legal and regulatory requirements.

It assists in planning, performing, fixation of accountability and responsibility, supervision and review of audits. Retaining the records for future audits, as also conduct of quality controls (SQC 1).

### **Definitions:**

*Audit Documentation:* The record of audit procedures performed, relevant audit evidence obtained and conclusions the auditor reached (working papers, work papers)

*Audit File:* One or more folders or other storage media in physical or electronic form, containing the records that comprise of the audit documentation for a specific engagement.

*Experienced Auditor:* An individual (whether internal or external to the firm ) who has practical audit experience and a reasonable understanding of audit processes, SA's and applicable legal and regulatory requirements, the business environment in which the entity operates and auditing and financial reporting issues relevant to the entity's industry.

### **Form, Content and Extent in Addition to the Nature and Purpose**

An auditor should prepare audit documentation sufficient to enable an experienced auditor having no previous connection with the audit to understand.

- a. Nature, timing and extent of audit procedures:
  - Identifying characteristics of specific items and matters tested.
  - Who performed the audit and the date of completion.
  - Who reviewed the report, the date and extent of review.
- b. Results of the audit procedures performed and evidence obtained:
  - Document discussions of significant matters.
  - Nature of the significant matters – when and with whom discussed.
- c. Significant matters arising during the audit:
  - Document how the inconsistencies have been addressed.
  - In case of departure from the standard, the relevant requirements and the reason for departure, the alternative audit procedures performed to achieve the aim of that requirement.

### **Matters arising after the date of the Auditors Report**

If, in the exceptional circumstances, auditor performs new or additional audit procedures or draws new conclusions after the date of the auditor's report, the auditor shall document:

- Circumstances encountered.
- Newer additional procedures performed, evidence obtained, conclusions reached and it's effect on auditor's report.
- When and by whom the resulting changes to audit documentation were made and reviewed.

### **Additional points**

- Assembling of the final Audit file should be completed on a timely basis after the date of the auditor's report.
- After assembling the same, the auditor shall not delete or discard documentation of any nature before the end of its retention period.
- In case the auditor finds it necessary to modify existing or add new documentation post assembly, he should specify the reasons for them and when and by whom it was made and reviewed.

## **Application and Other Explanatory Material**

- Timely preparation enhances quality, review, evaluation of the audit evidence and conclusions reached before finalisation of the auditor's report. Documentation prepared after audit work is less accurate than that prepared during audit.
- Form, content and extent depends on size and complexity of the entity, nature of procedures performed, risks, exceptions, audit methodology, tools used and professional judgment.
- Audit Documentation may be recorded on paper or on electronic or other media. Examples: Audit programmes, checklists, analysis, correspondence.
- Audit Documentation should not include superseded drafts of working papers and financial statements, notes reflecting incomplete and preliminary thinking.
- Oral explanations can clarify or explain information contained in audit documentation.
- It is not necessary nor practicable for the auditor to document every matter considered or professional judgment made.
- Judging the significance of a matter requires an objective analysis of the facts and circumstances.
- Summary describing significant matters identified during the audit and how they were addressed, or that includes cross-references to other relevant supporting audit documentation that provides such information.
- The identifying characteristics should be recorded which helps serve a number of purposes.
- Documentation also includes records prepared by the entity's personnel.
- Retention period of audit engagements is no shorter than seven years from the date of the auditor's report.
- Unless otherwise stated audit documentation is the property of the auditor. He may make disclosures but these should not affect his independence nor invalidate his work.

## **SA-250 : The Auditor's Responsibility relating to Laws and Regulations in an Audit of Financial Statements**

**Scope:-**This Standard on Auditing (SA) deals with the auditor's responsibility to consider laws and regulations while performing an audit of financial statements and not compliance with specific laws or regulations.

**Effect of Laws & Regulations:** The effect on financial statements depends on the fact that whether they are directly or indirectly related to the operational business. Non-compliance of the same shall attract fines, litigations or other consequences.

### **Responsibility of Management**

The management must ensure that entity's operations are conducted in accordance and with compliance of the various provisions of laws and regulations that determine the reported amounts and disclosures. The management should:

- Monitor legal requirements
- Institute and operate appropriate systems of internal controls
- Develop, publish and follow a code of conduct
- Ensure employees are properly trained
- Monitor compliance with code of conduct
- Engage legal advisors
- In larger companies the policies and procedures are assigned to:
  - An Internal Audit function

- An Audit Committee
- Compliance function.

### **Responsibility of the Auditor:**

This SA is designed to assist the auditor in identifying material misstatement of the financial statements. He is responsible for obtaining a reasonable assurance that the financial statements as a whole are free from any material misstatement. However, due to inherent limitations of audit there exists an unavoidable risk.

**Effective date:** Audit of Financial Statements for period beginning on or after 1st April, 2009.

**Objectives:** The objectives of an audit are:

- To obtain sufficient audit evidence regarding compliance with provisions of laws and regulations,
- To perform audit procedures to help identify areas to non-compliance,
- To respond appropriately to non-compliance or suspected compliance,
- To maintain an attitude of professional skepticism.

**Definition of Non-Compliance:** Acts of omission or commission by the entity either intentional or unintentional which are contrary in nature other than personal misconduct.

### **Duties of Auditor:**

- Obtain knowledge about legal and regulatory framework
- Know how the entity is complying with the same
- Obtain Audit evidence w.r.t. compliance
- Conduct audit procedures to identify non-compliance
- Ensure compliance by management
- Inspect correspondence, if any, with authorities
- Remain alert to suspicion, if any
- Obtain written representations from management where necessary.

### **Audit Procedures when Non-Compliance is Identified or Suspected**

Firstly understand the nature of act and circumstances and then evaluate the possible effects. If there is any suspicion, discuss the same with those charged with governance and if sufficient information is not obtained then the auditor can seek legal advice.

### **SA-260 : Communication with those charged with Governance**

The auditor shall communicate with those charged with governance and if there exist any audit committee or supervisory board, the auditor shall communicate the matter to them.

### **Reporting Non-Compliance in the Auditor's Report on Financial Statements**

- The auditor shall express a qualified or adverse opinion on the financial statements in case of non-compliance.
- If he is precluded from obtaining sufficient appropriate audit evidence, the auditor shall express a qualified opinion or disclaim an opinion.
- If he is unable to determine as to how exactly non-compliance has occurred, he shall evaluate the effect on auditor's opinion in accordance with proposed SA 705.

### **Reporting Non-Compliance to Regulatory And Enforcement Authorities**

The auditor has to determine whether he has the responsibility to report the identified or suspected non-compliance to parties outside the entity.

## Documentation

- Copies of records or documents relating to identified or suspected non-compliance.
- Minutes of discussions with management and those charged with governance or parties outside the entity.

## SA-700 : Forming an Opinion and Reporting on Financial Statements (Earlier known as 'The Auditor's Report on Financial Statements')

**Scope** This SA deals with the auditor's responsibility to form an opinion on the financial statements and with the form and content of the auditor's report issued as a result of an audit of financial statements.

It also promotes consistency in the auditor's report.

## Effective date

For audits of financial statements for periods beginning on or after 1-4-2012

## Objectives

- To form an opinion on the Financial Statements (FS) based on an evaluation of conclusion drawn from the audit evidence obtained.
- To give a clear written report that describes the basis for the opinion.

## Requirements

- Prepared in all material respects and in accordance with the applicable financial reporting framework.
- To conclude that the Financial Statements are free from material misstatement, whether due to fraud or error after taking into account:
  - a. Obtaining of sufficient appropriate audit evidence (SA 330)
  - b. Uncorrected misstatement are not material, individually or in aggregate (SA 450) and
  - c. Evaluation as to FS are prepared, in all material respects, in accordance with the requirements of the applicable financial reporting framework which is based on:
    - Consideration of the qualitative aspects of the entity's accounting practices, including indicators of possible bias in management's judgment.
    - Significant accounting policies are disclosed.
    - Accounting policies are appropriate and consistent with applicable financial reporting framework.
    - Estimates made are reasonable.
    - Information is relevant, reliable, comparable and understandable.
    - Consider overall presentation, structure, contents and whether related notes represent the underlying transactions and events to achieve fair presentation.
  - d. Financial statements adequately refer to or describe the applicable financial reporting framework.

## Form of Opinion (Refer SA-705)

- **Unmodified Opinion** : An unqualified opinion should be expressed when the auditor concludes that the financial statements give a true and fair view in accordance with the financial reporting framework used for preparation and presentation of the financial statements.
- **Modified Opinion** : In the following situations auditor's report may have to be modified:
  - a. In respect of the matters that do not affect the auditor's opinion, the auditor should modify the report by adding a paragraph to highlight a matter.

For example Corporate Debt Restructuring pending with banks affecting “going concern” or a legal dispute which involves significant uncertainty affecting the financial statements and the same has already been incorporated by management in financial statement. In such matters, the Emphasis of Matter paragraph would refer to the fact that the auditor’s opinion is not qualified in this respect.

b. In respect of the matters that do affect the auditor’s opinion:

A ‘**qualified opinion**’ should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with the management is not so material and pervasive as to require an adverse opinion, or limitation on scope is not material and pervasive as to require a disclaimer of opinion.

A ‘**disclaimer of opinion**’ should be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor is unable to obtain sufficient appropriate audit evidence and is hence, unable to express an opinion on the financial statements.

An ‘**adverse opinion**’ should be expressed when the effect of a disagreement is so material and pervasive to the financial statements that the auditor concludes that a qualification of the report is inadequate to disclose the misleading or incomplete nature of the financial statements

- **Opinion other than an unqualified opinion:** Whenever the auditor requires an opinion other than unqualified, a description of all the substantive reasons should be included in the report and quantification of the possible effect(s), individually and in aggregate, on the financial statements should be mentioned in the report.
- **Limitation on Scope:** The SA also requires that in case there is a limitation on scope that requires expression of a qualified opinion or a disclaimer of opinion, the auditor’s report should describe the limitation and indicate the possible adjustments that might have been necessary had the limitations not existed.

### **Auditor’s Report**

For Audits conducted in accordance with SA’s Auditor’s Report:

- Shall be in writing.
- Shall be addressed to the appropriate authorities.
- Shall include a section with the heading “Management’s responsibility for the financial statements” which shall state that it is the responsibility of the management for the preparation of the financial statements.
- Shall include a section with the heading “Auditors responsibility”.
- Shall be dated signifying completion of audit.
- Shall mention the place of signing
- Shall be signed in the name of the firm with Firm Registration Number of ICAI, for audit report signed on or after 1st April 2010 and the personal name of the person with Membership number of ICAI, as applicable.
- Shall also incorporate the matters specified by a statute or regulator and /or form prescribed by them e.g. banking and insurance act or forms prescribed by RBI.

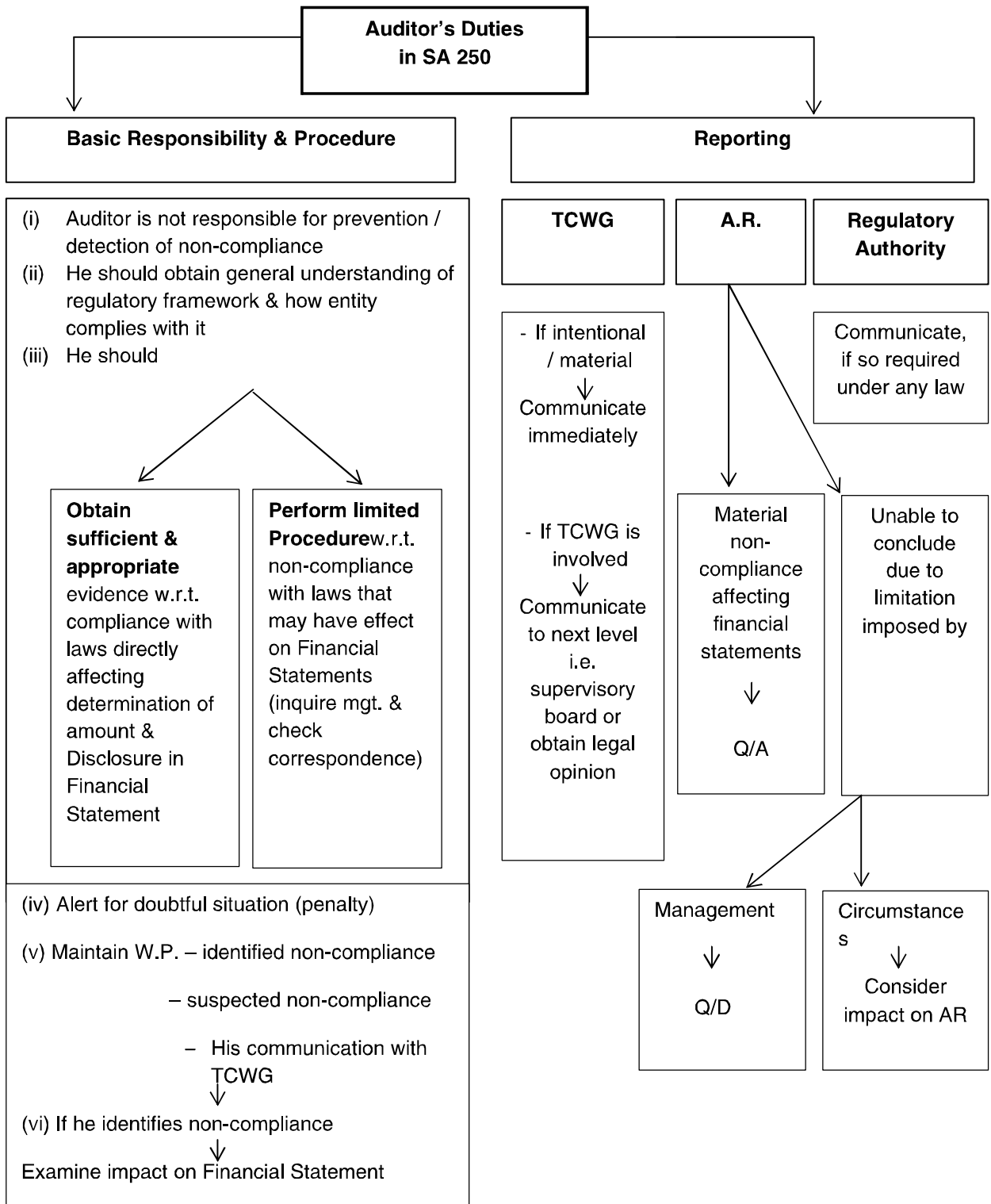
### **List of Applicable Guidance Note on Auditing Aspects**

- Audit of Property, Plant and Equipment
- Certification of XBRL Financial Statements
- Audit of Accounts of Non-Corporate Entities (Bank Borrowers)
- Audit of Cash and Bank Balances
- Audit of Consolidated Financial Statements
- Audit of Debtors, Loans and Advances



- Audit of Expenses
- Audit of Inventories
- Audit of Investments
- Audit of Liabilities
- Audit of Miscellaneous Expenditure (Revised)
- Audit of Payment of Dividend
- Audit of Revenue
- Audit Reports and Certificates for Special Purposes
- Auditing of Accounts of Liquidators
- Capital and Reserves
- Certificate on Corporate Governance (Revised)
- Certificate to be Issued by the Auditor of a Company Pursuant to Companies (Acceptance of Deposits) Rules, 1975
- Certification of Documents for Registration of Charges
- Computer Assisted Audit Techniques (CAATs)
- Duty Cast on the Auditors under Section 45-MA of the Reserve Bank of India Act, 1934
- Independence of Auditors (Revised)
- Preparation of Financial Statements on Letterheads and Stationery of Auditors
- Provision for Proposed Dividend
- Reports in Company Prospectuses (Revised)
- Section 227(3) (e) and (f) of the Companies Act, 1956 (Revised)
- Section 293 A of the Companies Act and the Auditor
- Guidance Note on Audit of Banks 2015 Edition
- Audit of Accounts of Members of Stock Exchanges (Revised)
- Audit of Companies Carrying on General Insurance Business
- Audit of Companies Carrying on Life Insurance Business

## Summary of Audit Standards for Financial Audit, Assurance and Agreed upon procedures



## **Summary of Audit Standards for Financial Audit, Assurance and Agreed upon procedures**

### **SA 260: Communication with those charged with Governance**

- To communicate with those charged with governance, auditor's responsibilities in relation to financial statements audit, an overview of planned scope and timing of audit and significant findings from the audit.
- Such matters include: Overall scope of audit; selection of/changes in significant accounting policies; potential effect on financial statements of any significant risks and exposures, such as pending litigation; adjustments to financial statements arising out of audit that have a significant effect on entity's financial statements; material uncertainties related to events and conditions that may cast significant doubt on entity's ability to continue as a going concern, disagreements with management about matters that could be significant to entity's financial statements or auditor's report; expected modifications to auditor's report. Auditors should communicate matters of governance interest on timely basis.
- Auditor's communication may be made orally or in writing. In case of oral communication, auditor should document their oral communications and response thereof.

### **SA 265: Communicating Deficiencies in Internal Control to those charged with Governance and Management**

- The objective of the auditor is to communicate appropriately to those charged with governance and management deficiencies in internal control that the auditor has identified during the audit and that, in the auditor's professional judgment, are of sufficient importance to merit their respective attentions.
- The auditor shall determine whether, on the basis of the audit work performed, the auditor has identified one or more deficiencies in internal control. If the auditor has identified one or more deficiencies in internal control, the auditor shall determine, on the basis of the audit work performed, whether, individually or in combination, they constitute significant deficiencies.

### **SA 299 : Responsibility of Joint Auditors**

- Joint auditors should, by mutual discussion, divide audit work. Division of work would usually be in terms of audit of identifiable units or specified areas. Division of work may be with reference to items of assets or liabilities or income or expenditure or with reference to periods of time.
- If a joint auditor comes across matters which are relevant to areas of responsibility of other joint auditors and which deserve their attention, or which require disclosure or discussion with, or application of judgment by other joint auditors, he should communicate the same to all other joint auditors in writing prior to finalisation of audit.
- Certain areas of work, owing to their importance or owing to the nature of work involved, would often not be divided and would have to be covered by all joint auditors.
- Each joint auditor is responsible only for the work allocated to them, whether or not s/he has prepared a separate report on work performed by them.
- All joint auditors are jointly and severally responsible in respect of the audit work which is not divided amongst them, for the appropriateness of decisions taken by them concerning the nature, timing or extent of the audit procedures to be performed by any of the joint auditors, for examining that the financial statements of the entity comply with disclosure requirements of relevant statute, for ensuring that audit report complies with the requirements of relevant statute and in respect of matters which are brought to the notice of joint auditors by any one of them and on which there is an agreement among joint auditors.
- Each joint auditor is entitled to assume that other joint auditors have carried out their part of audit work in accordance with generally accepted audit procedures. Normally, joint auditors are able to arrive at an agreed report. However, where the joint auditors are in disagreement with regard to any matters to be covered by the report, each one of them should express his own opinion through a separate report.

### **SA 300: Planning an Audit of Financial Statements**

- Planning an audit involves establishing the overall audit strategy for the engagement and developing an audit plan. The objective of auditor is to plan the audit so that it will be performed in an effective manner.

- Once the overall audit strategy has been established, an audit plan can be developed to address various matters identified in the overall audit strategy, considering the need to achieve the audit objectives through efficient use of auditor's resources.
- To consider various matters in developing the overall plan like: terms of engagement; nature and timing of reports; applicable legal or statutory requirements; accounting policies adopted by the client; identification of significant audit areas; setting of materiality levels, etc.
- To obtain a level of knowledge of client's business that will enable them to identify events, transactions and practices that, in their judgment, may have a significant effect on financial information. Audit plan is more detailed than overall audit strategy that includes the nature, timing and extent of audit procedures to be performed by engagement team members.
- Engagement partner and other key members of engagement team shall be involved in planning the audit, including planning and participating in the discussion among engagement team members so as to enhance effectiveness and efficiency of planning process.
- To plan the nature, timing and extent of direction and supervision of engagement team members and review of their work. Auditor shall document overall audit strategy, audit plan and any significant changes made during audit engagement to the overall audit strategy or audit plan, and reasons for such changes.
- Audit planning ideally commences at the conclusion of previous year's audit, and along with related programme, it should be reconsidered for modification as the audit of their compliance and substantive procedures progress. For an initial audit, auditor may need to expand the planning activities because the auditor does not ordinarily have previous experience with the entity that is considered when planning recurring engagements.

### **SA 315: Identifying and Assessing the Risks of Material Misstatement through understanding the Entity and its Environment**

- To provide a basis for identification and assessment of risks of material misstatement at the financial statements and assertion levels, the auditor shall perform risk assessment procedures. Thus procedures shall include: Inquiries with management; Analytical Procedures; Observation and Inspection.
- Where Auditor has performed other engagements with the entity, auditor shall consider whether information obtained is relevant for identifying the risk of material misstatement. If Auditor intends to use his/her previous experiences with the entity, he shall determine whether changes have occurred since previous audit that may affect its relevance on current audit.
- To obtain an understanding of the following: Industry, regulatory and other external factors; Nature of entity; Selection and application of accounting policies; Objectives and strategies and related business risks; Measurement and review of entity's financial performance; Internal control.
- SA 315 sets out five components of Internal control: Control environment; Entity's risk assessment process; the information system, including related business processes, relevant to financial reporting and communication; Control activities relevant to audit; Monitoring of controls.
- Usually, those controls which pertain to entity's objective of preparing financial statements are subject to risk assessment procedures.
- Obtaining an understanding of entity and its environment including entity's internal control is a continuous, dynamic process of gathering, updating and analysing information throughout the audit.
- To identify and assess risks of material misstatement at financial statement level, and at assertion level for classes of transactions, account balances and disclosures.
- Auditors are required to: Relate identified risks to what can go wrong at assertion level; Consider potential magnitude of risks in the context of financial statements; Consider the likelihood that risks could result in a material misstatement of financial statements.
- Documentation should cover: Discussion among engagement team; Key elements of understanding obtained; Sources of information; Risk assessment process; the identified and assessed risks; Significant risks evaluated; Risks evaluated for which substantive procedures done.

- Auditor uses professional judgment to determine the extent of understanding required. Auditors primary consideration is whether the understanding that has been obtained is sufficient to meet the objective stated in the SA.

### **SA 320: Materiality in Planning and Performing an Audit**

- SA 320 deals with the auditor's responsibility to apply the concept of materiality in planning and performing an audit of financial statements.
- In planning the audit, the auditor makes judgments about the size of misstatements that will be considered material.
- These judgments provide a basis for:
  - Determining the nature, timing and extent of risk assessment procedures;
  - Identifying and assessing the risks of material misstatement; and
  - Determining the nature, timing and extent of further audit procedures.
- For purposes of the SAs, performance materiality means the amount or amounts set by the auditor at less than materiality for the financial statements as a whole to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements exceeds materiality for the financial statements as a whole. If applicable, performance materiality also refers to the amount or amounts set by the auditor at less than the materiality level or levels for particular classes of transactions, account balances or disclosures.
- The auditor shall revise materiality for the financial statements as a whole (and, if applicable, the materiality level or levels for particular classes of transactions, account balances or disclosures) in the event of becoming aware of information during the audit that would have caused the auditor to have determined a different amount (or amounts) initially.
- The audit documentation shall include the following amounts and the factors considered in their determination:
  - Materiality for the financial statements as a whole;
  - If applicable, the materiality level or levels for particular classes of transactions, account balances or disclosures;
  - Performance materiality; and
  - Any revision of above as the audit progressed.
- ICAI has issued an Implementation Guide to Materiality in Planning and performing an audit work with specific reference to SA 320 and SA 450.

### **SA 330: The Auditor's Responses to Assessed Risks**

- The objective is to obtain sufficient appropriate audit evidence about assessed risks of material misstatement, through designing and implementing appropriate responses to those risks.
- Auditor shall design and implement overall responses to address assessed risks of material misstatement at financial statements level. To design and perform further audit procedures whose nature, timing and extent are based on and are responsive to assessed risks of material misstatement at assertion level.
- In designing further audit procedures to be performed, the auditor shall:
  - a. Consider reasons for the assessment given to risk of material misstatement at the assertion level for each class of transactions, account balance, and disclosure;
  - b. Obtain more persuasive audit evidence – the higher the auditor's assessment of risk.
- When the auditor obtains audit evidence about operating effectiveness of controls during an interim period, the auditor shall:

- a. Obtain audit evidence about significant changes to those controls subsequent to the interim period; and
  - b. Determine additional audit evidence to be obtained for the remaining period.
- Based on the audit procedures performed and audit evidence obtained, auditor shall evaluate before conclusion of audit whether assessments of risks of material misstatement at assertion level remain appropriate.
  - Auditor shall conclude whether sufficient appropriate audit evidence has been obtained. In forming an opinion, auditor shall consider all relevant audit evidence, regardless of whether it appears to corroborate or contradict assertions in financial statements.
  - If the auditor has not obtained sufficient appropriate audit evidence as to a material financial statement assertion, the auditor shall attempt to obtain further audit evidence. If the auditor is unable to obtain sufficient appropriate audit evidence, auditor shall express a qualified opinion or a disclaimer of opinion.
  - If Auditor plans to use audit evidence about operating effectiveness of controls obtained in previous audits, auditor shall document conclusion reached about relying on such controls that were tested in a previous audit.

### **SA 402: Audit Considerations relating to an Entity using a Service Organisation**

- This SA specifically expands on how the user auditor applies SA 315 and SA 330.
- The objectives of the auditor are (a) To obtain an understanding of the nature and significance of services provided by the service organisation and their effect on the user entity's internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement; and (b) To design and perform audit procedures responsive to those risks.
- The user auditor should obtain an understanding of the services provided by a service organisation, including internal control.
- The user auditor shall modify the opinion in the user auditor's report in accordance with SA 705 if the user auditor is unable to obtain sufficient appropriate audit evidence regarding the services provided by the service organisation relevant to the audit of the user entity's financial statements.
- The user auditor shall not refer to the work of a service auditor in the user auditor's report containing an unmodified opinion unless required by law or regulation to do so. If such reference is required by law or regulation, the user auditor's report shall indicate that the reference does not diminish the user auditor's responsibility for the audit opinion.
- If reference to the work of a service auditor is relevant to an understanding of a modification to the user auditor's opinion, the user auditor's report shall indicate that such reference does not diminish the user auditor's responsibility for that opinion.

### **SA 450: Evaluation of Misstatements Identified during the Audit**

- The objective of the auditor is to evaluate the effect of identified misstatements on the audit and the effect of uncorrected misstatements, if any, on the financial statements.
- To accumulate misstatements identified during the audit, other than those that are clearly trivial.
- To determine whether the overall audit strategy and audit plan need to be revised if the nature of identified misstatements and the circumstances of their occurrence indicate that other misstatements may exist that, when aggregated with misstatements accumulated during the audit, could be material or the aggregate of misstatements accumulated during the audit approaches materiality determined in accordance with SA 320 (Revised).
- To communicate on a timely basis all misstatements accumulated during the audit with the appropriate level of management, unless prohibited by law or regulations. To request management to correct those misstatements.

- Prior to evaluating the effect of uncorrected misstatements, the auditor shall reassess materiality determined in accordance with SA 320, to confirm whether it remains appropriate in the context of the entity's actual financial results.
- To communicate with those charged with governance uncorrected misstatements and the effect that they, individually or in aggregate, may have on the opinion in auditor's report, unless prohibited by law or regulation. Auditor's communication shall identify material uncorrected misstatements individually. Auditor shall request correction of uncorrected misstatements. Auditor shall also communicate with those charged with governance the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole.
- To request a written representation from management and, where appropriate, those charged with governance whether they believe the effects of uncorrected misstatements are immaterial, individually and in aggregate, to the financial statements as a whole. A summary of such items shall be included in or attached to the written representation.
- The audit documentation shall include the amount below which misstatements would be regarded as clearly trivial, all misstatements accumulated during the audit and whether they have been corrected and the auditor's conclusion as to whether uncorrected misstatements are material, individually or in aggregate, and the basis for that conclusion.
- ICAI has issued an Implementation Guide to Materiality in planning and performing an audit work with specific reference to SA 320 and SA 450.

### **SA 500: Audit Evidence**

- Auditor is required to obtain sufficient appropriate audit evidence to enable them to draw reasonable conclusions on which they can base their opinion on financial information.
- Auditor normally relies on evidence that is persuasive rather than conclusive in nature. Auditor may obtain evidence on a selective basis by way of either judgmental or statistical sampling procedures. Evidence is obtained through performance of compliance and substantive procedures.
- Compliance procedures are tests designed to obtain reasonable assurance that internal controls on which audit reliance is placed are in effect. Substantive procedures are designed to obtain evidence as to completeness, accuracy and validity of data produced by accounting system.
- Obtaining audit evidence from compliance procedures is intended to reasonably assure the auditor in respect of assertions of existence, effectiveness and continuity. Obtaining audit evidence from substantive procedures is intended to reasonably assure the auditor in respect of assertions of existence, rights and obligations, occurrence, completeness, valuation, measurement, presentation and disclosure.
- To test the reliability, few generalisations are useful such as external evidence is more reliable than internal evidence, written evidence is more reliable than oral evidence and self-obtained evidence is more reliable than obtained through the entity.
- Auditor gains increased assurance when audit evidence obtained from different sources is consistent. Various methods for obtaining audit evidence include inspection, observation, inquiry and confirmation, computation and analytical review.
- Emphasis is to be laid on considering relevance and reliability of audit evidence obtained during the course of audit, and focus is to be laid on designing and performing audit procedures to obtain relevant and reliable audit evidence.

### **SA 501: Audit Evidence — Specific Considerations for Selected Items**

- This Standard on Auditing (SA) deals with specific considerations by the auditor in obtaining sufficient appropriate audit evidence in accordance with SA 330, SA 500 (Revised) and other relevant SAs, with respect to certain aspects of inventory, litigation and claims involving the entity, and segment information in an audit of financial statements.
- Inventories: Management ordinarily establishes procedures under which inventory is physically counted at least once in a year to serve as a basis for preparation of financial statements or to ascertain reliability

of perpetual inventory system. When inventory is material to financial statements, auditor should obtain sufficient appropriate audit evidence regarding its existence and condition by attendance at physical inventory counting unless impracticable. If unable to attend physical inventory count on the date planned due to unforeseen circumstances, auditor should take or observe some physical counts on an alternative date and where necessary, perform alternative audit procedures to assess whether changes in inventory between date of physical count and period end date are correctly recorded.

- Litigation and Claims: The auditor shall design and perform audit procedures in order to identify litigation and claims involving the entity which may give rise to a risk of material misstatement, including:
  - a. Inquiry of management and, where applicable, others within the entity, including in-house legal counsel;
  - b. Reviewing minutes of meetings of those charged with governance and correspondence between the entity and its external legal counsel;
  - c. Reviewing legal expense accounts.
- Segment Information: Auditor considers segment information in relation to financial statements taken as a whole, and is not required to apply auditing procedures that would be necessary to express an opinion on segment information standing alone. Audit procedures regarding segment information ordinarily consist of obtaining an understanding of the methods used by management in determining segment information and performing analytical procedures and other audit tests appropriate in the circumstances.

### **SA 505: External Confirmation**

- External confirmation is the process of obtaining and evaluating audit evidence through a direct communication from a third party in response to a request for information about a particular item.
- Before making use of external confirmations, auditor should consider materiality, the assessed level of inherent and control risk, and how the evidence from other planned audit procedures will reduce audit risk to an acceptably low level.
- To employ external confirmation procedures in consultation with the management. External confirmations are mostly sought for account balances and their components but they are not to be restricted to these items only.
- The use of confirmation procedures may be effective in providing sufficient appropriate audit evidence when auditor determines higher level of assessed inherent and control risk.
- The request for confirmations is to be made either at the date of financial statements or at a date close to it. Requests are to be designed to specific audit objectives.
- Auditor's understanding of client's arrangements and transactions with third parties is important in determining the information to be confirmed. Auditor may use positive or negative external confirmation requests or a combination of both.
- To consider whether there is any indication that external confirmations received may not be reliable. To evaluate the conformity between results of external confirmation process together with results from any other procedures performed. If Auditor seeks for an external confirmation and management requests the auditor not to do so, auditor should consider whether there are valid grounds for such a request and obtain evidence to support validity of management's requests.

### **SA 510: Initial Audit Engagements – Opening Balances**

- In conducting an initial audit engagement, the auditor should obtain sufficient appropriate audit evidence that closing balances of preceding period have been correctly brought forward to current period or when appropriate, any adjustments have been disclosed as prior period items in the current year's Statement of Profit and Loss, the opening balances do not contain misstatements that materially affect financial statements for the current period and appropriate accounting policies are consistently applied.
- To consider whether accounting policies followed in preceding period, based on which opening balances have been arrived at, were appropriate and that those policies are consistently applied. If the auditor



concludes that the accounting policies have not been consistently applied or properly accounted for, the auditor has to express either a qualified or adverse opinion, as may be appropriate.

- Ordinarily, current auditor can place reliance on closing balances contained in financial statements for preceding period, except when during performance of audit procedures for current period the possibility of misstatements in opening balances is indicated.
- When financial statements of preceding period were not audited, auditor must adopt other procedures such as for current assets and liabilities. Some audit evidence can ordinarily be obtained as part of audit procedures performed during the current period and for non-current assets and liabilities such as fixed assets, investments and long-term debt, the auditor could ordinarily examine records underlying the opening balances.
- To evaluate matters giving rise to modifications in prior period's financial statements for assessing the risk of material misstatement. If the prior period's financial statements were audited by a predecessor auditor and there was a modification to the opinion, the auditor shall evaluate the effect of the matter giving rise to the modification in assessing the risks of material misstatement in the current period's financial statements in accordance with SA 315.

### **SA 520: Analytical Procedures**

- The objectives of the auditor are: (a) To obtain relevant and reliable audit evidence when using substantive analytical procedures; and (b) To design and perform analytical procedures near the end of audit that assist the auditor when forming an overall conclusion as to whether the financial statements are consistent with auditor's understanding of the entity.
- Auditor should apply analytical procedures at overall review stages of audit as well as while applying substantive procedures.
- Application of analytical procedures is based on the expectation that relationships among data exist and continue in absence of known conditions to the contrary. Presence of these relationships provides audit evidence as to completeness, accuracy and validity of data produced by the accounting system. However, reliance on results of analytical procedures will depend on auditor's assessment of the risk that analytical procedures may identify relationships as expected when, in fact, a material misstatement exists.
- When analytical procedures identify significant fluctuations or relationships that are inconsistent with other relevant information or that deviate from predicted amounts, the auditor should investigate and obtain adequate explanations and appropriate corroborative evidence.

### **SA 530: Audit Sampling**

- The auditor should design and select an audit sample, perform audit procedures thereon, and evaluate sample results so as to provide sufficient appropriate audit evidence.
- The objective of the auditor when using audit sampling is to provide a reasonable basis to draw conclusions about the population from which the sample is selected.
- When designing an audit sample, auditor should consider the objectives of the audit procedure and characteristics of the population when designing an audit sample. To assist in efficient and effective design of sample, stratification may be appropriate. Stratification is the process of dividing a population into sub-populations.
- When determining sample size, auditor should consider sampling risk, tolerable error, and expected error. Tolerable error is the maximum error in population that the auditor would be willing to accept and still conclude that the result from sample has achieved audit objective.
- If Auditor expects error to be present in the population, a larger sample needs to be examined to conclude that actual error in the population is not greater than planned tolerable error. Auditor should select sample items in such a way that the sample can be expected to be representative of the population.
- This requires that all items in the population have an opportunity of being selected. After having carried out those audit procedures on each sample item that are appropriate to particular audit objective, auditor should analyse any errors detected in the sample, project the errors found in the sample to the population and reassess sampling risk.

- Auditor should investigate the nature and cause of any deviations or misstatements identified, and their possible effect on the objective of the particular audit procedure or other areas of audit. In order to conclude that a misstatement or deviation is an anomaly, the auditor is required to obtain a high degree of certainty that the misstatement or deviation is not representative of the population.

### **SA 540: Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures**

- Auditor should obtain sufficient appropriate audit evidence regarding reasonableness of accounting estimates including fair value accounting estimate and related disclosure in financial statements are adequate.
- Accounting estimate means an approximation of a monetary amount in absence of a precise means of measurement. Determination of an accounting estimate may be simple or complex, depending upon the nature of item. Auditor should adopt one or a combination of following approaches in the audit of an accounting estimate:
  - a. review and test process used by management to develop the estimate;
  - b. use an independent estimate for comparison with that prepared by management; or
  - c. review subsequent events which confirm the estimate made.
- Auditor should make a final assessment of reasonableness of estimate based on auditor's knowledge of the business and whether the estimate is consistent with other audit evidence obtained during audit. When there is a difference between auditor's estimate of the amount best supported by available audit evidence and the estimated amount included in financial statements, auditor should consider whether the amount requires adjustment and report accordingly.
- Auditor should adopt a risk-based approach to the responsibilities regarding accounting estimates, including fair value accounting estimates and related disclosures. A difference between the outcome of an accounting estimate and amount originally recognised or disclosed in financial statements does not necessarily represent a misstatement of financial statements.
- Auditor should review the outcome of accounting estimates included in prior period financial statements. Auditor should obtain written representations from management whether management believes significant assumptions used by it in making accounting estimates are reasonable.
- Audit documentation should include the basis for auditor's conclusions about reasonableness of accounting estimates and their disclosure that give rise to significant risks; and Indicators of possible management bias, if any.

### **SA 550: Related Parties**

This Standard on Auditing (SA) deals with the auditor's responsibilities regarding related party relationships and transactions when performing an audit of financial statements:

- Auditor has a responsibility to perform audit procedures to identify, assess and respond to the risks of material misstatement arising from the entity's failure to appropriately account for or disclose related party relationships, transactions or balances in accordance with the framework.
- To perform procedures to obtain information relevant to identifying the risks of material misstatement associated with related party relationships and transactions.
- The auditor shall inquire of management regarding:
  - (a) The identity of entity's related parties, including changes from prior period (b) The nature of relationships between the entity and these related parties; and (c) Whether the entity entered into any transactions with these related parties during the period and, if so, the type and purpose of the transactions.
- To maintain alertness for related party information when reviewing records or documents.
- To respond to the risks of material misstatement associated with related party relationships and transactions.

- To Identify significant related party transactions outside the Entity's normal course of business.
- To evaluate that related party transactions were conducted on terms equivalent to those prevailing in an Arm's Length Transaction.
- To ensure that the accounting and disclosure of identified related party relationships and transactions are correct.
- To obtain written representation from management for related party transactions.
- Auditor shall communicate with those charged with governance significant matters arising during the audit in connection with the entity's related parties.
- Auditor shall include in the audit documentation, names of identified related parties and nature of related party relationships.

### **SA 560: Subsequent Events**

- Subsequent events are significant events occurring between balance sheet date and the date of auditor's report. Auditor should consider effect of subsequent events on financial statements and on auditor's report. Auditor should perform procedures designed to obtain sufficient appropriate audit evidence that all events up to the date of auditor's report that may require adjustment of, or disclosure in financial statements have been identified.
- Procedures to identify events that may require adjustment of, or disclosure in financial statements would be performed as near as practicable to the date of auditor's report.
- When Auditor becomes aware of events which materially affect financial statements, the auditor should consider whether such events are properly accounted for in financial statements.
- When the management does not account for such events that auditor believes should be accounted for, auditor should express a qualified opinion or an adverse opinion, as appropriate.

### **SA 570: Going Concern**

- Going concern assumption is a fundamental principle in the preparation of financial statements. Management should assess entity's ability to continue as a going concern even if the applicable financial reporting framework does not include an explicit requirement.
- Auditor should evaluate appropriateness of management's use of going concern assumption in preparation of financial statements and conclude whether there is a material uncertainty about entity's ability to continue as a going concern that need to be disclosed in financial statements.
- When planning and performing audit procedures and in evaluating the results thereof, auditor should perform further audit procedures when events or conditions are identified that cast significant doubt on the entity's ability to continue as a going concern. Indications of risk that continuance as a going concern may be questionable could come from financial statements, operational activities or from other sources.
- These may be financial indicators, operating indicators or other indicators. If, on the presence of such indication, a question arises regarding appropriateness of going concern assumption, auditor should gather sufficient appropriate audit evidence to attempt to resolve, to the auditor's satisfaction, the question regarding entity's ability to continue in operation for foreseeable future.
- After procedures considered necessary have been carried out, all information required has been obtained, and effect of any plans of management and other mitigating factors have been considered, auditor should decide whether the question raised regarding going concern assumption has been satisfactorily resolved.
- Auditor, on the basis of his/her judgment and audit evidence will report, as deemed appropriate. In case where use of going concern assumption is appropriate but a material uncertainty exists, then (i) if adequate disclosure is made in financial statements, auditor should express an unmodified opinion but include an Emphasis of Matter paragraph in the auditor's report; (ii) if adequate disclosure is not made in financial statements, auditor should express a qualified or adverse opinion, as appropriate. In case where entity

will not be able to continue as a going concern, auditor should express an adverse opinion if financial statements have been prepared on a going concern basis.

- Auditor should communicate with those charged with governance when there are identified events or conditions that may cast significant doubt on the entity's ability to continue as a going concern.

ICAI has issued an Implementation Guide to SA 570 wherein the template for checklists for testing going concern assumption, practical case studies and illustrative examples pertaining to the concept of going concern are given.

### **SA 580: Written Representations**

- Written representations are written statements used to corroborate the validity of the premises, relating to management's responsibilities, on which an audit is conducted; and other audit evidence obtained with regard to specific assertions in financial statements.
- Written representations in this context do not include financial statements, the assertions therein, or supporting books and records.
- To request written representations from management with appropriate responsibilities for financial statements and knowledge of matters concerned.
- To request management to provide a written representation that it has fulfilled its responsibility for the preparation and presentation of financial statements as set out in the terms of the audit engagement; and in accordance with applicable financial reporting framework; designing, implementing and maintaining of adequate internal control system; and completeness of information made available to the auditor.
- To determine relevant parties from whom general and specific written representations are to be requested.
- To evaluate the reliability of written representations and in case of doubt, should reconsider the reliability of other written representations and, take appropriate action. A management representation letter should be addressed to the auditor containing relevant information and be appropriately dated and signed.
- A management representation letter should ordinarily be signed by members of management who have primary responsibility for the entity and its financial aspects, e.g., Managing Director, Finance Director. Auditor should disclaim an opinion on financial statements when the requested general written representations are not provided or are unreliable, and the auditor is unable to obtain sufficient appropriate audit evidence.

### **SA 600 : Using the Work of Another Auditor**

- When the principal auditor uses the work of another auditor, the principal auditor should determine how the work of other auditor will affect the audit.
- Auditor should consider professional competence of other auditor in the context of specific assignment if the other auditor is not a Chartered Accountant. Auditor should inform other auditor of matters such as areas requiring special consideration, procedures for identification of inter-component transactions and significant accounting, auditing and reporting requirements.
- Auditor should consider significant findings of other auditor. There should be proper co-ordination and communication between the two auditors.
- When the principal auditor concludes that work of other auditor cannot be used and s/he has not been able to perform sufficient additional procedures regarding financial information of the component audited by other auditor, s/he should express a qualified opinion or disclaimer of opinion because there is a limitation on the scope of audit.
- The principal auditor would not be responsible in respect of the work entrusted to other auditors.

### **SA 610: Using the work of Internal Auditors**

- This SA deals with the external auditor's responsibilities regarding the work of internal auditors when the external auditor has determined, in accordance with SA 315, that the internal audit function is likely to be relevant to the audit.

- The objectives of the external auditor, where the entity has an internal audit function that the external auditor has determined is likely to be relevant to the audit, are to determine whether, and to what extent, to use specific work of the internal auditors and if so, whether such work is adequate for the purposes of the audit.
- External auditor should determine whether and to what extent to use the work of the internal auditors. In determining whether the work of the internal auditors is likely to be adequate for purposes of the audit, the external auditor shall evaluate the objectivity of the internal audit function, the technical competence of the internal auditors, whether the work of the internal auditors is likely to be carried out with due professional care and whether there is likely to be effective communication between the internal auditors and the external auditor.
- In order for the external auditor to use specific work of the internal auditors, the external auditor shall evaluate and perform audit procedures on that work to determine its adequacy for the external auditor's purposes.
- To determine the adequacy of specific work performed by the internal auditors for the external auditor's purposes, the external auditor shall evaluate whether the work was performed by internal auditors having adequate technical training and proficiency, the work was properly supervised, reviewed and documented, adequate audit evidence has been obtained to enable the internal auditors to draw reasonable conclusions, conclusions reached are appropriate in the circumstances and any reports prepared by the internal auditors are consistent with the results of the work performed and any exceptions or unusual matters disclosed by the internal auditors are properly resolved.
- When the external auditor uses specific work of the internal auditors, the external auditor shall document conclusions regarding the evaluation of the adequacy of the work of the internal auditors, and the audit procedures performed by the external auditor on that work.

## **SA 620: Using the Work of an Auditor's Expert**

- This SA deals with the auditor's responsibilities regarding the use of an individual or organisation's work in a field of expertise other than accounting or auditing, when that work is used to assist the auditor in obtaining sufficient appropriate audit evidence.
- The auditor has sole responsibility for the audit opinion expressed, and that responsibility is not reduced by the auditor's use of the work of an auditor's expert.
- The objectives of the auditor are to determine whether to use the work of an auditor's expert and if using the work of an auditor's expert, to determine whether that work are adequate for the auditor's purposes.
- If expertise in a field other than accounting or auditing is necessary to obtain sufficient appropriate audit evidence, the auditor shall determine whether to use the work of an auditor's expert.
- The nature, timing and extent of the auditor's procedures with respect to the requirement of this SA will vary depending on the circumstances. In determining the nature, timing and extent of those procedures, the auditor shall consider matters including the nature of the matter to which that expert's work relates, the risks of material misstatement in the matter to which that expert's work relates, the significance of that expert's work in the context of the audit, the auditor's knowledge of and experience with previous work performed by that expert and whether that expert is subject to the auditor's firm's quality control policies and procedures.
- The auditor shall evaluate whether the auditor's expert has the necessary competence, capabilities and objectivity for the auditor's purposes. In the case of an auditor's external expert, the evaluation of objectivity shall include inquiry regarding interests and relationships that may create a threat to that expert's objectivity.
- The auditor shall agree, in writing when appropriate, on the following matters with the auditor's expert:
  - o The nature, scope and objectives of that expert's work;
  - o The respective roles and responsibilities of the auditor and that expert;
  - o The nature, timing and extent of communication between the auditor and that expert, including the form of any report to be provided by that expert; and

- o The need for the auditor's expert to observe confidentiality requirements.
- The auditor shall evaluate the adequacy of the auditor's expert's work for the auditor's purposes, including:
  - o The relevance and reasonableness of that expert's findings or conclusions, and their consistency with other audit evidence;
  - o If that expert's work involves use of significant assumptions and methods, the relevance and reasonableness of those assumptions and methods in the circumstances; and
  - o If that expert's work involves the use of source data that is significant to that expert's work, the relevance, completeness, and accuracy of that source data.
- The auditor shall not refer to the work of an auditor's expert in an auditor's report containing an unmodified opinion unless required by law or regulation to do so. If such reference is required by law or regulation, the auditor shall indicate in the auditor's report that the reference does not reduce the auditor's responsibility for the audit opinion.

## **SA 700 : Forming an Opinion and Reporting on Financial Statements**

- Auditor should form an opinion on the financial statements based on an evaluation of the conclusions drawn from the audit evidence obtained and express clearly that opinion through a written report that also describes the basis for the opinion.
- The auditor shall express an unmodified opinion when the auditor concludes that the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.
- If the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatement; or is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement, the auditor shall modify the opinion in the auditor's report in accordance with SA 705.
- Auditor's report includes basic elements such as Title, Addressee, Opening or introductory paragraph, Management's Responsibility for the Financial Statements, Auditor's Responsibility, Auditor's Opinion, Other Reporting Responsibilities, Signature of the Auditor, Date of the Auditor's Report and Place of Signature. If the auditor is required by any law or regulation to use a specific layout or wording of the auditor's report, the auditor's report shall refer to SA only if the auditor's report includes, at a minimum, each of the elements prescribed in this SA.
- If an auditor is required to conduct an audit in accordance with the SAs issued by the ICAI, but may additionally have complied with the International Standards on Auditing (ISAs) in the conduct of the audit, the auditor's report may refer to ISAs in addition to the national auditing standards only if conditions specified in this SA are complied with.
- ICAI has issued a notification giving the illustrative formats of the audit report. These illustrative formats of Audit Report are for standalone as well as for consolidated financial statements. From F Y 2015-16 the reporting on internal financial control on financial reporting is compulsory, hence the revised format also includes the same. The auditor should issue the report in the revised format for the accounting periods starting from 1st April, 2015.

## **SA 705 : Modification to the opinion in the Independent Auditor's Report**

- Auditor is responsible to issue an appropriate report in circumstances when, in forming an opinion in accordance with SA 700 (Revised), the auditor concludes that a modification to the auditor's opinion on the financial statements is necessary.
- The objective of the auditor is to express clearly an appropriately modified opinion on the financial statements that is necessary when the auditor concludes, based on the audit evidence obtained, that the financial statements as a whole are not free from material misstatement; or the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement.
- The auditor shall express a qualified opinion when the auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not

pervasive, to the financial statements; or the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

- The auditor shall express an adverse opinion when the auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements.
- The auditor shall disclaim an opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.
- When the auditor modifies the opinion on the financial statements, the auditor shall, in addition to the specific elements required by SA 700 (Revised), include a paragraph in the auditor's report that provides a description of the matter giving rise to the modification.
- When the auditor expects to modify the opinion in the auditor's report, the auditor shall communicate with those charged with governance the circumstances that led to the expected modification and the proposed wording of the modification.
- ICAI has issued a notification giving the illustrative formats of the audit report. These illustrative formats of Audit Report are for standalone as well as for consolidated financial statements. From F Y 2015-16 the reporting on internal financial control on financial reporting is compulsory, hence the revised format also includes the same. The auditor should issue the report in the revised format for the accounting periods starting from 1st April, 2015.

### **SA 706 : Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report**

- The objective of the auditor, having formed an opinion on the financial statements, is to draw users' attention, when in the auditor's judgment it is necessary to do so, by way of clear additional communication in the auditor's report, to a matter, although appropriately presented or disclosed in the financial statements, that is of such importance that it is fundamental to users' understanding of the financial statements; or as appropriate, any other matter that is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.
- If the matter refers to information presented or disclosed in the financial statements, the auditor shall include an Emphasis of Matter paragraph (immediately after the Opinion paragraph) in the auditor's report provided the auditor has obtained sufficient appropriate audit evidence that the matter is not materially misstated in the financial statements.
- If the auditor considers it necessary to communicate a matter other than those that are presented or disclosed in the financial statements that, in the auditor's judgment, is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report and this is not prohibited by law or regulation, the auditor shall do so in a paragraph in the auditor's report, with the heading "Other Matter", or other appropriate heading.
- If the auditor expects to include an Emphasis of Matter or an Other Matter paragraph in the auditor's report, the auditor shall communicate with those charged with governance regarding this expectation and the proposed wording of this paragraph.
- ICAI has issued a notification giving the illustrative formats of the audit report. These illustrative formats of Audit Report are for standalone as well as for consolidated financial statements. From F Y 2015-16 the reporting on internal financial control on financial reporting is compulsory, hence the revised format also includes the same. The auditor should issue the report in the revised format for the accounting periods starting from 1st April, 2015.

### **SA 710 : Comparative Information– Corresponding Figures and Comparative Financial Statements**

- The objectives of the auditor are to obtain sufficient appropriate audit evidence about whether the comparative information included in the financial statements has been presented, in all material respects,

in accordance with the requirements for comparative information in the applicable financial reporting framework; and to report in accordance with the auditor's reporting responsibilities.

- The framework and methods of presentation that are referred to in this SA are corresponding figures where amounts and other disclosures for preceding period are included as an integral part of current period financial statements and Comparative Financial Statements where amounts and other disclosures for preceding period are included for comparison with financial statements of current period.
- Auditor should obtain sufficient appropriate audit evidence that the comparative information meet the requirements of relevant financial reporting framework. This involves verifying whether accounting policies used for corresponding figures are consistent with those of current period and whether corresponding figures agree with amounts and other disclosures presented in prior period.
- If the financial statements of the prior period were audited by a predecessor auditor and the auditor is permitted by law or regulation to refer to the predecessor auditor's report on the corresponding figures and decides to do so, the auditor shall state in an Other Matter paragraph in the auditor's report that the financial statements of the prior period were audited by the predecessor auditor; the type of opinion expressed by the predecessor auditor and, if the opinion was modified, the reasons therefor; and the date of that report. When auditor's report on prior period, as previously issued, included a qualified opinion or a disclaimer of opinion or an adverse opinion and concerned matter is not resolved, auditor's report should also be modified regarding corresponding figures.
- When prior period financial statements are not audited, incoming auditor should state the fact in auditor's report in an Other Matter paragraph.
- When comparative financial statements are presented, the auditor's opinion shall refer to each period for which financial statements are presented and on which an audit opinion is expressed.

### **SA 720: The Auditor's Responsibility in relation to Other Information in Documents containing Audited Financial Statements**

- The objective of the auditor is to respond appropriately when documents containing audited financial statements and auditor's report thereon include other information that could undermine the credibility of those financial statements and auditor's report.
- The auditor is not required to give his/her opinion on other information, not having any responsibility of determining whether or not other information is properly stated, if there is no separate requirement in particular circumstance of the engagement. However, the auditor reads other information because the credibility of audited financial statements may be undermined by material inconsistencies between audited financial statements and other information and if found, to determine whether the audited financial statements or other information needs to be revised.
- To make appropriate arrangements with management or those charged with governance to obtain the other information prior to the date of the auditor's report. If material inconsistencies are identified prior to the date of the auditor's report, and the revision of audited financial statement is necessary and the management refuses to make the revision, auditor is required to modify his/her opinion. Further, if revision of other information is necessary, and management refuses to make the revision, auditor is required to communicate the matter to those charged with governance and also provide paragraph in the auditor's report on other matter; or withdraw from the engagement, if permitted by laws or regulations.
- If material inconsistencies are identified subsequent to the date of the auditor's report, and revision of audited financial statement is necessary, the auditor is required to perform the procedures given in SA 560, "Subsequent Events". If, on reading other information for the purpose of identifying material inconsistencies, auditor becomes aware of an apparent material misstatement of fact, auditor should discuss the matter with management and if the management refuse to correct it, communicate the same to those charged with governance and take further appropriate actions.

### **SA 800: Special Considerations — Audits of Financial Statements prepared in accordance with Special Purpose Frameworks**

- The objective of the auditor, when applying SAs in an audit of financial statements prepared in accordance with a special purpose framework, is to address appropriately the special considerations that are relevant



to: (a) The acceptance of the engagement; (b) The planning and performance of that engagement; and (c) Forming an opinion and reporting on the financial statements.

- In an audit of special purpose financial statements, the auditor shall obtain an understanding of: (a) The purpose for which the financial statements are prepared; (b) The intended users; and (c) The steps taken by management to determine that the applicable financial reporting framework is acceptable in the circumstances.
- The auditor shall determine whether application of other SAs requires special consideration in the circumstances of the engagement. In the case of financial statements prepared in accordance with the provisions of a contract, the auditor shall obtain an understanding of any significant interpretations of the contract that management made in the preparation of those financial statements. An interpretation is significant when adoption of another reasonable interpretation would have produced a material difference in the information presented in the financial statements.
- In the case of financial statements prepared in accordance with the provisions of a contract, the auditor shall evaluate whether the financial statements adequately describe any significant interpretations of the contract on which the financial statements are based.
- The auditor's report on special purpose financial statements shall include an Emphasis of Matter paragraph alerting users of the auditor's report that the financial statements are prepared in accordance with a special purpose framework and that, as a result, the financial statements may not be suitable for another purpose.

### **SA 805: Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement**

- The objective of the auditor, when applying SAs in an audit of a single financial statement or of a specific element, account or item of a financial statement, is to address appropriately the special considerations that are relevant to: (a) acceptance of the engagement; (b) planning and performance of that engagement; and (c) forming an opinion and reporting on the single financial statement or on the specific element, account or item of financial statement.
- SA 200 requires the auditor to comply with all SAs relevant to the audit. If the auditor is not also engaged to audit the entity's complete set of financial statements, the auditor shall determine whether the audit of a single financial statement or of a specific element of those financial statements in accordance with SAs is practicable.
- SA 210 requires the auditor to determine the acceptability of the financial reporting framework applied in the preparation of the financial statements. This shall include whether application of the financial reporting framework will result in a presentation that provides adequate disclosures to enable the intended users to understand the information conveyed in the financial statement or the element, and the effect of material transactions and events on the information conveyed in the financial statement or the element.
- The auditor shall consider whether the expected form of opinion is appropriate in the circumstances.
- The auditor shall apply the requirements in SA 700, adapted as necessary in the circumstances of the engagement.
- If the auditor undertakes an engagement to report on a single financial statement or on a specific element of a financial statement in conjunction with an engagement to audit the entity's complete set of financial statements, the auditor shall express a separate opinion for each engagement. If the opinion in the auditor's report on an entity's complete set of financial statements is modified, or that report includes an Emphasis of Matter paragraph or an Other Matter paragraph, the auditor shall determine the effect that this may have on the auditor's report on a single financial statement or on a specific element of those financial statements.

### **SA 810: Engagements to Report on Summary Financial Statements**

- SA 810 deals with the auditor's responsibilities when undertaking an engagement to report on summary financial statements derived from financial statements audited in accordance with SAs by that same auditor.

- The objectives of the auditor are to: (a) Determine whether it is appropriate to accept the engagement to report on summary financial statements; (b) Form an opinion on the summary financial statements based on an evaluation of the conclusions drawn from the evidence obtained; and (c) Express clearly that opinion through a written report that also describes the basis for that opinion.
- The auditor shall, ordinarily, accept an engagement to report on summary financial statements in accordance with this SA only when the auditor has been engaged to conduct an audit in accordance with SAs of the financial statements from which the summary financial statements are derived.
- Before accepting an engagement to report on summary financial statements, the auditor shall: (a) Determine whether the applied criteria are acceptable; (b) Obtain the agreement of management that it acknowledges and understands its responsibility.
- The auditor shall perform the prescribed procedures, and any other procedures that the auditor may consider necessary, as the basis for the auditor's opinion on the summary financial statements.
- When the auditor has concluded that an unmodified opinion on the summary financial statements is appropriate, the auditor's opinion shall, unless otherwise required by law or regulation, use one of the phrases enumerated in this SA.
- The auditor's report on the summary financial statements may be dated later than the date of the auditor's report on the audited financial statements. In such cases, the auditor's report on the summary financial statements shall state that the summary financial statements and audited financial statements do not reflect the effects of events that occurred subsequent to the date of the auditor's report on the audited financial statements that may require adjustment of, or disclosure in, the audited financial statements.
- If the summary financial statements are not consistent, in all material respects, with or are not a fair summary of the audited financial statements, in accordance with the applied criteria, and management does not agree to make the necessary changes, the auditor shall express an adverse opinion on the summary financial statements.
- If the audited financial statements contain comparatives, but the summary financial statements do not, the auditor shall determine whether such omission is reasonable in the circumstances of the engagement.
- If the auditor becomes aware that the entity plans to state that the auditor has reported on summary financial statements in a document containing the summary financial statements, but does not plan to include the related auditor's report, the auditor shall request management to include the auditor's report in the document.

## **STANDARDS ON REVIEW ENGAGEMENTS (SRES)**

### **SRE 2400: Engagements to Review Historical Financial Statements**

- To establish standards and provide guidance on the practitioner's professional responsibilities when a practitioner, who is not the auditor of an entity, undertakes an engagement to review financial statements and on the form and content of the report that the practitioner issues in connection with such a review.
- The objective of a review of financial statements is to enable a practitioner to state whether, on the basis of procedures which do not provide all the evidence that would be required in an audit, anything has come to the practitioner's attention that causes the practitioner to believe that the financial statements are not prepared, in all material respects, in accordance with the applicable financial reporting framework (negative assurance).
- The practitioner should comply with the Code of Ethics issued by the ICAI.
- The procedures required to conduct a review of financial statements should be determined by the practitioner having regard to the requirements of this SRE, relevant professional bodies, legislation, regulation and, where appropriate, the terms of the review engagement and reporting requirements.
- A review engagement provides a moderate level of assurance that the information subject to review is free of material misstatement; this is expressed in the form of negative assurance. For the purpose of expressing negative assurance in the review report, the practitioner should obtain sufficient appropriate evidence primarily through inquiry and analytical procedures to be able to draw conclusions.

- The practitioner and the client should agree on the terms of the engagement.
- When using work performed by another practitioner or an expert, the practitioner should be satisfied that such work is adequate for the purposes of the review.
- The practitioner should document matters which are important in providing evidence to support the review report, and evidence that the review was carried out in accordance with this SRE.
- The practitioner should apply judgment in determining the specific nature, timing and extent of review procedures. The practitioner should apply the same materiality considerations as would be applied if an audit opinion on the financial statements were being given.
- Based on the work performed, the practitioner should assess whether any information obtained during the review indicates that the financial statements do not give a true and fair view in accordance with the applicable financial reporting framework.

#### **SRE 2410: Review of Interim Financial Information Performed by the Independent Auditor of the Entity**

- To establish standards and provide guidance on the auditor's professional responsibilities when the auditor undertakes an engagement to review interim financial information of an audit client, and on the form and content of the report.
- The auditor should comply with the ethical requirements relevant to the audit of the annual financial statements of the entity. The auditor should implement quality control procedures that are applicable to the individual engagement. The auditor should plan and perform the review with an attitude of professional skepticism.
- The objective is to enable the auditor to express a conclusion whether, on the basis of the review, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with an applicable financial reporting framework.
- The auditor and the client should agree on the terms of the engagement.
- The auditor should have an understanding of the entity and its environment, including its internal control, as it relates to the preparation of both annual and interim financial information, sufficient to plan and conduct the engagement.
- The auditor should make inquiries, primarily of persons responsible for financial and accounting matters, and perform analytical and other review procedures to enable the auditor to conclude whether, on the basis of the procedures performed, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework.
- The auditor should obtain evidence that the interim financial information agrees or reconciles with the underlying accounting records and should inquire whether management has identified all events up to the date of the review report that may require adjustment to or disclosure in the interim financial information.
- The auditor should inquire whether management has changed its assessment of the entity's ability to continue as a going concern. If adequate disclosure is made in the interim financial information, the auditor should add an emphasis of matter paragraph to the review report to highlight a material uncertainty relating to an event or condition that may cast significant doubt on the entity's ability to continue as a going concern. If a material uncertainty that casts significant doubt about the entity's ability to continue as a going concern is not adequately disclosed in the interim financial information, the auditor should express a qualified or adverse conclusion, as appropriate. The report should include specific reference to the fact that there is such a material uncertainty.
- When a matter comes to the auditor's attention that leads the auditor to question whether a material adjustment should be made, the auditor should make additional inquiries or perform other procedures to enable the auditor to express a conclusion in the review report.
- The auditor should evaluate, individually and in the aggregate, whether uncorrected misstatements that have come to the auditor's attention are material to the interim financial information.

- The auditor should obtain written representations from management.
- The auditor should read the other information that accompanies the interim financial information to consider whether any such information is materially inconsistent with the interim financial information. If a matter comes to the auditor's attention that causes the auditor to believe that the other information appears to include a material misstatement of fact, the auditor should discuss the matter with the entity's management.
- When, as a result of performing the review of interim financial information, a matter comes to the auditor's attention that causes the auditor to believe that it is necessary to make a material adjustment to the interim financial information, the auditor should communicate this matter as soon as practicable to the appropriate level of management. When, in the auditor's judgment, management does not respond appropriately within a reasonable period of time, the auditor should inform those charged with governance.
- The auditor should issue a written report that contains the nature, extent and results of the review of interim financial information.
- The auditor should express a qualified or adverse conclusion when a matter has come to the auditor's attention that causes the auditor to believe that a material adjustment should be made to the interim financial information for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.
- When the auditor is unable to complete the review, the auditor should communicate, in writing, to the appropriate level of management and to those charged with governance the reason why the review cannot be completed, and consider whether it is appropriate to issue a report.
- The auditor should consider modifying the review report by adding a paragraph to highlight a significant uncertainty (other than a going concern problem) that came to the auditor's attention, the resolution of which is dependent upon future events and which may affect the interim financial information.
- The auditor should prepare review documentation that is sufficient and appropriate to provide a basis for the auditor's conclusion and to provide evidence that the review was performed in accordance with this SRE and applicable legal and regulatory requirements.

## **STANDARDS ON ASSURANCE ENGAGEMENTS (SAE) — OTHER THAN AUDITS OR REVIEWS OF HISTORICAL FINANCIAL INFORMATION**

### **SAE 3400 : The examination of Prospective Financial Information**

- In an engagement to examine prospective financial information, auditor should obtain sufficient appropriate evidence as to whether:
  - a. Management's best-estimate assumptions are not unreasonable and, in the case of hypothetical assumptions such assumptions are consistent with the purpose of information.
  - b. Prospective financial information is properly prepared on the basis of assumptions;
  - c. Prospective financial information is properly presented and all material assumptions are adequately disclosed, including whether they are best-estimate assumptions or hypothetical assumptions; and
  - d. Prospective financial information is prepared on a consistent basis with historical financial statements, using appropriate accounting principles.
- While evidence may be available to support assumptions on which prospective financial information is based, such evidence is itself generally future-oriented and, therefore, speculative in nature, as distinct from evidence ordinarily available in examination of historical financial information. Auditor is, therefore, not in a position to express an opinion as to whether the results shown in prospective financial information will be achieved.

#### **Auditor should:**

- o Not accept, or should withdraw from, an engagement when assumptions are clearly unrealistic or when she believes that prospective financial information will be inappropriate for its intended use.

- o Obtain a sufficient level of knowledge of business and become familiar with entity's process to be able to evaluate whether all significant assumptions required for preparation of prospective financial information have been identified.
- o Consider extent to which reliance on entity's historical financial information is justified. Auditor should consider period of time covered by prospective financial information. Sufficient appropriate evidence supporting such assumptions would be obtained from internal and external sources.
- o Would consider whether, when hypothetical assumptions are used, all significant implications of such assumptions have been taken into consideration.
- o Should obtain written representations from management regarding intended use of prospective financial information, completeness of significant management assumptions and management's acceptance of its responsibility for prospective financial information.
- o Should assess the presentation and disclosures in prospective financial statement are adequate.
- o should document matters, which are important in providing evidence to support his/her report on examination of prospective financial information, and evidence that such examination was carried out in accordance with this SA.

When auditor believes that presentation and disclosure of prospective financial information is not adequate, the auditor should express a qualified or adverse opinion in the report on prospective financial information, or withdraw from engagement as appropriate.

When auditor believes that one or more significant assumptions do not provide a reasonable basis for prospective financial information prepared on basis of best-estimate assumptions or that one or more significant assumptions do not provide a reasonable basis for prospective financial information given the hypothetical assumptions, the auditor should either express an adverse opinion setting out reasons in the report on prospective financial information, or withdraw from engagement.

When examination is affected by conditions that preclude application of one or more procedures considered necessary in the circumstances, auditor should either withdraw from engagement or disclaim the opinion and describe the scope limitation in the report on prospective financial information.

#### **SAE 3402: Assurance Reports on Controls at a Service Organisation**

- This SAE deals with assurance engagements undertaken by a professional accountant in public practice to provide a report for use by user entities and their auditors on the controls at a service organisation that provides a service to user entities that is likely to be relevant to user entities' internal control as it relates to financial reporting.
- The objectives of the service auditor are: (a) To obtain reasonable assurance about whether, in all material respects, based on suitable criteria: (i) The service organisation's description of its system fairly presents the system as designed and implemented throughout the specified period; (ii) The controls related to the control objectives stated in the service organisation's description of its system were suitably designed throughout the specified period; (iii) Where included in the scope of the engagement, the controls operated effectively to provide reasonable assurance that the control objectives stated in the service organisation's description of its system were achieved throughout the specified period; (b) To report on the matters in (a) above in accordance with the service auditor's findings.
- The service auditor shall comply with relevant ethical requirements, including those pertaining to independence, relating to assurance engagements.
- Where this SAE requires the service auditor to inquire of, request representations from, communicate with, or otherwise interact with the service organisation, the service auditor shall determine the appropriate person(s) within the service organisation's management or governance structure with whom to interact.
- If the service organisation requests a change in the scope of the engagement before the completion of the engagement, the service auditor shall be satisfied that there is a reasonable justification for the change.

- The service auditor shall assess whether the service organisation has used suitable criteria in preparing the description of its system, in evaluating whether controls are suitably designed, and, in the case of a type 2 report, in evaluating whether controls are operating effectively.
- When planning and performing the engagement, the service auditor shall consider materiality with respect to the fair presentation of the description, the suitability of the design of controls and, in the case of a type 2 report, the operating effectiveness of controls.
- The service auditor shall obtain an understanding of the service organisation's system, including controls that are included in the scope of engagement
- The service auditor shall obtain and read the service organisation's description of its system, and evaluate whether those aspects of the description included in the scope of engagement are fairly presented.
- The service auditor shall determine which of the controls at the service organisation are necessary to achieve the control objectives stated in the service organisation's description of its system, and shall assess whether those controls were suitably designed.
- If the service organisation has an internal audit function, the service auditor shall obtain an understanding of the nature of the responsibilities of the internal audit function and of the activities performed in order to determine whether the internal audit function is likely to be relevant to the engagement.
- In order for the service auditor to use specific work of the internal auditors, the service auditor shall evaluate and perform procedures on that work to determine its adequacy for the service auditor's purposes.
- The service auditor shall request the service organisation to provide written representations.
- The service auditor shall inquire whether the service organisation is aware of any events subsequent to the period covered by the service organisation's description of its system up to the date of the service auditor's assurance report that could have a significant effect on the service auditor's assurance report.
- The service auditor's assurance report shall include the basic elements prescribed by this SAE.

#### **SAE 3420: Assurance Engagements to Reports on Compilation of pro forma financial information to be included in a Prospectus**

- This Standard on Assurance Engagements (SAE) deals with reasonable assurance engagements undertaken by a practitioner to report on the responsible party's compilation of pro forma financial information included in a prospectus.
- The SAE applies where:
  - o Such reporting is required by securities law or the regulation of the securities exchange ("relevant law or regulation") in the jurisdiction in which the prospectus is to be issued; or
  - o This reporting is generally accepted practice in such jurisdiction.
- This SAE is effective for assurance reports dated on or after 1st April 2016

#### **STANDARDS ON RELATED SERVICES (SRS)**

##### **SRS 4400 : Engagements to Perform agreed-upon Procedures Regarding Financial Information**

- In an engagement to perform agreed-upon procedures, auditor is engaged by client to issue a report of factual findings, based on specified procedures performed on specified matters of a financial statement. As the auditor simply provides a report of factual findings of agreed-upon procedures, no assurance is expressed by them in the report. Report is restricted to those parties that have agreed to procedures to be performed since others, unaware of reasons for the procedures, may misinterpret results.
- To comply with Code of Ethics, issued by ICAI.
- Where auditor is not independent, a statement to that effect should be made in the report of factual findings. Terms of engagement should be well-defined so as to avoid any misunderstandings.

- To plan the work so that an effective engagement will be performed and documentation of important matters to be done which provides evidence to support the report of factual findings.
- The report describes the purpose and agreed-upon procedures of engagement in sufficient detail to enable the reader to understand the nature and extent of work performed. The report should also clearly mention that no audit or review has been performed.

#### **SRS 4410 : Engagements to Compile Financial Information**

- In such types of engagements, accountant uses accounting expertise as against auditing expertise to collect, classify and summarise financial information.
- The accountant should comply with the “Code of Ethics”, issued by ICAI. However, where accountant is not independent, a statement to that effect should be made in the accountant’s report. It should be ensured that there is a clear understanding between the client and accountant regarding terms of engagement by means of an engagement letter or such other suitable form of contract.
- To obtain an acknowledgement from management of its responsibility for appropriate preparation and presentation of financial statements or other information and of its approval of such information to be compiled.
- Accountant should also obtain an acknowledgement from management of its responsibility for accuracy and completeness of underlying accounting data and complete disclosure of all material and relevant information.
- To plan the work so that an effective engagement will be performed. Accountant should obtain a general knowledge of business and operations of the entity and should be familiar with accounting principles. Accountant should request management representation letter covering significant information or explanations given orally on which they consider representations are required.
- There are few special considerations which the accountant has to take care of i.e. s/he should ensure that financial statements or other financial information compiled, comply with requirements of identified financial reporting framework & where there is no specific financial reporting framework, client may specify that accounts should be compiled on, for example, based on requirements of Income Tax Act. If any accounting standard is not complied with, the fact should be disclosed in the notes to accounts.
- If accountant becomes aware of any material misstatement, s/he must report this to management or must withdraw from engagement if management doesn’t act. Financial information compiled should be approved by client before compilation report is signed by accountant.
- SRS has been revised for the engagements taken after 31st March 2016. The title is also changed to ‘Compilation Engagements’ wherein the illustrative engagement report is also given.

# FRAUD RISK MANAGEMENT & INTERNAL CONTROLS REVIEW

## **Audit checklist for Companies and Banks**

The role of auditors in detecting and preventing corporate fraud is assuming all-time importance in India, in corporate sector and also in bank audits. CAG, RBI, SEBI, and SFIO develop structured intelligence units. Section 143 (12) of the Companies Act 2013 on fraud reporting by auditors and implications of Section 447 is now a burning issue, with ICAI pronouncing an exhaustive Guidance Note. Section 143(3)(i) of the Companies Act 2013 and relevant Rules made thereunder is also stressing the role of the statutory auditor to comment on Internal Controls in the entity under audit. Finance professionals have tremendous potential in developing and strengthening controls to combat the menace of fraud and the cancer of corruption.

## **Major Types of fraud are as under –**

- Management fraud – perhaps the most difficult to detect
- Employee fraud
- External Fraud
- Combination fraud

## **Some other categories of fraud can be –**

- Misappropriation of Assets – forgery, theft, embezzlement, falsification of timesheets and payroll, overstated expenses
- Fraudulent Financial Reporting (FFR)- Window Dressing, improper revenue recognition, overstatement of assets, understatement of liabilities
- Expenditures and Liabilities for improper purposes – Bribery, Kick-backs
- Fraudulently obtained Revenue and Assets

## **Possible red flags & fraud indicators**

These are warning signs that frauds have occurred. Such signs must be proactive, not reactive. Persons raising red flags are known as 'whistleblowers' – they must always be conscious of the unusual or the out of place. Some salient signs of red flags are as

- Infighting among Top Management
- Inconsistent & Surprising Cash flow deficiencies
- Employee with unexplained lavish lifestyle
- Frequent complaints from customers, Suppliers etc
- Low morale & motivation among employees
- Under staffed Accounting Departments

## **Some Red flags or warning signs or fraud-indicators associated with employee fraud –**

- No or little segregation of duties
- Established controls or procedures are not followed
- Minimal monitoring of employee performance
- Employee never takes vacations
- High Employee Turnover



- Employees feel they are “owed something”
- No Corporate “conflict of interest” policies
- Code of ethics nonexistent or not followed

### **Important Sections on fraud reporting , penalties internal controls and Vigilance mechanism – in Companies Act, 2013**

- Sec 143(12) – (15)
- Sec 447, 448, 449
- Sec 134, 177

### **Important standards – issued by ICAI**

- SA 240
- SIA 11

### **Circumstances triggering risk / indicators of risks of material misstatement & fraud risk**

- Changes in operating environment
- New personnel / changes in KMP
- New / revamped IS, Rapid growth
- New technology, rapid changes in industry scenario
- New business models, LoB
- Corporate restructuring, Expanded foreign operations
- New FR pronouncements – IFRS , RP transactions significant
- Significant Accounting estimates / subjectivity
- history of detected fraud, errors, re-statements
- Pending litigations , contingent liabilities
- Significant inter-company & non-routine transactions
- Weaknesses in IC Structure, Existence of complex JV, SPE
- Operations subject to volatile markets – futures trading

### **ICAI GN on fraud reporting- sec 143 (12) of Companies Act 2013**

#### **Illustrative audit checklist for consideration on fraud risk factors**

- A consideration of any unusual or unexplained changes in behavior or lifestyle of management or employees which have come to the attention of the engagement team
- What are the business risks that the entity is subject to?
- How might fraud, including fraudulent financial reporting, occur at the entity? How can it be concealed?
- Have there been any frauds that have been reported in the same industry as the entity? If so, is it possible that the fraud identified is applicable to the entity and should be considered?
- Where are the financial statements susceptible to material misstatement as a result of fraud or error?
- How could assets at the entity be misappropriated?
- Is there a high risk of management override of controls?

- What is the susceptibility of financial statements to material misstatement due to fraud or error that could result from the entity's related party relationships and transactions?
- Are there circumstances that indicate earnings management and the practices that might be followed by management to manage earnings that could lead to fraudulent financial reporting?
- Are there known external or internal factors affecting the entity that may create an incentive or pressure for management and others to commit fraud, provide the opportunity for fraud to be perpetrated, indicate a culture or environment that enables management or others to rationalise committing fraud?
- Is the financial stability or profitability of the entity threatened by economic, industry, or other operating conditions?
- Does the nature of the entity's operations provide opportunities to engage in fraudulent financial reporting?
- Does the entity have a complex or unstable organisational structure?
- Are there any unusual or unexplained changes in behavior or lifestyle of management and/or others?
- Have there been any actual frauds uncovered at the entity?
- If so, what was the circumstances surrounding the fraud and what was the outcome of the investigation?
- Did management and others take the appropriate actions to address the fraud?
- Have there been any allegations of fraud?

#### **Illustrative audit checklist for Bank Audit (fraud risk & default risk)**

##### **Review of the following exception reports & MIS**

- List of cases where stock statements are not furnished on or after 28th February List of cases where fresh limits were sanctioned
- List of overdue accounts i.e. outstanding amount > Sanctioned amount.
- List of manual entries viz. Interest Reversals
- Recognition of Interest in NPA
- Debit to HO account
- List of unchecked transactions (Accounts master)
- Standing Instructions
- Temporary OD – beyond time limit
- Large cash transactions – list of it viz. above Rs: 10 lakhs cash deposits
- Operations in in-operative accounts
- Accounts without any Interest charge / credit
- Listing of overdrawn accounts (Can check Penal Interest)
- List of matured deposits not renewed (Can check for interest credit)
- Listing of Overdue bills at the year end (Check for overdue interest)
- List of outstanding bills at the year end with accrual details
- List of cases where loan documents have expired
- List of cases where security Insurance has expired
- List of cases where asset valuation reports pending beyond prescribed time limit

**Focus points in Bank audit**

- NPA movement , Asset quality , IRAC
- Productivity ratios, Composition of gross NPA s
- Sectoral NPA break-up
- Details of restructured accounts & advances
- Compliance with Accounting Standards
- Fraud reporting / flash report
- Application of SA 230, 240, 300, 315, 330, 500, 610, 700

# AUDIT REPORT FORMATS

## COMPANIES (AUDITOR'S REPORT) ORDER, 2016

In exercise of the powers conferred by sub-section (11) of section 143 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Auditor's Report) Order, 2015 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 990 (E), dated the 10th April, 2015, except as respects things done or omitted to be done before such supersession, the Central Government, after consultation with the committee constituted under proviso to sub-section (11) of section 143 of the Companies Act, 2013 hereby makes the following Order, namely:—

### 1. Short title, application and commencement.-

- (1) This Order may be called the Companies (Auditor's Report) Order, 2016.
- (2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except—
  - (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 under the Insurance Act, 1938 (4 of 1938);
  - (iii) a company licensed to operate under section 8 of the Companies Act;
  - (iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and
  - (v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Schedule III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.

### 2. Auditor's report to contain matters specified in paragraphs 3 and 4. –

Every report made by the auditor under section 143 of the Companies Act, 2013 on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after 1st April, 2015, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable:

Provided the Order shall not apply to the auditor's report on consolidated financial statements

### 3. Matters to be included in the auditor's report. -

The auditor's report on the accounts 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) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;
- (ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account;

- (iii) whether the company has granted any loans, secured or unsecured to companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so,
  - (a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest;
  - (b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;
  - (c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;
- (iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.
- (v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions 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?
- (vi) whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained.
- (vii) (a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on 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;
- (b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax 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 concerned Department shall not be treated as a dispute).
- (viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided).
- (ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;
- (x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;
- (xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same;
- (xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1 : 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;
- (xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;

- (xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance;
- (xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act, 2013 have been complied with;
- (xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.

4. Reasons to be stated for unfavourable or qualified answers.-

- (1) Where, in the auditor's report, the answer to any of the questions referred to in paragraph 3 is unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.
- (2) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with the reasons as to why it is not possible for him to give his opinion on the same.

### **Format of the Auditor's Report for Standalone Financial Statements:**

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#### **Independent Auditor's Report**

TO THE MEMBERS OF ABC COMPANY LIMITED

Report on the Standalone<sup>1</sup> Financial Statements

We have audited the accompanying standalone financial statements of ABC COMPANY LIMITED ("the Company"), which comprise the Balance Sheet as at 31st March, 20XX, the Statement of Profit and Loss, the Cash Flow Statement for the year then ended, and a summary of the significant accounting policies and other explanatory information, [in which are incorporated the Returns for the year ended on that date audited by the branch auditors of the Company's branches at (location of the branches)]<sup>2</sup>

#### **Management's Responsibility for the Standalone Financial Statements**

The Company's Board of Directors is responsible for the matters stated in Section 134(5) of the Companies Act, 2013 ("the Act") with respect to the preparation of these standalone financial statements that give a true and fair view of the financial position, financial performance and cash flows of the Company in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014. This responsibility also includes maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding the assets of the Company and for preventing and detecting frauds and other irregularities; selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and design, implementation and maintenance of adequate internal financial control s, that were operating effectively for ensuring the accuracy and completeness of the accounting records, relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

#### **Auditor's Responsibility**

Our responsibility is to express an opinion on these standalone financial statements based on our audit.

We have taken into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder.

We conducted our audit in accordance with the Standards on Auditing specified under Section 143(10) of the Act. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

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<sup>1</sup> Where the Company does not have any requirement to prepare consolidated financial statements under the Companies Act 2013, in the auditor's report, the term "Standalone financial statements", wherever appearing, would be replaced by the term "financial statements".

<sup>2</sup> Where applicable

An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal financial control relevant to the Company's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of the accounting estimates made by the Company's Directors, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion on the standalone financial statements.

### **Opinion**

In our opinion and to the best of our information and according to the explanations given to us, the aforesaid standalone financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of affairs of the Company as at 31st March, 20XX, and its profit/loss and its cash flows for the year ended on that date.

### **Emphasis of Matters**

We draw attention to the following matters in the Notes to the financial statements:

- a) Note X to the financial statements which, describes the uncertainty related to the outcome of the lawsuit filed against the Company by XYZ Company.
- b) Note Y in the financial statements which indicates that the Company has accumulated losses and its net worth has been fully / substantially eroded, the Company has incurred a net loss/net cash loss during the current and previous year(s) and, the Company's current liabilities exceeded its current assets as at the balance sheet date. These conditions, along with other matters set forth in Note Y, indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. However, the financial statements of the Company have been prepared on a going concern basis for the reasons stated in the said Note.

Our opinion is not modified in respect of these matters.

### **Other Matter<sup>3</sup>**

We did not audit the financial statements/information of \_\_\_\_\_(number) branches included in the standalone financial statements of the Company whose financial statements / financial information reflect total assets of Rs. \_\_\_\_\_ as at 31st March, 20XX and total revenues of Rs. \_\_\_\_\_ for the year ended on that date, as considered in the standalone financial statements. The financial statements/information of these branches have been audited by the branch auditors whose reports have been furnished to us, and our opinion in so far as it relates to the amounts and disclosures included in respect of these branches, is based solely on the report of such branch auditors.

Our opinion is not modified in respect of this matter.

### **Report on Other Legal and Regulatory Requirements**

As required by Section 143 (3) of the Act, we report that:

- (a) We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit.
- (b) In our opinion, proper books of account as required by law have been kept by the Company so far as it 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.<sup>4</sup>]
- (c) [The reports on the accounts of the branch offices of the Company audited under Section 143 (8) of the Act by branch auditors have been sent to us and have been properly dealt with by us in preparing this report.<sup>5</sup>]
- (d) The Balance Sheet, the Statement of Profit and Loss, and the Cash Flow Statement dealt with by this Report are in agreement with the books of account [and with the returns received from the branches not visited by us<sup>6</sup>].
- (e) In our opinion, the aforesaid standalone financial statements comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014.

- (f) The going concern matter described in sub-paragraph (b) under the Emphasis of Matters paragraph above, in our opinion, may have an adverse effect on the functioning of the Company.
- (g) On the basis of the written representations received from the directors as on 31st March, 20XX taken on record by the Board of Directors, none of the directors is disqualified as on 31st March, 20XX from being appointed as a director in terms of Section 164 (2) of the Act.
- (h) With respect to the adequacy of the internal financial controls over financial reporting of the Company and the operating effectiveness of such controls, refer to our separate Report in “Annexure A”.
- (i) With respect to the other matters to be included in the Auditor’s Report in accordance with Rule 11 of the Companies (Audit and Auditors) Rules, 2014, in our opinion and to the best of our information and according to the explanations given to us:
- i. The Company has disclosed the impact of pending litigations on its financial position in its financial statements – Refer Note XX to the financial statements; [or the Company does not have any pending litigations which would impact its financial position<sup>7</sup>]
  - ii. The Company has made provision, as required under the applicable law or accounting standards, for material foreseeable losses, if any, on long-term contracts including derivative contracts – Refer Note XX to the financial statements; [or the Company did not have any long-term contracts including derivative contracts for which there were any material foreseeable losses.<sup>8</sup>]
  - iii. There has been no delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the Company {or, following are the instances of delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the Company or there were no amounts which were required to be transferred to the Investor Education and Protection Fund by the Company<sup>9</sup>}.

For XYZ & Co.  
Chartered Accountants

(Firm’s Registration No.)

Signature  
(Name of the Member Signing the Audit Report)

(Designation)

(Membership No. X)

Place of Signature:

Date:

<sup>1</sup> Where applicable

<sup>2</sup> Where applicable

<sup>3</sup> Where applicable

<sup>4</sup> Where applicable

<sup>5</sup> As may be applicable

<sup>6</sup> As may be applicable

<sup>7</sup> Partner or proprietor, as the case may be

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## **ANNEXURE A TO THE INDEPENDENT AUDITOR’S REPORT OF EVEN DATE ON THE STANDALONE FINANCIAL STATEMENTS OF ABC COMPANY LIMITED**

Report on the Internal Financial Controls under Clause (i) of Sub-section 3 of Section 143 of the Companies Act, 2013 (“the Act”)

I / We have audited the internal financial controls over financial reporting of ABC Company Limited (“the Company”) as of March 31, 20XX in conjunction with my / our audit of the standalone financial statements of the Company for the year ended on that date.

### **Management’s Responsibility for Internal Financial Controls**

The Company’s management is responsible for establishing and maintaining internal financial controls based on \_\_\_\_\_ [for example, “the internal control over financial reporting criteria established by the Company considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by the Institute of Chartered Accountants of India”.] These



responsibilities include the design, implementation and maintenance of adequate internal financial controls that were operating effectively for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information, as required under the Companies Act, 2013.

### **Auditors' Responsibility**

My / Our responsibility is to express an opinion on the Company's internal financial controls over financial reporting based on my / our audit. I / We conducted my / our audit in accordance with the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting (the "Guidance Note") and the Standards on Auditing, issued by ICAI and deemed to be prescribed under section 143(10) of the Companies Act, 2013, to the extent applicable to an audit of internal financial controls, both applicable to an audit of Internal Financial Controls and, both issued by the Institute of Chartered Accountants of India. Those Standards and the Guidance 168 Note require that I / we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether adequate internal financial controls over financial reporting was established and maintained and if such controls operated effectively in all material respects.

My / Our audit involves performing procedures to obtain audit evidence about the adequacy of the internal financial controls system over financial reporting and their operating effectiveness.

My / Our audit of internal financial controls over financial reporting included obtaining an understanding of internal financial controls over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.

I / We believe that the audit evidence I/we have obtained is sufficient and appropriate to provide a basis for my /our audit opinion on the Company's internal financial controls system over financial reporting.

### **Meaning of Internal Financial Controls Over Financial Reporting**

A company's internal financial control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal financial control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

### **Inherent Limitations of Internal Financial Controls Over Financial Reporting**

Because of the inherent limitations of internal financial controls over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the internal financial controls over financial reporting to future periods are subject to the risk that the internal financial control over financial reporting may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

### **Opinion**

In my / our opinion, the Company has, in all material respects, an adequate internal financial controls system over financial reporting and such internal financial controls over financial reporting were operating effectively as at March 31, 20X1, based on \_\_\_\_\_ [for example, "the internal control over financial reporting criteria established by the Company considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by the Institute of Chartered Accountants of India"].

Place of Signature:

Date:

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## Format of the Auditor's Report for Consolidated Financial Statements

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### Independent Auditor's Report

#### Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of ABC COMPANY LIMITED (hereinafter referred to as "the Holding Company") and its subsidiaries (the Holding Company and its subsidiaries together referred to as "the Group") its associates and jointly controlled entities, comprising of the Consolidated Balance Sheet as at 31st March, 20XX, the Consolidated Statement of Profit and Loss, the Consolidated Cash Flow Statement for the year then ended, and a summary of the significant accounting policies and other explanatory information (hereinafter referred to as "the consolidated financial statements").

#### Management's Responsibility for the Consolidated Financial Statements

The Holding Company's Board of Directors is responsible for the preparation of these consolidated financial statements in terms of the requirements of the Companies Act, 2013 (hereinafter referred to as "the Act") that give a true and fair view of the consolidated financial position, consolidated financial performance and consolidated cash flows of the Group including its Associates and Jointly controlled entities in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014. The respective Board of Directors of the companies included in the Group and of its associates and jointly controlled entities are responsible for maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding the assets of the Group and for preventing and detecting frauds and other irregularities; the selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and the design, implementation and maintenance of adequate internal financial controls, that were operating effectively for ensuring the accuracy and completeness of the accounting records, relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error, which have been used for the purpose of preparation of the consolidated financial statements by the Directors of the Holding Company, as aforesaid.

#### Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. While conducting the audit, we have taken into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder.

We conducted our audit in accordance with the Standards on Auditing specified under Section 143(10) of the Act. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal financial control relevant to the Holding Company's preparation of the consolidated financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of the accounting estimates made

by the Holding Company's Board of Directors, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence obtained by us and the audit evidence obtained by the other auditors in terms of their reports referred to in sub-paragraph (a) of the Other Matters paragraph below, is sufficient and appropriate to provide a basis for our audit opinion on the consolidated financial statements.

### **Opinion**

In our opinion and to the best of our information and according to the explanations given to us, the aforesaid consolidated financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, of the consolidated state of affairs of the Group, its associates and jointly controlled entities as at 31st March, 20XX, and their consolidated profit/loss and their consolidated cash flows for the year ended on that date.

### **Emphasis of Matter**

We draw attention to Note X to the consolidated financial statements which, describes the uncertainty related to the outcome of the lawsuit filed against the Holding Company by XYZ Company.

Our opinion is not modified in respect of this matter.

### **Other Matters**

- (a) We did not audit the financial statements / financial information of \_\_\_\_\_ subsidiaries, and \_\_\_\_\_ jointly controlled entities, whose financial statements / financial information reflect total assets of Rs. \_\_\_\_\_ as at 31st March, 20XX, total revenues of Rs. \_\_\_\_\_ and net cash flows amounting to Rs. \_\_\_\_\_ for the year ended on that date, as considered in the consolidated financial statements. The consolidated financial statements also include the Group's share of net profit/loss of Rs. \_\_\_\_\_ for the year ended 31st March, 20XX, as considered in the consolidated financial statements, in respect of \_\_\_\_\_ associates, whose financial statements / financial information have not been audited by us. These financial statements / financial information have been audited by other auditors whose reports have been furnished to us by the Management and our opinion on the consolidated financial statements, in so far as it relates to the amounts and disclosures included in respect of these subsidiaries, jointly controlled entities and associates, and our report in terms of sub-sections (3) and (11) of Section 143 of the Act, insofar as it relates to the aforesaid subsidiaries, jointly controlled entities and associates, is based solely on the reports of the other auditors.
- (b) We did not audit the financial statements / financial information of \_\_\_\_\_ subsidiaries and \_\_\_\_\_ jointly controlled entities, whose financial statements / financial information reflect total assets of Rs. \_\_\_\_\_ as at 31st March, 20XX, total revenues of Rs. \_\_\_\_\_ and net cash flows amounting to Rs. \_\_\_\_\_ for the year ended on that date, as considered in the consolidated financial statements. The consolidated financial statements also include the Group's share of net profit/loss of Rs. \_\_\_\_\_ for the year ended 31st March, 20XX, as considered in the consolidated financial statements, in respect of \_\_\_\_\_ associates, whose financial statements / financial information have not been audited by us. These financial statements / financial information are unaudited and have been furnished to us by the Management and our opinion on the consolidated financial statements, in so far as it relates to the amounts and disclosures included in respect of these subsidiaries, jointly controlled entities and associates, and our report in terms of sub-sections (3) and (11) of Section 143 of the Act in so far as it relates to the aforesaid subsidiaries, jointly controlled entities and associates, is based solely on such unaudited financial statements / financial information. In our opinion and according to the information and explanations given to us by the Management, these financial statements / financial information are not material to the Group.

Our opinion on the consolidated financial statements, and our report on Other Legal and Regulatory Requirements below, is not modified in respect of the above matters with respect to our reliance on the work done and the reports of the other auditors and the financial statements / financial information certified by the Management.

### **Report on Other Legal and Regulatory Requirements**

1. As required by Section 143(3) of the Act, we report, to the extent applicable, that:
  - a. We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit of the aforesaid consolidated financial statements.
  - b. In our opinion, proper books of account as required by law relating to preparation of the aforesaid consolidated financial statements have been kept so far as it appears from our examination of those books and the reports of the other auditors.

- c. The Consolidated Balance Sheet, the Consolidated Statement of Profit and Loss, and the Consolidated Cash Flow Statement dealt with by this Report are in agreement with the relevant books of account maintained for the purpose of preparation of the consolidated financial statements.
- d. In our opinion, the aforesaid consolidated financial statements comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014.
- e. On the basis of the written representations received from the directors of the Holding Company as on 31st March, 20XX taken on record by the Board of Directors of the Holding Company and the reports of the statutory auditors of its subsidiary companies, associate companies and jointly controlled companies incorporated in India, none of the directors of the Group companies, its associate companies and jointly controlled companies incorporated in India is disqualified as on 31st March, 20XX from being appointed as a director in terms of Section 164 (2) of the Act.
- f. With respect to the adequacy of the internal financial controls over financial reporting of the Group and the operating effectiveness of such controls, refer to our separate report in “Annexure A”; and
- g. With respect to the other matters to be included in the Auditor’s Report in accordance with Rule 11 of the Companies (Audit and Auditor’s) Rules, 2014, in our opinion and to the best of our information and according to the explanations given to us:
- i. The consolidated financial statements disclose the impact of pending litigations on the consolidated financial position of the Group, its associates and jointly controlled entities– Refer Note XX to the consolidated financial statements.
- Or There were no pending litigations which would impact the consolidated financial position of the Group, its associates and jointly controlled entities<sup>10</sup>
- ii. Provision has been made in the consolidated financial statements, as required under the applicable law or Accounting Standards, for material foreseeable losses, if any, on long-term contracts including derivative contracts – Refer (a) Note XX to the consolidated financial statements in respect of such items as it relates to the Group, its associates and jointly controlled entities and (b) the Group’s share of net profit/loss in respect of its associates.
- Or The Group, its associates and jointly controlled entities did not have any material foreseeable losses on long-term contracts including derivative contracts<sup>11</sup>
- iii. There has been no delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the Holding Company and its subsidiary companies, associate companies and jointly controlled companies incorporated in India.
- Or Following are the instances of delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the Holding Company, and its subsidiary companies, associate companies and jointly controlled companies incorporated in India<sup>12</sup>
- Or There were no amounts which were required to be transferred to the Investor Education and Protection Fund by the Holding Company, and its subsidiary companies, associate companies and jointly controlled companies incorporated in India<sup>13</sup>.

For XYZ & Co.  
Chartered Accountants

(Firm’s Registration No.)

Signature  
(Name of the Member Signing the Audit Report)  
(Designation)  
(Membership No. X)

Place of Signature:  
Date:

<sup>10</sup> Where Applicable

<sup>11</sup> Where Applicable

<sup>12</sup> Where Applicable

<sup>13</sup> Partner or Proprietor, as the case may be

## **ANNEXURE TO THE INDEPENDENT AUDITOR'S REPORT OF EVEN DATE ON THE CONSOLIDATED FINANCIAL STATEMENTS OF ABC COMPANY LIMITED**

Report on the Internal Financial Controls under Clause (i) of Sub-section 3 of Section 143 of the Companies Act, 2013 ("the Act")

In conjunction with my / our audit of the consolidated financial statements of the Company as of and for the year ended March 31, 20XX, I / We have audited the internal financial controls over financial reporting of ABC Company Limited (hereinafter referred to as "the Holding Company") and its subsidiary companies, its associate companies and jointly controlled companies, which are companies incorporated in India, as of that date.

### **Management's Responsibility for Internal Financial Controls**

The respective Board of Directors of the of the Holding company, its subsidiary companies, its associate companies and jointly controlled companies, which are companies incorporated in India, are responsible for establishing and maintaining internal financial controls based on \_\_\_\_\_ [for example, "the internal control over financial reporting criteria established by the Company considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by the Institute of Chartered Accountants of India (ICAI)].] These responsibilities include the design, implementation and maintenance of adequate internal financial controls that were operating effectively for ensuring the orderly and efficient conduct of its business, including adherence to the respective company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information, as required under the Companies Act, 2013.

### **Auditor's Responsibility**

My / Our responsibility is to express an opinion on the Company's internal financial controls over financial reporting based on my / our audit. I / We conducted my / our audit in accordance with the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting (the "Guidance Note") issued by the ICAI and the Standards on Auditing, issued by ICAI and deemed to be prescribed under section 143(10) of the Companies Act, 2013, to the extent applicable to an audit of internal financial controls, both issued by the Institute of Chartered Accountants of India. Those Standards and the Guidance Note require that I/we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether adequate internal financial controls over financial reporting was established and maintained and if such controls operated effectively in all material respects.

My / Our audit involves performing procedures to obtain audit evidence about the adequacy of the internal financial controls system over financial reporting and their operating effectiveness. My / Our audit of internal financial controls over financial reporting included obtaining an understanding of internal financial controls over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.

I / We believe that the audit evidence I / we have obtained and the audit evidence obtained by the other auditors in terms of their reports referred to in the Other Matters paragraph below, is sufficient and appropriate to provide a basis for my /our audit opinion on the Company's internal financial controls system over financial reporting.

### **Meaning of Internal Financial Controls over Financial Reporting**

A company's internal financial control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal financial control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of

unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

### **Inherent Limitations of Internal Financial Controls over Financial Reporting**

Because of the inherent limitations of internal financial controls over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the internal financial controls over financial reporting to future periods are subject to the risk that the internal financial control over financial reporting may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

### **Opinion**

In my / our opinion, the Holding Company, its subsidiary companies, its associate companies and jointly controlled companies, which are companies incorporated in India, have, in all material respects, an adequate internal financial controls system over financial reporting and such internal financial controls over financial reporting were operating effectively as at March 31, 20X1, based on \_\_\_\_\_ [for example, "the internal control over financial reporting criteria established by the Company considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by the Institute of Chartered Accountants of India"].

### **Other Matters**

Our aforesaid reports under Section 143(3)(i) of the Act on the adequacy and operating effectiveness of the internal financial controls over financial reporting insofar as it relates to \_\_ (number) subsidiary companies, \_\_ (number) associate companies and \_\_ (number) jointly controlled companies, which are companies incorporated in India, is based on the corresponding reports of the auditors of such companies incorporated in India.

For XYZ & Co.  
Chartered Accountants

(Firm's Registration No.)

Signature  
(Name of the Member Signing the Audit Report)

Place of Signature:

Date:

(Designation)

(Membership No. X)

## **PUBLISHING QUARTERLY/HALF-YEARLY RESULTS BY LISTED COMPANIES AND LIMITED REVIEW REPORT**

### **Quarterly Results [QR]**

- a) A company shall publish unaudited financial results on quarterly basis as per proforma given hereafter within one month of the end of the quarter to the SEs and immediately after market hours on the date of Board Meeting
- b) The results shall also be published in a daily newspaper with national circulation and in one regional language daily newspaper within 48 hours of the Board Meeting.
- c) The results shall be signed by the MD/Director
- d) At least 7 days before the Board Meeting, the company shall inform the SEs about the Board Meeting
- e) Any change of name in the company suggesting new line of business should disclose the turnover and income, etc. from the new activities separately for 3 years from the date of name change
- f) The unaudited results should not substantially differ from the audited results by 20% otherwise reasons for the difference should be explained to the SEs

- g) Unaudited QR for the last quarter need not be published if the company informs the SE in advance that it will publish audited results within 3 months from the end of the accounting year of the company
- h) The QR shall be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods on quarterly basis
- i) With effect from quarter ending on or after June, 2003 the QR shall be subjected to Limited Review by the auditors.
- j) The format of limited review report (LRR) is given hereafter.
- k) The LRR shall be submitted to the SEs within 2 months of the close of the quarter."
- l) The company will have the option to publish consolidated quarterly financial results in addition to the unaudited quarterly financial results of the parent company as required under this clause.
- m) The company will publish its Annual Results in the same format as prescribed for quarterly results in this clause.

**1) Half-Yearly Results [HYR]**

- a) The HYR shall be in the same format as the QR and shall be subject to limited review by the auditors [discussed separately]
- b) The format of limited review report [LRR] is given hereafter
- c) The LRR shall be submitted to the SEs within 2 months of the end of the half-year
- d) The QR of the 2 quarters contained in the half-year should not vary more than 20% of its sum total otherwise a statement of reasons should be sent to the SEs
- e) To the extent possible, requirements in items relating to QR shall apply to HYR also.

**Format for submission of Unaudited/Audited financial results  
by companies other than banks**

<b>Part-I</b>						
<b>Statement of Standalone / Consolidated Unaudited / Audited Results for the Quarter and __ Months Ended dd/mm/yyyy OR for the Year Ended dd/mm/yyyy</b>						
<b>Particulars</b>	<b>3 months ended (dd/mm/yyyy)</b>	<b>Preceding 3 months ended (dd/mm/yyyy)</b>	<b>Corresponding 3 months ended in the previous year (dd/mm/yyyy)</b>	<b>Year to date figures for current period ended (dd/mm/yyyy)</b>	<b>Year to date figures for the previous year ended (dd/mm/yyyy)</b>	<b>Previous accounting year ended (dd/mm/yyyy)</b>
<b>1. Income from Operations</b>						
(a) Net Sales/Income from operations (Net of excise duty)						
(b) Other Operating Income						
<b>Total income from Operations (net)</b>						
<b>2. Expenditure:</b>						
(a) Cost of materials consumed						
(b) Purchase in stock-in-trade						
(c) Change in inventories of finished goods, work-in-progress and stock-in-trade						
(d) Employee benefits expenses						
(e) Depreciation and Amortization expenses						
(f) Other Expenditure (Any item exceeding 10% of the total expenditure to be shown separately)						

<b>Total Expenses</b>						
<b>3. Profit/(Loss) from operations before other income, finance costs and exceptional item (1+2)</b>						
4. Other Income						
<b>5. Profit/(Loss) from ordinary activity before finance costs and exceptional items (3 + 4)</b>						
6. Finance Costs						
<b>7. Profit/(Loss) from ordinary activity after finance costs but before exceptional items (5+6)</b>						
8. Exceptional Items						
<b>9. Profit/(Loss) from ordinary activities before tax (7+8)</b>						
10. Tax Expense						
<b>11. Net Profit/(Loss) from ordinary activities after tax (9+10)</b>						
12. Extraordinary Item (net of tax expense _____ Lakhs)						
<b>13. Net Profit/(Loss) for the period (11+12)</b>						
14. Share of Profit/(Loss) of associates*						
15. Minority Interest*						
<b>16. Net Profit/(Loss) after taxes, minority interest and share of profit or loss of associates (13+14+15)*</b>						
17. Paid up Equity Share Capital (Face Value of the share be indicated)						
18. Reserve excluding Revaluation Reserves as per Balance Sheet of previous accounting year.						
19. (i) Earnings Per Share (before extraordinary items) (of Rs. /-each) (not annualized): a) Basic b) Diluted						
19. (ii) Earnings Per Share (after extraordinary items) (of Rs. /-each) (not annualized): a) Basic b) Diluted						

\*Applicable in the case of consolidated results  
MEMBERS' READY REFERENCER 2016-17



**Note:** Profit / loss from discontinuing operations, if any, included in the above shall be disclosed separately with details thereof.

- A company which presents quarterly financial results in accordance with Ind AS 34 Interim Financial Reporting (applicable under Companies (Indian Accounting Standards) Rules, 2015) for the period covered by its first Ind AS financial statement shall comply with the requirements of paragraph 32 of Ind AS 101 – First time Adoption of Indian Accounting Standard.

### **Format for Reporting of Segment wise Revenue, Results and Capital Employed along with the quarterly results**

(applicable for banks as well as companies other than banks)

Particulars	3 months ended (dd/mm/yyyy)	Previous 3 months ended (dd/mm/yyyy)	Corresponding 3months ended in the previous year (dd/mm/yyyy)	Year to date figures for current period ended (dd/mm/yyyy)	Year to date figures for the previous year ended (dd/mm/yyyy)	Previous accounting year ended (dd/mm/yyyy)
	Audited/ Unaudited*	Audited/ Unaudited*	Audited/ Unaudited*	Audited/ Unaudited*	Audited/ Unaudited*	Audited/ Unaudited*
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) Segment.... (e) Unallocated 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) Segment.... (e) Unallocated						
Total						
Less:						

i) Interest**						
ii) Other Un-allocable Expenditure net off						
iii) Un-allocable income						
Total Profit Before Tax						
3. Capital Employed (Segment assets – Segment Liabilities)						
(a) Segment – A						
(b) Segment – B						
(c) Segment – C						
(d) Segment....						
(e) Unallocated						
Total						

\* strike off whichever is not applicable

# 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.

### **Format for the Limited Review Report for companies (other than banks)**

Review Report to .....

We have reviewed the accompanying statement of unaudited financial results of ..... (Name of the Company) for the period ended ..... This statement is the responsibility of the Company's Management and has been approved by the Board of Directors. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Standard on Review Engagement (SRE) 2400, Engagements to Review Financial Statements issued by the Institute of Chartered Accountants of India. This standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit and accordingly, we do not express an audit opinion.

Based on our review conducted as above, nothing has come to our attention that causes us to believe that the accompanying statement of unaudited financial results prepared in accordance with applicable accounting standards and other recognized accounting practices and policies has not disclosed the information required to be disclosed in terms of Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 including the manner in which it is to be disclosed, or that it contains any material misstatement.

For XYZ & Co.  
Chartered Accountants  
(Firm's Registration No.)

Signature  
(Name of the Member Signing the Audit Report)

Place of Signature:

Date:

(Designation)  
(Membership No. X)

## Statement of Assets and Liabilities for Companies (Other than Banks)

Standalone / Consolidated Statement of Assets and Liabilities	As at (Current half year end / Year end) (dd/mm/yyyy)	As at (Previous year end) (dd/mm/yyyy)
Particulars		
<b>A EQUITY AND LIABILITIES</b>		
<b>1 Shareholders' funds</b>		
(a) Share capital		
(b) Reserves and surplus		
(c) Money received against share warrants		
<b>Sub-total - Shareholders' funds</b>		
<b>2. Share application money pending allotment</b>		
<b>3. Minority interest *</b>		
<b>4. Non-current liabilities</b>		
(a) Long-term borrowings		
(b) Deferred tax liabilities (net)		
(c) Other long-term liabilities		
(d) Long-term provisions		
<b>Sub-total - Non-current liabilities</b>		
<b>5. Current liabilities</b>		
(a) Short-term borrowings		
(b) Trade payables		
(c) Other current liabilities		
(d) Short-term provisions		
<b>Sub-total - Current liabilities</b>		
<b>TOTAL - EQUITY AND LIABILITIES</b>		
<b>B ASSETS</b>		
<b>1. Non-current assets</b>		
(a) Fixed assets		
(b) Goodwill on consolidation *		
(c) Non-current investments		
(d) Deferred tax assets (net)		
(e) Long-term loans and advances		
(f) Other non-current assets		
<b>Sub-total - Non-current assets</b>		
<b>2 Current assets</b>		
(a) Current investments		
(b) Inventories		
(c) Trade receivables		
(d) Cash and cash equivalents		
(e) Short-term loans and advances		
(f) Other current assets		
<b>Sub-total - Current assets</b>		
<b>Total -Assets</b>		

\*Applicable in the case of consolidated statement of assets and Liabilities

## Format for Newspaper Publishing Purpose (Standalone/Consolidated)

Particulars	Quarter ending /Current Year ending	Year to date Figures/Previous Year ending	Corresponding 3 months ended in the previous year
Total income from operations (net)			
Net Profit / (Loss) from ordinary activities after tax			
Net Profit / (Loss) for the period after tax (after Extraordinary items)			
Equity Share Capital			
Reserves (excluding Revaluation Reserve as shown in the Balance Sheet of previous year)			
Earnings Per Share (before extraordinary items) (of ` /- each)			
Basic :			
Diluted:			
Earnings Per Share (after extraordinary items) (of ` /- each)			
Basic :			
Diluted :			

*Note: The above is an extract of the detailed format of Quarterly/Annual Financial Results filed with the Stock Exchanges under Regulation 33 of the SEBI (Listing and Other Disclosure Requirements) Regulations, 2015. The full format of the Quarterly/Annual Financial Results are available on the Stock Exchange websites. (URL of the filings).*

# INCOME FROM HOUSE PROPERTY

## INCOME CHARGEABLE REAL & NOTIONAL

This is the only head of income, where the charging provision provides for taxing notional income i.e. Income under this head may be charged irrespective of income actually received or not (In exceptional circumstances notional income is computed under the head capital gains and income from other sources). Therefore, taxability under this head of income may not necessarily be of actual rent or income received but the fair amount of rent which the property could reasonably fetch when let out. Accordingly, if a person owns a property which even if it is lying vacant, notional income with respect to such property may be liable to tax even though the owner may not have received any income from such property. Further, if the property is let out and the rent received is less than the fair rent which the property could fetch when let-out would also be liable to tax. Thus tax would be payable on the rent which the owner should have received and not on the actual rent so received (Refer heading “Determination of annual value”). Though the head of chargeability of the income is Income from house property what is charged under this head is not only the income from house (dwelling) but all income arising out of letting of building (whether used for dwelling or commercial purpose). In other words Sections 22 to 27 are silent as to the purpose for which a building or a house property is to be used. This head of income can be aptly described as income from properties.

## CHARGEABILITY U/S. 22

### (a) What is chargeable under this head?

Annual value of property consisting of any buildings or lands appurtenant thereto except such property which is used by assessee for the purpose of business and profession. If the building is used by the assessee for the purposes of his business or profession, no notional income from such building can be assessed to tax under the head “Income from house property” and no deduction on account of notional repairs is available to the assessee while computing the income under the head “Income from business or profession”.

### (b) In whose hand such income is taxable?

Income from house property is taxable in the hands of owner/deemed owner of the property. Owner is a person who is entitled to receive income from property in his own right. Income is chargeable in the hands of person even if he is not a registered owner. Rental income from sub-letting of property acquired on monthly tenancy basis or on lease for a period of less than twelve years may be taxable either as “Income from business or profession”, where such letting is the business of the assessee or taxable as “Income from other sources”. This would depend upon facts of each case.

## Property Owned by Co-owners (Section 26)

Where property consisting of buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not be assessed as an A.O.P. (Association of Persons) but the share of each person in the income from the property as computed under sections 22 to 25 (i.e., income from house property) shall be included in their individual total income respectively.

Owner includes deemed owner u/s. 27 as under:

- A person, who transfers to his/her spouse otherwise than under the agreement to live apart, without adequate consideration or to a minor child not being a married daughter
- Holder of impartible estate shall be deemed to be owner of all the properties comprised in the estate
- A member of a co-operative society, company or other association to whom a building is allotted or leased under a house building scheme of such society, company or other association as a case may be
- A person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882)
- A person who acquires any lease rights of not less than twelve years (excluding any rights by way of a lease from month to month or for a period not exceeding one year)

Official assignee can be treated as owner for the purpose of section 22 except when the receiver is appointed by court.

## **INCOME FROM PROPERTIES UNDER THE PURVIEW OF THE HEAD “INCOME FROM HOUSE PROPERTY”**

- a. Predominantly, only income from letting out of building or land appurtenant thereto is taxable under the head “Income from house property”. Accordingly, if letting out is of a bungalow along with the garden surrounding it, the income of the entire bungalow along with land appurtenant thereto; i.e., the garden would be taxed under this head. If the letting out is only of the vacant land, the rent received from such letting out of land is not taxable under the head “Income from house property”. It may be taxable under the head “Income from business or profession” if the business of the assessee is to let out land or may be taxable as “Income from other sources” if letting out of land is not the business of the assessee. Further if composite rent is received for property as well as services and amenities, the annual value of such property is assessable under section 22 and profits arising from services and amenities is chargeable to tax under section 28; i.e., business income or under section 56; i.e., income from other sources.
- b. Rental income from letting out of residential and commercial buildings is covered under this head of income. Where property constitutes stock-in-trade of business or where business of assessee is to let out house property, income is covered under the head Profits and Gains of Business & Profession. Further if letting out is subservient to the main business the annual value will not be chargeable u/s. 22 rather it will be chargeable under Profits and Gains of Business & Profession.
- c. Where an assessee let machinery, plant or furniture and also buildings, and the letting out of buildings is inseparable from the letting of the machinery, plant or furniture, the income from such letting, if it is not chargeable to tax under the head “Income from business or profession” would be taxable under the head “Income from other sources”. However, provision of services are incidental to the predominant object of letting out of the property and the income arising therefrom is inseparable the income shall be charged under this head.
  - Refer section 56(2)(iii) and decision of the Hon'ble Supreme Court in the case of Shambhu Investments (P.) Ltd. vs. CIT (2003) 263 ITR 143 (SC) as also decision in case of Chennai Properties (Supreme Court in CIVIL APPEAL NO. 4494 OF 2004 April 9, 2015)

## **DETERMINATION OF ANNUAL VALUE**

For determining the annual value, one has to first determine the gross annual value (GAV) which is the higher of:

- a. The sum for which the property might reasonably be expected to let from year to year. In cases of properties where Standard rent has been fixed, such sum cannot exceed the standard rent fixed (Refer Sheila Kaushish vs. CIT [1981] 7 Taxman 1 (SC) & Amolak Ram Khosla vs. CIT [1981] 7 Taxman 51 (SC)). However where property let was vacant during the whole or part of the previous year and rent actually received or receivable owing to such vacancy is less than expected rent, then rent actually received or receivable is taken as GAV.
- b. Where property is actually let out and the rent received or receivable is more than the amount determined in (a) above, the annual value would be the actual rent received.

## **ANNUAL VALUE TO BE TAKEN AS ‘NIL’ IN CERTAIN CASES**

- a. The annual value of a property which is in occupation of the owner for the purposes of his residence would be considered to be nil if he does not derive any other benefit from the said residential house. If the owner has more than one house for the purposes of his residence, the annual value of any one of such houses, at his option, would be considered to be nil. Notional income of other residential houses would be liable to tax. In such case owner may choose to consider the annual value nil (for computation purposes) in respect of the one property at his option.
- b. Similarly, if the assessee is owner of only one residential house which he is unable to occupy on account of his employment, business or profession carried on at any other place and on account of which he has to reside at that other place in a building not owned by him, the annual value of such house shall be nil.

## **DETERMINATION OF NET ANNUAL VALUE (NAV)**

The following amounts are required to be reduced while determining the net annual value :

- a. Any taxes levied by any local authority, which are liable to be paid by the owner, only on actual payment thereof during the previous year in which such payment is made irrespective of method of accounting followed; and
- b. The unrealisable rent subject to satisfaction of following conditions where the amount of unrealised rent shall be equal to the amount of rent payable but not paid by a tenant of the assessee and is proved to be lost and irrecoverable where,—
  - o the tenancy is bona fide
  - o the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property
  - o the defaulting tenant is not in occupation of any other property of the assessee
  - o the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

### **UNREALISED RENT REALISED SUBSEQUENTLY — SECTIONs 25A/25AA (UP TO A.Y. 2016-17)**

- The entire amount of unrealised rent received in any of the PY, which is not subjected to tax in earlier year as per section 24(1)(x), (effective up to A.Y. 2002-03) shall be chargeable to tax in the year in which such amount is actually received. (The deduction u/s. 23/24 shall not be allowed if the unrealised rent pertains to period up to A.Y. 2001-02 & deduction u/s. 24(1)(x) in respect thereof was allowed in earlier years.)
- Unrealised rent received subsequently is chargeable to tax even if the house property is not owned by the assessee in the year of such recovery.

### **ARREARS OF RENT RECEIVED — SECTION 25B (UP TO A.Y. 2016-17)**

Where any arrears of rent is received which was not taxed earlier, such rent shall be assessed under the head “Income from house property” in the year in which such arrears are received. The arrears would be taxable under this head irrespective of the fact whether the assessee is the owner of the buildings in the year in which such arrears are received. However, a deduction of 30% on account of repairs on the arrears of rent received would be allowed in the year in which such arrears are taxable.

### **SPECIAL PROVISION FOR ARREARS OF RENT AND UNREALISED RENT RECEIVED SUBSEQUENTLY**

Section 25A : (substituted for sections 25A, 25AA and 25B w.e.f. A.Y. 2017-18)

- The arrears of rent or unrealised rent received from a tenant subsequently shall be deemed to be the income from House property in respect of the financial year in which such rent is received or realised and shall be chargeable to tax under the head Income From House Property, irrespective of the fact that the assessee is the owner of such property in that financial year or not.
- From the above income sum equal to 30% of such rent shall be allowed as deduction while computing such income from arrears of rent or unrealised rent so received and included in total income.

### **DEDUCTIONS ALLOWED WHILE COMPUTING INCOME UNDER THIS HEAD**

The following deductions shall be allowed from the annual value u/s. 24:

1. 30% of the annual value as computed.
2. Interest payable on borrowed capital for the purpose of acquisition, construction, repairs, renewals or reconstruction of house property (subject however in case of self occupied property it is subject to conditions and limits as mentioned hereinafter).
  - o Interest to the extent it is not claimed/allowed under any of the provisions of the Act, for the period prior to acquisition or construction of the premises would be deductible in five equal installments starting from the year in which property is acquired or constructed.
  - o However In case of self occupied House Property or the property not occupied due to employment etc. interest allowable is subject to following conditions:

Sr. No.	Particulars	Limit of Deduction (in ₹)
1.	Property acquired/constructed after 1st April, 1999 with borrowed capital (deduction is allowed only where such acquisition or construction is completed within 3 years (5 years w.e.f. F.Y. 2016-17) from the end of the financial year in which capital was borrowed)	2,00,000/- w.e.f. 2015-16
2.	In case of property acquired/ constructed Before 1st April, 1999	30,000/-

Note:

- Interest on new loan taken to repay original loan is considered as loan taken for such acquisition, construction, etc. (Refer CBDT Circular No. 28 dated 20-8-1969).
- Where interest is claimed as a deduction, a certificate from the lender certifying the amount of interest payable should be furnished by the assessee.
- The list of deduction specified u/s. 24 are exhaustive, no other deduction can be claimed other than specified therein.
- Interest on borrowed money which is payable outside India shall not be allowed as deduction u/s. 24(b) unless the tax on the same has been paid or deducted at source and in respect of which, there is a person in India, who may be treated as agent of the recipient for such purpose.
- Brokerage or commission paid to arrange a loan for house construction will not be allowed.
- Section 80EE has been reintroduced to allow additional interest of Rs.50000/- (from A.Y. 2017-18) in case of residential house purchased by an individual. The said deduction is available if all the conditions of section 80EE are fulfilled.

## COMPUTATION OF INCOME FROM HOUSE PROPERTY IN NUTSHELL

Particulars	Types of Property					
	Let-Out Property u/s. 23(1)		Self-occupied House Property u/s. 23(2)		Deemed to be Let-Out Property u/s. 23(4)	
	Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹
(i) Reasonably Expected Rent		XXX		NIL		XXX
(ii) Actual rent received or receivable		XXX		NIL		NIL
<b>Gross Annual Value (GAV)</b>		XXX				
<b>1. (i) or,</b>						
<b>2. (ii)&gt;(i), then (ii) or,</b>						
<b>3. (ii)&lt;(i) due to vacancy then (ii)</b>				NIL		XXX
Less : Municipal Taxes paid to local authority by the owner		(XXX)		NIL		(XXX)
<b>1. Net Annual Value (NAV)</b>		XXX		NIL		XXX
Less: Deduction u/s. 24						
(a) 30% of NAV	XXX		NIL		XXX	
(b) Interest on loans as allowed	XXX		XXX		XXX	
<b>2. Total Deductions (a) + (b)</b>		(XXX)		(XXX)		(XXX)
<b>A. Income from House Property (1 - 2)</b>		XXX		(XXX)		XXX
<b>B. Add Unrealised Rent Received subject to conditions of deduction u/ss. 23/24</b>		XXX		NIL		NIL
<b>C. Add arrears of Rent Received</b>	XXX		NIL		NIL	
Less: 30% of arrears of Rent	(XXX)	XXX	NIL	NIL	NIL	NIL
<b>Total Income from House Property (A + B + C)</b>		XXX		XXX		XXX

Note: The rent received may be charged under the head business income or income from other sources where the assessee carries out an organised activity of letting out of the properties and/or the predominant object of receiving such rent is the commercial exploitation of such property.



# INCOMES EXEMPT FROM TAX

Section	Eligible Assessee	Nature of income	Amount exempt
10(1)	Any assessee	Agricultural income	Entire amount of such income
10(2)	Any individual as a member of HUF	Any sum received as a member of HUF	Entire amount so received
10(2A)	Partner of the firm	Share of profit in total income of the firm	Entire amount
10(4)(i)	Non resident assessee	Interest or premium on securities or bonds specified by central govt. before 1st June, 2002	Entire amount
10(4)(ii)	An individual being non-resident as defined under section 2(q) of FEMA, 1999	Interest earned on money standing in credit of his NRE account	Entire amount
10(4B)	A non-resident individual who is either citizen of India or person of Indian Origin	Interest on specified savings certificates issued before 1st June, 2002	Entire amount
10(5)	An individual	Leave travel concession or assistance received or due from employer or former employer	Amount received or actually spent, on travel to any place in India as specified in Rule 2B, whichever is lower.
10(6)(ii)	An individual not being citizen of India	Remuneration received as an official or as a member of staff of the officials of an embassy, high commission, legation, commission, consulate or trade representative of foreign state	Entire amount
10(6)(vi)	An individual not being a citizen of India	Remuneration received or due as an employee of foreign enterprises, for services rendered during his stay in India	Entire amount
10(6)(viii)	An individual being non-resident and not a citizen of India	Salaries for services rendered on a foreign ship	Entire amount
10(6)(xi)	An individual not being a citizen of India	Remuneration received as an employee of Government of foreign state during his stay in India	Entire amount
10(6A)	Any foreign company	Tax paid on income earned by way of Royalty or fees for technical services by the government or Indian concern	Entire amount of such tax paid by government or Indian Concern.
10(6B)	Non-resident (not a company) or a foreign company	Tax paid on income other than salary, Royalty or fees for technical services by government or Indian concern	Entire amount of such tax paid by Government or Indian concern
10(6BB)	Government of foreign state or foreign enterprise	Tax paid on income derived from leasing of aircraft or aircraft engine as per agreement approved by central government	Entire tax paid by the government or Indian company
10(6C)	Foreign company as notified by Central Government	Royalty or fees for technical services for projects connected with security of India	Entire amount
10(7)	A citizen of India	Amount paid or allowed by the government outside India	Entire amount
10(8)	An Individual	Remuneration for duties assigned in India and any other income accrues or arises outside India	Entire amount
10(8A)	An individual who is either not a citizen of India or is not ordinarily resident in India  or  Any other person who is not a resident of India	Any remuneration or fees received under a technical grant assistance agreement, from, funds made available to international agency Any other income which does not accrue or arise in India	Entire amount
10(8B)	An individual who is either not a citizen of India or is not ordinarily	The remuneration received for services rendered in India from consultant referred	Entire amount

	resident in India.	to in sec 10(8A) and Any other income which does not accrue or arise in India	
10 (9)	An individual who is a member of the family of person referred to in section 10(8), 10(8A) & 10 (8B).	Any income accrues or arises outside India	Entire amount
10 (10)	An individual	Death cum Retirement Gratuity	As per conditions
10 (10A)	An individual	Pension	As per conditions
10 (10AA)	An individual	Leave Encashment	As per conditions
10 (10B)	An individual	Compensation/award received at the time of his retrenchment	An amount calculated as per section 25F(b) of the Industrial Dispute Act 1947 or • 5.00.000/ whichever is lower. In special case any amount received as per any scheme approved by the Government
10 (10BB)	Any person	Any payment received under Bhopal Gas Leak Disaster (Processing of Claims Act), 1985	Entire amount
10(10BC)	Any individual or his legal heirs	Any compensation received from state or central government or local authority on account of any disaster	Entire amount
10 (10C)	Individual employee	Amount received on voluntary retirement as an employee from specified employers	Amount received as per scheme not exceeding Rs.5,00,000/-
10(10CC)	Individual employee	Tax on income derived as perquisite other than monetary payment	Entire amount of such tax
10(10D)	An individual	Amount received under life insurance policy including any bonus allowed on such policy	Entire amount
10(11)	An individual	Amount received from provident funds	Entire amount
10(11A)	An individual being girl (Applicable from A.Y 15-16)	Amount received from Sukanya Samriddhi account	Entire amount
10(12)	An individual employee participating in recognized provident fund	Accumulated balance due and payable under recognized provident fund	Amount as provided in Rule 8 of part A of fourth schedule
10(12A)	An individual (Applicable from A.Y. 2017-18)	Any payment from the National Pension System Trust to employee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD	To the extent the it does not exceed 40% of the total amount payable to him at the time of such closure or his opting out of the scheme
10(13)	An individual	Any payment received from approved Superannuation Fund	Entire amount
10(13A)	An individual employee	House Rent allowance	As per rule 2A
10(14)	An individual	Special allowance granted to meet expenses incurred in performance of duties	As per Rule 2BB
10(15) (i)	All assesseees	Interest, premium on redemption, securities, Bonds, certificates, as notified by government	Entire amount
10 (15)(iib)	Individual or HUF	Interest on notified capital bond	Entire amount
10(15)(iic)	Individual or HUF	Interest on notified relief Bonds	Entire amount
10(15)(iid)	Individual non-resident Indian or being nominee or survivor of such non-resident or donee to whom such bond are received as gift by such non resident	Interest on notified Bonds	Entire amount
10(15)(vi)	All assesses	Interest on  (a) notified gold deposit bond issued under the Gold Deposit Scheme, 1999; or	Entire amount

		(b) deposits certificates issued under the Gold Monetisation Scheme, 2015 (Applicable from A.Y. 2016-17)	
10(15)(vii)	All assesses	Interest on Bonds	Entire amount
10(15)(viii)	Person who is non- resident or not ordinary resident	Interest on offshore Banking units	Entire amount
10 (15A)	Government of a foreign state or foreign enterprise	Income derived from leasing of aircraft or aircraft engine	Entire amount
10(16)	An individual	Scholarship	Entire amount
10(17)	A member of parliament or state legislature or any committee formed thereof	Daily allowances or constituency allowance	Entire amount
10(17A)	Any assessee	Award or Reward received in cash or in kind	Entire amount
10(18)	Any eligible Central or state government employee or his family member as the case may be.	Pension received or family pension received by the family member as the case may be	Entire amount
10(19)	Widow, children or nominated heir of member of army	Family pension received	Entire amount
10(19A)	Any Ruler (individual)	Annual value of any palace/s in occupation of such ruler	Entire amount
10(20)	Income of panchayat, municipality, municipal committee, district Board or cantonment board	Income from house property, capital gains, income from trade or business or income from other sources	Entire amount
10(21)	Any Research Association	Any income	Entire amount
10(22B)	Any notified news agency	Any income	Entire income
10(23A)	An association or institution set up in India for specified professions	Any income other than  Income from house property Interest or dividend from investment Income from rendering specified services	Entire income
10(23AA)	Any person	Any income	Entire amount
10(23AAA)	Any person	Any income	Entire amount
10(23AAB)	Any fund setup by LIC or other insurer	Any income of the fund under a pension scheme	Entire amount
10(23B)	An institution constituted as Society or public charitable trust	Any income	Entire amount
10(23BB)	Authority established under state or provincial Act for development of Khadi and village industries	Any income	Entire amount
10(23BBA)	Authority or body established or appointed under central, state or Provincial Acts	Any income	Entire amount
10(23BBB)	European Economic community	Interest, dividend, capital gains	Entire income
10(23BBC)	SAARC Fund for regional projects	Any income	Entire amount
10(23BBE)	Insurance regulatory and Development Authority	Any income	Entire amount
10(23BBG)	Central Electricity Regulatory Commission	Any income	Entire amount
10(23BBH)	Income of Prasar Bharti (Broadcasting corporation of India) w.e.f AY 2013-14.	Any income	Entire amount
10(23C)	Income received by any person on behalf of specified entities	Any income	Entire income

10(23D)	Specified Mutual funds	Any income	Entire amount
10(23DA)	Securitisation Trust (w.e.f. 01.04.2013)	Any income from the activity of securitisation	Entire amount
10(23EA)	Investor protection fund set up by recognized stock exchange	Any income by way of contribution received from recognized stock exchange or its member	Entire amount
10(23EC)	Investor protection fund set up by commodity exchange	Any income by way of contribution received from commodity exchange or its member	Entire amount
10(23ED)	Depository of Investor Protection Fund set up by the Depository (applicable w.e.f 01.04.2013 )	Any income, by way of contribution received from such Depository of Investor Protection Fund	Entire amount
10(23EE)	Core Settlement Guarantee Fund set up by a recognized Clearing Corporation as per regulations as may be notified by the Central Government (Applicable from A.Y 16-17)	Any Specified income viz.  1. The income by way of contribution received from specified persons 2. The income by way of penalties imposed by the recognized clearing corporation and credited to the Core Settlement Guarantee Fund 3. The income from investment made by the Fund	Entire Specified Income
10(23FB)	Venture capital fund or venture capital company  w.e.f A.Y 16-17 the benefit would not be allowed to a venture capital company or fund being investment fund which means  any fund established or incorporated as trust or company or LLP or any body corporate which is granted certificate as category I or category II alternative investment fund and is regulated under the SEBI regulations 2012	Any income from investment in venture capital undertaking	Entire amount
10(23FBA)	Investment Fund (Applicable from A.Y 16-17)	Any income other than income chargeable under the head profit and gains from business and profession	Entire amount
10(23FBB)	A person being a unit holder of an investment fund (Applicable from A.Y 16-17)	Any income accruing arising or received from investment fund by a unit holder in such proportion which is of the same nature as income chargeable under the head profit and gains of business and profession	Entire amount of such income
10(23FC)	Business Trust where the trust has controlling interest or specified percentage of share holding or interest in any Indian company (SPV)	1. Interest income from SPV, or 2. dividend referred to in section 115-O (7) (Applicable from A.Y. 2017-18)	Entire Amount
10(23FCA)	Business trust being a real estate investment trust	Any income by way of renting or leasing or letting out any real estate asset owned directly by such business trust	Entire income
10(23FD)	Unit holder of a business trust (Applicable from A.Y. 2015-16)	Distributed income from business trust	The amount distributed, not being that proportion of income which is of same nature as referred to in sub-clause (a) of clause 10(23FC) or clause 10(23FCA)
10(24)	Registered union or Association of such unions	Income from house property or income from other sources	Entire income

10(25)	Provident fund, Superannuation fund, Gratuity fund, coal Mines P.F., employees PF.	Interest on securities and capital gains on sale of such securities held by provident fund to which Provident fund Act, 1925 applies.  In any other case any income	Entire amount
10(25A)	Employees state insurance fund	Any income	Entire income
10(26)	Member of schedule Tribes residing in specified areas	Any income from source in that area Interest and dividend on securities	Entire income
10(26AAA)	A Sikkimese individual	Any income accrues from source in Sikkim, or Interest or dividend on securities	Entire income
10(26AAB)	Agricultural produce market committee or Board	Any income	Entire income
10(26B)	Government corporation or any association, body, institution wholly financed by government	Any income	Entire income
10(26BB)	Government corporation formed by state or central government	Any income	Entire income
10(26BBB)	corporation formed by state or central or provincial Act	Any income	Entire income
10(27)	A co-operative society	Any income	Entire income
10(29A)	Various Boards or authorities established under various Acts	Any income	Entire income
10(30)	Any assessee engaged in growing and manufacturing Tea in India	Subsidy received from Tea Board.	Entire amount so received
10(31)	Any assessee carrying on business of growing and manufacturing rubber, coffee, cardamom or other commodities notified by central Govt.	Subsidy received from concerned Board	Entire amount so received
10(32)	An assessee referred to in section 64(1A)	Income included u/s 64(1A)	Income included in assessee's income u/s 64(1A) to the extent it does not exceed Rs.1500/- for each minor child.
10(33)	Any assessee	Income arising from transfer of units held as capital assets of Unit Scheme 1964.	Entire income
10(34)	Any assessee	Dividends referred to in section 115-O, except for dividend chargeable to tax in accordance with the provisions of section 115BBDA (exception applicable from A.Y. 2017-18)	Entire amount
10(34A)	Any assessee being a shareholder of a company (w.e.f. A.Y. 2014-15)	Amount received on buy back of shares of unlisted company	Entire amount
10(35)	Any assessee	Income received in respect of Units of specified mutual fund, specified undertaking, specified Company, other than on transfer of such units	Entire income
10(35A)	Any assessee being an investor of a securitization trust	Distributed income as referred to in Section 115TA received on or before 31 May 2016	Entire income
10(36)	Any assessee	Long term capital gains on transfer of eligible equity shares	Entire amount
10(37)	Individual or HUF	Capital gains arising out of sale of agricultural land	Entire gain
10(38)	Any assessee	Long term capital gains on sale of equity shares or units of equity oriented fund or a unit of a business trust	Entire amount, however income to be included for computing book profit under section 115JB
10(39)	Notified persons	Specified income out of international sporting events held in India	Income to the Extent notified by Central Government
10(40)	Any Subsidiary company	Income received from Indian holding	Entire amount

		company	
10(42)	Notified body or authority	Specified income	Entire amount
10(43)	An individual	Amount received as loan	Entire amount
10(44)	New pension system trust	Any income received for and on behalf of such trust	Entire amount
10(45)	Chairman or member (including retired one) of union public service commission	Notified allowance or perquisites	Entire amount
10(46)	Any body, authority, Board or Trust or Commission	Specified income	Specified amount
10(47)	Infrastructure debt fund	Any income	Entire income
10(48)	Foreign Company (w.e.f. A.Y. 2012-13)	Income received on account of sale of crude oil to any person in India  W.e.f A.Y. 2014-15 following clause is inserted :  Income received on account of sale of crude oil, any other goods or rendering of services as may be notified by Central Government in this behalf	Entire Income received in India in Indian Currency
10(48A)	Foreign Company (w.e.f. 2016-17)	Any income accruing or arising on account of storage of crude oil in a facility in India and sale of crude oil there from to any person resident in India	Entire income
10(49)	National Financial Holdings Company Limited	Any income of National Financial Holdings Company Limited for any previous year related to an assessment year beginning prior to 01.04.2014	Entire income
10(50)  (Inserted w.e.f. 01 June 2016)	Non-resident	Any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII (Equalization Levy) comes into force and chargeable to equalisation levy under the said Chapter	Entire income

\*Exemptions are subject to various conditions as prescribed in Section 10.

# DEPRECIATION

## WHAT IS DEPRECIATION?

Depreciation as per law of lexicon is defined as positive decline in the real value of a tangible asset because of consumption, wear and tear or obsolescence. The concept of depreciation is widely used for the purpose of writing off the cost of an asset against profit over an extended period (its depreciable life), irrespective of the real value of the asset. Depreciation is charged against income and there are different methods of calculating it like straight line method or written down value method. The Income-tax Act recognises WDV method of depreciating asset, save and except for undertaking engaged in generation or generation and distribution of power.

## BLOCK OF ASSETS [SECTION 2(11)]

Prior to the 1986, the Income-tax Act required the calculation of depreciation in respect of each capital asset separately. Due to differences in depreciation rates depending on the date of purchase, the type of asset, the intensity of use etc., computation of depreciation allowance involved a detailed exercise on the part of the assessee and AO. Moreover, the system of granting the terminal allowance or taxing the balancing charge at the time an asset was sold, demolished, discarded, etc., necessitated the maintenance of records of depreciation already allowed in respect of each asset.

The amendments sought to simplify the system to a great extent by introducing the concept of “block of assets”.

Section 2(11) defines the term block of assets as “a group of assets falling within a class of tangible assets, being building, machinery, plant & furniture, or intangible assets, being know how, patents, copyrights or commercial rights of similar nature etc. in respect of which the same percentage of depreciation is prescribed.”

## CONDITIONS FOR CLAIMING DEPRECIATION [SECTION 32(1)]

- The assets must be owned, wholly or partly, by the assessee.
- The asset should be actually used for the purpose of business or profession of the assessee. Since, individual asset loses its identity it is sufficient where even not all the asset but even the part of the block of asset is used for the purpose of the business.
- Co-owners are entitled to claim depreciation to the extent of the value of the asset owned by each co-owner.
- Depreciation is not allowable on the cost of land.
- Depreciation is mandatory from A.Y. 2002-03 and shall be allowed or deemed to have been allowed irrespective of claim made in the profit & loss account or not.
- Where the asset is not exclusively used for the purpose of business or profession, the depreciation shall be allowed proportionately with regards to such usage of assets (section 38).

Section 32(1) provides that depreciation is to be computed at the prescribed percentage on the written down value of the asset which in turn is calculated with reference to actual cost of the assets. In the context of computing depreciation, it is important to understand the meaning of the term ‘WDV’ & ‘Actual Cost’.

## WRITTEN DOWN VALUE [SECTION 43(6)]

WDV under the Income-tax Act, means

- a. Where the asset is acquired in the previous year the actual cost of asset shall be treated as WDV.
- b. Where the asset is acquired in earlier year WDV shall be equal to the actual cost incurred less depreciation actually allowed under the Income-tax Act.

In case of block of assets, WDV is computed as under:

Sr. No.	Particulars	Amount	Amount
1	In case of any P.Y. relating to A.Y. 1988-89		
	a. The aggregate WDV of all assets falling within the same block in the beginning of P.Y. relating to A.Y. commencing from 1-4-1988	XXX	
	b. Add : Assets acquired during the previous year falling in the same block	XXX	
	c. Less: Moneys payable (including the scrap value) on assets sold, discarded or demolished or destroyed during the previous year to the extent it does not exceed (a+b)	(XXX)	XXX
2	In case of slump sale in relation to any P.Y. relating to A.Y. 1988-89		
	a. Actual cost of assets falling in the same block	XXX	
	b. Less : Depreciation actually allowed in A.Ys. prior to 1988-89	(XXX)	
	c. Less : Depreciation allowable in respect of A.Y. beginning on or after 1-4-1988 as if the asset was the only asset in the relevant block. (However deduction under b & c shall not exceed a.)	(XXX)	XXX
3.	In case of P.Y. relevant to A.Y. commencing on 1-4-1989 the WDV would be the amount of WDV of block of assets in immediately preceding P.Y. as reduced by depreciation actually allowed in respect of said preceding P.Y. and as adjusted by clauses b & c of 1 above.		
— The WDV in the case of the assessee whose income includes agricultural income shall be computed as the assets were used for the purpose of business and the whole depreciation is allowed under this Act.			

### ACTUAL COST [SECTION 43(1)]

Actual Cost as per Income-tax Act, means:

Sr. No.	Particulars	Actual Cost would mean
1.	Asset is acquired by the assessee in previous year	Actual cost of asset to the assessee as reduced by cost met by any other person or authority (in the form of subsidy or grant or reimbursement).  However, if any such amount of subsidy or grant or reimbursement is of such nature that it cannot be directly related to asset acquired, then the cost of the asset would be reduced on proportionate basis.  In case of motor car acquired before 1-3-1975 but after 31-3-1967 and not used for run it on hire the actual cost shall be restricted to ₹ 25,000/-.
2.	Asset acquired and used for scientific research when ceases to be so used on which depreciation has to be allowed	The amount of actual cost of asset to the assessee as reduced by any deduction allowed u/s. 35(1)(iv) or similar deductions allowed under the Income-tax Act, 1922.
3.	An asset is acquired by way of gift or inheritance	Actual cost to the previous owner as reduced by  a. The depreciation actually allowed under the Income-tax Act, 1922 or this Act in respect of previous years prior to 1-4-1988; and b. The amount that would have been allowed to the assessee for assessment year starting from 1-4-1988 (taking the asset as the only asset in the block).
4.	The assets which were previously used by any other person #9;	If the A.O. is satisfied that the main purpose of transfer of assets is to reduce the tax liability the actual cost shall be an amount as determined by the A.O. with prior approval of JCIT.
5.	An asset once belonging to the assessee and was used by him for the purpose of his business or profession and thereafter it ceased to be his property which is reacquired by him	Actual cost when he first acquired it, as reduced by the depreciation actually allowed in respect of previous year related to Assessment year commencing from 1-4-1988 and the amount that would have been allowed to the assessee for assessment year starting from 1-4-1988 (taking the asset as the only asset in



		the block)  OR  The actual price for which the asset is reacquired WHICHEVER IS LESS.
6.	Where the assessee acquires the assets which were previously used at any time by any other person for the purpose of his business or profession & depreciation was allowed to such other person and such other person acquires the same assets on lease, hire or otherwise from the assessee	The written down value of such assets at the time of transfer by the other person to the assessee in his books of account.
7.	A building previously the property of the assessee is brought into use for the purpose of the business or profession after 28-2-1946	Actual cost of building to the assessee as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the business or profession since the date of its acquisition by the assessee.
8.	Any asset is transferred by a holding company to its subsidiary company or vice versa, and if conditions of clauses (iv) or (v) of section 47 are satisfied	The actual cost shall be the same as if the transferor company continued to hold the asset.
9.	In a scheme of amalgamation, asset transferred by amalgamating company to amalgamated Indian company	The actual cost shall be the same as if the amalgamating company had continued to hold the asset for the purpose of its own business.
10.	In a scheme of demerger, asset transferred by demerged company to resulting Indian company	The actual cost shall be the same as if the demerged company had continued to hold the asset for the purpose of its own business. Provided the actual cost shall not exceed the WDV of such asset in the hands of demerged company.
11.	Asset is acquired outside India by a non-resident assessee and is brought into India for the use in business or profession	Actual cost to the assessee as reduced by an amount equal to the depreciation calculated at the rate in force that would have been allowable as if the asset had been used in India for the business or profession since the date of its acquisition by the assessee.
12.	Any asset is acquired under a scheme of Corporatisation of a recognised stock exchange in India, approved by SEBI	The amount which would have been regarded as actual cost had there been no such Corporatisation
13.	Any asset on which deduction has been allowed or allowable u/s. 35AD	NIL  In either case of assessee or the other assessee acquiring the asset by way of gift, will, trust or distribution of liquidation of a company or any such mode referred to in Clauses (i), (iv), (v), (vi), (vib), (xiii), (xiiib) and (xiv) of section 47.
14.	Any block of assets is transferred by a private company or unlisted public company to an LLP where conditions u/s. 47(xiiib) are satisfied	The actual cost shall be WDV of the block of assets as in the case of the said company on the date of conversion of the company into an LLP.

**Notes:**

- Any amount paid or payable as interest in connection with the acquisition of an asset and the same is related to the period after the asset is first put to use shall not be included in actual cost of the asset.
- The actual cost for the assets acquired on or after 1-3-1994 shall be reduced by the amount of duty of excise or additional duty leviable under section 3 of The Customs and Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944.

The term actual cost has not been defined under the Act and hence this expression has to be construed in accordance with the generally accepted principles of accounting. Accordingly, the actual cost of a depreciable asset comprises its purchase price (including import duties and other non-refundable taxes or levies) and any directly attributable cost of bringing the asset to its working condition for its intended use. Actual cost to the assessee would be what the assessee has in fact expended or laid out for the purpose of acquiring the asset.

**DEPRECIATION ALLOWED [SECTION 32(1)]**

- **For all assessee other than Power Sector** — Depreciation is calculated on written down value of “Block of Assets”, except for Power Sector, at rates provided in Appendix I read with Rule 5(1).

- **For Power Sector Assesseees** — Under Section 32(1)(i) in case of undertaking engaged in generation or generation and distribution of power, the depreciation will be allowed on actual cost (i.e. on straight line method) at the rates provided in Appendix IA read with Rule 5(1A). Such undertaking however has an option to claim depreciation on Written Down Value method at the rates provided in New Appendix I if the assessee exercises such option before the due date of filing the return as per provisions of section 139(1). In case of —
  - a. Undertaking which began to generate power prior to 1-4-1997, for the A.Y. 1998-99 onwards.
  - b. In other case, for the A.Y. relevant to the P.Y. in which it begins to generate power.
- Once the option is exercised to claim depreciation on WDV method, it will apply for all subsequent assessment years.
- Depreciation allowable to predecessor and successor company in case of succession of business due to amalgamation or demerger shall not exceed in any previous year the amount of depreciation that would have been allowed as if there was no such succession and the depreciation so computed shall be divided between the amalgamating and amalgamated company or demerged and resulting company as the case may be on the basis of number of days the assets were used by such companies.
- Accounting standard on lease issued by ICAI requires capitalisation of the assets by the lessees in financial lease transaction. In such leases, the lessee can exercise the rights of the owner in his own right and hence depreciation is available to the lessee.

### **Assets Sold or Discarded**

- When such asset on which depreciation is allowed is sold discarded or demolished in a previous year, and if the insurance, salvage, compensation or sale value, as the case may be, receivable in respect of such asset falls short of the written down value, such difference would be allowed as deduction [Terminal Depreciation] u/s. 32(1)(iii). The condition for allowing such deduction is that such deficiency is actually written off in the books of account. Similarly, excess of insurance, salvage, compensation or sale value, as the case may be, receivable in respect of such asset over the written down value is chargeable to tax [Balancing Charge] u/s. 41(2) up to the amount of actual cost of the asset. Since Section 50 does not apply to such assets, the provisions of capital gains in respect of these assets shall apply as if it is a transfer of asset not forming part of the block of assets.

### **ADDITIONAL DEPRECIATION**

- In case of any new machinery or plant (excluding ships and aircraft) acquired and installed after March 31, 2005 by an assessee engaged in the business of manufacture or production of any article or thing additional depreciation of 20% of actual cost shall be allowed. From A.Y. 2013-14 the same is also allowed to assessee engaged in the business of generation or generation and distribution of power, where the depreciation is provided on WDV method as per Appendix I.
- From assessment year 2017-18 the same is also allowed to the assessee engaged in the business of transmission of power. However no such additional deduction will be allowed in respect of machinery or plant—
  - o Used by any other person in India or outside India before its installation.
  - o Installed in any office premises or any residential accommodation, including a guest house.
  - o Any office appliances or road transport vehicles.
  - o The whole of actual cost of which is allowed as deduction in computing income chargeable under the head Profit and gain of business or profession of any one previous year.

From assessment year 2016-17 where an assessee set up an undertaking for manufacture or production of articles on or after 1st April, 2015 in any notified backward area in the state of Andhra Pradesh, Bihar, Telangana or in West Bengal and acquires or install any new machinery or plant (other than ship or aircraft) after 1st April, 2015 but before 1st April, 2020 then the additional depreciation shall be allowed at 35% of cost of acquisition as against 20%.

- Where an asset acquired during the previous year and is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, depreciation allowance shall be restricted to 50% of the amount calculated at prescribed rates, w.e.f. 1st April, 2016 the balance amount of 50% of such depreciation shall be allowed in the immediate subsequent year.

- In case of an asset acquired under hire purchase agreement, where the terms of the agreement provide that the equipment shall eventually become the property of the hirer or confer on the hirer an option to purchase the equipment, the hirer is entitled to claim depreciation allowance.

For computing the depreciation allowance, the difference between the aggregate amount of the periodical payments under the agreement and the initial value (i.e., the amount for which the hired subject would have been sold for cash at the date of agreement) would be spread evenly over the term of the agreement. (Circular No. 9, dated 23-3-1943).

- Fans, air-conditioners, refrigerators, etc., provided by the employer at the residence of the employees, is considered to have been used wholly for the purpose of the employer's business and full depreciation in accordance with the rules, is allowed in the assessment of the employer. (F. No. 10/14/66-IT (A-I), dated 12-12-1966).
- Where the business or profession is carried on in a building not owned by assessee and any capital expenditure is incurred for construction of any structure or for renovation, improvement or extension of the building, then depreciation will be allowed in respect of such capital expenditure at the rates prescribed for "building".
- No depreciation is allowable in respect of motor car manufactured outside India acquired after 25th February, 1975 but before 1st April, 2001 unless it is used by the assessee:
  - In the business of running it on hire for tourists.
  - In his business or profession outside India.
- In case of inadequate profit or loss any depreciation which could not be fully allowed for want of profit, the amount which could not be given full effect of shall be carried forward in the subsequent year and shall form part of the depreciation of such subsequent previous year. [This condition is subject to Section 72(2) & Section 73(3)].

RATES OF DEPRECIATION		(%)
(I)	Buildings:	
	(a) Buildings which are used mainly for residential purposes except hotels and Boarding House	5
	(b) Buildings which are not used mainly for residential purposes and other than mentioned in a & c	10
	(c) Buildings acquired on or after 1-9-2002 for installing P & M forming part of water supply project; or water treatment system and put to use for the purpose of providing infrastructure facilities u/s. 80-IA(4)(i)	100
	(d) Purely temporary erections such as wooden structures	100
	Note — "Buildings" include roads, bridges, culverts, wells and tube wells.  — A building shall be deemed to be a building used mainly for residential purposes, if the built up floor area thereof used for residential purposes is not less than sixty-six and two-thirds per cent of its total built-up floor area and shall include any such buildings in the factory premises.  — Water treatment system includes system for desalination, demineralisation and purification of water.	
(II)	Furniture and fittings including electrical fittings	10
	— Electrical fittings include electrical wiring, switches, sockets, other fitting and fans, etc.	
(III)	Machinery and plant: Plant has been held to include :  Movable partitions Sanitary & pipeline fitting Ceiling and pedestal fans Wells Hospital  However, w.e.f. A.Y. 2004-05, it shall not include buildings, furniture and fittings.	
	1) Machinery & plant other than those covered by sub-items 2, 3 and 8 below:  Machinery and plant includes pipes needed for delivery from the source of supply of raw water to the	15

	plant and from the plant to the storage facility	
	2) Motor-cars (other than those used in business of running them on hire) acquired or put to use on or after 1st April, 1990	15
	3) (i) Aeroplane-Aeroengines	40
	(ii) Motor buses, Motor lorries and Motor used in a business of running them on hire	30
	(iii) Commercial vehicles acquired on or after 1-10-1998 but before 1-4-1999 and is put to use before 1-4-1999 for the purposes of business or profession	40
	(iv) New commercial vehicles acquired on or after 1-10-1998 but before 1-4-1999 and is put to use before 1-4-1999 in replacement of condemned vehicles of over 15 years of age for the purpose of business or profession	60
	(v) New commercial vehicles acquired on or after 1-4-1999 but before 1-4-2000 in replacement of condemned vehicles of over 15 years of age and is put to use before 1-4-2000 for the purpose of business or profession	60
	(vi) New commercial vehicles acquired on or after 1-4-2001 but before 1-4-2002 and is put to use before 1-4-2002 for the purpose of business or profession	50
	(vii) New Commercial vehicles acquired on or after 1-1-2009 but before 1-10-2009 and put to use before 1-10-2009 for the purpose of business or profession  "Commercial vehicle" means — heavy goods vehicle, heavy passenger motor vehicle, light motor vehicle, medium goods vehicle, medium passenger motor vehicle. It does not include "maxi-cab", "motor-cab", "tractor" and "road-roller".	50
	(viii) Moulds used in rubber and plastic goods factories	30
	(ix) Air pollution control equipments	100
	(x) Water pollution control equipments	100
	(xi) Solid waste control equipments	100
	(xii) P & M used in semi-conductor industry	30
	(xiii) Life saving medical equipments	40
	(xiv) Any new plant and machinery installed in or after the P.Y. pertaining to A.Y. 1988-89 for manufacture of articles or things by using any technology or know-how developed or an article invented in a laboratory owned by a public sector company, Government, recognised University subject to specified conditions (See Rule 5(2))	40
	4) Containers made of glass or plastic used as refills	50
	5) Computers (including computer software)  "Computer Software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.	60
	6) Machinery and plants used in weaving, processing and garment sector of textile industry purchased under TUFSS on or after 1-4-2001 but before 1-4-2004 and is put to use before 1-4-2004	50
	7) Machinery and plant, acquired and installed on or after the 1-9-2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility under 80-IA(4)(i)	100
	8) For other items of P & M refer to Rule 5 App. 1	100/80/60
	9) (i) Books owned by assessee's carrying on a profession  Annual publications Other books	100  60
	(ii) Books owned by assessee's carrying on business in running lending libraries	100
(IV)	Ships  "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.	20

(V)	Intangible Assets  Know-how patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature acquired on or after 1-4-1998.	25
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**More details regarding the Rates of Depreciation under SLM and WDV methods can be viewed on CD.**

Note : For details under items listed above please refer New Appendixes I & 1A (power companies) to Rule 5.

**Depreciation Rate Chart as per Part "C" of Schedule II of The Companies Act 2013**  
**Depreciation Rate Chart as per Part "C" of Schedule II of The Companies Act 2013**

Nature of Assets	Useful Life	Rate [SLM]	Rate [WDV]
<b>I Buildings [NESD]</b>	60 Years	1.58%	4.87%
a. Building (other than factory buildings) RCC Frame Structure	30 Years	3.17%	9.50%
b. Building (other than factory buildings) other than RCC Frame Structure	30 Years	3.17%	9.50%
c. Factory buildings	30 Years	3.17%	9.50%
d. Fences, wells, tube wells	5 Years	19.00%	45.07%
e. Other (including temporary structure, etc.)	3 Years	31.67%	63.16%
<b>II Bridges, culverts, bunkers, etc. [NESD]</b>	30 Years	3.17%	9.50%
<b>III Roads [NESD]</b>			
(a) Carpeted Roads	10 Years	9.50%	25.89%
i. Carpeted Roads - RCC	5 Years	19.00%	45.07%
ii. Carpeted Roads - other than RCC (b) Non-carpeted roads	3 Years	31.67%	63.16%
<b>IV Plant and Machinery</b>			
a. <b>General rate applicable to Plant and Machinery not covered under Special Plant and Machinery</b>			
i. Plant and Machinery other than continuous process plant not covered under specific			
ii. Continuous process plant for which no special rate has been prescribed under (ii) below			
b. <b>Special Plant and Machinery</b>			
Plant and Machinery related to production and exhibition of Motion Picture Films	15 Years	6.33%	18.10%
1. Cinematograph films - Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights	8 Years	11.88%	31.23%
2. Projecting equipment for exhibition of films	13 Years	7.31%	20.58%
Plant and Machinery used in glass	13 Years	7.31%	20.58%
1. Plant and Machinery except direct fire glass melting furnaces - Recuperative and regenerative glass melting furnaces	13 Years	7.31%	20.58%
2. Plant and Machinery except direct fire glass melting furnaces - Moulds [NESD]	8 Years	11.88%	31.23%
3. Float Glass Melting Furnaces [NESD]	10 Years	9.50%	25.89%
Plant and Machinery used in mines and quarries Portable underground machinery and earth moving machinery used in open cast mining	- 8 Years	11.88%	31.23%

iv.	Plant and Machinery used in	18 Years	5.28%	15.33%
	Telecommunications [NESD]	13 Years	7.31%	20.58%
	Towers	18 Years	5.28%	15.33%
	Telecom transceivers, switching centres, transmission and other network equipment	18 Years	5.28%	15.33%
	Telecom - Ducts, Cables and optical fibre			
	Satellites			
v.	Plant and Machinery used in exploration, production and refining oil and gas [NESD]	25 Years	3.80%	11.29%
	1. Refineries	25 Years	3.80%	11.29%
	2. Oil and gas assets (including wells), processing plant and facilities	25 Years	3.80%	11.29%
	Petrochemical Plant	25 Years	3.80%	11.29%
	Storage tanks and related equipment	25 Years	3.80%	11.29%
	Pipelines			
	Drilling Rig	30 Years	3.17%	9.50%
	Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc.	30 Years	3.17%	9.50%
	Loggers	8 Years	11.88%	31.23%
vi.	Plant and Machinery used in generation, transmission and distribution of power [NESD]	8 Years	11.88%	31.23%
	Thermal / Gas / Combined Cycle Power Generation Plant	40 Years	2.38%	7.22%
	Hydro Power Generation Plant	40 Years	2.38%	7.22%
	Nuclear Power Generation Plant	40 Years	2.38%	7.22%
	Transmission lines, cables and other network assets	40 Years	2.38%	7.22%
	Wind Power Generation Plant	40 Years	2.38%	7.22%
	Electric Distribution Plant	40 Years	2.38%	7.22%
	Gas Storage and Distribution Plant	40 Years	2.38%	7.22%
	Water Distribution Plant including pipelines	22 Years	4.32%	12.73%
vii.	Plant and Machinery used in manufacture of			
	1. Sinter Plant	35 Years	2.71%	8.20%
	2. Blast Furnace	30 Years	3.17%	9.50%
	3. Coke Ovens	30 Years	3.17%	9.50%
	4. Rolling mill in steel plant	20 Years	4.75%	13.91%
	5. Basic Oxygen Furnace Converter	20 Years	4.75%	13.91%
		20 Years	4.75%	13.91%
		20 Years	4.75%	13.91%
		25 Years	3.80%	11.29%
viii.	Plant and Machinery used in manufacture of non ferrous metals	-	2.38%	7.22%
	1. Metal pot line [NESD]			
	2. Bauxite crushing and grinding section	40 Years	2.38%	7.22%
	3. Digester Section [NESD]			
	4. Turbine [NESD]			
	5. Equipments for Calcinations [NESD]			

6.	Copper Smelter [NESD]	40 Years	2.38%	7.22%
7.	Roll Grinder			
8.	Soaking Pit			
9.	Annealing Furnace	40 Years	2.38%	7.22%
10.	Rolling Mills			
11.	Equipments for Scalping, Slitting, etc. [NSED]	40 Years	2.38%	7.22%
12.	Surface Miner, Ripper Dozer, etc. used in mines			
13.	Copper refining plant [NSED]	40 Years	2.38%	7.22%
ix.	Plant and Machinery used in medical and surgical operations [NESD]			
1.	Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc.	40 Years	2.38%	7.22%
2.	Other Equipments			
x.	Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]	40 Years	3.17%	9.50%
1.	Reactors	30 Years	3.17%	9.50%
2.	Distillation Columns			
3.	Drying equipments / Centrifuges and Decanters	30 Years	3.17%	9.50%
4.	Vessel / Storage tanks			
xi.	Plant and Machinery used in civil construction			
1.	Concreting, Crushing, Piling Equipments and Road Making Equipments	30 Years	3.17%	9.50%
2.	Heavy Lift Equipments -			
▪	Cranes with capacity more than 100 tons	30 Years	3.80%	11.29%
▪	Cranes with capacity less than 100 tons			
3.	Transmission line, Tunnelling Equipments [NESD]	25 Years	3.80%	11.29%
4.	Earth-moving equipments			
5.	Others including Material Handling /Pipeline / Welding Equipments [NESD]	25 Years	7.31%	20.58%
xii.	Plant and Machinery used in salt works [NESD]			
		13 Years	6.33%	18.10%
		15 Years	4.75%	13.91%
		20 Years	4.75%	13.91%
		20 Years	4.75%	13.91%
		20 Years	4.75%	13.91%
		20 Years	7.92%	22.09%
		12 Years	4.75%	13.91%
		20 Years	6.33%	18.10%
		15 Years	9.50%	25.89%
		10 Years	10.56%	28.31%
		9 Years	7.92%	22.09%
		12 Years	6.33%	18.10%
		15 Years		
<b>V Furniture and fittings [NESD]</b>				
a.	General furniture and fittings	10 Years	9.50%	25.89%
b.	Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other education institutions, libraries, welfare centres, meeting halls, cinema houses, theatres and circuses and furniture and fittings let out on hire for used on occasion of marriages and similar functions	8 Years	11.88%	31.23%
<b>VI Motor Vehicles [NESD]</b>				

a. Motor cycles, scooters and other mopeds	10 Years	9.50%	25.89%
b. Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire	6 Years	15.83%	39.30%
c. Motor buses, motor lorries, motor cars and motor taxies other than those used in a business of running them on	8 Years	11.88%	31.23%
d. Motor tractors, harvesting combines and heavy vehicles	8 Years	11.88%	31.23%
e. Electrically operated vehicles including battery powered or fuel cell powered vehicles	8 Years	11.88%	31.23%
<b>VII Ships [NESD]</b>	25 Years	3.80%	11.29%
a. Ocean-going ships	20 Years	4.75%	13.91%
Bulk Carriers and liner vessels	25 Years	3.80%	11.29%
Crude tankers, product carriers and easy chemical carriers with or without conventional	20 Years	4.75%	13.91%
Chemicals and Acid Carriers			
1. With Stainless steel tanks	30 Years	3.17%	9.50%
2. With other tanks			
Liquefied gas carriers	30 Years	3.17%	9.50%
Conventional large passenger vessels which are used for cruise purpose also			
Coastal service ships of all categories	30 Years	3.17%	9.50%
Offshore supply and support vessels			
Catamarans and other high speed passenger for ships or boats	20 Years	4.75%	13.91%
Drill ships			
Hovercrafts	20 Years	4.75%	13.91%
Fishing vessels with wooden hull			
Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging	25 Years	3.80%	11.29%
Vessels ordinarily operating on inland waters	15 Years	6.33%	18.10%
i. Speed boats	10 Years	9.50%	25.89%
ii. Other vessels	14 Years	6.79%	19.26%
	13 Years	7.31%	20.58%
	28 Years	3.39%	10.15%
<b>VIII Aircrafts or Helicopters [NESD]</b>	20 Years	4.75%	13.91%
<b>IX Railway siding, locomotives, rolling stocks, tramways and railway used by concerns, excluding railway</b>	15 Years	6.33%	18.10%
<b>X Ropeway structures [NESD]</b>	15 Years	6.33%	18.10%
<b>XI Office equipments [NESD]</b>	5 Years	19.00%	45.07%
<b>XII Computers and data processing units [NESD]</b>	6 Years	15.83%	39.30%
a. Servers and networks	3 Years	31.67%	63.16%
b. End user devices, such as, desktops, laptops, etc.			
<b>XIII Laboratory equipment [NESD]</b>			
a. General laboratory equipment	10 Years	9.50%	25.89%
b. Laboratory equipments used in education institutions	5 Years	19.00%	45.07%
<b>XIV Electrical Installations and Equipment [NESD]</b>	10 Years	9.50%	25.89%
<b>XV Hydraulic woks, pipelines and sluices [NESD]</b>	15 Years	6.33%	18.10%



# PRESUMPTIVE TAXATION

Businesses have grown over the period of time due to growth of economy. However at the same time various numbers of business and service providers, irrespective of their area of operations, earning substantial income are outside the tax net. Presumptive income scheme has been introduced to bring such business & service providers within tax net and also because there is lesser compliance cost for such taxpayers and lesser corresponding administrative burden on revenue. From the A.Y. 2011-12 various schemes of presumptive taxation as applicable to small businesses have been consolidated under section 44AD, and section 44AF (applicable to retail trade) has been deleted. Now scheme of presumptive taxation (other than presumptive taxation scheme applicable to non-residents) for small businesses is operated by sections 44AD and 44AE. A new section 44ADA has been introduced which deals with presumptive taxation for professionals.

## Section 44AD

- **Applicability**

Any business except plying, hiring or leasing goods carriages referred in section 44AE and whose turnover is less than ₹ 200 lakhs (₹ 100 lakh till previous year 2015-16) during the previous year.

- **Class of eligible assessee**

Applies to any resident individual, HUF, partnership firm excluding LLPs, provided that no deduction u/s. 10A, 10AA, 10B, 10BA, 80HH to 80RRB is claimed in the relevant assessment year. Provisions are also not applicable in case of person carrying profession as specified u/s. 44AA(1) or earning income in the nature of commission or brokerage or carrying on any agency business. (Introduced by Finance Act, 2012 w.r.e.f. A.Y. 2011-12).

- **Presumptive or estimated income**

Sum equal to minimum 8% of the total turnover or gross receipt of the assessee.

Higher or lower income: Assessee at his option can claim such higher/lower amount earned by him. Assessee can claim to have earned income lower than specified amount, subject to fulfilment of conditions as to maintenance of books of account and getting the same audited.

- **Restriction on availing the presumptive taxation scheme**

Where an assessee declares presumptive income u/s. 44AD but within next five succeeding Assessment years declares profit under normal scheme by maintaining books u/s. 44AA, then he shall not be eligible to claim benefit of 44AD for further next five Assessment years starting from the year in which he claimed income under normal scheme.

E.g., If in AYs 2017-18 and 2018-19, the assessee declared income u/s. 44AD. If in AY 2019-20 he opts out of this presumptive taxation scheme (due to either NP ratio being lower than 8% or turnover higher than ₹ 2 crore) and files return by maintaining books of account u/s. 44AA, then he shall not be eligible to avail benefit for 44AD till AY 2024-25, i.e., for 5 AYs subsequent to AY 2019-20 and shall be liable to audit u/s. 44AB of the Act. Thus an assessee has to spend at least six assessment years by maintaining books of accounts before he gets back an option to avail Section 44AD benefit.

- **Maintenance of books of account and getting them audited**

Where an assessee claims that he has earned income lower than specified percentage and such income is more than maximum amount not chargeable to tax, or the turnover of such assessee is more than ₹ 2 crore, then it is mandatory for him to maintain books of account and other documents as specified u/s. 44AA and also get them audited from the accountant and furnish report as required u/s. 44AB. Further, if an assessee is restricted from availing benefit of Section 44AD due to above provisions, he shall be liable to get the books audited even if he has a turnover of less than ₹ 2 crore and a profit ratio of more than 8%.

E.g: If an assessee declares income u/s. 44AD for AYs 2017-18 and 2018-19 but not u/s. 44AD for AY 2019-20, then he shall be liable to get the books of account audited for the assessment years 2019-20 to 2024-25.

- **Deduction from presumptive income**

No deduction is allowable under provisions of sections 30 to 38. However in case of partnership firm remuneration to partner and interest on partner's capital is allowable as a further deduction, since it not being covered in sections 30 to 38 (applicable only upto A.Y. 2016-17). For the computation of allowable partner's remuneration, book profits would be deemed to be income less interest to partners. Further written down value of any depreciable asset of such business shall be calculated as if depreciation has been actually allowed.

- **Advance tax**

No specific provision exempting assessee from payment of advance tax. [Unlike specific provision exempting such assessee from advance tax payment till AY 2016-17]. However only the last instalment date of 15th March is applicable for such assessee.

## SECTION 44ADA

- **Applicable**

Any assessee engaged in profession mentioned in Section 44AA(1) and whose gross receipts/turnover does not exceed ₹ 50 lakh rupees during the previous year.

- **Presumptive or estimated income**

Sum equal to minimum 50% of the total turnover or gross receipts of the assessee.

- **Higher or lower income**

Assessee at his option can claim such higher/lower amount earned by him. Assessee can claim to have earned income lower than specified amount, subject to fulfilment of conditions as to maintenance of books of account and getting the same audited.

- **Maintenance of books of account**

Where an assessee claims that he has earned income lower than specified percentage and such income is more than maximum amount not chargeable to tax, or the turnover of such assessee is more than ₹ 50 lakhs, then it is mandatory for him to maintain books of account and other documents as specified u/s. 44AA and also get them audited from the accountant and furnish report as required u/s. 44AB.

- **Advance tax**

No specific provision exempting assessee from payment of advance tax.

## SECTION 44AE

- **Applicable**

Assessee engaged in business of plying, hiring or leasing goods carriages and who owns not more than 10 goods carriages anytime during the previous year. However unlike section 44AD, there is no condition of maximum turnover of the assessee. Assessee shall be deemed to be owner of goods vehicles taken on hire purchase or on instalment basis, whether whole or part of the amount is payable, when such vehicles are in the possession of such assessee.

- **Applicable to class of taxpayer**

All assessee including LLP and company.

- **Presumptive or estimated income**

Type of Vehicle	Deemed Income
For Each of Heavy Goods Vehicle	• 7.500 (• 5000 up to A.Y. 2014-15) per month or part of month
For Each of Vehicle Other than Heavy Vehicle	• 7.500 (• 4.500 up to A.Y. 2014-15) per month or part of month
OR	
Profit higher than aggregate of above as may be declared by the assessee	

Terms 'goods carriage' and 'heavy goods' vehicle shall have meaning as per Motor Vehicles Act, 1988.

- **Higher or lower income**

Assessee at his option can claim such higher/lower amount earned by him. Assessee can claim to have earned income lower than specified amount, subject to fulfilment of conditions as to maintenance of books of account, and getting them audited u/s. 44AB of the Act.

- **Maintenance of books of account**

Assessee offering income on presumptive basis is not required to maintain books of account & other documents as prescribed u/s. 44AA and audit u/s 44AB. However in case assessee claims that he has earned income lower than specified amount, sections 44AE(7) and 44AA(2)(iii), mandates him to maintain books of account and other documents as specified u/s. 44AA, get them audited from the accountant and furnish report as required u/s. 44AB.

- **Deduction from presumptive income**

No deduction is allowable under provisions of sections 30 to 38. However in case of partnership firm remuneration to partner and interest on partner's capital is allowable. For the computation of allowable partner's remuneration, book profits would be deemed to be income less interest to partners subject to limits specified in Section 40(b). Further written down value of any depreciable asset of such business shall be calculated as if depreciation has been actually allowed.

- **Advance tax**

No specific provision exempting assesseees from payment of advance tax.

## **SECTION 211**

- **Applicability and payment of Advance Tax**

Up to AY 2016-17, all assesseees (except companies) are required to pay advance in three instalments viz. 15th September (30% of tax), 15th December (60% of tax) and 15th March (100% of tax). Assesseees covered u/s. 44AD were exempted totally from payment of Advance tax.

Now as per amended section 211, from AY 2017-18 all the assesseees except assesseees filing return u/ s. 44AD, are required to pay advance tax in four instalments viz. 15th June (15% of tax), 15th September (45% of tax), 15th December (75% of tax) and 15th March (100% of tax). For assesseees availing benefit of section 44AD, only the due date of last instalment of 15th March is mandatory.

This amended section 211 is applicable w.e.f. 1-6-2016 thus making it applicable from the first instalment date of 15th June, 2016.

# INCOME FROM CAPITAL GAINS

## 1. Chargeability u/s. 45

Profits or gains arising from the transfer of a capital asset is chargeable to tax in the year in which transfer takes place under the head "Capital Gains".

### Definitions

**Transfer: Section 2(47):** Transfer in relation to a capital asset includes sale, exchange, or relinquishment of the asset or extinguishment of any rights therein or the compulsory acquisition thereof under any law or conversion of the asset by the owner in stock-in-trade of a business carried on by him or the maturity or redemption of a zero coupon bond.

An Explanation has been inserted by Finance Act, 2012 w.r.e.f. 1-4-1962 which clarifies the following:—

"transfer" includes disposing of or parting with the asset or creating any interest in any asset directly or indirectly (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights is being effected or dependent upon or flowing from the transfer of a share or shares of a company registered outside India.

### Capital Asset: Section 2(14)

As per sub-section 14 of section 2 -

"capital asset" means-

- a. property of any kind held by an assessee, whether or not connected with his business or profession;
- b. any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992,

but does not include-

- i. any stock-in-trade [other than the securities referred to in sub-clause (b)]
- ii. Personal effects of the assessee;
- iii. Agricultural land in a rural area
- iv. 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government;
- v. Special Bearer Bonds, 1991 issued by the Central Government;
- vi. Gold Deposit Bonds issued under Gold Deposit Scheme 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 (as inserted by Finance Act, 2016).

Explanation 1 - "property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Explanation 2 -

- a. the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;
- b. the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

Short-term capital asset: Section 2(42A): means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, with effect from the 1st day of April, 2015, in the following cases, an asset, held for not more than twelve months, is treated as short-term capital asset—

- a. a security (other than a unit) listed in a recognised stock exchange in India;

- b. Units of Unit Trust of India.
- c. Units of an equity oriented fund.
- d. Quoted or unquoted zero coupon bonds.

The Finance Act, 2016 has inserted a new clause to provide that the period of 36 months would be substituted with period of 24 months in case of unlisted shares. In other words, unlisted shares of company would be treated as short-term capital asset if it is held for a period of 24 months or less immediately preceding the date of its transfer.

Long-term capital asset: Section 2(29A): means a capital asset which is not a short-term capital asset.

## 2. Year of chargeability to tax

Capital gains are generally charged to tax in the year in which "transfer" takes place. Exceptions —

- a. Section 45(1A) — Insurance Claim — In the year of receipt.
- b. Section 45(2) — Conversion of capital asset into stock-in-trade — In the year of actual sale of the stock.
- c. Section 45(5) — Compulsory acquisition — When consideration or part thereof is first received. Compensation received in pursuance of an interim order of a court is chargeable to tax in the previous year in which the final order of such court is made.

### Exempt Capital Gains under section 10

- 10(33) : Transfer of US 64 on or after April 1, 2002.
- 10(36) : Long-term capital gain arising from transfer of long-term capital asset being eligible equity share purchased after 1st March, 2003 but before 1st March 2004.
- 10(37) : Compulsory acquisition of Urban Agriculture Land where consideration is received after March 31, 2004.
- 10(38) : Long-term capital gain arising on transfer on or after October 1, 2004 of equity shares or units of equity oriented mutual fund or (w.e.f. 1st day of April, 2015) units of a business trust and the STT is paid at the time of transfer.

Finance Act, 2016 has inserted a proviso to section 10(38) whereby clause (b), relating to securities transaction tax, shall not apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

## 3. Computation of capital gains (section 48)

The method of computation depends on the nature of capital asset transferred. It is as follows:—

Short-term Capital Gain	Long-term Capital Gain
A. Find out Full Value of Consideration	A. Find out Full Value of Consideration
B. Deduct:	B. Deduct:
(i) Expenditure incurred wholly and exclusively in connection with such Transfer	(i) Expenditure incurred wholly and exclusively in connection with such Transfer.
(ii) Cost of Acquisition	(ii) Indexed Cost of Acquisition
(iii) Cost of Improvement	(iii) Indexed Cost of Improvement
(iv) Exemption provided by Ss. 54B, 54D & 54G, 54GA	(iv) Exemption provided by Ss. 54, 54B, 54D, 54EC, 54ED, 54F & 54G, 54GA, 54GB
C. (A-B) is short-term capital gain	C. (A-B) is a long-term capital gain

- Finance Act, 2016 has inserted proviso to section 48 w.e.f 1-4-2017 stating that while computing capital gains arising to a non-resident assessee on redemption of rupee denominated bond of an Indian company subscribed by him, the gain arising on account of appreciation of rupee against a foreign currency shall be ignored for the purpose of computation of full value of consideration.

- For computing long term capital gain arising on transfer of Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015, the cost of acquisition shall be indexed.

#### 4. Full value of consideration for transfer of land or building or both: Section 50C

Higher of the followings:—

- Full value of the consideration received or accruing
- Value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.

#### 5. Fair market value shall be deemed to be full value of consideration : Section 50D

Where the consideration received or accruing is not ascertainable or cannot be determined, then, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration.

#### 6. Indexed Cost of acquisition = Cost of acquisition \* Cost inflation index for the financial year in which the asset is transferred / Cost inflation index for the first financial year in which the asset was held by the assessee or the year beginning on 1-4-1981, whichever is later or the year of improvement of the asset

However, in case of Bonds, Debentures, except capital indexed bonds, depreciable assets, and for non-residents even if they are long term capital assets the benefit of indexation is not available.

#### Cost inflation Index

Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index
1981-82	100	1990-91	182	1999-2000	389	2008-09	582
1982-83	109	1991-92	199	2000-01	406	2009-10	632
1983-84	116	1992-93	223	2001-02	426	2010-11	711
1984-85	125	1993-94	244	2002-03	447	2011-12	785
1985-86	133	1994-95	259	2003-04	463	2012-13	852
1986-87	140	1995-96	281	2004-05	480	2013-14	939
1987-88	150	1996-97	305	2005-06	497	2014-15	1024
1988-89	161	1997-98	331	2006-07	519	2015-16	1081
1989-90	172	1998-99	351	2007-08	551	2016-17	1125

W.e.f. the 1st day of April, 2016 "Cost Inflation Index" in relation to a previous year would mean such index as may be notified by the Central Government having regard to seventy-five percent of average rise in the Consumer Price Index (Urban) (instead of Consumer Price Index for urban non-manual employees) for the immediately preceding previous year to such previous year

#### Section 111A: Tax on short term capital gain in certain cases

Short term capital gains arising on transfer of equity share in a company or a unit of an equity oriented fund or (w.e.f. 1st day of April, 2015) unit of a business trust shall be eligible for tax at the rate of 15% provided it satisfies the other conditions specified under the said section.

The above provision shall not apply if the units of the business trust were acquired by an assessee in consideration of transfer of a share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor as referred to in clause (xvii) of section 47.

## Computation of Long Term Capital Gains on Shares both Equity and Preference, Listed or Unlisted and Debentures

Sr. No.	Capital Assets	If transaction is covered by STT at the time of transfer	If it is not covered by STT	
			Long-Term	
			Without indexation	With indexation
A	Listed equity shares or units of equity oriented fund covered by Section 10(38)	0%	NA	NA
B	Listed securities other than those covered by Section 10(38)	NA	10%	20%
C	Unit of a Mutual Fund specified under clause (23D) of section 10 transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014	NA	10%	20%
D	(w.e.f. the 1st day of April, 2015) units not covered by A, B & C	NA	NA	20%
E	Unlisted equity shares	NA	NA	20%
F	Listed Preference shares	NA	10%	20%
G	Unlisted Preference shares	NA	NA	20%
H	Zero Coupon Bonds	NA	10%	NA
I	Unlisted Debentures	NA	20%	NA

### CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER (Section 47)

Section	Transfer of a capital asset
47(i)	On total or partial partition of HUF
47(iii)	Under gift or will or an irrevocable trust (not applicable to gift of shares, etc. by company to employees under ESOP)
47(iv)	By holding co. to subsidiary co. on fulfilment of certain conditions
47(v)	By subsidiary co. to holding co. on fulfilment of certain conditions
47(vi)	In scheme of amalgamation by amalgamating co. to amalgamated co.
47(via)	Transfer of shares in Indian company in scheme of amalgamation between two foreign cos. on fulfilment of certain conditions
47(viaa)	In a scheme of amalgamation between a banking co. and a banking institution
47(viab)	being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company (w.e.f. 1st April, 2016)
47(vib)	In a demerger by demerged co. to resulting co.
47(vic)	Being shares in Indian company in scheme of demerger between two foreign cos. on fulfilment of certain conditions
47(vica)	In a business reorganisation by predecessor co-operative bank to the successor co-operative bank
47(vicb)	Being shares by shareholder of a predecessor co-operative bank in a business reorganization
47(vicc)	being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company (w.e.f. 1st April, 2016)
47(vid)	Transfer or issue of shares by resulting co. to the shareholders of demerged co. in a scheme of demerger
47(vii)	Being shares by share holder of amalgamating co. in a scheme of amalgamation on fulfilment of certain conditions
47(viia)	Bonds or shares referred to in section 115AC(1), made outside India by a non-resident to another non-resident
47(viib)	Being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident. (w.e.f. the 1st day of April, 2015)
47(ix)	Being works of art, archaeological, scientific or art collection to Government/University/National Museum, etc.
47(x)	Being conversion of bonds or debentures or debenture-stock or deposit certificate into shares or debentures

47(xa)	Conversion of bonds referred to in 115AC(1)(a) into shares or debentures
47(xii)	Being land of a sick industrial company
47(xiii)	On succession of the firm by a company or on demutualisation or corporatisation of a recognised stock exchange on fulfilment of certain conditions
47(xiiiia)	Membership right by a member of recognised stock exchange in a scheme of demutualisation or corporatisation
47(xiiiib)	On conversion of a company into limited liability partnership on fulfilment of certain conditions
47(xiv)	On succession of a sole proprietary by a company on fulfilment of certain conditions
47(xv)	In a scheme for lending any securities under an agreement subject to guidelines issued by SEBI
47(xvi)	In a transaction of reverse mortgage as notified by Central Government
47(xvii)	Being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor. (w.e.f. the 1st day of April, 2015)
47(xviii)	Being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund (w.e.f. 1st April, 2016)

### **COST OF ACQUISITION IN CERTAIN CASES (Section 49)**

<b>Section</b>		<b>Cost of acquisition</b>
49(1)	(i) Distribution of assets on total or partial partition of HUF  (ii) Gift or will  (iii) Succession, inheritance or devolution  (iv) Distribution of assets on liquidation of company  (v) Transfer to a revocable or an irrevocable trust  (vi) Transfer as mentioned in clauses (iv), (v), (vi), (via), (viaa), (vica), (vicb), (xiii), (xiiiib), (xiv) of section 47.	Cost to the previous owner
49(2)	Transfer of shares received by existing shareholder in the scheme of amalgamation referred to in section 47(vii)	Cost of such shares shall be cost of shares of amalgamating co.
49(2A)	On conversion of bonds or debentures, etc. or bonds referred to in section 115AC(1)(a) into shares -	Cost of shares is proportionate to the cost of the portion of bonds, debentures, etc. converted
49(2AA)	Transfer of specified security or sweat equity shares referred to in section 17(2)(vi)	Cost of such security shall be fair market value
49(2AAA)	Transfer of right of a partner in LLP consequent to conversion referred to in sec. 47(xiiiib)	Cost of the right shall be cost of shares in company before conversion
49(2AB)	Transfer of specified security or sweat equity shares	Cost would be fair market value while calculating fringe benefits under section 115WC(1)(ba)
49(2AC) w.e.f. the 1st day of April, 2015	Transfer of a unit of a business trust, which became the property of the assessee in consideration of a transfer share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor as referred to in clause (xvii) of section 47	Cost of acquisition of such unit shall be deemed to be the cost of acquisition to him of the share of the special purpose vehicle
49(2AD) (w.e.f. 1st April, 2016)	Transfer of unit or units in a consolidated scheme of a mutual fund which became the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47	Cost of acquisition of the unit or units shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.
49(2C)	Where shares of resulting co. acquired in a scheme of demerger are transferred	Cost of such shares would be proportionate to the value of assets transferred to resulting co. in demerger
49(2D)	Cost of acquisition of original shares in demerged co. shall be cost after reducing the amount arrived in clause (2C) above.	
49(2E)	The provisions of sections (2), (2C) and (2D) of section 49 shall apply accordingly to business reorganisation of a co-operative bank also.	



## **Section 50 : Special Provision for Computation of Capital Gains in case of Depreciable Assets**

### **Opening W.D.V. of the Block of Assets**

Less : Full value of consideration received or accruing as a result of transfer or transfers of asset falling within the concerned block of assets during the relevant previous year

Add : Expenditure incurred wholly and exclusively in connection with such transfer or transfers. This deduction would not be available in a case where the entire block ceases to exist as such, for the reason that all the assets in that block are transferred during the year.

Add: Actual cost of any asset falling within the concerned block of assets acquired during the relevant previous year.

### **Closing WDV/short-term capital gains/short-term capital loss**

Where the resultant figure is negative, the same is chargeable as deemed short-term capital gains u/s. 50.

In case it is positive and the entire block ceases to exist as such, the resultant figure indicates deemed short-term capital loss (refer CBDT Circular No. 469 dated 23-9-1986 — reported in 162 ITR (Stat) 21, 30).

If the resultant figure is positive and the block continues to exist, the assessee will be entitled to claim depreciation on the resultant figure.

## **Section 50B : Special provision for computation of capital gains in case of slump sale**

1. As per section 2(42), slump sale means transfer of one or more undertakings as a result of the sale of lump sum consideration without values being assigned to the individual assets and liabilities.
2. Where the undertaking is held for more than thirty six months, the gains would be deemed as long term capital gains.
3. Where the undertaking is held for not more than thirty six months, the gains would be deemed as short-term capital gains.
4. Cost of acquisition in this case would be the "net worth" of the undertaking or division.
5. "Net worth" means aggregate value of total assets as reduced by the value of liabilities.

## **Section 51 : Advance Money received**

W.e.f. 1st day of April, 2015, any sum received as advance or otherwise in course of negotiations for transfer of capital asset and which has been taxed under clause (ix) of Section 56(2), then such sum shall not be deducted in computing the cost of acquisition.

## **Section 55A : As per section 55A the AO may refer to the Valuation Officer for ascertaining the fair market value of the asset under following circumstances**

1. Where in view of the AO the value of the asset claimed by the assessee in accordance with the estimate made by a registered valuer, is less than is FMV or w.e.f. 1-7-2012, section 55A, clause (a) is amended as follows:
2. Where in view of the AO, the value of the asset claimed by the assessee in accordance with the estimate made by a registered valuer is at variance with its fair market value or
3. Where in view of the AO the value of the asset claimed by the assessee is less than the FMV by so much percentage or by so much amount as may be prescribed or

4. Having regard to the nature of the asset and other relevant circumstances, it is necessary to do so.

CAPITAL GAINS — VARIOUS EXEMPTIONS DETAILS		54D		54EC	
(a)	<b>Kind of assets transferred</b>	Long-term Capital Assets being House Property used for residential purpose	Land used for agricultural purposes	Land and Building or any right therein used by an industrial undertaking compulsorily acquired under any law	Any Long Term Capital Assets
(b)	<b>Eligible Assessee</b>	Individual & HUF	Individual & HUF	All	All
(c)	<b>Condition of period of holding of original Asset</b>	3 years	2 years	2 years	1 year for Shares, Listed Securities, Units of UTI/ Mutual Fund specified u/s. 10(23D), Zero coupon bonds, 2 years for any other capital assets
(d)	<b>Condition of utilisation of consideration</b>	W.e.f. 1st day of April, 2015 Purchase of one Residential House in India within 2 years after or 1 year prior to date of transfer: or construction of one residential house in India within 3 years from the date of transfer	Purchase of Agricultural Land within 2 years from the date of transfer	Purchase/construction of land, building, or any right therein within 3 years from the date of transfer by way of compulsory acquisition for the purpose of shifting/ re-establishing/ setting up another industrial undertaking	Investment of whole or any Part of Capital Gain in "specified assets" as stipulated in the section. Investment should be made within 6 months from the date of transfer
(e)	<b>Exempt Amount</b>	The amount of gain or, the cost of new asset, whichever is less	Lower of the Capital Gain or the Cost of acquisition of new agricultural land	Lower of the Capital Gain or the Cost of acquisition of new land and building	Refer Note 9
(f)	<b>Other requirements</b>	See notes 1, 2 & 4	Assessee or his parents or HUF must have used the land for agricultural purpose for preceding two years	See notes 1, 2 & 4. Must have been used for business of industrial undertaking for preceding 2 years	See notes 1, 2 & 4. Rebate u/s. 88 or deduction u/s. 80C not to be granted for the same investment. New Asset must be retained for a period of 3 years

#### CAPITAL GAINS — VARIOUS EXEMPTIONS DETAILS

Section	54EE	54F	54G	54GA	54GB	
(a)	<b>Kind of assets transferred</b>	Any Long-term Capital Asset (inserted by Finance Bill, 2016)	Any long term capital asset other than residential house	Land or Building or any right therein or Plant or Machinery in Urban Area used for the business	Land or Building or any right therein or Plant or Machinery in Urban Area used for the business	Long-term capital asset being a residential property (a house or a plot of land)
(b)	<b>Eligible Assessee</b>	Any assessee	Individual & HUF	Industrial undertakings in urban area shifting to an area other than urban area	Industrial undertakings in urban area shifting to any Special Economic Zone	Individual & HUF
(c)	<b>Condition of period of holding of original Asset</b>	1 year for listed Shares, Listed Securities, Units of UTI/ Mutual Fund specified u/s. 10(23D), Zero-coupon bonds, 2 years for unlisted shares, 3 years for other capital assets	1 year for listed Shares, Listed Securities, Units of UTI/ Mutual Fund specified u/s. 10(23D), Zero-coupon bonds, 2 years for unlisted shares, 3 years for other capital assets	No period specified	No period specified	Assessee should hold shares for a period of 5 years as well as the company should hold new asset for 5 years. (Refer Note 7)

(d)	<b>Condition of utilisation of consideration</b>	Investment of whole or any Part of Capital Gain in "long term specified assets" as stipulated in the section. Investment should be made within 6 months from the date of transfer	Purchase of one Residential House in India within 2 years after or 1 year prior to date of transfer; or construction of one residential house in India within 3 years from date of transfer	Acquire similar assets and incur expenses on shifting original asset, within 1 year before, or 3 years from the date of transfer	Acquire similar assets and incur expenses on shifting original asset, within 1 year before, or 3 years from the date of transfer	a. Subscribe to equity shares of an eligible company before due date of return filing b. The company within 1 year of subscription should utilise the amount for purchase of new asset (refer note 6)
(e)	<b>Exempt Amount</b>	Investment made by an assessee in the long-term specified asset, from capital gains arising from the transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed * 50 lakh.	Refer Note 5	The amount of gain or the aggregate cost of new asset, and shifting expenses, whichever is lower	The amount of gain or the aggregate cost of new asset, and shifting expenses, whichever is low	Refer Note 5
(f)	<b>Other requirements</b>	See Note 1	Must not own more than 1 residential house other than the new asset on the date of transfer of original asset	Must have been shifted to non-urban area. See notes 1 & 2	See notes 1, 2, 3 and 4	Refer Note 8

## NOTES

1. In case new Asset is transferred before 3 years from date of purchase/construction, the Capital Gains exempted earlier will be chargeable to tax in year of transfer of new asset.
2. In order to avail the exemption, gains are to be reinvested, before the due date of return u/s. 139(1). If the amount is not so reinvested, it is to be deposited on or before that date in account of specified bank/ institution and it should be utilised within specified time limit for purchase/construction of new asset.
3. U/s. 54F Capital Gains exempted earlier shall be chargeable to tax — if (a) If the assessee purchases within 2 years or constructs within 3 years any residential house other than the one in which reinvestment is made & (b) If the new asset is transferred within a period of 3 years from the date of its purchase/ construction.
4. As per Section 54H, where the transfer is by way of compulsory acquisition, the period available for acquiring the new asset u/ss. 54, 54B, 54D, 54EC and 54F shall be computed from the date of receipt of compensation and not the date of transfer.
5. If cost of new asset is more than the net consideration of original asset, the whole of the gains is exempt. If cost of specified asset is less than net consideration, proportionate amount of the gains will be exempt i.e. Capital Gain x Cost of New Asset/Net consideration on sale of asset.
6. Under section 54GB—  
**“Eligible company”** means a company which fulfils the following conditions, namely:—
  - i. it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;
  - ii. it is engaged in the business of manufacture of an article or a thing;

- iii. it is a company in which the assessee has more than 50% share capital or more than 50% voting rights after the subscription in shares by the assessee; and
- iv. it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

“**New asset**” means new plant and machinery but does not include—

- v. any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
  - vi. any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
  - vii. any office appliances including computers or computer software;
  - viii. any vehicle; or
  - ix. any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.
7. U/s. 54GB, if the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property which was not charged to tax, shall be deemed to be the income of the assessee chargeable under the head "Capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.
8. The exemption u/s. 54GB is available in case of any transfer of residential property made on or before 31st March, 2017. However, the time period has been extended from 31st March, 2017 to 31st March, 2019 in case the investment is made in an "eligible start-up". (Inserted by Finance Act, 2016 wef 1-4-2017 (term "eligible start-up" - as defined in explanation below section 80-IAC(4)).
9. Exemption u/s. 54EC w.e.f. the 1st day of April, 2015.

Lower of the Capital Gain or the actual amount invested in specified assets.

However the aggregate investment made by assessee in the specified asset, during the financial year in which the original asset/assets are transferred and in the subsequent financial year should not exceed fifty lakh rupees

Rationale behind amendment in Section 54EC :—

Prior to amendment Section 54EC read as follows-

The capital gain arising from the transfer of a long-term capital asset shall be exempted to the extent of lower of capital gain or amount actually invested within a period of six months after the date of such transfer in long term specified asset.

However the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year should not exceed fifty lakh rupees.

The above provision had been interpreted by various Tribunals as follows-

The assessee can invest up to ₹ 1 crore in assets specified under section 54EC if the investment is spread over a period of two financial years at ₹ 50 lakh in each financial year. However, such investment should be made within a period of 6 months from the date of transfer.

Hence the proviso has been inserted so as to restrict the aggregate amount invested to ₹ Fifty lakh only.

# CLUBBING OF INCOME

SECTION	NATURE OF TRANSACTION	CLUBBED IN THE HANDS OF	CONDITIONS/EXCEPTIONS	RELEVANT REFERENCE
60	Transfer of Income without transfer of Assets.	Transferor who transfers the income.	Irrespective of:  1. Whether such transfer is revocable or not 2. Whether the transfer is effected before or after the commencement of IT Act.	1. Section 60 does not apply if corpus itself is transferred. [Grandhi Narayana Rao 173 ITR 593 (AP)]
61	Revocable transfer of Assets.	Transferor who transfers the Assets.	Clubbing not applicable if:  1. Trust/transfer irrevocable during the lifetime of beneficiaries/transferee or to transferor; 2. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case.	Transfer held as revocable  1. If there is provision to re-transfer directly or indirectly whole/part of income/asset 2. If there is a right to reassume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary. [S. Raghbir Singh 57 ITR 408 (SC)] 3. Where no absolute right is given to transferee and asset can revert to transferor in prescribed circumstances, transfer is held revocable. [Jyotendrasinhji vs. S. I. Tripathi 201 ITR 611 (SC)] 4. Trust in favour of minor children of assessee-stipulation that income from trust not to be given or used for beneficiaries until they attain majority, Income not to be clubbed — Section 64(1)(iii) expl. 2A [Kapoorchand vs. CIT 376 ITR 450 SC]
64(1)(ii)	Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial* interest.	Spouse whose total income (excluding income to be clubbed) is greater.	Clubbing not applicable if:  Spouse possesses technical or professional qualification and remuneration is solely attributable to application of that knowledge/qualification. (burden of proof of qualification is on assessee — Yashwant Chhajta vs Dy. CIT 210 Taxmann 280)	1. Income for the purpose of Section 64 includes losses. [P. Doraiswamy Chetty 183 ITR 559 (SC)] [also see Expl. (2) to Section 64] 2. The relationship of husband and wife must subsist at the time of accrual of the income. [Philip John Plasket Thomas 49 ITR 97 (SC)] 3. Income other than salary, commission, fees or remuneration is not clubbed under this clause.
64(1)(iv)	Income from assets transferred directly or indirectly to the spouse without adequate	Individual transferring the asset.	Clubbing not applicable if:  The assets are transferred;	1. Income earned out of Income arising from transferred assets not liable for clubbing. [M.S.S. Rajan 252 ITR 126 (Mad)]

	consideration.		<ol style="list-style-type: none"> <li>1. With an agreement to live apart.</li> <li>2. Before marriage.</li> <li>3. Income earned when relation does not exist.</li> <li>4. By Karta of HUF gifting coparcenary property to his wife. L. Hirday Narain vs. ITO 78 ITR 26 (SC)</li> <li>5. Property acquired out of pin money. R.B.N.J. Naidu vs. CIT 29 ITR 194 (Nag.)</li> </ol>	<ol style="list-style-type: none"> <li>2. Cash gifted to spouse and he/she invests to earn interest. [Mohini Thaper vs. CIT 83 ITR 208 (SC)]</li> <li>3. Capital gain on sale of property which was received without consideration from spouse [Seventilal M. Sheth vs. CIT 68 ITR 503 (SC)]</li> <li>4. Transaction must be real. [O.N. Mohindroo 99 ITR 583 (Delhi)]</li> </ol>
64(1)(vi)	Income from the assets transferred to son's wife.	Individual transferring the Asset.	<p>Condition:</p> <p>The transfer should be without adequate consideration.</p>	Cross transfers are also covered [C.M. Kothari 49 ITR 107 (SC)]
64(1)(vii), (viii)	<p>Transfer of assets by an individual to a person or AOP for the immediate or deferred benefit of his:</p> <p>(vii) — Spouse.</p> <p>(viii) — Son's wife.</p>	Individual transferring the Asset.	<p>Condition:</p> <ol style="list-style-type: none"> <li>1. The transfer should be without adequate consideration.</li> </ol>	<ol style="list-style-type: none"> <li>1. Transferor need not necessarily have taxable income of his own. [P. Murugesan 245 ITR 301 (Mad)]</li> <li>2. Wife means legally wedded wife. [Executors of the will of T.V. Krishna Iyer 38 ITR 144 (Ker)]</li> </ol>
64(1A)	Income of a minor child [Child includes step child, adopted child and minor married daughter].	<ol style="list-style-type: none"> <li>1. If the marriage subsists, in the hands of the parent whose total income is greater; or; [Anju Mehara vs. CIT 357 ITR 416 (P&amp;H)]</li> <li>2. If the marriage does not subsist, in the hands of the person who maintains the minor child.</li> <li>3. Income once included in the total income of either of parents, it shall continue to be included in the hands of same parent in the subsequent year and not in the income of other parent unless AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)</li> <li>4. Minors admitted to benefits of partnership— Clubbing provision was held to be applicable. CIT vs.</li> </ol>	<p>Clubbing not applicable for:—</p> <ol style="list-style-type: none"> <li>1. Income of a minor child suffering any disability specified u/s. 80U.</li> <li>2. Income on account of manual work done by the minor child.</li> <li>3. Income on account of any activity involving application of skills, talent or specialised knowledge and experience.</li> </ol>	<ol style="list-style-type: none"> <li>1. Income out of property transferred for no consideration to a minor married daughter, shall not be clubbed in the parents' hands. [Section 27]</li> <li>2. The parent in whose hands the minor's income is clubbed is entitled to an exemption up to • 1.500 per child. [Section 10(32)]</li> </ol>

		Shardaben Kishorebhai Patel (2014) 225 Taxman 375/48 taxmann.com 296 (Guj.)(HC)		
64(2)	Income of HUF from property converted by the individual into HUF property.	Income is included in the hands of individual & not in the hands of HUF.	Clubbing applicable even if:  The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual.	Fiction under this section must be extended to computation of income also. [M. K. Kuppuraj 127 ITR 447 (Mad)]

**Note:** 1) An individual shall deemed to have substantial interest in a concern for the purpose of Section 64(1)(ii).

**IF THE CONCERN IS A COMPANY**

**IF THE CONCERN IS OTHER THAN A COMPANY**

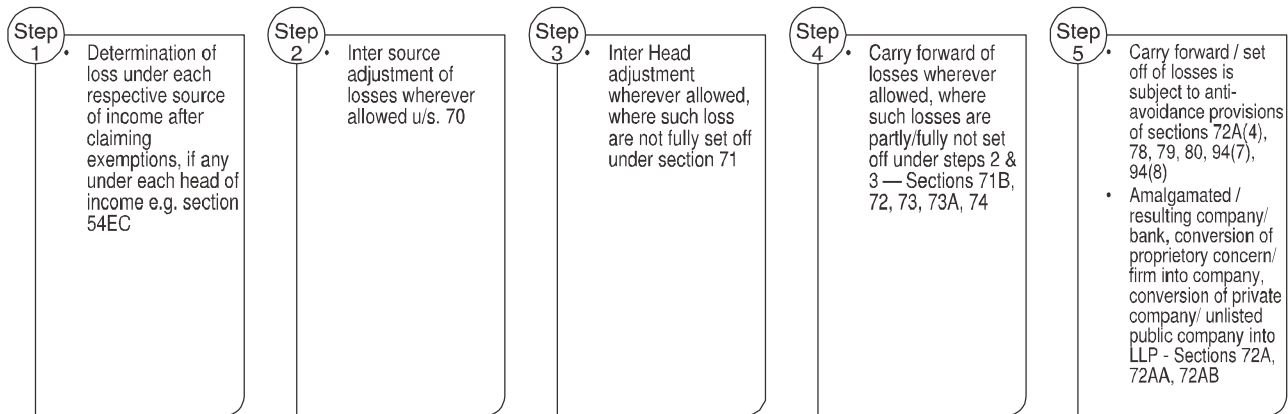
Person's beneficial shareholding should not be less than 20% of voting power either individually or jointly with relatives at any time during the previous year. (Shares with fixed rate of dividend shall not be considered).	Person either himself or jointly with his relatives is entitled in aggregate to not less than 20% of the profits of such concern, at any time during the previous year.
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2) The clubbed income retains the same head under which it is earned.

3) Income includes loss.

# SET OFF AND CARRY FORWARD OF LOSSES

## Steps in carry forward and set off of losses



Sr. No.	Section	Types of Loss	Set Off against Income		Can be carried forward (subject to Notes 4 and 8)
			In same Assessment Year	In subsequent Assessment Year	
1	71B	House Property	Any income under any head of Income	Income from House Property	8 years
2	71/72	Business or Profession (other than speculation/specified business or depreciation)	Any income under any head except salaries	Business income only (Note 1)	8 years
3	72 r.w.ss. 32(2) & 35(1)(iv)	Unabsorbed Depreciation and Unabsorbed Capital Expenditure for Scientific Research	Any income under any head except Salaries	Any income under any head except Salaries	No restriction on number of years
4	73	Speculation Loss (Notes 2 & 3)	Speculation Profit Only	Speculation Profit Only	4 years (w.e.f. A.Y. 2006-07)
5	70/74	Short-term Capital Loss r.w.s. 94(7) in respect of units of Mutual Funds/securities & 94(8) in respect of units of Mutual Funds or UTI (Notes 8 and 9)	Any Capital Gain	Any Capital Gain	8 years
6	70/74	Long-term Capital Loss (other than equity shares or units of equity oriented mutual fund or units of a business Trust which are subjected to STT and which are exempt u/s 10(38))	Long-term Capital Gain	Long-term Capital Gain	8 years
7	71/74	Long-term Capital Loss on equity shares & units of equity oriented mutual fund or units of a business Trust which are subjected to STT (See Note 11)	Not Eligible for Set off (See Note 11)	Not Eligible for Set off (See Note 11)	N.A.
8	74A	Loss from Owning and Maintaining race horses	Only against income from horse races	Only against income from horse races	4 years
9	71	Other Sources	Any income under any head of income	Unutilised loss not allowed for carry forward	N.A.
10	72A(1) r.w. Rule 9C	In case of amalgamation			
		a. Accumulated Business Losses (other than speculation business loss) of the Amalgamating Company	For Conditions regarding transfer of accumulated Business losses — See Note 16	Business Income of the Amalgamated Company	8 years from the expiry of the year of amalgamation



				See Notes 15 & 16	
		b. Unabsorbed Depreciation of the Amalgamating Company	For Conditions regarding transfer of unabsorbed depreciation — See Note 16	Any Income of the Amalgamated Company	Indefinitely
11	72A(4)	In case of Demerger			
		a. Accumulated Business losses (other than speculation business loss) of Demerged Company	For Conditions regarding transfer of accumulated Business losses — See Note 17	Business Income of the Resulting Company See Notes 15 & 17	Unexpired period out of total permissible period of 8 years
		b. Unabsorbed Depreciation of the Demerged Company	For Conditions regarding transfer of unabsorbed depreciation - See Note 17	Any Income of the Resulting Company	Indefinitely
12	72A, 72A(6)	In case of Firm/Prop. Concern succeeded by Company			
		a. Accumulated Business losses (other than speculation business loss) of Firm/Prop. Concern	For Conditions regarding set off of accumulated Business Loss - See Note 18	Business Income of the Successor Company See Notes 15 & 18	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of the Firm/Prop. Concern	For Conditions regarding set off of unabsorbed Depreciation — See Note 18	Any Income of the Successor Company	Indefinitely
13	72A(6A)	Conversion of Private Company, Unlisted Public Company into LLP (w.e.f. A.Y. 2011-12)			
		a. Accumulated Losses (other than speculation losses) of such Company	For Conditions regarding set off of accumulated Business Loss — See Note 19	Business income of the successor LLP See Notes 15 & 19	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such Company	For Conditions regarding set off of unabsorbed depreciation — See Note 19	Any Income of the successor LLP	Indefinitely
14	72AA	Amalgamation of Banking Company with a Banking Company (w.e.f. A.Y. 2005-06)			
		a. Accumulated Losses (other than speculation losses) of such bank	For Conditions regarding set off of accumulated Business Loss — See Note 21	Business income of the successor bank(See Notes 20 & 21)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For Conditions regarding set off of unabsorbed depreciation — See Note 19	Any Income of the successor bank	Indefinitely
15	72AB(1)	Amalgamation of Co-op. Banks (w.e.f. A.Y. 2008-09)			
		a. Accumulated Losses (other than speculation losses) of such bank	For definition of Accumulated Loss — See Note 22	Business income of the successor bank(See Note 22)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For definition of unabsorbed depreciation — See Note 22	Any Income of the successor bank	Indefinitely
16	72AB(3)	Demerger of Co-operative Bank			

		a. Accumulated Losses (other than speculation losses) of such bank	For Conditions regarding set off of accumulated Business Loss — See Note 23	Business income of the successor bank(See Notes 22 & 23)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For Conditions regarding set off of unabsorbed depreciation — See Note 23	Any Income of the successor bank	Indefinitely
17	73A r.w.s. 35AD	Losses of Specified Business	Income from Specified Business	Income from Specified Business	No Time Limit

## Notes

1. From A.Y. 2000-01, conditions as to continuation of the same business in which the loss was incurred, has been dispensed with.
2. Losses from undermentioned transactions would not be considered as speculation transactions and such losses can be set off against any other income.
  - o Transactions entered into by the assessee to guard against the future price fluctuations of the raw material or merchandise in course of his manufacturing or merchandising. [u/s. 43(5) proviso (a)].
  - o Transactions of trading in derivatives (referred in section 2(ac) of Securities Contracts (Regulation) Act, 1956) entered into on recognised stock exchange through a broker or SEBI recognised intermediary and supported by a time stamped contract note [u/s. 43(5) proviso (d)].
  - o Transaction in respect of trading in commodity derivatives carried out in a recognised association which is chargeable to commodities transaction tax shall not be considered to be a speculative transaction [u/s. 43(5) proviso (e)]
3. As per the Explanation to Section 73 Losses from purchase and sale of shares would be treated as speculation losses except in case of following companies
  - o company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources",
  - o a company whose principal business is the business of banking or the granting of loans and advances (A.Y. 2014-15 & onwards)
  - o a company whose principal business is the business of trading in share or banking or the granting of loans and advances (A.Y. 2015-16 & onwards).
4. Priority for set off of depreciation, business loss may be in the following order:
  - o Current Year's Depreciation
  - o Unabsorbed Carried Forward Business Loss
  - o Unabsorbed Carried Forward Depreciation
5. In case of firm, where a change has occurred in the constitution of a firm, the firm shall not be entitled to carry forward and set off so much of the loss in proportion to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year [Section 78(1)]. However, such restriction shall not be applicable where any person is succeeded by way of inheritance [Section 78(2)].
6. In case of company in which public are not substantially interested (i.e., closely held companies), Unabsorbed Loss relating to any assessment year can be carried forward and set off against income in a subsequent year only if on the last day of the previous year in which the loss is sought to be set off, the shares of the company carrying not less than 51% of voting power are beneficially held by the persons who beneficially held the shares of the company carrying not less than 51% of the voting power on the last day of the previous year in which the loss was incurred (Section 79).

7. In terms of section 80, the losses other than depreciation & house property loss can be carried forward only if determined in pursuance of the return filed within the time prescribed u/s. 139(1). However in case return is filed late, Income Tax Authorities have the power to condone delay on the basis of limit of losses — Circular No. 8/2001 dated 16-5-2001.
8. As per section 94(7) if any person
  - o buys units of mutual funds/securities within the period of 3 months prior to record date for dividend; and
  - o transfers/sells such securities within 3 months of such record date or transfers/sells units within the period of 9 months of such record date
  - o dividend or income received or receivable on such securities/units is exempt.

Then, the loss arising to the extent of the amount of dividend received or receivable shall be ignored while computing his total income chargeable to tax.

9. As per section 94(8) if any person
  - o buys units of mutual funds or UTI within the period of 3 months prior to record date for issue of bonus units and receives bonus units on such date
  - o transfers/sells all or any of the original units within period of 9 months of such record date
  - o he continues to hold all or any of the bonus units

Then the loss arising in respect of such purchase & sale transaction shall be ignored while computing his total income. However loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units as are held on the date of sale or transfer.

10. Capital gain resulted from the transfer of a depreciable asset held for a period of more than three years, may be set off against the brought forward loss from the long-term capital assets.
11. Long-term Capital Gains in respect of equity shares sold on recognised stock exchange and units of equity oriented mutual fund or units of a business Trust which has suffered Securities Transaction Tax (STT) are exempt u/s. 10(38) with effect from 1-10-2004. However long-term gains is not exempt in case where STT is not paid on sale e.g. off market transactions, off market buyback, etc.
12. In case of buy-back of shares which is subject to tax u/s. 115QA, arisen losses may not be allowed to be set off or carried forward.
13. Long-term capital losses except in case of sale/transfer of shares/units of equity oriented mutual funds/ units of a business trust subjected to STT to be set off only against taxable long-term capital gains and not against exempt long-term capital gains. However, set off of indexed long-term capital loss can be set off against long-term capital gain without indexation.
14. Provisions of sections 70, 71 and 72 are applicable even in respect of loss incurred in business which are eligible for deduction under 80-IA, 80-IB, etc. Where section 71 grants an option to an assessee for set off of any head of loss against any head of income, then at the option of assessee such loss could be set off against respective income. E.g. where assessee has suffered loss under head 'Business' at his option such loss could be set off against 'Income from other sources', in first instance, and only surviving loss could be set off against 'income from capital gains'.
15. For the purpose of section 72A, Accumulated loss, Unabsorbed Depreciation and Industrial undertaking has been defined as :

**“Accumulated Loss”** means so much of the loss of the predecessor firm or the proprietary concern or the company under the head Profits and gains of business or profession (other than speculation loss), which such firm or concern or the company would have been entitled to carry forward or set off as if the business reorganisation/conversion/amalgamation/demerger had not occurred.

**“Unabsorbed Depreciation”** means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the company, which such firm, or concern or the company would have been

entitled to carry forward or set off as if the business reorganisation/ conversion/amalgamation/demerger had not occurred.

**‘Industrial undertaking’** means any undertaking engaged in the manufacture or processing of goods, or the manufacture of computer software or in the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircraft or rail systems or the business of providing telecommunication services whether basic or cellular including radio paging, domestic satellite service, network of trunking, broadband network and internet services.

**‘Specified Bank’** means the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959, or a nationalised bank.

16. In case of Amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company or of a banking company as referred to in section 5(c) of the Banking Regulations Act, 1949 with a specified bank or of a public sector company engaged in the business of operation of aircraft with one or more public sector companies engaged in the similar business, the accumulated loss and unabsorbed depreciation of Amalgamating (transferor) company can be transferred to Amalgamated (transferee) company, if
- a. Amalgamated company holds continuously 3/4th book value of fixed assets acquired from Amalgamating Company for at least 5 years from date of Amalgamation.
  - b. Amalgamated company continues to carry on the business of the amalgamating company for at least 5 years.
  - c. The Amalgamated company shall achieve the level of production of at least 50% of the installed capacity of the said undertaking before the end of the four years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. The amalgamated company shall also furnish to Assessing Officer a certificate in Form No. 62 providing prescribed production particulars, duly verified by chartered accountant. (Rule 9C). However, on application to Central Government, this condition may be relaxed
  - d. Amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years.
  - e. Amalgamating company has held continuously as on the date of amalgamation at least 3/4th of the book value of fixed assets held by it 2 years prior to the date of amalgamation.

In case of Demerger, accumulated loss and unabsorbed depreciation of Demerged Company can be transferred to Resulting Company:

- where such losses and unabsorbed depreciation is directly relatable to undertaking transferred, the whole of such losses or unabsorbed depreciation.
  - a. where such losses and unabsorbed depreciation is not directly relatable to undertaking transferred, then such losses and unabsorbed depreciation would be apportioned in ratio of assets retained by the Demerged Company and transferred to the Resulting Company.
  - b. The Central Government may by a notification in Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

Carry forward and set off of loss incurred by the erstwhile Partnership firm and Proprietary concern is allowed only if conditions prescribed u/s 47(xiii)/47(xiv) is complied. In case prescribed conditions are not complied, aggregate set off of such losses or allowance of depreciation in any previous year shall be income of the successor company of the previous year in which such conditions are violated.

Carry forward and set off of loss incurred by the erstwhile Private company or Unlisted public company is allowed only if conditions prescribed u/s. 47(xiii b) are complied. In case prescribed conditions are not complied, aggregate set off of such losses or allowance of depreciation in any previous year shall be income of the successor LLP of the previous year in which such conditions are violated.

For the purpose of section 72AA Accumulated loss and Unabsorbed Depreciation has been defined as:

**“Accumulated Loss”** means so much of the loss of the amalgamating banking company under the head Profits and gains of business or profession (other than speculation loss), which such amalgamating banking company would have been entitled to carry forward or set off as if the amalgamation had not occurred.

**“Unabsorbed Depreciation”** means so much of the allowance for depreciation of the amalgamating banking company which, would have been allowed to such banking company as if the amalgamation had not occurred.

- There is amalgamation of a banking company with any other banking institution.
  - a. Amalgamation is sanctioned u/s. 45(7) of Banking Regulation Act, 1949.
  - b. Condition of sections 72A and 2(1B)(i)/(ii)/(iii) need not be satisfied.

For the purpose of section 72AB Accumulated loss and Unabsorbed Depreciation has been defined as:

**“Accumulated Loss”** means so much of the loss of the amalgamating co-operative bank or the demerged co-operative bank, under the head Profits and gains of business or profession (other than speculation loss), which such amalgamating co-operative bank or the demerged bank would have been entitled to carry forward or set off as if the business reorganisation had not taken place.

**“Unabsorbed Depreciation”** means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, which would have been allowed to such amalgamating co-operative bank or the demerged co-operative bank as if the business reorganisation had not taken place.

- The predecessor bank is engaged in banking business for 3 or more years.
  - a. The predecessor bank has held 3/4th of the book value of fixed assets as on the date of business reorganisation, continuously for 2 years prior to the date of business reorganisation.
  - b. The successor bank holds 3/4th of book value of fixed assets of the predecessor bank, continuously for minimum 5 years from the date of business reorganisation.
  - c. The successor continues the business of the predecessor bank, continuously for minimum 5 years from the date of business reorganisation.
  - d. The successor fulfils such other conditions as may be prescribed.

In case of amalgamation/demerger, unabsorbed capital expenditure e.g. scientific research, family planning may also be allowed to be carried forward and set off in the hands of resulting company.

Any loss under any head of income cannot be set off against the income from winnings from lotteries, crossword puzzles, race horses etc.

# INTERNATIONAL TRANSFER PRICING

## INDIAN TRANSFER PRICING PROVISIONS

The Finance Act, 2001 introduced detailed provisions relating to transfer pricing, requiring all "international transactions" between "associated enterprises" to be at arm's length. These provisions are applicable to the transactions with effect from 1st April, 2001. The Finance Act, 2012 has extended the provisions of transfer pricing regulations to certain specified domestic transactions ("SDTs") which fulfil the prescribed conditions. The Finance Act, 2016 has recently introduced Country-by-Country reporting requirements within the Indian transfer pricing regulations.

## SCOPE OF APPLICATION OF THE PROVISIONS

Any income/expense arising from an international transaction with an associated enterprise must be computed having regard to the arm's length price. Also, costs or expenses allocated or apportioned between two or more associated enterprises based on mutual agreement or arrangement, should be determined having regard to arm's length price. The transfer pricing provisions are wide enough to cover transactions between a foreign entity and its permanent establishment in India. The transfer pricing provisions would however not apply in cases wherein the application of the arm's length price results in a downward revision in the income chargeable to tax in India or results in an increase in the loss.

## INTERNATIONAL TRANSACTIONS

- The term "international transactions" covers a wide range of revenue and capital transactions between two or more associated enterprises where either or both are non-residents;
- The term also includes arrangements between associated enterprises for cost sharing in connection with benefits, services or facilities provided to any of such enterprises.

Additionally, under certain circumstances transactions between two unrelated entities can be deemed to be an international transaction. This is when an enterprise, say X Ltd., has entered into a transaction with an unrelated person, say A Inc. and there exists a prior agreement in relation to this transaction between A Inc. and Y Inc. (an associated enterprise of X Ltd.); or the terms of this transaction (i.e., the transaction between X Ltd. and A Inc.) are determined in substance between A Inc. and Y Inc. The Finance Act, 2014 has provided that the deeming provision should also apply to cases where the third party is an Indian resident.

The Finance Act, 2012 has added an explanation to clarify the expression "international transaction". It includes:

- business restructuring or reorganisation irrespective of bearing on profit, income, losses - current or future;
- capital financing, lending or guarantee, any type of advance, receivables, etc.;
- provision of services including marketing research, technical service, repairs, legal or accounting, etc.;
- tangible property - which is defined to include building, transportation vehicle, machinery, furniture, equipment, etc. or commodity or any other article, product or thing; and
- intangible property - which is defined to include customer list, franchise, marketing channel, brand, etc., or any other business or commercial rights of similar nature or any other similar items that derive value from its intellectual content rather than physical attributes.

## ASSOCIATED ENTERPRISE

The term "Associated Enterprise" is defined based on the criteria of direct or indirect participation in the management, control or capital of the other enterprise or by the same persons in such enterprise. The regulation gives inter alia, an illustrative list of relationships to which transfer pricing rules apply:

- equity holding of 26%;
- control of board of directors;
- loans/guarantees;

- dependence on the use of specified intangibles of the other enterprise;
- influence over supply of raw material/finished products, etc.

Transfer pricing provisions have also been made applicable to transactions with parties located in Notified Jurisdictional Areas. The benefit of variation between actual and arm's length price is not applicable to such transactions.

### **COMPUTATION OF ARM'S LENGTH PRICE**

The arm's length price in relation to an international transaction is to be determined using the most appropriate method out of the specified methods as prescribed by the Central Board of Direct Taxes ("CBDT"/"Board") in Rule 10B, having regard to the nature or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as may be prescribed. The six specified methods are:

- Comparable Uncontrolled Price Method ("CUP");
- Resale Price Method ("RPM");
- Cost Plus Method ("CPM");
- Profit Split Method ("PSM");
- Transactional Net Margin Method ("TNMM"); and
- Other Method

CBDT has introduced the sixth method by way of Notification No. 18/2012, dated May 23, 2012. The new method inserted by way of Rule 10AB states that "any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all relevant facts", shall be considered as one of the methods for determination of arm's length price. This Rule is applicable from F.Y. 2011-12 onwards. The Indian regulations refers to the "most appropriate method" and has no preference of one method over the other.

### **USE OF MULTIPLE YEAR DATA AND INTER QUARTILE RANGE**

The Finance Act, 2014 has introduced the concept of range and the use of multiple year data. The new rules shall apply to international transactions entered on or after 1st April, 2014.

#### **Data to be used for application of TNMM, RPM or CPM**

- The current year data shall continue to be used for comparability analysis;
- Where current year data is not available at the time of filing return of income, data pertaining to preceding financial year can be used;
- However, at the time of transfer pricing assessment, if the relevant data for current year is available, then such data will be used for determination of arm's length price irrespective of the fact that the same was not available at time of filing return of income.

#### **Range concept**

- The range concept can be applied for determining arm's length price under each of the transfer pricing methods namely, CUP, TNMM, RPM or CPM.
- Selection of a minimum of six comparable entities is required. However, the earlier concept of arithmetic mean and benefit of +/- 1% or 3% will continue in cases where the number of comparables are inadequate.
- Three-year data of comparables would be considered and the weighted average of the three-year data of each comparable would be used to construct the data set. In certain circumstances, data of two out of three years could also be used. Additionally, single year data can be used, provided that the data is for the current year in which the tested transaction is undertaken or a year prior to the current year in the case of non-availability of data for the current year.

- An arm's length range is between the 35th and 65th percentile of the data set, pursuant to the definition provided in the amended rules.
- If the taxpayer's transaction price of the international transaction falls within the range, then the transaction price will be considered as arm's length and no adjustments will be required.
- If the taxpayer's transaction price of the international transaction falls outside the arm's length range then the median (50th percentile) of the dataset will be considered as arm's length price. Accordingly the difference between transaction price and median will be the adjustment.

## **REFERENCE TO TRANSFER PRICING OFFICER**

The CBDT recently issued new guidelines<sup>1</sup>, providing detailed procedures to be followed by the Assessing Officers and the Transfer Pricing Officers for scrutiny of transfer pricing cases. The new guidelines state categorically that the selected cases for scrutiny involving transfer pricing transactions would need to be referred to the Transfer Pricing Officer, and would not be done by the Assessing Officer under Section 92C(3) of the Act. This reference to the Transfer Pricing Officer would be after recording the basis of selection through transfer pricing risk assessment to satisfy the requirement of "necessary and expedient" under Section 92CA(1) of the Act, and after obtaining the due approval of the jurisdictional Principal Commissioner of income tax or the Commissioner of Income tax. For the cases selected for scrutiny on non-transfer pricing parameters, the case could be referred to the Transfer Pricing Officer only if the Assessing Officer finds any transfer pricing transaction during the course of assessment. Such cases would be referred by the Assessing Officer to the Transfer Pricing Officer only after giving an opportunity of being heard to the taxpayer. The Assessing Officer would also be required to record his reasons and would seek necessary approval of the Commissioner or Principal Commissioner in each of such cases before referring to the Transfer Pricing Officer.

Transfer Pricing Officer can determine arm's length price of any international transaction that comes to his notice in the course of proceedings even if the transaction is not referred to him by the Assessing Officer. Further the Transfer Pricing Officer is also granted additional powers of survey, so as to conduct on-the-spot enquiry and verification. The Finance Act, 2012 has empowered the Transfer Pricing Officer to determine arm's length price of any transaction entered into by the assessee, as if they are international transactions, even when such transactions are not reported by the taxpayer.

The Transfer Pricing Officer shall determine the arm's length price and send a copy of his written order to the Assessing Officer and to the taxpayer. Wherever the Assessing Officer proposes to make any variation in the income or loss returned of the assessee as a consequence of the above order of the Transfer Pricing Officer, the Assessing Officer shall forward the draft order to assessee for its objections (if any).

On receipt of draft order the assessee shall communicate either its acceptance or file objections against such order with Dispute Resolution Panel ("DRP") within 30 days. The DRP which is a collegium of three Commissioners of Income Tax shall issue binding directions to Assessing Officer after due consideration of objections and evidences filed by assessee. The DRP is empowered to include any matter arising out of the assessment proceedings, irrespective whether such matter was raised by the taxpayer or not.

The Assessing Officer shall pass appropriate order in conformity with the directions of DRP within nine months from the end of the month, in which the draft order is forwarded to the assessee. By virtue of the Finance Act, 2016, the Income Tax Department will have no right to appeal against the order issued in conformity with the directions of the DRP, however the assessee has the option to appeal against the final assessment order before the Income Tax Appellate Tribunal.

## **COMPUTATION OF TOTAL INCOME**

Where the Assessing Officer computes the total income of the taxpayer having regard to the arm's length price so determined by the Transfer Pricing Officer, no tax benefits under sections 10A, 10AA or 10B or under Chapter VI-A of the Act will be allowed in respect of the amount of income by which the total income of the taxpayer is enhanced after such computation by the Assessing Officer.

## **NO ADJUSTMENT TO ASSOCIATED ENTERPRISE's INCOME**

In cases where the total income of a taxpayer is re-computed after determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible at source, the income of the other associated enterprise shall not be recomputed by reason of such re-determination of arm's length price in the case of the taxpayer.



## **STATUTE OF LIMITATIONS ON ASSESSMENT**

The time limit for concluding tax assessments involving transfer pricing is reduced from thirty six months to thirty three months with the Transfer Pricing Officer to pass order sixty days prior to the said time limit. For instance, the transfer pricing assessment for A.Y. 2013-14 shall be required to be concluded by the Transfer Pricing Officer by 31st October, 2016. The amendment is effective from 1st June, 2016.

By virtue of amendment to section 92CA(3), the time limit for transfer pricing assessment is extended beyond the limitation period so as to allow the Transfer Pricing Officer at least sixty days for passing the transfer pricing order after excluding the period for which the assessment proceedings before the Transfer Pricing Officer are stayed by any court; or the information is sought from any other country under the exchange of information process. The amendment is effective from 1st June, 2016.

## **ALTERNATE DISPUTE RESOLUTION MECHANISM**

The Finance (No. 2) Act, 2009 had introduced section 144C in respect of the provisions relating to Alternate Dispute Resolution Mechanism ("ADRM"). The dispute resolution mechanism is applicable for taxpayers subject to transfer pricing adjustment and to foreign companies. The entire process of ADRM would be handled by a dispute resolution panel ("DRP") comprising of three Commissioners of Income Tax constituted by the Board and having powers as vested in a civil court. The DRP may confirm, reduce or enhance the adjustment as proposed by the Assessing Officer. The Finance Act, 2012 has empowered the DRP to include any matter arising out of the assessment proceedings, irrespective whether such matter was raised by the tax-payer or not.

## **DOCUMENTATION**

Every person who has entered into an international transaction with an associated enterprise would be required to keep and maintain the prescribed information and documentation. Such information and documentation need not be maintained in cases where the aggregate book value of international transactions entered into by the taxpayer does not exceed ₹,1 one crore. However, in such cases, the taxpayer would need to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with the arm's length principle.

The Finance Act, 2016 has provided that w.e.f. 1st April, 2017, every person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed. The details regarding the same are provided separately in the chapter on country by country reporting.

## **RELAXATION OF REQUIREMENT TO MAINTAIN FRESH DOCUMENTATION**

It is prescribed that in cases wherein an international transaction continues to have effect over more than one financial year, fresh documentation need not be maintained separately in respect of each financial year, unless there is any significant change in the nature or terms of the international transaction, in the assumptions made, or in any other factor which could influence the transfer price. In case there is a significant change, fresh documentation shall be maintained bringing out the impact of the change on the pricing of the international transaction.

## **PERIOD OF MAINTENANCE OF DOCUMENTATION**

The information and documents should, as far as possible, be contemporaneous and should exist latest by the date of filing the accountant's report which is 30th November.

Further, the specified information and documents are required to be maintained for a period of eight years from the end of the relevant assessment year.

## **ACCOUNTANT'S REPORT**

It is prescribed that every person who has entered into an international transaction shall obtain a report from an independent practicing Chartered Accountant. This Report (Form No. 3CEB) should be furnished to the Income Tax department before the due date of filing the return as per Explanation 2 to Section 139(1) which is 30th November. The Accountant's Report gives particulars of associate enterprises, international transactions, arm's length price and the method used for determining arm's length price.

## SAFE HARBOUR

The CBDT has notified the Safe harbour rules (10TA to 10TG) for international transactions. The rules contains the procedure for adopting safe harbour, the transfer price to be fixed and the compliance procedures to be undertaken. In order to avail the benefit of Safe Harbour provisions, a taxpayer is required to file Form no. 3CEFA with the revenue authorities. A validly exercised safe harbour option can continue to remain in force for a period of 5 years or period opted by the taxpayer, whichever is less, provided certain conditions are met.

The rules cover international transactions in following categories/sectors:

Sr. No.	Nature of Transaction	Safe Harbour
1.	Information Technology (IT)	Operating Profit margin on operating expenses is 20% - 22% or more
2.	IT Enabled Services	Operating Profit margin on operating expenses is 20% - 22% or more
3.	Knowledge Process Outsourcing services	Operating Profit margin on operating expenses is 25% or more
4.	Contract Research & Development in the IT sector	Operating Profit margin on operating expenses is 30% or more
5.	Contract Research & Development in the Pharmaceutical Sector	Operating Profit margin on operating expenses is 29% or more
6.	Financial transactions	For Outbound loans:  Interest rate = State Bank of India's Base Rate (as on 30th June of the relevant year) +150 to 300 basis points For Corporate Guarantees:  Commission/Fee = 1.75% to 2% of the amount guaranteed.
7.	Auto Ancillary Manufacturing	Operating Profit margin on operating expenses is 8.5% - 12% or more

The key directives/clarifications are as follows:

- If the taxpayer has opted for Safe Harbour but has reported rates or margins less than the Safe Harbour rates or margins, then income has to be computed by the tax authorities on the basis of the Safe Harbour rates or margins.
- The Safe Harbour rates or margins are not a benchmark for the cases not covered by the Safe Harbour Rules. Thus, regular transfer pricing audits should be carried out without having regard to the Safe Harbour rates or margins.

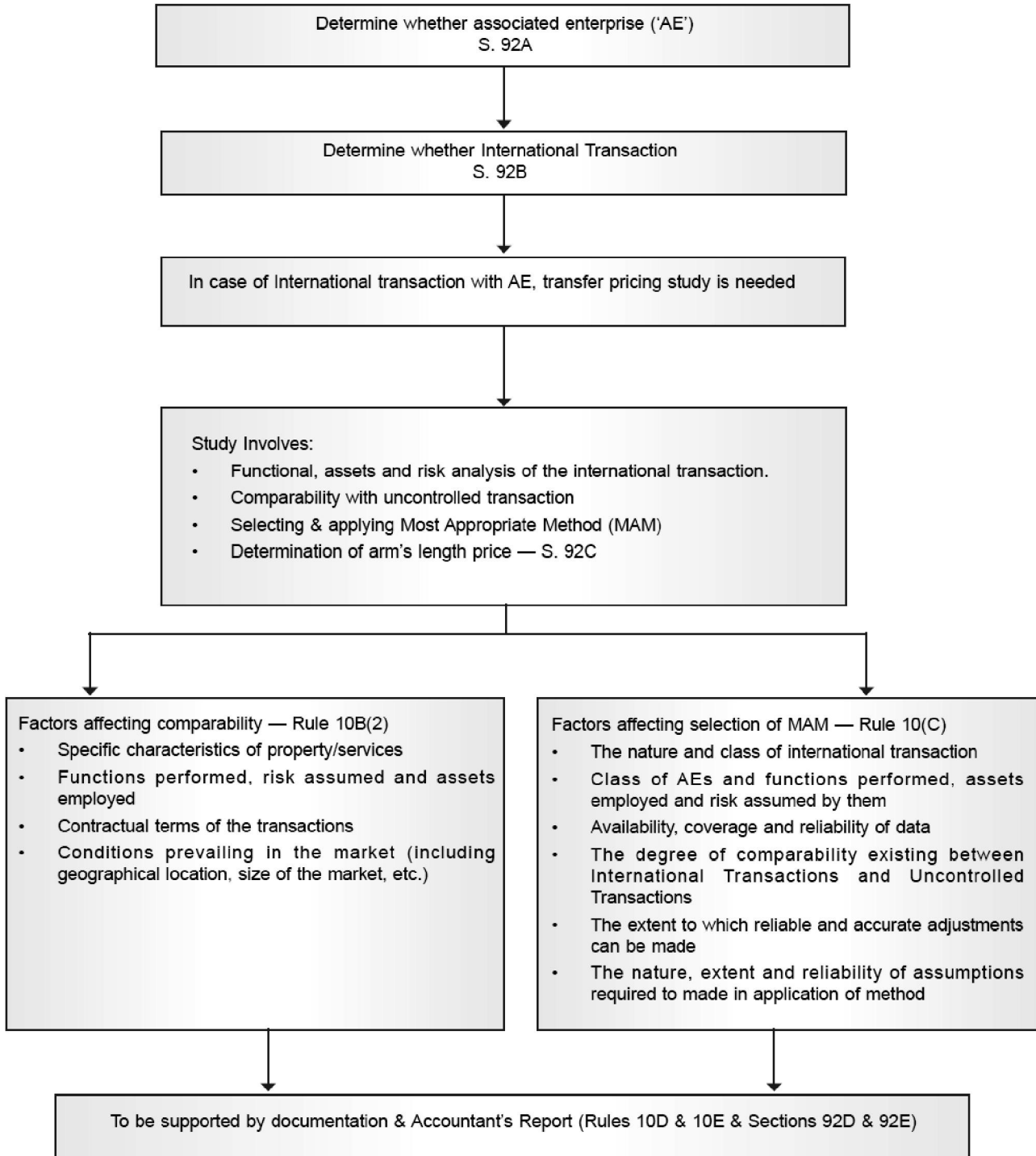
The Safe Harbour rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

## PENALTIES

The provisions have prescribed levy of penalties for non-compliance with the statutory requirements, as follows:

Sr. No.	Default	Penalty
1	Under-reporting/Misreporting of income (section 270A) Under-reporting of income due to failure to report international transactions/ deemed international transactions or any under-reporting is consequence of any misreporting by any person	50%-200% of amount of tax payable on under-reported income
2	Transfer Pricing Documentation (section 271AA, section 271G) Failure to keep and maintain any such information and document as required by section 92D; Failure to report transaction in Form 3CEB; Maintaining or furnishing incorrect information or document. Failure to furnish documentation required by the tax authorities	2% of the value of each international transaction in respect of every such failure
	Form 3CEB (section 271BA) Failure to furnish the prescribed report of the accountant in Form 3CEB under section 92E	Rs.100,000

## Flow Chart for Transfer Pricing Regulations



### Alternate Mechanisms

- Advanced Pricing Agreement (Rules 10D to 10T)
- Mutual Agreement Procedure (Double Taxation Avoidance Agreement)
- Safe Harbour (Rules 10TA to 10TF)

# DOMESTIC TRANSFER PRICING

## INTRODUCTION

Finance Act, 2001 introduced detailed provisions relating to transfer pricing, requiring all 'international transactions' between 'associated enterprises' to be at arm's length. Hitherto, the provisions of transfer pricing were applicable in relation to an international transaction only. However, after the grand success of International Transfer Pricing Hon'ble Finance Minister has cast his net wider and deeper for the next one by including "Specified Domestic Transactions (SDT)" in the purview of Transfer Pricing (TP).

## OBJECTIVE

Section 40A of the Act empowers the AO to disallow unreasonable expenditure incurred between related parties. Further under Chapter VI-A and Section 10AA, the AO is empowered to recompute the income of the undertaking for the purposes of the deduction based on fair market value (FMV). However, no specific method is provided to determine the reasonableness of expenditure or FMV to re-compute the income in such related party transactions.

Thus while dealing with the issue that, whether the assessee company and its service provider are related companies in terms of Section 40A(2), Hon'ble Supreme Court in *CIT vs. GlaxoSmithKline Asia (P) Ltd. [(2010) 195 Taxmann 35]* had observed "The larger issue is whether Transfer Pricing Regulations should be limited to cross-border transactions or whether the Transfer Pricing Regulations to be extended to domestic transactions?" The application and extension of the scope of TP regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonable expenditure between related domestic parties. Also it will create a legal obligation on assessees to maintain proper documentation.

Keeping in view the observations of the Apex Court, the Finance Act, 2012 made amendments to Chapter X to extend the applicability of transfer pricing provisions to SDTs with effect from Assessment Year 2013-14.

## SCOPE OF APPLICATION OF THE PROVISIONS

Specified Domestic Transaction (SDT) means any of the following transaction namely:

1. *any expenditure incurred between related parties referred to in section 40A(2)(b);*
2. *any transaction referred to in section 80A;*
3. *any transfer of goods or services referred to in section 80-IA(8);*
4. *any business transacted between the assessee and other person as referred to in section 80-IA(10);*
5. *any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which section 80-IA(8) or section 80-IA(10) are applicable; or*
6. *any other transaction as may be prescribed,*

and where the aggregate of such transactions exceeds a sum of Rs. 20 crores (Up to assessment year 2015-16, this threshold limit was Rs. 5 crores).

The provisions of Domestic Transfer Pricing will apply only when the transaction qualifies as a Specified Domestic Transaction.

Generally, if a transaction is an international transaction, then the same will not be a SDT.

### **(1) any expenditure incurred between related parties referred to in section 40A(2)(b)**

This clause covers only expenditure and not income. Expenditure here does not include capital expenditure. Thus any payment for revenue expenditure made to a related party has to be at arm's length price.

#### **Few examples where DTP will be applicable:**

- Expenditure on purchase of goods

- Procurement of services
- Purchase/lease of movable and immovable property
- Interest payments
- Use of common facilities and infrastructure
- Director's Remuneration, Sitting fees, Commission to directors
- Commission, etc.

**Examples where DTP will not be applicable:**

- It doesn't cover a case where a specified person has received income which is less than Arm's Length Price. To illustrate, if a person gives an interest free loan, the notional interest on such loan is not covered by the definition.
- Depreciation on purchase of capital asset will not be covered since depreciation is an allowance and not expenditure.

Section 40A(2)(b) covers the various situations mentioned below wherein the two persons are related parties. Relationship can exist at any time during the year.

Sr. No.	Payer/assessee	Payee
1	Individual	Any relative (Relative means spouse, brother, sister, lineal ascendant or descendant)
2	a) Company	Any director or relative of such director
	b) Firm	Any partner or relative of such partner
	c) Association of Person (AOP)	Any member or relative of such member
	d) Hindu Undivided Family (HUF)	Any member or relative of such member
3	Any assessee	Any individual or relative of such individual having substantial interest in the assessee's business or profession  (Substantial interest means beneficial interest of 20% or more of the voting rights/profits as the case may be at any time during the year)
4	Any assessee	Company, Firm, AOP, HUF having substantial interest in the assessee's business or any director, partner, member or relative of such director, partner or member or a company having the same parent company  E.g. A Ltd. (holding company) X Ltd. (subsidiary of A Ltd.) Y Ltd. (subsidiary of A Ltd.) X Ltd. and Y Ltd. are related entities
5	Any assessee	Company's director, Firm's partner, AOP's member, HUF's member having substantial interest in the assessee's business or any director, partner, member or relative of such director, partner or member
6	Individual or his relative	Assessee having substantial interest in the business or profession of any person
	Company	Company, director or his relative having substantial interest in the business or profession of any person
	Firm	Firm, partner or his relative having substantial interest in the business or profession of any person
	AOP/HUF	AOP/HUF, member or his relative having substantial interest in the business or profession of any person

**(2) Any transaction referred to in section 80A**

Section 80A(6) refers to transactions in respect of goods or services. Hence it would not cover a transaction which does not involve goods or services. Unlike clause (1) which is applicable only to any expenditure, this clause applies to both income as well as expenditure.

### **(3) Any transfer of goods or services referred to in section 80-IA(8)**

Section 80-IA covers infrastructure developers, telecommunication service providers, developers of industrial parks and producers or distributors of power. Where any goods or services held for the purpose of eligible business are transferred to any other business carried on by the assessee or vice versa, the consideration has to be determined at ALP.

### **(4) Any business transacted between the assessee and other person as referred to in section 80-IA(10)**

Due to close connection between the assessee carrying on the eligible business and any other person, if the business is arranged in such a manner that produces more than ordinary profits to the assessee, then the transaction has to be determined having regard to ALP. The term "close connection" has not been defined in the Act. The same has to be understood keeping in mind the relationship between the assessee and any other person may be by having reference to Section 40A(2)(b), related party as per AS 18 of the Companies Act, 1956 and so on. Substance over form should be considered.

### **(5) Any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which section 80-IA(8) or section 80-IA(10) are applicable**

The provisions of section 80-IA(8) or section 80-IA(10) apply to an undertaking referred in the below-mentioned sections:

Sr. No.	Section	Description
1	10AA	Persons with income from SEZ units
2	80-IAB	Developers of SEZ
3	80-IC/IE	Persons with units in specified states/ north eastern states claiming deduction
4	80-ID	Hotels located in districts with World Heritage sites

### **COMPUTATION OF ALP**

In relation to a SDT, the following shall be computed having regard to the ALP:

- Allowance for an expenditure
- Allowance for interest
- An allocation of any cost or expense
- Any income

However, the above shall not be computed having regard to the ALP if it has the effect of reducing the taxable income or increasing the loss of the assessee.

The arm's length price is to be determined using the most appropriate method out of the specified methods as prescribed, having regard to the nature or class of transaction or functions performed or such other relevant factors as may be prescribed. The six specified methods are as mentioned below:

- Comparable Uncontrolled Price Method ('CUP');
- Resale Price Method ('RPM');
- Cost Plus Method ('CPM');
- Profit Split Method ('PSM'); and
- Transactional Net Margin Method ('TNMM')
- Any other method

With effect from Financial Year 2014-15, the multiple year data has been introduced. Further, the 'range

concept' has also been made applicable when: (a) the most appropriate method is either CUP Method, RPM, CPM, or TNMM; and (b) there are at least 6 comparables. Where these conditions are not fulfilled, 'arithmetic mean' shall continue to apply, as before, along with the tolerance range benefit.

### **ACCOUNTANT'S REPORT**

Every person who has entered into specified domestic transaction has to obtain a report i.e., Form 3CEB from an independent practicing Chartered Accountant. This report should be furnished to the Income Tax Department before the due date of filing the return as mentioned under section 139(1) (Presently, 30th November of the relevant assessment year). The Report gives particulars of entities with whom SDT has been entered, SDT, arm's length price and the method used for determining arm's length price.

### **IMPLICATIONS DUE TO APPLICABILITY OF DTP**

- The due date for filing the return of income is extended to 30th November of the relevant assessment year for the assesseees who are covered by the provisions of DTP.
- Where the assessee has entered into a SDT the Assessing Officer may refer the computation of ALP to the Transfer Pricing Officer (TPO). In such a case if any reference is made to the TPO then the time limit for completion of assessment is extended to 3 years from the end of the assessment year in which the income was first assessable. The Finance Act, 2016 has amended this time limit to 33 months from the end of the assessment year in which the income was first assessable.
- Increased administrative and compliance burden for the assessee.
- Non-conforming with ALP leads to economic double taxation and also penalty for non-compliance.

### **OTHER PROVISIONS**

All other provisions applicable to international transfer pricing transactions like documentation, reference to Transfer Pricing Officer, penalties, etc. are also applicable to specified domestic transactions.

However, the benefit of entering into Advance Pricing Agreement to determine ALP or the manner in which ALP is to be determined and safe harbour rules are not applicable to SDT.

# TDS RATES FOR THE A. Y. 2017-18 (IN %)

Section	Nature of Payment	Threshold Limit	Paid/Credited to						
			An Individual, HUF, BOI, AOP Payments	Non Resident Non-corporate person		Foreign Company Payments			
					Non-Resident Individual/HUF/AOP/BOI	Non-Resident Co-Op. Society / Firm			
			(in Rs.)	< 1 crore	> 1 crore	< 1 crore	> 1 crore but < 10 crore	> 10 crore	
192	Salary*	Normal Rate + Surcharge + 3% cess	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
* After considering basic deduction u/ch VIA — Individual: Rs.2,50,000, senior citizen: Rs.3,00,000, Super Sr. Citizen Rs.5,00,000/-.									
Surcharge @ 15% if income is > Rs.1 crore									
192A	Payment of Taxable accumulated balance of PF (applicable from June 1, 2015)	50,000	10.00%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
193	Interest on Securities to any resident								
	(i) Interest on Debentures or securities (Listed)	5,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(ii) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(iii) Any other interest on securities (Unlisted)	Any Amount	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194	Dividend other than dividend covered by Section 115-O to Resident	2,500	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194A	Interest other than interest on securities								
	Where the payer is—								
	(i) Banking company	10,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(ii) Co-operative society engaged in banking	10,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(iii) Post office under a deposit scheme framed by Central Government	10,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(iv) Others	5,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194B	Winnings from Lotteries	10,000	30%	30.90%	35.535%	34.608%	30.90%	31.518%	32.445%
194BB	Winnings from Horse Races	10,000	30%	30.90%	35.535%	34.608%	30.90%	31.518%	32.445%
194C	Payment to Resident Contractors#								
	— Individual / HUF	30,000**	1%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	— Any other person	Single Transaction/ credit	2%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.



Section	Nature of Payment	Threshold Limit	Paid/Credited to						
			An Individual, HUF, BOI, AOP Payments	Non Resident Non-corporate person		Foreign Company Payments			
					Non-Resident Individual/HUF/AOP/BOI	Non-Resident Co-Op. Society / Firm			
			(in Rs.)	< 1 crore	> 1 crore	< 1 crore	> 1 crore but < 10 crore	> 10 crore	
**The payments in a year in aggregate exceeds of Rs.1,00,000 also attract TDS at above rates.									
# Payment made to transporters shall not be liable for TDS if the Transporter owns 10 or less than 10 goods carriages & declaration is furnished to this effect with PAN No.									
194D	Insurance Commission to Resident								
	— Other than Company	15,000	1%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	— Domestic Company		2%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194DA	Payment in respect of life Insurance Policy	1,00,000	1%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194E	Non-Resident sportsman/sports association	Any Amount	N.A.	20.60%	23.69%	23.072%	20.60%	21.012%	21.63%
194EE	Deposits under NSS and if the payment is to Resident	2,500	10%	10.30%	11.845%	11.536%	N.A.	N.A.	N.A.
194F	Repurchase of units of MF/UTI Resident	Any Amount	20%	20.60%	23.69%	23.072%	N.A.	N.A.	N.A.
194G	Commission on sale of lottery tickets to	15,000	5%	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%
194H	Commission or brokerage to resident	15,000	5%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194-I	Rent to Resident for	1,80,000							
	(a) machinery/plant/equipments		2%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	(b) For Land/Building		10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194-IA	Transfer of immovable property other than an Agricultural land.	50,00,000	1%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194J	Fees for Professional/Technical services to Resident	30,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194LA	Compensation to Resident for compulsory acquisition of immovable property	2,50,000	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194LB	Payment for interest by Infrastructure Debt Fund to Non-Resident	—	N.A.	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%
194LBA(1)	Payment of nature referred to in section 10(23FC)/10(23FCA)] by business trust to resident unit-holders.	—	10%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194LBA(2)	Payment of the nature referred to in section 10(23FC) by business trust to unit-holders	—	N.A.	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%

Section	Nature of Payment	Threshold Limit	Paid/Credited to						
			An Individual, HUF, BOI, AOP Payments	Non Resident Non-corporate person		Foreign Company Payments			
					Non-Resident Individual/HUF/AOP/BOI	Non-Resident Co-Op. Society / Firm			
			(in Rs.)	< 1 crore	> 1 crore		< 1 crore	> 1 crore but < 10 crore	> 10 crore
194LBA(3)	Payment of the nature referred to in section 10(23FCA) by business trust to unit-holders to Non-Resident	—	N.A.	30.90%	35.535%	34.608%	41.20%	42.024%	43.26%
194LBB	Payment in respect of units of investment fund specified in section 115UB	—	10%	30.90%	35.535%	34.608%	41.20%	42.024%	43.26%
194LBC(1)	Payment in respect of Securitisation Trust specified in Section 115TCA (w.e.f. 01-06-2016)								
	— Individual / HUF	—	25%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	— Any other person	—	30%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
194LBC(2)	Payment in respect of Securitisation Trust specified in Section 115TCA (w.e.f. 01-06-2016)	—	N.A.	30.90%	35.535%	34.608%	41.20%	42.024%	43.26%
194LC	Payment of interest to non-Resident (approved by Central Government) Interest borrowed during 1/7/2012-30/6/2017	—	—	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%
194LD	Payment of interest to FIIs, Qualified Foreign Investor on Interest paid during 1/6/2013-30/6/2017 to non-resident	—	N.A.	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%
196B	Income from units (including long-term capital gain on transfer of such units) to an offshore fund Non-Resident	—	N.A.	10.30%	10.845%	11.536%	10.30%	10.506%	10.815%
196C	Income from foreign currency bonds or GDR of Indian company	—	N.A.	10.30%	10.845%	11.536%	10.30%	10.506%	10.815%
196D	Income of FII from Securities not being dividend, long-term and short-term capital gain	—	N.A.	20.60%	23.69%	23.072%	20.60%	21.012%	21.63%

### TCS Rates for the A. Y. 2017-18 (in %)

Section	Nature of Payment	Threshold Limit	Paid/Credited to						
			An Individual, HUF, BOI, AOP Payments	Non- Resident Non-corporate person			Foreign Company Payments		
					Non- Resident Individual/ HUF/AOP/BOI	Non- Resident Co-Op. Society/ Firm			
				(in Rs.)	< 1 crore	> 1 crore but < 10 crore	> 10 crore	< 1 crore	> 1 crore but < 10 crore
206C	Alcoholic liquor for human consumption (Other than Indian Made foreign liquor)	Any Amount	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%
206C	Indian Made foreign liquor	Any Amount	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%
206C	Tendu Leaves	Any Amount	5%	5.15%	5.9225%	5.768%	5.15%	5.253%	5.4075%
206C	Timber obtained under forest lease	Any Amount	2.50%	2.575%	2.96125%	2.884%	2.575%	2.6265%	2.70375%
206C	Timber obtained by any mode other than forest lease.	Any Amount	2.50%	2.575%	2.96125%	2.884%	2.575%	2.6265%	2.70375%
206C	Any other forest produce (not being timber or tendu Leaves)	Any Amount	2.50%	2.575%	2.96125%	2.884%	2.575%	2.6265%	2.70375%
206C	Scrap	Any Amount	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%
206C	Minerals	Any Amount	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%
206C	Parking lot, toll plaza, mining and mining and quarrying	Any Amount	2%	2.06%	2.369%	2.3072%	2.06%	2.1012%	2.163%
206C	Sale of the following where consideration received in cash  i) Bullion more than • 2 Lakh  ii) Jewellery more than • 5 Lakh or  iii) any other goods or services valuing more than •12 Lakh — where TDS provisions are not applicable  coin/article weighing 10 gms or less) for which Consideration is received in cash.	—	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%
206C	Sale of Motor vehicle where payment is received by cheque or	—	1%	1.03%	1.1845%	1.1536%	1.03%	1.0506%	1.0815%

Section	Nature of Payment	Threshold Limit	Paid/Credited to						
			An Individual, HUF, BOI, AOP Payments	Non- Resident Non-corporate person			Foreign Company Payments		
					Non- Resident Individual/ HUF/AOP/BOI	Non- Resident Co-Op. Society/ Firm			
(in Rs.)	< 1 crore	> 1 crore but < 10 crore	> 10 crore	< 1 crore	> 1 crore but < 10 crore	> 10 crore			
	any other mode for Sale of Motor vehicle valuing more than Rs.10 Lakh (W.e.f. 1-6-2016)								

Notes:

1. In case of any non-resident non-corporate the same shall be increased by surcharge 15% if amount paid exceeds Rs.1 crore along with Education cess of 2% & Higher Education cess of 1%.
2. The aforesaid person (except a seller of jewellery/bullion) shall not be deemed to be an assessee in default, if the buyer has included such income in the return submitted under section 139 and the buyer has paid tax on such income. The collector will have to submit a certificate to this effect from a Chartered Accountant.
3. If PAN of the deductee is not intimated to the deductor, tax will be deducted at source either at the rate given in the table or at the rate of 20% whichever is higher

# RATES OF INCOME TAX

## TAX RATES (INCLUDES SURCHARGE AND EDUCATION CESS) FOR ASSESSMENT YEAR 2017-18

### INDIVIDUALS (OTHER THAN COVERED BELOW)/HUF/AOP/BOI

Income (₹)	Rate of Tax (Including Education Cess)
Up to 2,50,000	Nil
2,50,001 - 5,00,000	10.30
5,00,001 - 10,00,000	20.60
10,00,001 and above	30.90

### FOR RESIDENT SENIOR CITIZEN (ABOVE 60 YRS. BUT BELOW 80 YRS. OF AGE)

Income (₹)	Rate of Tax (Including Education Cess)
Up to 3,00,000	Nil
3,00,001 - 5,00,000	10.30
5,00,001 - 10,00,000	20.60
10,00,001 and above	30.90

### FOR RESIDENT SENIOR CITIZEN (ABOVE 80 Yrs.)

Income (₹)	Rate of Tax (Including Education Cess)
Up to 5,00,000	Nil
5,00,001 - 10,00,000	20.60
10,00,001 and above	30.90

#### NOTE:

- Surcharge @ 15% applicable if total income exceeds INR 1 crore, subject to marginal relief.
- Tax rebate up to ₹ 5,000 or 100% of the tax whichever is less available to resident Individuals having total income below INR 5 lakhs.

### FOR FIRMS/LLP (INCLUDING SURCHARGE & EDUCATION CESS)

	Rate of Tax		
	Income (₹) < 1,00,00,000	Income (₹) > 1,00,00,000	Income (₹) > 10,00,00,000
Firm & LLP	30.90	34.608	34.608

### DOMESTIC COMPANY (INCLUDING SURCHARGE & EDUCATION CESS)

	Rate of Tax		
	Income (₹) < 1,00,00,000	Income (₹) > 1,00,00,000	Income (₹) > 10,00,00,000
Domestic Company having turnover or Gross receipts of the company in the previous year 2014-15 does not exceed five crore rupees	29.87	31.9609	33.4544
In all other cases	30.90	33.063	34.608

SECTION 115BA, TO provide that the income-tax payable in respect of the total income of a domestic company for any previous year relevant to the assessment year beginning on or after the 1st day of april, 2017 shall be computed @ 25% at the option of the company, if, – the company has been setup and registered on or after 1st day of march, 2016; the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business; the company while computing its total income has not claimed any benefit under section 10aa, benefit of accelerated depreciation, benefit of additional depreciation, investment MEMBERS' READY REFERENCER 2016-17

allowance, expenditure on scientific research and any deduction in respect of certain income under part-c of chapter-vi-a other than the provisions of section 80jja; and the option is furnished in the prescribed manner before the due date of furnishing of income.

#### FOR CO-OPERATIVE SOCIETIES (INCLUDING EDUCATION CESS)

Income (₹)	Rate of Tax
Up to 10,000	10.30
10,001 - 20,000	20.60
20,001 and above	30.90

NOTE: • Surcharge @ 12% applicable if total income exceeds INR 1 crore, subject to marginal relief

#### MAT PAYABLE BY COMPANY

Income (₹)	Rate of Tax
In case the adjusted book profits are less than INR 1 crore	19.055
In case the adjusted book profits are greater than INR 1 crore	20.389
In case the adjusted book profits are greater than INR 10 crore	21.342

#### AMT PAYABLE BY PERSON OTHER THAN COMPANY

Income (₹)	Rate of Tax
Individual/HUF/AOP/BOI/Any other artificial juridical person	
In case adjusted total income is less than INR 20 lakhs	NIL
In case adjusted total income is equal to or greater than INR 20 lakhs	19.055
In case adjusted total income is more than INR 1 crore	21.342
Firm/LLP	
In case adjusted total income is less than INR 1 crore	19.055
In case adjusted total income exceeds INR 1 crore	21.342

#### DIVIDEND DISTRIBUTION TAX

	Type of Payer		
	Company	Mutual Funds	
		Money Market Liquid Fund	Others
Individuals/HUFs	20.358%	38.449%	38.449%
Others	20.358%	49.432%	49.432%

Income distributed to Non-Resident or Foreign Company by Mutual Fund under an Infrastructure Debt Scheme subject to DDT @ 5.263%.

Similarly Income distributed to Non-Resident or Foreign Company by Mutual Fund under an Infrastructure Debt Scheme after grossing up would be subject to DDT @ 6.071% (earlier subject to DDT @ 5.963%)

### TAX RATES FOR CAPITAL GAINS

	For Individual, HUFs, BOI, AOP, Firm, LLPs	for Individual, HUFs, BOI, AOP, Firm, LLPs	Domestic	Corporates	
				Income (₹) < 1 crore	Income (₹) > 10 crore
Income (₹) < 1 crore		Income (₹) > 1 crore	Income (₹) < 1 crore	Income (₹) < 10 crore	Income (₹) > 10 crore
Equity shares in a company and unit of an equity oriented mutual fund covered under section 10(38) (which are subject to STT)	NIL	NIL	NIL	NIL	NIL
Listed securities and zero coupon bonds - without Indexation	10.30%	11.536%	10.30%	11.021%	11.536%
Listed securities and zero coupon bonds - with Indexation	20.60%	23.072%	20.60%	22.042%	23.072%
On any other asset - with Indexation	20.60%	23.072%	20.60%	20.042%	23.072%
<b>Short-term Capital Gains</b>					
On listed securities traded on recognised Stock Exchange or Unit of Equity Oriented Fund	15.45%	17.304%	15.45%	16.532%	17.304%
Others	(At applicable Slab Rates for Individual, HUF, BOI & AOP)		30.90%	33.063%	34.608%
	30.90%	34.608%			
	(For Firms & LLPs)				

Note: W.e.f. 10th July 2014 unlisted securities and a unit of mutual (other than equity oriented mutual fund) shall be considered as short term capital asset if held for not more than 36 months (24 months w.e.f. 01.04.2017).

# FEES & OTHER CHARGES UNDER DIRECT TAXES

## PAN/TAN APPLICATION CHARGES (INCLUSIVE OF SERVICE TAX)

Sr. No.	Particulars	Amount
1	PAN Application (Original/Correction) with UTISL & TIN facilitation centre	₹ 107/-
2	PAN Applications (where foreign address is provided as address for communication)	₹ 994/-
3	TAN Application with TIN facilitation centre	₹ 63/-

Note:–

- For getting TCS Number, no separate application is required to be made.
- Central/State Governments and Statutory/Autonomous Bodies cannot make payment through Credit Card. Others can make payment online through Credit Card for which additional surcharge of Rs.5/- will be charged.
- With effect from 13-2-2007, Tatal facility for PAN and TAN application with Credit Card payment has been withdrawn.

## TDS RETURN

- TDS return with TIN facilitation centre Charges (inclusive of service tax) are dependent upon number of records, as under:

Sr. No.	Particulars	Amount
1	Returns having records of up to 100 deductees	₹ 43.70/-
2	Returns having records of 101 to 1000 deductees	₹ 204.70/-
3.	Returns having records of more than 1000 deductees	₹ 665.27/-

- The organisation desirous of availing the facility for online upload of electronic statements (e-TDS/TCS), signed digitally, shall make a minimum payment of Rs. 1,000/- (advance amount deposited for electronic statement upload charges) at the time of making registration.

## FURNISHING OF PAPER RETURN TO BE DIGITISED BY AGENCY/E-INTERMEDIARY IN ELECTRONIC FORM

Sr. No.	Particulars	Amount
1	Furnishing paper TDS return to agency under Scheme for Furnishing of paper Returns of Tax Deducted at Source, 2005 (NOTIFICATION NO. 179/2005 [F.No.142/4/2005-TPL] dtd. 30-6-2005)	NIL
2	Furnishing paper TCS return to agency under Scheme for Furnishing of paper Returns of Tax Collected at Source, 2005 (NOTIFICATION NO. 180/2005 [F.No.142/4/2005-TPL] dtd. 30-6-2005)	NIL
3	Preparation & filing of tax return through tax return preparers	• 250/-
4	Furnishing paper return of income tax with e-intermediately under the Electronic Furnishing of Return of Income Scheme, 2007 within specified cities (having income under all heads) (NOTIFICATION NO. SO 1281(E), dtd. 27-7-2007)	Under these schemes no fees have been prescribed.
5	Furnishing paper return of income tax with e-intermediately under the Electronic Furnishing of Return of Income Scheme, 2007 within Specified cities (having income from business) (NOTIFICATION NO. SO 1281(E), dtd. 27-7-2007)	- do -



## APPEAL FILING FEES

- Commissioner of Income Tax (Appeals)

Sr. No.	Particulars	Amount
1	Under Section 249 of Income-tax Act Assessed income up to • 1.00.000 Assessed income between • 1.00.001 & • 2.00.000 Assessed income exceeding • 2.00.001 Any other matter (refer note below)	• 250/- • 500/- • 1,000/- • 250/-
2	Under Section 23 of Wealth Tax Act	• 250/-

- ITAT

Sr. No.	Particulars	Amount
1	Under Section 253 of Income-tax Act Assessed income up to • 1.00.000 Assessed income between • 1.00.001 & • 2.00.000 Assessed income exceeding • 2.00.001 Any other matter (refer note below) Stay of demand	• 500/- • 1,500/- 1% of assessed income. maximum • 10,000/- • 500/-
2	Under Section 254 of Income-tax Act Miscellaneous Application	• 50/-

Note : Appeals in relation to assessed loss, Penalty, TDS, TCS, interest & revision u/s 263 filing fees shall be as per residuary clause; i.e., ₹ 250 with Commissioner (Appeals) & ₹ 500 with ITAT (for appeal against penalty order refer Dr. Ajith Kumar Pandey vs. ITAT (2009) 310 ITR 195 (Patna) and for revision order refer Jet Electronics vs. ACIT (2008) 2 DTR 337 (Ahd.))

## REVISION APPLICATION FEES

Sr. No.	Particulars	Amount
1	Under Section 264 of Income-tax Act	• 500/-

## SETTLEMENT COMMISSION APPLICATION FEES

Sr. No.	Particulars	Amount
1	Under Section 245C of Income-tax Act, Rule 44C	• 500/-

## COURT FEES

- Application before Authorities

Sr. No.	Particulars (Type of Documents)	Amount
1	Vakalatnama Income-tax Officer Inspecting Assistant Commissioner of IT, Appellate Assistant Commissioner of IT CIT Central Board of Revenue	• 0.50/- • 1.00/- • 2.00/-
2	Application obtaining copy of any order passed by IT authorities or any other document on the record of the IT authorities	• 6.00/-
3	Application other than referred in 2 above when presented to the CIT or Board	• 1.00/-
4	Certified copy of any order of the IT authorities (not for private use nor intended for filing before the ITAT)	• 0.50/-
5	Certified copy of other documents on record of IT Department (not for private use) (for every 360 words or fraction)	• 0.50/-
6	Memorandum of Appeal Before Assistant Commissioner of Income Tax Before Central Board of Revenue	• 0.50/- • 2.00/-
7	Application for transfer of cases from one Income Tax Officer to another, other than on Change of address or such other valid reason, the existing ITO has ceased to hold jurisdiction	• 1.00/-

8	Application for recognition of provident funds	• 1.00/-
9	Application for compromise or issue of directions to Income Tax Officers when assessments are pending	• 1.00/- • 1.00/-
10	Application for hearing or for adjournment in connection with Sections 263 and 264 proceedings	• 1.00/-
11	Form of Appeal before CIT(A)	• 0.50/-
12	Copy of Assessment Order filed along with Appeal memo	• 0.65/-
13	Application for stay of recovery or for grant of instalments for tax payments	• 1.00/-
14	Application for rectification of mistakes u/s. 154 of the Income Tax Act, in the orders of CIT	• 1.00/-

**Notes :-**

1. Power of Attorney/Letter of Authority in favour Chartered Accountant for attending before Income Tax Authority/ITAT should be stamped as per local stamp laws except Punjab Charges (Cir. No. 9 (XL-48), dated 18-5-1958 & No. 125 [F.No. 274/1/73-ITJ], dated 26-11-1973). Stamp duty in the State of Maharashtra/Gujarat/Goa is ? 200/-.
2. All applications or petitions or representations which invoke any jurisdiction, authority, power, discretion, etc. whether real or supposed, vested in the Commissioner of Income Tax or the Central Board of Revenue / Central Board of Direct Taxes under the Income-tax Act or any other Act, shall be liable to Court fee under Schedule II of the Court Fees Act, 1870.
3. Applications or representations which are in the form of complaints such as excessive in disposal of any matter (eg. petition requesting for direction to the Income Tax Officer about undue delay in issue of refund), ill-treatments (complains and representations against harassment caused by the Officers of the Income-tax Department), etc. which are not strictly referable to any provisions in the Income-tax Act or any other Act, is not liable to court fee.
4. Petitions u/s. 264 is exempt from Court fees.
5. The amendments made by various State Governments to the Court Fees Act, 1870 are not to be taken into consideration. (Circular : No. 50 (XL-43) of 1956, dated 28-12-1956)
6. Illustrative list of application liable for Court Fees refer Circular No. 36 (XL-52), dated 19-11-1958

• **Appeal Before High Court**

Sr. No.	Particulars	Amount
1	Under Section 260A of Income-tax Act	As per code of Civil Procedure & High Court Rules. The Bombay Court Fee Act Schedule-I, Entry 14, provides certain ad valorem per cent on the amount in dispute subject to maximum • 10.000
2.	Under Section 27A of Wealth Tax Act	

**Inspection Fees**

Sr. No.	Particulars	Amount
1	For first one hour or part thereof	• 0.75/-
2	For every additional hour or part thereof	• 0.50/-

**Copying Charges**

Sr. No.	Particulars	Amount
1	For the first 200 words or less	• 0.75/-
2	For every additional 100 words or fraction thereof	• 0.375/-

**Notes:-**

1. No copying charges are payable for the first copy where the assessee entitled to copy thereof under rules or instructions.
2. Normally, applications for inspection or copies must be complied with within three days of their receipt.
3. Where, however, an inspection or a copy is urgently required, i.e., on the very day on which an application for the same is received by the Income Tax Officer, the above rates of fees shall be increased by 100 per cent thereof. [Cir. No. 17 (XL-36), dated 28-6-1965]

# APPEALS, REVISIONS & RECTIFICATION

## I. Appeals

Section	Appellate Authority	Time Limit	Filing fees	Form No.	Documents to be submitted/attached	Remarks
246A	CIT(A)	<p>1. As per section 249(2), within 30 days of</p> <p>a. the date of service of notice of demand if appeal relate to assessment of penalty; or</p> <p>b. date of payment of tax when appeal u/s. 248</p> <p>c. date of service of order in any other case</p> <p>2. CIT(A) has power to condone delay u/s. 249(3) on showing sufficient cause.</p> <p>A subsequent decision of Supreme Court or High Court resulting in change of legal position may be sufficient cause of condonation of delay.</p> <p>Sothiya Mining &amp; Mfg. Corp. 186 ITR 182 (Cal.)</p>	<p>a. Court fee stamps as applicable.</p> <p>b. Appeal fees:</p> <p>1. Rs.250.</p> <p>a. Where assessed total income is Rs.1 lakh or less.</p> <p>b. Where appeals are filed on issues such as penalty order, TDS defaults, non-filing of returns, etc. which cannot be linked with the assessed income.</p> <p>2. Rs.500, where assessed total income is more than Rs.1 lakh but not more than Rs.2 lakh.</p> <p>3. Rs.1,000, where assessed total income is more than Rs.2 lakh.</p>	35	<p>1. Form No. 35 in duplicate.</p> <p>2. Memorandum of Appeal, Grounds of Appeal and Statement of Facts in duplicate.</p> <p>3. Copy of Order appealed against along with the Transfer Pricing Order, if applicable, duly certified.</p> <p>4. Notice of Demand (original).</p> <p>5. In the case of appeal against penalty order copy of relevant Penalty order along with a copy of the relevant assessment order.</p> <p>6. Proof of payment of appeal filing fee (Original).</p> <p>7. Affidavit narrating circumstances for delay in filing appeal beyond 30 days for late filing.</p> <p>Form No. 35, grounds of appeal and form of verification appended thereto shall be signed and verified by the person authorised to sign the ROI u/s. 140.</p> <p>If the same is unsigned or unverified or is signed or verified by wrong person, an opportunity should be given to the assessee to rectify it.</p> <p>Rajendrakumar Maneklal Sheth (HUF) 213 ITR 715 (Guj)</p>	<p>1. Appealable orders are Assessment Orders, Reassessment Orders, Penalty Orders and other orders as listed under the relevant section. Appeal does not lie against the order which is not covered by section 246A viz. order under section 179 against directors for recovery of tax in private companies.</p> <p>2. Appeal does not lie u/s. 246A, if the additions/disallowances on facts are admitted by the assessee before the AO. (Unless the appellant can demonstrate that facts relied upon were untrue and circumstances for placing such reliance), as the assessee cannot be said to be 'aggrieved' by the asst. order containing such agreed additions/disallowances.</p> <p>Rameshchandra &amp; Co. 168 ITR 375 (Bom) Vamdevan Bhanu 330 ITR 559 (Ker)</p> <p>3. However, if admission was wrongly made or under mistaken belief of fact or law, appeal would lie.</p> <p>Gouri Sahai Ghisa Ram 120 ITR 338 (All).</p> <p>4. No appeal lies under the Act against the following orders :</p> <p>a. Order levying interest u/ss. 234A, 234B, 234C</p> <p>b. Revision order u/s. 264</p> <p>c. Order of Authority for Advance Ruling.</p> <p>d. Order of Settlement Commission.</p> <p>5. The assessee must ensure payment of tax due as per income 'returned' by him u/s. 249(4) if not paid at the time of filing of return of income.</p>
						<p>6. CIT(A) has to adjudicate the matter in appeal before him. He has no power to set aside order to AO.</p> <p>7. Courts have consistently held that the CIT(A) has inherent powers to grant stay of demand though not specifically conferred by</p>

Section	Appellate Authority	Time Limit	Filing fees	Form No.	Documents to be submitted/attached	Remarks
						<p>express provision.</p> <p>8. CIT(A) can suo motu deal with issues which were not the subject matter of appeal.</p> <p>9. Kashi Nath Chandiwala 280 ITR 318 (All)</p> <p>10. Appellate Authority can only give direction/finding in respect of year or period which is before the authority.</p> <p>Sun Metal Factory (I) (P) Ltd. 124 ITD 14 (Chennai)</p>
248	CIT(A)	<p>1. As per section 249(2), within 30 days of date of payment of tax.</p> <p>2. CIT(A) has power to condone delay u/s. 249(3) on showing sufficient cause.</p>	Filing Fee Rs.250/-	35	Same as above to the extent applicable.	<p>1. Where under an agreement or other arrangement, the tax is deductible on any income [other than interest] under Section 195 is to be borne by the person by whom the income is payable and such person having paid such tax claims that no tax was required to be deducted on such income, he may appeal to the CIT(A) for a declaration that no tax was deductible on such income.</p> <p>2. Where the tax is borne by the payee, the payer cannot file appeal under Section 248 of the Act. If the payee contends for lower rate of deduction or nil deduction, he has to file the return of income and claim refund from the revenue authorities. Alternatively, he may invoke Writ jurisdiction of the Competent High Court under Article 226 of the Constitution owing to absence of efficient alternative remedy.</p> <p>3. Tax has to be paid before filing appeal u/s. 248.</p> <p>4. CIT(A) in appeal u/s. 248 holding assessee not liable to deduct tax at source u/s 195, assessee is entitled to refund of the amount deposited by way of TDS.</p> <p>[TELCO vs. DCIT (2004) 83 TTJ 458 (Mum.)]</p> <p>5. Appeal to be signed by the person responsible for payment of income from which TDS is deductible u/s 195.</p>
253	ITAT	<p>i. 60 days from the date of service of CIT(A) order Section 253(3)</p> <p>ii. Section</p>	<p>Appeal fees:</p> <p>1. Rs.500.</p> <p>a. Where assessed total income is Rs.1 lakh or less</p>	36	<p>1. Form No. 36 together with grounds of appeal in triplicate.</p> <p>2. Order appealed against in duplicate (including one</p>	<p>1. Person authorised to sign return of income u/s. 140, must sign appeal form.</p> <p>2. Orders of CIT(A)/CIT against which appeal lies are listed under the relevant section.</p> <p>3. The fee payable for filing</p>

Section	Appellate Authority	Time Limit	Filing fees	Form No.	Documents to be submitted/attached	Remarks
		253(5) empowers the ITAT to condone the delay on showing sufficient grounds	<p>b. Where appeals are filed on issues such as TDS defaults, penalties, non-filing of returns, etc. which cannot be linked with the assessed income.</p> <p>c. An application for stay of demand.</p> <p>2. Rs.1,500, if assessed income is above Rs.1 lakh but not more than Rs.2 lakh.</p> <p>3. 1% of assessed income subject to maximum of Rs.10,000 where assessed income is more than Rs.2 lakh.</p> <p>However, no such fee shall be payable in case :</p> <p>a. the appeal is filed by the Pr. CIT or CIT; or</p> <p>b. where the memorandum of cross objections is filed either by the assessee or the department.</p>		<p>certified copy)</p> <p>3. Order of AO in duplicate.</p> <p>4. Grounds of Appeal before CIT(A) in duplicate.</p> <p>5. Statement of facts filed before CIT(A) in duplicate.</p> <p>6. In the case of appeal against penalty order, same to be filed in duplicate.</p> <p>7. In the case of appeal against order u/s. 143(3) read with Section 144A — Two copies of the directions of the Joint Commissioner u/s. 144A.</p> <p>8. In the case of appeal against order u/s. 143 read with Section 147 — Two copies of original assessment order, if any.</p> <p>9. Proof of payment of appeal filing fee.</p> <p>10. Affidavit stating reasons for delay in filing appeal beyond 60 days (If delayed).</p>	<p>appeal before the ITAT in cases of penalty orders would be only Rs.500/- as they do not have any nexus with assessed income.</p> <p>Dr. Ajit Kumar Pandey vs. ITAT (2009) 310 ITR 195 (Pat.)</p> <p>Dubwali Transport Comapny 38 DTR 434 (Chd)</p> <p>4. The fee payable for filing appeal before the ITAT in cases assessed 'losses' is Rs.500 as the assessed 'income' is less than monetary limit Rs.1 lakh prescribed.</p> <p>Gibbs Computer vs. ITAT 317 ITR 159 (Bom)</p> <p>5. As far as the deficiencies are rectified within the specified time-limit, there should be no reason for rejection of the appeal.</p> <p>BDA Ltd. vs. ITO 281 ITR 99 (Bom)</p> <p>6. The word 'pass such order thereon as it thinks fit' include all the powers except the power of enhancement which are confirmed upon the CIT(A) by section 251.</p> <p>Hukumchand Mills Ltd. vs. CIT 63 ITR 232 (SC)</p>
253(4) (Cross Objection)	ITAT	30 days of receipt of notice of appeal by other party	NIL		Same as above [except instead of Form 36, Form 36A]	<p>i. The assessee / A.O. (who may or may not have preferred appeal) may file the cross objections against any part of CIT(A) order. No fees payable.</p> <p>ii. The cross objection need not be confined to the points taken by the opposite party in the main appeal. The assessee can challenge the order of the dept. not only in the quantum of tax amount but other points also.</p>

Form No 35 shall be furnished in the following manner, namely:-

- (a) In the case of a person who is required to furnish return of income electronically under sub rule (3) of rule 12.
- (i) By furnishing the form electronically under digital signature, if the return of income is furnished under digital signature
- (ii) By furnishing the form electronically through electronic verification code in a case not covered under (i) above
- (b) In a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with (a) above or in paper form.

## II. Revisions

Section	Subject matter of revision	Who can revise	Time limit	Remarks
263	Any order passed by the Assessing Officer which is erroneous and prejudicial to the interest of the revenue.	Principal CIT or CIT	2 years from the end of the financial year in which order sought to be revised was passed except in situation enumerated u/s. 263(3).  a. However, an order of revision may be passed at any time in the case of an order which has been passed in the consequence of or to give effect to, any finding or directions in an order of ITAT, NTT, the HC or the SC or order of court under any other law.  b. Where an order prejudicial to the revenue has become the subject matter of appeal on different issue, the time limit u/s. 263 has to be reckoned with reference to the original order and not the later order.	<ol style="list-style-type: none"> <li>1. CIT must disclose reasons/ grounds in his notice to assessee for proposed revision. He shall give reasonable opportunity of being heard to assessee before an order u/s. 263 passed.</li> <li>2. CIT has the power to call for and examine the record of any proceeding under the Act.</li> <li>3. The Assessment Order must be 'erroneous' as well as 'prejudicial to the interest of revenue' before the action can be taken under this section.</li> <li>4. The powers of the Pr. CIT/CIT are widened so as to construe the order as 'erroneous' and "prejudicial to the interests of the revenue" by virtue of the insertion of Explanation 2.</li> <li>5. An assessment order which gives effect to a binding ruling of the Authority of Advance Ruling, cannot be regarded as being erroneous or as being prejudicial to the interest of the revenue.</li> </ol> <p>Prudential Assurance Co. Ltd. vs. DIT 191 Taxman 62 (Bom)</p> <ol style="list-style-type: none"> <li>6. Where an order passed by the AO has been subject matter of an appeal, it cannot be revised by the Pr. CIT or CIT. However, the CIT has jurisdiction and power to initiate proceedings under section 263 in respect of all issues not touched by the CIT(A) in the appellate order.</li> </ol> <p>Jaikumar B. Patil 236 ITR 469 (SC)</p> <ol style="list-style-type: none"> <li>7. Where revision proceedings were taken up on the basis of order of another HC but the said decision was not approved by jurisdictional HC, it was held that such order of revision is liable to set aside.</li> </ol> <p>Hindustan Lever Ltd. vs. CIT 70 DTR 182 (Cal.)</p> <ol style="list-style-type: none"> <li>8. Intimation u/s. 143(1) is not assessment order hence cannot be revised. Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500 (SC)</li> <li>9. Where an initial/original order of assessment has been rectified, there remains no initial order in existence and as such the CIT cannot exercise his power of revision with reference to the</li> </ol>

Section	Subject matter of revision	Who can revise	Time limit	Remarks
				initial/original order.  Vippy Solvex Products (P) Ltd. 228 ITR 587 (MP)  10. An appeal against the order of CIT u/s. 263 lies in ITAT u/s. 253
264	Any order passed by the officer subordinate to Pr. CIT or CIT Exception :  1. Applies to an order other than an order to which Section 263 applies. 2. Where appeal lies before CIT(A) / ITAT or the time limit for filing the appeal has not expired.	Principal CIT or CIT	a. If CIT revises on his own motion : within 1 year from the date of passing the order sought to be revised. b. On Application being made by the assessee : within 1 year from the end of the F.Y. in which such application is made.  The assessee has to make an application within 1 year from the date of communication or knowledge of the order to the assessee whichever is earlier  However, Pr. CIT or CIT has power to condone delay if assessee is prevented by sufficient cause from making the application after the expiry of that period.	1. No revision is possible where the order has been made the subject of an appeal to the CIT(A). 2. Revision of the order u/s. 264 cannot be made where an appeal lies to CIT(A) but not made and the assessee has not waived his right of such appeal. 3. Section 264 debars the CIT from passing any order which is prejudicial to assessee and therefore, once assessee approached CIT for getting relief u/s. 264, CIT cannot pass an order by invoking provisions of section 263.  Vineet Sharma vs. CIT 41 Taxmann.com 141 (Del.) (Trib.) 4. The provision can be beneficially used by the assessee for seeking appropriate relief from CIT where certain claims, relief could not be claimed before the AO or appeal could not be filed before CIT(A) in time for any reason. 5. While passing order u/s. 264, it is open to the CIT to entertain even a new ground/claim/plea not urged before the lower authority  Parekh Brothers vs. CIT 150 ITR 105 (Ker.)  SLP filed by Department on this issue is dismissed by the Supreme Court. 6. An order cannot be said to have been made subject to an (effective) appeal if the appeal has been disposed of by CIT(A) or ITAT without passing an order on merits. 7. If an application made u/s 197 for obtaining no tax deduction or low tax deduction certificate is rejected by AO, it can be revised by the Cit u/s. 264.  Larsen & Tubro Ltd. vs. CIT 190 Taxman 373 8. Section 264 is enacted for the benefit of the assessee. Order u/s. 264 cannot be prejudicial to assessee. 9. The order of CIT u/s. 264 is not appealable before ITAT u/s. 253 or High Court u/s. 260A. However, a petition for Writ of Certiorari under Article 226 of the Constitution for quashing the order of CIT will lie in appropriate cases. 10. Application by the assessee to be accompanied by a fee of Rs.500.

### III. Rectification

Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
154	<p>a. Any order passed by an IT authority under the provisions of IT Act.</p> <p>b. Any Intimation or deemed intimation u/s. 143(1)</p> <p>c. Any intimation u/s. 200A(1) (TDS Processing)</p> <p>d. Any intimation u/s. 206CB(1)(TCS Processing)</p>	<p>IT authority as referred to in section 116</p> <p>a. on its own motion; or</p> <p>b. on intimation being made by assessee, tax deductor or tax collector.</p> <p>If order is passed by CIT (A), then he can rectify the mistake on intimation being made by AO or Assessee.</p>	<p>Within 4 years from the end of the financial year in which order sought to be rectified was passed.</p> <p>If an order is revised, set aside, etc., then the period of 4 years will be counted from the date of such fresh order and not from the date of original order.</p> <p>In case an application for rectification is made by the taxpayer, the authority shall amend the order or refuse to allow the claim within 6 months from the end of the month in which the application is received by the authority.</p>	<p>Any mistake 'apparent' from the record.</p> <p>Mistake apparent from record must be an obvious and patent and must not be something which can be drawn by a long-drawn process of reasoning</p> <p>T. S. Balram, ITO vs. Volkart Brothers 82 ITR 40 (SC)</p>	<ol style="list-style-type: none"> <li>1. A decision on a debatable point of law is not a mistake apparent from the record.</li> <li>2. Rectification order having effect of enhancing liability or reducing refund could be passed only after providing opportunity of hearing to the assessee.</li> <li>3. Rectification of matter which is subject to an Appeal or Revision cannot be rectified.</li> <li>4. Intimation u/s. 143(1) cannot be rectified after issue of notice u/s. 143(2)</li> <li>5. When superior Authority had already passed an order against levy of interest, AO cannot rectify the order suo motu.</li> <li>6. Refund to be given in case rectification results into reduction of assessment.</li> <li>7. Notice of demand to be issued in case rectification results in to enhancing the assessment etc.</li> <li>8. An appeal lies against rectification orders.</li> <li>9. An appeal lies against refusal to rectify the mistake.</li> <li>10. Higher authorities not empowered to give decision on application for rectification pending before the assessing officer</li> </ol> <p>Manjeet Singh Sachdev 310 ITR 357 (Kar)</p> <p>Smt. Brindra Arneja 55 Taxmann.com 478 (All)</p> <p>Ayyar Spinning &amp; Waiving Mills Ltd. 171 Taxman 498 (SC)</p>
254(2)	Any order passed by ITAT	<p>Income Tax Appellate Tribunal ITAT</p> <p>a. on its own motion; or</p> <p>b. mistake is brought to its notice by the Assessee or AO.</p>	4 years from the date of the order.	Any mistake 'apparent' from the record.	<ol style="list-style-type: none"> <li>1. Application for rectification is to be filed with the fees of Rs.50/-.</li> <li>2. Rectification order having effect of enhancing liability or reducing refund could be passed only after providing opportunity of hearing to the assessee.</li> <li>3. Once the application is made by assessee within specified time, Tribunal is bound to decide the application on merits and not on the ground of limitation.</li> <li>4. Non-consideration of a judgment of the jurisdictional HC or the Apex Court would always constitute a mistake apparent from record.</li> </ol>



Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
					<p>Saurashtra Kutch Stock Exchange Ltd. 173 Taxman 322 (SC)</p> <p>5. Once order of Tribunal is dismissed by HC, no rectification is possible in order of Tribunal as order of Tribunal would be merged with that of HC.</p> <p>Saroj Ceramics Industries 42 taxmann.com 372 (Guj.)</p> <p>6. Failure to consider material on record or order of ITAT, based on erroneous assumption of facts, non-consideration of grounds, failure to consider alternate grounds, non-consideration of relevant provisions of law/rule/binding decisions inter alia are some of the grounds for rectification.</p> <p>7. The ITAT cannot 'review' its order passed on merits in the garb of 'rectification' by resorting to section 254(2).</p>

# PENALTIES

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 158BFA(2)	a. Delay or failure in furnishing the return of total income including undisclosed income for the block period as required by notice u/s. 158BC(a) OR b. Undisclosed Income determined by the Assessing Officer is in excess of the undisclosed income shown in such return	Assessing Officer or Commissioner (Appeals)	Minimum 100% & maximum 300%; in case (a) of the tax leviable in respect of the undisclosed income determined by the Assessing Officer and in case (b), of the tax leviable on the difference between the undisclosed income as determined by the Assessing Officer and the amount of undisclosed income shown in the return. (Not applicable w.e.f. 31-5-2003)
SECTION 221(1)	Default in making payment of tax within prescribed time; i.e., as required by notice u/s. 156 or wherever assessee is deemed to be in default in payment of tax.	Assessing Officer	Such amount as directed by Assessing Officer but not exceeding the amount of tax in arrears.
SECTION 270A	Penalty for under reporting of income  Penalty for misreporting of income  (Applicable from the Assessment Year 2017-18)	Assessing Officer, CIT(Appeals) or Principal CIT or CIT	Minimum 50% of tax payable on under reported income 200% of such tax in the case of misreporting of income.
SECTION 271(1)(b)	Failure to comply with the notice u/s. 115WD(2) or 115WE(2) or 143(2) or 142(1) or failure to comply with the direction u/s. 142(2A) to get the accounts audited. (Applicable up to Assessment Year 2016-17)	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	Rs.10,000/- for each such failure.
SECTION 271(1)(c)	Concealment of particulars of income or furnishing of inaccurate particulars of such income. (Applicable up to Assessment Year 2016-17)	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	Minimum 100% & maximum 300% of the tax sought to be evaded
SECTION 271(1)(d)	Concealment of particulars of fringe benefits or inaccurate particulars of such fringe benefits (Applicable upto A.Y. 2016-17)	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	Minimum 100% & Maximum 300% of the tax sought to be evaded
SECTION 271(4)	Distribution of Profit by registered firm otherwise than in accordance with the partnership deed on the basis of which the firm has been registered and as a result of which partner has returned income below the real income (penalty leviable on the partner) (applicable up to Assessment Year 2016-17)	Assessing Officer or Commissioner (Appeals)	A sum not exceeding 150% of the difference between the tax on partner's income assessed and income returned
SECTION 271A	Failure to keep and maintain any such books of account and other documents as required under Section 44AA or rules made thereunder or to retain such books of account and other documents for the period specified under Income-tax Rules	Assessing Officer or Commissioner (Appeals)	A sum of Rs.25,000/-.
SECTION 271AA(1)	a. Failure to keep and maintain any information or document in respect of international transactions or (Specified domestic transactions w.e.f. 1-4-2013) as required by Section 92D(1) or 92D(2), or b. Failure to report international transaction or furnishing of incorrect information (applicable in the case of specified domestic transactions)	Assessing Officer or Commissioner (Appeals)	2% of the value of each international transaction or specified domestic transaction.

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271AA(2)	Failure to furnish information document as required under section 92D(4) (applicable from the assessment Year 2017-18)	Assessing Officer or Commissioner (Appeals)	Rs.5,00,000
SECTION 271AAA	Undisclosed income found during Search initiated under section 132 on or after 1-6-2007 (Explanation to Section 271AAA)	Assessing Officer	<p>A sum computed @ 10% of the undisclosed income of the specified previous year. Penalty cannot be levied if all the following conditions stipulated in Section 271AAA(2) are fulfilled.</p> <ol style="list-style-type: none"> <li>i. In the course of the search admits the undisclosed income in a statement recorded u/s.132(4) and specifies the manner in which such income has been derived.</li> <li>ii. Substantiates the manner in which the undisclosed income was derived and</li> <li>iii. Pays the taxes together with interest, in respect of such undisclosed income.</li> </ol> <p>w.e.f. A.Y. 2012-13</p> <p>Provisions of this section are applicable if search is initiated on or after 1st June, 2007 but before 1st July, 2012.</p>
SECTION 271AAB	Undisclosed income found during search initiated under section 132 on or after 1-7-2012	Assessing Officer	<p>Penalty at the rate of 10% of undisclosed income if:—</p> <ol style="list-style-type: none"> <li>a. undisclosed income is admitted during the course of the search in a statement under section 132(4);</li> <li>b. the taxpayer substantiates the manner in which the undisclosed income was derived;</li> <li>c. the taxpayer pays tax together with interest on undisclosed income;</li> <li>d. he furnishes his return of income declaring the undisclosed income; and</li> <li>e. the return of income is submitted before the due date under section 139(1) or the date on which the period is specified in the notice issued under section 153A expires.</li> </ol>
			<p>Penalty at the rate of 20% of undisclosed income if:-</p> <ol style="list-style-type: none"> <li>a. undisclosed income is not admitted during the course of the search in a statement under section 132(4);</li> <li>b. the taxpayer pays tax together with interest on undisclosed income;</li> <li>c. he furnishes his return of income declaring the undisclosed income; and</li> <li>d. the return of income is submitted before the due date under section 139(1) or the date on which the period is specified in the notice issued under section 153A expires.</li> </ol> <p>In any other case penalty shall be between 30% to 90%.</p>

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271B	Failure to get the accounts audited as required u/s. 44AB or furnish report of such audit before the specified date mentioned in Explanation (ii) below Section 44AB.	Assessing Officer	0.5% of the total sales, turnover or gross receipts Maximum Rs.1,50,000/-
SECTION 271BA	Failure to furnish a report from an accountant in respect of international transaction as required u/s. 92E.	Assessing Officer	A minimum sum of Rs.1,00,000/-
SECTION 271C	a. Failure to deduct whole or any part of tax at source (TDS) as required under the provisions of Chapter XVIIIB or b. failure to pay whole or any part of tax u/s. 115-O or c. Failure to pay whole or any part of tax as per second proviso to section 194B	Joint Commissioner	Amount of tax not deducted or amount of tax not so paid as the case may be.
SECTION 271CA	Failure to collect whole or any part of tax at source (w.e.f. 1st April, 2007) under Chapter XVII-BB	Joint Commissioner	A sum equal to the amount of tax failed to collect.
SECTION 271D	Failure to comply with the provisions of Section 269SS; i.e., by taking or accepting any loan or Specified sum, (means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place) of *b 20.000/- or more otherwise than by crossed account payee cheque/Draft	Joint Commissioner	A sum equal to the amount of loan or deposit or specified sum so taken or accepted.
SECTION 271E	Failure to comply with the provisions of Section 269T, i.e., repayment of any loan or deposit or specified advance (means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place) of Rs.20,000/- or more otherwise than by crossed account payee cheque/draft in the name of the person who has made the loan or deposit.	Joint Commissioner	A sum equal to the amount of loan or deposit or specified advance repaid.
SECTION 271F	Failure to furnish return of income before the end of relevant assessment year as required u/s. 139(1) or before the due date u/s 139 or provisos to the said sub-section	Assessing Officer	A sum of Rs.5,000/-.
SECTION 271FA	a. Failure to furnish annual information return required u/s. 285BA(1) or b. Failure to furnish such return within the time prescribed u/s 285BA(5)  (Applicable from 1st April, 2014)	Prescribed Income-tax authority	a. Rs.100/- for every day during which failure continues. b. Rs.500 for each day of default commencing from the day immediately following the day on which the time specified in notice for furnishing the return expires
SECTION 271FAA	a. Providing inaccurate information of reportable transactions u/s. 285BA b. Fail to rectify the inaccurate informations filed  Failure to furnish accurate statement of financial transaction or reportable account under section 285BA(1)k	Prescribed Income-tax authority	Rs.50,000/-

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271FAB	Failure to furnish statement of information or document by an eligible investment fund as required by section 9A(5)  (applicable from Assessment Year 2016-17)	Prescribed Income-tax authority	Rs.5,00,000/- and above
SECTION 271FB	Failure to furnish fringe benefits return required u/s. 115WD(1) or failure to furnish such return within the time prescribed.	Assessing Officer.	Rs.100/- for every day during which failure continues.
SECTION 271G	Failure to furnish any information or document as required by Section 92D(3) in respect of international transaction w.e.f. 1-4-2013 Specified Domestic Transactions are also included.	Assessing Officer or Commissioner (Appeals)	2% of the value of international transaction or specified domestic transaction for each such failure.
SECTION 271GA	Failure to furnish statement of information or document u/s. 285A (applicable from Assessment Year 2016-17)		In case of transferring right of management or control in relation to the Indian Control: 2% of value of transaction.  In any other case : Rs.5,00,000/-
SECTION 271GB(1)	Failure to furnish report under section 286(2) in respect of international group (Applicable from assessment year 2017-18)	Prescribed Income-tax authority	Rs.5,000 per day (if period of default does not exceed 1 month) Rs.15000 per day (for the period of default beyond 1 month)
SECTION 271GB(2)	Failure to produce information or document to the prescribed authority under section 286(6) (applicable from Assessment Year 2017-18)	Prescribed Income-tax authority	Rs.5,000 per day (beginning immediately following the day on which the period for furnishing the information expires)
SECTION 271GB(3)	Continuity of failure referred to in section 271GB(1)/(2) after the order directing to pay penalty under section 271GB(1)/(2) has been served	Prescribed Income-tax authority	Rs.50,000 per day from the date of service of penalty order
SECTION 271GB(4).	Furnishing inaccurate report under section 286(2) in respect of international group (applicable from assessment year 2017-18)	Prescribed Income-tax authority	Rs.5,00,000/-
SECTION 271H	Failure to submit (or furnishing incorrect statements in) quarterly TDS/TCS returns (applicable from July 1, 2012)	Assessing Officer	Minimum Penalty – Rs.10,000/- and Maximum Penalty Rs.1,00,000/-
SECTION 271I	Failure to furnish information or furnishing inaccurate information under section 195(6) (applicable from June 1, 2015)	Prescribed Income Tax authority	Rs.1,00,000/- and above
SECTION 272A(1)(a)/(b)/(c)	Failure to answer questions, sign statements or attend summons u/s. 131(1) to give evidence/ produce books of account or other documents	Income Tax authority not lower in rank than a Joint Commissioner or a Joint Director.	Rs.10,000/- for each such default or failure
SECTION 272A(1)(d)	Failure to comply with a notice under sections 142(1), 143(2) or failure to comply a direction issued under section 142(2A) (applicable from assessment year 2017-18)	Income Tax authority not lower in rank than a Joint Commissioner or a Joint Director.	Rs.10,000/- for each default or failure
SECTION 272A(2)	Failure to: a. comply with a notice u/s. 94(6); b. give notice of discontinuance of business or profession u/s. 176(3); c. furnish in due time any of the returns, statements or particulars mentioned in Sections 133, 206 or 206C or 285B;	Income Tax authority not lower in rank than a Joint Commissioner or a Joint Director except for failure under Clause (f) above w.r.t. Section 197A wherein the authority is with Chief Commissioner or Commissioner	Rs.100/- per day during which default continues. However, penalty shall not exceed the amount of tax deductible or collectible in case of failure to deliver or pay declaration u/s. 197A, furnish a certificate u/s. 203 or annual return of TDS/TCS u/ss. 206 and 206C and for failure in relation to section 200(2A)/ 206C(3A).

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
	<p>d. allow inspection of any register referred to in section 134 or of any entry therein or to allow copies of the same;</p> <p>e. furnish return of income u/s. 139(4A)/ 139(4C) or furnish such returns within time allowed;</p> <p>f. deliver copy of declaration as stated in Section 197A in due time;</p> <p>g. furnish a certificate as required u/s. 203 or u/s. 206C;</p> <p>h. deduct and pay tax as required u/s. 226(2);</p> <p>i. furnish a statement required u/s. 192(2C);</p> <p>j. to deliver in due time a copy of the declaration u/s. 206C(1A);</p> <p>k. furnish quarterly statement of TDS as required u/s. 200(3) or TCS under proviso to Section 206C(3).</p> <p>* (Failure to submit quarterly TDS/TCS returns will not be governed by section 272A(2) with effect from July 1, 2012);</p> <p>l. deliver the quarterly return in respect of payment of interest to residents without deduction of tax u/s. 206A(1)</p> <p>m. to deliver a statement in section 200(2A) or section 206C(3A).</p>		
SECTION 272AA	Failure to comply with the provisions of Section 133B (a general survey meant for collection of information)	Assessing Officer or Joint Commissioner or Assistant Director or Deputy Director	Maximum Penalty up to Rs.1,000/-
SECTION 272B	Failure to comply with the provisions of Section 139A (i.e., failure to obtain PAN) or failure to quote PAN in documents and use of false PAN deliberately	Assessing Officer	A maximum sum of Rs.10,000/-
SECTION 272BB	Failure to comply with the provisions of Section 203A (failure to obtain TAN including failure to quote the same) including quoting of false TAN	Assessing Officer	A sum of Rs.10,000/-

#### Important Notes

- No penalty can be levied u/s. 221(1), if the assessee proves that the default in making payment of tax was for good and sufficient reasons.
- No order levying penalty can be passed for failure u/ss. 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271FAB, 271G, 271GA, 271H, 271-I, 272A(1)(c)/(d), 272A(2), 272AA(1), 272B, 272BB(1)/(1A), 272BBB(1)(b), 273(1)(b), 273(2)(b)/(c). if the person or the assessee proves that there was a reasonable cause by virtue of Section 273B.
- No penalty shall be imposed on any person unless he is properly heard or has been provided with reasonable opportunity of being heard by virtue of Section 274(1).
- No order imposing penalty exceeding Rs.10,000/- can be passed by the Income Tax Officer without previous approval of Joint Commissioner. Further, no order imposing penalty exceeding Rs.20,000/- can be passed by the ACIT or DCIT without the previous approval of Joint Commissioner by virtue of Section 274(2).
- Penalty proceedings have to be completed before the end of financial year in which the proceedings, in the course of which action for imposition of penalty is initiated, are complete, or within 6 months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later by virtue of Section 275.
- While determining the amount of penalty, the law to be applied would be the law operative on the date when default was committed. In case of late filing of return, the default is said to be committed on the date when the return is to be filed and in case of non-compliance of notice, default is taken to be committed on the day when the date given in the notice expires.
- An application can be made to Commissioner for reducing or waiving any penalty levied under the Income-tax Act, 1961 or for staying or compounding any proceeding for the recovery of any such penalty by virtue of Section 273A(4). In such situations, where the aggregate of such penalties exceed Rs.1,00,000/-, then the Commissioner can exercise these powers with the previous approval of Chief Commissioner or Director-General as the case may be.
- Explanation 1 to Section 271(1)(c) specifies that assessee shall offer an explanation, and only on failure to offer any explanation or such explanation is found to be false, or assessee is not in a position to substantiate then it will be deemed that such person has concealed the income.
- Explanation 4 to Section 271(1)(c) specifies that the amount of tax sought to be evaded also shall include reduction in the loss figure.
- With effect from A.Y. 2017-18 complete new scheme of Penalty, Section 270A, has been introduced in place of earlier section 271(1)(c).

# IMPORTANT DUE DATES

## DUE DATE CALENDAR — F.Y. 2016-17

Date	Obligations
April 7, 2016	Payment of Securities Transaction Tax for the month of March, 2016. Filing of Form 26QB for Tax deducted on payment of purchase consideration of house property in the month of March 2016
April 30, 2016	TCS Payment for the month of March, 2016. Payment of TDS collected and provisions made for the month of March, 2016 (or for Quarter Jan-March, 2016 in case approved by Assessing Officer under Sections 192,194A, 194D or 194H). Submissions of declarations received in Forms 60/61 (other than those received at the time of opening bank account) between 1-10-2015 and 31-12-2015 to Director (Investigation).
May 7, 2016	TDS/TCS payment for the month of April, 2016. Payment of Securities Transaction Tax for the month of April, 2016. Filing of form 26QB for Tax deducted on payment of purchase consideration of house property in the month of April 2016
May 15, 2016	TDS Return and TCS Return (by all persons who are responsible to collect the tax) for the quarter 1-1-2016 to 31-3-2016.
May 22, 2016	Issue of certificate in respect of TDS under section 194-IA in the month of April, 2016
May 30, 2016	Filing of statement Form No. 49C by non-resident having a liaison office in India for F.Y. 2015-16. Issue of TDS Certificates in Form 16A in respect of Tax Deducted at Source (other than salary) and TCS Certificate in Form 27D for quarter 1-1-2016 and 31-3-2016.
May 31, 2016	Issue of certificate in respect of TDS on salary during FY 2015-16 in Form 16. Statement for contribution paid by trustees of an approved superannuation fund and tax deducted thereon.
June 7, 2016	TDS/TCS payment for the month of May, 2016. Payment of Securities Transaction Tax for the month of May, 2016. Filing of form 26QB for Tax deducted on payment of purchase consideration of house property in the month of May, 2016
June 15, 2016	Advance Tax first instalment (up to 15%) for F.Y. 2016-17.
June 22, 2016	Issue of certificate in respect of TDS under section 194-IA in the month of May 2016.
June 30, 2016	Banking companies to file return of non-deduction of tax at source from interest on time deposit for the quarter 1-1-2016 to 31-3-2016 in Form No. 26QAA. Report by an approved institution/public sector company under sections 35AC(4)/(5) for the year ending March 31, 2016 in Form 58C/Form 58D. Return in respect of Securities Transaction Tax for the financial year 2015-16 in Form 1/ 2. Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2015-16 in Form 64B.
July 7, 2016	TDS/TCS (other than tax deducted under section 194IA) payment for the month of June, 2016 Deposit of TDS for the period April, 2016 to June, 2016 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192,194A, 194D or 194H. Payment of Securities Transaction Tax for the month of June, 2016
July 15, 2016	TCS Return (by all persons who are responsible to collect the tax) for the quarter 1-4-2016 to 30-6-2016.
July 30, 2016	Payment of Tax deducted under section 194-IA in the month of June, 2016 Issue of TCS Certificate in Form 27D for quarter 1-4-2016 and 30-6-2016
July 31, 2016	Filing of Income-tax/ Return by all assesseees (other than whose accounts are subject to audit under Income-tax Act or other laws and working partner of the firm which is liable for audit under any law) FOR A.Y. 2016-17. Belated payment of TDS, if TDS deducted but not paid within due date; payment of sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions (applicable to assesseees whose due date of filing return of income is 31-7-2016). Banking Company to file Return of non-deduction of tax at source from interest on time deposit for the

Date	Obligations
	<p>quarter 1-4-2016 and 30-6-2016 in Form No. 26QAA.</p> <p>TDS Return by all persons who are responsible to deduct tax for the quarter 1-4-2016 to 30-6-2016.</p> <p>Filing of Report certified by Accountant by Scientific Research Association, University, College or Other Association of Indian Scientific Research Company as required by rules 5D, 5E and 5F with the Commissioner/Director of Income Tax (if due date of submission of return of income tax is July 31, 2016)</p>
August 7, 2016	<p>TDS/TCS (other than tax deducted under section 194-IA) payment for the month of July, 2016.</p> <p>Payment of Securities Transaction Tax for the month of July, 2016.</p>
August 15, 2016	<p>Issue of TDS Certificates in Form 16A in respect of Tax Deducted at Source (other than salary) for quarter 1-4-2016 to 30-6-2016.</p>
August 30, 2016	<p>Payment of Tax deducted under section 194IA in the month of July, 2016</p>
August 31, 2016	<p>Filing of Statement of Financial transaction or reportable account for the financial year 2015-16 in Form 61A.</p>
September 7, 2016	<p>TDS/TCS (other than tax deducted under section 194-IA) payment for the month of August, 2016.</p> <p>Payment of Securities Transaction Tax for the month of August, 2016.</p>
September 15, 2016	<p>Advance Tax second instalment (up to 45%) for PY 2016-17.</p>
September 30, 2016	<p>Filing of Income-tax/ Return by assesseees who are required to get the accounts audited and working partner of the firm which is liable for audit under any law other than assesseees who are required to furnish transfer pricing audit report.</p> <p>Audit report under section 44AB in the case of an assessee (who is required to submit his/its return of income on September 30, 2016)</p> <p>Belated payment of TDS, if TDS deducted but not paid, within due date; payment of sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions, applicable to assesseees whose due date of filing return of income is 30-9-2016.</p> <p>Filing of Statement by Scientific Research Association, University, College or Other Association of Indian Scientific Research Company as required by rules 5D, 5E and 5F with the Commissioner/ Director of Income Tax (if due date of submission of return of income tax is September 30, 2016).</p> <p>Payment of Tax deducted under section 194-IA in the month of August, 2016.</p> <p>Last date to file declaration of undisclosed income under The Income Declaration Scheme, 2016.</p> <p>E-filing of statement in form no 61 containing particulars of form no 60 received during the period 1-1-2016 to 31-3-2016 (due date extended from 30 April 2016).</p>
October 7, 2016	<p>TDS/TCS (other than tax deducted under section 194IA) payment for the month of September, 2016.</p> <p>Deposit of TDS for the period July, 2016 to September, 2016 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192, 194A, 194D or 194H.</p> <p>Payment of Securities Transaction Tax for the month of September, 2016.</p>
October 15, 2016	<p>TCS Return (by all persons who are responsible to collect the tax) for the quarter 1-7-2016 to 30-9-2016.</p>
October 30, 2016	<p>Payment of Tax deducted under section 194-IA in the month of September, 2016.</p> <p>Issue of TCS Certificate in Form 27D for quarter 1-7-2016 and 30-9-2016.</p>
October 31, 2016	<p>Filing of annual audited accounts for each approved programmes under section 35(2AA).</p> <p>Banking companies to file return of non-deduction of Tax at Source from interest between 1-7-2016 and 30-9-2016 in Form No. 26QAA.</p> <p>TDS return by all persons who are responsible to deduct tax for the quarter 1-7-2016 to 30-9-2016.</p> <p>Declarations received in Form 60/61 (other than those received at the time of opening bank account) during 1-4-2016 to 30-9-2016 to Director (Investigation).</p>
November 7, 2016	<p>TDS/TCS (other than tax deducted under section 194-IA) payment for the month of October, 2016.</p> <p>Payment of Securities Transaction Tax for the month of October, 2016.</p>
November 15, 2016	<p>Issue of TDS Certificates in respect of Tax Deducted at Source (other than salary) for quarter 1-7-2016 to 30-9-2016 in Form 16A.</p>
November 30, 2016	<p>Filing of Income-tax/Return for A.Y. 2016-17 by the assesseees who are required to furnish transfer pricing audit report u/s. 92E. Filing of Tax Audit Report u/s. 44AB in Form 3CA/3CB &amp; Transfer Pricing Audit report u/s. 92E in Form 3CEB for A.Y. 2016-17, in case where assessee's accounts are subject to Transfer Pricing Audit.</p> <p>Belated payment of TDS (F.Y. 2015-16), if TDS deducted but not paid, within due date; payment of sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions, applicable to companies who are required to furnish transfer pricing audit report.</p> <p>Statement of Income distributed by Venture Capital/Fund in respect of income distributed during 2015-16 in Form 64.</p>



Date	Obligations
	Filing of Statement of Income Distributed by business trust to its unit holders in Form 64A. Payment of Tax deducted under section 194-IA in the month of October, 2016. Last date to pay tax, surcharge and penalty on undisclosed income under The Income Declaration Scheme, 2016.
December 7, 2016	TDS/TCS(other than tax deducted under section 194-IA) payment for the month of November, 2016. Payment of Securities Transaction Tax for the month of November, 2016.
December 15, 2016	Advance Tax third instalment (up to 75%) for F.Y. 2016-17.
December 30, 2016	Payment of Tax deducted under section 194-IA in the month of November, 2016
January 7, 2017	TDS/TCS (other than tax deducted under section 194-IA) payment for the month of December, 2016. Deposit of TDS for the period October, 2016 to December, 2016 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192, 194A, 194D or 194H. Payment of Securities Transaction Tax for the month of December, 2016.
January 15, 2017	TCS Return (by all persons who are responsible to collect the tax) for the quarter 1-10-2016 to 30-12-2016.
January 30, 2017	Payment of Tax deducted under section 194-IA in the month of December, 2016. Issue of TCS Certificate in Form 27D for quarter 1-10-2016 and 31-12-2016
January 31, 2017	Banking companies to file return of non-deduction of tax at source from interest on time deposit for quarter 1-10-2016 and 31-12-2016 in Form No. 26QAA. TDS Return by all persons who are responsible to deduct tax for the quarter 1-10-2016 to 31-12-2016.
February 7, 2017	TDS/TCS (other than tax deducted under section 194-IA) payment for the month of January, 2017. Payment of Securities Transaction Tax for the month of January, 2017.
February 15, 2017	Issue of TDS Certificates in respect of Tax Deducted at Source (other than salary) for quarter 1-10-2016 to 31-12-2016.
March 2, 2017	Payment of Tax deducted under section 194-IA in the month of January, 2017
March 7, 2017	TDS/TCS (other than tax deducted under section 194-IA) payment for the month of February, 2017. Payment of Securities Transaction Tax for the month of February, 2017.
March 15, 2017	Advance Tax final instalment for balance payment for PY 2016-17. Advance tax payment in case of eligible business referred to in section 44AD.
March 30, 2017	Payment of Tax deducted under section 194-IA in the month of February, 2016
March 31, 2017	Last date for payment of balance advance tax so as to avoid interest u/s. 234B, if the total payment is less than 90% paid up to 15th March, in case of all assessees. Application for registration in Form 10A for trust u/s. 12A to be eligible for exemption for F.Y. 2016-17 u/s. 11 and 12 to CIT/PCIT. Last date for deduction of TDS for payments made in F.Y. 2016-17 so as to avoid disallowance of expenses u/s. 40(a)(i)/(ia). Last date to file belated return u/s. 139(4) for F.Y. 2014-15. Last date to file revised return u/s 139(5) for F.Y. 2014-15.
April 7, 2017	Payment of Securities Transaction Tax for the month of March, 2017.
April 30, 2017	Payment of TDS collected and provisions made for the month of March, 2017 (or for Quarter Jan-March, 2017 in case approved by Assessing Officer under Sections 192,194A, 194D or 194H). TCS payment for the month of March, 2017 Declarations received in Form 60/61 (other than those received at the time of opening bank account) during 1-10-2016 to 31-3-2017 to Director (Investigation). Payment of Tax deducted under section 194-IA in the month of March, 2017
May 7, 2017	TDS/TCS (other than tax deducted under section 194-IA) payment for the month of April, 2017. Payment of Securities Transaction Tax for the month of April, 2017.
May 15, 2017	TCS Return in respect of all assessees for the quarter 1-1-2017 to 31-3-2017.
May 30, 2017	Payment of Tax deducted under section 194-IA in the month of April, 2017. Issue of TCS Certificate in Form 27D for quarter 1-1-2017 and 31-3-2017
May 31, 2017	Statement for contribution paid by trustees of an approved superannuation fund and tax deducted

Date	Obligations
	thereon. TDS return in respect of all assessees for the quarter 1-1-2017 to 31-3-2017
June 7, 2017	TDS/TCS (other than tax deducted under section 194-IA) payment for the month of May, 2017. Payment of Securities Transaction Tax for the month of May, 2017.
June 15, 2017	Advance Tax first instalment (up to 15%) for f.Y. 2017-18. Issue of TDS Certificates in respect of Tax Deducted at Source (other than salary) for quarter 1-01-2017 to 31-03-2017
June 30, 2017	Banking companies to file return of non-deduction of tax at source from interest on time deposit between 1-1-2017 and 31-3-2017 in Form No. 26QAA. Report by an approved institution/public sector company under section 35AC(4)/(5) for the year ending March 31, 2017 in Form 58C/Form 58D. Return in respect of Securities Transaction Tax for the financial year 2016-17 in Form 1/Form 2. Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2016-17 in Form 64B. Payment of Tax deducted under section 194-IA in the month of May, 2017.

**Note:** The Income-tax (11th Amendment) Rules, 2016 on 29-4-2016, has amended various time limits for payment of TDS, filing statements etc. Amended rule 30(2A) allows 30 days from the end of month in which tax is deducted u/s 194-IA to make payment of such TDS. But Statement in 26QB is required to be filed within 7 days from the end of month in which deduction is made [as per rule 31(3A)] and certificate in form 16B is required to be issued within 15 days from the date of furnishing of statement [as per rule 31A(4A)]. In absence of amendment in time limit for filing of statement and issue of TDS certificate, anomaly is created. In sense time limit for filing statement and issue of TDS certificate falls prior to date of payment of TDS. Hence in above due dates due date of issue TDS certificate for tax deducted u/s. 194-IA and filing statement for same has not been considered.

# PLACE OF EFFECTIVE MANAGEMENT & BASE EROSION AND PROFIT SHIFTING

The International tax issues were never as high on the political agenda as they are today. This has placed a stress on the international tax framework, which was designed more than a century ago. To address this issue, in September 2013, G20 leaders endorsed the ambitious and wide-ranging action plan on Base Erosion and Profit Shifting (BEPS). The package of 13 reports which includes new or reinforced international standards as well as concrete measures to help countries tackle BEPS were delivered within 2 years.

The findings of the work performed since 2013 indicate that the global corporate income tax (CIT) revenue losses could be between 4% to 10% of global CIT revenues. The losses can be due to variety of reasons like lack of transparency and coordination between tax authorities, aggressive tax planning by some multinational enterprises etc. The BEPS package is developed and agreed because there is a vital need to restore the trust of ordinary people in the fairness of their tax systems, to level the playing fields among businesses and to provide government with more effective tools to ensure the effectiveness of their sovereign tax policies.

The goal of BEPS is to address the root cause of concerns rather than merely the symptoms. To address the concerns, where no action by some countries would have created negative spill overs on other countries, minimum standards have been agreed in particular. Identifying the need to level the playing field, the Organisation for Economic Co-operation and Development (OECD) and G20 countries have committed for consistent implementation in the areas of preventing treaty shopping, country-by-country reporting and improving dispute resolution.

Implementation of BEPS will lay groundwork of a modern international tax framework under which profits will be taxed where economic activity and value creation follows. Some of the revisions requisite for BEPS implementation may be immediately applicable such as the revisions to the Transfer Pricing Guidelines, while the other required changes can be implemented via tax treaties.

## **The BEPS plan is structured around the following three pillars:**

- i. Introducing coherence in the domestic rules that affects cross border activities;
- ii. Reinforcing substance requirements in the existing international standards to ensure alignment of taxation with the location of economic activity and value creation; and
- iii. Improving transparency as well as certainty for businesses and government.

## **The Organisation for Economic Co-operation and Development (OECD) released final reports on all 15 focus areas in its Action Plan on BEPS which are as follows:**

- Action 1 Address the Tax Challenges of the Digital Economy.
- Action 2 Neutralise the Effects of Hybrid Mismatch Agreements.
- Action 3 Strengthen Controlled Foreign Company (CFC) Rules.
- Action 4 Limit Base Erosion via Interest Deductions and other Financial Payments.
- Action 5 Counter Harmful Tax Practices more Effectively, Taking into Account Transparency and Substance.
- Action 6 Prevent Treaty Abuse.
- Action 7 Prevent the Artificial Avoidance of PE Status.
- Action 8-10 Assure that Transfer Pricing Outcomes are in Line with Value Creation.
- Action 11 Measuring and Monitoring BEPS.
- Action 12 Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements.
- Action 13 Re-examine Transfer Pricing Documentation.
- Action 14 Make Dispute Resolution Mechanisms More Effective.
- Action 15 Develop a Multilateral Instrument.

# SURVEY, SEARCH AND SEIZURE

## SURVEY

### 1. Preliminary

The relevant provisions are contained in section 133A of the Income-tax Act. The Income-tax Department may take recourse to these provisions to verify whether the Income-tax returns filed/to be filed by an assessee are inconsistent with the books, documents, cash, stocks or other assets in physical possession with the assessee. For example, the assessee may be in possession of stocks which is far in excess of stocks disclosed in the last return of income even after making adjustments for purchases and sales during the intervening period. This may be on account of underreporting of inventories and consequently income chargeable to tax. This would be detected during the process of survey.

It may be noted that unlike section 132, for taking action under these provisions, it is not necessary that the Income-tax Authorities should have any information to the effect that an assessee is in possession of undisclosed assets, etc.

### 2. Authorities

The powers of survey are with Income-tax authority means Principal Commissioner, Joint Commissioner, Principal Director, Director and Joint Director. Also the powers may be exercised by Assistant Director, Deputy Director, Assessing Officer and Tax Recovery Officer, and for specified provisions, also Inspector of Income-tax, only after taking approval of Joint Director/Joint Commissioner.

Normally the decision to conduct a survey is taken by Assessing Officer who is also involved in actual conduct of survey.

### 3. Time and place

- The powers are given to conduct survey at a place at which business (including profession) is carried on, which need not be the principal place, as also other place at which books of account, documents, cash, stock or other valuable articles relating to business are stated to be kept.

Hence, while survey cannot be done at residential premises, such premises will get covered if books, etc. relating to business is stated to be kept there.

- The Income-tax authority can enter a place of business for this purpose only during hours at which such place is open for conduct of business. As regards the other place at which books, etc. are stated to be kept, the entry can be only after sunrise and before sunset.
- Once the Income-tax authority enters the place, there is no restriction regarding the time by which the proceedings need to be completed.
- Proceedings are normally contemplated at the place where business of the assessee is conducted and not at his residence or business places of his consultants (Circular dated 3rd May, 1967).

### 4. Powers of the Income-tax authority

The Income-tax authority is entitled to:

- Inspect books of account/documents, place identification marks thereon, get copies thereof, or, after recording reasons for doing so, impound them. However, they cannot be retained by him for more than 10 days unless necessary approval is obtained from Chief Commissioner/Director General.
- Verify cash, stock or other valuable articles or things and make inventory thereof. These assets cannot be seized or retained.
- Seek information or record statement relating to matters relevant to any proceedings (including proceedings which are pending/completed or may be commenced) under the Income-tax Act.
- As inserted by Finance Act, 2014 w.e.f. 1-10-2014

The powers of survey u/s. 133A vested upon the Income tax authorities are now extended also for verifying that tax has been deducted or collected at source in accordance with the provisions under sub heading B & BB of Chapter XVII of the Income-tax Act.

Section 133C has been inserted w.e.f. 1-10-2014 empowering the prescribed income tax authority, for the purpose of verification of information in its possession relating to any other person, issue a notice to such other person requiring him, on or before the date to be specified therein, to furnish information or documents verified in the manner specified therein, which may be useful for, or relevant to any inquiry or proceedings under this Act.

## **5. Expenditure on function/ceremony or event**

If Income-tax authority considers it necessary having regard to nature and scale of expenditure in connection with a function, ceremony or event, it may, after the function, ceremony or event, seek information from or record statement of any person likely to possess necessary information in relation thereto.

## **6. Other matters**

- i. Assessee should verify the identity of the Income-tax authority and during the process of survey needs to be vigilant to ensure that the Income-tax authority does not make an inventory or record statement which is incorrect and detrimental to the interests of the assessee.
- ii. The assessee is expected to co-operate and allow the Income-tax authority to carry out their duties.

However, acts of the following nature, by the Income-tax Authority, may be considered high-handed and unauthorised:

- Sealing of premises or enforcing stoppage of business
- Preventing movement of persons to/from the place being surveyed.
- Forcing disclosure of unaccounted income.
- Taking control of the telephone and not allowing making or receiving of telephone calls.

Information obtained during survey may lead to search and seizure under section 132 only if the conditions of that section are satisfied.

Cases in which survey is conducted are normally selected for scrutiny and the information gathered as a result of the survey is used for making assessments.

Unlike action under section 132, Explanation 5 to section 271(1)(c) does not operate. Hence, in case any unaccounted assets are found during survey, but later disclosed in return of income, penalty is not leviable merely because these were found during survey.

The Income-tax Officer can inspect the business premises and record statements under the provisions of Section 133A. But such an Authority cannot demand collection of tax on the alleged undisclosed income then and there.

## **SEARCH AND SEIZURE**

### **1. Preliminary**

The relevant provisions are contained in section 132 of the Income-tax Act. Search and seizure proceedings amount to serious invasion of right to privacy and right to possess property. Hence, it is necessary that these proceedings are carried out strictly within the framework of the relevant provisions.

The prerequisite for action under this section is that the concerned authority has information which provides a reason to believe that:

- A person has failed or will fail to produce books of account or documents required from him by issue of summons under section 131 or notice under section 142; or
- A person possesses money, bullion, jewellery or other valuable asset which represents income or property which he has not disclosed or will not disclose for the purposes of the Income-tax Act (undisclosed income or property).

- Source of information:

The information may come from a variety of sources:

Professional informers, business or professional rivals, disgruntled employees, disgruntled relatives ...

The information collected during survey may also form the basis. The object is to get direct and clinching evidence regarding transactions, duplicate set of books, undisclosed, concealed income, wealth and assets.

- Information to the effect that a person possesses large amount of cash would not suffice in absence of information to the effect that it is not disclosed or will not be disclosed. Also the information should exist when the authorisation is issued and authorisation cannot be justified with reference to findings in search. Reference may be made to decision of Delhi High Court in case of Ajit Jain vs. Union of India (2001) (159 CTR 204, 242 ITR 305), decision of Bombay High Court in case of Diamondstar Exports Limited vs. Director General of Income-tax (143 Taxman 16) and of Allahabad High Court in case of Suresh Chand Agarwal vs. Director General of Income-tax (269 ITR 22).

## 2. Authorities

The powers under the section are vested in Director General, Director, Principal Commissioner, Commissioner or Principal Chief Commissioner, Chief Commissioner or Joint Director or Joint Commissioner empowered by the Board.

These authorities may authorise Assistant Director, Deputy Director, Assistant Commissioner or Deputy Commissioner to conduct the search and seizure operations.

Further, the Director General, Director, Commissioner or Chief Commissioner may also authorise Joint Director or Joint Commissioner or Additional Director, Additional Commissioner or Assistant Director or Deputy Director or Assistant Commissioner, Deputy Commissioner or Income Tax Officer for this purpose (Authorised persons referred to as Authorised Officer).

## 3. Powers of the Authorised Officers

Unlike action under section 133A which is generally restricted to business place, action under section 132 can cover any building, including residential buildings, place, vessel, vehicle or aircraft.

The action can commence at any time of day or night.

If keys are not available, authorised officer may break open lock of door, box, locker, safe, almirah or other receptacle.

He may also search a person who has got out of or about to get into the building, or is in possession of books of account, tangibles, etc.

He may inspect books of account or documents including electronic record.

He may seize books of account, documents, money, bullion, jewellery or valuable article or thing, other than stock-in-trade of business. However, he would not be justified in seizing assets which are disclosed to the Income-tax Department. Reference may be made to decision of Guwahati High Court in case of Rajesh Sharma vs. ACIT (168 CTR 231). The seized items are to be handed over to the Assessing Officer having jurisdiction over the assessee within 60 days from the date of last authorisation. Immovable property cannot be seized Reference Decision of M.P. High Court in case of Bapurao vs. ADIT (247 ITR 98). The books and documents are not to be retained beyond 30 days from the date of relative assessment order unless reasons are recorded and approval is taken from Commissioner/Chief Commissioner/Director/Director General. Authorised officer is to allow assessee to take copies thereof.

In case it is not practicable to seize books, documents, money, bullion, jewellery or valuable article or thing, the Authorised Officer may serve a prohibitory order to the effect that such asset (other than stock-in-trade) shall not be removed or dealt with without his permission. Except as regards valuable article or thing not seized on account of their physical characteristics, the order shall not be considered as seizure and shall be in force for up to 60 days.

He may place marks of identification on books or documents or get copies thereof and also make inventory of money, bullion, jewellery or valuable article or thing.

The Authorised Officer may requisition services of police or other officer for this purpose.

He may examine on oath any person found in possession of books, documents, money, bullion, jewellery or valuable article or thing. There is rebuttable presumption that these assets belong to him and that contents of the books/documents are true.

Prabhubhai Vastabhai Patel vs. R.P. Meena 226 ITR 781 (Guj.) has summarised conditions laid down by various judgements. Authority must have information, Reason to believe & not suspect It must be info & not rumour or gossip or hunch. Information must exist prior to authorization. Reason to believe must have reasonable bearing/connection to information. Existence of condition precedent is open to judicial scrutiny. But sufficiency of information is not open to judicial scrutiny.

Illegal Search – Consequences when a search is held as illegal by High Court: All assets seized to be returned, Original copies of books of account or other documents to be released. No proceedings u/s. 153A or u/s. 153C. No presumption u/s. 132(4A)/292C Costs may be awarded. However, department is not precluded from using the document. [Pooranmal vs. Director of Inspection (1974) 93 ITR 505 (SC).]

#### 4. Statement on Oath

- Sec. 8 of INDIAN OATHS ACT, 1969: Persons giving evidence bound to state the truth: Every person giving evidence on any subject before any Court or any person evidence on any subject before any Court or any person authorised to administer oaths and affirmation shall be bound to state the truth on the subject. Name of Old act - The Indian Oaths Act, 1873.
- An admission in statement recorded on oath is an extremely important piece of evidence but it cannot be said that it is conclusive: Pullangode Rubber Products Co. Ltd. (91 ITR 18)(SC), Krishnan vs. Products Co. Ltd. (91 ITR 18)(SC), Krishnan vs. Kurushetra University (AIR 1976 SC 377) (SC) a statement recorded u/s. 132(4) at midnight cannot be considered a voluntary statement if it is subsequently retracted by the assessee and necessary evidence is laid contrary to such admission: Kailashben Manharlal Chokshi (174 Taxmann 466)( Gujrat):
- C.I.T. vs. Radhakishan Goyal (278 ITR 454)(Allahabad) that it is a matter of common knowledge, which cannot be ignored that the search is being conducted with the complete team of the officers consisting of several officers with the police force. Usually telephone and all other connections are disconnected and all ingress and egress are blocked. During the course of search person is so tortured ,harassed and put to a mental agony that he loses his normal mental state of mind and at that stage it cannot be expected from a person to pre-empt the statement required to be given in law as a part of his defence.
- Violation of Human Rights: Chief Commissioner of Income-tax (CCA) vs. State of Bihar through the Chief Secretary, [2012] 18 taxmann.com 70 (Pat.):  
Due regard to human dignity taxmann.com 70 (Pat.): Due regard to human dignity and value cannot be ignored.
- Aspects Relating to Surrender of Undisclosed Income: Why to make surrender? To avoid penalty, to mitigate rigours of search, To wrap up the search proceedings. Conditions of surrender under section 132(4) r.w.s 271AAB state the manner how undisclosed income has been derived. Substantiate the manner pay the taxes before the specified date.
- Retraction of surrender to be made at the earliest Department may view it adversely ultimately nature of evidences will decide Challenging valuation, not retraction Challenging calculation, not retraction Conditional surrender- fulfilling conditions Consequences of retraction. In case of retraction burden of proof on assessee : Krishan Lal Shiv Chand Rai vs. CIT (1973) 88 ITR 293 (P&H).
- Surrender—consideration Cover incriminating material found Creation of capital Generation of income vs. Application in assets Set-off of losses Assets acquired prior to seven financial years Current year income not recorded, advance tax not paid Conditional surrender Principle of Peak Balance No surrender for third party.

- Surrender of Undisclosed Income: How to be made during the course of search. A paragraph mentioning that the surrender letter submitted by the assessee is in the nature of statement of the assessee u/s.132(4). To mention that the declaration is subject to no penal consequences. To mention broad manner of earning undisclosed income and to substantiate it to the extent possible. Surrender letter to be signed by of the person/entity making the surrender. In case a person makes declaration on behalf of other person, he should be authorised to do so.
- Surrender of Undisclosed Income: Surrender of undisclosed income to be made in the hands of the person/entities against whom search warrant has been issued. To ensure that surrender letter is given prior to the date of conclusion of search with respect to the concerned person/entity. In case declaration is made amending or improving upon any earlier declaration, this fact should be clearly mentioned. In case there is seizure of cash, assessee should state and request to treat the amount of cash seized as payment of advance tax in the hands of concerned person/entity. A line mentioning that surrender of undisclosed income is being made to buy peace and to settle the dispute.

## 5. Application of seized/requisitioned assets

This is dealt with in section 132B.

Application may be made to Assessing Officer within 30 days of the end of the month of seizure for release of assets and the assets may be released with the approval of Commissioner/Chief Commissioner if Assessing Officer is satisfied regarding the nature and source of acquisition thereof, after recovery of any existing tax liability. The release should be within 120 days from the date of execution of last authorization.

Assessing Officer may recover tax demands out of cash seized or sale of assets.

Interest at 6% p.a. is payable on excess of money seized (less amount released) and sale price of assets sold over the amount of liability after exclusion of period of 120 days.

Assets cannot be retained for meeting potential liabilities. Reference may be made to decision of Calcutta High Court in case of Mukundrai Shah (269 ITR 529).

Remaining assets are to be forthwith released after recovery of existing liability under Income-tax Act, Wealth-tax Act, etc. as also liability for tax, interest and penalty arising on completion of assessments made in consequence of the search the first and second proviso to section 132B(1)(i), provides to make application to the Assessing Officer for release of asset within thirty days from the end of the month in which the asset was seized. Explaining source of acquisition of the asset The amount of any existing liability referred to in clause (i) of section 132B(1) may be recovered out of such asset. The remaining portion, if any, of the asset may be released with the prior approval of the Chief Commissioner or the Commissioner within a period of one hundred and twenty days from the date on which the last of the authorizations for search was executed. Delay in release of assets – Remedies with the assessee Approach to the higher administrative authorities. Writ to the High Court claiming compensation for delay in release of the assets. File petition with the office of Ombudsman.

## 6. Assessments

Sections 153A/153B/153C deal with assessments in pursuance of search.

Irrespective of findings in search and irrespective of whether assessments are already made for these years, there will be fresh assessments in pursuance of search for six assessment years preceding the assessment year relevant to the previous year of search. Assessments pending on the date of initiation of search shall abate.

Notice will be issued by Assessing Officer to the person in whose case the search is carried out, requiring him to furnish returns for these years.

In an assessment or reassessment made in respect of an assessment year u/s. 153A, the tax shall be chargeable at the rate or rates applicable to such assessment year.

Assessments shall be made within 21 months from the end of the year of execution of last authorisation subject to extended limitation applicable in cases of stay by a court/audit under section 142/fresh opportunity of hearing under section 129/applications to Settlement Commission or Authority for Advance Ruling.



If Assessing Officer is satisfied that the seized items belong to another person, the relative items shall be handed over to Assessing Officer having jurisdiction over the other person and he shall undergo similar proceedings. In his case, assessments pending on date of receipt of relative items by his Assessing Officer shall abate. Extended limitation for assessment shall apply in his case. w.e.f. 1-10-2014 the period of limitation u/s. 153B shall exclude the period commencing from the date on which the A.O. makes reference to valuation office u/s. 1 of 142A and ending with the date on which it's the report of the valuation officer is received by the A.O.

- In case of assessment in search cases one should systematically and chronically arrange all the seized documents entities wise and Assessment year wise. For that, get the transactions entered in excel sheet preferably in the following columns. Name of Entity, Date, amount, narration of expenditure, narration of income, narration of investment and premise wise, and premise wise, Benefit of telescoping /peak credits. Where any undisclosed income is offered in the return filed u/s 153A then the expenditure incurred to earn that income may also be claimed. Below the computation of income put the suitable and appropriate notes-provide flexibility, no allegation of non disclosure etc.
- Relevant Issues Under Sections 153A/153C (made after 31-5-2003) Assessment for the preceding seventh year prior to the year of search can be reopened under section 148. Ramballabh Gupta vs. Asstt. CIT (2007) 288 ITR 347 (MP). Fresh assessments to be framed for all the preceding six years whether assessment proceedings are abated or not. Notice under section 143(2) within time limit as prescribed is mandatory in case of proceedings under section 153A: Asstt. CIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC).
- Recording of satisfaction before invoking provision of section 153C: Manish Maheshwari vs. Asstt. CIT (2007) 280 ITR 341 (SC). Jurisdiction under section 153C can be assumed when seized material belong or belongs to other person : Vijaybhai N. Chandrani vs. Asstt. CIT (2010) 38 DTR (Guj.) 225. Reference to departmental valuation officers in search cases. Reference to departmental valuation officers in search cases. Reference for special audit under section 142(2A). Reliance on statement recorded by authorized officer during search. No addition for investment in jewellery up to specified limit not required to be seized. Assessment in the case of retraction surrender of undisclosed income.
- Assessment u/s.153A in the Case of Concluded Assessments. Assessment u/s.153A has to be made on the basis of Incriminating Material Only In The Case of Concluded Assessments: All Cargo Global Logistics Ltd. vs. DIT, 2012-TIOL-391-ITAT-Mum- SB, i.e., on the basis of undisclosed income/property/books of account/ documents found during 132/132A operation. A.C.I.T. vs. Pratibha Industries Ltd., [2012] 28 taxmann.com 246 (Mum.) Jai Steel (India) vs. Assistant Commissioner Of Income Tax (dated 24-5-2013)(Raj.) held (a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made; (b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and (c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made.

Writ Jurisdiction at Assessment Stage: Chitra Devi Soni 313 ITR 174 (Raj.) in favour of assessee SLP dismissed. Paras Rice Mills 313 ITR 182 (P&H); Gaya Prasad Pathak Paras Rice Mills 313 ITR 182 (P&H); Gaya Prasad Pathak 290 ITR 128 (MP) against the assessee.

- Presence of Counsel: The Madras High Court, in the G. Giribabu & Anr. (2010) 326 ITR 575 Madras case, decided that a person summoned cannot insist that he should be permitted to appear with his counsel during preliminary enquiry proceedings. The case arose under the FEMA provisions. The petitioners' case before the high court was that the right to be represented by an advocate flows as the cross examination is justified as if before a court of law. The FEMA/I-T authorities have no jurisdiction or power to deny the presence of an advocate. The right of fair procedure is part of the requirement of article 21 of the Constitution of India.
- There is great latitude allowed to an income-tax authority and the procedure in an adversary system of proceedings cannot be applied to him even at the stage of collection of information. The court held that the functions that the AOs under the IT Act and officers of the ED under FEMA perform are of an inquisitive and officers of the ED under FEMA perform are of an inquisitive nature seeking

and collecting information-not that of deciding any issues. Basically, these are information gathering exercises. When the information gets collected through the machinery of these provisions and it is to be put to use in passing orders, the parties involved are to be given opportunity to have their say in accordance with the principle of natural justice and they get full opportunity for cross-examination and, at that stage, the assessee/party proceeded against, can be represented by his/her counsel-not at the enquiry stage.

## **7. Post Search Matter**

Request to appropriate cash seized toward advance tax. Now not possible from 1st June 2013. Application u/s. 132B for release of disclosed assets if any seized along with all the relevant evidences. (Refer 1st and 2nd proviso to 132B(1)(i). Letter requesting to give photocopies of all the documents, papers or books of account seized. Delay in supplying copies of seized material – Levy of interest not justified. [Refer Board order issued material – Levy of interest not justified. [Refer Board order issued u/s. 119(2)(a)] reported in 219 ITR 169 (ST). Letter for release by person/entity not covered in the search, in case any books of account or assets belonging to them have been seized. Letter with complete evidences regarding disclosure of jewellery or assets in case restraint order u/s. 132(3) has been passed but assets have not yet been seized. Letter for release of jewellery against deposit of equivalent amount of cash/furnishing of bank guarantee.

## **8. Other matters**

- Presumption as to ownership. Section 292C [Inserted by Finance Act, 2008, w.e.f. 1-6-2002]. Presumption regarding belongingness of books of account, other documents, money, bullion, jewellery, other valuable articles or thing, Truthfulness of the contents regarding signature and handwriting and stamping and execution or attestation.

Note: This concept is in line with the principle given under Indian Evidence Act. Section 110 of Indian Evidence Act. 1872 reads as under: “when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.

- Assessee is entitled to verify identity of the search party and search them and also verify search warrant. Proceedings are to be conducted in the presence of two witnesses and copy of panchnama is to be given to assessee.
- The provisions do not contain power to make arrest. Children are allowed to go to school after search of their bags. Courts have frowned upon practice not to allow doctors to attend to emergencies. Medical attention and meals are to be allowed to assessee or his family members.
- Assessee needs to be vigilant to ensure that the Income-tax authority does not make an inventory or record statement which is incorrect and detrimental to the interests of the assessee.
- Assessee may request for release of assets after furnishing bank guarantee or making payment of tax demands, especially in cases of assets which assessee wants to sell to take advantage of good market price or in cases of financial assets which have matured.
- Action under section 132 cannot be stopped by Civil Court.
- Ornaments weighing up to 500 grams per married female member, 250 grams per unmarried female member and 100 grams per male member are not seized by executive instructions, even if assessee is not able to furnish any evidence regarding nature and source of acquisition. Similarly, ornaments up to gross weight declared in wealth-tax return should not be seized.

## **9. Important Judicial Decisions**

- i. M/s. All Cargo Global Logistics Ltd. vs. DCIT (Special Bench Mumbai)

Held that in the case of assessment/reassessment proceedings u/s. 153A which are already completed u/s. 143(1) or u/s. 143(3) and which were not abated, addition can be made as to the undisclosed income, inter alia, based upon incriminating material found during the course of search.

- ii. Canara Housing Development Company vs. DCIT (Karnataka High Court)

Several Benches of the Tribunal as well as High courts have time and again stated that in case of assessment u/s. 153A which are not abated no addition can be made without incriminating material. However recently The Hon'ble Karnataka High Court thus creating controversy has held that it is expressly provided u/s. 153A of the Act that the AO shall assess or reassess the "total income" of six assessment years which means the said total income includes income which was returned in the earlier return, the income which was unearthed during search.

iii. Gurinder Singh Bawa vs. DCIT (ITAT Mumbai)

In a case where the assessment has not abated, an assessment u/s. 153A can be made only on the basis of incriminating material. On facts, as the assessment was completed u/s. 143(1) and the time limit for issue of u/s. 143(2) notice had expired on the date of search, there was no assessment pending and there was no question of abatement. Therefore, the addition could be made only on the basis of incriminating material found during search.

iv. Dy. CIT vs. Eversmile Construction Co. (P) Ltd. 65 DTR 39 (Mum 'G')

Held that in the case of search, when Revenue is empowered to reassess 'total income' of the assessee for the earlier six years, assessee should also be entitled to lodge new claim of deduction which could not be claimed by him in the original return and for which assessee is legally entitled. In fact, entitlement of the assessee to lodge fresh claim has been accepted.

v. Sanjay Agarwal vs. DCIT (ITAT DELHI)

Held that the second proviso to section 153A(1) eclipses the determination of 'total income' by mandating that while pending assessments relating to any assessment year falling within the period of six years shall abate and that completed assessments shall remain intact. The effect of the second proviso in the entire setting of section is that the assessment for any assessment year which is not pending as on the date of search cannot include an item of income for which no incriminating material was found.

vi. DCIT vs. Eversmile Construction Co. Pvt. Ltd. (ITAT Mumbai)

Held that Section 153A requires the AO to make the assessment afresh and compute the "total income" in respect of each of the relevant six assessment years. There is no inhibition on the jurisdiction of the AO on the including of new income and likewise there is no restriction on the assessee to claim any deduction which was not allowed in the original assessment.

vii. CIT vs. Smt. Shaila Agarwal Allahabad High Court, reported in 204 Taxmann 276

In case of section 153A if the assessment is finalised, there are no "pending proceedings" to be abated. The pendency of an appeal does not mean that the assessment proceedings are pending. The word 'abatement' refers to something, which is pending or alive and its suspension or termination. Proceedings which are complete are not liable for abatement

viii. CIT vs. Murli Agro Products Ltd. (Bombay High Court)

Held that the AO, while passing the independent assessment order u/s. 153A could not have disturbed the assessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s. 153A establish that the reliefs granted under the finalized assessment were contrary to the facts unearthed during the course of section 153A proceedings.

ix. Sinhgad Technical Education Society vs. ACIT (ITA Nos. 114 to 117/PN/10 dated 28-1-2011)

Held that though section 153C confers jurisdiction if the AO is "satisfied" that "documents" seized belong to a person other than the person referred to in section 153A so as to be able to assess that other person, the document must have prima facie incriminating information. The document seized must not only be a 'speaking one' but also be prima facie 'incriminating one' for attracting section 153C.

x. Manish Maheshwari 289 ITR 341 (SC)

In the case of section 158BD the recording of satisfaction by the AO that undisclosed income belongs to any person, other than the person who was searched, is a condition precedent. Section 153C is analogues to section 158BD.

- xi. Navin Kumar Agarwal vs. CIT (Calcutta High Court)  
Section 158BE: The search ends, and the period of limitation begins, only on the drawing up of the formal panchnama to record the ending of the search. The argument that the search is concluded on the date of the search itself if nothing is seized thereafter is not acceptable.
- xii. CIT vs. Vatika Township (Supreme Court – Full Bench) [2014] 49 taxmann.com 249  
Section 113 Proviso inserted by FA 2002 w.e.f. 1-6-2002 to impose surcharge in search assessments is not clarificatory or retrospective. Suresh Gupta 297 ITR 322 (SC) overruled.
- xiii. Jasjit Singh vs. ACIT (ITAT Delhi)  
Section 153C: Date of receiving seized documents is the "date of initiation of search" and six years period has to be reckoned from that date. An assessment order passed u/s.143(3) instead of u/s. 153C is void.
- xiv. CIT vs. Indu Surveyors & loss Assessors Pvt. Ltd.(Delhi High Court)  
Section 153A/153C: If the assessee stands amalgamated with another Co., it ceases to exist and all proceedings of search u/s. 132, notice and assessment u/s. 153C on the assessee are a nullity and void ab initio.
- xv. Pr. CIT vs. Lata Jain (Delhi High Court)  
Section 153A assessment cannot be made for the AYs in which incriminating material is not recovered even though incriminating material may be recovered for other years in the block of 6 years.

## 10. Penalties in Case of Search and Seizure Cases

Presently the Income Tax Act, 1961 contains special provisions in respect of penalty where the Search has been initiated. These provisions are summarized as under:

Sr. No.	Section	Applicability
1	271(1)(c) read with Explanation 5A	Applicable to Search carried out on or after 1-6-2007
2	271AAA	Applicable to Search carried out on or after 1-6-2007 but before 1-7-2012
3	271AAB	Applicable to Search carried out on or after 1-7-2012

### Amendment of section 271AAB

Existing provision of clause (c) of sub-section (1) of section 271AAB provides that in a case not covered under the provisions of clauses (a) and (b) of the said sub-section of section 271AAB, a penalty of a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after the 1st day of July, 2012. In order to rationalise the rate of penalty and to reduce discretion it is proposed to amend that clause (c) of sub-section (1) of section 271AAB to provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

Calculation of under-reported income in a case where the source of any receipt, deposit or investment is linked to earlier year is proposed to be provided based on the existing Explanation 2 to sub-section (1) of section 271(1)

It is proposed that the under-reported income under this section shall not include the case where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

## 11. Application to Settlement Commission

Another alternate to the assessment proceedings is filing an application before the Settlement Commission.

### Pre-requisite for Filing Application –

1. An application before the Settlement Commission can be made only if the additional income disclosed exceeds ? 10 lakh in normal case and in search case if disclosure exceeds ? 50 lakh.
2. Application can be made only at the stage of the pendency of the original assessment proceedings before the assessing officer (AO) original assessment proceedings before the assessing officer (AO).

An application can be made by an assessee for settlement before the Commission only once in a lifetime. Advantage: Order is conclusive and final. Waiver of penalty and prosecution under Income-tax Act can be given.

# INCOME COMPUTATION AND DISCLOSURE STANDARDS

## SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - INCOME COMPUTATION AND DISCLOSURE STANDARD I RELATING TO ACCOUNTING POLICIES

**NOTIFICATION NO.32/2015 [F. NO. 134/48/2010-TPL]/SO 892(E) DATED 31-3-2015**

- In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 the Central Government notified the Income Computation and Disclosure Standards (ICDS).
- Applicable to all assesseees following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources".
- This notification shall come into force with effect from 1st day of April, 2015, and shall accordingly apply to the assessment year 2016-17 and subsequent assessment years.
- Common Preamble to all ICDS:

This ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this ICDS, the provisions of the Act shall prevail to that extent.

### ICDS I – Accounting Policies

#### Fundamental Accounting Assumptions

The following are fundamental accounting assumptions, namely: -

- a. **Going Concern:** Refers to the assumption that the person has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future.
- b. **Consistency:** Refers to the assumption that accounting policies are consistent from one period to another;
- c. **Accrual:** Refers to the assumption that revenues and costs are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.

#### Accounting Policies

The accounting policies refer to the specific accounting principles and the methods of applying those principles adopted by a person.

#### Considerations in the Selection and Change of Accounting Policies

Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation. For this purpose,

- i. The treatment and presentation of transactions and events shall be governed by the principle "substance over form"; and
- ii. Marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other ICDS.

An accounting policy **shall not be changed without reasonable cause.**

## Disclosure of Accounting Policies

- All significant accounting policies adopted by a person shall be disclosed.
- Any change in an accounting policy which has a material effect shall be disclosed.
- The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable; where such amount is not ascertainable, wholly or in part, the fact shall be indicated.
- If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and also in the previous year in which such change has material effect for the first time.
- Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.
- If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact shall be disclosed.

## Transitional Provisions

All contract or transaction existing on the 1st day of April, 2015 or entered into on or after the 1st day of April, 2015 shall be dealt with in accordance with the provisions of this standard after taking into account the income, expense or loss, if any, recognised in respect of the said contract or transaction for the previous year ending on or before the 31st March, 2015.

## ICDS II - Valuation of Inventories

### Scope

This Income Computation and Disclosure Standard shall be applied for valuation of inventories, except:

- a. Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the ICDS on construction contracts;
- b. Work-in-progress which is dealt with by other ICDS;
- c. Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the ICDS on securities;
- d. Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value;
- e. Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, shall be dealt with in accordance with the ICDS on tangible fixed assets.

### Definitions

- a. **"Inventories"** are assets:
  - i. Held for sale in the ordinary course of business;
  - ii. In the process of production for such sale;
  - iii. In the form of materials or supplies to be consumed in the production process or in the rendering of services.
- b. **"Net realisable value"** (NRV) is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Words and expressions used and not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act.

### Measurement

Inventories shall be valued at cost, or NRV, whichever is lower.

## **Cost of Inventories**

Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

### **Costs of Purchase**

The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase.

### **Costs of Services**

The costs of services in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.

### **Costs of Conversion**

- The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods.
- Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production.
- Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.
- The allocation of fixed production overheads for the purpose of their inclusion in the costs of conversion shall be based on the normal capacity of the production facilities.
  - o Normal capacity shall be the production expected to be achieved on an average over a number of periods or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance.
  - o The actual level of production shall be used when it approximates to normal capacity.
  - o The amount of fixed production overheads allocated to each unit of production shall not be increased as a consequence of low production or idle plant.
  - o Unallocated overheads shall be recognised as an expense in the period in which they are incurred. In periods of abnormally high production, the amount of fixed production overheads allocated to each unit of production is decreased so that inventories are not measured above the cost.
  - o Variable production overheads shall be assigned to each unit of production on the basis of the actual use of the production facilities.
  - o Where a production process results in more than one product being produced simultaneously and the costs of conversion of each product are not separately identifiable, the costs shall be allocated between the products on a rational and consistent basis.
  - o Where by products, scrap or waste material are immaterial, they shall be measured at net realisable value and this value shall be deducted from the cost of the main product.

### **Other Costs**

- Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.
- Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the ICDS on borrowing costs.

## Exclusions from the Cost of Inventories

In determining the cost of inventories, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely: -

- a. Abnormal amounts of wasted materials, labour, or other production costs;
- b. Storage costs, unless those costs are necessary in the production process prior to a further production stage;
- c. Administrative overheads that do not contribute to bringing the inventories to their present location and condition ;
- d. Selling costs.

## Cost Formulae

- The Cost of inventories of items
  - i. That are not ordinarily interchangeable; and
  - ii. Goods or services produced and segregated for specific projects shall be assigned by specific identification of their individual costs.
- 'Specific identification of cost' means specific costs are attributed to identified items of inventory.
- Where there are a large numbers of items of inventory which are ordinarily interchangeable, specific identification of costs shall not be made.

## First-in First-out and Weighted Average Cost Formula

- Cost of inventories, shall be assigned by using the **First-in First-out (FIFO), or weighted average cost formula**. The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.
- The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced.
- Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.

## Retail Method

- The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins.
- The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price.

## Net Realisable Value

- Inventories shall be written down to net realisable value on an item-by-item basis.
- Where 'items of inventory' relating to the same product line having similar purposes or end uses and are produced and marketed in the same geographical area and cannot be practicably evaluated separately from other items in that product line, such inventories shall be grouped together and written down to net realisable value on an **aggregate** basis.
- Net realisable value shall be based on the **most reliable evidence available** at the time of valuation.
- The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events



occurring after the end of previous year to the extent that such events confirm the conditions existing on the last day of the previous year.

- Materials and other supplies held for use in the production of inventories shall not be written down below the cost, where the finished products in which they shall be incorporated are expected to be sold at or above the cost.
- Where there has been a decline in the price of materials and it is estimated that the cost of finished products will exceed the net realisable value, the value of materials shall be written down to net realisable value which shall be the replacement cost of such materials.

### **Value of Opening Inventory**

- The value of the inventory as on the beginning of the previous year shall be
  - i. The cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and
  - ii. The value of the inventory as on the close of the immediately preceding previous year, in any other case.
- **Change of Method of Valuation of Inventory**
  - The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.

### **Valuation of Inventory in Case of Certain Dissolutions**

- In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.

### **Transitional Provisions**

Interest and other borrowing costs, which do not meet the criteria for recognition of interest as a component of the cost above, but included in the cost of the opening inventory as on the 1st day of April, 2015, shall be taken into account for determining cost of such inventory for valuation as on the close of the previous year beginning on or after 1st day of April, 2015 if such inventory continue to remain part of inventory as on the close of the previous year beginning on or after 1st day of April, 2015.

### **Disclosure**

- The following aspects shall be disclosed, namely: -
  - a. The accounting policies adopted in measuring inventories including the cost formulae used; and
  - b. The total carrying amount of inventories and its classification appropriate to a person.

## **ICDS III -Construction Contracts**

### **Scope**

This Standard should be applied in determination of income for a construction contract of a contractor.

### **Definitions**

The following terms are used in this ICDS with the meanings specified:

- (a) "**Construction contract**" is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes :
  - i. Contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects;
  - ii. Contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.

- (b) **"Fixed price contract"** is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which may be subject to cost escalation clauses.
- (c) **"Cost plus contract"** is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.
- (d) **"Retentions"** are amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.
- (e) **"Progress billings"** are amounts billed for work performed on a contract whether or not they have been paid by the customer.
- (f) **"Advances"** are amounts received by the contractor before the related work is performed.
  - o Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.
  - o A construction contract may be negotiated for the construction of a single asset. A construction contract may also deal with the construction of a number of assets which are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.
  - o Construction contracts are formulated in a number of ways which, for the purposes of this ICDS, are classified as fixed price contracts and cost plus contracts. Some construction contracts may contain characteristics of both a fixed price contract and a cost plus contract, for example, in the case of a cost plus contract with an agreed maximum price.

### **Combining and Segmenting Construction Contracts**

- The requirements of this ICDS shall be applied separately to each construction contract except as provided herein under.
- For reflecting the substance of a contract or a group of contracts, where it is necessary, the ICDS should be applied to the separately identifiable components of a single contract or to a group of contracts together.
- Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when:
  - a. Separate proposals have been submitted for each asset;
  - b. Each asset has been subject to separate negotiation and the contractor and customer have been able to accept or reject that part of the contract relating to each asset; and
  - c. The costs and revenues of each asset can be identified.
- A group of contracts, whether with a single customer or with several customers, should be treated as a single construction contract when:
  - a. The group of contracts is negotiated as a single package;
  - b. The contracts are so closely interrelated that they are, in effect, part of a single project with an overall profit margin; and
  - c. The contracts are performed concurrently or in a continuous sequence.
- Where a contract provides for the construction of an additional asset at the option of the customer or is amended to include the construction of an additional asset, the construction of the additional asset should be treated as a separate construction contract when:
  - a. The asset differs significantly in design, technology or function from the asset or assets covered by the original contract; or
  - b. The price of the asset is negotiated without having regard to the original contract price.

## **Contract Revenue**

- Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.
- Contract revenue shall comprise of:
  - a. The initial amount of revenue agreed in the contract, including retentions; and
  - b. Variations in contract work, claims and incentive payments:
    - i. To the extent that it is probable that they will result in revenue; and
    - ii. They are capable of being reliably measured.
- Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue.

## **Contract Costs**

- Contract costs shall comprise of :
  - a. Costs that relate directly to the specific contract;
  - b. Costs that are attributable to contract activity in general and can be allocated to the contract;
  - c. Such other costs as are specifically chargeable to the customer under the terms of the contract; and
  - d. Allocated borrowing costs in accordance with the ICDS on Borrowing Costs.
- These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains that is not included in contract revenue.
- Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.
- Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. Costs that are incurred in securing the contract are also included as part of the contract costs, provided
  - a. They can be separately identified; and
  - b. It is probable that the contract shall be obtained.
- When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.
- Contract costs that relate to future activity on the contract are recognised as an asset. Such costs represent an amount due from the customer and are classified as contract work in progress.

## **Recognition of Contract Revenue and Expenses**

- Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.
- The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.
- The stage of completion of a contract shall be determined with reference to:
  - a. The proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or

- b. Surveys of work performed; or
- c. Completion of a physical proportion of the contract work.

Progress payments and advances received from customers are not determinative of the stage of completion of a contract.

- When the stage of completion is determined by reference to the contract costs incurred upto the reporting date, only those contract costs that reflect work performed are included in costs incurred upto the reporting date. Contract costs which are excluded are:
  - a. Contract costs that relate to future activity on the contract; and
  - b. Payments made to subcontractors in advance of work performed under the subcontract.
- During the early stages of a contract, where the outcome of the contract cannot be estimated reliably contract revenue is recognised only to the extent of costs incurred. The early stage of a contract shall not extend beyond 25 % of the stage of completion.

### **Changes in Estimates**

- The percentage of completion method is applied on a cumulative basis in each previous year to the current estimates of contract revenue and contract costs. Where there is change in estimates, the changed estimates shall be used in determination of the amount of revenue and expenses in the period in which the change is made and in subsequent periods.

### **Transitional Provisions**

- Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised as revenue and costs respectively in accordance with the provisions of this standard. The amount of contract revenue, contract costs or expected loss, if any, recognised for the said contract for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising revenue and costs of the said contract for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

### **Disclosure**

- A person shall disclose:
  - a. The amount of contract revenue recognised as revenue in the period; and
  - b. The methods used to determine the stage of completion of contracts in progress.
- A person shall disclose the following for contracts in progress at the reporting date, namely: -
  - a. Amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;
  - b. The amount of advances received; and
  - c. The amount of retentions.

## **ICDS IV - Revenue Recognition**

### **Scope**

- This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from
  - i. The sale of goods;
  - ii. The rendering of services;
  - iii. The use by others of the person's resources yielding interest, royalties or dividends.
- This ICDS does not deal with the aspects of revenue recognition which are dealt with by other ICDS.

## Definitions

- The following term is used in this ICDS with the meanings specified:
  - a. **"Revenue"** is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.
- Words and expressions used and not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act.

## Sale of Goods

- In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership.
- In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.
- Revenue shall be recognised when there is reasonable certainty of its ultimate collection.
- Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.

## Rendering of Services

Revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transactions costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. ICDS on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction.

## The Use of Resources by Others Yielding Interest, Royalties or Dividends

- Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.
- Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.
- Dividends are recognised in accordance with the provisions of the Act – Section 8.

## Transitional Provisions

- The transitional provisions of ICDS on construction contract shall mutatis mutandis apply to the recognition of revenue and the associated costs for a service transaction undertaken on or before the 31st day of March, 2015 but not completed by the said date.
- Revenue for a transaction, other than that referred to above, undertaken on or before the 31st day of March, 2015 but not completed by the said date shall be recognised in accordance with the provisions of this standard for the previous year commencing on the 1st day of April, 2015 and subsequent previous year.
- The amount of revenue, if any, recognised for the said transaction for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising revenue for the said transaction for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

## Disclosure

- Following disclosures shall be made in respect of revenue recognition, namely: -
  - a. In a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;
  - b. The amount of revenue from service transactions recognised as revenue during the previous year;
  - c. The method used to determine the stage of completion of service transactions in progress; and
  - d. For service transactions in progress at the end of previous year:
    - i. Amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;
    - ii. The amount of advances received; and
    - iii. The amount of retentions.

## ICDS V- Tangible Fixed Assets

### Definitions

- The following terms are used in this ICDS with the meanings specified:
  - a. **"Tangible fixed asset"** is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.
  - b. **"Fair value"** of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.
- Words and expressions used and not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act.

### Identification of Tangible Fixed Assets

- The definition provides criteria for determining whether an item is to be classified as a tangible fixed asset.
- Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.

### Components of Actual Cost

- The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.
- The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of
  - i. Price adjustment, changes in duties or similar factors; or
  - ii. Exchange fluctuation as specified in ICDS on the effects of changes in foreign exchange rates.
- Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset.
- Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset.

- The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised.
- The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as revenue expenditure.

### **Self-constructed Tangible Fixed Assets**

- In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply as those described in paragraphs 5 to 8. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. Any internal profits shall be eliminated in arriving at such costs.

### **Non-monetary Consideration**

- When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be its actual cost.
- When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.

### **Improvements and Repairs**

- An Expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance is added to the actual cost.
- The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost.
- Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.

### **Valuation of Tangible Fixed Assets in Special Cases**

- Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets. Details of such jointly owned tangible fixed assets shall be indicated separately in the tangible fixed assets register.
- Where several assets are purchased for a consolidated price, the consideration shall be apportioned to the various assets on a fair basis.

### **Transitional Provisions**

- The actual cost of tangible fixed assets, acquisition or construction of which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised in accordance with the provisions of this standard. The amount of actual cost, if any, recognised for the said assets for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising actual cost of the said assets for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

### **Depreciation**

- Depreciation on a tangible fixed asset shall be computed in accordance with the provisions of the Act.

### **Transfers**

Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of the Act.

### **Disclosures**

- Following disclosure shall be made in respect of tangible fixed assets, namely: -
  - a. Description of asset or block of assets;
  - b. Rate of depreciation;

- c. Actual cost or written down value, as the case may be;
- d. Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of -
  - i. Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004;
  - ii. Change in rate of exchange of currency;
  - iii. Subsidy or grant or reimbursement, by whatever name called;
- e. Depreciation Allowable; and
- f. Written down value at the end of year.

## ICDS VI - Effects of changes in Foreign Exchange rates

### Scope

- This ICDS deals with:
  - a. Treatment of transactions in foreign currencies;
  - b. Translating the financial statements of foreign operations;
  - c. Treatment of foreign currency transactions in the nature of forward exchange contracts.

### Definitions

1. The following terms are used in this ICDS with the meanings specified:
  - a. "**Average rate**" is the mean of the exchange rates in force during a period.
  - b. "**Closing rate**" is the exchange rate at the last day of the previous year.
  - c. "**Exchange difference**" is the difference resulting from reporting the same number of units of a foreign currency in the reporting currency of a person at different exchange rates.
  - d. "**Exchange rate**" is the ratio for exchange of two currencies.
  - e. "**Foreign currency**" is a currency other than the reporting currency of a person.
  - f. "**Foreign operations of a person**" is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India.
  - g. "**Foreign currency transaction**" is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person: -
    - viii. Buys or sells goods or services whose price is denominated in a foreign currency; or
    - ix. Borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or
    - x. Becomes a party to an unperformed forward exchange contract; or
    - xi. Otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency.
  - h. "**Forward exchange contract**" means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature;
  - i. "**Forward rate**" is the specified exchange rate for exchange of two Currencies at a specified future date;
  - j. "**Indian currency**" shall have the meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);



- k. "Integral foreign operation" is a foreign operation, the activities of which are an integral part of the operation of the person;
  - l. "Monetary items" are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Cash, receivables, and payables are examples of monetary items;
  - m. "Non-integral foreign operation" is a foreign operation that is not an integral foreign operation;
  - n. "Non-monetary items" are assets and liabilities other than monetary items. Fixed assets, inventories, and investments in equity shares are examples of non-monetary items;
  - o. "Reporting currency" means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.
2. Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning assigned to them in the Act.

## **Foreign Currency Transactions**

### **Initial Recognition**

- A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.
- An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.

### **Conversion at Last Date of Previous Year**

- At last day of each previous year: -
  - a. Foreign currency monetary items shall be converted into reporting currency by applying the closing rate;
  - b. Where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and
  - c. Non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.

### **Recognition of Exchange Differences**

- In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year.
- In respect of non-monetary items, exchange differences arising on conversion thereof at the last day of the previous year shall not be recognised as income or as expense in that previous year.

### **Exceptions to above**

- Notwithstanding anything contained above, initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

## **Financial Statements of Foreign Operations**

### **Classification of Foreign Operations**

- The method used to translate the financial statements of a foreign operation depends on the way in which it is financed and operates in relation to a person. For this purpose, foreign operations are classified as either "integral foreign operations" or "non-integral foreign operations".

- The following are indications that a foreign operation is a non-integral foreign operation rather than an integral foreign operation: -
  - (a.a) While the person may control the foreign operation, the activities of the foreign operation are carried out with a significant degree of autonomy from the activities of the person;
  - (a.b) Transactions with the person are not a high proportion of the foreign operation's activities;
  - (a.c) The activities of the foreign operation are financed mainly from its own operations or local borrowings;
  - (a.d) Costs of labour, material and other components of the foreign operation's products or services are primarily paid or settled in the local currency;
  - (a.e) The foreign operation's sales are mainly in currencies other than Indian currency;
  - (a.f) Cash flows of the person are insulated from the day-to-day activities of the foreign operation;
  - (a.g) Sales prices for the foreign operation's products or services are not primarily responsive on a short-term basis to changes in exchange rates but are determined more by local competition or local government regulation;
  - (a.h) There is an active local sales market for the foreign operation's products or services, although there also might be significant amounts of exports.

### **Integral Foreign Operations**

- The financial statements of an integral foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.

### **Non-integral Foreign Operations**

- In translating the financial statements of a non-integral foreign operation for a previous year, the person shall apply the following, namely: -
  - o The assets and liabilities, both monetary and non-monetary, of the non-integral foreign operation shall be translated at the closing rate;
  - o Income and expense items of the non-integral foreign operation shall be translated at exchange rates at the dates of the transactions; and
  - o All resulting exchange differences shall be recognised as income or as expenses in that previous year.
- Notwithstanding anything stated in above, translation and recognition of exchange difference in cases referred to in section 43A of the Act or Rule 115 of Income-tax Rules, 1962 shall be carried out in accordance with the provisions contained in that section or that Rule, as the case may be.

### **Change in the Classification of a Foreign Operation**

- When there is a change in the classification of a foreign operation, the translation procedures applicable to the revised classification should be applied from the date of the change in the classification.
- The consistency principle requires that foreign operation once classified as integral or non-integral is continued to be so classified. However, a change in the way in which a foreign operation is financed and operates in relation to the person may lead to a change in the classification of that foreign operation.

### **Forward Exchange Contracts**

- Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.

- The above provisions shall apply provided that the contract:
  - a. Is not intended for trading or speculation purposes; and
  - b. Is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.
- The above provisions shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year.
- The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference on the contract is the difference between:
  - a. The foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and
  - b. The same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.
- Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised at the time of settlement.

### **Transitional Provisions**

- o All foreign currency transactions undertaken on or after 1st day of April, 2015 shall be recognised in accordance with the provisions of this standard.
- o Exchange differences arising in respect of monetary items or non-monetary items, on the settlement thereof during the previous year commencing on the 1st day of April, 2015 or on conversion thereof at the last day of the previous year commencing on the 1st day of April, 2015, shall be recognised in accordance with the provisions of this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March, 2015 for an item, if any, which is carried forward from said previous year.
- o The financial statements of foreign operations for the previous year commencing on the 1st day of April, 2015 shall be translated using the principles and procedures specified in this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March, 2015 for an item, if any, which is carried forward from said previous year.
- o All forward exchange contracts existing on the 1st day of April, 2015 or entered on or after 1st day of April, 2015 shall be dealt with in accordance with the provisions of this standard after taking into account the income or expenses, if any, recognised in respect of said contracts for the previous year ending on or before the 31st March, 2015.

## **ICDS VII - Government Grants**

### **Scope**

- o This ICDS deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.
- 1. This ICDS does not deal with: -
  - a. Government assistance other than in the form of Government grants; and
  - b. Government participation in the ownership of the enterprise.

### **Definitions**

- o The following terms are used in the ICDS with the meanings specified:
  - a. "**Government**" refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international.

- b. **"Government grants"** are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.
- o Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning assigned to them in the Act.

### **Recognition of Government Grants**

- o Government grants should not be recognised until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.
- o Recognition of Government grant shall not be postponed beyond the date of actual receipt.

### **Treatment of Government Grants**

- o Where the Government grant relates to a depreciable fixed asset or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.
- o Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfillment of certain obligations, the grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income.
- o Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, shall be deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.
- o The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.
- o The Government grants other than covered by paragraphs 5, 6, 7, and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.
- o The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

### **Refund of Government Grants**

- o The amount refundable in respect of a Government grant referred to in paragraphs 6, 8 and 9 shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.
- o The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate.

### **Transitional Provisions**

- o All the Government grants which meet the recognition criteria of para 4 on or after 1st day of April, 2015 shall be recognised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount, if any, of the said Government grant recognised for any previous year ending on or before 31st day of March, 2015.

### **Disclosures**

- o Following disclosure shall be made in respect of Government grants, namely: -
  - a. Nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;

- b. Nature and extent of Government grants recognised during the previous year as income;
- c. Nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and
- d. Nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

## **ICDS VIII - Securities**

### **Scope**

- This ICDS deals with securities held as stock-in-trade.
- This ICDS does not deal with:
  - o The bases for recognition of interest and dividends on securities which are covered by the ICDS on revenue recognition;
  - o Securities held by a person engaged in the business of insurance;
  - o Securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013.

### **Definitions**

- The following terms are used in this ICDS with the meanings specified:
  - a. **"Fair value"** is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.
  - b. **"Securities"** shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956, other than Derivatives referred to in sub-clause (1a) of that clause.
- Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.

### **Recognition and Initial Measurement of Securities**

- A security on acquisition shall be recognised at actual cost.
- The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.
- Where a security is acquired in exchange for other securities, the fair value of the security so acquired shall be its actual cost.
- Where a security is acquired in exchange for another asset, the fair value of the security so acquired shall be its actual cost.
- Where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost.

### **Subsequent Measurement of Securities**

- At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value at the end of that previous year, whichever is lower.
- The comparison of actual cost initially recognised and net realisable value shall be done categorywise and not for each individual security. For this purpose, securities shall be classified into the following categories, namely:-
  - a. Shares;
  - b. Debt securities;
  - c. Convertible securities; and
  - d. Any other securities not covered above.

- The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be:
  - a. The cost of securities available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and
  - b. The value of the securities of the business as on the close of the immediately preceding previous year, in any other case.
- Notwithstanding anything contained herein above, at the end of any previous year, securities not listed on a recognised stock exchange; or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised.
- For the above, where the actual cost initially recognised cannot be ascertained by reference to specific identification, the cost of such security shall be determined on the basis of first-in-first-out method.

## **ICDS IX - Borrowing Costs**

### **Scope**

- This ICDS deals with treatment of borrowing costs.
- This ICDS does not deal with the actual or imputed cost of owners' equity and preference share capital.

### **Definitions**

- The following terms are used in this ICDS with the meanings specified:
  - (a) "**Borrowing costs**" are interest and other costs incurred by a person in connection with the borrowing of funds and include:
    - i. Commitment charges on borrowings;
    - ii. Amortised amount of discounts or premiums relating to borrowings;
    - iii. Amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;
    - iv. Finance charges in respect of assets acquired under finance leases or under other similar arrangements.
  - (b) "**Qualifying asset**" means:
    - v. Land, building, machinery, plant or furniture, being tangible assets;
    - vi. Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
    - vii. Inventories that require a period of twelve months or more to bring them to a saleable condition.
- Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning assigned to them in the Act.

### **Recognition**

- Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this ICDS. Other borrowing costs shall be recognised in accordance with the provisions of the Act.
- For the purposes of this ICDS, "capitalisation" in the context of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2 means addition of borrowing cost to the cost of inventory.

### **Borrowing Costs Eligible for Capitalisation**

- To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.

- To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely : -

$$A \times \frac{B}{C}$$

Where A = Borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes;

B = i. The average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year;

ii. In case the qualifying asset does not appear in the balance sheet of a person on the first day or both on the first day and the last day of previous year, half of the cost of qualifying asset;

iii. In case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be , other than those qualifying assets which are directly funded out of specific borrowings; or

C = The average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings;

### Commencement of Capitalisation

- The capitalisation of borrowing costs shall commence:
  - In cases of specific borrowings, from the date on which funds were borrowed;
  - In cases of general borrowings, from the date on which funds were utilised.

### Cessation of Capitalisation

- Capitalisation of borrowing costs shall cease:
  - In case of a qualifying asset referred to in items (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such asset is first put to use;
  - In case of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such inventory for its intended sale are complete.
- When the construction of a qualifying asset is completed in parts and a completed part is capable of being used while construction continues for the other parts, capitalisation of borrowing costs in relation to a part shall cease: -
  - In case of part of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such part of a qualifying asset is first put to use;
  - In case of part of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such part of inventory for its intended sale are complete.

### Transitional Provisions

- All the borrowing costs incurred on or after 1st day of April, 2015 shall be capitalised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount of borrowing costs capitalised, if any, for the same borrowing for any previous year ending on or before 31st day of March, 2015.

### Disclosure

- The following disclosure shall be made in respect of borrowing costs, namely: -
  - The accounting policy adopted for borrowing costs; and
  - The amount of borrowing costs capitalised during the previous year.

## ICDS X - Provisions, Contingent Liabilities and Contingent Assets

### Scope

- This ICDS deals with provisions, contingent liabilities and contingent assets, except those:
  - a. Resulting from financial instruments;
  - b. Resulting from executory contracts;
  - c. Arising in insurance business from contracts with policyholders; and
  - d. Covered by another ICDS.
- This ICDS does not deal with the recognition of revenue which is dealt with by ICDS - Revenue Recognition.
- The term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets and are not addressed in this ICDS.

### Definitions

The following terms are used in this ICDS with the meanings specified:

- a. **"Provision"** is a liability which can be measured only by using a substantial degree of estimation.
  - b. **"Liability"** is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits.
  - c. **"Obligating event"** is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation.
  - d. **"Contingent liability"** is:
    - i. A possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person; or
    - ii. A present obligation that arises from past events but is not recognised because:
      - A. It is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; or
      - B. A reliable estimate of the amount of the obligation cannot be made.
  - e. **"Contingent asset"** is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or non-ccurrence of one or more uncertain future events not wholly within the control of the person.
  - f. **"Executory contracts"** are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.
  - g. **"Present obligation"** is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.
- Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.

### Recognition

#### Provisions

- A provision shall be recognised when:
  - a. A person has a present obligation as a result of a past event;
  - b. It is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and
  - c. A reliable estimate can be made of the amount of the obligation.

If these conditions are not met, no provision shall be recognised.



- No provision shall be recognised for costs that need to be incurred to operate in the future.
- It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions.
- Where details of a proposed new law have yet to be finalised, an obligation arises only when the legislation is enacted.

### **Contingent Liabilities**

- A person shall not recognise a contingent liability.

### **Contingent Assets**

- A person shall not recognise a contingent asset.
- Contingent assets are assessed continually and when it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income are recognised in the previous year in which the change occurs.

### **Measurement**

#### **Best Estimate**

- The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year. The amount of a provision shall not be discounted to its present value.
- The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.

#### **Reimbursements**

- Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is reasonably certain that reimbursement will be received if the person settles the obligation. The amount recognised for the reimbursement shall not exceed the amount of the provision.
- Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs.
- An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.

#### **Review**

- Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.
- An asset and related income recognised as specifically provided, shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an inflow of economic benefits will arise, the asset and related income shall be reversed.

#### **Use of Provisions**

- A provision shall be used only for expenditures for which the provision was originally recognised.

#### **Transitional Provisions**

- All the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2015.

## Disclosure

- Following disclosure shall be made in respect of each class of provision, namely:-
  - a. A brief description of the nature of the obligation;
  - b. The carrying amount at the beginning and end of the previous year;
  - c. Additional provisions made during the previous year, including increases to existing provisions;
  - d. Amounts used, that is incurred and charged against the provision, during the previous year;
  - e. Unused amounts reversed during the previous year; and
  - f. The amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.
- Following disclosure shall be made in respect of each class of asset and related income recognised as provided in para 11, namely: -
  - a. A brief description of the nature of the asset and related income;
  - b. The carrying amount of asset at the beginning and end of the previous year;
  - c. Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and
  - d. Amount of asset and related income reversed during the previous year.

The CBDT vide press release dated 06.07.2016 had deferred the ICDS by one year. Further The CBDT vide Notification no S.O. 3079 (E) dated 29.09.2016 has notified the new ICDS which will be applicable for the assessment year 2017-18.

The difference between ICDS as notified in 2015 vis-à-vis as notified in 2016 is explained as under.

# ICDS 2015 vs ICDS 2016

	ICDS 1 (NOTIFICATION: 32/2015)	ICDS 2 (NOTIFICATION: 87/2016)
<b>Main Paragraph</b>	In exercise of the powers conferred by subsection (2) of section 145 of the Income tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Part II, Section 3, Subsection (ii), vide number S.O 69(E) dated the 25th January, 1996, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to be followed by all assesseees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income tax under the head "Profit and gains of business or profession" or "Income from other sources". This notification shall come into force with effect from 1st day of April, 2015, and shall accordingly apply to the assessment year 2016-17 and subsequent assessment years.	In exercise of the powers conferred by subsection(2) of section 145 of the Income tax Act, 1961 (43 of 1961), the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to this notification to be followed by all assesseees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income tax under the head "Profits and gains of business or profession" or "Income from other sources".  2. This notification shall apply to the assessment year 2017-18 and subsequent assessment years.
<b>Annexures-B: Income Computation and Disclosure Standard II relating to valuation of inventories</b>		
Clause-18	<b>Retail Method</b>  18. Where it is impracticable to use the costing methods referred to in paragraph 16, the retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price.	<b>Techniques for the Measurement of Cost</b>  18 (1). Techniques for the measurement of the cost of inventories, such as the standard cost method or the retail method, may be used for convenience if the results approximate the actual cost. Standard costs take into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilisation. They are regularly reviewed and, if necessary, revised in the light of the current conditions.  (2) The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins and for which it is impracticable to use other costing methods. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price. An average percentage for each retail department is to be used.
Clause-26(a)	the accounting policies adopted in measuring inventories including the cost formulae used	the accounting policies adopted in measuring inventories including the cost formulae used. Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost
<b>Annexure-C: Income Computation and Disclosure Standard III relating to construction contracts.</b>		
Clause-22	22. Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised as revenue and costs respectively in accordance with the provisions of this standard. The amount of contract revenue, contract costs or expected loss, if any, recognised for the said contract for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising revenue and costs of the said contract for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.	22.1 Contract revenue and contract costs associated with the construction contract, which commenced on or after 1st day of April, 2016 shall be recognised in accordance with the provisions of this standard.  22.2 Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2016 but not completed by the said date, shall be recognised based on the method regularly followed by the person prior to the previous year beginning on the 1st day of April, 2016.

<b>Annexure-D: Income Computation and Disclosure Standard IV relating to revenue recognition</b>		
Clause-6 & 7(2016)	6. Revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transactions costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction.	6. Subject to Para 7, revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction. However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.  7. Revenue from service contracts with duration of not more than ninety days may be recognised when the rendering of services under that contract is completed or substantially completed.
Clause-7 (2015) corresponding to 8(2016)	7. Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.	8. (1) Subject to sub paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.  (2) Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.  (3) Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.
<b>Annexure-E: Income Computation and Disclosure Standard V relating to tangible fixed assets</b>		
Clause- 14	Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets. Details of such jointly owned tangible fixed assets shall be indicated separately in the tangible fixed assets register.	Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets.
<b>Annexure-F: Income Computation and Disclosure Standard VI relating to the effects of changes in foreign exchange rates</b>		
Clause- 2(1)	(k) "Integral foreign operation" is a foreign operation, the activities of which are an integral part of the operation of the person.  (m) "Non-integral foreign operation" is a foreign operation that is not an integral foreign operation.	-
Clause- 4(d)	-	Nonmonetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.
Clause-7-10	<b>Classification of Foreign Operations</b>  7. (1) The method used to translate the financial statements of a foreign operation depends on the way in which it is financed and operates in relation to a person. For this purpose, foreign operations are classified as either "integral foreign operations" or "non-integral foreign operations".  (2) The following are indications that a foreign operation is a non-integral foreign operation rather than an integral foreign operation:  (a.a) while the person may control the foreign operation, the activities of the foreign operation are carried out with a significant degree of autonomy from the activities of the	7. The financial statements of a foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.

	<p>person</p> <ul style="list-style-type: none"> <li>(a.b) transactions with the person are not a high proportion of the foreign operation's activities</li> <li>(a.c) the activities of the foreign operation are financed mainly from its own operations or local borrowings</li> <li>(a.d) costs of labour, material and other components of the foreign operation's products or services are primarily paid or settled in the local currency</li> <li>(a.e) the foreign operation's sales are mainly in currencies other than Indian currency</li> <li>(a.f) cash flows of the person are insulated from the day-to-day activities of the foreign operation</li> <li>(a.g) sales prices for the foreign operation's products or services are not primarily responsive on a Short-term basis to changes in exchange rates but are determined more by local competition or local government regulation</li> <li>(a.h) there is an active local sales market for the foreign operation's products or services, although there also might be significant amounts of exports.</li> </ul> <p><b>Integral Foreign Operations</b></p> <p>8. The financial statements of an integral foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.</p> <p><b>Non-integral Foreign Operations</b></p> <p>9. (1) In translating the financial statements of a non-integral foreign operation for a previous year, the person shall apply the following, namely:</p> <ul style="list-style-type: none"> <li>(a.h.1.a) the assets and liabilities, both monetary and nonmonetary, of the non-integral foreign operation shall be translated at the closing rate</li> <li>(a.h.1.b) income and expense items of the non-integral foreign operation shall be translated at exchange rates at the dates of the transactions and</li> <li>(a.h.1.c) all resulting exchange differences shall be recognised as income or as expenses in that previous year.</li> </ul> <p>(2) Notwithstanding anything stated in subparagraph 1, translation and recognition of exchange difference in cases referred to in section 43A of the Act or Rule 115 of Income tax Rules, 1962 shall be carried out in accordance with the provisions contained in that section or that Rule, as the case may be.</p> <p><b>Change in the Classification of a Foreign Operation</b></p> <p>10 (1) When there is a change in the classification of a foreign operation, the translation procedures applicable to the revised classification should be applied from the date of the change in the classification.</p> <p>(2) The consistency principle requires that foreign operation once classified as integral or non-integral is continued to be so classified. However, a change in the way in which a foreign operation is financed and operates in relation to the person may lead to a change in the classification of that foreign operation.</p>	
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<b>Annexure-H: Income Computation and Disclosure Standard VIII relating to securities</b>		
Clause- 3(1)	(b) "Securities" shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956), other than derivatives referred to in sub-clause (1a) of that clause.	(b) "Securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested but shall not include derivatives referred to in sub-clause (ia) of that clause (h).
Part-B	-	<p><b>Scope</b></p> <p>1. This part of Income Computation and Disclosure Standard deals with securities held by a scheduled bank or public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).</p> <p><b>Definitions</b></p> <p>2 (1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:</p> <p>(a) "<b>Scheduled Bank</b>" shall have the meaning assigned to it in clause (ii) of the Explanation to clause (vii) of subsection (1) of section 36 of the Act.</p> <p>(b) "<b>Securities</b>" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested</p> <p>2 (2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.</p> <p><b>Classification, Recognition and Measurement of Securities</b></p> <p>3. Securities shall be classified, recognised and measured in accordance with the extant guidelines issued by the Reserve Bank of India in this regard and any claim for deduction in excess of the said guidelines shall not be taken into account. To this extent, the provisions of Income Computation and Disclosure Standard VI on the effect of changes in foreign exchange rates relating to forward exchange contracts shall not apply."</p>
<b>Annexure-I: Income Computation and Disclosure Standard IX relating to borrowing cost</b>		
Clause-5	To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.	Subject to paragraph 8, the extent to which funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.
Clause-6	To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely :-  A x B/C  Where A = borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes  B = (i) the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year  (ii) in case the qualifying asset does not appear in the	Subject to Para 8, in respect of borrowing other than those referred to in Para 5, if any, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely :—  A x B/C  Where A = borrowing costs incurred during the previous year except on borrowings referred to in Para 5 above  B = (i) the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year  (ii) in case the qualifying asset does not appear in the balance sheet of a person on the first

	<p>balance sheet of a person on the first day or both on the first day and the last day of previous year, half of the cost of qualifying asset</p> <p>(iii) in case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, other than those qualifying assets which are directly funded out of specific borrowings or</p> <p>C = the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings</p>	<p>day, half of the cost of qualifying asset or</p> <p>(iii) in case the qualifying asset does not appear in the balance sheet of a person on the last day of the previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, excluding the extent to which the qualifying assets are directly funded out of specific borrowings</p> <p>C = the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than assets to the extent they are directly funded out of specific borrowings</p> <p>Explanation — For the purpose of this paragraph, a qualifying asset shall be such asset that necessarily requires a period of twelve months or more for its acquisition, construction or production.</p>
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# DEDUCTIONS

Section	Assessee	Qualifying Payments/Income	Quantum
80C	Individual/HUF	Contribution to LIP, PPF etc. Sukanya Samriddhi Account Scheme also qualifies for deduction u/s 80C vide N. No. 9/2015, dt. 21.01.2015	100% of the amount invested/paid or Rs.1,50,000 (Rs.1,00,000 upto A.Y. 2014-15) whichever is less. Note: The total deduction that an assessee can claim under sections 80C, 80CCC and 80CCD(1) would be restricted to Rs.1,50,000 (Rs.1,00,000 upto A.Y. 2014-15) per annum as per the provisions of section 80CCE.
80CCC	Individual	Payment made out of taxable income to LIC or to any other approved insurer under approved Pension Plan.	Lower of – a. Amount paid; or b. Rs.1,50,000 (Rs.1,00,000 upto A.Y. 2015-16). (Also refer note in sec. 80C above)
80CCD	Individual who is an employee, employed on or after 1-1-2004/ any other individual (self-employed) w.e.f. A.Y. 2009-10	Amount paid or deposited in his account under a pension scheme notified by the Government. New Pension System (NPS) has been notified for this purpose.	Lower of the following is deductible u/s 80CCD(1) : i. actual amount paid, ii. 10% of salary / GTI (total deduction u/s 80C, 80CCC & 80CCD(1) can not exceed Rs.1.5 lacs) 80CCD(1B) - maximum of ₹ 50,000 deposited under Pension Scheme
80CCG	Individual	Acquired listed Equity shares in accordance with a scheme, as may be notified by the Central Government. Rajiv Gandhi Equity Saving Scheme has been notified for This purpose.	50% of the amount invested in such equity shares to the extent such deduction does not exceed twenty-five thousand rupees.  Note : Up to A.Y. 2013-14 Where assessee has claimed and allowed a deduction under this section for any assessment year in respect of any amount, he shall not be allowed any deduction under this section for any subsequent assessment year. With effect from A.Y. 2014-15, the deduction shall be allowed for 3 consecutive assessment years, beginning with the A.Y. in which the equity shares or units referred to in column 3 were first acquired
80D	Individual/HUF	Contribution to Mediclaim etc. (approved scheme of Insurance Co.)	In case of Individuals -100% of premium paid to insure health of assessee or his family subject to a maximum of Rs.25,000 (if any of the persons for whom premium is paid is a senior citizen the maximum amount is Rs.30,000 instead of Rs.25,000). Additional Deduction equivalent to amount paid as premium to insure health of the parent or parents of the assessee subject to a maximum of Rs.25,000 (if either parent or parents for whom premium is paid is a senior citizen the maximum amount of deduction is Rs.30,000 instead of Rs. 25,000). In case of HUF: Premium paid to insure health of any member of HUF subject to a maximum of Rs.25,000 (in case premium is paid for any member of the HUF who is a senior citizen then the maximum amount stands increased from Rs.25,000 to Rs.30,000).  Note : in all cases mentioned above, limit of Rs.25,000 was Rs.15,000 and limit of Rs.30,000 was Rs.20,000 upto A.Y. 2015-16.
80DD	Individual/HUF (Resident)	Expenses incurred for Medical Treatment (including Nursing), Training & Rehabilitation of a dependent with disability.	Upto A.Y. 2015-16 - Rs.50,000 for ordinary disability & Rs.1,00,000 for severe disability A.Y. 2016-17 onwards - Rs.75,000 for ordinary disability & Rs.1,25,000 for severe disability
80DDB	Individual/HUF (Resident)	Amount actually paid for medical treatment of such disease or ailments as may be specified.	Lower of amount paid or Rs.40,000 (Rs. 60,000* for senior citizen)  *From A.Y. 2016-17 aforesaid limit of Rs.60,000 has been increased to Rs.80,000 in case of resident citizen of 80 years or more.
80E	Individual	Payment (out of taxable income) of interest on loan taken for pursuing his own higher education or higher education of his spouse or children or the student for whom the individual is the legal guardian.	The entire amount of interest is deductible without any limit for 8 assessment years starting from the assessment year in which the assessee starts paying the interest on loan, or until the interest thereon is paid by the assessee in full, whichever is earlier.



Section	Assessee	Qualifying Payments/Income	Quantum
80EE	Individual	Interest payable on Housing loan taken by the assessee from any financial institution.	Lower of—(a) Amount of interest (b) Rs.100000/- (Rs. 50000/- from AY 2017-18) this section cannot exceed Rs.100000/- (Rs.50000/- from AY 2017-18) and also the deduction will be allowed maximum over a period of 2 years. Interest allowed as a deduction under this section will not be allowed under any other provisions of the Act for the same or any other Assessment Year.
80G	Any Assessee [except u/s. 80G(2)(c)]	Donations for charitable purposes specified in S. 80G(2).	1) 50% generally; and2) 100% in cases of PM's Relief Funds, Gujarat Earthquake Relief Funds, etc. [Ref. S. 80G(1)(i)].  Note : W.e.f. A.Y. 2015-16, Donation to Swachh Bharat Kosh/Clean Ganga Fund and W.e.f. A.Y. 2016-17, Donation to National Fund for Control of Drug Abuse is eligible for 100% of donation only if amount is not spent in pursuance of CSR u/s. 135(5) of Companies act, 2013.
80GG	Any Assessee [other than having any income falling u/s. 10(13A) ; i.e. , House Rent Allowance]	Expenditure incurred towards payment of rent in respect of furnished or unfurnished accommodation occupied for his own residence.	Least of – i) Rs.2,000/- per month; or ii) 25% of the Adjusted Total Income; or iii) Excess of actual rent paid over 10% of Adjusted Total Income. Adjusted Total Income = Total income - LTCG - STCG taxable u/s 111A - Deduction u/s 80C to 80U (except u/s 80GG)
80GGA	Any Assessee other than an assessee whose Gross Total Income Includes income chargeable under the head 'Profits and Gains of Business or Profession'.	Payments made for scientific research etc.	100% of the qualifying amount.
80GGB	Indian Company	Any sum contributed, in the previous year, to any political party or an electoral trust.	100% of the qualifying amount.
80GGC (w.e.f. 22-9-2003)	Any Assessee [Except Local authority and Artificial juridical Person wholly or partly funded by the Government]	Any sum contributed in the previous year to any political party or an electoral trust.	100% of the qualifying amount.

# RETURNS OF INCOME

Due Dates for filing Return of Income for A.Y. 2016-17 [Explanation 2 to Section 139(1)]

Sl. No.	Nature of Assessee	Due Date
1	<ul style="list-style-type: none"> <li>Company other than those company who is required to furnish Transfer Pricing Audit Report u/s 92E</li> <li>Every assessee who is required to get accounts audited under Income Tax Act / any other laws</li> <li>An working partner of the Firm (including working partner of LLP), where accounts of such firm are subjected to audit under any law</li> </ul>	30th September
2	Assessee who is required to furnish Transfer Pricing Audit Report u/s 92E	30th November
3	Other Assessee	31st July

Where the last day for filing return of income/loss is a day on which the office is closed, the assessee can file the return on the next day afterwards on which the office is open and, in such cases, the return will be considered to have been filed within the specified time limit-Circular No. 639, dated 13-11-1992.

Return of Income to be verified by

Sl. No.	Nature of Assessee	To be signed by
1	Individual	<ul style="list-style-type: none"> <li>Individual himself</li> <li>In case not within India or for any other reason, by the person authorised through power of attorney. In case mentally incapacitated, his guardian or any person competent to act on his behalf</li> </ul>
2	HUF	<ul style="list-style-type: none"> <li>Karta</li> <li>In case Karta is not within India or is mentally incapacitated by any other adult member of such family</li> </ul>
3	Indian resident Company	<ul style="list-style-type: none"> <li>Managing director</li> <li>In case managing director is not able to sign or where there is no managing director, any other director</li> <li>Liquidator where company is being wound up</li> <li>In case management has been taken over by the Central of State Government, Principal Officer of the company</li> </ul>
4	Indian non-resident Company	<ul style="list-style-type: none"> <li>By any person holding valid power of attorney</li> </ul>
5	Firm	<ul style="list-style-type: none"> <li>Managing partner</li> <li>In case managing partner is not able to sign or where there is no managing director, any other partner</li> </ul>
6	LLP	<ul style="list-style-type: none"> <li>Designated Partner</li> <li>In case designated partner is not able to sign or where there is no managing director, any other partner</li> </ul>
7	Local Authority	<ul style="list-style-type: none"> <li>Principal Officer</li> </ul>
8	Political Party	<ul style="list-style-type: none"> <li>Chief Executive Officer</li> </ul>
10	Any other Association	<ul style="list-style-type: none"> <li>Any member of Association or the Principal Officer</li> </ul>
11	Any other person	<ul style="list-style-type: none"> <li>By that person or some person competent to act on his behalf</li> </ul>

Forms for Return of income:

Sl. No.	ITR Forms	Type of Assessee	E- Filing
1	ITR 1 (SAHAJ)	For Indian Individual having total income containing Salaries, Family Pension, House property or Income from other sources except winning from lottery/horse races and not having Agricultural income exceeding Rs.5,000	Optional upto Total Income not exceeding Rs. 5 Lakh. In other cases -Compulsory
2	ITR 2	For Individuals and HUFs not having Income from Business or Profession	- Do -

3	ITR 2A	For Individual & HUFs not having Income from Business or Profession and Capital Gains and who do not hold foreign assets	--- Do---
3	ITR 3	For Individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship	- Do -
4	ITR 4S [SUGAM]	For individuals and HUFs having income from a specified business referred u/s 44AD/44AE (presumptive income) not having exempt income exceeding Rs.5,000	- Do -
5	ITR 4	For individuals and HUFs having income from a proprietary business or profession (other than those specified in 4)	- Do - However, Mandatory, if the accounts are subject to Tax audit, and also the return is to be signed digitally.
6	ITR 5	For firms, AOPs and BOIs	Mandatory, if the accounts are subject to Tax audit, & also the return is to be signed digitally.
7	ITR 6	For Companies other than companies claiming exemption under section 11	Mandatory & also to be signed digitally.
9	ITR 7	For persons including companies required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D) or section 139(4E) or 139(4F)	Political parties : mandatory and also to be signed digitally. Others : Optional
10	ITR V	Acknowledgement for return of income	

#### Belated Return:

- Return can be filed belatedly within one year from the end of assessment year on or before completion of assessment, whichever is earlier. The due date for filing return for AY 2015-16, belatedly is 31st March, 2017. However in case, return is not filed within the assessment year penalty u/s 271F of Rs.5000 may be imposed.

However w.e.f 01.04.2017 belated return can only be filed before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

- In case return, as required by Section 139(4A) (Trusts) / 139(4C) (specified Trust's, institutions, Political Parties etc.) is not filed on or before due date, penalty of Rs.100/- per day may be imposed u/s 272A(2)(e).

#### Revised Return:

- Return can be revised within one year from the end of the assessment year or before completion of assessment, whichever is earlier.
- Return can be revised on discovery of any omission or any wrong statement.
- Belated Return can also be revised w.e.f 01.04.2017.
- The revised return filed prevails over the original return, which is taken to have been withdrawn after the filing of the revised return.

#### Defective Return:

- S. 139(9) lays that return of income would be defective in case not accompanied by the relevant annexure.
- However in annexure less return scenario, return would be treated as defective in case return is not filled completely in the manner specified in the return form.
- W.e.f. AY 2013-14, If due tax and interest are not paid on Self-assessment u/s 140A, the concerned Return will be considered as Defective. However, the said provision is applicable only upto 31.03.2017.

**Compulsory filing in relation to assets located outside India [4th Proviso to Sec. 139(1)]:**

W.e.f. A.Y. 2016-17, a person, being a resident other than not ordinarily resident in India within the meaning of section 6(6) who is not required to furnish a return u/s 139(1) and who at any time during the previous year :

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall mandatorily furnish, on or before the due date, a return in respect of his income or loss.

However, as per 5th Proviso to Sec. 139(1), 4h Proviso to Sec. 139(1) shall not apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act.

# IMPORTANT DEFINITIONS UNDER THE COMPANIES ACT, 2013

## Under Section 2 of the Companies Act, 2013

In this Act, unless the context otherwise requires,—

1. **“abridged prospectus”** means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
2. **“accounting standards”** means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
6. **“associate company”** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

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

7. **“auditing standards”** means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;

### Section 143 sub-section (10) reads

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

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

11. **“body corporate”** or **“corporation”** includes a company incorporated outside India, but does not include—
  - i. a co-operative society registered under any law relating to co-operative societies; and
  - ii. any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
12. **“book and paper”** and **“book or paper”** include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
13. **“books of account”** includes records maintained in respect of—
  - i. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
  - ii. all sales and purchases of goods and services by the company;
  - iii. the assets and liabilities of the company; and
  - iv. the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
17. **“chartered accountant”** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
18. **“Chief Executive Officer”** means an officer of a company, who has been designated as such by it;
19. **“Chief Financial Officer”** means a person appointed as the Chief Financial Officer of a company;

20. **“company”** means a company incorporated under this Act or under any previous company law;
24. **“company secretary”** or **“secretary”** means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;
25. **“company secretary in practice”** means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);
26. **“contributory”** means a person liable to contribute towards the assets of the company in the event of its being wound up.

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

27. **“control”** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
30. **“debenture”** includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;
31. **“deposit”** includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
32. **“depository”** means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);
34. **“director”** means a director appointed to the Board of a company;
35. **“dividend”** includes any interim dividend;
36. **“document”** includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
37. **“employees’ stock option”** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
38. **“expert”** includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
40. **“financial statement”** in relation to a company, includes—
- i. a balance sheet as at the end of the financial year;
  - ii. a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  - iii. cash flow statement for the financial year;
  - iv. a statement of changes in equity, if applicable; and
  - v. any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

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

41. **“financial year”** in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the

period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

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

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

42. **“foreign company”** means any company or body corporate incorporated outside India which—
- a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
  - b. conducts any business activity in India in any other manner.
43. **“free reserves”** means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:
- Provided that—
- . any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
  - i. any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,
- shall not be treated as free reserves;
44. **“Global Depository Receipt”** means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;
45. **“Government company”** means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is subsidiary company of such a Government company;
46. **“holding company”** in relation to one or more other companies, means a company of which such companies are subsidiary companies;
47. **“independent director”** means an independent director referred to in sub-section (5) of section 149;

#### **Under Section 149(6)**

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
  - i. who is or was not a promoter of the company or its holding, subsidiary or associate company;
  - ii. who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- b. who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- c. none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per

cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

d. who, neither himself nor any of his relatives—

- i. holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
- ii. is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
  - A. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
  - B. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- iii. holds together with his relatives two per cent. or more of the total voting power of the company; or
- iv. is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

f. who possesses such other qualifications as may be prescribed.

48. **“Indian Depository Receipt”** means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;
49. **“interested director”** means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;
51. **“key managerial personnel”**, in relation to a company, means—
- i. the Chief Executive Officer or the managing director or the manager;
  - ii. the company secretary;
  - iii. the whole-time director;
  - iv. the Chief Financial Officer; and
  - v. such other officer as may be prescribed;
52. **“listed company”** means a company which has any of its securities listed on any recognised stock exchange;
53. **“manager”** means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
54. **“managing director”** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.



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

55. **“member”** in relation to a company, means—
- i. the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
  - ii. every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
  - iii. every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
57. **“net worth”** means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
59. **“officer”** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;
60. **“officer who is in default”**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—
- i. whole-time director;
  - ii. key managerial personnel;
  - iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  - iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  - v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  - vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
  - vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;
62. **“One Person Company”** means a company which has only one person as a member;
63. ordinary or special resolution and
64. paid up share capital may be included as they are as important.
65. **“postal ballot”** means voting by post or through any electronic mode;
68. **“private company”** means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

- i. restricts the right to transfer its shares;
- ii. except in case of One Person Company, limits the number of its members to two hundred:

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

**Provided further** that—

- A. persons who are in the employment of the company; and
  - B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- iii. prohibits any invitation to the public to subscribe for any securities of the company;

*The Requirements of having minimum paid-up share capital shall not apply to Section 8 Company, vide Notification F.No. 1/2/2014-CL.I dated 5th June, 2015.*

Omitted words “of one lakh rupees or such higher paid-up,” by the Companies (Amendments) Act, 2015 vide Notification F.No. 1/6/2015-CL.V. dated 29th May, 2015 w.e.f. 29th May, 2015.

69. **“promoter”** means a person—

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

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

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

**“public company”** means a company which—

- a. is not a private company;
- b. has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

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

The Requirements of having minimum paid-up share capital shall not apply to Section 8 Company, vide Notification F.No. 1/2/2014-CL.I dated 5th June, 2015.

Omitted words “of five lakhs rupees or such higher paid-up,” by the Companies (Amendments) Act, 2015 vide Notification F.No. 1/6/2015-CL.V. dated 29th May, 2015 w.e.f. 29th May, 2015.

76. **“related party”**, with reference to a company, means—

- i. a director or his relative;
- ii. a key managerial personnel or his relative;
- iii. a firm, in which a director, manager or his relative is a partner;

- iv. a private company in which a director or manager is a member or director;
- v. a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- vi. any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:

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

- viii. \*any company which is—
  - A. a holding, subsidiary or an associate company of such company; or
  - B. a subsidiary of a holding company to which it is also a subsidiary;
- ix. such other person as may be prescribed;

Under Companies (Specification of definitions details) Rules, 2014, Sub-Rule 3, Related party - For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director, or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

\*Sub-clause (viii) of clause (76) of Section 2 shall apply with respect to Section 188, to a to Private Companies vide Notification F.No. 1/2/2014-CL.I dated 5th June, 2015. This notification gives the direction about the stipulated amount of Rs 1 lac beyond which Sec 188 shall be applicable for Sec 8 companies.

77. **“relative”**, with reference to any person, means any one who is related to another, if—

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

**Under Companies (Specification of definitions details) Rules, 2014, Sub Rule 4**

List of relatives in terms of clause (77) of section 2

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:—

1. Father: Provided that the term “Father” includes step-father.
2. Mother: Provided that the term “Mother” includes the step-mother.
3. Son: Provided that the term “Son” includes the step-son.
4. Son’s wife.
5. Daughter.
6. Daughter’s husband.
7. Brother: Provided that the term “Brother” includes the step-brother;
8. Sister: Provided that the term “Sister” includes the step-sister.

78. **“remuneration”** means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of 1961);

81. **“securities”** means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Section 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.
  - e. Explanation.— For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.
  - f. any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.
- ii. Government securities.
  - a. such other instruments as may be declared by Central Government to be securities; and rights or interest in securities.

85. **“small company”** means a company, other than a public company,—

- i. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- ii. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- A. a holding company or a subsidiary company;
- B. a company registered under section 8; or
- C. a company or body corporate governed by any special Act;

87. **“subsidiary company”** or **“subsidiary”** in relation to any other company (that is to say the holding company), means a company in which the holding company—

- i. controls the composition of the Board of Directors; or
- ii. exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

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

Explanation — For the purposes of this clause, —

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

- d. “layer” in relation to a holding company means its subsidiary or subsidiaries;
88. “**sweat equity shares**” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
89. “**total voting power**” in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;
91. “**turnover**” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
94. “**whole-time director**” includes a director in the whole-time employment of the company;

Under Companies (Specification of definitions details) Rules, 2014, Sub Rule 2(k) –

“**Executive Director**” means a whole time director as defined in clause (94) of section 2 of the Act.

95. words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

### Explanations to key sections

**Section 31** – Explanation- For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

**Section 32** – Explanation - For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

**Section 42(2)** – Explanation II(ii) - For the purposes of this section, the expression "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

**Section 43** – Explanation— For the purposes of this section,—

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

fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

**Section 96(2)** – Explanation – For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

**Section 134(5)(e)** – Explanation – For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

**Section 151** – Explanation - For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

**Section 185(1)** – Explanation - For the purposes of this section, the expression “to any other person in whom director is interested” means—

- a. any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- b. any firm in which any such director or relative is a partner;
- c. any private company of which any such director is a director or member;
- d. any body corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- e. any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

**Section 188** – Explanation – In this sub-section,—

- a. the expression “**office or place of profit**” means any office or place—
  - i. where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
  - ii. where such 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 receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- b. the expression means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

**Section 195(1)** – Explanation— For the purposes of this section

- a. “**insider trading**” means—
  - i. an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
  - ii. an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

- b. **“price-sensitive information”** means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

**Section 205** – Explanation – For the purpose of this section, the expression **“secretarial standards”** means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by the Central Government.

**Section 455** – Explanation – For the purposes of this section,—

- i. **“inactive company”** means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
- ii. **“significant accounting transaction”** means any transaction other than—
- a. payment of fees by a company to the Registrar;
  - b. payments made by it to fulfil the requirements of this Act or any other law;
  - c. allotment of shares to fulfil the requirements of this Act; and
  - d. payments for maintenance of its office and records.

# PRIVILEGES OF A PRIVATE COMPANY/ OPC/SMALL COMPANY

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
1	2(68)	3(1)(iii)	Minimum Paid-up Capital Rs.1 lakh ( w.e.f. 29-5-2015, minimum paid capital requirement is been removed)
2	3(1)	12	Need only 2 persons to form a Private Company
3	58	111(11) & (13)	Restricted right of appeal to CLB/NCLT against refusal to transfer shares
4	67(2)	77(2) & (3)	No prohibition on a Private Company to provide financial assistance to any one for purchasing or subscribing for shares of the Company or its holding Company
5	103	174	Minimum Quorum for Company meetings – 2 members in person (as against 5 members for public Company)
6	149(1)	252	Minimum number of Directors is Two
7	149(1) Second Proviso		Rule 3 of the Companies (Appointment and Qualification) Rules, 2014 exempts Private Company from having a Woman Director unless it is subsidiary of Public Company
8	149(4)		Not mandatory to have independent directors for Private Company unless it is subsidiary of Public Company
9	152(6)	255	Retirement of Directors by rotation not mandatory for Private Company unless it is subsidiary of Public Company and the articles provide for the retirement of directors at every Annual General Meeting.
10	160(1)	257	Provisions relating to election of new candidates in place of Retiring Directors shall not apply to Private Company unless it is subsidiary of Public Company
11	161(4)	262	Provision of filling up casual vacancy not applicable for Private Company unless it is subsidiary of Public Company
12	164(3)	274(1)	Private Company can provide special disqualifications for appointment of Director
13	167(4)	283	Private Company can provide additional grounds for vacating office of Director
14	190	302	Provisions re. Contract of employment or memorandum of terms of employment of Managing Director/whole-time Directors to be kept – not applicable to a private Company
15	197	198, 309-311	Ceiling on overall managerial remuneration, Restriction on payment of remuneration to Directors or increase their remuneration unless it is subsidiary of Public Company
16	197-198	349-350	Determination of net profits and depreciation for Managerial Remuneration shall not apply to Private Company unless it is subsidiary of Public Company
<b>New Exemptions notified : (vide Notification No. GSR 464(E) dated 5-6-2015)</b>			
17	2(76)(viii)		Shall not apply to Private Company unless it is subsidiary of Public Company with respect to section 188
18	43 & 47	85-90	Only 2 kinds of share capital & voting rights of shareholders – shall not apply where Memorandum or Articles so provide
19	62(1)(a)(i) & 62(2)	81	If consent from 90% of members of a private Company received in writing or electronic mode, shorter period for acceptance of offer and despatch of notice of offer, is allowed. i.e. offer can be closed before 15 days
20	62(1)(b)	81	Only Ordinary resolution required against special resolution, for approval of ESOP
21	67	77	Restriction on Loan for buying its own shares not applicable to Private Companies, not having investment by body corporate in its share capital and borrowing from Banks/FIs less than 2 times paid capital but not more than Rs.50 crores and no default in repayment of borrowings from banks/FIs.
22	73(2)	58A	Private Company can accept deposits from members, not exceeding paid-up capital and free reserves. However prescribed details are required to be filed with ROC. (Also refer further exemptions allowed vide notification dt. 15-9-2015, detailed hereinbelow).
23	101 to 107 & 109	171-178 & 181-183	Provisions related to Notices of meetings and related matters shall not apply if articles so provide
24	117(3)(g)		For Private Company, No need to file Form MGT 14, for Resolutions u/s. 179(3)
25	141(3)(g)	226	The ceiling of 20 Companies, on number of Companies an auditor can audit, does not include audit of Pvt. Cos. unless it is subsidiary of Public Company. having paid-up capital less than



			Rs.100 crores
26	160	257	Notice of candidature, security deposit (Rs.100,000/-) for appointment of a director (other than retiring director) not applicable to a Private Company unless it is subsidiary of public Company.
27	162	263	Individual resolution not required for appointment of more than 1 directors in case of a Private Company
28	180	293	Restrictions on the powers of the board for the matters specified in section 180, not applicable to private Companies unless it is subsidiary of Public Company.
29	184(2)		In case of Private Companies, interested director is allowed to participate in the Board meeting, after disclosing interest in the matter to be discussed by the Board meeting.  Note: He cannot be counted in Quorum [Section 174(3) Explanation]
30	185	295, 296	Restrictions on loans to directors/relatives etc. not applicable to Private Companies, not having investment by body corporate in its share capital and borrowing from Banks/FIs less than 2 times paid capital but not more than Rs.50 crores and no default in repayment of borrowings from banks/FIs Body Corporate should not be Shareholder
31	Second Proviso to Section 188(1)		A related party member of a private Company is allowed to vote on special resolution to approve contracts or arrangement.
32	196(4) & (5)		Provisions of sections 196(4) & (5) shall not apply to a Private Company
The private Companies, while complying with above exceptions (17- 32), shall ensure that the interests of their shareholders are protected (as per clause 2 of the aforesaid notification dated 5-6-2015)			
<b>New Exemptions notified : (vide Notification No. G.S.R. 695 (E) dated 15-9-2015)</b>			
1	73(2)	58A	Private Company can accept deposits from relative of director. However, a declaration to be given in writing by the person that the amount given is not from funds borrowed by him and disclosure to be made in Board's report
<b>Note 1</b>	<b>In addition to the above, a small Company will have following additional privileges:</b>		
1	2(40)	—	Financial statement of a Small Company shall not include Cash Flow Statement
2	92(1)	—	Annual return to be signed by the director and Company Secretary or where there is no Company Secretary by a Company Secretary in Practice
3	173(5)	—	Small Company may hold one Board Meeting in each half year and the gap between the two Meetings shall not be less than Ninety days.
<b>Note 2</b>	<b>In addition to the above privileges 1-32, an OPC will have following additional privileges :</b>		
1	2(40)	—	Financial statement of an One Person Company (OPC) shall not include Cash Flow Statement
2	3(1)		Need only 1 person to form an OPC
3	4(f)	—	Facility to name a nominee in the Memorandum of Association, who shall become the member of the Company, on death of the subscriber or his being incapacitated to contract. Facility to change the nominee. Nominee can also resign
4	92(1)	—	Annual return to be signed by the director, where there is no Company Secretary
5	96(1)	—	OPC not required to hold Annual General Meeting
6	122	—	Exempted from section 98 and sections 100 to 111 (both inclusive), containing provisions relating to General Meetings.
7	134	—	The Financial statements to be signed by only one director and the report of the Board of Directors to be attached to the financial statements shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor.
8	137(1)	—	The OPC shall file a copy of the financial statements duly adopted by its member, along with all the documents, which are required to be attached thereto, within 180 days from the closure of the financial year.
9	149(1)(a)	—	OPC shall have minimum One Director Only
10	152(1)	—	Subscriber to the Memorandum of Association shall be the First Director of the Company until the Directors are appointed

# TYPES OF SECURITIES AND RELATED PROVISIONS

## — Buy-back of Shares and Other Specified Securities

1. Buy-back of Securities is the reverse of issue of shares by a Company wherein the Company offers to take back its securities owned by the investors at a specified price. A Company can carry out buy-back of shares and other specified securities (Section 68 and related provisions of Companies Act, 2013 and Companies (Share Capital and Debentures) Rules, 2014). 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 or securities premium account or out of proceeds of issue of any shares or other specified securities other than the type of the same kind of securities.
  - b. The Company cannot make further issue of the same type of securities as bought back within six months of buy-back except as bonus shares or sweat equity shares or discharge of subsisting obligations like on conversion of warrants, or stock option schemes, conversion of preference shares or debentures into equity shares.
  - c. No offer of buy-back shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.
  - d. 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 and the details of such transfer shall be disclosed in the balance sheet.
2. Other conditions to be complied:
  - a. The buy-back is authorised by its articles;
  - b. A special resolution has been passed at a general meeting of the Company authorising the buy-back: (no special resolution is required in case
    - i. The buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the Company; and
    - ii. Such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
  - c. The buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the Company;

Provided that in respect of the buy-back of equity shares in any financial year, the reference to Twenty-Five per cent in this clause shall be constructed with respect to its total paid-up equity capital in that financial year
  - d. The ratio of the aggregate of secured and unsecured debts owed by the Company after buy-back is not more than twice the paid-up capital and its free reserves;
  - e. All the shares or other specified securities for buy-back are fully paid-up;
  - f. The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
  - g. The buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014.
3. The notice of the general meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating — full and complete disclosure of all material facts
  - a. The date of the board meeting at which the proposal for buy-back was approved by the board of directors of the Company;
  - b. The objective of the buy-back;

- c. The class of shares or other securities intended to be purchased under the buy-back;
- d. The number of securities that the Company proposes to buy-back;
- e. The method to be adopted for the buy-back;
- f. The price at which the buy-back of shares or other securities shall be made;
- g. The basis of arriving at the buy-back price;
- h. The maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- i. The time-limit for the completion of buy-back;
- j.
  - i. The aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a Company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;
  - ii. The aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
  - iii. The maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date;
- k. If the persons mentioned in sub-clause (i) of Clause (j) intend to tender their shares for buy-back:
  - i. The quantum of shares proposed to be tendered;
  - ii. The details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- l. A confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking Company;
- m. A confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the Company and that they have formed the opinion —
  - i. That immediately following the date on which the general meeting is convened there shall be no grounds on which the Company could be found unable to pay its debts;
  - ii. As regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the Company's business during that year and to the amount and character of the financial resources which will in their view be available to the Company during that year, the Company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
  - iii. The directors have taken into account the liabilities (including prospective and contingent liabilities), as if the Company were being wound up under the provisions of the Companies Act, 2013
- n. A report addressed to the Board of directors by the Company's auditors stating that —
  - i. They have inquired into the Company's state of affairs;
  - ii. The amount of the permissible capital payment for the securities in question is in their view properly determined;

- iii. That the audited accounts on the basis of which calculation with reference to buy-back is done is not more than six months old from the date of offer document; and

“Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subject to limited review by the auditors of the Company.”

- iv. The Board of Directors have formed the opinion as specified in Clause (m) on reasonable grounds and that the Company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.
4. The buy-back may be made:
    - a. From the existing shareholders or security holders on a proportionate basis;
    - b. From the open market;
    - c. By purchasing the securities issued to employees of the Company pursuant to a scheme of stock option or sweat equity.
  5. Where a Company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.
  6. The Company which has been authorised by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH. 8, along with the fee provided that such letter of offer shall be dated and signed on behalf of the Board of directors of the Company by not less than two directors of the Company, one of whom shall be the managing director, where there is one.
  7. The Company shall file with the Registrar, along with the letter of offer, and in case of a listed Company with the Registrar and the Securities and Exchange Board, a declaration of solvency in Form No. SH. 9 along with the fee and signed by at least two directors of the Company, one of whom shall be the managing director, if any, and verified by an affidavit as specified in the said form.
  8. The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than twenty days from its filing with the Registrar of Companies.
  9. The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer.

“Provided that where all members of a company agree, the offer for buyback may remain open for a period less than fifteen days.”
  10. In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the Company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.
  11. The Company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.
  12. The Company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back.
  13. The Company shall within seven days of the time specified in point-11 :
    - a. Make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or
    - b. Return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.

14. The Company shall ensure that —
  - a. The letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the Company accept the responsibility for the information contained in such document;
  - b. The Company shall not issue any new shares including by way of bonus shares from the date of passing the resolution authorising the buy-back till the date of closure of offer except those arising out of any outstanding convertible debentures;
  - c. The Company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash.
  - d. The Company shall not withdraw the offer once it has announced the offer to the Shareholders.
  - e. The Company shall not utilise any money borrowed from banks or financial institutions for the purpose of buying back its shares.
  - f. The Company shall not utilise the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.
15.
  - a. The Company shall maintain a register of shares or other securities which have been bought back in Form No. SH. 10.
  - b. The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorised by the board in this behalf.
  - c. The entries in the register shall be authenticated by the Secretary of the Company or by any other person authorized by the Board for the purpose.
16. The Company shall after the completion of buy-back file with the Registrar, and in case of a listed Company with the Registrar and Securities and Exchange of India, a return in the Form SH. 11 along with the fee.
17. There shall be annexed to the return filed with the Registrar in Form No. SH. 11, a certificate in Form No. SH. 15 signed by two directors of the Company, including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act.

# COMPLIANCES UNDER THE COMPANIES ACT, 2013

## Annual and Other Obligations under Companies Act, 2013

### OBLIGATIONS UNDER THE COMPANIES ACT, 2013 WITH RESPECT TO E-FILING OF FORMS, RETURNS AND DOCUMENTS WITH REGISTRAR OF COMPANIES

The Companies Act, 2013 (“the Act”) provides for and casts an obligation on Companies incorporated under the Act to file various forms, returns and documents under various provisions with the Registrar of Companies (ROC)/Regional Director (RD)/Central Government (CG) 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.

Ministry of Corporate Affairs (MCA) has introduced e-governance Project MCA-21 which is designed to fully automate all processes related to proactive enforcement and compliance of legal requirements under the Act. The major component of this project are front office and back office. The front office is administered through the portal [www.mca.gov.in](http://www.mca.gov.in) since September 30, 2006. As the Companies Act, 2013 has become operative, new forms have been prescribed. In case the facility is not available to upload the form, you may use the manual form and attach the same to General E-form e.g. GNL 2 or such other prescribed form as specified in Circular No. 17 dated June 11, 2014 read with Circular No. 6/2014 dated March 28, 2014.

Various documents, returns, etc. that are required to be filed with the ROC could be categorized as under:

- Forms required to be filed once in a year – Annual Filing Obligations; and
- Forms required to be filed from time-to-time with ROC/CG as provided under the Act based on specific event — Event based Filing Obligations.

#### ANNUAL FILING OBLIGATIONS

##### A. Annual Return under Section 92

- The Annual Return, as on the financial year end, has to be filed with the ROC in an electronic mode within 60 days of the holding of the Annual General Meeting (AGM);
- Where AGM has not been held, the return is required to be filed within 60 days from the date on which the (AGM) should have been held together with the statement specifying the reasons for not holding the annual general meeting with such fees or additional fees as may be prescribed, within a time as specified, under section 403.
- The return is to be duly signed by a Director and the Company Secretary or where there is no Company Secretary, by a Company Secretary in Practice. The Annual Return in the format prescribed is to be attached as per Section 92;
- An extract of Annual Return shall form part of Board’s Report. Refer MGT - 9
- The Annual Return filed by a listed Company or by a Company having paid-up Capital of ? 10 crore or more or turnover of ? 50 crores or more shall be certified by Company Secretary in Practice in Form MGT-8.
- Copies of all annual returns and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.

#### For OPC & Small Companies

In relation to One Person Company and small Company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the Company.

Note: In case of an adjourned (AGM), the Annual Return incorporates the date of the original meeting.

Description	e-Form
Annual return	MGT-7

Practicing CS certificate	MGT-8
Foreign Company u/s 384(2)	FC-4
Extract of Annual Return	MGT-9

## B. Filing of Financial Statements with Registrar, under Section 137 [e-form No. AOC-4]

- a. For Companies other than OPC
  - i. Financial Statement to be adopted at the AGM;
  - ii. Copy of \*\*Financial statements including Balance Sheet, Profit & Loss Account, Cash Flow Statement, Statement of changes in equity, Directors Report and Auditor's Report along with Form No. AOC-4, to be e-filed with the ROC within 30 days of the date of the AGM;
  - iii. Where an AGM is not held, copy of financial statements to be e-filed within 30 days from the latest day on or before which the meeting ought to 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 financial statement, a statement of the fact and reasons thereof was filed along with Balance Sheet, etc. to be filed within 30 days of the date of AGM. However, the Registrar shall take the unaudited Balance Sheet filed as 'Provisional' till the audited financial statements are filed.
  - v. Company shall, along with its financial statements to be filed with Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.
- b. For OPC A One Person Company shall file a copy of the financial statements duly adopted by its member within 180 days from the closure of the financial year.

**\*Note:** Company cannot file any other forms with ROC nor can CA/CS/Cost Accountant sign forms (except specified forms) unless the Company has filed Balance Sheet, Profit & Loss Account, and Annual Return up-to-date. Accounts of the subsidiary (ies) need to be attached where applicable.

\*\* As per Circular No. 6/2014 dated March 28, 2014, all forms specified in Table A of the said Circular will have to be filed for Financial Year 2013-14. No new notification issued in this respect till May 31, 2015.

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
*Form for filing XBRL* document in respect of Balance Sheet and other documents with the Registrar	Form 23AC - XBRL
*Form for filing XBRL* document in respect of Profit and Loss account and other documents with the Registrar	Form 23ACA - XBRL

## Annual Form Filing (From Financial Year 2014-15)

Description	e-Form
Form for filing annual return by a company	Form MGT-7
Form for filing financial statement and other documents with the Registrar	Form AOC-4
Form for filing consolidated financial statements and other documents with the Registrar	Form AOC-4(CFS)
Form for filing XBRL document in respect of financial statement and other documents with the Registrar.	Form AOC-4 XBRL

\*Following class of Companies are required to file their accounts in XBRL format. MCA has prescribed separate forms for the same.

- Companies listed in India and their subsidiaries;
- Companies having a paid-up capital of Rs.5 crores and above;
- Companies having a Turnover of Rs.100 crores or
- Companies who were required to file their financial statements for F.Y. 2013-14 using XBRL mode.
- banking Companies, Insurance Companies, Power Companies, Non-Banking Financial Companies (NBFC) are exempted from XBRL filing till further instructions from MCA.

\*\* As per Circular No. 6/2014 dated March 28, 2014, all forms specified in Table A of the said Circular will have to be filed for Financial Years up to F.Y. 2013-14.

### C. Compliance Certificate Under Section 383A (Only For Financial Years Up To 2013-14)

- 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 AGM.
- In case the AGM 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

\*Form No. 66 being Secretarial Compliance Certificate will be operative and needs to be filed for the financial year(s) up to 2013-14. No new notification issued till May 31, 2015.

### EVENT BASED FILING OBLIGATIONS

#### Approval Services

Description	e-Form
Form for filing application or documents with Central Government	Form CG-1
Form of application for removal of disqualification of directors	Form DIR-10

#### Approval Services (Regional Director)

Description	e-Form
Application to Regional Director for Conversion of Section 8 Company into Company of any other kind	Form INC 18
Application for confirmation by Regional Director for change of registered office of the company within the State from the jurisdiction of one Registrar to the jurisdiction of another Registrar within same state	Form INC 23
Memorandum of Appeal	Form ADJ
Form for filing application to Regional Director	Form RD-1
Form for filing petitions to Central Government (RD)	Form RD-2



## Approval Services (Regional Director)

Description	e-Form
One Person Company – Application for conversion	Form INC 6
Application for approval of the Central Government for change of name	Form INC 24
Form for filing an application with Registrar of Companies	Form GNL-1
Application to Registrar for obtaining the status of dormant company	Form MSC-1
Application for seeking status of active company	Form MSC-4
Application for striking off the name of company under the Fast Track Exit (FTE) Mode	Form FTE

## Change Services

Description	e-Form
Application form for reservation or change of a name	Form INC-1
Annual Accounts along with the list of all principal places of business in India established by Foreign Company	Form FC-3
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 FC-2
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 DIR-12
Notice of situation or change of situation of registered office	Form INC-22
Advertisement to be published in the Newspaper for Licence for existing companies	Form INC-26
Conversion of Public Company to Private Company and vice versa	Form INC-27
Notice of consolidation, division, etc. or increase in share capital or increase in number of members	Form SH-7
Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept	Form MGT-3
Changes in shareholding position of promoters and top ten share holders	Form MGT-10 (to be filed as an attachment to e-Form GNL 2)
Format of Proxy Form	Form MGT-11

## Charge Management

Description	e-Form
Appointment or cessation of receiver or Manager	Form CHG-6
Particulars for creation or modification of charges (other than those related to debentures)	Form CHG-1
Particulars for satisfaction of charges	Form CHG- 4
Particulars for registration of charges for Debentures	Form CHG-9
Application to CG for extension of time for filing particulars of charge	Form CHG-8
Details of persons/directors/charged/specified	Form GNL-3

## Company Registration

Description	e-Form
Application form for availability or reservation of a name (For OPC and other than OPC)	Form INC-1
<b>Formation of One Person Company (OPC)</b>	
Application for Incorporation	Form INC-2
Nominee Consent Form	Form INC-3

Change in Member/Nominee	Form INC-4
<b>Conversion of OPC to Company</b>	
• of exceeding threshold	Form INC-5
• for Conversion	Form INC-6
<b>Formation of Company (Other than OPC)</b>	
Integrated Incorporation Form	Form INC-29
Application for Incorporation of Company	Form INC-7
Declaration by Professionals	Form INC-8
Affidavit from the subscribers	Form INC-9
Verification of Signature of Subscribers	Form INC-10
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 DIR-12
Notice of situation or change of situation of registered office	Form INC-22
Application by a Company for registration under section 366	Form URC-1
Information to be filed by foreign company	Form FC-1
<b>Formation of Section 8 Company</b>	
Application for grant of licence under section 8	Form INC-12
Draft Memorandum of Association	Form INC-13
Declaration by professional	Form INC-14
Declaration by applicants	Form INC-15
Application to Regional Director for Conversion of Section 8 company into Company of any other kind	Form INC-18
Public Notice	Form INC-19
Intimation to Registrar of revocation or surrender of licence issued under Section 8	Form INC-20
<b>Registration of Foreign Companies</b>	
Documents delivered for registration by a Foreign Company	Form FC-1
<b>Registration of Existing Companies</b>	
Application by a company for registration under section 366	Form URC-1
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 DIR-12
Form of notice of interest by Director u/s. 184(1) Board Resolution in regard to MBP1 to be filed in	Form MBP 1 Form MGT 14

## Compliance related filing

Description	e-Form
<b>Compliance Related to Share Capital and Debentures</b>	
Advertisement giving details of notice of special resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued	Form PAS-1
Information Memorandum	Form PAS-2
Return of allotment	Form PAS-3
Letter of Offer (Public Offer)	Form SH-8
Private Placement offer letter format	Form PAS-4
Share Certificate Format	Form SH-1
Debenture trust Deed	Form SH-12
Securities Transfer Form	Form SH-4
Nomination Form	Form SH-13

Cancellation or Variation of Nomination	Form SH-14
Notice for transfer of partly paid securities	Form SH-5
Return in respect of Buy-back of Shares	Form SH-11
Certificate of compliance in respect of buy-back of securities	Form SH-15
Declaration of Solvency	Form SH-9
<b>Other Compliances</b>	
Registration of special resolution(s) and agreement(s)	Form MGT-14
Information by Auditor to Registrar	Form ADT-1
Application for removal of auditor(s) from his/their office before expiry of term	Form ADT-2
Notice of Resignation by the Auditor	Form ADT-3
Report to the Central Government	Form ADT-4
Return of appointment of managing director or whole time director or manager	Form MR-1
Form for submission of documents with Registrar of Companies	Form GNL-2
Statement of amounts credited to Investor Education and Protection Fund	Form 1 INV
<b>Form for filing Cost Audit Report and other Documents with the Central Government</b>	
Statement of Unclaimed and Unpaid amounts	Form 5-INV
Form for filing XBRL document in respect of Cost Audit Report and other documents with the Central Government	Form I-XBRL
Form for filing XBRL document in respect of compliance report and other documents with the Central Government	Form A-XBRL
<b>Compliance Related to Acceptance of deposits</b>	
Circular in the Form of Advertisement Inviting deposits	Form DPT-1
Format for Deposit Trust Deed	Form DPT-2
Return of Deposits	Form DPT-3
Statement regarding deposits existing on the commencement of the Act	Form DPT-4
<b>Compliance Related to Management and Administration</b>	
Declaration by the registered owner of shares who does not hold beneficial Interest in such shares	Form MGT-4
Declaration by the registered owner of shares who hold beneficial Interest in shares but whose name are not appeared in the Register of Member	Form MGT-5
Return of registered in respect of Declaration u/s 89 received by the Company	Form MGT-6
Annual Return	Form MGT-7
Extract of Annual Return	Form MGT-9

**Report by a Listed Company after AGM** shall contain the following (see Rule 31 of Companies (Management & Administration) Rules, 2014):

The report shall contain the details in respect of the following namely:—

- i. The day, date, hour and venue of the AGM
- ii. Confirmation with respect to appointment of Chairman of the meeting;
- iii. Number of member, attending the meeting;
- iv. Confirmation with respect to compliance of the Act and the Rules, secretarial standards made thereunder with respect to calling, convening and conducting the meeting;
- v. Business transacted at the meeting and result thereof;
- vi. Particulars with respect to any adjournment, postponement of meeting, change in venue; and
- vii. Any other points relevant for inclusion in the report.

## Compliance Related to NIDHI Rules, 2014

Description	e-Form
Return of Statutory Compliances	Form NDH-1
Application for extension of Time	Form NDH-2
Half Yearly Return	Form NDH-3

## Informational Services

Description	e-Form																																														
Annual Report on Corporate Social Responsibility (CSR) Activities to be included In the Board's Report	<p>Annexure – Companies (Corporate Social Responsibility Policy) Rules, 2014</p> <p><b>ANNEXURE FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT</b></p> <ol style="list-style-type: none"> <li>A brief outline of the company's CSR policy, including overview of projects or programmes proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.</li> <li>The Composition of the CSR Committee.</li> <li>Average net profit of the company for the last three financial years.</li> <li>Prescribed CSR Expenditure (two per cent of the amount as in item 3 above)</li> <li>Details of CSR spent during the financial year:               <ol style="list-style-type: none"> <li>Total amount to be spent for the financial year;</li> <li>Amount unspent, if any;</li> <li>Manner in which the amount spent during the financial year is detailed below.</li> </ol> </li> </ol> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> <th>(4)</th> <th>(5)</th> <th>(6)</th> <th>(7)</th> <th>(8)</th> </tr> </thead> <tbody> <tr> <td>Sr. No.</td> <td>CSR Project or Activity identified</td> <td>Sector in which the Project is covered</td> <td>Projects or programmes (1) Local area or other (2) Specify the State and district where projects or programmes was undertaken</td> <td>Amount outlay (budget) project or programmes wise</td> <td>Amount spent on the projects or programmes Subheads:(1) Direct expenditure on projects or programmes. (2) Overheads:</td> <td>Cumulative expenditure up to the reporting period</td> <td>Amount spent: Direct or through implementing agency</td> </tr> <tr> <td>1.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>*Give details of implementing agency:</p> <ol style="list-style-type: none"> <li>In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.</li> <li>A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the Company.</li> </ol> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Sd/-</td> <td style="width: 33%;">Sd/-</td> <td style="width: 33%;">Sd/-</td> </tr> <tr> <td>(Chief Executive Officer or Managing Director or Director)</td> <td>(Chairman CSR Committee)</td> <td>(Person Specified under clause (d) of sub-section (1) of section 380 of the Act)(wherever applicable)</td> </tr> </table>	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Sr. No.	CSR Project or Activity identified	Sector in which the Project is covered	Projects or programmes (1) Local area or other (2) Specify the State and district where projects or programmes was undertaken	Amount outlay (budget) project or programmes wise	Amount spent on the projects or programmes Subheads:(1) Direct expenditure on projects or programmes. (2) Overheads:	Cumulative expenditure up to the reporting period	Amount spent: Direct or through implementing agency	1.								2.								3.								Sd/-	Sd/-	Sd/-	(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee)	(Person Specified under clause (d) of sub-section (1) of section 380 of the Act)(wherever applicable)
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Description	e-Form
Particulars of person(s) or director(s) or charged or specified for the purpose of clause (f) or (g) of Section 5	Form GNL-3
Notice of the court or the Company Law Board order	Form INC 28
Statement containing salient features of the Financial statement of subsidiaries/associate Companies/joint ventures	Form AOC-1

Form for disclosure of particulars of contracts/Arrangements entered into by the company u/s. 188(1)	Form AOC-2
Form of Abridged Financial Statement	Form AOC-3
Form of return to be filed with the Registrar	Form MGT-6
Registration of resolution(s) and agreement(s)	Form MGT-14

### 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 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 MR-2

### Form GNL4 (Addendum)

Description	e-Form
Form for filing addendum for rectification of defects or incompleteness	GNL 4

### Conversion into Limited Liability Partnership (LLP) Forms

Description	e-Form
Form for intimating to Registrar of Companies of conversion of the Company into Limited Liability Partnership (LLP)	Form 14

### Investor Services

Description	e-Form
Application for allotment of Director	Form DIR-3
Verification of applicant for application for DIN	Form DIR-4
Application for Surrender of DIN	Form DIR-5
Intimation of change in particulars of Director to be given to the Central Government	Form DIR-6
Other Compliances related to Director	
Intimation by Director	Form DIR-8
Report by the company to Registrar	Form DIR-9
Notice of Resignation of a director to the Registrar	Form DIR-11

### Refund E-form

Description	e-Form
Application for requesting refund of fees paid	Refund Form

## Bank Account E-Form

Description	e-Form
Application for simplifying bank account opening process as user shall not be required to submit any physical application form	Form Bank ACC

## Other forms which need to be filed as per The Companies (Misc.) Rules, 2014

Description	e-Form
Application to Registrar for obtaining the status of dormant company	Form MSC-1
Return of Dormant Companies	Form MSC-3
Application for seeking status of Active Company	Form MSC-4

## Informational Services

Description	e-Form
Notice of address at which books of account are maintained	Form AOC-5
Form for filing Report on Annual General Meeting	Form MGT-15

## Investor Services

Description	e-Form
Investor Complaint Form	Form ICP
Serious Complaint Form	Form SCP

## REGISTRATION OF DIGITAL SIGNATURE

The verification of credentials of Authorized Signatories and Professionals is 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 Authorized Signatories/Professionals will be accepted by the system only once registered with MCA.

Step by step process for registration of signature of director/secretary/professional

- i. Step 1: Go to the website of MCA 21 services <http://www.mca.gov.in/MCA21/>
- ii. Step 2: Go to the tab of Register your Digital Signature
- iii. Step 3: Select Director/Secretary/Professional under quick links, specify details as requested, connect the DSC to computer and register the DSC.

PAN is mandatory for Manager, Secretary and practicing professionals for DSC registration purpose.

The information submitted by the Professionals at the time of registering the Digital Signature Certificate (DSC) is verified by information in database and that submitted by the respective Professional Institute.

## ONLINE PAYMENT FACILITY

Presently the online payment facility for payment of Registration Fees and Stamp Duty with the Registrar of Companies (ROC), is available for selected forms only (viz. INC-29 and Form SH-7 and for other please refer 'Table of Fees' as prescribed by Companies (Registration of Offices and Fees) Rules, 2014. Ministry of Corporate Affairs (MCA) has made online payment of fees compulsory. However the facility will be extended to other forms in due course.

# STATUTORY REGISTERS

## LIST OF STATUTORY REGISTERS, BOOKS AND RECORDS REQUIRED TO BE MAINTAINED BY A COMPANY UNDER COMPANIES ACT, 2013

Sr. No.	Relevant Sections	Register/Books>Returns	Inspection	Fees/Charges for Inspection, if any
1.	187(3)	Register of Investments not held in its own name by the Company (Form MBP-3)	Members and Debenture holder	Without any fees
2	73 and 74 read with rule 14 of the Companies (Acceptance of Deposits) Rules, 2014) & RBI Directions	Registers of Deposits	Not open for Inspection Entry shall be made within 7 days from the date of issuance of the receipt	NA
3	68(9) read with Rule 17(12) of Companies (Share Capital & Debentures) Rules, 2014	Register of Securities Bought Back (Form SH-10)	Not open for inspection	NA
4	85 read with Rule 10 of Company (Registration of charges) Rules, 2014	Register of Charges (Form CHG.7)	a. Member or a creditor b. any other person	a. without any fees b. On payment of fees
5	88(1) read with rule 3 of the Companies (Management and Administration) Rules, 2014	(a) (i) Register of Members (Form MGT.1)	a. Member, Debenture-holder, other security holder or beneficial owner b. any other person	a. without any fees b. On payment of requisite fees
6	88(2) and Rule 6 of the Companies (Management and Administration Rules, 2014)	(a) (ii) Index to Members	a. Member, Debenture-holder, other security holder or beneficial owner b. any other person	a. without any fees b. On payment of fees
7	88(1) and Rule 4 of the Companies (Management and Administration Rules, 2014)	(b) (i) Register of Debenture holders(Form MGT-2.)	a. Member, debenture holder, other security holder or beneficial owner b. any other person	a. Without any fees b. On payment of requisite fees
8	88(2)	(b) (ii) Index of Debenture holders/other security holders.	a. Member, debenture holder, other security holder or beneficial owner b. any other person	a. Without any fees b. On payment of requisite fees
9	88(4)	Foreign Register of members or Debenture holders (Form MGT-3)	a. Member / Debenture Holder, security holder or beneficial owner b. any other person	a. Without any fees b. On payment of requisite fees
10	88(3)	Register and Index of beneficial owner	a. Member / Debenture Holder, security holder or beneficial owner b. any other person	a. Without any fees b. On payment of requisite fees
11	118/119	Minutes books of General Meetings	Any Member	a. without any fees if asked soft copy of minutes of general meeting of preceding 3 Financial Years b. Max. Rs.10 per page for photocopies

Sr. No.	Relevant Sections	Register/Books>Returns	Inspection	Fees/Charges for Inspection, if any
11	128	Proper books of account and cost records and other relevant Books and papers and financial statements for every year	Directors of the Company	NA
12	189	Register of Contracts with related party and contracts and Bodies etc. in which Directors are interested (Form MBP-4)	Member	Payment of Requisite Fees
13	170	Register of Director/Managing Director/Manager/Whole Time Director/Secretary and their shareholding	Member	Without any fees
14	186	Register of Loans made, provided or Investment made and Acquisition made by the Company (Form MBP-2)	Member	Guarantees given, Securities on payment of requisite fees
15	Rule 6(3)(a) of the Companies (Share Cap & Deb) Rules, 2014	Register of Renewed and Duplicate Share certificates (Form SH. 2)	Not open for inspection	NA
16	581-ZL(7)* Read with Sec. 465 of Companies Act, 2013	Register of particulars of Investments of Producer Companies	Member	NA
17	54 read with Rule 8(14) of Companies (Share Capital and Debentures) Rules, 2014	Register of Sweat Equity Shares Options (Form SH-3)	Employees	Without any fees
18	62 read with Rule 12(10) of Companies (Share Capital and Debentures) Rules, 2014	Register of Employee Stock Options (Form SH-6)	Employees	Without any fees

#### Other records to be maintained by the Companies

Sr. No.	Relevant Sections	Register/Books>Returns	Inspection	Fees/Charges for Inspection, if any
1	189(1)	Notice of Disclosure of Interest (Form MBP-1)	Directors of the Company	Without any fees
2	190	Copy of contract of employment With managing director or whole time director	Member	Without any fees
3	42(7) read with Rule 14(3) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Record of a Pvt. Placement offer (Form PAS-5)	Directors of the Company	Without any fees
4	Rule 20 of Companies (Acceptance of Deposits) Rules, 2014	Statement regarding deposits existing on the commencement of the Act Options (Form DPT-4)	Depositors	



# ANNUAL ACCOUNTS AND BALANCE SHEET

- Sections 209-223 of the old Act of 1956 concerning Accounts have been replaced by new Chapter IX – Accounts of Companies along with the Companies (Accounts) Rules, 2014. The Rules are to be read along with Chapter IX of the new 2013 Act.
- “Books of Account” are defined for the first time in Section 2(13) of Companies Act, 2013 (“the new Act”) and is in line with that prescribed in section 209(1) of the Companies Act, 1956 (“the old Act”).
- Section 2(13) defines “books of account” to include records maintained in respect of—
  - i. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
  - ii. all sales and purchases of goods and services by the company;
  - iii. the assets and liabilities of the company; and
  - iv. the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.
- There is a new definition of “Financial Statement” in Section 2(40) of the New Act in place of Profit & Loss & Balance Sheet described in Section 211 of the old Act. “Financial Statements” are required to give true and fair view and are to be in accordance with “Accounting Standards”. These financial statements are required to be prepared, audited and adopted by the shareholders.
- “Financial Statements” include (i) the Balance Sheet (ii) the Statement of Profit and Loss (iii) the Cash Flow Statement (iv) the Statement of Changes in Equity and (v) Notes to Accounts.
- Therefore, now it is mandatory for all companies to also prepare the Cash Flow Statement and the Statement of Changes in Equity and have the same audited.
- The guidance for preparation of Statement of changes in equity is available in Ind AS 1.
- The Cash Flow Statement may not be prepared for OPC (One Person Company) and small company and dormant company. It is important to note the word “may”. It implies that OPC, small companies and dormant companies have an option at their discretion to prepare the “Cash Flow Statement.”
- [Briefly as per the new Act and the Rules thereunder, OPC are private companies and those which have only one shareholder and have net worth not exceeding ₹ 50 lakh and Average Annual Income (3 years average) of not exceeding ₹ 2 crore. A small company is defined in Section 2(85) of the New Act, as one which is not a public company, presently not having a paid up capital exceeding ₹ 50 lakh and turnover as per last Balance Sheet not exceeding ₹ 2 crore. Holding & Subsidiary Companies, Section 8 (old section 25) Companies and those governed by Special Acts are not to be treated as small companies. Section 455 of the new Act defines a dormant company as one which is having no significant accounting transactions.]
- The Financial Statements shall be for every Financial Year. “Financial Year” has been defined u/s. 2(41) of the new Act to mean the period ending 31st March every year. In case of a new company incorporated after 1st January of the year, it shall be 31st March next in the following year. Existing companies are required to align to the new financial period within 2 years of commencement of the new Act. There is an exception which may be granted by the tribunal where the Indian Company is a holding or a subsidiary company of a company incorporated outside India and is required to follow different financial year for consolidation of accounts outside India.
- A new feature of Chapter IX is Consolidation of Accounts. All provisions relating to preparation & audit of accounts as applicable to the standalone Financial Statements are applicable to the Consolidated Financial Statements. All Companies (including step-down subsidiaries) irrespective of whether they are listed or not, private or public are required to prepare Consolidated Financial Statements.
- Consolidation shall be done of all subsidiaries, associate companies and joint venture companies as per sub-section (3) of Section 129 of the new Act. Financial Statements shall be in the form provided for in Schedule III to the new Act.

- Schedule III also gives “general introduction for the preparation of Consolidated Financial Statements”. This introduction is very broad and it appears that consolidation will have to be done as per AS-21. AS-21 gives detailed guidelines for consolidation. The Ministry of Corporate Affairs vide General Circular No. 39 dated 14-10-2014 has clarified that disclosures made on its standalone Financial Statements need not be repeated in Consolidated Financial Statements. In Consolidated Financial Statements only disclosures relevant to Consolidated Financial Statements should be given.
- Briefly, “Subsidiary Company” is defined in section 2(87) read with section 2(27) defining control of the new Act. Subsidiary company in relation of any other company (holding company) means a company in which the holding company controls the composition of the Board of Directors or controls more than half of the total paid up capital either on its own or together with one or more of its subsidiary companies. “Associate Company” in relation to another company means a company in which that other company has a “significant influence” and includes a JV Company. “Significant influence” means control of at least 26% of the share capital. It is significant to note that under the old Act, there is reference to control of more than half of the total equity capital; in the new Act, reference is made to more than half of the total paid-up capital (i.e. including, preference share capital.) Further, under the new Act, a company having no subsidiary but having an associate and/or a joint venture company is required to prepare Consolidated Financial Statements. Under the Listing Agreement, listed companies were required to prepare Consolidated Financial Statements ONLY if it had subsidiary(ies).
- Apart from consolidation, Section 129(3) of the New Act also requires that a separate statement containing the salient features of the Financial Statements of the subsidiaries, associates and joint ventures be attached to the holding company’s Financial Statements. This statement is required to be in Form AOC-1, which has two parts, PART “A”—Subsidiaries and PART “B”—Associates and Joint Ventures. The details in FORM AOC-1 can be easily extracted from the Financial Statements of the subsidiaries, associates and joint ventures.
- The old Act did not provide for reopening of the Annual Financial Statements and Restating or Revision of the Financial Statements. A circular of the Department of Company Affairs for Restating of Accounts issued by the Ministry provided for Restating of Accounts due to mistake (not arising out of fraud or mismanagement) and for the limited purpose of complying with the technical requirements of the laws viz. Income-tax Act, etc. Under the new Act, there are two independent provisions, Section 130 relating to Reopening of the Financial Statements and Section 131 relating to Voluntary Revision of the Financial Statements or the Board Report.

### **Reopening of Accounts**

- Section 130 of the new Act provides that accounts cannot be reopened and financial statements cannot be recast by a company unless there an application has been made by the Central Government, Income Tax Authority, SEBI and other statutory regulatory body or authority or any person concerned and an order is made by a court of Competent Jurisdiction or the Tribunal to the effect that:
  - o The relevant earlier accounts were prepared in a fraudulent manner, or
  - o The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of the Financial Statements.
- These provisions have far reaching consequences and an order passed under Section 130 of the new Act could potentially reopen all accounts and Financial Statements for up to 8 previous years [up to 8 years, as Books of Account are required to be maintained u/s. 128(5), unless, there is an order for maintenance of records for longer period].
- Sub-section (2) of Section 130 provides that accounts so revised or recast shall be final. It appears that there is no requirement to revise the Directors’ Report, Auditors’ Report or adopt the same in a general meeting. The revised or recast accounts which would be final as per sub-section (2) would be submitted to the tribunal and be subject to such further directions or orders of the tribunal.

### **Voluntary Revision of the Financial Statements or the Board Report**

- This is an altogether new provision which did not exist in the old Act. Section 131 of the new Act provides that the Board of Directors may voluntarily revise the Financial Statements or the Board Report where it finds that the Financial Statements do not comply with the provision of Section 129 of the new Act

[briefly, Section 129 of the New Act provides that the Statement of Profit and Loss, the Balance Sheet and the Cash Flow Statement give a true and fair view of the affairs of the company and they are prepared as per the notified Accounting Standards] and/or the Board Report does not comply with Section 134 of the new Act. The Revision can be done for 3 preceding financial years. The company is required to obtain approval of the Tribunal before taking up the voluntary revision.

- Before passing any order, it is provided that a notice needs to be given to the Central Government and the Income-tax authorities and their representation considered.
- The Second proviso of section 131 of the New Act restricts the revision to only once in a Financial Year. However, sub-section 2 of section 131 puts a further restriction on the ability of the Board of Directors to revise Financial Statements or the Board Report in a situation where the audited accounts have been sent to members or delivered to the Registrar or laid before the Annual General Meeting. The sub-Section provides that the revision in such cases must be confined to
  - a. “corrections in respect of previous Financial Statement or Board Report – they do not comply with the provision of section 129 or section 134 and
  - b. the making of any necessary consequential alteration”.
- Sub-section (3) of section 131 of the new Act provides for rules relating to the compliances post the revision of accounts & Directors’ Report. The Rules are also required to make provisions with respect to the role and function of the company’s Auditors in relation to the revised Financial Statements or Report. The Companies (Accounts) Rules, 2014 has not prescribed any such rule till date.
- rules have been framed for the manner in which books to be kept in electric mode — Rule 3 of The Companies (Accounts) Rule, 2014 manner of books of account to be kept in electronic mode.
- The books of account, other relevant books & papers maintained in electronic mode shall remain accessible in India for subsequent reference, retained completely in the same format in which they were originally generated, sent or received, unaltered, & present accurate information. The information received from branch offices shall not be altered and kept in a manner where it shall depict what was originally received from the branches; documents shall be capable of being displayed in a legible form.
- There shall be proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- The backup of the books of account and other books and papers maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statements, details of Service Provider, IP address of the Service Provider and where the books are maintained on “Cloud,” such address as provided by the service provider.

# DISCLOSURE IN DIRECTOR'S REPORT

The Board's Report is a vital document of Annual Report in which the Directors of a company gives review of the performance of the company. Under the Board Report, there is no restriction to put any matter. However, certain matters as a part of statutory compliance, needs to be put in as per the Companies Act, 2013 and the Listing Agreement (for listed company).

The Board's Report is to be prepared based on the standalone financial statements of the Company and it should contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

A. Section 134 of Companies Act, 2013 read with Companies (Account) Rules, 2014 provides for the contents to be disclosed in the Board's Report. The Board's Report shall include:

1. The extract of the annual return as provided in Form MGT-9;
2. Number of meetings of the Board;
3. Directors' Responsibility Statement;
4. A statement on declaration given by independent directors under sub-section (6) of section 149;
5. In case of a company covered under sub-section (1) of section 178, company's policy on director's appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters;
6. Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report;
7. Particulars of loans, guarantees or investments under section 186;
8. Particulars of contracts or arrangements with related parties in Form AOC-2;
9. The state of the company's affairs;
10. The amounts, if any, which it proposes to carry to any reserves;
11. The amount, if any, which it recommends should be paid by way of dividend;
12. Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
13. The conservation of energy, technology absorption, foreign exchange earnings and outgo, in the manner (the Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows).
14. A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
15. The details about the Corporate Social Responsibility Committee (Constitution), policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
16. In case of a listed company and every other public company having paid-up share capital of twenty five crore rupees or more, calculated at the end of the preceding financial year, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

B. In addition to above the Board Report should also include the below information as per Rule 8 of the Companies (Accounts) Rules, 2014:

1. The financial summary or highlights;
  2. The change in the nature of business, if any;
  3. The details of directors or key managerial personnel who were appointed or have resigned during the year;
  4. The names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
  5. The details relating to
    - a. deposits accepted during the year,
    - b. remained unpaid or unclaimed as at the end of the year;
    - c. whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved- (i) at the beginning of the year; (ii) maximum during the year; (iii) at the end of the year;
  6. The details of deposits which are not in compliance with the requirements of Acceptance of Deposit Rules;
  7. The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
  8. The details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- C. The Directors Report should also include the below information as per the relevant Sections of the Act:
1. Section 149(10) of the Act – Disclosure on Reappointment of Independent Director
  2. Section 177(9) of the Act – Disclosure on establishment of vigil mechanism
  3. Section 197(12) of the Act – Disclosure on ratio of the remuneration of each director to the median employees remuneration and such other details as may be prescribed shall be disclosed in the Board's Report.
  4. Section 197(14) of the Act - Disclosure about receipt of any commission by MD/WTD from a Company
  5. Section 204 of the Act – Secretarial Audit Report (Form MR-3)
  6. Section 177(8) of the Act – Disclosure on composition of the Audit Committee. Further, if the Board has not accepted any recommendation of the Audit Committee, the same shall also be disclosed along with reasons therefor.
  7. Section 131 of the Act – Voluntary revision of financial statement or Board's Report
  8. Section 67(3) read with Rule 16 of Companies (Share Capital & Debentures) Rules, 2014 – Disclosure in respect of voting rights not exercised by the employees in respect of shares to which the scheme relates.
  9. Sections 43, 54, 62(1)(b) read with Rules 4(4), 8(13) & 12(9) of Companies (Share Capital & Debentures) Rules, 2014 – Disclosure on Issue of Equity Shares with differential Rights, Sweat Equity, ESOS etc.
  10. Clause 49 of the Listing Agreement – Corporate Governance disclosure requirements (Listed Company)
  11. Disclosure under Sexual Harassment of women at workplace (Prevention, Prohibition & Redressal) Act, 2013.
  12. Furnish explanation for variation as specified in sub-regulation (3) of Regulation 32 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.

# SCHEDULE II — RATE OF DEPRECIATION — THE COMPANIES ACT, 2013

As per Schedule II along with Section 123 of the Companies Act, 2013 Useful lives to Compute Depreciation,

## As per Part A

- i. In case of such class of companies, as may be prescribed and whose financial statements comply with the Accounting Standards prescribed for such class of companies under section 133, the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.
- ii. In respect of other companies, the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.
- iii. For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

## As per Part B

The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

## As per Part C

As per Part C, Subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets		Useful Life in years
<b>I.</b>	<b>Buildings [NESD]</b>	
	(a) Buildings (other than factory buildings) RCC Frame Structure	60
	(b) Buildings (other than factory buildings) other than RCC Frame Structure	30
	(c) Factory buildings	30
	(d) Fences, wells, tube wells	5
	(e) Others (including temporary structure, etc.)	3
<b>II.</b>	<b>Bridges, culverts, bunders, etc. [NESD]</b>	30
<b>III.</b>	<b>Roads [NESD]</b>	
	(a) Carpeted roads	
	(i) Carpeted Roads — RCC	10
	(ii) Carpeted Roads — other than RCC	5
	(b) Non-carpeted roads	3
<b>IV.</b>	<b>Plant and Machinery</b>	
	(i) <b>General rate applicable to plant and machinery not covered under special plant and machinery</b>	
	(a) Plant and Machinery other than continuous process plant not covered under specific industries	15
	(b) continuous process plant for which no special rate has been prescribed under (ii) below [NESD]	8
	(ii) <b>Special Plant and Machinery</b>	
	(a) <b>Plant and Machinery related to production and exhibition of Motion Picture Films</b>	

Nature of assets			Useful Life in years
		1. Cinematograph films—Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs	13
		2. Projecting equipment for exhibition of films	13
	<b>(b)</b>	<b>Plant and Machinery used in glass manufacturing</b>	
		1. Plant and Machinery except direct fire glass melting furnaces — Recuperative and regenerative glass melting furnaces	13
		2. Plant and Machinery except direct fire glass melting furnaces — Moulds [NESD]	8
		3. Float Glass Melting Furnaces [NESD]	10
	<b>(c)</b>	<b>Plant and Machinery used in mines and quarries—Portable underground machinery and earth moving machinery used in open cast mining [NESD]</b>	8
	<b>(d)</b>	<b>Plant and Machinery used in Telecommunications [NESD]</b>	
		1. Towers	18
		2. Telecom transceivers, switching centres, transmission and other network equipment	13
		3. Telecom—Ducts, Cables and optical fibre	18
		4. Satellites	18
	<b>(e)</b>	<b>Plant and Machinery used in exploration, production and refining oil and gas [NESD]</b>	
		1. Refineries	25
		2. Oil and gas assets (including wells), processing plant and facilities	25
		3. Petrochemical Plant	25
		4. Storage tanks and related equipment	25
		5. Pipelines	30
		6. Drilling Rig	30
		7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc.	8
		8. Loggers	8
	<b>(f)</b>	<b>Plant and Machinery used in generation, transmission and distribution of power [NESD]</b>	
		1. Thermal/Gas/Combined Cycle Power Generation Plant	40
		2. Hydro Power Generation Plant	40
		3. Nuclear Power Generation Plant	40
		4. Transmission lines, cables and other network assets	40
		5. Wind Power Generation Plant	22
		6. Electric Distribution Plant	35
		7. Gas Storage and Distribution Plant	30
		8. Water Distribution Plant including pipelines	30
	<b>(g)</b>	<b>Plant and Machinery used in manufacture of steel</b>	
		1. Sinter Plant	20
		2. Blast Furnace	20
		3. Coke ovens	20
		4. Rolling mill in steel plant	20
		5. Basic oxygen Furnace Converter	25
	<b>(h)</b>	<b>Plant and Machinery used in manufacture of non-ferrous metals</b>	
		1. Metal pot line [NESD]	40
		2. Bauxite crushing and grinding section [NESD]	40
		3. Digester Section [NESD]	40

Nature of assets			Useful Life in years
		4. Turbine [NESD]	40
		5. Equipments for Calcination [NESD]	40
		6. Copper Smelter [NESD]	40
		7. Roll Grinder	40
		8. Soaking Pit	30
		9. Annealing Furnace	30
		10. Rolling Mills	30
		11. Equipments for Scalping, Slitting, etc. [NESD]	30
		12. Surface Miner, Ripper Dozer, etc., used in mines	25
		13. Copper refining plant [NESD]	25
	<b>(i)</b>	<b>Plant and Machinery used in medical and surgical operations [NESD]</b>	
		1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc.	13
		2. Other Equipments.	15
	<b>(j)</b>	<b>Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]</b>	
		1. Reactors	20
		2. Distillation Columns	20
		3. Drying equipments/Centrifuges and Decanters	20
		4. Vessel/storage tanks	20
	<b>(k)</b>	<b>Plant and Machinery used in civil construction</b>	
		1. Concreting, Crushing, Piling Equipments and Road Making Equipments	12
		2. Heavy Lift Equipments- Cranes with capacity of more than 100 tons	20
		Cranes with capacity of less than 100 tons	15
		3. Transmission line, Tunnelling Equipments [NESD]	10
		4. Earth-moving equipments	9
		5. Others including Material Handling /Pipeline/Welding Equipments [NESD]	12
	<b>(l)</b>	<b>Plant and Machinery used in salt works [NESD]</b>	15
<b>V.</b>	<b>Furniture and fittings [NESD]</b>		
	<b>(i)</b>	General furniture and fittings	10
	<b>(ii)</b>	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 circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions.	8
<b>VI.</b>	<b>Motor Vehicles [NESD]</b>		
	1.	Motor cycles, scooters and other mopeds	10
	2.	Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire	6
	3.	Motor buses, motor lorries and motor cars other than those used in a business of running them on hire	8
	4.	Motor tractors, harvesting combines and heavy vehicles	8
	5.	Electrically operated vehicles including battery powered or fuel cell powered vehicles	8
<b>VII.</b>	<b>Ships [NESD]</b>		
	<b>1.</b>	<b>Ocean-going ships</b>	
	<b>(i)</b>	Bulk Carriers and liner vessels	25
	<b>(ii)</b>	Crude tankers, product carriers and easy chemical carriers with or without conventional tank	20



Nature of assets			Useful Life in years
		coatings.	
	(iii)	Chemicals and Acid Carriers:	25
		(a) With Stainless steel tanks	
		(b) With other tanks	20
	(iv)	Liquefied gas carriers	30
	(v)	Conventional large passenger vessels which are used for cruise purpose also	30
	(vi)	Coastal service ships of all categories	30
	(vii)	Offshore supply and support vessels	20
	(viii)	Catamarans and other high speed passenger for ships or boats	20
	(ix)	Drill ships	25
	(x)	Hovercrafts	15
	(xi)	Fishing vessels with wooden hull	10
	(xii)	Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	14
	<b>2.</b>	<b>Vessels ordinarily operating on inland waters—</b>	
	(i)	Speed boats	13
	(ii)	Other vessels	28
<b>VIII.</b>	<b>Aircrafts or Helicopters [NESD]</b>		20
<b>IX.</b>	<b>Railways sidings, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]</b>		15
<b>X.</b>	<b>Ropeway structures [NESD]</b>		15
<b>XI.</b>	<b>Office equipment [NESD]</b>		5
<b>XII.</b>	<b>Computers and data processing units [NESD]</b>		
	(i)	Servers and networks	6
	(ii)	End user devices, such as, desktops, laptops, etc.	3
<b>XIII.</b>	<b>Laboratory equipment [NESD]</b>		
	(i)	General laboratory equipment	10
	(ii)	Laboratory equipments used in educational institutions	5
<b>XIV.</b>	<b>Electrical Installations and Equipment [NESD]</b>		10
<b>XV.</b>	<b>Hydraulic works, pipelines and sluices [NESD] #9;</b>		15

#### Notes

1. "Factory buildings" does not include offices, godowns and staff quarters.
2. 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.
3. The following information shall also be disclosed in the accounts, namely:—
  - i. Depreciation methods used; and
  - ii. The useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.
4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.
6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.
7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—
  - a. shall be depreciated over the remaining useful life of the asset as per this Schedule;
  - b. after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.

**“Continuous process plant”** means a plant which is required and designed to operate for twenty-four hours a day.

# TABLE OF FEES – CHAPTER 24 OF THE COMPANIES ACT, 2013

## Chapter 24 — Table of Fees [See Section 403]

APPLICABLE WITH EFFECT FROM APRIL 1, 2014

### A. TABLE OF FEES TO BE PAID TO THE REGISTRAR

#### I. FOR A COMPANY HAVING A SHARE CAPITAL

			Other than OPCs and Small Companies(Rs.)	*OPC and Small Companies(Rs.)
1.	(a)	For Registration of OPC and small companies whose nominal share capital does not exceed Rs. 10,00,000.	N.A.	2000
	(b)	For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 10,00,000 and up to Rs. 50,00,000.	N.A.	200
2.	(a)	For Registration of a company whose nominal share capital does not exceed Rs. 1,00,000.	5000	N.A.
	(b)	For registration of a company whose nominal share capital exceeds Rs. 1,00,000, the above fee of Rs. 5,000 with the following additional fees regulated according to the amount of nominal capital :		
	(a)	For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1,00,000 up to Rs. 5,00,000	400	N.A.
	(b)	For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 5,00,000 up to Rs. 50,00,000	300	N.A.
	(c)	For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 up to Rs. 1 crore	100	N.A.
	(d)	For every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.	75	N.A.
		Provided that where the additional fees, regulated according to the amount of the nominal capital of a company, exceeds a sum of Rs. 2.5 crores, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed Rs. 2.5 crores.		
3.		For filing a notice of any increase in the nominal share capital of a company, the difference between the fees payable on the increased share capital on the date of filing the notice for the registration of a company and the fees payable on existing authorized capital, at the rates prevailing on the date of filing the notice.		
4.		For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.		
5.		For submitting, filing, registering or recording any document by this Act required or authorised to be submitted, filed, registered or recorded:		
	(a)	In respect of a company having a nominal share capital of up to Rs. 1,00,000	200	
	(b)	In respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000.	300	
	(c)	In respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000.	400	
	(d)	In respect of a company having a nominal share capital of Rs. 25,00,000 or more but less than Rs. 1 crore or more.	500	
	(e)	In respect of a company having a nominal share capital of Rs. 1 crore or more.	600	N.A.
6.		For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar:		

(a)	In respect of a company having a nominal share capital of up to Rs. 1,00,000.	200	
(b)	In respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs. 5,00,000.	300	
(c)	In respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs. 25,00,000.	400	
(d)	In respect of a company having a nominal share capital of Rs. 25,00,000 or more but less than Rs. 1 crore or more.	500	
(e)	In respect of a company having a nominal share capital of Rs. 1 crore or more.	600	N.A.

## II. FOR A COMPANY NOT HAVING A SHARE CAPITAL

		Other than OPCs and Small Companies(Rs.)	*OPC and Small Companies(Rs.)
1.	For registration of a company whose number of members as stated in the articles of association, does not exceed 20.	2000	
2.	For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 200.		
3.	For registration of a company whose number of members as stated in the articles of association, exceeds 200 but is not stated to be unlimited, the above fee of Rs. 5,000 with an additional Rs. 10 for every member after first 200.	5000	
4.	For registration of a company in which the number of members is stated in the articles of association to be unlimited.	10000	
5.	For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration:  Provided that no company shall be liable to pay on the whole a greater fee than Rs. 10,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.		
6.	For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.		
7.	For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar.	200	
8.	For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar.	200	

### Notes:

- The above table prescribed for small companies [as defined under section 2(85) of the Act] and one person companies defined under Rule related to Chapter II r/w 2(62) of the Act shall be applicable provided the said company shall remain as said class of company for a period not less than one year from its incorporation.
- The above table of fee shall be applicable for any such intimation to be furnished to the Registrar or any other officer or authority under section 159 of the Act, filing of notice of appointment of auditors or Secretarial Auditor or Cost Auditor.
- The above table of fee and calculation of fee as applicable for increase in authorised capital shall be applicable for revised capital in accordance with sub-section (11) of 233 of the Act, (after setting off fee paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company).
- The above table of fee shall be applicable for filing revised financial statement or board report under sections 130 and 131 of the Act.

**III. FOLLOWING TABLE OF ADDITIONAL FEES SHALL BE APPLICABLE FOR DELAYS IN FILING OF THE FORMS INCLUDING CHARGE DOCUMENTS OTHER THAN FOR INCREASE IN NOMINAL SHARE CAPITAL**

Sr. No.	Period of Delay	Additional fees
1	Up to 15 days (under sections 93, 139 and 157)	<b>One time</b>
2	More than 15 days and up to 30 days (under sections 93, 139 and 157) and up to 30 days in the remaining forms	2 times of normal filing fees
3	More than 30 days and up to 60 days	4 times of normal filing fees
4	More than 60 days and up to 90 days	6 times of normal filing fees
5	More than 90 days and up to 180 days	10 times of normal filing fees
6	More than 180 days and up to 270 days	12 times of normal filing fees

**Note:**

- The additional fee shall also be applicable to revised financial statement or board's report under sections 130 and 131 of the Act and secretarial audit report filed by the company secretary in practice under section 204 of the Act.
- The belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether in Companies Act, 1956 or the Companies Act, 2013 i.e. due for filing prior to notification of these fee rules, the fee applicable at the time of actual filing shall be applicable.
- Delay beyond 270 days, the second proviso to sub-section (1) of section 403 of the Act may be referred.

**IV. FOR INCREASE IN AUTHORISED CAPITAL, THE ADDITIONAL FEES SHALL BE APPLICABLE AT THE FOLLOWING RATES**

	Delay up to 6 months	Delay beyond 6 months
Slab	2.5 % per month on the fees payable under Para I.3 or II.6 of above Table A as the case may be.	3% per month on the fees payable under Para I.3 or II.6 of above Table A as the case may be.

The above fee table shall also be applicable for delay in filing application with Registrar under sub-section (11) of section 233 of the Act.

**B. FEE ON APPLICATIONS (INCLUDING APPEAL) MADE TO CENTRAL GOVERNMENT UNDER SUB-SECTION (2) OF SECTION 459 OF THE COMPANIES ACT, 2013**

		Other than OPCs and Small Companies (Rs.)	OPC and Small Companies (Rs.)
<b>1</b>	<b>For Application</b>		
(i)	By a company having an authorised share capital of:		
a)	Up to Rs. 25,00,000	2,000	1,000
b)	More than Rs. 25,00,000 and up to Rs. 50,00,000	5,000	2,500
c)	More than Rs. 50,00,000 and up to Rs. 5,00,00,000	10,000	N.A.
d)	More than Rs. 5,00,00,000 and up to Rs. 10 crores	15,000	N.A.
e)	More than Rs. 10 crores	20,000	N.A.
(ii)	By a company limited by guarantee but not having a share capital	2,000	N.A.
(iii)	By an Association or proposed company for issue of licence under section 8 of the Act	2,000	N.A.
(iv)	By a company having a valid licence issued under section 8 of the Act	2,000	N.A.
(v)	By a Foreign Company	5,000	N.A.
(vi)	Application for allotment of Director Identification Number (DIN) under section 153 of the Act	500	N.A.

1. Every application to the Registrar of Companies filed by any person for reservation of name under sub-section (4) of section 4 of the Companies Act, 2013 shall be accompanied with the fee of Rs. 1,000.
2. For every application made to Regional Director (including appeal) or Registrar of Companies (except specifically stated elsewhere), Table of fees as above shall be applicable.

Note: The separate fee schedule shall be prescribed under sub-section (2) of section 459 of the Act for applications to be filed before Tribunal.

**C. ANNUAL FEE PAYABLE BY A DORMANT COMPANY UNDER SUB-SECTION (5) OF SECTION 455 OF THE COMPANIES ACT, 2013**

		Other than OPCs and Small Companies (Rs.)	OPC and Small Companies (Rs.)
<b>1</b>	<b>For Application</b>		
(i)	By a Company having an authorised share capital of		
	a)	Up to Rs. 25,00,000	2,000
	b)	More than Rs. 25,00,000 and up to Rs. 50,00,000	5,000
	c)	More than Rs. 50,00,000 and up to Rs. 5,00,00,000	10,000
	d)	More than Rs. 5,00,00,000 and up to Rs. 10 crores	15,000
	e)	More than Rs. 10 crores	20,000
(ii)	By a company limited by guarantee but not having a share capital	2,000	N.A.

**D. FEE FOR INSPECTION AND PROVIDING CERTIFIED COPIES OF DOCUMENTS KEPT BY THE REGISTRAR UNDER SECTION 399 OF THE ACT**

- i. Under clause (a) of sub-section (1) of section 399 of the Act – Rs. 100 (View Public Documents)
- ii. Under clause (b) of sub-section (1) of section 399 of the Act (Get Certified copies)
  - a. For copy of Certificate of Incorporation – Rs. 100
  - b. For copy or extract of other documents including hard copy of such document on computer readable media – Rs. 25 per page.

**E. FEE FOR REGISTRATION OF DOCUMENTS UNDER SECTION 385 OF THE ACT (FOREIGN COMPANY)**

Rs. 6,000/- for each document.

**F. FEES FOR REMOVAL OF NAMES OF COMPANIES FROM THE REGISTRAR OF COMPANIES UNDER SECTION 248(2) OF THE ACT**

Rs. 5,000/-

# COMPANY DEPOSITS

Companies can accept "**Deposits**" subject to compliance of certain prescribed conditions. The conditions for banking companies, Non-Banking Financial Companies (NBFCs), housing finance companies are notified by the Reserve Bank of India (RBI) and for other Companies mainly by the Central Government, in consultation with the RBI.

The term "**Deposits**" is defined very widely in the definition section itself of the Companies Act, 2013 (the Act) and except for specified exclusions provided in the Companies (Acceptance of Deposits) Rules, 2014 (the Rules), all monies received by a Company by way of deposit or loan or in any other form, would be deposit.

From the term – '**Deposit**', following are excluded namely amounts received from/by way of :

- a. Central or State Government, Local authority, Foreign Government or any other Foreign Citizen or Government or any amount guaranteed by Government.
- b. Banks
- c. Public Financial Institutions notified by the Central Government in this behalf in consultation with the RBI
- d. Against issue of commercial paper or any other instruments issued in accordance with the guidelines of RBI
- e. Any other Company
- f. Pursuant to an offer made towards subscription to any securities so long as such amount is appropriated towards the securities subscribed for. If the securities are not allotted within 60 days or advance is not refunded within next 15 days, such amount shall be treated as deposit
- g. Directors or relatives of the directors of the private company with declaration from director or relative, as the case may be, that amount is not out of funds acquired by him by borrowing
- h. Amount raised by an issue of bonds or debentures by first charge on assets (not exceeding market value of such assets as determined by registered valuer) specified in Schedule III of the Act excluding intangible assets, or bonds or debentures compulsorily convertible into shares within 5 years
- i. Amounts from an employee not exceeding his annual salary in the nature of non-interest bearing deposit
- j. Any non-interest bearing amount received or held in trust
- k. Amounts received in the course of business as an advance or security deposit for supply of goods or provision of services provided such advance is appropriated within 365 days unless it is subject matter of legal proceedings, for consideration of property provided that such advance is adjusted against the property, as advance under long-term projects for supply of capital goods
- l. Amount brought in by promoters by way of unsecured loan in pursuance of stipulation by lenders subject to certain conditions
- m. Amounts accepted by a Nidhi company

The relevant provisions of Sections 73, 74, 75 and 76 contain relevant general provisions for prohibitions from acceptance, repayment of deposits accepted before commencement of the Act, damages for fraud and provisions for certain class of companies. These do not apply to banking companies and NBFCs.

## **Prohibitions on Acceptance of Deposits from public**

- a. No company shall invite, accept or renew deposits from public except in the manner provided in the Act and Rules.
- b. A company may accept deposits from its members subject to the passing of a resolution in general meeting which shall be repaid with interest in accordance with the terms and conditions of the agreement. In case of a failure, the depositor may apply to the Tribunal for an order directing the company to pay the sum due. The company is required to deposit at least 15% of the amount maturing during a financial year and the financial year next following in Deposit Repayment Reserve Account kept in a scheduled bank in a separate account.

## **Deposits accepted prior to commencement of the Act**

Amounts received by private companies from their members, directors or their relatives prior to 1st-April-2014 shall not be treated as “deposits” under the Companies Act, 2013. The private company is required to disclose the amounts and the accounting head in which such amounts have been shown in the financial statements in the notes. For deposits accepted before commencement of the Act, the company shall file with the Registrar, before 31st-August-2014, a statement of all the deposits accepted by the company and repay them within one year from such commencement or from the date on which such payments are due, whichever is earlier. The Tribunal may allow further time as considered reasonable. This is deemed to be complied with if the company complies with the requirements of the Act and Rules and continues to repay such deposits and interest on due dates for the remaining period.

## **Penalty and punishment**

- a. Every company shall pay a penal rate of interest of 18% p.a. for overdue period in case of deposits matured and claimed but remaining unpaid.
- b. If the company is in arrears in the repayment of any deposits accepted by it or the interest payable thereon, section 66(1) prohibits such company from reduction of share capital.
- c. If the company is in default in the repayment of deposit or interest, section 70 prohibits the company to purchase its own shares or other specified securities. Such prohibition continues for three years after default ceases to subsist.
- d. Stringent monetary and imprisonment penalties, including prosecution are introduced in the Act.

## **Deposit insurance**

Every company needs to enter into a contract for providing deposit insurance at least 30 days before the issue of circular or before the date of renewal in the manner and extent provided in Clause 5 of the Rules. Till 31st-March, 2015, companies may accept deposits without such contract.

## **Limits on amounts of deposits**

Maximum amounts of deposits that can be accepted by the company are prescribed in the Rules. It provides limits under various circumstances such as short-term and demand deposits, deposits from members, deposits from other than members, government company, etc.

## **Return of deposits**

Company needs to file return of deposits with the Registrar before 30-June every year. It needs to be filed in Form DPT-3 along with the fees. Information contained in the return should be as of 31st-March of that year duly audited by the auditor of the company.

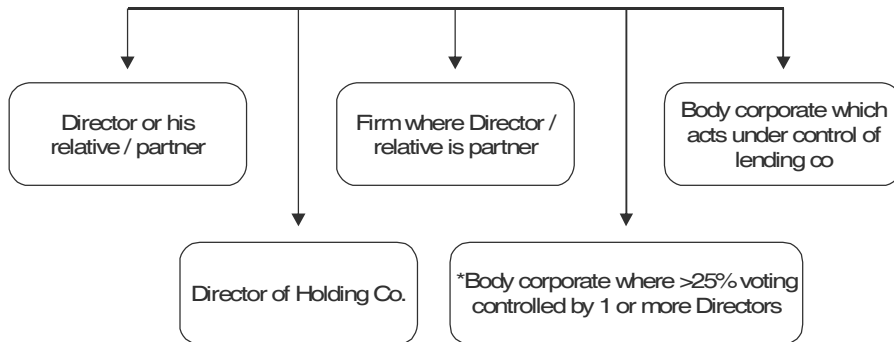
## **Register of deposits**

Clause 14 of the Rules prescribes one or more separate registers of deposits accepted or renewed to be maintained by every company at its registered office. The register needs to include the prescribed details of the depositor. Entries need to be made in the register within 7 days from the date of issuance of the receipt. Such register needs to be preserved for the period of at least 8 years from the financial year in which latest entry is made.



# LOANS TO AND BY COMPANIES

**Section 185 : A Company (including Private Limited company) cannot advance loan or give guarantee / security for loan taken by**



- Above restrictions do not apply to
  - Loan given to Managing Director/Whole-time Director as part of terms of employment; or pursuant to scheme approved by special resolution;
  - Loan to a company which is in the lending business
  - Loan made by holding company to Wholly-Owned Subsidiary (WOS) or guarantee / security by holding company for loan taken by WOS or a Guarantee given/ security provided by holding company in respect of bank loan to subsidiary (note – not WOS).
- Note: Loans and/or advances made by the companies to their employees other than managing or whole-time directors (which is governed by Section 185) are not governed by the requirements of Section 186 of the Companies Act, 2013, provided that such loans /advances to employees are in accordance with the service conditions and remuneration policy, where such policy is required to be formulated.
- Note: The proposed Companies (Amendment) Bill, 2016, proposes that companies may give a loan to any person in whom the director is interested, subject to prior approval of the Company by a special resolution and loans extended to persons, including subsidiaries, falling within the restrictive purview of section 185. Such loans should be used by the subsidiary for its principal business activity only. The Bill has also specified the definition of the term "any person in whom the director is interested".
- Further, the Bill prohibits companies to give loans to the director of a company or holding company, or any firms in which the director and his /her relatives are partners and partner of his/ her relative.

## **Section 186 : Loans/Investment by a Company**

Every company, (Note: including private companies) needs to obtain prior approval by passing a special resolution at a general body meeting, for:

- Loan given to any person or other body corporate
- Guarantee / security in respect of any loan to any person or body corporate
- Value of securities purchased /acquired/subscribed in any body corporate

The approval is necessary where the loans/investments made by the company are less than :

- 60% of paid up cap + free reserves + securities premium; or
- 100% of free reserves + securities premium; whichever is more.

### **Other provisions:**

- The Board resolution sanctioning it, is passed at a Board meeting with the consent of all the Directors present at the meeting and prior approval of the public financial institution is obtained, if any term loan is subsisting therefrom, in certain cases.

- However, the above limits not applicable in case of loans / guarantee to Wholly Owned Subsidiary (WOS)/ Joint Venture & investments in WOS.
- Above provisions in respect of loan / guarantee not applicable for banks, insurance, Housing Finance Companies, Non-Banking Financial Companies making acquisition of securities in the ordinary course of its business or is engaged in the business of acquiring securities, acquiring shares in rights issue or companies engaged in providing infrastructure facilities specified in Schedule VI of the Act.
- Companies registered under Section 12 of the Securities and Exchange Board of India Act, 1992 cannot take inter-corporate loans beyond the specified limit and subject to certain conditions.
- Companies defaulting in repayment of deposits cannot give loan, etc. under this Section till such default is subsisting.
- A company cannot make investment through not more than two layers of investment companies. Not applicable in case of acquisition of a foreign company which has investment subsidiaries beyond two layers or for meeting the requirements of law. Note: The proposed Companies (Amendment) Bill, 2016, proposes to remove restrictions on the layers of subsidiaries and investment companies in accordance with the recommendation made by the Companies Law Committee (CLC) Report.
- The rate of interest shall not be lower than the prevailing yield of Government security closest to the tenor of the loan. It is clarified that in cases where the effective yield (effective rate of return) on tax free Bonds is greater than the prevailing yield of 1/3/5/10 Government Security closest to the tenor of the loan, there is no violation of Section 186(7) of Companies Act, 2013 [Gen. Circular No. 06/2015 dated April 9, 2015.]
- Company to maintain register [in Form No. MBP – 2] to record such transactions. Such register to be maintained permanently. The register shall be open for inspection and extracts thereof can be provided on payment of prescribed fees.

# LIMITED LIABILITY PARTNERSHIP – A REFERENCER

With the introduction of Companies Act, 2013, several exemptions and relaxations available earlier to private limited and unlisted limited companies have been done away with, and the new company law has imposed several restrictions on such companies. Apart from the stringent regulations affecting the day-to-day working of the companies, the new law has also imposed rigorous penalty and prosecution provisions in case of non-adherence to the same.

In such a scenario it has become very difficult, challenging and costly to maintain small private limited and unlisted companies. Hence the need of the hour is to look forward to other forms of entities for doing business, and Limited Liability Partnership is one of such forms.

A Limited Liability Partnership (hereinafter referred to as 'LLP') is a corporate business form that provides the benefits of limited liability of a company and the flexibility of a partnership. Hence it may also be referred to as a hybrid between company and partnership. It is governed by the provisions of The Limited Liability Partnership Act, 2008 and related Rules thereon.

Government of India [GOI] notified various provisions of LLP Act on 31st March, 2009. GOI has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act.

## ADVANTAGES OF LLP

- LLP is organized and operates on the basis of an agreement;
- LLP enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner;
- LLP provides flexibility without imposing detailed legal and procedural requirements;
- LLP is a separate legal entity, liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP;
- LLP has perpetual existence and can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name;
- No partner shall be held personally liable for any act of the LLP or any of the other partners for the sole reason of being a partner of the LLP. Hence no partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct;.

## NATURE OF LLP [Sections 3, 5 & 6]

- LLP –
  - o is a "body corporate" formed and incorporated under LLP Act;
  - o is a legal entity separate from its partners
  - o shall have perpetual succession.
  - o The LLP, unlike a partnership firm, has contractual capacity and can enter into contracts, hold property in its name and can sue and be sued in its name.
- Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in an LLP.
- In case if individual is a partner, he should not be –

- o found to be of unsound mind; or
- o an undischarged insolvent; or
- o a person who has applied to be adjudicated as insolvent and the application is pending
- If the number of partners of a LLP falls below two and the LLP carries on business for more than six months, the only partner in such case shall be liable personally for the obligations of LLP incurred during that period.

### **DESIGNATED PARTNERS & THEIR LIABILITIES [SECTION 7 & 8]**

- LLP shall have at least two “designated partners” [DP] who are individuals and at least one of them shall be “resident in India”. In case one or more of the partners of an LLP are bodies corporate at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as “designated partners”.
  - o “Resident in India” means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.
- Designated partner is responsible for compliance with the provisions of LLP Act.
- Designated Partner is required to obtain Directors Identification Number [DIN] from the Central Government.
- Application for allotment of DIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.
- Particulars of Individual who have consented to act as DP have to be filed with the Registrar in e-form 4 by the LLP within 30 days of his appointment. In case of incorporation, the individual consenting to act as Partner or DP shall be required to file the consent in e-form 2.
- An LLP may appoint a DP within 30 days of a vacancy arising for any reason and if no DP is appointed, or if at any time there is only 1 DP, each partner shall be deemed to be a DP.
- a designated partner shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the LLP agreement and liable to all penalties imposed on LLP for any contravention of those provisions

### **INCORPORATION OF LLP [SECTIONS 11 TO 21]**

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 2013. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed within 3 months from the date of issue of letter for approval for reservation of name of the proposed LLP.

- Name of every LLP shall end with the words “Limited Liability Partnership” or “LLP”.
- Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or any body corporate or trade mark, is not allowed.
- No person shall carry on business under any name/title which contains the words “Limited Liability Partnership” or “LLP” without duly incorporating it as LLP under the LLP Act.
- LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.
- Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- A limited liability partnership shall give an address for service of documents within the jurisdiction of the Registrar where its registered office is situated. Such address shall include the postal code and e-mail address.

Steps for Incorporation of LLP are described below:-

<b>Step I</b> Pre-incorporation	<ul style="list-style-type: none"> <li>Identify designated partners</li> <li>Register user on MCA Portal</li> <li>Apply online for DIN for designated partners (DPIN has been integrated into DIN). DIN application needs to be signed by professional.</li> <li>Acquire Digital Signature (class 2 or class 3) of the proposed designated partners</li> </ul>
<b>Step II</b> Approval of Name	<ul style="list-style-type: none"> <li>Check availability of name using name search facility on MCA Portal</li> <li>Apply name reservation in Form 1</li> <li>Rule 18 of LLP Rules provides cases in which name will not be reserved</li> <li>The name should not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950</li> </ul>
<b>Step III</b> Incorporation	<ul style="list-style-type: none"> <li>Apply for incorporation of LLP in Form 2</li> <li>Submission of Incorporation Document and Subscribers statement along with details of directorship and various required information or documents</li> <li>Form 2 to be signed by designated partner and also to be certified by Advocate/CA/CS/Cost Accountants in practice</li> </ul>
<b>Step IV</b> Incorporation	<ul style="list-style-type: none"> <li>Track online and rectify deficiency if any, pointed.</li> <li>Registrar after satisfying himself about completeness in documents and various compliances, issue certificate of incorporation in Form 16, within 14 days of submission of Form 2</li> </ul>
<b>Step V</b> Post incorporation compliance	<ul style="list-style-type: none"> <li>Simultaneously at the time of filing Form 2 or within 30 days of the incorporation, file Form 3 — LLP Agreement</li> <li>Further every time any changes occur Forms 3 &amp; 4 need to be filed within 30 days of changes</li> </ul>

## **PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY [SECTIONS 22 TO 31]**

- Every LLP needs to file a LLP Agreement within 30 days of its incorporation pursuant to section 23(2) of Limited Liability Partnership Act, 2008 read with Rule 21 of Limited Liability Partnership Rules, 2009. The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners shall be governed by such LLP agreement. In the absence of any such Agreement, the rights and duties shall be governed by Schedule I of the LLP Act.
- Every partner of an LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners.
- LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP.
- LLP is not bound by anything done by a partner in dealing with a person if –
  - the partner in fact has no authority to act for the LLP in doing a particular act; and
  - the person knows that he has no authority or does not know or believe him to be a partner of the LLP
- LLP is liable if the partner of an LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/with its authority.
- Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP. Liabilities of LLP shall be met out of properties of LLP.
- Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.
- No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission.
- The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. Similarly, if the partners/designated partner/employees of LLP who conduct the affairs of LLP in a fraudulent manner, shall be liable to compensate to any person who has suffered loss or damage by reason of such conduct.
- Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent, etc. will not be effective unless —

- o the person has notice that the partner has ceased to be so; or
- o notice of cessation has been delivered to ROC.
- The notice of cessation may be filed by the outgoing partner if he has reasonable cause to believe that LLP has not filed the said notice.

#### **CONTRIBUTION BY PARTNER [SECTIONS 32 AND 33]**

- A contribution of a partner to the capital of LLP may consist of any of the –
  - o Tangible, movable or immovable property
  - o Intangible property
  - o Other benefit to the LLP including money, promissory notes, contracts for services performed or to be performed.
- The obligation of a partner for the contribution shall be as per the LLP agreement.
- Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.

#### **AUDIT/FINANCIAL DISCLOSURES [SECTIONS 34 AND 35]**

- LLP shall maintain the prescribed books of account relating to its affairs on cash or accrual basis and according to the double entry system of accounting.
- The accounts of every LLP are required to be audited, except in following situations:
  - o Turnover does not exceed ? 40,00,000 in any financial year; or
  - o Contribution does not exceed ? 25,00,000
- Central Government has powers to exempt certain class of LLP from requirement of compulsory audit.
- LLP are required to file following documents with the ROC
  - o Statement of Account and Solvency (e-Form 8), within 30 days from the end of 6 months of the financial year;
  - o Annual Return (e-Form 11) within 60 days from the end of the financial year.

#### **ASSIGNMENT & TRANSFER OF PARTNERSHIP RIGHTS [SECTION 42]**

- The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part. However, such transfer of rights does not cause either dissociation of the partner or a dissolution and winding up of the LLP.
- Such transfer of right, shall not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

#### **CONVERSION OF PARTNERSHIP FIRM/PRIVATE COMPANY/UNLISTED PUBLIC COMPANY INTO LLP [SECTIONS 55 TO 58, SECOND, THIRD AND FOURTH SCHEDULES]**

The LLP Act & Schedules contains provisions relating to conversion of –

- A partnership firm as defined under the Indian Partnership Act, 1932 into LLP;
- A private limited company into LLP;
- An unlisted public company into LLP.

## REASONS FOR CONVERTING A COMPANY INTO LLP

The basic comparison between a LLP and a Company are highlighted by way of a table below:

Sr. No.	Criteria	Company	LLP
1	Regulatory Authority	Registrar of Companies(ROC)	Registrar of Companies(ROC)
2	No. of Members/ Partners	<u>Private Company</u> Minimum - 2 (except in case of OPC) Maximum –200 <u>Public Company</u> Minimum - 7 Maximum –Unlimited	Minimum - 2 Maximum - Unlimited
3	Mandatory Suffix in Name	Pvt. Ltd.	L.L.P.
4	Liability	Limited to the extent of Capital Contribution	Limited to the extent of Capital Contribution
5	Distribution of Profit	Distributable as dividend(Dividend Distribution Tax applicable)	Distributable in Profit Sharing Ratio (No DDT)
6	MAT/ AMT	MAT Applicable	AMT Applicable
7	Separate Ownership & Control	Yes	No
8	Remuneration to Partners / Directors	Allowable as per provisions of Companies Act, 2013	Payable as per LLP Agreement, however allowable as per Section 40(b) of I. T. Act, 1961
9	Statutory ROC Compliances	Many forms and registers	Very less compared to a Company
10	Loan to Directors/Partners & Related party transactions	Restrictions apply as per Companies Act, 2013	No such restrictions
11	Acceptance of Loans, Advances & Deposits	Restrictions apply as per Companies Act, 2013	No such restrictions
12	Auditor Rotation and Audit Limit provisions	Applicable	Not Applicable
13	Statutory Audit	Mandatory	Applicable only if Capital exceeding Rs. 25 lacs or Turnover exceeding Rs.40 Lacs
14	Maximum number of Directorship/ Partnership restrictions	Applicable	Not Applicable
15	Capital/ Contribution Fee	High	Very less, Maximum fee is Rs.5000/-

## COMPARATIVE TABLE FOR CONVERSION TO LLP

Particulars	Partnership Firm	Private Limited Company	Unlisted Public Company
Section	55	56	57
Schedule to Act	Second	Third	Fourth
Rules+	38	39	40
Eligibility	a. Partners of the converted LLP comprises of all the partners of the firm. b. No persons except partners of firm will be partner of LLP.	a. No security interest subsists at the time of application and b. Partners of the converted LLP comprises all the shareholders such private/unlisted public company	
Filings	<b>Form 1</b> - Application for reservation of name <b>Form 2</b> - Incorporation document and subscriber's statement (simultaneously with Form 17) <b>Form 17</b> - Application and Statement for conversion of a firm into LLP (within 3 months of name approval letter) <b>Form 3</b> - Information with regard to limited liability partnership agreement.	<b>Form 1</b> - Application for reservation of name <b>Form 2</b> - Incorporation document and subscriber's statement (simultaneously with Form 18) <b>Form 18</b> - Application and Statement for conversion of a private company/ unlisted public company into LLP (within 3 months of name approval letter) <b>Form 3</b> - Information with regard to limited liability partnership agreement.	
Certificate of registration	On conversion of firm Registrar shall issue certificate of registration in Form 19.	On conversion of any private/unlisted company registrar shall issue certificate of registration in Form 19.	
Information to concern registering authority	The LLP within 15 days shall inform the concern Registrar of firms about conversion of firm into LLP in Form 14.	Company's status will be changed to "Converted to LLP".	

Effect of registration	<p>There shall be a limited liability partnership by the name specified in the certificate of registration;</p> <p>All tangible and intangible property, assets, interests, rights, liabilities, obligations, undertaking of the firm shall be transferred to and shall vest with the LLP;</p> <p>The Firm shall be deemed to be dissolved and if registered under Indian Partnership Act, 1932 removed from the records maintained thereunder.</p> <p>All pending proceedings, ruling or order by or against the Firm may be continued, completed and enforced by or against the LLP;</p> <p>All deeds, contracts, schemes, bonds, agreements, instruments, arrangements, permit, license, approval relating to the firm shall continue in force as if they relate to LLP;</p> <p>The LLP shall ensure that for a period of 12 months, every official correspondence of the LLP bears the following:</p> <ul style="list-style-type: none"> <li>• a statement that it was converted from partnership firm with effect from the registration date;</li> <li>• the name and Registration Number of firm from which it was converted.</li> </ul>	<p>There shall be a limited liability partnership by the name specified in the certificate of registration;</p> <p>All tangible and intangible property, assets, interests, rights, liabilities, obligations, undertaking of the company shall be transferred to and shall vest with the LLP;</p> <p>The Company shall be deemed to be dissolved and removed from the records of the Registrar of Companies;</p> <p>All pending proceedings, ruling or order by or against the Company may be continued, completed and enforced by or against the LLP;</p> <p>All deeds, contracts, schemes, bonds, agreements, instruments, arrangements, permit, license, approval relating to the Company shall continue in force as if they relate to LLP;</p> <p>The LLP shall ensure that for a period of 12 months, every official correspondence of the LLP bears the following:</p> <ul style="list-style-type: none"> <li>• a statement that it was converted from company with effect from the registration date;</li> <li>• the name and CIN of company from which it was converted.</li> </ul>
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### **COMPROMISE, ARRANGEMENT OR RECONSTRUCTION [SECTIONS 60 TO 62]**

- Provisions have been made in the LLP Act for allowing a compromise and arrangement including mergers and amalgamations.
- Compromise and arrangement can be between an LLP and its creditors or between an LLP and its partners.
- If majority representing 3/4th in value of creditors or partners, at the meeting, agree to compromise or arrangement shall, if sanctioned by National Company Law Tribunal [NCLT] be binding on all the creditors, all the partners and LLP. NCLT to pass order subject to disclosure of all material facts/latest financial position and pendency of investigation proceedings.
- NCLT order shall be filed with the ROC within 30 days, in order to be effective.
- In case of scheme of the amalgamation, NCLT shall pass order only on receipt of report from the ROC that the affairs of the LLP (transferor LLP) have not been conducted in the manner prejudicial to the interest of the partner/public.

### **WINDING-UP & DISSOLUTION [SECTIONS 63 TO 65]**

LLPs may be wound-up either voluntarily or by National Companies Law Tribunal (NCLT).

#### **Voluntary Winding Up**

(LLP Winding Up & Dissolution Rules, 2012)

LLP may be wound up voluntarily if the resolution to wind up is approved by 3/4th of the partners and after following the procedure prescribed under the LLP Winding Up & Dissolution Rules, 2012.

#### **Winding up by NCLT**

- LLP decides to be wound up by NCLT;
- Number of partners is reduced below 2 for a period of more than 6 months;
- LLP is unable to pay its debts;
- LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;



- LLP has defaulted in filing Statement of Account and Solvency or annual return with the ROC for 5 consecutive financial years; or
- NCLT is of the opinion that it is just and equitable that the LLP be wound up.

### **STRIKING OFF NAME OF DEFUNCT LLP [RULE 37]**

#### **Where a LLP is not carrying on any business or operation-**

- for a period of two years or more and the Registrar has reasonable cause to believe the same, for the purpose of taking suo motu action for striking off the name of the LLP; or
- for a period of one year or more and has made an application in Form 24 to the Registrar, with the consent of all partners of the LLP for striking off its name from the register, the Registrar shall send a notice to the LLP and all its partners, of his intention to strike off the name of the LLP from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of notice.

### **Income Tax Provisions**

- LLP is included in the definition of the firm in the Income Tax Act, 1961 and accordingly income tax of LLP shall be in line with that of a firm. Accordingly, profit will be taxed in the hands of LLP and not in the hands of partners.

- Share of profit of Partners to be exempt u/s 10(2A).

#### **SECTION 47(xiiib)**

- Conversion of private or unlisted public company to LLP not to be regarded as transfer for Capital Gain purposes;
- No capital gain on transfer of capital assets by such company on conversion;
- No capital gain on transfer of shares by shareholder on conversion;
  - o The aforesaid exemption from capital gains tax is available subject to following conditions:
  - o Business Turnover of such company does not exceed Rs.60 lacs during any of the last three preceding years
  - o All the assets and liabilities of company are transferred to LLP;
  - o All the shareholders of company become partners of LLP and their capital contribution and profit sharing ratio is in the same proportion of their shareholding on the date of conversion;
  - o Shareholders do not receive any consideration or benefit other than capital contribution and share of profit in the LLP;
  - o Aggregate of profit sharing ratio of such shareholders shall not be less than 50% for at least five years from the date of conversion;
  - o No amount is paid directly or indirectly to partners out of accumulated profits standing in the accounts of company on the date of conversion for a period of three years from the date of conversion.

#### **SECTION 49(1)(iii)(e)**

Cost of capital assets acquired by LLP on conversion shall be the cost for which such capital assets were acquired by the Company

#### **SECTION 49(2AAA)**

Cost of capital asset, being rights of a partner in LLP acquired on aforesaid conversion by the shareholders, shall be deemed to be the cost of acquisition of the original shares held earlier by such partner as shareholder

#### **SECTION 72A(6A)**

Carry forward and Set-off of Losses/ Unabsorbed Depreciation of the Company available to LLP on conversion

- **SECTION 115JAA(7)**

Carry forward and Set-off of MAT Credit of the Company is not available to LLP on conversion

- **SECTION 32(1) (5TH PROVISIO)**

Depreciation in the year of conversion to be allocated pro-rata between the company and LLP

- **SECTION 35DDA(4A)**

Amortisation of expenditure incurred on Voluntary Retirement Scheme – LLP is eligible to claim deduction for balance period

- **SECTION 43(6) (EXPLANATION 2C)**

Written down value of assets in the hands of company on the date of conversion will be the written down value in the hands of LLP

Form No.	Rule	Section	Particulars	Time Limit
1	18(4), 18(5)	16(1)	Application for reservation or change of name	N.A.
2	11, 13	11(2)	Incorporation document and statement (Form 2 also has addendum)	Within 3 months from the approval of name by the ROC
2A	-	-	Details in respect of designated partners and partners of Limited Liability Partnership (Addendum to Form 2)	Within 7 days from the validity period of the approved name.
3	21	23(2)	Information relating to LLP Agreement and changes, if any, made therein	Within 30 days of Incorporation
4	8	7(4)	Notice of appointment of partners/designated partner and changes among them, intimation of DPIN by LLP to the Registrar and consent of partner to become a partner/designated partner (Form 4 also has addendum)	Within 30 days of Appointment
	22, 10	25(2), 25(3)	Notice of appointment of partners and the changes among them or consent of incoming partner to become a partner/designated partner	Within 30 days of change
4A	-	-	Notice of appointment, cessation, change in particulars of a partners	(Addendum to Form 4) Within 7 days of filing of Form 4
5	20(2)	19	Notice of change of name of LLP	Within 30 days of complying requirement u/r 20(1)
6	22	25(1)	Intimation of particulars of name or address of a partner / changes in particulars to the LLP by the partner	Within 15 days
DIR-3 (Old Form DIN 1)	10(1)	7(6)	Application for allotment of Directors Identification Number (Post Integration Designated Partner Identification Number has been integrated under DIN)	N.A.
8	24(8)	34(2)	Statement of Account & Solvency	Within 30 days from the end of 6 months of the Financial Year
			While winding up of LLP – LLP Liquidator to report quarterly to Partners/Creditors	Before the end of the following quarter
9	7, 10(8)	7(3)	Consent to act as designated partner	Prior consent
DIR-6 (Old Form DIN 4)	10(9)	7(6)	Intimation of changes in particulars by designated partner	Within 30 days from date of such change
11	25(1)	35(1)	Annual return of LLP	Within 60 days of closure of its Financial Year#

Form No.	Rule	Section	Particulars	Time Limit
12	16(3)	13(2)	Intimation of other address for service of documents	Within 30 days of complying requirements u/r 16(2)
13	—	24(1)	Specimen of notice of cessation by a ceasing partner to other partner	
14	33, 38, 39, 40	58(1)	Intimation to the Registrar of Firms/Registrar of Companies for conversion of firm/company into LLP	Within 15 days from date of registration
15	17(2), 17(5)	13(3)	Notice of change of place of registered office	Within 30 days of complying requirements under rules 17(1), 17(4)
16	—	12(1)	Certificate of Incorporation	—
17	38(1)	Para 4 of Second Schedule	Application and statement by a firm for its conversion into LLP	—
18	39, 40	Para 3 of Third Schedule and Para 4 of Fourth Schedule	Application and statement by a private company/unlisted public company for its conversion into LLP	—
19	32, 38, 39, 40	Para 5 of Second Schedule, Para 4 of Third Schedule and Para 5 of Fourth Schedule	Certificate of Registration on conversion	—
20	35(1)	60	Affidavit in support of summons	—
21	35(2)	60	Summons for direction to convene a meeting under s. 60(1)	—
22	41(4), 35(11), 35(17)	39, 60, 60(3), 62(3)	Notice of intimation of order of Court/Tribunal/CLB/CG to the Registrar	Within 30 days of making the order u/r 35(15)
23	19	18	Application for direction to LLP to change its name	Within 24 months from the date of registration of the LLP under that name
24	37(1)	75	Application to the Registrar for striking off name	—
25	18(3)	59	Application for reservation/renewal of reservation of name by Foreign LLP/foreign company	—
26	35(4)		Form of proxy	Not later than 48 hours before the meeting
27	34(1)	59	Registration of particulars by foreign LLP	Within 30 days of establishing a place of business in India
28	34(3)	59	Alteration in case of foreign LLP (a) the incorporation document, or document or constituting of foreign LLP, (b) the registered or principal office of foreign LLP, or (c) partner or designated partner of a foreign LLP	Within 60 days of the close of the F.Y.
29	34(3), 34(8)	59	Alteration in case of foreign LLP in certificate of incorporation or name and address of persons authorised to accept service or alteration of place of business of foreign LLP in India or cessation of business in India	Within 30 days from the date on which the alteration was made
30	34(10)	59	Certificate for establishment of place of business foreign LLP	—
31	41(1)	39	Application for compounding of an offence under the Act	—
32	36(6)	—	Rectification of Defects or incompleteness (Addendum)	Within the time limit prescribed u/r 36(7)

## FEES TABLE

1. For registration of Limited Liability Partnership including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership:

(a)	Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh	Rs. 500
(b)	Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs	Rs. 2,000
(c)	Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs	Rs. 4,000
(d)	Limited Liability Partnership whose contribution exceeds Rs. 10 lakh	Rs. 5,000

2. The difference between the fees payable on the increased slab of contribution and the fees paid on the preceding slab of contribution shall be paid through Form 3.

3. For filing, registering or recording any document, form, statement, notice, Statement of Accounts and Solvency, annual return and an application along with the Statement for conversion of a firm or a private company or an unlisted public company into LLP by this Act or by these rules required or authorized to be filed, registered or recorded:

(a)	Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh	Rs. 50
(b)	Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs	Rs. 100
(c)	Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs	Rs. 150
(d)	Limited Liability Partnership whose contribution exceeds Rs. 10 lakh	Rs. 200
3A. For filing, registering or recording notice of appointment, cessation, change in name, address, designation of a partner or designated partner, intimation of Designated Partner Identification Number and consent to become a partner or designated partner in Form 4.		Rs. 50

4. Fee for any application other than application for conversion of a firm or a private company or an unlisted public company into LLP shall be as under:-

(a)	An application for reservation of name u/s 16	Rs. 200
(b)	An application for direction to change the name u/s 18	Rs. 10,000
(c)	Application for reservation of name under Rule 18(3)	Rs. 10,000
(d)	Application for renewal of name under rule 18(3)	Rs. 5,000
(e)	Application for obtaining DPIN under rule 10(5)	Rs. 100
(f)	An application for striking off name of defunct Limited Liability Partnership under rule 37	Rs. 500

5. Fee for inspection of documents or for obtaining certified copy thereof shall be as under:-

(a)	For inspection of documents of an LLP under section 36	Rs. 50
(b)	For copy or extract of any document under section 36 to be certified by Registrar	Rs. 5 per page or fractional part thereof

6. Fee for filing any form or a Statement of Account and Solvency or a notice or a document by foreign limited liability partnership

(a)	For filing a document under rule 34(1)	Rs.5,000
(b)	Any other form or Statement of Account and Solvency or notice or document	Rs.1,000

*This write-up has been compiled based on current provisions of LLP Act, 2008, related Rules, and other documents available in the public domain. While every care has been taken in the compilation of this document and every attempt made to present up-to-date and accurate information, it cannot be guaranteed that inaccuracies will not occur. We shall not be held responsible for any claim, loss, damage or inconvenience caused as a result of any information, representation or understanding of this write-up.*

# BUSINESS RESTRUCTURING

Business Restructuring may be achieved by a variety of methods of arrangements, such as Amalgamation, Merger, Demerger/Spin Off, Slump Sale, Acquisition of Shares, etc. Each method has its own objectives and must be selected keeping in mind the goals to be achieved.

While adopting a particular method, the following important factors, wherever applicable, need to be considered, in addition to the commercial and financial justification:

- Income-tax impact on the Companies and their share holders, e.g., capital gains on the transfer, set-off of losses /allowances and cost of assets to the Transferee, etc.
- Stamp duty implication.
- Companies Act provisions.
- Competition Law provisions.
- SEBI provisions including take over regulations.
- Listing Agreement provisions and procedural requirements.
- RBI compliances and new shareholdings whether the same tantamount to change in control after Amalgamation or not.
- FEMA and FIPB Policies.
- VAT - transfer of exemption schemes and tax on the transfer of business.
- Transfer of CENVAT Credit and Excise Registration.
- Transfer of licences under EPCG (Export Promotion Council Guarantee) Scheme, Project Import Regulations, etc.
- Transfer of Tenancy Rights under Rent Control Laws, Labour law implications etc.
- Permissions required under contractual agreements, e.g., lenders concerned Ministries in case of infrastructure / telecom projects, etc.
- Transfer of environmental licenses/ factory licenses.
- Accounting implications of a particular method.
- TRAI Guidelines/Provisions where ever applicable.
- IRDA Guidelines/Provisions where ever applicable.
- Lease Deeds/Agreements entered by all of the companies and preventive clause therein (if any).
- Jurisdictional Court / NCLT.

## **BROAD CHECKLIST FOR AMALGAMATION/ MERGERS/DEMERGERS**

- Examine whether a Regular Merger or a Reverse Merger is more advantageous. In case of Demerger whether an undertaking is demerged. Ensure feasibility.
- Ensure that the main objects or the incidental objects of the Memorandum of Association contain the power to amalgamate/merge/Demerge.
- Identify the Jurisdictional High Court/NCLT.
- Valuation of shares for fixing the share exchange ratio from an independent valuer.
- Fairness report from a merchant banker on the valuation report in the case of listed companies.
- Prepare Scheme of Amalgamation/Demerger.
- Ensure that the scheme does not violate, override or circumscribe the provisions of any law including securities laws or the stock exchange requirements.

- Call board meeting of all the concerned Companies to approve scheme of amalgamation and file resolution through E form - MGT 14 in MCA portal.
- Ascertain whether the arrangement would be covered under the Competition Act and if yes, permission of the Competition Commission should be sought for.
- If any of the companies is concerned with SEBI (if Listed Company), IRDA (if Insurance Company), TRAI (if Telecom Company), RBI (if NBFC) etc. it shall obtain their respective prior approval.
- Obtain consent, as applicable, of Institutional Lenders, Debenture Trustees, Bankers and other Creditors etc to the arrangement.
- Submit application under section 391(1) of the Companies Act, 1956 to the respective High Court seeking directions for convening meeting of shareholders (Physical as well as E Voting in case of Listed Company).
- Settlement of notices & explanatory statement by the Registrar of the Court for:
  - Meeting of shareholders/creditors.
  - Publication in the newspapers.
- For listed companies, notices are to be prepared with regards to the Provisions/ Guidelines of SEBI and order of the Court shall be obtained accordingly in commensurate with SEBI guidelines also.
- Printing of Notice, Scheme, Explanatory Statement and Proxy Form.
- Submission of 3 copies of the notice convening shareholders meeting to the Stock Exchange, NSDL, CDSL & Registrar along with the Scheme, Explanatory Statement and Proxy Form.
- Dispatch of notice convening meeting along with Scheme, Explanatory Statement and Form of Proxy to the shareholders. All the steps for E voting should also be taken if the company is a listed company simultaneously.
- Publication of notice convening the shareholders meeting in news papers not less than 21 days prior to the date of the shareholders meeting.
- Filing Affidavit of service proving dispatch of individual notices to the shareholders and publication of the notice in newspaper as per the direction of the court.
- Shareholders meeting for approving scheme. If listed company result of meeting as per SEBI guidelines also.
- Filing of chairman's report of meeting along with affidavit. Filing of report for listed company in respect of E-Voting as well as physical meeting where ever applicable.
- Filing of Petition for confirmation of the scheme with court.
- Obtaining Order from the court for admitting petition & directing service of notice on
  - a. Central Government.
  - b. Official Liquidator (in case of Merger or Amalgamation).
- Services of Petition to the ROC through Form no GNL 1, Central Government, Official Liquidator(in case of Merger or Amalgamation)
- Filing affidavit-confirming service to the Central Government, Official Liquidator (in case of Merger or Amalgamation) and publication in the newspaper.
- Obtaining sanction of scheme from the court after filing of observation by Central Govt. and report by Official Liquidator (in case of Merger or Amalgamation).
- Obtaining Certified Copy of the Order sanctioning the scheme and E-filing as well as physical filing of the same with the respective ROC.
- Board meeting of the Transferee, Transferor, Demerged or Resulting Companies inter alia, for:
  - a. Taking note of the order of the court.
  - b. Taking note of the effective date of arrangement, which will be the date of filing of the orders with Registrar of Companies.

- c. Fixing the record date for determining shareholders of the Transferor Company in case of Merger and Demerged Company in case of Demerger who would be entitled to the shares of the transferee/ Resulting Company.
  - d. Authorizing a committee of the board to issue and allot shares of the Transferee Company to the shareholders of the Transferor Company in case of Merger or Amalgamation and Resulting Company to the Share holders of Demerged Company.
  - e. Appointing nominee for sale of shares of the Transferee Company/ Resulting Company representing fractional entitlements, if any, of shareholders of the Transferor Company/Demerged Company and distribution of sale proceeds thereof.
  - f. Taking note that all employees of the Transferor Company or all employees of the Demerged Undertaking will become employees of the Transferee Company/ Resulting Company from the effective date and the transferee/Resulting Company will issue that letter of appointment to the employees of the Transferor Company or employees of the Demerged Undertaking.
- Publication of record date in newspapers covering the locations of the Stock Exchanges where the transferee/Demerged company's shares are listed.
  - Intimation to Stock Exchanges, NSDL, CDSL & Registrar the Effective Date of Arrangement & Record Date if any listed Company involved.
  - Obtaining list of shareholders of the Transferor Companies/Demerged Company on effective date for the purpose of communication of the Record Date etc to the shareholders of the Transferor Company/Demerged Company by the Transferee Company or Resulting Company.
  - Individual letters to the shareholders of the Transferor Company or Demerged Company intimating them of Record Date and advising, inter alia :
    - a. That no registration of transfer of shares of the transfer will be accepted after Record Date.
    - b. That options to receive transferee shares in demat form, are to be exercised within such Record Date.
    - c. That detail is to be provided for availing ECS facility in respect of fractional entitlements, if any.
    - d. That bank details/mandates are to be provided.
  - Intimation of Board Meeting, Allotment of Shares to Stock Exchanges in case of listed Company by Transferee Company in Merger and by Resulting Company as well as Demerged Company in case of Demerger.
  - Filing return of allotment under E Form PAS 3 with concerned ROC by Transferee Company in case of Merger and by Resulting Company in case of Demerger.
  - Letter to the shareholders of the Transferor Company or Demerged Company advising them of allotment.
  - All activities concern with NSDL & CDSL in case of listed company.
  - Application for listing of further allotted shares of the Transferee Company with the concerned Stock Exchanges in case of listed company in Merger. In case of Demerger, Resulting Company will apply to Stock Exchange for listing of itself as New Company if said Resulting Company is an unlisted Company and will follow all guidelines of SEBI including taking exemption under 19(2)(b) to list itself as New Company in the Concerned Stock Exchanges where ever Demerged Company is listed.

If Consent of all Share holders and Creditors of unlisted company has been obtained, then the Court may dispense the meeting of Share holders as well as Creditors of such unlisted company. In the Calcutta High Court sanction of Scheme and dissolution of Transferor Company is effected through separate orders.

### **MERGER/AMALGAMATION SCHEME**

The Merger Scheme / Scheme of Amalgamation must cover the following:

- Definitions of important terms such as Appointed Date, Effective Date, Record Date for issue of shares, etc.
- Background, capital, history, etc. of the transferor and Transferee Company

- Rationale of the scheme.
- Amalgamation of transferor with Transferee Company and vesting of its undertaking, assets and liabilities in the Transferee Company. Reduction of capital, if any, of the Transferee Company.
- Issue of securities, etc. by transferee to share holders of transferor, Share Exchange Ratio, Valuation Report, Fairness Report by Merchant Banker etc.
- Cancellation of Inter holding.
- Adding Authorised Capital of Transferor Company with the Authorised Capital of Transferee Company. Increase in Authorised Capital of Transferee Company, if required.
- The date from when the scheme comes into operation.
- Accounting Treatment of the amalgamation by the Transferee Company. Applicability of method mentioned in AS-14
- All contracts, deeds, bonds, instruments, executed by the Transferor to be binding on and enforceable against the Transferee Company.
- All legal proceedings, by or against the Transferor Company to be binding on and enforceable against the Transferee Company.
- Transfer of all legal benefits, licences, charges etc
- Applications to relevant High Courts for their approval.
- All employees of transferor to become the employees of transferee.
- No dividends, bonus, rights, further shares to be issued by either company without prior approval of the other company.
- The approvals / sanctions upon which the Scheme is conditional and effect of non-receipt of such approvals.
- Sharing of merger costs and expenses.
- Dissolution without winding-up of Transferor Company.
- Change of name of the Transferee Company, if applicable.
- Modification subject to order of the Court.

#### **ADDITIONAL CHECKLIST FOR DEMERGERS :**

- Ensure that what is being demerged is an Undertaking as per the Income-tax Act or else the tax benefits may be jeopardized.
- Decide whether the Resulting Company would be a New Company or an Existing Company.
- Reduction in share capital/Share Premium of the demerged company. Consolidation of Share Capital of Demerged Company after Reduction.
- Accounting Treatment in the demerged as well as resulting companies.
- Resulting Company to take over the assets and liabilities of the demerged undertaking.
- Increase in Authorised Capital. Allotment of the securities to the share holders of the Demerged Company.
- Provisions for Transfer of charges related to the Undertaking Demerged.
- Clause of Listing of Resulting Company if Demerged Company is a listed Company.
- All assets and Liabilities to be transferred on book value.

#### **CHECKLIST FOR SLUMP SALE :**

- Ensure that what is being sold satisfies the conditions of an 'undertaking' under the Income-tax Act.
- Ensure that the Main Objects in Memorandum of Association of Transferor contain the power to sell a business undertaking and in case of Transferee contain object(s) for carrying on such business.



- Audited Balance Sheets of the undertaking / business to be sold.
- Decide upon the lump sum consideration and its mode of payment.
- Compute the tax impact u/s. 50B of the Income-tax Act.
- Ascertain the stamp duty and VAT impact, if any, on the sale.
- Draft the Slump Sale Agreement.
- U/s. 180 of the Companies Act, 2013, a sale of an undertaking (as defined) requires a Special Resolution of the members. Private / Public Companies with more than 200 members and all listed companies require a postal ballot.
- Draft the Postal Ballot Notice + Draft Resolution + Explanatory Statement to be sent to the Members.
- File special resolution with ROC.
- Execute the Slump Sale Agreement
- Give possession of the undertaking / business to the Transferee Company.
- Prepare a letter of possession.
- Board Resolution for giving and receiving the possession of the business.
- Pass Accounting entries for sale of business undertaking in the books.
- Take steps for transfer of CENVAT Credit

NOTE: The Checklist for Mergers / Demergers has been prepared as per the provisions of the Companies Act, 1956 since the relevant provisions of the 2013 Act have not yet been notified.

# FRAUD RISK & FORENSIC AUDIT CHECKLIST IN CORPORATE & BANKING SECTOR

## Introduction

A recent study conducted in US has shown - 49% of Investors and 29% of Executives claim corporate scandals in recent years as one of the top reasons for increased importance of corporate responsibility. Corporate fraud has of late, been the focal point of attention in Board rooms across the world, in the aftermath of financial scandals in Enron, Tyco, Adelphia, Worldcom and others. The Sarbanes Oxley Act (SOX) , the Anti-Bribery Act of UK and the Foreign Corrupt Practices Act (FCPA) are the more prominent legislation against the menace of fraud.

## Demonetization

The recent move by Government of India towards demonetization of currency notes and stringent initiatives taken by Income Tax department, introduction of GST etc are all targeted towards achieving transparency in the system and eliminating corruption, cash economy and frauds.

## Companies Act 2013

In India, the Companies Act 2013 has introduced section 447 on penalty for fraud and white collar crime. Moreover, section 143 (12) also casts responsibility on statutory auditors for fraud reporting to Central Government.

### What is fraud – Definition under Section 447 of the act ?

As per the Act- "fraud" in relation to affairs of a company or any body corporate, includes:

- a. any act;
- b. omission;
- c. concealment of any fact; or
- d. abuse of position committed by any person or any other person with connivance of another in any manner.-
  - i. with the intent to deceive,
  - ii. to gain undue advantage from, or
  - iii. to injure the interests of-
    - the company; or
    - its shareholders; or
    - its creditors' or
    - any other person,

whether or not there is any wrongful gain or wrongful loss

Meaning of wrongful gain or wrongful loss:

- (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled
- (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled

### Major Types of fraud are as under –

- Management fraud – perhaps the most difficult to detect
- Employee fraud
- External Fraud
- Combination fraud

## Fraud incidence Survey results

Particulars	2011-12	2015-16
Number of Frauds by Middle Management	45%	54%
Number of frauds committed by Junior Staff	50%	31%
Detecting Fraud - Fraud initially detected by external measures or by accident	15%	32%
Particulars : 2015-16	External Actors	Internal Actors
Economic crime is committed	45%	50%

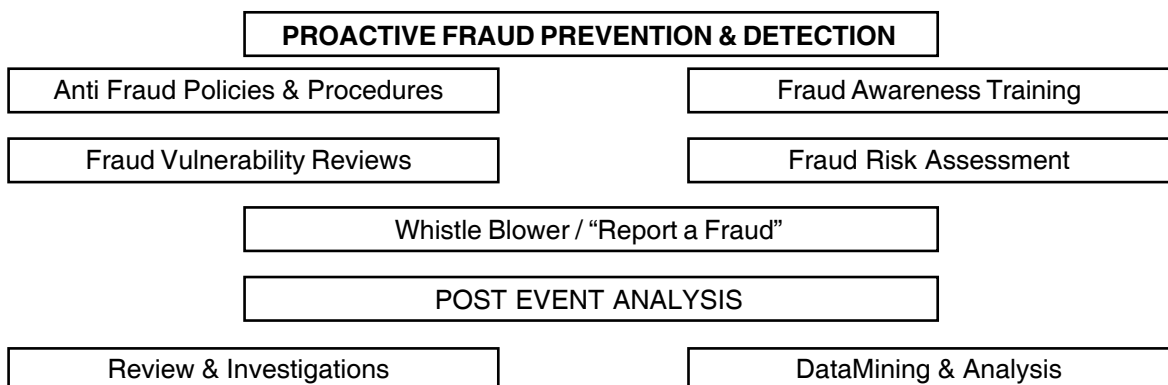
## Fraud incidence surveys in banking & industrial sector

- 45% of banks have suffered economic crime compared to only 34% across all other industries, more than 1 in 3 organization impacted by economic crime \*
- 1 in 5 internally perpetrated frauds still involve senior management, though the majority of such fraud tends to be committed by junior staff or middle management. \*
- Asset mis- appropriation - primary type of reported economic crime \*
- Cybercrime, bribery and corruption increasingly common \*
- Money laundering remains a hot topic, where it is almost five times more likely to occur than in other industries \*
- Whistleblowing mechanisms appear to be more prevalent than before, however doubts remain over their effectiveness \*
- Root cause of most cyber attacks is monetary/ financial gain \*

## Indian Banking scenario

Advance Related Frauds (>Rs. 1cr)								
Bank Group	2010-11		2011-12		2012-13		Cumulative (upto Mar '13)	
	Nos.	Amt (in cr.)	Nos.	Amt (in cr.)	Nos.	Amt (in cr.)	No.	Amt (in cr.)
<b>PSBs</b>	201	1820	228	2961	309	6078	1792	14577
<b>OPB</b>	20	289	14	63	12	49	149	767
<b>NPB</b>	18	234	12	75	24	67	363	1068
<b>FB</b>	3	33	19	83	4	16	456	277
<b>Grand Total</b>	242	2376	273	3183	349	6212	2760	16690

OPB – Other Private Banks • NPB – New Private Banks • FB – Foreign banks



## **FORENSIC AUDIT CHECKLIST & FRAUD INDICATORS ( Illustrative)**

### **A. High level**

- Infighting among Top Management
- Inconsistent & Surprising Cash flow deficiencies
- Employee with unexplained lavish lifestyle
- Frequent complaints from customers, Suppliers etc
- Low morale & motivation among employees
- Under staffed Accounting Departments

### **B. Employee fraud**

- No or little segregation of duties
- Established controls or procedures are not followed
- Minimal monitoring of employee performance
- Employee never takes vacations
- High Employee Turnover
- Employees feel they are “owed something”
- No Corporate “conflict of interest” policies
- Code of ethics nonexistent or not followed

### **C. Organizational culture, ‘tone at the top’**

- A consideration of any unusual or unexplained changes in behavior or lifestyle of management or employees which have come to the attention of the engagement team
- What are the business risks that the entity is subject to?
- How might fraud, including fraudulent financial reporting, occur? How can it be concealed?
- Have there been any frauds that have been reported in the same industry as the entity? If so, is it possible that the fraud identified is applicable to the entity and should be considered?
- How could assets at the entity be misappropriated?
- Is there a high risk of management override of controls?
- What is the susceptibility of financial statements to material misstatement due to fraud or error that could result from the entity’s related party relationships and transactions? – SA 240 R
- Is the financial stability or profitability of the entity threatened by economic, industry, or other operating conditions?
- Does the nature of the entity’s operations provide opportunities to engage in fraudulent financial reporting?
- Does the entity have a complex or unstable organisational structure?
- Investigation by Govt. deptt, Regulators , Banks, fines, penalties,chargesheets, evasion, litigations
- Payments or loans for unspecified services to consultants, RP, govt. personnel & employees
- Unusual payments in cash / other transactions , Unexplained decisions, transactions, or bot h
- Unusual transactions with companies in tax havens

- Large cash transactions, Complex transactions
- Management compensation highly dependent on meeting aggressive performance targets
- Adverse Media comment , Weak management , Unethical leadership
- Purchases at above / below ALP / MP,
- Rapid changes in profitability
- Excessive sales commission or agents fee compared to market rates
- Existence of accounting system with no audit trail
- Habitual management override of controls,
- Strained relationships between management and internal or external auditors , frequent changes of CFO, Top management, auditors
- Personal financial pressure on key staff

#### **D. Procurement Fraud detection checklist**

- Employment of consultant without verifying his credentials and capacity or capability
- Inadequate planning of work and incorrect preparation or non-preparation of detailed estimates by consultants.
- Non-preparation of justification statement for the rates quoted in tender, resulting in contract being awarded at very high rates.
- Rejection of the lowest tender without adequate justification, on the ground that the contractor is not reliable or lacks capacity to execute the work, even though he was included in the original pre-qualification list.
- Improper evaluation of tenders, leading to allotment of works wrongly with ultimate loss to the public undertaking.
- Allowing upward revision of rates in some cases by contractors on very flimsy grounds during the process of negotiations, so that the lowest tenderer manages to make up the difference of cost between his quotation and the second lowest quotation.
- Payment of money to contractors outside the terms of contract. Eg- in a large number of cases contract is for fixed price, but substantial payment is made on the ground of escalation of prices.
- Use of inferior material in construction, while payment is made at full rates on the approval of the consultant without making any financial adjustment.
- Lack of proper supervisory arrangement by the undertakings placing total reliance on the consultant for even preparation of the bill which leads to incorrect measurement of works and payment for the items of work not done.
- Splitting of orders to bring it within the financial ceiling.
- Procured goods not taken in the fixed asset register.
- Procured goods not found at site during visit,
- Followed single tender instead of limited tender.
- Followed limited tender instead of open tender.
- Not taken Earnest money deposit from prospective bidder.
- Not obtained SD/performance guarantee from selected bidders

## **FORENSIC ASPECTS IN CONCURRENT AUDIT OF BANKS**

Typical fraud indicators are as :

- Payment of Loans before the Sanctioning;
- Overvaluation of the Property;
- Overvaluation of the Collateral Securities;
- Accepting of the Inadequate Securities;
- Accepting no Securities;
- Having False Particulars;
- Improper Documentation; inexistence of the Proper Introduction;
- Unauthorized Cash Payments;
- Sanctioning of the Loans without the approval of the Competent Authority;
- False Mortgage of the Property;
- Accepting of the False Deed Documents of the Property etc.

### **Concurrent Audit Checklist ( Illustrative)**

- Ensure that the data reported on various formats are consistent vis a vis last quarter/last year, large variations in the amount (+/- 10%) must be looked into and commented upon properly.
- Tally total amount of depreciation on Bank's property mentioned in Fixed Asset Return with Profit & Loss A/c.
- Ensure that the total amount of Sundry Liability on Interest Capitalised on Restructured Accounts (Standard and NPAs) should tally with Yearly Statement of Abstract.
- Total advances should tally with the total advances mentioned in YSA.
- Check whether the balances of related parties / JVs / subsidiaries / associates are duly reconciled .
- Please get the total of sub-standard, doubtful and loss assets tallied with gross NPAs , Review Banks Closing manual
- Check the total of Net block is tallied with the balances shown in YSA.
- Ensure that, Date of NPA is reported correctly
- Ensure correct Sector-wise classification of accounts
- Branch operations – key data, target vs accomplishments, branch rating
- Top 10 advance categories , profiling,
- Customer-wise advances, Restructured advances , interest rates
- Deposit profiling
- Frauds reported
- Review of Py Audit report, LFAR, Concurrent, RBA, Inspection reports
- Comparison of NPA list of last year and current list – enquiry if accounts upgraded, reasons thereof
- Obtain reports from CBS
- List of loan accounts in arrear – 2 installments – NPA if 3 installments are in arrear – check borderline cases

- Check CC & OD a/c s overdrawn as on March 31 – date from which they are continuously overdrawn – if > 90 days – NPA
- Report of accounts not reviewed / renewed for > 1 year – report LFAR
- Report of stock statement in arrears > 3 months --- NPA
- List of O/D bills purchased and discounted – 1 NPA a/c of borrower makes all other facilities into NPA
- extent of manual transactions in case all departments not under CBS / system outage due to poor connectivity – whether all day’s vouchers entered in system – compensating error
- Interest not levied on particular product in bank – eg advance against mutual funds – as interest and all charges run done at data centre, if 1 account skipped – all accounts get skipped at least for the branch.
- Non responsiveness of interest rate to PLR – check : account converted from legacy system may not carry PLR link feature – leading to under / over recovery of interest.
- Installment / EMI Holiday – manual calculation – under recovery leads to ‘self caused’ NPA

**Typical aspects of a Fraud Deterrence and Prevention approach should include–**

- Establishing the right culture and ‘tone at the top’
- Establishing a whistle-blowing and anti-fraud policy,
- Developing a Code of Conduct and Integrity helpline
- Identify risks and implement effective Internal controls
- Internal Audits with special ‘Surprise Audits’
- Planning for the worst (DRP)
- Recruiting the right people with adequate background checks
- Regular fraud substantive audits
- Deploying proper IT Security
- System of Vendor Appraisal, Receiving Report and Physical checking at entry points
- System of segregation and rotation of duties, employee background checks etc

**Conclusion** The best defense against fraud are strong internal controls, fraud risk awareness and suitable anti-fraud programs. The quality of anti-fraud strategy within the organization and the responsibility for managing fraud risk should be well defined. There should be presence of clear channels for reporting suspicions of fraud , adequate protection offered to whistle-blowers, effectiveness of recruitment screening procedures and last but not the least – the appropriate tone at the top. Chartered Accountant s with competence in Finance, IT, Audit, Forensics, Administration and Behavioral Sciences should form multidisciplinary teams to curb this menace. Together, we can make a difference to eliminate white-collar crime and propagate a world free of corporate terrorism.

# RELEVANT DIRECTIONS ISSUED BY RBI IN RELATION TO NBFCs

CA MK MAROTI • Maroti & Associates

## 1. IMPORTANT DIRECTIONS APPLICABLE TO NBFCs NOTIFIED BY RBI

- Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 [AOPDRBD] [Notified on 31-1-1998];
- Press release dated 17/06/2016 regarding new registration.
- Master Direction-Non Banking Financial Company- Non systemically Important Non-Deposit Accepting Taking Company (Reserve Bank) Direction, 2016.
- Non-Banking Financial Company - Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions ,2016 . [Notified on 01-09-2016]
- Master Direction Non – Banking Financial Companies Auditor’s Report (Reserve Bank) Directions 2016
- Master Direction- Non Banking Financial Company Returns (Reserve Bank) Directions, 2016
- Master Direction- Core Investment Companies (Reserve Bank) Directions , 2016
- DNBR.019/CGM(CDS)-2015 dated April 10,2015

## 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 are to be satisfied by a company to be regarded as an NBFC. (Press Release: 1998-99/1269 dated 08/04/1999)

DNBS (PD) C.C. No. 79 / 03.05.002/ 2006-07 dated 21/09/2006 and DNBS (PD) C.C. No. 81/03.05.002/2006-07 dated 19/10/2006 submission of statutory auditor certificate for continuation of business based on its income and asset pattern.

## 3. REGISTRATION REQUIREMENT

An NBFC cannot commence/carry on its business without –

- Obtaining the certificate of registration (CoR) from the RBI; and
- Having NOF (Net Owned Fund) of Rs 200 lakhs or more

Provided that an nbfc holding a CoR issued by the RBI and having NOF of less than Rs 200 lakhs, may continue to carry on the business of NBFC, if such Company achieves NOF of Rs 200 lakhs on or before April 1, 2017.

It will be incumbent upon such NBFCs, the NOF which currently falls below Rs 200 Lakhs to submit a Statutory Auditors Certificate certifying compliance with the prescribed levels by the end of the period as given above.

NBFCs failing to achieve the prescribed level within the stipulated period shall not be eligible to hold CoR as NBFCs thereafter.

## 4. REGISTRATION AS NEW NBFC

The Reserve Bank Of India has revised the norms for Registration of New Company. It has vide its press release DT 17/06/2016 has bifurcated NBFCs application into NBFCs (NBFC–ND) based on source of funds and customer interface. Application are to be submitted online and physical documents/papers are to be sent directly to their central office addressed to:



Chief General Manager  
Department Of Non-Banking Regulation  
Reserve Bank Of India  
Centre- 1, World Trade Centre  
Mumbai – 400005

NBFC to commence business within 6 months from the date of receiving of Certificate of Registration.

## **5. TYPES OF NBFCs**

- NBFC – ASSET FINANCE COMPANY
- NBFC – INVESTMENT COMPANY
- NBFC – LOAN COMPANY
- NBFC – MICRO FINANCE INSTITUTION
- NBFC – INFRASTRUCTURE DEBT FUND
- NBFC – FACTORS
- NBFC – CORE INVESTMENT COMPANY
- NBFC – INFRASTRUCTURE FINANCE COMPANY

## **6. DEFINITION OF “PUBLIC DEPOSITS”**

“Public Deposits” does not include the following:

- Inter Corporate deposits;
- deposits from shareholders of a Private Co. and from Directors of a Limited Co. or from relative of a Director of the NBFC;
- amount received on issue of Optionally Convertible Debentures;
- amount received from promoters based on Financial Institution stipulations.

## **7. NET OWNED FUND (NOF) IS DEFINED IN SEC. 45-IA OF THE RESERVE BANK OF INDIA ACT, 1934 TO MEAN-**

- a. Paid-up equity capital, and
- b. Free reserves, as disclosed in the latest balance-sheet of the company after deducting there from—
  - i Accumulated balance of loss;
  - ii Deferred revenue expenditure;
  - iii Other intangible assets; and,
  - iv 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.

Note:-Subsidiaries/Companies in the same group shall have the meaning assigned to them as per the Companies Act, 2013.

- v. Free Reserves include Securities Premium.

## **8. LEVERAGE RATIO**

“Leverage Ratio” means the total Outside Liabilities/Owned Funds. Every Non-Systematically Important Non-

Deposit taking NBFC is required to maintain a leverage ratio of not more than 7 at any point of time, with effect from March 31, 2015.

In respect of NBFCs primarily engaged in lending against gold jewellery (such loans comprising 50% or more of their financial assets) they shall maintain a minimum Tier I capital of 12%.

In case of CIC-ND-SI, the leverage ratio should not be more than 2.5 times of adjusted net worth as on the last audited balance sheet.

## **9. PROVISION FOR STANDARD ASSETS**

Every Non-Systematically Important non-deposit taking NBFC is required to make provision for standard assets at 0.25 percent of the outstanding amount of loans and advances which shall not be reckoned for arriving at net NPAs. The provision towards standard assets need not be netted from gross advances but shall be shown separately as 'Contingent Provisions against Standard Assets' in the balance sheet, whereas every NBFC-ND-SI to make provisions for standard assets at:

- 0.30 per cent by the end of March 2016;

- 0.35 per cent by the end of March 2017;

- 0.40 per cent by the end of March 2018

and thereafter, of the outstanding amount of loans and advances (excluding capital advances), which shall not be reckoned for arriving at net NPAs.

## **10. DISCLOSURE IN THE BALANCE SHEET**

- Non-Banking Financial Company - Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016 are required to separately disclose in the Balance sheet the provisioning made as per these Directions without netting them from the income or against the value of the assets .
- The Provisions shall be distinctly indicated under separate heads of account:
  - o Provision for Bad and doubtful debts
  - o Provision for depreciation in investments
- Such provision for each year shall be debited to profit and loss account.
- Disclose in the Balance sheet the following particulars:
  - o Capital to Risk Assets Ratio (CRAR)
  - o Exposure to Real Estate Sector (both direct and indirect)
  - o Maturity pattern of assets and liabilities

Every Non NDSI NBFCs shall separately disclose in its balance sheet the provisions made as per these directions without netting them from the income or against the value of assets. The provisions shall be distinctly indicated under separate heads of account as under:

- (i) Provisions for bad and doubtful debts
- (ii) Provisions for depreciation in investments

Such provisions shall not be appropriated from the general provisions and loss reserves held, if any, by the applicable NBFCs.

Such provisions for each year shall be debited to the Profit & Loss Account. The excess of Provisions, if any, held under the heads general provisions and loss reserves may be written back without making adjustment against them.

## 11. CAPITAL ADEQUACY RATIO (CAR)

A deposit taking NBFC and every NBFD-ND-SI is required to maintain a minimum Capital Adequacy Ratio consisting of Tier I and Tier II capital which will not be less than 15% of its aggregate risk weighted assets on balance sheet items and of risk adjusted value of off-balance sheet items.

## 12. CONCENTRATION OF CREDIT/INVESTMENT

Every deposit taking NBFC and every NBFC-ND-SI cannot:

- (i) Lend to
  - (a) any single borrower exceeding 15% of its owned fund; and
  - (b) any single group of borrowers exceeding 25% of its owned fund;
- (ii) Invest in
  - (a) the shares of another company exceeding 15% of its owned fund; and
  - (b) the shares of a single group of companies exceeding 25% of its owned fund;
- (iii) Lend and invest (loans/investments taken together) exceeding
  - (a) 25% of its owned fund to a single party; and
  - (b) 40% of its owned fund to a single group of parties.

An NBFC, classified as Asset Finance Company by the RBI, may in exceptional circumstances, exceed the above ceilings on credit/investment concentration to a single party or a single group of parties by 5 per cent of its owned fund, with the approval of its Board.

The above restrictions will not apply to Investments made by NBFC in shares of its:

- Subsidiaries
- Company in the same group

To the extent they have been reduced from the owned funds for calculation of Net Owned Fund

The above restrictions will not apply to debentures, bonds, outstanding loans made to and deposits with

- Subsidiaries
- Company in the same group

To the extent they have been reduced from the owned funds for calculation of Net Owned Fund

## 13. CORPORATE GOVERNANCE

Non-Banking Financial Company Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016. [Notified on 01-09-2016] applies to NBFCs-ND-SI and Deposit accepting NBFCs ("applicable NBFCs"). These Directions specify the constitution of Audit, Nomination and Risk Management Committees, fit & proper criteria for directors at the time of appointment and Disclosure & Transparencies. Further, all the applicable NBFCs to rotate the partner/s of the Chartered Accountant firm conducting the audit, every three years.

## 14. MULTIPLE NBFCs

NBFCs that are part of a corporate group or are floated by a common set of promoters will not be viewed on a standalone basis. The total assets of NBFCs in a group including deposit taking NBFCs, if any, will be aggregated to determine if such consolidation falls within the asset size of the two categories mentioned viz. NBFCs-ND (those with asset size of less than Rs. 500 crore) and NBFCs-ND-SI (those with asset size of Rs. 500 crore and above). Regulations as applicable to the two categories will be applicable to each of the NBFC-ND within the group. For this purpose, Statutory Auditors would be required to certify the asset size of all the NBFCs in the Group. However, NBFC-D, within the group, if any, will be governed under the Non-Banking

Financial Companies Acceptance of Public Deposits (Reserve Bank) Direction 2016 and Prudential Norms and other Directions as applicable to deposit taking NBFCs.

The definition of the word “group” will be the same as per Accounting Standards. “Companies in the Group”, shall mean an arrangement involving two or more entities related to each other through any of the following relationships:

- Subsidiary – parent (defined in terms of AS 21),
- Joint venture (defined in terms of AS 27),
- Associate (defined in terms of AS 23),
- Promoter - promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997] for listed companies,
- a related party (defined in terms of AS 18), common brand name, and investment in equity shares of 20% and above.

(Master Circular - Miscellaneous Instructions to all Non-Banking Financial Companies dated 1st July, 2015)

## 15. FINANCIAL YEAR AND PERIODIC RETURNS

- An NBFC shall have its accounting year as the financial year ending on 31st March every year. Every NBFC shall append to its balance sheet prescribed under the Companies Act, 2013, the particulars in the schedule as set out in Annex to the Directions. Even applying before ROC, The Company has to take prior approval from RBI to extend date of balance sheet and proforma balance sheet of March,31 be submitted with RBI.
- RBI Master Circular DNBS.PPD.03/66.15.001/2016-2017 DT 29/09/2016-lists of returns to be submitted by NBFCs, which inter alia includes the following Returns to be submitted by NBFC-ND-Sis:

SL.NO	Returns	Periodicity	Due date	Applicable
1	NBS7	Quarterly	15 days from the end of the Quarter	ND- SI
2	NBFCs- ND – SI 500 CR	Quarterly	15 days from the end of the Quarter	ND- SI
3	ALM – 1	Quarterly	15 days from the end of the Quarter	ND- SI
4	ALM – 2 & 3	Half-yearly	30days from the end of the Quarter	ND- SI
5	ALM – ( NBFC – NS – SI )	Annual	15 days from the end of the Quarter	ND- SI
6	BRANCH INFO RETURN	Quarterly	15 days from the end of the Quarter	ND- SI
7	REPORTING TO CENTRAL REPOSITORY INFORMATION ON LARGE CREDITS ( CRILC)	Quarterly	21 days from the end of the Quarter	ND- SI
8	REPORTING ON SPECIAL MENTION ACCOUNT STATUS (SMA-2 RETURN )	Weekly		ND- SI
9	NBS-8	Annual		NBFC WITH ASSET SIZE BETWEEN Rs 100Crore and Rs 500 Crore
10	NBS-9	Annual		NBFC WITH ASSET SIZE BETWEEN Rs 100Crore
11	STATUTORY AUDITOR CERTIFICATE	Annual	One month from the date of finalization of Balance Sheet . Not later than 31St December .	ALL NBFC
12	RETURNB ON FDI	Half-yearly		CONCERN NBFC
13	OVERSEAS INVESTMENT	Quarterly		CONCERN NBFC

## 16. MISCELLANEOUS

Any of the following changes to be communicated within one month from the date of occurrence:

- Address, telephone or fax number of registered/corporate office
- Name and residential address of the directors of the company
- Name and official designation of the principal officer.
- Name and office address of the auditors of the company.
- Specimen signatures of the officers authorized to sign on behalf of the company

## 17. AUDIT DIRECTIONS

The RBI has issued Master Direction DNBS.PPD.03/66.15.001/2016-17 DT 29/03/2016 on Master Direction Non – Banking Financial Companies Auditor's Report (Reserve Bank) Directions 2016 which apply to every auditor of an nbfc. These Direction replaces all earlier Direction issued. The main provisions of the New Audit Directions are:

- i. Auditors to submit additional report to the Board of Directors on the matters specified in para 3 (A), (B) and (C) and 4 of the New Audit Directions.
- ii. Auditors to submit additional exceptional report to bank in terms of Para 5 of the report to the Board of Directors on the matters specified in para 3 and 4 of the New Audit Directions.
- iii. Where the statement regarding any of the items referred to in para 3 and 4, is unfavorable or qualified, or in the opinion of the auditor the company has not complied with the provisions of the RBI Act or the NBFC Regulations, it shall be the obligation of the auditor to make a report containing the details of such unfavorable or qualified statements and/or about the non-compliance, as the case may be, in respect of the company to the concerned office of the RBI.

## 18. CORE INVESTMENT COMPANY – CIC

Core Investment Companies (Reserve Bank) Directions, 2016 – These Directions shall apply to every Core Investment Company-

- (i) if it holds not less than 90% of its net assets in the form of investments in equity shares, preference shares, bonds, debentures , debt or loans in group companies
- (ii) its investment in equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitute not less than 60% its net assets as mentioned in ( i ) above
- (iii) it does not trade in its investment in shares , bonds , debentures, debt or loan in group companies except through block sale for the purpose of dilution or disinvestment.
- (iv) it does not carry on any other financial activity referred to in Sec 45I(c) and 45I(f) of the Reserve Bank Of India Act, 1934 except:
  - Investment in:
    - o Bank deposits
    - o Money market instruments, including money market mutual funds and liquid mutual funds
    - o Government securities
    - o Bonds and debentures issued by group companies
  - Granting of loans to group companies and
  - Issuing guarantees on behalf of group companies

Every systemically important Core Investment Company (CIC-ND-SI) shall apply to the bank for grant of

Certificate of Registration three months from the date of becoming CIC-ND-SI. A CIC-ND-SI is a core investment company having total assets of not less than Rs 100 crores either individually or in aggregate along with other CICs in the group and which raises or holds public funds.

## **19. MEMBERSHIP OF CREDIT INFORMATION COMPANIES**

Membership/ admission to credit information companies by all NBFCs and submission of data in terms of circular no DNBR(PD).CC.No 019/03.10.01/2014-15 dt 06/02/2015.

Presently, four CICs, viz. Credit Information Bureau (India) Limited, Equifax Credit Information Services Private Limited, Experian Credit Information Company of India Private Limited and CRIF High Mark Credit Information Services Private Limited have been granted Certificate of Registration by RBI. In terms of Section 15 of the Credit Information Companies (Regulation) Act, 2005 (CICRA), every Credit Institution shall become member of all CICs.

## **20. ACQUISITION/ TRANSFER OF CONTROL**

DNBR(PD) CC.NO 065/03.10.001/2015-16 DT 09/07/2015 has notified that all NBFC should obtain prior approval of RBI in case of acquisition / transfer of control of Non Banking Finance Companies . Further Non-Banking Financial Company - Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016 provides for prior written approval of the bank for :

- i. Any takeover or acquisition of control of the applicable NBFC which may or may not result in change of Management
- ii. Any change in the shareholding, including progressive increase over time , which would result in acquisition / transfer of shareholding of 26 percent or more of the paid up equity capital
- iii. Any change in the management which results in change in more than 30 per cent of the directors, excluding independent directors.

A public notice of at least 30 days shall be given before effecting the sale of or transfer of the ownership by sale of shares , or transfer of control , whether with or without sale of shares .

## **21. EXEMPTIONS FROM THE PROVISIONS OF RBI ACT, 1934**

— Master Circular Number DNBS.PD. CC.No 052/03.10.119/2015-16 dated July 1, 2015

The above master circular consolidates and updates all the instructions contained in the notifications listed in the Appendix pertaining to exemption from various provisions of RBI Act, 1934. Following companies are exempted from the provisions of Chapter IIIB of the RBI Act, 1934 subject to specific conditions:

- A. Housing Finance Institutions
- B. Merchant Banking Company
- C. Specific Micro Finance Companies
- D. Mutual Benefit Companies
- E. Government Companies
- F. Venture Capital Fund Companies
- G. Insurance/Stock Exchange/Stock Broker/Sub-Broker
- H. Others
  - Nidhi Companies
  - Chit Companies
  - Securitisation and Reconstruction Companies
  - Mortgage Guarantee Companies
  - Core Investment Companies.

# INSOLVENCY AND BANKRUPTCY CODE 2016

## Snapshot

<i>Why:</i>	<i>To speed up resolution of distressed assets</i>
<i>Applicable:</i>	<i>Applicable to Individual, Partnership, LLP and Corporate</i>
<i>Authority:</i>	<i>NCLT for Corporate, DRT for Individual and Partnership</i>
<i>When:</i>	<i>Authority to decide application within 180 days (90 days extension allowed). Fast track process of 90 days available for specified entities</i>

## Background

Presently Indian credit system is facing undue strain as the multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India does not aid lenders in recovery or restructuring of defaulted assets. In order to improve the business atmosphere and mitigate the credit markets operative reforms were essential. The Government introduced the Insolvency and Bankruptcy Code Bill in November 2015, drafted by a specially constituted 'Bankruptcy Law Reforms Committee' (BLRC) under the Ministry of Finance.

The Insolvency and Bankruptcy Code, 2016 (Code) was passed on 11th May 2016 and received Presidential assent on 28th May 2016. On the same day it was notified in the official gazette. The preparation involved public consultation and recommendations from a joint committee of Parliament. While the legislation of the Code is a historical development for economic reforms in India, its effect will be seen in due course when the institutional infrastructure and implementing rules as foreseen under the Code are formed.

The Code will ensure time-bound settlement of insolvency, enable faster turnaround of businesses and create a database of serial defaulters. Hence this will aid in resolving India's bad debt problem, which has crippled bank lending. The provisions of the code will override other existing laws (e.g. SARFAESI Act, 2002, SICA Act, 1985 etc.)

The Code involves creating a new class of insolvency professionals that will specialize in helping sick companies and information utilities that will assemble all information about debtors to prevent serial defaulters from abusing the system. The bankruptcy code has provisions to address cross-border insolvency through bilateral agreements with other countries.

## Objective

- IBC proposes a paradigm shift from the existing 'Debtor in possession' to a 'Creditor in control' regime.
- Timely detection of sick & potentially sick Companies.
- To establish an unmitigated system for resolving the bankruptcy in a time bound manner with the help of other institutions.
- To ensure an uninterrupted flow of credit which will also help to promote entrepreneurship and start-ups.
- To introduce a qualified insolvency professional (IP) as intermediaries to oversee the process.
- To provide for greater clarity in law and facilitate the application of consistent and lucid provisions to different stakeholders affected by business failure or inability to pay debt.
- To recover loans faster and in a pre-defined manner.
- To enable handling new business ventures rapidly & swiftly.

## Salient Features

- This Code will endow with clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.

- Matters relating to Corporate Insolvency, Limited Liability Partnership & enforcement of personal guarantees related to corporate debtors will be dealt by National Company Law Tribunal (NCLT). Debt Recovery Tribunal (DRT) would deal with individual insolvency and partnership. They would act as adjudicating authority having exclusive jurisdiction to deal with matters relating to insolvency.
- Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
- The code allows financial creditor, operational creditor & corporate debtor to file cases of insolvency. It must be noted the code comprise of penalties for frivolous petitions.
- Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- Insolvency professionals would handle the commercial aspects of insolvency resolution process under the oversight of the Board. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals. Three sets of Resolution Professionals are sought to be appointed – Interim Resolution Professional, Final Resolution Professional and Liquidator.
- Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- Automatic moratorium period of 180 days have been provided by the code to facilitate stakeholder to find a common path for resolution process. This period could be extended upto 270 days (including earlier 180 days).
- Creditor Committee consisting of Financial Creditors & corporate debtors will be created to approve all the material decisions of Resolution Professionals. All decisions taken by this committee will be by way of a majority of 75% of Financial creditors by value.
- Clearly defined ‘Order of Priority’ or waterfall mechanism will be followed to render government dues junior to most others.

## **Institutions Involved**

### **1. Insolvency and Bankruptcy Board of India (“Board”).**

The Board will be set up as the regulator under the Code. It is referred as Fourth Pillar of institutional infrastructure.

Role of the Board includes:

- Regulating all matters related to insolvency and bankruptcy process.
- Setting out eligibility requirements of insolvency intermediaries i.e., Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.
- Regulating entry, registration and exit of insolvency intermediaries.
- Making model bye laws for Insolvency Professional Agencies.
- Setting out regulatory standards for Insolvency Professionals.
- Specifying the manners in which Information Utilities can collect and store data.

### **2. Insolvency Professionals**

As per Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, Professionals who are not eligible to apply for Registration as Insolvency Professionals under the Limited Period Window of 6 months (without passing any examination) can appear for the aforesaid examination and get registered as an Insolvency Professional. However, all such professionals need to have the following experience:

- 1) 15 years of experience in management, after he received a Bachelor’s degree from a university established or recognized by law; or



- 2) 10 years of experience as -
  - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
  - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
  - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
  - (iv) an advocate enrolled with a Bar Council.

### Registration for a Limited Period

Regulation 9(1)(a) states that notwithstanding any of the provisions of Regulation 5, an individual shall be eligible to be registered for a limited period as an insolvency professional, if in practice for fifteen year as Chartered Accountant, Company Secretary, Cost Accountant or an Advocate enrolled with Bar Council

Regulation 9(3) states that an individual referred to in sub-regulation (1) shall be registered for a limited period upon submission of the details and fees collected by the Board, which shall be valid for a period of 6 months from the date of such submission.

The insolvency process will be managed by licensed professionals who form the First Pillar of Insolvency & Bankruptcy Code. These professionals will also control the assets of the debtor during the insolvency process. The Code contemplates insolvency professionals as a class of regulated but private professionals having minimum standards of professional and ethical conduct.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business during the moratorium period and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.

### 3. Insolvency Information Utilities

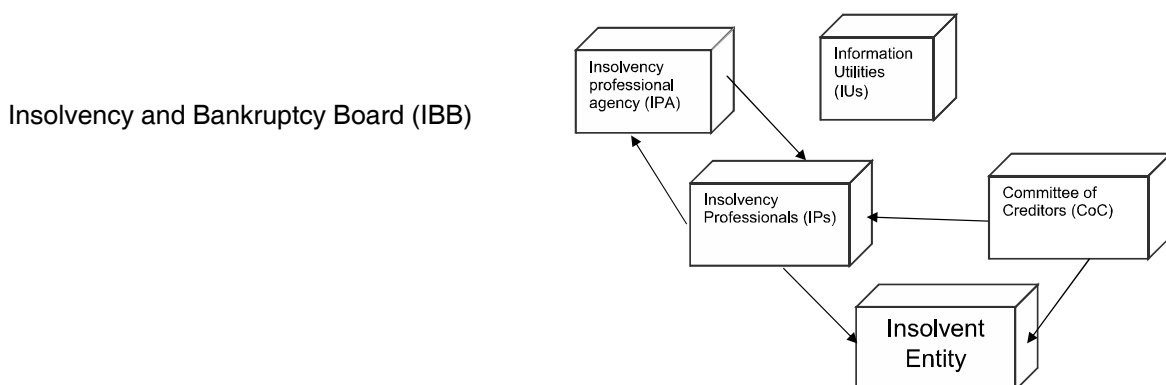
A notable feature of the Code is the creation of information utilities to collect, collate, authenticate and circulate financial information of debtors in centralised electronic databases. This new industry forms the Second Pillar of institutional infrastructure. The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis. These information would be accessible to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information unevenness and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency.

### 4. The Debt Recovery Tribunal

The Debt Recovery Tribunal (“DRT”) forming part of Third Pillar, shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal (“DRAT”).

### 5. The National Company Law Tribunal (“NCLT”)

The National Company Law Tribunal (“NCLT”) forming part of Third Pillar, shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities and other entities with limited liabilities. The jurisdiction of the NCLT shall be based on the registered office of the debtor. Appeals from the order of NCLT shall lie to NCLAT.



## Impact on debtors

To initiate an insolvency process for corporate debtors, the default should be at least INR 100,000 (USD 1495) (which limit may be increased up to INR 10,000,000 (USD 149,500) by the Government). The Code proposes two independent stages:

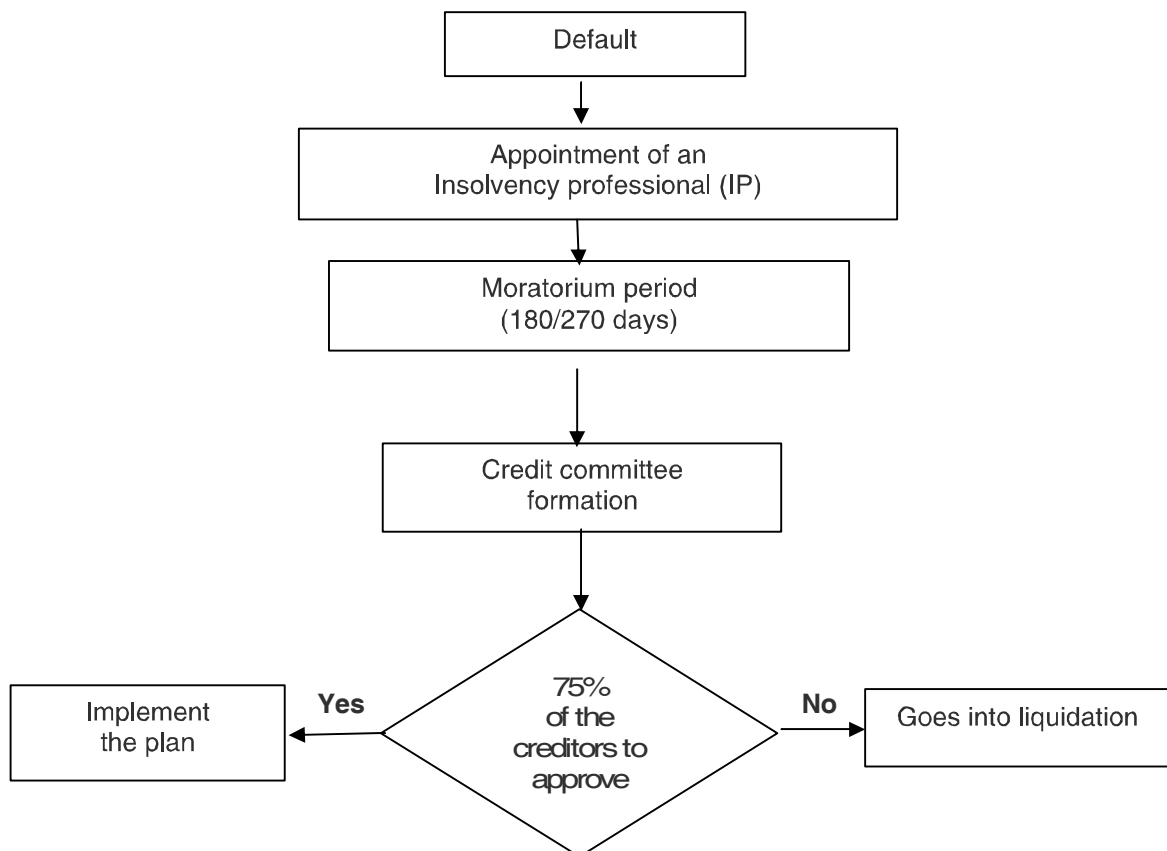
### Insolvency Resolution Process:

It prescribes an insolvency resolution process with a strict timeline of 180 days with one time extension of 90 days ("Resolution Period"). During the insolvency resolution process, the creditors and debtor are required to discuss and deliberate on viability of the business of the debtor. The creditors and the debtor will come up with the restructuring / resolution plan during the Resolution Period if the business is found to be viable.

The declaration of moratorium on the debtor prohibits any institution or continuation of litigation against the debtor, mandates maintenance of status quo of the assets by the debtor and requires the creditors to refrain from enforcing any security interest. During the Resolution Period, the entire management of the debtor and custody of the assets of the debtor are placed in the hands of a resolution professional to ensure the protection of the assets of the debtor. Further, the resolution professional conducts the insolvency resolution process.

The resolution professional constitutes a committee of the creditors and conducts the meetings of the creditors committee. The creditors committee has the power to decide and approve the final solution by majority vote in the negotiations. The majority vote requires approval of 75% of the creditors committee weighted by the aggregate financial liabilities. It is to be noted that the creditors committee will consist of only financial creditors and not operational creditors. Debtors also form the part of this committee. The creditors committee will discuss all practicable solutions for keeping the entity as a going concern. It will be upon the creditors and the debtor to come up with viable solutions. The Insolvency Resolution Process will be closed on the expiry of the Resolution Period. If a resolution plan is approved by the creditors, the Adjudicating Authority will pass necessary order(s) and close the proceedings. Following this, the debtor and the creditors will be required to implement the resolution plan.

### Flowchart :



## **Liquidation Process:**

In the event, no resolution plan is agreed upon within the Resolution Period or the creditors have resolved to liquidate the debtor during the Resolution Period, the Adjudicating Authority will pass an order for liquidation of the debtor. The insolvency resolution professional shall act as liquidator for liquidation of the debtor. Once the liquidation order is passed, no legal proceedings can be commenced or continued against the debtor.

### **Impact on creditors**

Upon commencement of the liquidation proceedings, a secured creditor will have option:

- (i) to relinquish its security interest to the liquidation trust and receive proceeds from the sale of assets by the liquidator as per waterfall mechanism set out in the Insolvency Code; or
- (ii) to enforce and realize its security interest.

If the secured creditor chooses to enforce its security interest, it may enforce, realize, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realized and apply the proceeds received from such enforcement to recover the debts due. The secured creditor can seek necessary judicial assistance from the Adjudicating Authority if it faces any resistance from any person for the enforcement of its security interest.

### **Distribution of Liquidation Proceeds – Waterfall mechanism**

The proceeds of liquidation are required to be distributed in the following order of priority:

- (i) the insolvency resolution process costs and the liquidation costs;
- (ii) the following debts which shall rank equally between and among the following:-
  - (a) debts owed to a secured creditor in the event such secured creditor has relinquished security;
  - (b) workmen's dues for the period of three months before the liquidation commencement date;
- (iii) wages and any unpaid dues owed to employees other than workmen for the period of three months prior to the liquidation commencement date;
- (iv) the following classes of creditors shall be paid equally between and among the following:-
  - (a) financial debts owed to unsecured creditors; and
  - (b) workmen's dues in respect of the period of nine months beginning from twelve months before the liquidation commencement date and ending three months before the liquidation commencement date;
- (v) the following dues rank equally between and among the following :-
  - (a) any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years prior to the liquidation commencement date;
  - (b) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (vi) any remaining debts;
- (vii) preference shareholders, if any; and
- (viii) equity shareholders or partners, as the case may be.

### **Professional Opportunities**

There are a broad range of opportunities that arise from corporate insolvency and financial restructurings.

1. Spotting and evaluating distressed companies for restructuring and rescue planning.
2. Reviewing the various risks involved in restructuring.

3. Developing risk mitigation strategies.
4. Working out a detailed bankable financial structure of the business.
5. Working out a detailed plan for restructuring the business from all angles.
6. Assessment of distressed assets, cash position, due diligence and turnaround feasibility.
7. Advice on optimum utilization of resources.
8. Drafting insolvency petitions.
9. Representation and registration of sick companies with BIFR.
10. Representation before the Debt Recovery Tribunals.
11. Representation before the NCLT or NCLAT
12. Negotiating settlements.
13. Identifying Areas of Opportunity for the company.
14. Advisory in relation to a merger or acquisition or takeover.
15. Advisory services to management on an ongoing basis.

### **Conclusion**

India currently ranks 136 out of 189 countries in the World Bank's index on the ease of resolving insolvencies. The Code promises to bring about far-reaching reforms with a thrust on creditor driven insolvency resolution. The intention of the Code is to do away with the antiquated existing laws covering aspects of insolvency and bankruptcy. The unified regime envisages a structured and time-bound process for insolvency resolution and liquidation, which should significantly improve debt recovery rates and revitalise the ailing Indian corporate bond markets.

# EMPLOYEES' PROVIDENT FUNDS & MISC. PROVISIONS ACT, 1952 & THE SCHEMES - CHECKLIST

## Eligibility

Any person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment.

## Payment of Contribution

- The employer shall pay the contribution payable to the EPF, DLI and Employees' Pension Fund in respect of the member of the Employees' Pension Fund employed by him directly by or through a contractor.
- It shall be the responsibility of the principal employer to pay the contributions payable to the EPF, DLI and Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

## Clarification about Contribution

After revision in wage ceiling from Rs.6500 to Rs.15000 w.e.f. 1.9.2014 per month, the employer's share in the Pension Scheme will be Rs. 1,250 w.e.f. 1.9.2014.

Under Employees' Deposit-Linked Insurance Scheme the contribution @ 0.50% is required to be paid.

The employer also will pay administrative charges @ 0.01% whereas an exempted establishment will pay inspection charges @ 0.005% on the total wages paid.

## Notes:

Since an excluded employee i.e. drawing wages more than Rs. 15000 can also become member of the Fund and the Schemes on joint request and if, for instance, such an employee is getting Rs.20,000 per month, his share towards provident fund contribution will be Rs.2400 e.g. 12% and employer's share towards provident fund contribution will be Rs.1150/- and Rs.1250/- towards Employees' Pension Fund.

## Applicability

- Every establishment which is factory engaged in any industry specified in Schedule 1 and in which 20 or more persons are employed.
- Any other establishment employing 20 or more persons which Central Government may, by notification, specify in this behalf.
- Any establishment employing even less than 20 persons can be covered voluntarily u/s 1(4) of the Act.

## Benefits

Employees covered enjoy a benefit of Social Security in the form of an unattachable and unwithdrawable (except in severely restricted circumstances like buying house, marriage/education, etc.) financial nest egg to which employees and employers contribute equally throughout the covered persons' employment.

This sum is payable normally on retirement or death. Other Benefits include Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme.

## Rates of Contribution

SCHEME	EMPLOYEE's	EMPLOYER's	CENTRAL GOVTS
Provident Fund Scheme	12%	Amount > 8.33% (in case where contribution is 12% or 10%) 10% (in case of certain Establishments as per details given earlier)	NIL
Insurance Scheme	NIL	0.5	NIL
Pension Scheme	NIL	8.33% (Diverted out of Provident Fund)	1.16%

## Damages

- Less than 2 months .....@ 5% per annum
- Two months and above but less than upto four months ....@ 10% per annum
- Four months and above but less than upto six months ....@ 15% per annum
- Six months and above .....@ 25% per annum

## Penal Provision

Liable to be arrested without warrant being a cognisable offence. Defaults by employer in paying contributions or inspection/administrative charges attract imprisonment upto 3 years and fines upto Rs.10,000 (S.14). For any retrospective application, all dues have to be paid by employer with damages upto 100% of arrears.

# EMPLOYEES' STATE INSURANCE ACT, 1948 & the SCHEME - CHECK LIST

## Applicability of the Act Scheme

Is extended in implemented areas to factories/establishments/registered contractors employing 10 or more persons. It has also been extended upon shops, hotels, restaurants, roads motor transport undertakings, equipment maintenance staff in the hospitals, pp private educational and medical establishments

## Coverage of employees

Drawing wages upto Rs.15000/-per month engaged either directly or through contractor.

## Rate of Contribution of the wages

Employers' 4.75%                      Employees' 1.75%

(Employees drawing salary upto Rs 100/- per day are not required to pay their share of contribution wef 01.07.2011)

## Recent Amendment:

Construction workers are now covered under ESI Act' 1948 w.e.f.01.08.2015

## Expected Amendments:

The maximum salary for making contributions under the ESI Act' 1948 is proposed to be amended to Rs 21000/- from the present ceiling of Rs 15000/- pm..

## Manner and Time Limit for making Payment of contribution

The total amount of contribution (employee's share and employer's share) is to be deposited through internet banking only through a challan generated online on ESIC portal in duplicate on or before 21st of month following the calendar month in which the wages fall due.

## Benefits To the employees under the Act

Medical, sickness, extended sickness for certain diseases, enhanced sickness, accidental cash benefit (TDB due to Employment Injury), disablement benefit (Partial or total), dependents maternity, besides funeral expenses, rehabilitation allowance, medical benefit to insured person and his or her spouse.

**WAGES FOR ESI CONTRIBUTIONS** Registers/files to be maintained by the employers

## To be deemed as wages

- Basic pay
- Dearness allowance
- House rent allowance
- City compensatory allowance
- Overtime wages (but not to be taken into account for determining the coverage of an employee)
- Payment for day of rest
- Production incentive
- Bonus other than statutory bonus
- Night shift allowance
- Heat, Gas & Dust allowance

- Payment for unsubstituted holidays
- Meal/food allowance
- Suspension allowance
- Lay off compensation
- Children education allowance (not being reimbursement for actual tuition fee)

**NOT to be deemed as wages**

- Contribution paid by the employer to any pension/provident fund or under ESI Act.
- Sum paid to defray special expenses entailed by the nature of employment – Daily allowance paid for the period spent on tour.
- Gratuity payable on discharge.
- Pay in lieu of notice of retrenchment compensation
- Benefits paid under the ESI Scheme.
- Encashment of leave
- Payment of Inam which does not form part of the terms of employment.
- Washing allowance for livery
- Conveyance Amount towards reimbursement for duty related journey

**Contribution period** 1st April to 30th September.

1st Oct. to 31st March

**Corresponding Benefit Period** 1st January to 30th June

1st July to 31stDecember

**Contribution period**

If the person joined insurance employment for the first time, say on 5th January, his first contribution period will be from 5th January to 31st March and his corresponding first benefit will be from 1st July to 31st December.

**Penalties**

Different punishment have been prescribed for different types of offences in terms of Section 85: (I) (six months imprisonment and fine Rs.5000), (ii) (one year imprisonment and fine), and 85-A: (five years imprisonment and not less to 2 years) and 85-C(2) of the ESI Act, which are self explanatory. Besides these provisions, action also can be taken under section 406 of the IPC in cases where an employer deducts contributions from the wages of his employees but does not pay the same to the corporation which amounts to criminal breach of trust.



# MINIMUM WAGES ACT, 1948 - CHECK LIST

## Object of the Act

To provide for fixing minimum rates of wages in certain employments

## Fixation of Minimum Rates of Wages

- The appropriate government to fix minimum rates of wages. The employees employed in para 1 or B of Schedule either at 2 or either part of notification u/s 27.
- To make review at such intervals not exceeding five years the minimum rates or so fixed and revised the minimum rates.

## Government can also fix Minimum Wages for

- Time work
- Piece work at piece rate
- Piece work for the purpose of securing to such employees on a time work basis
- Overtime work done by employees for piece work or time rate workers. **Sec. 3**

## Minimum Rates of Wages

Such as Basic rates of wages etc. Variable DA and Value of other concessions etc. **Sec. 4**

## Procedure for fixing and revising Minimum Rates of Wages

Appointing Committee issue of Notification etc. **Sec. 5**

## Overtime

To be fixed by the hour, by the day or by such a longer wage-period works on any day in excess of the number of hours constituting normal working day.

Payment for every hour or for part of an hour so worked in excess at the overtime rate double of the ordinary rate of (1½ times or for agriculture labour) **Sec. 5**

## Composition of Committee

Representation of employer and employee in schedule employer in equal number and independent persons not exceeding 1/3rd or its total number one such person to be appointed by the Chairman.

## Payment of Minimum Rates of Wages

Employer to pay to every employee engaged in schedule employment at a rate not less than minimum rates of wages as fixed by Notification by not making deduction other than prescribed.

## Wages of workers who works for less than normal working days

Save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

## Fixing Hours for Normal Working

- Shall constitute a normal working day inclusive of one or more specified intervals.
- To provide for a day of rest in every period of seven days with remuneration.
- To provide for payment for work on a day of rest at a rate not less than the overtime rate. **Sec. 13**

## Wages for two class of work

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, wages at not less than the minimum rate in respect of each such class. **Sec. 16**

### Minimum time rate wages for piece work

Not less than minimum rates wages as fixed. **Sec. 17**

### Maintenance of registers and records

- Register of **Fines** – Form I Rule 21(4)
- Annual **Returns** – Form III Rule 21 (4-A)
- Register for **Overtime** – Form IV Rule 25
- Register of **Wages** – Form X, **Wages slip**–Form XI, **Muster Roll**–Form V Rule 26
- Representation of register – for three year Rule 26-A **Sec. 18**

### Claims by employees

- To be filed by before authority constituted under the Act within 6 months.
- Compensation upto 10 times on under or non-payment of wages Sec. 16

PENALTIES	Offence	Punishment
Sec. 20	For paying less than minimum rates of wages	Imprisonment upto 6 months or with fine upto Rs.500/- or both
	For contravention of any provisions pertaining to fixing hours for normal working day etc.	Imprisonment upto 6 months or with fine upto Rs.500/- or both

# PAYMENT OF WAGES ACT, 1936 - CHECKLIST

## Applicability of Act

- Factory industrial Establishment
- Tramway service or motor transport service engaged in carrying passengers or good or both by road for hire or reward. • Air transport service Dock, Wharf or Jetty • Inland vessel, mechanically propelled
- Mine, quarry or oil-field Plantation
- Workshop or other establishment etc.

## Coverage of Employees

Drawing average wage upto Rs.6500 pm as amended w.e.f. 09.11.2005.

## Object of the Act

To regulate the payment of wages of certain classes of employed persons

## Time of payment of wages

The wages of every person employed be paid.

- When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month.
- When more than 1000 workers, before the expiry of the 10th day of the following month.**Sec. 5**

## Wages to be paid in current coins or currency notes

- All wages shall be paid in current coins or currency notes or in both.
- After obtaining the authorization, either by cheque or by crediting the wages in employee's bank Account  
**Sec. 6**

## Deduction made from wages

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house-building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, ESI contributions etc.etc. **Sec. 7**

## Fines as prescribed by

Not to imposed unless the employer is given an opportunity to show cause to record in the register **Sec.8**

## Deduction for absence from duties for unauthorised absence

Absence for whole or any part of the day – If ten or more persons absent without reasonable cause, deduction of wages upto 8 days.**Sec. 9**

## Deduction for damage or loss

For default or negligence of an employee resulting into loss. Show cause notice has to be given to the employee.  
**Sec.10**

## Deductions for service rendered

When accommodation amenity or service has been accepted by the employee. **Sec.11 rw Section 20**

On contravention of S.5 (except sub-sec.4), S.7, S.8 (except Ss.8), S.9, S.10 (except Ss.2) and Secs.11 to 13. Fine not less than Rs.1000 which may extend to Rs.5000. Rs.5000. On subsequent conviction fine not less than Rs.5000, may extend to Rs.10,000. On contravention S.4, S.5(4), S6, S.8(8), S.10(2) or S.25 fine not less than Rs.1000. – may extend to Rs.5000. On subsequent On conviction fine not less.

<p>On contravention of S.5 (except sub-sec.4), S.7, S.8 (except Ss.8), S.9, S.10 (except Ss.2) and Secs.11 to 13.</p>	<p>Fine not less than Rs.1000 which may extend to Rs.5000. Rs.5000. On subsequent conviction fine not less than Rs.5000, may extend to Rs.10,000. On contravention S.4, S.5(4), S6, S.8(8), S.10(2) or S.25 fine not less than Rs.1000. – may extend to Rs.5000. On subsequent On conviction fine not less.</p>
<ul style="list-style-type: none"> <li>• For failing to maintain registers or records; or</li> <li>• Wilfully refusing or without lawful excuse neglecting to furnish information or return; or</li> <li>• Wilfully furnishing or causing to be furnished any information or return which he knows to be false or</li> <li>• Refusing to answer or wilfully giving a false answer to any question necessary for obtaining any information required to be furnished under this Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Fine which shall not be less than Rs.1000 but may extend to Rs.5000 – On record conviction fine not less than Rs.5000, may extend to Rs.10,000.</li> <li>• For second or subsequent conviction, fine not less than Rs.5000 but may extend to Rs.10,000</li> </ul>
<ul style="list-style-type: none"> <li>• Wilfully obstructing an Inspector in the discharge of his duties under this Act; or</li> <li>• Refusing or wilfully neglecting to afford an Inspector any reasonable facility for making any entry, inspection etc.</li> <li>• Wilfully refusing to produce on the demand of an inspector any register or other document kept in pursuance of this Act; or preventing any person for appearance etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Fine not less than Rs.1000 extendable Upto Rs.5000 – On subsequent conviction fine not less than Rs.5000 – may extent to Rs.10,000</li> </ul>
<ul style="list-style-type: none"> <li>• On conviction for any offence and again guilty of Contravention of same provision.</li> <li>• Failing or neglecting to pay wages to any employee</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment not less than one month extendable upto six months and fine not less than Rs.2000 extendable upto Rs.15000.</li> <li>• Additional fine upto Rs.100 for each day.</li> </ul>

# **CONTRACT LABOUR (REGULARATION & ABOLITION) ACT, 1970 & THE RULES - CHECKLIST**

## **Object of the Act**

To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

## **Applicability**

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

## **Registration of Establishment**

Principal employer employing 20 or more workers through the contractor or the contractor(s) on deposit of required fee in Form 1 Sec. 7

## **Prohibition of Employment of Contract Labour**

Only by the appropriate Government through issue of notification after consultation with the Board (and not Courts) can order the prohibition of employment of contract labour. Sec. 10

## **Revocation of Registration**

When obtained by Misrepresentation or suppression of material facts etc. after opportunity to the principal employer. Sec. 9

## **Licensing of Contractor**

- Engaging 20 or more than 20 workers and on deposit of required fee in Form IV.
- Valid for specified period. Sec. 12, Rule 21

## **Revocation or Suspension & Amendment of Licences**

- When obtained by misrepresentation or suppression of material facts.
- Failure of the contractor to comply with the conditions or contravention of Act or the Rules

## **Welfare measures to be taken by the Contractor**

- Contract labour either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.
- First Aid facilities.
- Number of rest-rooms as required under the Act.
- Drinking water, latrines and washing facilities. Sec. 16 & 17

## **Laws, Agreement or standing orders inconsistent with the Act-Not Permissible**

Unless the privileges in the contract between the parties or more favourable than the prescribed in the Act, such contract will be invalid and the workers will continue to get more favourable benefits.

## **Liability of Principal Employer**

- To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.

- Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable. Sec. 20

## Registers of Contractors

### Principal employer

- To maintain a register of contractor in respect of every establishment in Form XII.

### Contractor Rule 74

- To maintain register of workers for each registered establishment in Form XIII.
- To issue an employment card to each worker in Form XIV.
- To issue service certificate to every workman on his termination in Form XV. Rules 75, 76 and 77

### Muster Roll, Wages Register, Deduction Register and Overtime Register by Contractor

- Every contractor shall
- Maintain Muster Roll and a Register of Wages in Form XVI and Form XVII respectively when combined.
- Register or wage-cum-Muster Roll in Form XVII where the wage period is a fortnight or less.
- Maintain a Register of Deductions for damage or loss, Register of Fines and Register of Advances in Form XX, from XXI and Form XXII respectively.
- Maintain a Register of Overtime in Form XXIII.
- To issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages.
- Obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of wages or Muster Roll-Cum-Wages Register.
- When covered by Payment of Wages Act, register and records to be maintained under the rules
- Muster Roll, Register of wages, Register of Deductions, Register of Overtime, Register of Fines, Register of Advances, Wage slip. **Rule 79**
- To display an abstract of the act and Rules in English and Hindi and in the language spoken by the Majority of workers in such forms as may be approved by appropriate authority **Rule 80**
- To display notices showing rates of wages, hours of work, wage period, dates of payment, names and addresses of the inspector and to send copy to the inspector and any change forthwith. **Rule 81**

## PENALTIES

Sec.	Offence	Punishment
Sec. 22	Obstructions	For obstructing the inspector or failing to produce registers etc.- 3 months' imprisonment or fine uptoRs.500, or both.
Sec.23	Violation	For violation of the provisions of Act or the Rules, imprisonment of 3 Months or fine upto Rs.1000. On continuing contravention, additional fine upto Rs.100 per day

# (STANDING ORDERS) ACT, 1946 & THE RULES - CHECK LIST

## Applicability of the Act

Every industrial establishment wherein 100 or more (in many States it is 50 or more). Any industry covered by Bombay Industrial Relations Act, 1946. Industrial establishment covered by M.P. Industrial Employment (Standing Orders) Act, 1961.

## Matters to be provided in Standing orders

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishments, and temporary stoppages of work and the right and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redressal for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

## Additional Matters

Service Record – Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age Confirmation Age of retirement Transfer Medical aid in case of Accident Medical Examination Secrecy Exclusive service.

## Conditions for Certification of Standing Orders

- Every matter to be set out as per Schedule and Rule 2A.
- The standing orders to be in conformity with the provisions of the Act.

## Submissions of Draft Standing Orders

Within six months from the date when the Act becomes applicable to an industrial establishment. Five copies of the draft Standing Orders are to be submitted to the Certifying Officer under the Act. **Sec.3**

## Procedure for Certification of Standing Orders

Certifying Officer to forward a copy of draft standing orders to the trade union or in the absence of union, to the workmen of the industry. The trade union or the other representatives, as the case may be, are to be heard. **Sec.5**

## Date of Operation of Standing Orders

On the date of expiry of 30 days from certification or on the expiry of 7 days from authentication of Standing Orders. **Sec. 7**

## Posting of Standing Orders

The text of the standing orders as finally certified shall prominently be posted in English or in the language understood by majority of workmen on special board at or near the entrance for majority of workers. **Sec. 9**

### **Temporary application of Model Standing Orders**

Temporary application of mod standing orders shall be deemed to be adopted till the standing orders as submitted are certified.

### **Payment of Subsistence Allowance to the Suspended Workers**

At the rate of fifty per cent, of the wages which the workman was entitled to immediately proceeding the date of such suspension, for the first ninety days of suspension. At the rate of seventy-five percent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct such workman. Sec.10-A

### **PENALTIES**

- Failure of employer to submit draft Standing Orders fine of Rs.5000 and Rs.200 for every day on continuation of offence.
- Fine of Rs.100 on contravention and on continuation of offence Rs.25 for every day.



# PAYMENT OF BONUS ACT, 1965 & THE RULES - CHECK LIST

## Applicability of Act

Every factory where in 10 or more persons are employed with the aid of power or An establishment in which 20 or more persons are employed without the aid of power on any day during an accounting year

## Establishment

Establishment includes Departments, undertakings

Computation of available surplus

- Income tax and direct taxes as payable.
- Depreciation as per section 32 of Income Tax Act.
- Development rebate, investment or development allowance. **Sec.5**

## Components of Bonus

Salary or wages includes dearness allowance but no other allowances e.g. over-time, house rent, incentive or commission. **Sec.2(21)**

## Separate establishment

If profit and loss accounts are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch is treated as a separate establishment.

## Disqualification & Deduction of Bonus

On dismissal of an employee for

- Fraud; or
- riotous or violent behaviour while on the premises of the establishment; **or**
- theft, misappropriation or sabotage of any property of the establishment; **or**
- Misconduct of causing financial loss to the Employer to the extent that bonus can be deducted for that year. **Secs. 9 & 18.**

## Computation of gross profit

For banking company, as per First Schedule. Others, as per Second Schedule

## Eligibility of Bonus

An employee will be entitled only when he has worked for 30 working days in that year.

## Payment of Minimum Bonus

8.33% of the salary or Rs.100 (on completion of 5 years after 1st Accounting year even if there is no profit)

## Time Limit for Payment of Bonus

Set-off and Set-on

## Eligible Employees

- Employees drawing wages upto Rs.3500 per month or less.
- For calculation purposes Rs.2500 per month maximum will be taken even if an employee is drawing upto Rs.3500 per month....**Sec.12**

Note: The proposal to enhance the existing ceiling of Rs.3500 is under active consideration by the Govt.

**Maintenance of Registers and Records etc.**

- A register showing the computation of the allocable surplus referred to in clause (4) of section 2, in form A.
- A register showing the set-on and set-off of the allocable surplus, under section 15, in form B
- A register showing the details of the amount of bonus due to each of the employees, the deductions under section 17 and 18 and the amount actually disbursed, in form C.

Act not applicable to certain employees of LIC, General Insurance, Dock Yards, Red Cross, Universities & Educational Institutions, Chambers of Commerce, Social Welfare Institutions, Building Contractors, etc. etc. Sec.32.

**PENALTY**

For contravention of any provision of the Act or the Rule

Upto 6 months or with fine upto Rs.1000. Sec.28

# SEBI SUMMARY

## ABOUT SEBI

The Securities and Exchange Board of India ("SEBI") was established by an act of Parliament on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992 (SEBI Act). SEBI is headquartered in Mumbai, and has Northern, Eastern, Southern and Western regional offices in New Delhi, Kolkata, Chennai and Ahmadabad and other various cities too.

The Preamble of the Securities and Exchange Board of India describes the basic functions of the Securities and Exchange Board of India as "...to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"

## PURPOSE AND ROLE OF SEBI

SEBI was set up with the main purpose of keeping a check on malpractices and protect the interest of investors. It was set up to meet the needs of three groups.

1. Issuers: For issuers it provides a market place in which they can raise finance fairly and easily.
2. Investors: For investors it provides protection and supply of accurate and correct information.
3. Intermediaries: For intermediaries it provides a competitive professional market.

## OBJECTIVES OF SEBI

The overall objectives of SEBI are to protect the interest of investors and to promote the development of stock exchange and to regulate the activities of stock market. The objectives of SEBI are:

1. To regulate the activities of stock exchange.
2. To protect the rights of investors and ensuring safety to their investment.
3. To prevent fraudulent and malpractices by having balance between self-regulation of business and its statutory regulations.
4. To regulate and develop a code of conduct for intermediaries such as brokers, underwriters, etc.

## FUNCTIONS OF SEBI

### Functions of SEBI

The SEBI performs functions to meet its objectives. To meet three objectives SEBI has three important functions. These are:

- i. Protective functions
- ii. Developmental functions
- iii. Regulatory functions

#### 1. Protective Functions

These functions are performed by SEBI to protect the interest of investor and provide safety of investment.

#### As protective functions SEBI performs following functions:

- i. It Checks Price Rigging: Price rigging refers to manipulating the prices of securities with the main objective of inflating or depressing the market price of securities. SEBI prohibits such practice because this can defraud and cheat the investors.
- ii. It Prohibits Insider trading: Insider is any person connected with the company such as directors, promoters etc. These insiders have sensitive information which affects the prices of the securities. This information is not available to people at large but the insiders get this privileged

information by working inside the company and if they use this information to make profit, then it is known as insider trading, e.g., the directors of a company may know that company will issue Bonus shares to its shareholders at the end of year and they purchase shares from market to make profit with bonus issue. This is known as insider trading. SEBI keeps a strict check when insiders are buying securities of the company and takes strict action on insider trading.

- iii. SEBI prohibits fraudulent and Unfair Trade Practices: SEBI does not allow the companies to make misleading statements which are likely to induce the sale or purchase of securities by any other person.
- iv. SEBI undertakes steps to educate investors so that they are able to evaluate the securities of various companies and select the most profitable securities.
- v. SEBI promotes fair practices and code of conduct in security market by taking following steps:
  - a. SEBI has issued guidelines to protect the interest of debenture-holders wherein companies cannot change terms in midterm.
  - b. SEBI is empowered to investigate cases of insider trading and has provisions for stiff fine and imprisonment.
  - c. SEBI has stopped the practice of making preferential allotment of shares unrelated to market prices.

## **2. Developmental Functions**

These functions are performed by the SEBI to promote and develop activities in stock exchange and increase the business in stock exchange. Under developmental categories following functions are performed by SEBI:

- i. SEBI promotes training of intermediaries of the securities market.
- ii. SEBI tries to promote activities of stock exchange by adopting flexible and adoptable approach in following way:
  - a. SEBI has permitted internet trading through registered stock brokers.
  - b. SEBI has made underwriting optional to reduce the cost of issue.
  - c. Even initial public offer of primary market is permitted through stock exchange.

## **3. Regulatory Functions**

These functions are performed by SEBI to regulate the business in stock exchange. To regulate the activities of stock exchange following functions are performed:

- i. SEBI has framed rules and regulations and a code of conduct to regulate the intermediaries such as merchant bankers, brokers, underwriters, etc.
- ii. These intermediaries have been brought under the regulatory purview and private placement has been made more restrictive.
- iii. SEBI registers and regulates the working of stock brokers, sub-brokers, share transfer agents, trustees, merchant bankers and all those who are associated with stock exchange in any manner.
- iv. SEBI registers and regulates the working of mutual funds etc.
- v. SEBI regulates takeover of the companies.
- vi. SEBI conducts inquiries and audit of stock exchanges.

# SEBI REGULATIONS

SEBI has made rules and regulations on various important matters to carry out the purposes of the SEBI Act. Major amongst these regulations are related to:

- Substantial Acquisition of Shares & Takeover
- Buy-back of Securities – in case of listed companies
- Collective Investment Scheme
- Credit Rating Agencies
- Debenture Trustees
- Delisting of Securities
- Foreign Institutional Investors
- Foreign Venture Capital Investors
- Insider Trading
- Issue of securities
- Merchant Bankers
- Mutual Funds
- Portfolio Managers
- Stock Brokers and Sub-brokers
- Bankers to Issue
- Underwriters
- Unfair trade practices
- Venture Capital Fund,
- REITs,
- Issue of Capital and Disclosure Requirements Regulations, 2009,
- Listing Obligations and Disclosure Requirements Regulations, 2015, etc.

SEBI has powers to regulate issuance of securities and their listing on the Stock Exchanges. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains detailed provisions in matters like eligibility for public issue, qualified institutional placements, preferential allotment of securities by listed companies, bonus issue, rights issue, etc.

SEBI has cut the IPO listing timeline by making ASBA (applications supported by blocked amount) compulsory for retail investors and listing in just six days after closing (known as T+6 in market parlance). ASBA is a facility where investors' money remains blocked in the bank account until shares are allotted. Retail investors are those investing up to Rs. 2 lakh.

SEBI Act contains detailed provisions relating to investigations, penalties and adjudication. Penalty provisions are provided for various non-compliances including the following:-

1. Failure to furnish information, return, etc.
2. Failure to redress investors' grievances
3. Insider trading,
4. Fraudulent and unfair trade practices

5. Non-disclosure of acquisition of shares and takeovers, etc.
6. Non-compliance with the provisions of Corporate Laws

Securities Appellate Tribunal (SAT) has been set up under the SEBI Act to create accountability. Any person aggrieved by an order of SEBI under SEBI Regulations or by an order of an adjudicating officer may prefer an appeal to SAT. An appeal against the decision of the SAT lies directly before the Supreme Court.

## **FAQs ON CREDIT RATING**

### **1. What is the full form of CRA?**

The full form of CRA is Credit Rating Agency.

### **2. What is a credit rating agency?**

A credit rating agency is an entity which assesses the ability and willingness of the issuer company for timely payment of interest and principal on a debt instrument.

### **3. How is a rating denoted?**

Rating is denoted by a simple alphanumeric symbol, for e.g. AA+, A-, etc.

### **4. Whether the issuer company is rated or the instrument?**

The rating is assigned to a security or an instrument.

### **5. What does credit rating convey?**

Credit rating is an assessment of the probability of default on payment of interest and principal on a debt instrument. It is not a recommendation to buy, sell or hold a debt instrument. Rating only provides an additional input to the investor and the investor is required to make his own independent and objective analysis before arriving at an investment decision.

### **6. How is credit rating done?**

Ratings are based on a comprehensive evaluation of the strengths and weaknesses of the company fundamentals including financials along with an in- depth study of the industry as well as macro-economic, regulatory and political environment.

### **7. What do the various rating symbols mean?**

Each rating symbol is an alphanumeric representation of the probability of degree of repayment risk associated with debt instruments.

### **8. Are rating symbols the same across all types of debt instruments?**

No. Rating symbols may vary depending on the type of debt instrument, as for example long term or short term.

### **9. What do the “+” and “-” sign indicate in a rating?**

Plus and minus symbols are used to indicate finer distinctions within a rating category. The minus symbol associated with ratings has no negative connotations. In fact, ratings in a higher rating category such as ‘AA-’ are stronger than ratings in a lower rating category such as ‘A+’.

### **10. What are investment and speculative grade ratings?**

An investment grade rating signifies the rating agency’s belief that the rated instrument is likely to meet its payment obligations. In the Indian context, debt instruments rated ‘BBB’ and above are classified as investment grade ratings. Instruments that are rated ‘BB’ and below are classified as speculative grade category ratings in which case the ability to meet the payment obligations is considered to be “speculative”. Instruments rated in the speculative grade are considered to carry materially higher risk and a higher probability of default compared to instruments rated in the investment grade.

### **11. Who pays for the credit rating?**

In India, the issuer company pays for the credit rating.

**12. Who regulates rating agencies?**

Credit rating agencies are regulated by SEBI. The SEBI (Credit Rating Agencies) Regulations, 1999 govern the credit rating agencies and provide for eligibility criteria for registration of credit rating agencies, monitoring and review of ratings, requirements for a proper rating process, avoidance of conflict of interest and inspection of rating agencies by SEBI, amongst other things.

**13. Does SEBI have a role in the rating exercise?**

No. SEBI does not play any role in the assessment made by the rating agency. The rating is intended to be an independent, unbiased and professional opinion of the rating agency.

**14. Is rating a one time exercise?**

No. To protect the interest of investors, SEBI has mandated that every credit rating agency shall, during the lifetime of the securities rated by it, continuously monitor the rating of such securities and carry out periodic reviews of all published ratings.

**15. Why do ratings change?**

Rating is an opinion based on information available at a point in time with the rating agency and expectations made on the basis of such information by the agency. However, information can change significantly over time causing the rated instruments performance to deviate from the earlier expectations thereby affecting the future repayment abilities and thus, requiring the rating to be altered.

**16. What does a rating downgrade indicate?**

Rating is monitored throughout the life of the instrument. A downgrade in the rating indicates that the risk of default of the instrument is higher than what was earlier predicted.

**17. What kind of responsibility or account ability will attach to a rating agency if an agency if an investor, who makes his investment decision on the basis of its rating, incurs a loss on the investment?**

A credit rating is a professional opinion given after studying all available information at a particular point of time. Nevertheless, such opinions may prove wrong in the context of subsequent events. There is no contract between an investor and a rating agency and the investor is free to accept or reject the opinion of the agency.

**18. Do agencies rating small and medium enterprises, mutual funds, banks, non-banking financial institutions, insurance providers, infrastructure entities, etc. also fall under the regulatory purview of SEBI?**

No, SEBI regulates only the agencies which are engaged in the business of rating securities offered by way of public or rights issue.

**19. From where can the credit ratings of instruments be obtained?**

Credit ratings assigned by the credit rating agencies to various instruments are made available by the agencies through press releases and on their respective websites. The same are also available in the prospectus or the offer document of the issuer company and in media advertisements.

**20. What are the common factors that are taken into account while awarding the credit rating?**

Each credit rating agency may have its own set of criteria and different weightage for each component for assigning the ratings. Some of the common factors that may be taken into consideration for credit rating are Issuer Company's operational efficiency, level of technological development, financials, competence and effectiveness of management, past record of debt servicing, etc.

**21. How can an investor know if a credit rating agency has changed its rating?**

The credit rating agencies are required to continuously monitor the ratings assigned by them to a particular instrument. In case of any changes in the ratings so assigned, the agencies are required to disclose the same through press releases and on their respective websites.

**22. What are the measures taken by SEBI in strengthening credit rating?**

SEBI has, from time to time, taken several steps to strength the process of credit rating. SEBI directives require the credit rating agencies to be transparent and disclose to the public the information which may have a material bearing on the ratings, any sources of conflicts of interest while undertaking the rating exercise, rating methodology, rationale of the ratings, etc.

**23. Why there are not common symbols for credit ratings of all agencies?**

The credit rating agencies do not have common symbols because they use different rating methodologies and have different factors bearing different weight age.

**24. Which are the Credit rating agencies registered with SEBI?**

Name of the rating agency	Information
<b>Credit Analysis &amp; Research Ltd. (CARE)</b>	4th Floor, Godrej Coliseum Somaiya Hospital Road Off Eastern Express Highway Sion (East) Mumbai-400022 <i>[<a href="http://www.careratings.com">http://www.careratings.com</a>]</i>
<b>ICRA Ltd.</b>	1105, Kailash Building, 11th Floor, 26, Kasturba Gandhi Marg, New Delhi-110 001 <i>[<a href="http://www.icra.in">http://www.icra.in</a>]</i>
<b>CRISIL Ltd.</b>	CRISIL House, Central Avenue, Hiranandani Business Park, Powai, Mumbai- 400 076 <i>[<a href="http://www.crisil.com">http://www.crisil.com</a>]</i>
<b>Fitch Ratings India Pvt. Ltd.</b>	Apeejay House, 6th Floor, 3, Dinshaw Vachha Road , Churchgate Mumbai-400020 <i>[<a href="http://www.fitchindia.com">http://www.fitchindia.com</a>]</i>
<b>Brick work Ratings India Pvt. Ltd.</b>	#39/2,Sagar Complex, 2nd Floor, Bannerghatta Road, Near Diary Circle, Bangalore- 560029 <i>[<a href="http://www.brickworkratings.com">http://www.brickworkratings.com</a>]</i>

- *Source: <http://www.sebi.gov.in>*



# SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013

## Background:

The Securities Exchange Board of India (“SEBI”), with a view to foster the fund raising options for Corporates and Banks and at the same time ensuring transparency and to protect the interest of investors has notified a new set of Regulations governing issuance and listing of Non-Convertible Redeemable Preference Shares (“NCRPS”) viz. SEBI (Issue & Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“Regulations”). The Regulations have come into force with effect from June 12, 2013. The key features of the Regulations are summarized below:

## Applicability:

The Regulations shall be applicable to the following:

- Public issue of NCRPS;
- Listing of NCRPS on recognized Stock Exchange issued by a public company through public issue or on private placement basis; and
- Issue and listing of Perpetual Non-Cumulative Preference Shares and Perpetual Debt Instrument issued by Banks on private placement basis in compliance with Guidelines issued by Reserve Bank of India (RBI).

## Key Requirements

The Regulations provides certain key requirements for issue of NCRPS through:

- a) Public Issue of NCRPS; and
- b) Listing of NCRPS issued through Private Placement basis.

## Key requirements for Public issue of NCRPS and its listing:

- The Promoters/ the issuer should not have been restrained / prohibited / debarred by the SEBI from accessing the securities market or dealing in securities and such order is not in force;
- The issuer or any of its promoters or directors is a wilful defaulter or it is in default of payment of interest or repayment of principal amount in respect of non-convertible redeemable preference shares issued by it to the public, if any, for a period of more than six months;
- The Issuer shall make an application to one or more recognized Stock Exchange for listing of its NCRPS and in-principal approval for its listing has to be obtained;
- The Issue has been assigned a rating of not less than “AA-“ or equivalent by a credit rating agency registered with SEBI;
- The Issuer has entered into an arrangement with a depository registered with the Board for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made there under;
- The minimum tenure of NCRPS should not be less than 3 years;
- The Issuer shall create a Capital Redemption Reserve, as per the provisions of Companies Act, 1956;
- The object of the issue should not be providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the Issuer,
- The issue may be a fixed price issue or pricing may be determined through Book Building process in accordance with the procedure to be specified by SEBI.

- The redemption of NCRPS shall take place as per the terms of the Offer Document.
- The Issuer may decide the amount of minimum subscription which it seeks to raise by Public Issue of NCRPS in accordance with the provisions of Companies Act, 1956 and disclose the same in the Offer Document. In the event of non-receipt of minimum subscription, all application moneys received in the public issue shall be refunded forthwith to the applicants.
- The Issue may be underwritten by an underwriter registered with SEBI.

#### **Key requirements for listing of NCRPS issued on Private Placement basis:**

- Issuer to comply with the provisions of the Companies Act, 1956, rules prescribed thereunder and other applicable laws;
- Issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.
- The issuer shall comply with conditions of listing of such NCRPS as specified in the Listing Agreement with the Stock Exchange, where such non-convertible redeemable preference shares are sought to be listed.
- Every Issuer desirous of listing its NCRPS, shall execute an agreement with such Stock Exchange.
- Credit rating must be obtained from one of credit rating agencies;
- NCRPS proposed to be listed in dematerialized form only;
- Minimum application size for each investor is not less than Rs. 10 Lakhs;
- Creation of capital redemption reserve in accordance with the provisions of the Companies Act, 1956;
- The object of issue should not be providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the Issuer.

#### **Relaxation of strict enforcement of Rule 19 of Securities Contracts (Regulation) Rules, 1957 (SCR Rules)**

SEBI has relaxed compliance with Rule 19(2)(b) of SCRR Rules with regard to minimum public offer for listing of NCRPS issued by way of a public issue or a private placement.

#### **Conditions for continuous listing and trading of nonconvertible redeemable preference shares**

- All the issuers making public issues of NCRPS or seeking listing of NCRPS issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for NCRPS.
- The issuer and stock exchange shall disseminate all information and reports on NCRPS including compliance reports filed by the issuers regarding the NCRPS to the investors and the general public by placing them on their websites.

#### **Trading of non-convertible redeemable preference shares**

- NCRPS issued to the public or issued on a private placement basis, which are listed on stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges subject to conditions specified by SEBI.
- In case of trades of NCRPS which have been made over the counter, such trades shall be reported on the stock exchange having a nation-wide trading terminal or such other platform as may be specified by SEBI.
- Comply with such additional conditions for reporting of trades on the recognized stock exchange or other platform as may be specified by SEBI.

#### **Issuance and listing of non-equity regulatory capital instruments by banks**

As per Basel III norms, Banks are permitted to issue non-equity instruments such as Perpetual Non-Cumulative Preference Shares (PNCPS) and Innovative Perpetual Debt Instruments (PDI), which are in compliance with the criteria specified by RBI for inclusion in Additional Tier I Capital.

- The provisions of this regulations shall apply to the issuance and listing of PNCPS and PDI issued by banks;
- Only Banks shall be permitted to issue PNCPS and PDI;
- A bank may issue PNCPS and PDI subject to prior approval and in compliance with the Guidelines issued by RBI;
- Banks shall:-
  - Comply terms and conditions as may be specified SEBI,
  - Make adequate disclosure about features of instruments and risk factors, and
  - Comply with the listing requirements, if instruments are listed.

*Source: Notification No. LAD-NRO/GN/2013-14/11/6063 dated June 12, 2013 issued by SEBI and subsequent amendments thereto.*

## **2. SEBI (PROHIBITION OF INSIDER TRADING REGULATIONS), 2015**

[Insider trading is defined as a malpractice wherein trade of a company's securities is undertaken by people who by virtue of their work have access to the otherwise non public information which can be crucial for making investment decisions].

### **INTRODUCTION OF SEBI (PROHIBITION OF INSIDER TRADING REGULATIONS), 2015**

SEBI notified the SEBI (Prohibition of Insider Trading Regulations) 2015 ("Regulations") on January 15, 2015, replacing India's two decades old Insider Trading norms, the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("1992 Regulations"). The Regulations will be effective from May 15, 2015 (120 days from the date of publication in the Official Gazette).

The Regulations are based on the recommendations made by an 18 member committee ("Committee") constituted by SEBI under the chairmanship of Justice N.K. Sodhi, former Chief Justice of the High Courts of Kerala and Karnataka, which were approved by the SEBI Board in its meeting on November 19, 2014. Although the Committee's recommendations have substantially been incorporated in the Regulations, certain provisions have been left out/ amended in the Regulations.

SEBI has been constantly focused on developing and regulating the Indian capital market to boost investors' confidence to maintain this momentum. The 1992 Regulations had considerable inadequacies in terms of their drafting, interpretation and outreach, and, over time, SEBI had introduced several amendments to certain provisions of the 1992 Regulations to fill in the lacunae. However, a need was felt to systematically review the old regime and provide a more robust and efficient mechanism in line with global norms and standards to curb insider trading in India.

Thus, the Regulations are formulated to put in place to seek to (a) address the inadequacies of the 1992 Regulations; (b) establish a legal structure which conforms to global best practices and the changes brought about by the Companies Act, 2013; and (c) consolidate the changes effected by circulars, notifications, amendments of enactments and judicial precedents concerning securities laws in India since 1992.

### **APPLICABILITY OF THE REGULATIONS**

The charge of insider trading has been extended to securities listed and proposed to be listed on stock exchanges. This is an expansion from the 1992 Regulations which only applied with respect to companies that were listed. Additionally, the Regulations also strengthen the definition of who an 'insider' is. The scope of 'connected persons' under the Regulations has been widened to include persons associated with the company in a contractual, fiduciary or employment relationship or having direct or indirect access to unpublished price sensitive information. Further, under the Regulations, the criteria for what constitutes 'unpublished price sensitive information' would be whether the information is 'generally available' or not. The definition of 'unpublished price sensitive information' has been extended to both a company and securities.

### **NOTES TO INTERPRETATION**

Every provision under the Regulations is accompanied by specific notes setting out the legislative intent for which that provision has been formulated. As India continues to move from a form approach to a substance

approach, these notes will aid in capturing the spirit of the legislation and how the regulator is likely to view its enforcement.

## INSTANCES WHERE REGULATIONS SHOULD NOT BE AFFECTED

Multiple restrictions have been placed i.e. (i) prohibition on communication of unpublished price sensitive information (ii) procurement of unpublished price sensitive information and (iii) trading in securities when in possession of unpublished price sensitive information. The 1992 Regulations prohibited 'dealing' in securities when in possession of unpublished price sensitive information, amongst others; the expression 'dealing' has been replaced with 'trading' in securities. Under the Regulations, the definition of 'trading' has been kept wide. It must be noted that the 1992 Regulations placed no restrictions on the 'procurement' of unpublished price sensitive information by other persons.

## EXCLUSIONS

The Regulations provide for certain exclusions where the charge of insider trading will not be applicable, namely:

- in the conduct of due diligence: communication and procurement of information in connection with substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment, subject to certain conditions;
- for off-market transactions between Promoters who are in possession of the same information, and are making a conscious and informed decision; and
- in the case of non-individual insiders:
  - the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade;
  - when the trade was executed in the absence of any leakage of information, thereby recognizing the concept of "Chinese walls" in large organizations.
- Trades executed pursuant to the Trading Plan set up in accordance with the Regulations.

## REBUTTABLE PRESUMPTION:

It is clarified that the presumption against persons deemed to be 'connected' is rebuttable under the Regulations. This provision is akin to the presumption that exists against various persons having a common objective or purpose of acquisition i.e. persons acting in concert under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

## TYPE OF DISCLOSURES

Type of Disclosures	What	By whom	To whom	Time limit	Forms
Initial Disclosures	Holding in the Company	Promoter, KMP or Director of a Listed Company	Company	Within 30 days of these Regulation taking effect (Effective Date: May 15, 2015, Due Date- June 14, 2015)	Form A
	Holding on the date of appointment	Promoter, KMP or Director	Company	Within 7 days of such appointment	Form B
Continual Disclosures	Value of securities traded, in aggregate, in a calendar quarter, exceeds traded value of Rs. 10 Lac or any other value as may be prescribed	Promoter, KMP or Director	Company	Within 2 trading days of such transaction	Form C
		Company	Stock Exchange	Within 2 trading days of receipt of disclosure	
Disclosure By Other Connected Person	As required by the company	Connected Person	Company	As specified by the Company	Form D

Note: To protect the interest of investors in the securities market and to bring more transparency, the formats for submitting disclosures revised w.e.f. 16.09.2015.

## TRADING PLANS

These Regulations entail a new concept of trading plans which was not there under the erstwhile Regulations on insider trading:

- Insider shall formulate a Trading Plan & present it to compliance officer for approval & public disclosure. Upon approval, the Compliance Officer shall notify the TP to the Stock Exchanges.
- Trading plan shall be for a period of 12 months.
- Such TP shall not entail commencement of trading earlier than 6 months from public disclosure of plan.
- Trading shall not commence for the period between 20th trading day prior to last day of any financial period for which results are required to be announced by the issuer of the securities & 2nd trading day after the disclosure of such financial results.
- TP shall set out value of trades to be effected or number of securities to be traded along with the nature of trade; and also the intervals/ dates on trade execution.
- Trading by designated persons shall be subject to pre-clearance by compliance officer.
- Overlapping TPs are not allowed.
- A TP once approved, shall be irrevocable and cannot be withdrawn.

## COMPLIANCE OFFICER

Qualification criteria have been set for a compliance officer who shall report to the board of directors of the company or the head of the organization, as the case may be.

The compliance officer's role in monitoring and approving a trading plan has been made important. Enhanced role for the compliance officer who would need to police, monitor and regulate trading by employees and connected persons.

## PENALTIES

No separate penalties have been prescribed under the Regulations. Reference is made however to the penalty provisions under the SEBI Act, 1992 which shall apply. As per the Act, insider trading is punishable with a penalty of INR 250,000,000 (Rupees Two Hundred Fifty Million Only) or 3 times the profit made out of insider trading, whichever is higher. SEBI is also empowered to prohibit an insider from investing in or dealing in securities, declare violative transactions as void, order return of securities so purchased or sold. Any person contravening or attempting to contravene or abetting the contravention of the Act may also be liable to imprisonment for a term which may extend to ten years or with fine which may extend to INR 250,000,000 (Rupees Two Hundred Fifty Million Only) or with both. The Regulations, also, prescribe certain disciplinary sanctions that may be taken by companies or market intermediaries to require due compliance of the Regulations.

### **3. Simplified Framework for Capital Raising by technological start ups and other companies on Institutional Trading Platform.**

The platform shall now be called as Institutional Trading Platform (ITP) and shall facilitate capital raising as well. The said platform will be made accessible to:

- i. companies which are intensive in their use of technology, information technology, intellectual property, data analytics, bio-technology, nano-technology to provide products, services or business platforms with substantial value addition and with at least 25% of the pre-issue capital being held by QIBs (as defined in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009), or
- ii. any other company in which at least 50% of the pre-issue capital is held by QIBs as on date of filing offer document with SEBI
- iii. No person (individually or collectively with persons acting in concert) in such a company shall hold 25% or more of the post-issue share capital in point (i).

Considering the nature of business of companies which may list on the said platform, disclosure may contain only broad objects of the issue and there shall be no cap on amount raised for General Corporate Purposes. Further, the lock in of the entire pre-issue capital shall be for a period of 6 months from the date of allotment uniformly for all shareholders.

As the standard valuation parameters such as P/E, EPS, etc. may not be relevant in case of many of such companies, the basis of issue price may include other disclosures, except projections, as deemed fit by the issuers.

Companies intending to list on the proposed ITP, shall be required to file draft offer document with SEBI for observations, as provided in SEBI (ICDR) Regulations, 2009.

Only two categories of investors, i.e. (i) Institutional Investors (QIB as defined in SEBI (ICDR) Regulations, 2009 along with family trusts, systematically important NBFCs registered with RBI and the intermediaries registered with SEBI, all with net-worth of more than ₹500 crore) and (ii) Non-Institutional Investors (NIIs) other than retail individual investors can access the proposed ITP.

In case of public offer, allotment to institutional investors may be on a discretionary basis whereas to NIIs it shall be on proportionate basis. Allocation between the said two categories shall be in the ratio of 75% and 25%, respectively.

In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than 10% of the issue size. All shares allotted on discretionary basis shall be locked-in in line with requirements for lock-in by Anchor Investors i.e. 30 days at present.

The minimum application size in case of such issues shall be ₹10 lakhs and the minimum trading lot shall be of ₹10 lakhs.

The number of allottees in case of a public offer shall be 200 or more.

The company will have the option to migrate to main board after 3 years subject to compliance with eligibility requirements of the stock exchanges.

For Category I and II AIFs, which are required under the SEBI (Alternative Investment Funds) Regulations, 2012 to invest a certain minimum amount in unlisted securities, investment in shares of companies listed on this platform may be treated as investment in 'unlisted securities' for the purpose of calculation of the investment limits.

#### **Grandfathering of existing companies listed on SME-ITP:**

The existing companies listed on SME-ITP may continue to be guided by the existing regulatory framework for them including applicable relaxations from compliance with corporate governance requirements.

#### **Rationalisation of disclosures for proposed ITP as well as main board:**

Further, in order to rationalize the disclosures requirements for all issuers whether intending to list on the main board or the proposed ITP, it has been decided that the disclosures in offer document with respect to group companies, litigations and creditors shall be in accordance with policy on materiality as defined by the issuer. However, all relevant disclosures shall be available on the website of the issuer. Also, the product advertisements of an issuer will not be required to give details of public/rights issue.

# BRIEF TO RIGHT TO INFORMATION ACT, 2005

Every citizen of the country has a constitutional right to the information on the functioning of the government. Over 90 countries in the world have implemented some form of freedom of information. Sweden's Freedom of Press Act of 1766 is the oldest in the world. India joined the league by passing the Right to Information Act 2005 on 11-5-2005.

Right to information Act mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a – RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information/disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote, transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

The constitutional right to information was formally made available to general citizens in a formal way through this RTI Act.

In the year 1990, the then hon'ble Prime Minister of India, Mr. V. P. SINGH stressed on RTI as a legislative right. In the year 1994 a strong grass root movement spearheaded by MKSS (Mazdoor Kissan Shakthi Sangathan) created mass awareness and a demand for legislation which will give right to government data to citizens. In the year 1996 Press Council drafted a law- NIRD (National Institute of Rural Development) Freedom of Information Act, 1997. In the same year a working committee headed by Mr. Arun Shourie drafted the Freedom of Information Bill, 1997. In the year 1998 the then Hon'ble Prime Minister of India Shri A.B. Vajpayee announced that law relation to right to information will be enacted soon in India. In the year 2000 Freedom of Information Bill, 2000 was tabled before the Parliament and after some debate was referred to a committee for review of the same. In the year 2002 National Democratic Alliance Government in India enacted the Freedom of Information Act in 2002 and adopted it in January 2003. Unfortunately the said act never came into force. In the year 2004 the UPA Government finally tabled a New Bill Right To Information, 2004 in Parliament.

Finally in the year 2005 i.e. on 15th June, **Hon'ble President of India Mr. Abdul Kalam gave his consent and the said Act became operative from 12th October, 2005.**

Since 2005 till date many citizens have used this right to information and I am sure lot of them has got the information which they were looking for. Number of big disclosures revealed corruption in various government schemes. It is also observed that many government organisations have already started displaying information suo motu on their web portals which generally people are interested in knowing. Some of the government organisations have successfully answered more than 90% of the applications received by them. In some cases it is observed that no information is made available to the applicants even after reaching the final stage of appeal.

There are big numbers of appeals pending at state level appellate authorities as well as the central information commission. In time to come this act will improve on the current deficiencies and will help in building a strong system to give easy access to information, minimise corruption and increase the efficiency of the Government officials.

As per the latest amendments Indian citizens residing abroad are also permitted to apply online for the information. Online payment facility is made available to them for convenience. Major political parties are also covered under the Act to share the information which citizens are interested in knowing.

Right to inspection of material in the government work is a great feature included in the right to information Act, 1995. Any citizen, can request for inspection of quality of material being used in the work under process and satisfy whether the quality of the material is used as per the specifications mentioned in the work order.

Process of getting the information is very simple. The first step is to decide what information one is looking for. Then one needs to identify the public authority which holds the desired information. After reaching the right public authority, one needs to identify the right Public Information Officer in the said public authority. Submit clearly focused application to the said public information officer. Wait for the decision. If you don't get the

desired information within 30 days from the date of application, file First appeal in the same public authority. If the first appeal is also not answered, file second appeal with the state appellate authority. If the second appeal is not answered the last option is to file the appeal with central information commission.

If all the above efforts are unable to get the desired information, one can approach the High Court for the same. Lower courts are not permitted to accept any applications related to this act.

### **Some of the important features of the RTI Act are as under:**

- No fee for Below Poverty Line citizens [Proviso to section 7(5)]
- No need to specify the reason for seeking information or other personal details [section 6(2)]
- Provision to reduce oral requests into writing [proviso to section 6(1)]
- Provision to provide all required assistance, including to disabled persons. [section 7(4)]
- Information to be provided on suo moto, proactive basis by Public Authorities [section 4(1)(b)]
- Information to be provided in local languages [section 4(4)]
- Provision for penalties (section 20)
- Open only to citizens of India and whether residing in india or abroad (section 3)
- Lower courts are barred from entertaining suits or applications against any order made under this Act (section 23) Some recent decisions of CIC/High Court
- Pendency of investigation is not sufficient reason to withhold the information.
- Additional Information can not be sought at Appeal stage
- Hon'ble Delhi high Court said in one judgment that "it is expected that the Commission (CIC) henceforth will decide the complaints on merits instead of directing the CPIO to provide the information which the complainant has sought."
- The Public Authority is not bound to compile information as per the format of the applicant.

### **Some Important websites**

- [www.rti.gov.in](http://www.rti.gov.in)
- [www.cic.gov.in](http://www.cic.gov.in)
- [www.rtionline.gov.in](http://www.rtionline.gov.in)
- [www.rtiindia.org](http://www.rtiindia.org)

### **Some Recent Developments**

Recently the government has issued guideline regarding format for giving information to the applicants vide circular No.10/1/2013-IR dated 17-3-2015.

The central government is also thinking for use of postal stamps as RTI Application Fee and the cost of getting the information vide circular No.1/3/2014-IR dated 14-1-2015

Pimpri Chinchwad Municipal Corporation has started with SARATHI (System of Assisting Residents and Tourists through Helpline Information). They have also created Application for mobile users, E Book and PDF Book free of cost to users.

Pune Municipal Corporation has started with RTI library with free access to everybody during the office hours. Without any application the information is made available to the user free of cost.

SDM office of Dhalai District of Gandacherra Tripura started with Transparency Desk. At this place many departments of the government give the information generally asked by the applicants. The same can be accessed by the applicants. The files are stored department wise with indexing done for the ease of use.



RTI Online is the practice introduced by the Department of Personnel & Training (DOPT), Government of India.

Some private websites are providing assistance for people in filing RTI applications by giving them online service by charging professional fee for the same.

Government of Odisha has introduced a practice called Central Monitoring Mechanism with Government to Citizen (G2C) and Government to Government (G2G) service web portal.

Government of Bihar has introduced Jaankari. This will help the citizens to ask for the information on telephone and the fee will be charged to their landline bill.

MCA 21 is the portal used for getting information online related to corporate information.

# RIGHT TO INFORMATION ACT, 2005

## 1. When did the Right to Information Act, 2005 come into force?

The Right to Information Act came into force fully on the 12th October, 2005 (120th day of its enactment i.e., 15th June, 2005). Some provisions came into force with immediate effect viz. obligations of public authorities [Section 4(1)], designation of Public Information Officers and Assistant Public Information Officers [Sections 5(1) and 5(2)], constitution of Central Information Commission [Sections 12 and 13], constitution of State Information Commission [Sections 15 and 16], non-applicability of the Act to Intelligence and Security Organizations [Section 24] and power to make rules to carry out the provisions of the Act [Sections 27 and 28]

## 2. Who is covered under the Right to Information Act, 2005?

The Act extends to the whole of India except the State of Jammu and Kashmir [Section 1].

## 3. Are 'file notings' included in the definition of Information?

Section 2 (f) of the RTI Act defines 'information' which includes 'record'. Section 2(i)(a) states that a 'record' includes any document, manuscript and file. The operative definition of a 'file' is given in the Manual of Office Procedure prepared by the Central Secretariat, Government of India. The definition of 'file' in the Manual includes 'notes' and 'appendices to notes'.

In CIC Decision No. ICPB/A-1/CIC/2006 dt.31.01.2006, the CIC held that "file notings are not, as a matter of law, exempt from disclosure". Thus, file notings can be disclosed under the Act

## 4. If the law under which a Public Sector Unit (PSU) has been constituted does not allow access to information to the people such as agendas of board meetings etc., will such information have to be given under the RTI Act?

PSUs fall within the category of public authorities. Even if the law constituting a PSU does not allow disclosure of certain categories of information, the RTI Act, 2005 overrides any such law in existence. Hence the designated PIO for the organisation under question has to provide the information.

However, if an applicant seeks information, that includes commercial confidence, trade secrets or Intellectual Property Rights (IPRs) etc. the disclosure of which will affect the competitive position of that PSU, such information may not be given unless there is a larger public interest involved.

## 5. Government offices have been providing information to people on the basis of their oral requests in the past. Does the RTI Act require such informal practices to end?

No, there is no need to discontinue the conventional and informal practice of giving information upon oral request. The RTI Act does not put an end to such practices. If information can be given without delay upon oral request it is better to give such information to the requester rather than require him/her to put in a formal application. This helps reduce paper work for the public authority

## 6. Can Government officers get access to Annual Confidential Reports (ACRs) under the RTI Act?

As per decision No.18/IC(A)/2006 dt.28.03.2006, the CIC held that "the assessment reports by the superior officers are personal and confidential information and therefore exempted under Section 8 (1)(j) of the RTI Act".

In the case stated above, the Central Information Commission upheld the public authority's (Indian Oil Corporation's) decision that 'Annual Performance Appraisal Reports' cannot be shared as they are confidential in nature.

## 7. Can students ask for copies or inspection of their answer scripts if they are unhappy with the marks awarded by the examiner in public examinations?

The present position is that the Central Information Commission has ruled, on an appeal submitted to it, that students cannot have access to answer scripts / supplements [CIC Decision No. 22/ICPB/2006 dt. 18.05.2006]

**8. Every department performs different kinds of functions at different levels of operation from the Secretariat to the Taluka/Village level. Will disclosure under Section 4 (1) (b) have to be made for every one of these levels separately?**

Yes. In several states more than one public authority are notified within every department from the secretariat level to the district and sub-district levels. Every such public authority will have to develop its own proactive disclosure documents or Information Handbooks unique to its powers, functions, area of operation etc.

Section 4 (1)(b) is designed to ensure that public authorities disclose certain information which are important to the public voluntarily at every level of operation. It is to be noted that, if implemented properly, Section 4(1) (b) will reduce the workload of officials and public authorities with regard to the requirement of providing information on request. This is because the information which is regularly needed by the public can be accessed by them without the need of going through a process of making specific request.

**9. Is it enough to disseminate information under Section 4 (1)(b) on the Internet?**

Information under Section 4 (1) (b) shall be disseminated through notice boards, news papers, public announcements, media broadcasts, the Internet or any other means.

**10. Is it enough to publish information under Section 4 (1)(b) only once at the time of the commencement of the RTI Act?**

No. The Act requires that every public authority has to update its publications under Section 4(1)(b) every year. The Central/State Government/ Departments will have to come out with general instructions for time-bound updating of all categories of information, including formats for publication. Every public authority may in turn publish updated information that is specific to its functions following the guidelines.

**11. What will be the penalty if a public authority/department is not able to meet the deadline for proactive disclosure (120 days)?**

It is advisable to publish as much information as possible under Section 4(1)(b) within the deadline and give it wide media publicity so that people know that the public authority/department is earnest about implementing the law. Any person can make complaint to the relevant Information Commission under Section 18 (1)(f) of the Act and the Commission may even require the public authority to compensate the complainant for any loss or other detriment suffered.

It must be noted that the Information Commission has the power under Section 19(8)(a)(vi) to receive from a public authority an annual compliance report in relation to Section 4 (1)(b). This reporting mechanism will technically make the public authority answerable to the Information Commission for all acts of commission and omission in relation to proactive disclosure.

**12. Can a request be denied if it is too big? If not, how can we handle such requests best? How much information can a citizen request in one application? If he/she asks 20-30 kinds of information in one application should it be given? Or should the citizen be asked to put in fresh applications for each point of information requested and also be asked to pay application fees every time?**

The Act does not permit rejection of an application simply because it relates to a large number of documents. Under Section 7 (9), information shall be provided in the form in which it is sought unless it would 'disproportionately' divert the resources of the public authority. A PIO can request the applicant to visit his/her office personally and inspect the required documents or files. However, the PIO shall communicate the date and time to the applicant for such inspection. The PIO has to determine and justify what constitutes 'disproportionately divert resources'.

An applicant can ask for 20 to 30 different kinds of information in the same application and cannot be asked to apply afresh.

If the information published under Section 4 (1) (b) of the Act is comprehensive and proper information systems are maintained to enable such publication, even if an applicant requests for many pieces of information, the same can be provided to the applicant without much difficulty. Appropriate record management systems need also to be instituted.

- 13. If in a single application the applicant requests information that relates to a public authority and also other public authority/authorities, is the PIO responsible for giving all that information himself/herself?**

The RTI Act makes it clear that the PIO has the power to transfer an application or parts of it if the same relates to information held by another public authority [Section 6 (3)]. The application shall be transferred to the PIO concerned immediately - within 5 days - and the applicant has to be informed about the transfer in writing.

- 14. Is it possible that some elements may misuse this law and use the information to blackmail/threaten officers?**

The fact that the Act requires making as much information as possible available with the public authorities in the public domain may actually prevent blackmail to honest and sincere officers. If information is divided into two types, namely 'open to disclosure' and 'not open to disclosure', that which is not disclosed must be based only on the exemptions stipulated under the Act. Thus, the question of blackmail or threatening may not arise. As far as possible, information must be made public so as to reduce any possibility of blackmail. An honest and sincere officer need not fear blackmail at all. The strict adherence to the law would facilitate smooth functioning of such officers as they will be protected by law.

- 15. If there is a flood of applications for inspection of records how will the PIO provide access to all applicants and also do justice to his/her other designated duties? What if one such applicant mutilates or destroys a record during inspection?**

Under the Act, every public authority will need to designate as many PIOs as may be required to deal with requests for information from citizens. The PIOs may fix one or two particular days in a week for inspection of records. The Competent Authority needs to make rules and guidelines for public authorities regarding the procedure to be followed for allowing inspection of records [The Public Records Rules (1997), Rule No. 11(2) prepared by the Government of India may be adopted as a model].

It is important that the PIO takes adequate precautions for the safety of records being inspected. If, however, it is found that a person examining a record or document has mutilated or tampered with the document or attempted to do so it will be appropriate for the PIO/public authority to lodge a criminal complaint immediately.

- 16. If the same kind of information is sought by more than one person should it be made available to all such requesters?**

Yes, it has to be made available. However it is advisable that such records be digitised as far as possible and uploaded on the Internet to facilitate easy access.

- 17. If the information requested by a citizen has already been proactively disclosed can a PIO refuse to accept the request?**

There is nothing in the RTI Act that states that information disclosed proactively should not be provided to a citizen on request. If such information is requested the same can be provided in the available formats upon payment of fees/charges at rates prescribed by the Government.

- 18. Is the Assistant Public Information Officer (APIO) an assistant to the Public Information Officer (PIO)?**

No, the APIO is not an assistant to the PIO. A Central / State APIO (as the case may be) may be designated at the sub-district or sub-divisional level where a public authority may not have an office or administrative unit [Section 5(2)].

Designation of APIOs is particularly useful for Departments of the Government of India which rarely have offices below the district level. However, it has been decided that the CAPIOs of Department of Posts will also act as CAPIOs for other Central Government Public Authorities, which do not have an office / or an administrative unit operative at the sub-district / sub-divisional level.

These CAPIOs (of the Department of Posts) will receive requests on behalf of the Central Government public authorities and forward them to the CPIOs concerned.

**19. If the information requested by the applicant is in the possession of the APIO should he/she not give that information to the applicant?**

Under the RTI Act, the APIO's obligation is confined to forwarding the request to the PIO concerned forthwith – within five days.

**20. If a PIO has touring duties as well, then he will not be physically present to receive application in the office. Will his absence amount to refusal to accept information request?**

The best solution for such situations is for the public authority concerned to designate another official within the same public authority (to act as PIO) and to receive applications. The duty of this PIO in maintaining the PIO's register will be the same. This will ensure that citizens' applications are always received to suit their convenience and prompt action is taken on the same.

Incidentally, a particular public authority may appoint multiple numbers of PIOs such that each PIO is designated for a specific area of the organisation's functioning. Yet, if an applicant approaches any PIO, he/she cannot refuse to accept the application on the ground that it does not belong to his/her jurisdiction.

Accepting the application, the PIO has to seek the requested information from the officer/s in control of the requested information (who may be another PIO, but for the purpose of dealing with this application, he/she becomes an 'Other Officer' – in control of the requested information). He / she cannot direct the applicant to take his / her application to the other PIO.

**21. Will Panchayats/Municipalities (or any local authority) have to appoint PIOs irrespective of the size of their office / administrative unit?**

Yes. Every public authority shall have to appoint a PIO, irrespective of the size of its office / administrative unit.

**22. Should BPL applicants be charged the further fees for providing information requested?**

Persons belonging to the 'Below Poverty Line' category cannot be charged any fees / charges at all. The form of access can be decided by the PIO concerned subject to the provision of the Act that information shall be provided in the form in which it is sought unless it would 'disproportionately' divert the resources of the public authority.

**23. If the applicant does not pay the additional fees towards cost of providing information within the 30 days deadline will the PIO be penalised for failing to provide information to the applicant?**

No. The PIO will not invite any penalty in such cases. The 30-day clock stops ticking from the date of dispatching the intimation for further fees issued by the PIO and restarts on the date on which the applicant pays the additional fee [Sections 7(3)(a) & 7(3)(b)].

For example, if the PIO dispatches the intimation letter on the 5th day from the date of receipt of the complete application only 5 days would have elapsed from the 30 days limit. The clock will restart on the date on which the applicant pays the 'further fees'. The PIO will have to provide the information within 25 days from the date of payment of such further fees. If the applicant chooses to seek a review of the additional fee from the appellate authority or the SIC/CIC the period taken for giving a decision on this matter (if it is decided that no further payment is needed) or for actual payment of further fees (if it is decided that further fees would need to be paid), will not be included in the 30 day limit.

**24. If the applicant does not respond to the intimation letter of the PIO requesting payment of further fee will the PIO be duty-bound to provide information to the applicant? Will the PIO be duty-bound to provide information within 30 days even in such cases?**

No. The PIO is not duty bound to provide information to the applicant in such cases. The RTI Act states very clearly that the PIO will provide access to information only upon payment of further fee as may be determined [Section 7(1)] by him/her (for non-BPL cases).

**25. Are officials required to give information about themselves and their families under the law? Can the public request this kind of information? Should it be given?**

Officials are not required to provide private or personal information which is exempted under Section 8(1)(j) of the Act. Again, this must be decided on a case by case basis (as has indeed been the case with the decisions of the CIC). If public interest is served by disclosing such information then it must be given.

**26. Can any citizen ask any information that is more than 20 years old even if it does fall within the category of exemptions? Will the PIO be penalised if he/she is unable to provide such information?**

Yes, any citizen can ask any information more than 20 years old held by or under the control of a public authority, irrespective of whether the information requested falls within the category of exempted information or not. Nothing in the Act bars a citizen to ask for such information. The PIO concerned has to provide information 'held' under the control of the public authorities subject to the provisions of the Act relating to exemptions stipulated under the Act.

**27. In cases where building plans and designs of bridges or other important public structures have been requested and if the PIO has reasonable suspicion that the applicant will use those plans for commercial purposes and make a profit out of it, should such information be given?**

If disclosure of building plans and designs would prejudicially affect the economic or security interests of the State or if they relate to commercial confidence, or trade secrets or intellectual property rights, the disclosure of which would harm the competitive position of a third party, then such information would attract exemption under the Act. However, if the concerned authority is satisfied that larger public interest warrants the disclosure of such information, the same can be disclosed.

**28. What if existing departmental manuals prevent disclosure of information to the people?**

All such manuals were drawn up before the RTI Act came into force. These manuals will have to be reviewed in the light of the new law and all procedures for denying access to information will have to be done away with unless they relate to the exempt categories of information. Even in the case of exempt information the manuals should be so designed as to facilitate complete or partial access in the public interest. All new departmental manuals likely to be drawn up in future must conform to the new regime of transparency set up under the RTI Act, 2005.

**29. Periodic weeding of files results in destruction of many documents which are not important enough to maintain for as long as 20 years or more. So it will not be possible to give such information after they have been destroyed. Will the PIO be penalised for this?**

If a record has been destroyed legally the question of penalisation does not arise. But the RTI Act clearly requires a review of all weeding practices in existence to ensure that information which could be requested under the Act is not destroyed. More generally, it is necessary to consider a review of current records management processes.

**30. What is the process for taking a decision on granting partial access to a record? Who is the authority to make this decision within a public authority?**

Section 10(2)(b) of the RTI Act makes it clear that the PIO is the deciding authority for granting partial access to records that may contain exempted information. However, when partial information is disclosed the PIO needs to provide valid reasons for the decision. He also needs to mention his name and designation as the decision maker and the applicant's right with respect to the review of the decision, including the particulars of the AO, time limit, process etc.

Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.

**31. Will the APIO be punished for giving wrong or misleading information just as a PIO can be penalised under this Act?**

Given that, under the RTI Act, the APIO's obligation is confined to forwarding the request to the PIO concerned forthwith - within five days, the question of punishment for an APIO for giving wrong or misleading information does not arise.

In one of its decisions, the CIC has stated that the APIO has a limited role of transmitting applications and appeals to their proper destination... and that the APIO's responsibilities are not co-extensive with the PIO.

**32. Will a PIO be penalised if the superior officer orders him not to release information to the requester?**

It needs to be mentioned here that the PIO must note that it is not necessary on his / her part to seek the permission / approval of a superior officer of the public authority concerned for providing information under his / her control. The Act is clear about the fact that the PIO is an independent authority under the law and no approval is required from any superior official to release the requested information.

If a PIO acts upon any order of his/her superior and malafidely rejects requests fully / partially, he/she is liable to be penalised under the Act.

In case the information sought for is not available with a PIO, he/she can take the assistance of any other officer including asking for information under that officer's control and such officer will be treated as a PIO for the purpose of the Act and its penal provisions.

In the event a PIO seeks information from another official for providing information, his/her communication and receipt of information (to and from the other official) should be put down in writing and a proper record of the same should be maintained. This will be helpful, in the defense of the PIO concerned, should the information, turn out to be misleading or wrong, and an appeal is made against the PIO.

**33. If the information given by the PIO in response to a request turns out to be wrong, false or misleading but the PIO was not responsible for the creation of that record or such information will he/she be penalised by the ICs?**

The RTI Act provides protection to the PIO for 'action taken in good faith'. If the requested record has not been prepared by the PIO but by some other officer or if the data compiled by the PIO was received from some other officer and the PIO merely passed on that information to the applicant without having prior knowledge that such information was wrong or false or misleading he/she is not guilty of an offence under the RTI Act. The Information Commission will penalise PIO only in such cases where it may find him/her guilty of giving wrong, false or misleading information in a malafide manner.

**34. The PIO continues to be under the purview of the Official Secrets Act (OSA) of 1923. How will he reconcile his duties under the RTI Act with the secrecy required to be maintained under the OSA? What happens to the oath of secrecy every officer is required to take while joining service?**

It must be noted that the provisions of the RTI Act, 2005 shall be effective notwithstanding anything that may be inconsistent with its provisions in the Official Secrets Act, or any other Act of the Union or the State Governments (see RTI Act, 2005, Chapter VI, Section 21).

The 'Oath of Secrecy' taken by Government employees therefore only applies to the information that has been exempted from the ambit of the provisions of the said Act. Broadly, this exempted information pertains to matters / issues related to national security, defence, and integrity of the country. The Oath will not be adequate and the test of public interest is the overriding consideration.

**35. What is "Public Interest"?**

In the Indian context, and especially in the context of the RTI Act, 2005, a significant judgment of the Supreme Court of India can be taken note of in understanding the term "public interest".

In 'S. P. Gupta v President of India', AIR 1982 SC 149, Justice Bhagwati, in referring to 'public interest', maintained:

"Redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests vindicate public interest... [in the enforcement of which] the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

In State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat & others AIR 2006 Supreme Court 212, the Apex Court held "the interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part IV of the Constitution [i.e. Directive Principles of State Policy]".

One of the decisions of the Central Information Commission also throws some light on this term. Public interest includes "disclosure of information that leads towards greater transparency and accountability" [in the working of a public authority] (Decision No. CIC/OK/A/2006/00046, dt. 02.05.2006).

**36. Who are the Appellate Authorities and what are the key provisions for appeal under the Act?**

1. First Appeal: First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
2. Second Appeal: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).

3. Third Party appeal against PIO's decision must be filed within 30 days before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.
4. Burden of proving that denial of Information was justified lies with the PIO.
5. First Appeal shall be disposed of within 30 days from the date of its receipt. Period extendable by 15 days for reasons to be recorded in writing. [Section 19 (6)]
6. There is no time limit prescribed under the Act for deciding second appeals.

**37. What is the jurisdiction of courts?**

Lower Courts are barred from entertaining suits, applications or other proceeding against any order made under this Act [Section 23]. However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 226 of the Constitution respectively remains unaffected.

**38. Will not the publication of the 17 manuals mentioned under Section 4(1)(b) be very difficult and burdensome?**

The requirement to publish 'manuals' reflects the objectives of Section 4 (1)(b) for proactive disclosure on the part of every public authority, which is simply to publish and disseminate key information routinely in a manner and form which is easily accessible and understood by the public [Sections 4(3) and 4(4) of the RTI Act which specifically require this].

The 17 subsections of Section 4(1)(b) are 17 categories of information that a public authority is required to prepare and disseminate proactively through handbooks, notice boards, print and electronic media etc.

Most of the information required to be published proactively under this section may already be available within the public authority albeit in a scattered manner. These will need to be collected and collated to fulfil the requirement of Section 4(1)(b). Several officials are pleased with Section 4(1)(b) as it will help them streamline their own recordkeeping, monitoring and reporting procedures. Once the information is compiled and published in a suitable format it will be easy to update it.

Furthermore, not every public authority may be required to collate information under all categories of Section 4(1)(b). For example, the Finance Department in a State may not be issuing any permits or concessions. As it does not perform such functions the Finance Department will not be held at fault for not including this category of information in its Public Information Directory.

The CIC has, in one of its letters (dt. 10.05.2006) to all Ministries / Departments, stated that "it is in the interest of the public authorities to make available all the 17 manuals to the citizens, which is likely to reduce the volume of requests for information under the RTI Act".

If appropriate management information systems are developed and maintained by departments using information and communication technologies, the preparation of the information to be published at different levels annually can be a simple affair.



# DUE DILIGENCE

## What is it?

Due diligence is a process of thorough and objective examination that is undertaken before corporate entities enter into major transactions such as mergers and acquisitions, issuing new stock or other securities, project finance, securitization, etc. One of the key objectives of due diligence is to minimize, to the maximum extent practicable, the possibility of there being unknown risks or liabilities. Due Diligence can be of various types – Financial, Legal, Technical, Marketing etc. With an interdisciplinary team (comprising of engineers, MBA ), it is possible by a chartered accountant to provide an integrated due diligence services to clients

## Need for Due Diligence

Due diligence is necessary to allow the investigating party to find out everything that he needs to know about the subject of the due diligence. The objective is to allow the investigator to consider his options in light of the facts. The investigator would then have the following options open:

- (a) To withdraw from the deal - if the due diligence unearths information that makes the investment, loan or participation risky or undesirable and which cannot be adequately resolved then.
- (b) To adjust the valuation of the investment - the investigator may revise his valuation of the company or reassess the price at which it will provide services. More often, the information will be adverse and therefore the valuation will go down or the price will go up, as positive information will have been made more publicly available by the target from the start.
- (c) To have the problem remedied - it may be possible for a problem uncovered by the due diligence to be remedied before the deal goes ahead. For example, unpaid stamp duty could be paid, company filings could be put in order or, if negative information is uncovered on a principal of the target company, the investor may put pressure on the target firm to replace that individual. This will mean that the target is put into a state that the investigator is happier with before it deals with it.

## Professional Opportunities for Chartered Accountants

Typically a chartered accountant is called upon to provide following services:

- a. Financial Due Diligence (covering items of assets, liabilities, incomes and expenses)
- b. Tax (Direct and Indirect) Due Diligence
- c. Information Technology Due Diligence
- d. Other Legal Due Diligence
- e. Intangible Assets Due Diligence (e.g. patents, copyrights, licenses, and trademarks (issued and pending))
- f. FCRA Due Diligence
- g. IFRS and Indian Accounting Standard Compliance Due Diligence Process

## Review of Information

The information reviewed will include:

- a) Historical Financial Data
- b) Current Financial Data
- c) Forecasted Financial Information
- d) Business Plans
- e) Minutes of Directors' Meetings and Management Meetings
- f) Audit work paper files (if available)

- g) Contracts with suppliers, customers and staff
- h) Confirmations/representations from financiers, debtors etc.
- i) Production Data
- j) Statutory Filings Data

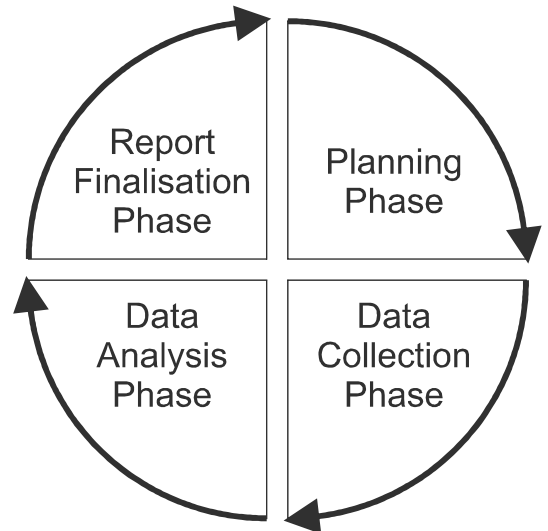
However, due diligence review should not be limited to reviewing documentation. Much can be learnt about the target from discussion with the staff (formal and informal talks), and generally attending at the target's premises and observing the ongoing daily activities. It is for this very reason that it is recommended the review be conducted by high-level experienced staff.

**Cycle of Due Diligence:**

The due diligence as a process consists of four phases, they are as follows:-

The due diligence exercise should reduce uncertainties, confirm assumptions and define scope and prioritize issues. The exercise should combine an understanding of organization, its operations, technologies, logistics, corporate strategy and finance and then summarize complex issues into concise, easily understandable terms.

The process would generally comprise of:



**1. Planning phase:** This stage includes the following processes:

**a) Defining the scope:** Prior to conducting an engagement, the due diligence team needs to learn about the specifics of the project. The due diligence team or the consultants should discuss the proposed transaction and the due diligence needs. After establishing and prioritizing clear objectives, the availability of resources should be studied and the areas on which the team has to focus on should be defined.

**b) Deciding the focus areas:** The first thing would be to decide on focus areas which normally include:

- i. Sustainability of the business: The team can understand the sustainability of the business by considering the target company's business plan, vision, strategic alliances, synergies, new products under development, new customers, order status and backlog, customer base
- ii. Financials : The key financial data to be reviewed are assets, liabilities, cash flow, Inventory turn-overs, accounts receivable., accounts payable, ownership structure , revenues and accounting procedures and policies
- iii. Competition: It is essential to understand the market environment, and the significant competitors
- iv. Management team and organization culture: The prevailing culture and the outlook and capability of the management team are of prime importance in taking a decision about the target company.
- v. Organizational Infrastructure: The organization's facilities, quality systems, personnel talent and policies should also be considered.
- vi. Potential liabilities: It is important to understand the potential risks and liabilities which an organization would face. The issues to be considered would include intellectual property rights, pending regulatory issues, liens, lawsuits etc.
- vii. Technology: It is essential to explore the technological advantage, if any, which the target company has over its competitors
- viii. Existing market and potential. It is important to gather Information about sales, distribution, marketing channels and promotional methods.

- ix. **Business to business fit:** If there is a good fit between the two businesses, it would create corporate synergy. The synergy might arise due to complementary strategy, personnel, financial situation etc.
- c) **Finalizing the team structure :** Ensure that the members who form the team are specifically chosen based on their skills and background so that the project is successful. The team members should know the relevant background information on the target company, the transaction, the industry, and due diligence objectives. The members should be clear about what information should be collected, what site visits should be conducted, what analyses should be performed, and what end products should be delivered at the end of the project.
- d) **Clear definition of responsibilities:** The due diligence effort requires integration of efforts and communication with multiple parties .It is therefore important that planning is done in such a manner that responsibilities and expected outputs are clearly defined so that the team is working collectively towards a common goal. Define the expectations from all sources like target company. Internal parties, third party sources, database searches.
- e) **Defining time schedules:** Before starting on the actual execution, it is best to define the scope, expectations and timing from each step. Scheduling the time of each key step helps achieving results in desired timeframe and helps the parties focus on the common goal.
- f) **Timely communication of information requirements :** The success of due diligence process depends upon complete, accurate and timely information. This can be made possible if the information providers are informed of the expectations from them and the timelines. Each party involved needs to provide as early and specifically as possible. For example, instead of making repeated information requests, if the target company is provided detailed information request list early, they can effectively manage the process and meet the communication timelines.
- g) **Finalize the template and tools required -** Based on scope, needs and objectives, the due diligence team should decide on tools to be used like internet database search, regulatory database search , questionnaires, worksheets and other communication methods like conducting interviews, emails etc.

## 2. Data Collection Phase:

This stage involves collecting existing business process data, key products, critical to quality services. The approach used for data collection depends on a number of factors including the desired precision and "projectability" of decision inputs, the nature of questions that need to be answered, and availability of time, money and access to information providers. Information sources can be:

- a) Internet
- b) Regulatory organizations and databases
- c) Competitors
- d) Vendors
- e) Customers
- f) Industry associations
- g) Chambers of commerce

The research can be qualitative research which is conducted via in-depth interviews with information providers. The real answer to any problem is usually two or three questions deep and therefore requires a skilled interviewer adept at probing. The quantitative research is conducted via surveys - among a sample of customers' information providers and the information from a sample is extrapolated to the entire population.

## 3. Data Analysis phase:

This stage involves analysis of the collected data and arriving at a conclusion based on critical factors like business criticality, functional complexity, technical complexity, Infrastructure requirements etc.

In life, there are no clear cut solutions. Similarly once the due diligence team has been through the process of rigorously examining an organization and its leadership; it will realize that there are no consistent set of

findings .In reviewing due diligence findings, the team may uncover some issues that lead to a favourable impression of the organization and others that cause concern. There might be few red flags too.During the course of due diligence, the team will understand the organization's financial health, its capacity to deliver in future, its reputation and its approach to working. The team will get a perspective on the leadership of the organization. The analysis of due diligence findings is generally a weighing of a variety of factors in order to determine whether team should give a positive recommendation. All the factors need to be considered and the organization should balance them to arrive at a decision.

#### **4. Report Finalization Phase**

- Once all the interviews and site visits have been completed by the due diligence team and all of the accompanying analyses performed, formalize finding into final presentation and final deliverables.
- The due diligence team prepares due diligence report and presents its conclusion that becomes an integral component of the decision-making and negotiation processes. Please refer below for a sample report.

#### **Conclusion**

The conclusion of the financial due diligence review should provide an overall evaluation of the viability of the target business following the proposed acquisition. The due diligence reports will form a valuable tool for the new owners of the business in providing an overview of the business and identification of areas of weaknesses and threats which will have to be addressed.

Each due diligence review is unique but the overall aim is to provide the investor with sufficient, relevant and timely information in order to assist in the investment decision. The due diligence exercise is not simply a number crunching exercise but involves collation of strategic non financial information which is likely to be crucial in the overall investment decision.

The successful performance of a due diligence investigation is dependent upon the scoping, co-ordination and planning of the review and the use of a highly skilled team. The cost of the preparation of a quality due diligence exercise is insignificant when compared to the cost of a bad acquisition.

#### **Sample Report of Due Diligence conducted for a NBFC intending to invest in a Company**

To,  
Board of Directors  
NBFC LTD.

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"We have completed our engagement in performing due diligence assessment (including financial and tax DUE DILIGENCE) OF \_\_\_\_\_ PRIVATE LIMITED in accordance with the terms of our engagement letter dated \_\_\_\_\_ 20xx.

#### **Objectives**

The overall objective of our engagement was to assist the by due diligence assessment (including financial due diligence) of \_\_\_\_\_ PRIVATE LIMITED in connection with your proposed investment in the target enterprise. Our on site work was conducted at the office of \_\_\_\_\_ PRIVATE LIMITED at \_\_\_\_\_ Kolkata-700\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_.

We have prepared our report highlighting the key issues noted in connection with the agreed upon procedures performed on \_\_\_\_\_ PRIVATE LIMITED in relation of financial year 20xx - xx.

We have reported broadly on matters, which we have noted, and which appeared significant to us.

Because of its special nature, our report may not be suited for any purpose other than to assist you in your evaluation of the \_\_\_\_\_ PRIVATE LIMITED and as such, is restricted for your internal use only. Additionally, our report reflects events and circumstances as they currently exist.

The terms of reference for this engagement have been established between NBFC Ltd. and us and we will not accept any responsibility whatsoever to any other party to whom the report may be shown or who may acquire

the copy of the report. If others choose to rely in a way on the content of this report, they do so entirely at their own risk.

Our report is based on enquires and discussions with management, a review of accounts and other documents made available to us, and analytical procedures applied to data provided.

We have relied on the information provided by the management and have not carried out any investigation to verify the same.

We have reviewed the accounts and affairs of the said entity while keeping in mind the overall objective of the investor. Our examination and reporting has also considered as per prescribed format of reporting but was not confined to those matters only.

Our observations, in addition to those covered in appendix, are as under:

- Company has achieved phenomenal growth in operation and requires improvement in controls.
- Our observations on the prescribed matters are mentioned in attached Schedule to this report.

FOR \_\_\_\_\_

**Date :**

**Place :**

Firm Regn. No.

[Name of the CA]

Membership No. \_\_\_\_\_

### **Schedule (referred to above)**

We have examined the registers, records, books of accounts and documents of [Name of the Company] (the Company) as required to be maintained under the Companies Act, 2013 (the Act) and the rules made thereunder, the provisions of various statutes, wherever applicable, the provisions contained in the Memorandum and Articles of Association of the Company. In my/our opinion and to the best of my/our information and according to the examination carried out by me/us and explanations furnished to me/us by the Company, its officers and agents. I/We report that in respect of the period from [period]:

- 1 The management of the Company is carried out by the Board of Directors comprising the following persons as provided in Annexure I :
- 2 During the period under review the Company has not made any alteration in the provisions of the Memorandum of Association and Article of Associations of the Company.
- 3 During the period under review no changes took place relating to the shareholding pattern of the company.
- 4 The company has during the period under review, entered into the transactions with business entities in which directors are interested. (Attached and marked as Annexure II)
- 5 The amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the period under review are within the borrowing limits of the Company. The break up of the company's borrowings are being attached herewith and marked as Annexure III.
- 6 The company has during the period under review, advanced loans, given guarantees and provided securities amounting to Rs. \_\_\_\_\_ to its subsidiary company and no advanced loans, given guarantees and securities provided to the directors.
7. The Company has during the period under review, has not made any loans and investments; or given guarantees or provided securities to other business entities.
- 8 The Company has during the period under review, not defaulted in the repayment of any public deposits or unsecured loans and the Company or its Directors are not under the Defaulter's list of Reserve Bank of India or in the Specific Approval List of ECGC.
- 9 The Company has during the period under review, created, modified or satisfied charges on the assets of the company, the details of the same is being attached herewith and marked as Annexure IV.
- 10 The Company has no Forex exposure and Overseas Borrowings during the period under review.
- 11 The Company has not declared any dividends to its shareholders.

- 12 The Company has insured fully all its assets.
- 13 The Company / Directors are not in the wilful defaulters' list of RBI.
- 14 The Company / Directors are not in the Specific Approval List of ECGC.
- 15 The Company has paid all its statutory dues and that there are no arrears.
- 16 The Company has not issued, offered and allotted any securities to the persons entitled thereto and has also issued letters, coupons, warrants and certificates thereof to the concerned persons and also the Company never redeemed any of its preference shares/debentures and bought back its shares, during the period under review.
- 17 The Company has insured all its secured assets.
- 18 The Company has complied with the terms and conditions, set forth by the lending institution at the time of availing the facility and also during the currency of the loan and has utilized the funds for the purposes for which these were borrowed.
- 19 The Company being the private limited Company and as such the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and Investments are not applicable to the Company.
- 20 The Company has complied with the applicable and mandatory Accounting Standards issued by the Institute of Chartered Accountants of India.
- 21 There is no amount lying with the Company which required be crediting or paying to the Investor Education and Protection Fund.
- 22 A list of prosecutions initiated against or show cause notices received by the Company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the Company in such cases is attached and marked as Annexure V and Annexure VI.
- 23 As the Company is an unlisted private limited Company, the various clauses of the Listing Agreement, is not applicable to the Company.
- 24 The Company has deposited both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

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

FOR \_\_\_\_\_  
 Firm Regn. No.  
 [Name of the CA]  
 Membership No. \_\_\_\_\_

**Date :**  
**Place :**

# THE MICRO, SMALL & MEDIUM ENTERPRISE DEVELOPMENT ACT, 2006

## Definition of Micro, Small and Medium Scale Enterprises:

As per the Micro, Small & Medium Enterprises Development Act (MSMED ACT) 2006, there are two categories of enterprises:

- Industrial (Manufacturing) Enterprises
- Service Enterprises

### Industrial Enterprises:

Enterprises engaged in the manufacturing or production, processing or preservation of goods are classified as "Industrial Enterprises"

An Industrial Enterprise is a:

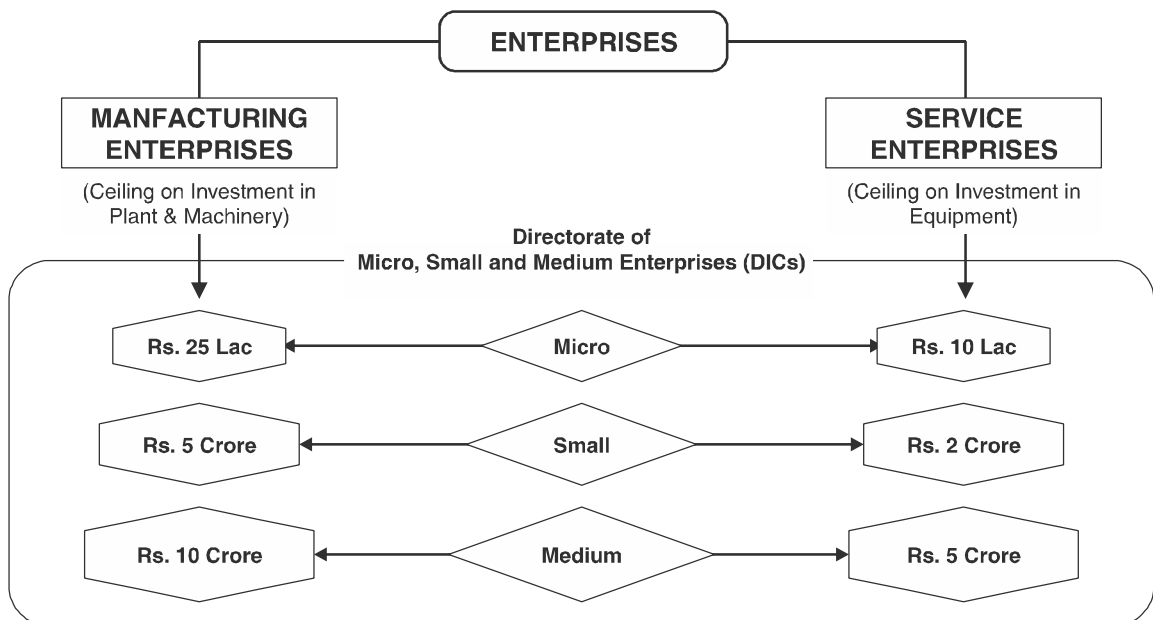
1. **Micro Enterprise:** When investment in Plant and Machinery does not exceed Rs. 25 Lakh.
2. **Small Enterprise:** More than Rs. 25 Lakh but does not exceed Rs. 5 crore.
3. **Medium Enterprise:** More than Rs. 5 crore but does not exceed Rs. 10 crore.

### Service Enterprises:

Enterprises engaged in providing or rendering of services such as small road and water transport operators, small business, professional & self employed persons, etc are classified as "Service Enterprises"

A Service Enterprise is a:

1. **Micro Enterprise:** Investment in equipment does not exceed Rs. 10Lac.
2. **Small Enterprise:** More than Rs. 10Lac but does not exceed Rs.2crore.
3. **Medium Enterprise:** More than Rs.2crores but does not exceed Rs.5crore.



## Definition of Plant and Machinery

Ministry of Small Scale Industries, Notification, New Delhi, the 5th October, 2006

S.O. 1722 (E) – In Exercise of the power conferred by sub-section (1) of section 7 of the Micro, Small and Medium Enterprise Development Act, 2006 (27 of 2006) herein referred to as the said Act, the Central Government hereby specifies the following items, the cost of which shall be excluded while calculating the investment in plant and machinery in the case of the enterprises mentioned in section 7(1)(a) of the said act, namely:-

- i. Equipment such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
- ii. Installation of Plant and Machinery;
- iii. Research and development equipment and pollution control equipment;
- iv. Power generation set and extra transformer installed by the enterprise as per the regulation of the state electricity board;
- v. Bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
- vi. Procurement or Installation of cables, wiring, bus bars, electrical control panels (not mounted on individual machines), oil circuits breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures;
- vii. Gas producer plants;
- viii. Transportation Charges (excluding sales-tax or value added tax and excise duty) for indigenous machinery from the place of their manufacture to the site of the enterprise;
- ix. Charges paid for technical know-how for erection of plant and machinery;
- x. Such storage tanks which store raw materials and finished products only and are not linked with the manufacturing process; and
- xi. Fire Fighting Equipment.

While calculating the investment in plant and machinery referred to in paragraph 1, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account provided that in the case of imported machinery, the following shall be included in calculating the value, namely:

- i. Import Duty (Excluding miscellaneous expenses such as transportation from the port to the site of the factory, demurrage and paid at the port);
- ii. Shipping Charges
- iii. Customs clearance charges; and
- iv. Sales Tax or value added tax.

### Notes:

- Investment in Plant and Machineries and other items include its original cost excluding Land and Building and the items as specified in the above notification.
- In calculating the value of Plant and Machinery for the purpose of investment limit, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account.

### Meaning of Large Scale Enterprises:

- Manufacturing Sector - Investment in Plant & Machinery should be more than Rs 10 crores.
- Service Sector- Investment in equipment should be more than Rs 5 crores.



# WBIS 2013 FOR MSMEs

## West Bengal Incentive Scheme 2013 for Micro, Small and Medium Enterprises as modified up to 22.05.15

The West Bengal Incentive Scheme 2013 for MSMEs is effective on and from the 1st April 2013 applicable in the whole state of West Bengal and remains valid for a period of 5 years ending on 31st March, 2018. This incentive scheme is specifically for MSME units except units which come under Textile Sector and have commenced production on or after 01.04.2013.

As per the scheme, entire state of West Bengal is classified into five zones for ascertainment of type and quantum of subsidy available in different areas.

A statement showing classification of the zones

ZONES	AREAS
Zone – A	Kolkata Municipal Corporation area, All Municipal areas of North 24 Parganas, All municipal areas of South 24 Parganas, All municipal areas of Howrah.
Zone – B	District of Hooghly, North 24 Parganas (excluding municipal areas and Sundarban areas), South 24 Parganas (excluding municipal areas and Sundarban areas), Howrah (excluding municipal areas), Siliguri Municipal Corporation, Municipal corporation/Municipal areas of Paschim Medinipur, Purba Medinipur, Burdwan & Nadia.
Zone – C	District of Burdwan (excluding municipal corporation/municipal areas), Purba Medinipur (excluding municipal corporation/municipal areas), Nadia (excluding municipal corporation/municipal areas), Malda, Jalpaiguri, Murshidabad and Darjeeling (excluding Siliguri Municipal Corporation)
Zone – D	District of Birbhum, Purulia, Bankura, Paschim Medinipur (excluding Municipal corporation/municipal areas), Uttar Dinajpur, DakshinDinajpur, and Sundarban areas of South and North 24 Parganas districts.
Zone-E	Cooch Behar District

The WBIS 2013 as modified up to 22.05.15 for MSMEs shall generally be applicable to all micro, small and medium enterprises in the manufacturing sector which have started production on or after 1st day of April 2013. The units may be in the private sector, cooperative sector and joint sector undertaking as also companies/undertakings owned and managed by the State Government and the Industrial SHGs. If an existing industrial unit sets up a branch as second/third unit etc. in different location in the state and manufactures new items, its second/third unit etc will only be treated as a new industrial unit provided EM (Part-II) is filed for the same.

*Note: New unit is eligible for subsidy. Expansion project whether same or new product at the existing location is not eligible under this scheme. However, expansion at new location with new product is covered and eligible for subsidy.*

### Types of Subsidy Available

#### 1) STATE CAPITAL INVESTMENT SUBSIDY

Type of Enterprise	Zone	Percentage / Max. Limit
Micro Enterprise	Zone C	25% of the FCI
Micro Enterprise	Zone D	40% of the FCI
Micro Enterprise	Zone-E	60% of the FCI
Small Enterprise	Zone- C	15% (Max Rs. 50 Lakhs)
Small Enterprise	Zone- D	30% (Max Rs. 50 Lakhs)
Small Enterprise	Zone-E	40% (Max Rs 75 Lakhs)

- “Fixed Capital Investment (FCI) “means investment made in plant & machinery in an approved project of the eligible unit/enterprise on or after 1st April, 2012.
- 20% additional subsidy on capital investment subsidy for all Micro and Small enterprises wholly owned by Women, SC/ST and minority community entrepreneurs.
- These entrepreneurs will also be entitled to Capital Investment subsidy for setting up of units in Zone A & B as follows : Micro Unit – 15% & Small Unit – 10% of FCI.

- The Subsidy normally admissible and additional subsidy taken together will not exceed Rs. 50.00 Lakh for a small enterprise located in Zone C & D area & will not exceed Rs 75 Lakh for a small Enterprise located in Zone E area.

*Note: State Capital Investment subsidy is not available for unit which comes under Zone- A and B. Further capital subsidy is also not available for unit which comes under medium scale for any zone.*

## 2) INTEREST SUBSIDY ON TERM LOAN

### Micro & Small Enterprise

- Interest Subvention of 6% for units in Zone – A & B and 7.5% for units in Zone - C, D & E for 5 years on Term Loan only.

### Medium Enterprise

- Zone B & C – 25 % of interest paid on Term Loan subject to a ceiling of Rs. 175.00 Lakh per year for 5 years.
- Zone D & E – 25 % of interest paid on Term Loan subject to a ceiling of Rs. 175.00 Lakh per year for 7 years.

*Note: Interest subsidy is not available for Medium enterprise which comes under Zone- A.*

## 3) ELECTRICITY DUTY

### Micro & Small Enterprise

- 50% waiver of electricity duty for Zone - A & B and 75% for Zone C,D & E for 5 years from the date of commencement of commercial production,
- The units set up in any zone and wholly owned by women, SC/ST & minority community entrepreneurs will be eligible for 100 % waiver for 5 years.

### Medium Enterprise

- Zone B & C – 100% waiver of electricity duty on the electricity consumption for 5 years from the date of commencement of commercial production subject to a maximum of Rs. 25.00 Lakh per year or Rs. 1.25 Crore in 5 years.
- Zone D & E – 100% waiver of electricity duty on the electricity consumption for 5 years and 75% waiver from the 6th year up to 10th year from the date of commencement of commercial production subject to a maximum of Rs. 50.00 Lakh per year or Rs. 2.50 crore in 5 years.

*Note: Electricity duty waiver benefit is not available to Medium enterprise comes under Zone- A.*

## 4) POWER SUBSIDY

### Micro, Small, and Medium Enterprise

- Subsidy of Re. 1.00 / Kwh for unit comes under Zone A & B.
- Subsidy of Rs. 1.50/ Kwh for unit located in Zone C,D & E for 5 years from the date of commencement of production; subject to a ceiling of Rs 20 Lakh for small enterprises, Rs. 30 Lakh for medium enterprises per year which is payable annually.

## 5) INCENTIVE FOR ENERGY EFFICIENCY

### Micro & Small Enterprise

- 50% re-imbusement of the cost of energy audit undertaken by a certified agency to be available after implementation of the recommendations.
- 25% reimbursement of the cost of installations for energy conservation as per energy audit subject to a ceiling of Rs. 2 Lakh.

## 6) SUBSIDY ON STAMP DUTY & REGISTRATION FEE-

If Stamp duty and Registration fees is paid for the purpose of registration of documents with in the state relating to purchase of land/or building for setting up of the approved project, the available benefits are as under:-

### Micro & Small Enterprise

100% for Zone D&E, 75% for Zone C, 50% for Zone B and 25% for Zone A

### Medium Enterprise

Under Zone B, C, D & E refund of Stamp duty @ 75%

## 7) REFUND OF ENTRY TAX (ET)

### Micro, Small & Medium Enterprise

- An unit is entitled for refund of ET on procurement of plant and machinery which payable after commencement of commercial production.
- Refund of ET on procurement of raw materials for the initial period of 3 years . The refund will be made available after the commencement of commercial production.

## 8) REFUND OF VALUE ADDED TAX (VAT)

### Micro, Small & Medium Enterprise

- Zone B & C – 80% VAT refund paid for 8 years from the date of commencement of commercial production or 75% of Fixed Capital Investment whichever reaches earlier.
- Zone D&E – 90% VAT refund paid for 8 years from the date of commencement of commercial production or 75% of Fixed Capital Investment whichever reaches earlier.

Note: Refund of VAT is not available for all MSME units which come under Zone- A.

## 9) REFUND OF CENTRAL SALES TAX (CST)

### Micro, Small & Medium Enterprise

- Total refund of CST for a period of 3 years from the date of commencement of commercial production.

## 10) SUBSIDY FOR WATER CONSERVATION / ENVIRONMENT COMPLIANCE

### Micro or Small Enterprise

- Reimbursement of 50% of expenditure incurred by an eligible unit towards cost of captive Effluent Water Treatment Plant (Max Rs. 2.00 Lakh) for water conservation/ pollution control devices.

## 11) SUBSIDY FOR STANDARD QUALITY COMPLIANCE

### Micro & Small Enterprise

50% of cost subject to a ceiling of Rs. 5.00 Lakh for obtaining ISI/ BIS certification / ISO-9000/ ISO-14000/ ISO – 14001 / ISO-18000 certification from approved Institutions / Research Laboratories.

## 12) WORK FORCE WELFARE ASSISTANCE

### Micro, Small & Medium Enterprise

- Reimbursement of 100% in 1st year & 75% in the remaining years of expenditure incurred towards Employees State Insurance (ESI) and Employees Provident Fund (EPF) if at least 50% of the employees in the enterprise are recruited from amongst the persons registered with Employment Bank of the State, the period of assistance are as follows:
- Zone B- 5 yrs.
- Zone C- 7 yrs.
- Zone D&E- 9 yrs.

**13) SUBSIDY FOR PATENT REGISTRATION:**

**Micro, Small & Medium Enterprises**

Reimbursement of 50% of the expenditure incurred by it for obtaining Patent Registration for its products subject to a maximum of Rs. 5 Lakh.

**14) NEGATIVE LIST OF INDUSTRIES**

The WBIS 2013 for MSMEs as modified up to 22.05.15 is not applicable in case of the following industries:

- Sponge Iron Factory
- Bricks (Excluding Fly Ash bricks, Sand lime Bricks, Refractory Bricks)
- Bought leaf Tea Processing Factory
- Any other industry notified by the State Govt. for its inclusion in this list

15) *In the event of WBST Act 1956/ WBVAT Act 2013/ CST Act 1956/ Entry Tax Act being replaced by any other Act, the provision of the Scheme will apply mutatis mutandis even after the new Act comes into force.*

# THE INFORMATION TECHNOLOGY ACT, 2000

## [As Amended by Information technology (Amendment) Act 2008]

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000. This Act was amended by Information Technology Amendment Bill 2006, passed in Lok Sabha on Dec 22nd and in Rajyasbha on Dec 23rd of 2008.

This is an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The Information Technology (Amendment) Bill, 2015 would further amend Section 66A in light of difficulties in its implementation.

### **DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE (AMENDED VIDE ITAA 2008) CHAPTER-II]**

This chapter gives legal recognition to electronic records and digital signatures. It contains only section 3. The section provides the conditions subject to which an electronic record may be authenticated by means of affixing digital signature.

### **ELECTRONIC GOVERNANCE [CHAPTER III]**

This chapter is one of the most important chapters. It specifies the procedures to be followed for sending and receiving of electronic records and the time and the place of the dispatch and receipt. This chapter contains sections 4 to 10.

- Section 4 provides for "legal recognition of electronic records".
- Section 5 provides for Legal recognition of Electronic Signature:
- Section 6 lays down the foundation of Electronic Governance.
- Section 6A deals with Delivery of Services by Service Provider (Inserted vide ITAA-2008):
- Section 7 provides that the documents, records or information which is to be retained for any specified period shall be deemed to have been retained if the same is retained in the electronic form
- Section 7A deals with Audit of Documents etc in Electronic form
- Section 8 provides for the publication of rules, regulations and notifications in the Electronic Gazette.
- Section 9 of the Act provides that the conditions stipulated in sections 6, 7 and 8 shall not confer any right to insist that the document should be accepted in an electronic form by any Ministry or department of the Central Government or the State Government.
- Section 10 deals with the power to make rules by Central Government in respect of Electronic Signature (Modified Vide ITAA 2008:)
- Section 10A provides validity of contracts formed through electronic means (Inserted by ITAA 2008)

### **ATTRIBUTION, ACKNOWLEDGMENT AND DISPATCH OF ELECTRONIC RECORDS [CHAPTER IV]**

Chapter IV of the Act deals with attribution, receipt and dispatch of electronic records.

- Section 11 provides for Attribution of Electronic Records:
- Section 12 provides for the manner in which acknowledgement of receipt of an electronic record by various modes shall be made. As per ITAA 2008.

Section 13 provides for the manner in which the time and place of despatch and receipt of electronic record sent by the originator shall be identified.

## **SECURE ELECTRONIC RECORDS AND SECURE ELECTRONIC SIGNATURES [CHAPTER V]**

Chapter V sets out the conditions that would apply to qualify electronic records and digital signatures as being secure. It contains sections 14 to 16.

Section 14 provides where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Section 15 provides for the security procedure to be applied to Digital Signatures for being treated as a secure digital signature.

Section 16 provides for the power of the Central Government to prescribe the security procedure in respect of secure electronic records and secure digital signatures.

## **REGULATION OF CERTIFYING AUTHORITIES (CHAPTER VI)**

Chapter VI contains detailed provisions relating to the appointment and powers of the Controller and Certifying Authorities. It contains sections 17 to 34.

## **ELECTRONIC SIGNATURE CERTIFICATES [CHAPTER VII]**

Chapter VII of the Act contains Sections 35 to 40.

Section 35 lays down the procedure for issuance of a Digital Signature Certificate.

Section 36 requires that while issuing a Digital Signature Certificate, the Certifying Authority should certify that it has complied with the provisions of the Act, the rules and regulations made there under and also with other conditions mentioned in the Digital Signature Certificate. Section 37 deals with the Suspension of Digital Signature Certificate

Section 38 provides for the revocation of Digital Signature Certificates under certain circumstances.

Section 39 deals with the process of notice of suspension or revocation:

## **DUTIES OF SUBSCRIBERS [CHAPTER VIII]**

This Chapter contains sections 40 to 42. It specifies duties of subscribers.

## **PENALTIES AND ADJUDICATION [CHAPTER IX]**

Chapter IX contains sections 43 to 47. It provides for awarding compensation or damages for certain types of computer frauds. It also provides for the appointment of Adjudication Officer for holding an inquiry in relation to certain computer crimes and for awarding compensation. Sections 43 to 45 deal with different nature of penalties.

Section 43 deals with penalty for damage to computer, computer system, etc

Section 44 deals with penalty for failure to furnish information, return, etc.:

Section 45 provides for residuary penalty. Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees. As per ITAA 2008,

Section 46 confers the power to adjudicate contravention under the Act to an officer not below than the rank of a Director to the Government of India or an equivalent officer of a State Government.

Section 47 provides that while deciding upon the quantum of compensation, the adjudicating officer shall have due regard to the amount of gain of unfair advantage and the amount of loss caused to any person as well as the respective nature of the default.

Section 48	provides for establishment of one or more Appellate Tribunals to be known as Cyber Regulations Appellate Tribunals.
Section 49	lays out the Composition of Cyber Appellate Tribunal (Substituted vide ITAA 2008):
Section 50	deals with qualifications for appointment as Chairperson and Members of Cyber Appellate Tribunal (Substituted vide ITAA 2006):
Section 51	deals with the Term of office, conditions of service etc of Chairperson and Members (Substituted vide ITAA 2008)
Section 52	provides for the salary and allowances and other terms and conditions of service of the presiding Officer.
Section 52A	provides powers of superintendence, direction, etc (Inserted vide ITAA 2008)
Section 52B	deals with distribution of Business among Benches (Inserted vide ITAA 2008)
Section 52C	deals with Powers of the Chairperson to transfer cases (Inserted vide ITAA 2008)
Section 52D	says it is decision by majority (Inserted vide ITAA 2008)
Section 53	provides that in the situation of any vacancy occurring in the office of the Presiding officer of Cyber Regulations Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act.
Section 54	deals with resignation and removal (Amended vide ITAA 2008)
Section 55	lays out that orders constituting Appellate Tribunal to be final and not to invalidate its proceedings (Inserted vide ITAA 2008)
Section 58	deals with Procedure and Powers of the Cyber Appellate Tribunal
Section 59	says the appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal Limitation.
Section 61	provides restriction on the Civil court (Amended vide ITAA 2008)
Section 62	details procedures for Appeal to High court:
Section 63	provides that any contravention under the Act may be compounded by the Controller or adjudication officer, either before or after the institution of the adjudication proceedings subject to such conditions as he may impose.
Section 64	provides for recovery of penalty as arrears of land revenue and for suspension of the license or Digital Signature Certificate till the penalty is paid.

## **OFFENCES [CHAPTER XI]**

Chapter XI deals with some computer crimes and provides for penalties for these offences. It contains sections 65 to 78.

Section 65	provides for punishment up to three years or with a fine which may extend to Rs. 2 lakhs or with both whoever knowingly or intentionally tampers with the computer code source documents.
Section 66	relates to computer Related Offences (Substituted vide ITAA 2008)
Section 66 A	provides for punishment for sending offensive messages through communication service, etc. (Introduced vide ITAA 2008)
Section 66 B	provides for punishment for dishonestly receiving stolen computer resource or communication device (Inserted Vide ITA 2008)
Section 66C	deals with punishment for identity theft. (Inserted Vide ITA 2008)

- Section 66D deals with punishment for cheating by personation by using computer resource (Inserted Vide ITA 2008)
- Section 66E deals with punishment for violation of privacy. (Inserted Vide ITA 2008)
- Section 66F deals with punishment for cyber terrorism:
- Section 67 provides for punishment for publishing or transmitting obscene material in electronic form (Amended vide ITAA 2008)
- Section 67 A provides for punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form (Inserted vide ITAA 2008)
- Section 67 B provides for punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form
- Section 67 C deals with preservation and retention of information by intermediaries.
- Section 68 provides that the controller may give directions to a Certifying Authority or any employee of such authority to take such measures or cease carrying on such activities as specified in the order, so as to ensure compliance with this law.
- Section 69 empowers the Controller, if he is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, security of the State, friendly relation with foreign states or public order, to intercept any information transmitted through any computer system or computer network.
- Section 69 A lays out power to issue directions for blocking for public access of any information through any computer resource
- Section 69B lays out power to authorize to monitor and collect traffic data or information through any computer resource for Cyber Security.
- Section 70 empowers the appropriate Government to declare by notification any computer, computer system or computer network to be a protected system. Any unauthorized access of such systems will be punishable with imprisonment which may extend to ten years or with fine.
- Section 70 A deals with the formation of the National nodal agency. (Inserted vide ITAA 2008):
- Section 70 B says that the Indian Computer Emergency Response Team to serve as national agency for incident response
- Section 71 deals with penalty for misrepresentation.
- Section 72 provides a punishment for breach of confidentiality and privacy of electronic records, books, information, etc. by a person who has access to them without the consent of the person to whom they belong
- Section 72 A deals with punishment for Disclosure of information in breach of lawful contract.
- Section 73 provides punishment for publishing a Digital Signature Certificate false in material particulars or otherwise making it available to any other person
- Section 74 provides for punishment to a person whoever knowingly publishes for fraudulent purpose any Digital Signature Certificate.
- Section 75 provides for punishment for commission of any offence or contravention by a person outside India irrespective of his nationality if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.
- Section 76 provides for confiscation of any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto in respect of contravention of any provision of the Act, rules, regulations or orders made there under.
- Section 77 further provides that penalty and confiscation provided under this Act shall not interfere with



other punishments provided under any other law for the time being in force. Section 77 A deals with compounding of offences.

Section 77 B provides that offences with three years imprisonment to be cognizable.

Section 78 provides that a police officer not below the rank of Inspector shall investigate any offence under this Act. (Amended Vide ITAA 2008)

### **INTERMEDIARIES NOT TO BE LIABLE IN CERTAIN CASES (SUBSTITUTED VIDE ITA-2006) [CHAPTER XII]**

Chapter XII contains section 79 which provides that the Network Service Providers shall be liable for any third party information or data made available by him if he proves that the offence was committed without his knowledge or consent.

### **MISCELLANEOUS [CHAPTER XIII]**

Section 80 deals with Power of Police Officer and Other Officers to Enter, Search, etc.:

Section 84 A says that the Central Government may, for secure use of the electronic medium and for promotion of e-governance and e-commerce, prescribe the modes or methods for encryption

Section 84 B deals with punishment for abetment of offences (Inserted Vide ITA-2008)

Section 84 C deals with punishment for attempt to commit offences (Inserted Vide ITA-2008).

Section 85 with offences by Companies.

Section 87-90 deals with the power of Central and State Government to make rules and constitution of the advisory committee.

### **The Information Technology Rules, 2011**

Four sets of Rules have been introduced under the Information Technology Act, 2000, as amended by the Information Technology (Amendment) Act, 2008.

- The Security Practices Rules require entities holding sensitive personal information of users to maintain certain specified security standards.
- The Intermediary Guidelines Rules prohibit content of specific nature on the internet. An intermediary, such as a website host, is required to block such content.
- The Cyber Café Rules require cyber cafés to register with a registration agency and maintain a log of identity of users and their internet usage.
- Under the Electronic Service Delivery Rules the government can specify certain services, such as applications, certificates, licenses etc, to be delivered electronically.

# UNDERSTANDING STARUP INDIA ACTION PLAN 2016

## Start-up Definition

Typically any new business initiative may be referred to as a start-up. Such businesses have high growth potential and scalability. They continuously work around innovative and disruptive business models. This term became quite common in later 1990s at the time of the dot-com bubble which saw emergence of several internet based company. However, Start-ups need not be necessarily in a technology sector. They may also be in manufacturing sector, services sector etc. but in order to achieve scalability and high growth they need to leverage technology to their best. The word start-up has now been recognised by the Government of India. According to notification no. G.S.R. 180(E) dated 17th February, 2016 issued by Ministry of Commerce and Industry (Department of Industrial Policy and Promotion), Government of India - an entity shall be considered as a 'start-up' on satisfaction of the following conditions -

- (i) it's age is within five years from the date of it's incorporation / registration
- (ii) it's turnover is upto Rs.25 Crore (maximum) in all the financial years. The term 'turnover' has been defined in Section 2(91) of the Companies Act, 2013. It means the aggregate value of realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the entity during a financial year.
- (iii) it is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize:-
  - (a) a new product or service or process, or
  - (b) significantly improved existing product or service or process, that will create or add value for customers or workflow.

Mere act of developing products or services or processes which do not have potential for commercialization or undifferentiated products or services or processes or products or services or processes with no or limited incremental value for customers or workflow, would not be considered as to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property and hence such acts will not be covered by this definition.
- (iv) it must not be formed by splitting up or reconstruction of a business already in existence
- (v) it must either be a private limited company (as defined in the Companies Act, 2013) or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2002)
- (vi) for the purpose of claiming tax benefits it must obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification consisting of following three representations :
  - (a) Joint Secretary, Department of Industrial Policy and Promotion
  - (b) Representative of Department of Science and Technology
  - (c) Representative of Department of Biotechnology

The Inter-Ministerial Board setup by DIPP shall validate the innovative nature of the business for granting tax related benefits Approval from the Inter-Ministerial Board shall not in any manner, limit or absolve the entity(ies) from any liability incurred in case of any misrepresentation/ fraud arising from submission of such application and/ or supporting such application.

## Procedure of Registration

The application can be submitted at the Start Up India portal <http://startupindia.gov.in/>. DIPP has recognised 497 entities as start up as on 7th December, 2016. For registration as a Start Up the entity should:-

- (a) be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator established in a post-graduate college in India; or
- (b) be supported by an incubator which is funded (in relation to the project) from GoI as part of any specified scheme to promote innovation; or
- (c) be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator recognized by GoI; or
- (d) be funded by an Incubation Fund/Angel Fund/ Private Equity Fund/ Accelerator/Angel Network duly registered with SEBI\* that endorses innovative nature of the business; or
- (e) be funded by GoI as part of any specified scheme to promote innovation; or
- (f) have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

(DIPP may publish a 'negative' list of funds which are not eligible for this initiative)

## **Startup India Action Plan 2016**

The Startup India Action Plan 2016 proposes several schemes and Incentives to boost the startup ecosystem in the Country and is concentrated into three broad agenda as follows :-

### **A. Simplification and Handholding**

### **B. Funding Support and Incentives**

### **C. Industry-Academia Partnership and Incubation**

**The agenda of Simplification and Handholding is further divided into six focus areas which are as follows :-**

1. Compliance Regime based on Self-certification
2. Startup India Hub
3. Rolling out of Mobile App and Portal
4. Legal Support and Fast-tracking Patent Examination at Lower Costs
5. Relaxed Norms of Public Procurement for Startups
6. Faster Exit for Startups

**Initiatives relating to Funding Support and Incentives have been categorized into five focus areas which are as follows :-**

1. Providing Funding Support through a Fund of Funds with a Corpus of INR 10,000 crore
2. Credit Guarantee Fund for Startups
3. Tax Exemption on Capital Gains
4. Tax Exemption to Startups for 3 years
5. Tax Exemption on Investments above Fair Market Value

**The issue of Industry-Academia Partnership and Incubation has been addressed by eight focus areas which are as follows :-**

1. Organizing Startup Fests for Showcasing Innovation and Providing a Collaboration Platform
2. Launch of Atal Innovation Mission (AIM) with Self-Employment and Talent Utilization (SETU) Program
3. Harnessing Private Sector Expertise for Incubator Setup

4. Building Innovation Centres at National Institutes
5. Setting up of 7 New Research Parks Modeled on the Research Park Setup at IIT Madras
6. Promoting Startups in the Biotechnology Sector
7. Launching of Innovation Focused Programs for Students
8. Annual Incubator Grand Challenge

## 1. Compliance Regime based on Self-certification

The very first step in the action plan is to reduce the regulatory compliance burden on Startups so that they can easily focus on their core business and work on a low compliance cost. Generally, new and small firms are unaware of nuances of the complex regulatory formalities requiring compliance with various labour and environment laws which are also time consuming and difficult in nature. Hence it is an initiative to reduce the compliance burden of Startups and introduce simplifications in the regulatory regime. Accordingly, the process of conducting inspections shall be made more meaningful and simple. It has been specifically provided that startups shall be allowed to self-certify compliance with the following nine labour and environmental laws :-

### *Labour Laws:*

1. The Building and Other Constructions Workers' (Regulation of Employment & Conditions of Service) Act, 1996
2. The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979
3. The Payment of Gratuity Act, 1972
4. The Contract Labour (Regulation and Abolition) Act, 1970
5. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
6. The Employees' State Insurance Act, 1948

### *Environment Laws:*

7. The Water (Prevention & Control of Pollution) Act, 1974
8. The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003
9. The Air (Prevention & Control of Pollution) Act, 1981

### *Note :*

1. No inspections will be conducted for a period of 3 years w.r.t labour laws. Startups may be inspected on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.
2. Startups which fall under the 'white category' (as defined by the Central Pollution Control Board) would be able to self-certify compliance and only random checks would be carried out in such cases w.r.t environmental laws.

## 2. Startup India Hub

The Government has recognized the potential of Young Indians today who have the conviction to venture out on their own and it has also recognized the fact that a conducive ecosystem is pre-requisite to convert their dreams into reality. At present probably we have the highest number of Startups and entrepreneurs than ever before in our history. It is indeed a concern that many do not reach their full potential due to limited guidance and access and hence the need for an All-India Start Up Hub. This Hub is planned to serve as a single contact point for start-up foundations in India and to help the entrepreneurs to exchange knowledge and access financial aid. The "Startup India" movement focuses on creating the much desired entrepreneurial ecosystem in India. The core function areas of the Startup Hub are as follows :-

- (a) Work in a hub and spoke model and collaborate with Central & State governments, Indian and foreign VCs, angel networks, banks, incubators, legal partners, consultants, universities and R&D institutions
- (b) Assist Startups through their lifecycle with specific focus on important aspects like obtaining financing, feasibility testing, business structuring advisory, enhancement of marketing skills, technology commercialization and management evaluation
- (c) Organize mentorship programs in collaboration with government organizations, incubation centers, educational institutions and private organizations who aspire to foster innovation.

The toll free contact of Startup India Hub is 1800115565. [Working Hours :10:00 AM to 5:30 PM (Monday to Friday)]. The email id of Startup India Hub is dipp-startups@nic.in. An Startup may also apply for advertising its product/ services at Start Up India Portal.

### **3. Rolling out of Mobile App and Portal**

In order to commence operations, Startups require registration with relevant regulatory authorities. Delays or lack of clarity in registration process may lead to delays in establishment and operations of Startups, thereby reducing the ability of the business to get bank loans, employ workers and generate incomes. Enabling registration process in an easy and timely manner can reduce this burden significantly. Besides, Startups often suffer from the uncertainty regarding the exact regulatory requirements to set up its operations. In order to ensure that such information is readily available, it is intended that a checklist of required licenses be made available. Towards these efforts, the Government introduces a Mobile App to provide on-the-go accessibility for the following :-

- (a) Registering Startups with relevant agencies of the Government. A simple form shall be made available for the same.
- (b) The Mobile App shall have backend integration with Ministry of Corporate Affairs and Registrar of Firms for seamless information exchange and processing of the registration application
- (c) Tracking the status of the registration application and anytime downloading of the registration certificate.
- (d) A digital version of the final registration certificate shall be made available for downloading through the Mobile App
- (e) Filing for compliances and obtaining information on various clearances/ approvals/ registrations required
- (f) Collaborating with various Startup ecosystem partners. The App shall provide a collaborative platform with a national network of stakeholders (including venture funds, incubators, academia, mentors etc.) of the Startup ecosystem to have discussions towards enhancing and bolstering the ecosystem
- (g) Applying for various schemes being undertaken under the Startup India Action Plan.

The Startup portal shall have similar functionalities (being offered through the mobile app) using a richer web-based User Interface.

### **4. Legal Support and Fast-tracking Patent Examination at Lower Costs**

Intellectual Property Rights (IPR) is a strategic business tool for any business organization to enhance industrial competitiveness and this is more so for a startup. This area of focus is aimed at promoting awareness and adoption of IPRs by Startups and facilitating them in protecting and commercializing the IPRs by providing access to high quality IP services and resources. The scheme for Startup Intellectual Property Protection (SIPP) shall facilitate filing of Patents, Trademarks and Designs by innovative Startups. Initially this scheme is being launched on a pilot basis for 1 year.-The measures being taken in this regard include the following :-

- (a) Fast-tracking of Startup patent applications – Post patenting, the valuation of any innovation shoots up by default. Hence the need to take up, examine and dispose off a patent

- (b) The patent application of Startups shall be fast-tracked for examination and disposal, so that they can realize the value of their IPRs at the earliest possible.
- (c) Panel of facilitators to assist in filing of IP applications: For effective implementation of the scheme, a panel of “facilitators” shall be empanelled by the Controller General of Patents, Designs and Trademarks (CGPDTM), who shall also regulate their conduct and functions. Facilitators will be responsible for providing general advisory on different IPRs as also information on protecting and promoting IPRs in other countries. They shall also provide assistance in filing and disposal of the IP applications related to patents, trademarks and designs under relevant Acts, including appearing on behalf of Startups at hearings and contesting opposition, if any, by other parties, till final disposal of the IPR application
- (d) Government to bear facilitation cost: Under this scheme, the Central Government shall bear the entire fees of the facilitators for any number of patents, trademarks or designs that a Startup may file, and the Startups shall bear the cost of only the statutory fees payable.
- (e) Rebate on filing of application: Startups shall be provided an 80% rebate in filing of patents vis-à-vis other companies. This will help them pare costs in the crucial formative years.

## 5. Relaxed Norms of Public Procurement for Startups

Public Procurement is a huge scope for any Startup but most Startups do not meet the eligibility conditions in such cases. From and onwards 1st April, 2015 Central Government, State Government and PSUs have to mandatorily procure at least 20% from the Micro Small and Medium Enterprise (MSME). Generally the eligibility conditions of such procurement tenders provide for either “prior experience” or “prior turnover”. Such a condition restricts Startups from participating in such tenders. Hence an effort has been made to provide an equal platform to Startups (in the manufacturing sector) vis-à-vis the experienced entrepreneurs/ companies in case of public procurement. Accordingly, it has been decided to exempt such Startups from the criteria of “prior experience/ turnover” without any relaxation in quality standards or technical parameters. However, such Startups will have to demonstrate requisite capability to execute the project as per the requirements and should have their own manufacturing facility in India.

## 6. Faster Exit for Startups

It cannot be ignored that several Startups fail in their venture. Exit or Winding up is sometimes very cumbersome due to regulatory framework. Delay in exit process leads to a situation where the capital invested and resources created become idle and unproductive as they get stuck in a unviable business. Hence, the need to quickly reallocate capital and resources to more productive avenues and for this we need a swift and a simple process. Only then the entrepreneurs can be encouraged to experiment with new and innovative ideas and take the risk as there will be no fear of facing a complex and long-drawn exit process and they can easily shift the capital and resources towards better opportunities.

The Insolvency and Bankruptcy Board of India (IBBI) has already been established on 1st October, 2016 in accordance with the provisions of The Insolvency and Bankruptcy Code, 2016. The Preamble of the Insolvency and Bankruptcy Code describes the basic functions of the Insolvency and Bankruptcy Code as “...to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Code of India, and for matters connected therewith or incidental thereto.”. The new system provides for fast track and / or voluntary closure of businesses. Startups with simple debt structures or those meeting specified criteria may be wound up within a period of 90 days from making of an application for winding up on a fast track basis. In such instances, an insolvency professional shall be appointed for the Startup, who shall be in charge of the company for liquidating its assets and paying its creditors. On appointment of the insolvency professional, the liquidator shall be responsible for the swift closure of the business, sale of assets and repayment of creditors in accordance with the law and keeping the concept of limited liability intact.

IBBI has notified today the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. These regulations inter alia provide for registration, regulation and oversight of insolvency professionals under the Code. These regulations shall come into effect from 29th November, 2016.

The following categories of individuals are eligible for registration as an insolvency professional:

- (a) Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 10 years' of post-membership experience (practice or employment) or a Graduate with 15 years' of post-qualification managerial experience, on passing the Limited Insolvency Examination.
- (b) Any other individual on passing the National Insolvency Examination.

However, Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with more than 15 years' of practice experience may seek registration, without any examination. But applications for such registration need to be made till 31st December, 2016 and such registration shall be valid for a limited period of six months.

## **7. Fund of Funds with a Corpus of INR 10,000 crore**

Access to finance has always been a major concern and it becomes a key issue when we talk about entrepreneurs and that too Startups and MSMEs and SMEs. The primary reason is that entities like Startups do not have collaterals or existing cash flows and hence they cannot beat the initial eligibility conditions of a standard loan process. Furthermore, their risk element is also high due to their innovativeness. In order to provide funding support to Startups, Government has set up a fund with an initial corpus of Rs.2,500 crore and a total corpus of Rs.10,000 crore over a period 4 years (i.e. Rs.2,500 crore per year) . The Fund will be in the nature of Fund of Funds, which means that it will not invest directly into Startups, but shall participate in the capital of SEBI registered Venture Funds. The key features of the Fund of Funds are as follows:

- (a) It shall be managed by a Board with private professionals drawn from industry bodies, academia, and successful Startups
- (b) Life Insurance Corporation (LIC) shall be a co-investor in this Fund
- (c) It shall contribute to a maximum of 50% of the stated daughter fund size. In order to be able to receive the contribution, the daughter fund should have already raised the balance 50% or more of the stated fund size as the case maybe.
- (d) It shall have representation on the governance structure/ board of the venture fund based on the contribution made.
- (e) It shall support a broad mix of sectors such as manufacturing, agriculture, health, education, etc.

## **8. Credit Guarantee Fund for Startups**

Credit guarantee comfort to Startups help the flow of Venture Debt from the formal Banking System. Debt funding to Startups is also considered as a high risk area and hence it is necessary to encourage Banks and other Lenders to provide Venture Debts to Startups. In this line Credit guarantee mechanism through National Credit Guarantee Trust Company (NCGTC)/ SIDBI has been envisaged with a budgetary Corpus of Rs.500 crore per year for the next four years. It is expected that this initiative will overcome traditional Indian stigma associated with failure of Startup enterprises in general and foster the experimentation among Startup entrepreneurs through disruptive business models.

## **9. Tax Exemption on Capital Gains**

Due to their high risk nature, Startups are not able to attract investment in their initial stage. It is therefore important that suitable incentives are provided to investors for investing in the Startup ecosystem. With this objective, exemption shall be given to persons who have capital gains during the year, if they have invested such capital gains in the Fund of Funds recognized by the Government. This will augment the funds available to various VCs/AIFs for investment in Startups. In addition, existing capital gain tax exemption for investment in newly formed manufacturing MSMEs by individuals shall be extended to all Startups. Currently, such an entity needs to purchase "new assests" with the capital gain received to avail such an exemption. Investment in 'computer or computer software' (as used in core business activity) shall also be considered as purchase of 'new assets' in order to promote technology driven Startups. This initiative will encourage investments into Startups by mobilizing the capital gains arising from sale of capital assets.

According to Finance Act, 2016 Section 54EE shall be inserted after existing Section 54ED w.e.f. 1st April, 2017. It provides as follows :-

54EE. (1) Where the capital gain arises from the transfer of a long-term capital asset (herein in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, namely:—

- (a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45:

Provided that the investment made on or after the 1st day of April, 2016, in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees:

Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from the transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

(2) Where the long-term specified asset is transferred by the assessee at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred.

Explanation 1 — In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have transferred such specified asset on the date on which such loan or advance is taken.

Explanation 2 — For the purposes of this section —

- (a) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;
- (b) "long-term specified asset" means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf. '.

Further, according to Finance Act, 2016 Section 54GB shall be amended. It provides that in section 54GB of the Income-tax Act, with effect from the 1st day of April, 2017 : —

(a) after sub-section (5), the following proviso shall be inserted, namely:—

"Provided that in case of an investment in eligible start-up, the provisions of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2017", the figures, letters and words "31st day of March, 2019" had been substituted;";

(b) in sub-section (6),—



- (i) in clause (b),—
  - (A) in sub-clause (ii), after the words “an article or a thing”, the words “or in an eligible business” shall be inserted;
  - (B) in sub-clause (iv), after the words and figures “Micro, Small and Medium Enterprises Act, 2006”, the words “or is an eligible start-up” shall be inserted;
- (ii) after clause (b), the following clause shall be inserted, namely:—
  - ‘(ba) “eligible start-up” and “eligible business” shall have the meanings respectively assigned to them in Explanation below sub-section (4) of section 80-IAC.’;
- (iii) after clause (d), the following proviso shall be inserted, namely:—
  - “Provided that in the case of an eligible start-up, being a technology driven start-up so certified by the Inter- Ministerial Board of Certification notified by the Central Government in the Official Gazette, the new asset shall include computers or computer software.”.

## 10. Tax Exemption to Startups for 3 years

Startups work on new ideas to think beyond conventional strategies of the existing corporate world and to establish new disruptive business models. During the initial years, the key challenge is to evaluate the feasibility of the business idea. Significant capital investment is made in embracing dynamic technology, fighting rising competition and navigating through the other new challenges arising from their venture. Also, there are limited alternative sources of finance available to Startups, which impedes their cash flows and constrains their cash funds. Hence, it has been decided that profits of Startup initiatives be exempted from income-tax for a period of 3 years. This fiscal exemption is expected to facilitate growth of business and meet the working capital requirements during the initial years of operations. However, this exemption shall be available to Startups only if they do not distribute dividend during that period. So it also ensures that the profits generated is ploughed back into the business and the wheel of business can keep moving easily.

## 11. Tax Exemption on Investments above Fair Market Value

As per the Income Tax Act, 1961, where a Startup (company) receives any consideration for issue of shares which exceeds the Fair Market Value (FMV) of such shares, such excess consideration is taxable in the hands of recipient as Income from Other Sources. As regards Startups, the idea is at a conceptualization or development stage and hence it may not be possible to determine the FMV of such shares. In majority of the cases, FMV is also significantly lower than the value at which the capital investment is made. This results into the tax being levied under Section 56(2)(viib) of the Act as above. At present, investment by venture capital funds in Startups is exempted from operations of this provision. The same shall be extended to investment made by incubators in the Startups.

## 12. Organizing Startup Fests for Showcasing Innovation and Providing a Collaboration Platform

Regular interaction of Startups within the Startup community is very essential. An effective Startup ecosystem is created by Startups alongwith academia, investors, industry and other stakeholders. Startup fests at national and international levels is aimed at this direction to provide a platform to Startups in India to showcase their ideas and work with a larger audience comprising of potential investors, mentors and fellow Startups. As part of “Make in India” initiative, Government proposes to:

- (a) Hold one fest at the national level annually to enable all the stakeholders of Startup ecosystem to come together on one platform.
- (b) Hold one fest at the international level annually in an international city known for its Startup ecosystem.

The fests shall have activities such as sessions to connect with investors, mentors, incubators and Startups, showcasing innovations, exhibitions and product launches, pitches by Startups, mentoring

sessions, curated Startup walks, talks by disruptive innovators, competitions such as Hackathon, Makerspace, etc., announcements of rewards and recognitions, panels and conferences with industry leaders, etc.

### **13. Atal Innovation Mission (AIM) with Self-Employment and Talent Utilization (SETU) Program**

India is destined now to serve as a platform for promotion of world-class Innovation Hubs, Grand Challenges, Startup businesses and other self-employment activities, particularly in technology driven areas. In this regard Atal Innovation Mission (AIM) has been designed for two core functions:

- (a) Entrepreneurship promotion through Self-Employment and Talent Utilization (SETU), wherein innovators would be supported and mentored to become successful entrepreneurs. This will include establishment of sector specific Incubators including in PPP mode, establishment of 500 Tinkering Labs, pre-incubation training to potential entrepreneurs in various technology areas in collaboration with various academic institutions having expertise in the field, strengthening of incubation facilities in existing incubators and mentoring of Startups and also seed funding to potentially successful and high growth Startups.
- (b) Innovation promotion to provide a platform where innovative ideas are generated. This will include institution of Innovation Awards (3 per state/UT) and 3 National level awards, providing support to State Innovation Councils for awareness creation and organizing state level workshops/conferences and launch of Grand Innovation Challenge Awards for finding ultra-low cost solutions to India's pressing and intractable problems.

### **14. Harnessing Private Sector Expertise for Incubator Setup**

There is a urgent need for ready availability of incubation facilities in the Country as a part of the infrastructure of across various parts of the country. Incubation facilities include physical infrastructure, provision of mentorship support, access to networks, access to market, etc. Physical infrastructure entails large capital investments where Government has a huge role. Also, the requisite skills for operating an incubator for which expertise of the private sector needs to be explored and networked. Government shall encourage setting up of;

- (a) 35 new incubators in existing institutions. Funding support of 40% (subject to a maximum of Rs.10 crore) shall be provided by Central Government for establishment of new incubators for which 40% funding by the respective State Government and 20% funding by the private sector has been committed. The incubator shall be managed and operated by the private sector.
- (b) 35 new private sector incubators. A grant of 50% (subject to a maximum of Rs.10 crore) shall be provided by Central Government for incubators established by private sector in existing institutions.

The funds for setting up of the incubators as aforesaid shall be provided by NITI Aayog as part of Atal Innovation Mission as mentioned above. The participating departments and agencies for setting up of new incubators shall be Department of Science and Technology, Department of Biotechnology, Department of Electronics and Information Technology, Ministry of Micro, Small and Medium Enterprises, Department of Higher Education, Department of Industrial Policy and Promotion and NITI Aayog. Each of the above mentioned departments/agencies would enter into a standard MoU with identified private sector players for creation of academia-industry tie-ups for nurturing innovations in academic institutions.

### **15. Building Innovation Centres at National Institutes**

Incubation and R&D efforts need to be escalated in the country and hence the Government has proposed to set up/ scale up 31 centres (to provide facilities for over 1,200 new Startups) of innovation and entrepreneurship at national institutes, including:

- (a) Setting-up 13 Startup centres: Annual funding support of INR 50 lakhs (shared 50:50 by DST and MHRD) shall be provided for three years for encouraging student driven Startups from the host institute.
- (b) Setting-up/ Scaling-up 18 Technology Business Incubators (TBIs) at NITs/IITs/IIMs etc. as per funding model of DST with MHRD providing smooth approvals for TBI to have separate society and built up space.

## **16. Setting up of 7 New Research Parks Modeled on the Research Park Setup at IIT Madras**

The Government has proposed to set up 7 new Research Parks in 7 institutes indicated in the Action Plan Document with an initial investment of Rs.100 crore each. The Research Parks are proposed to be modeled based on the Research Park setup at IIT Madras. Such Research Park breaks down the traditional, artificial barriers of innovation through its connectivity and collaborative interaction and aims to create, integrate and apply advancements in knowledge. The guiding principles behind the park include:

- (a) Creating a collaborative environment between industry and academia through joint research projects and consulting assignments.
- (b) Creating a self-sustaining and technologically fertile environment.
- (c) Encouraging and enabling R&D activities and Startups that are aligned to potential needs of the industry.
- (d) Providing world class infrastructure for R&D activities and incubation.
- (e) Enabling development of high quality personnel and motivating professional growth for researchers in companies through part time Masters and PhD Programs.

## **17. Promoting Startups in the Biotechnology Sector**

The Biotechnology sector in India is very strong and is expected to witness huge growth. Department of Biotechnology aims to create 300-500 new Startups each year in this sector and by the year 2020 it is expected that number of such Startups in this sector shall be 2000. The Department of Biotechnology shall be implementing the following measures along with its Public Sector Undertaking Biotechnology Research Assistance Council (BIRAC):

- (a) 5 new Bio-clusters, 50 new Bio-Incubators, 150 technology transfer offices and 20 Bio-Connect offices will be set up in research institutes and universities across India.
- (b) Biotech Equity Fund – BIRAC AcE Fund in partnership with National and Global Equity Funds (Bharat Fund, India Aspiration Fund amongst others) will provide financial assistance to young Biotech Startups.
- (c) Bengaluru-Boston Biotech Gateway to India has been formed. Letter of Intent has been signed between DBT, GoI and Department of IT, Government of Karnataka for the same. Through this initiative, a range of institutes in Boston (Harvard/ MIT) and Bengaluru will be able to connect to share ideas and mentor the entrepreneurs especially in the areas of Genomics, Computational Biology, Drug Discovery and new vaccines.
- (d) Amplification of Bio-entrepreneurship through BIRAC Regional Entrepreneurship Centres (BREC). The BREC aims to impart bio-entrepreneurs with the necessary knowledge and skills required for converting innovative ideas into successful ventures. Department of Biotechnology shall set up 5 Regional centres or Mini-BIRACs in the next 5 years.

## **18. Launching of Innovation Focused Programs for Students**

The Government shall implement the undertake the following measures to promote research and innovation among young students :-

- (a) Innovation Core – This program shall be for school kids with an outreach to 10 lakh innovations from 5 lakh schools. One lakh innovations would be targeted and the top 10,000 innovations would be provided prototyping support. Of these 10,000 innovations, the best 100 would be shortlisted and showcased at the Annual Festival of Innovations in the Rashtrapati Bhavan.
- (b) National Initiative for Developing and Harnessing Innovations (NIDHI) - A Grand Challenge program through Innovation and Entrepreneurship Development Centres (IEDCs) to support and award Rs.10 lakhs to 20 student innovations from IEDCs.
- (c) Uchhattar Avishkar Yojana – It is a joint MHRD-DST initiative which has earmarked Rs.250 crore p.a. towards fostering very high quality research amongst IIT students. The funding towards this research will be 50% contribution from MHRD, 25% from DST and balance 25% from industry. This

will ensure that the research and funding gets utilized in accordance with its relevance to the industry. Each project may amount to Rs.5 crore only. This scheme will initially apply to IITs only.

#### **19. Annual Incubator Grand Challenge**

Adequate support and mentoring at various stages of business lifecycle is a prerequisite. Incubators play an important role in identifying early stage Startups and supporting them across various phases of their lifecycle. World class incubators, adopting leading industry practices, must be setup in the country. In its first phase, the aim of the Government is to establish 10 such incubators. To enable this, GoI shall identify and select 10 incubators having necessary potential. These incubators would be given Rs.10 crore each as financial assistance to enhance the quality of service offerings. The incubators shall also become reference models for other incubators aspiring to offer best-in-class services. Video interviews of these incubators would be showcased on the Startup India portal. “Incubator Grand Challenge” shall ensure open invitation of applications from incubators, screening and evaluation based on pre-defined Key Performance Indicators and the Incubator Grand Challenge shall be an annual exercise.

# FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 (FCRA)

## INTRODUCTION

The Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011 are applicable from 1st May, 2011. It replaces Foreign Contribution (Regulation) Act, 1976.

### Object

- a) To regulate the acceptance and utilization of foreign contribution (FC) or foreign hospitality (FH) by certain individuals or associations or companies.
- b) To prohibit acceptance and utilisation of FC or FH for any activities detrimental to the national interest and matters connected therewith or incidental thereto.

### Applicability

This Act extends to whole of India and also applies to Citizens of India who are outside India and to Associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.

As such the provisions of FCRA, 2010 can be broadly classified in the following three categories:

1. Prohibition on certain persons from accepting foreign contribution.
2. Restriction on certain persons from accepting foreign hospitality.
3. Regulating the acceptance of foreign contribution by persons having a definite cultural, economic, educational, religious or social programme. Charitable Trusts and NGOs are covered under this category.

## FOREIGN CONTRIBUTION & FOREIGN SOURCE

Foreign contribution is any donation, delivery or transfer made by a foreign source of any article (other than personal gifts of market value not exceeding such sum as may be specified by the Central Government), currency (whether Indian or foreign) or any security. It covers transfer of money and transfer of asset from a foreign source. It covers all modes of receipt of foreign contribution, by way of transfer, gift or delivery in any manner and advance or loan received from a foreign source. However, any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of business, trade or commerce, whether within India or outside India, shall be excluded from the definition of foreign contribution.

The definition is also broad enough to cover any indirect receipt from a foreign source. Even if the money or article is routed through several intermediaries, it will not be cleansed of being treated as foreign source if the original source is foreign. Provided all the intermediaries should be registered under FCRA, 2010.

Foreign source covers a foreign government or its agency, any international agencies (other than certain specified agencies such as United Nations, World Bank, etc.), foreign citizen, foreign company, any other foreign entity such as trade unions, trusts, societies, clubs, etc. formed or registered outside India. It also covers multinational corporations and any company where more than 50% of the share capital is held by foreign government, entity or citizen.

In exercise of the powers conferred by section 50 of the FCRA, the Central Government vide Order No.SO 3210(E) [F.NO.II/21022/23(07)/2015-FC-III], dated 17-10-2016 hereby notifies that the international organisations specified below shall not be treated as foreign source for the purposes of the said Act, namely:—

- (i) *South Asian Association for Regional Cooperation Disaster Management Centre (SDMC);*
- (ii) *Global Fund for Disaster Risk Reduction (GFDRR);*
- (iii) *Asian Disaster Reduction Centre (ADRC); and*
- (iv) *Asian Disaster Preparedness Centre (ADPC).*

## **WHO CAN RECEIVE FOREIGN CONTRIBUTION**

An association having a definite cultural, economic, educational, religious or social programme with proven track record after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. Further, the Foreign Contribution shall be received through one designated bank account and the Central Government should be kept intimated about the amount, source and manner in which the contribution was received and utilised.

## **REGISTRATION & PRIOR PERMISSION**

There are two types of Registrations: Permanent Registration and Prior Permission

Permanent Registration is granted to an organisation, which has completed three years of existence. The organisation should:

- i. be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
- ii. be in existence for at least three years and have made significant contribution in chosen area of activity. For this purpose, the association should have spent at least ₹ 10 lakhs over last three years on its main objects, excluding administrative expenditure. Statement of Income & Expenditure duly audited by Chartered Accountant for last three years may be enclosed to substantiate financial parameter.

Prior Permission is applicable to an organisation in formative stage and not completed three years of existence. Such Organisation may apply for grant of prior permission under the law for specific transaction by providing the source such as memorandum of Understanding, commitment Letter etc.. The permission is granted only for the particular transaction. After receipt of permission letter, the organisation can accept the foreign contribution. For Prior Permission:

1. Registration has to be done electronically by filling Form FC-3 on [www.mha.gov.in](http://www.mha.gov.in) under e-services of foreign Division along with prescribed fees to be paid electronically.
2. PDF scanned copies of relevant documents should be uploaded electronically.
3. Prior Permission is applicable where the association is placed under prior permission category, where registration is frozen, Associations of political nature, not being political party, only single transaction is likely to take place.

### **Procedure for Registration**

1. Registration has to be done electronically by filling Form FC-3 on [www.mha.gov.in](http://www.mha.gov.in) under e-services of foreign Division along with prescribed fees to be paid electronically.
2. PDF scanned copies of relevant documents should be uploaded electronically.

### **Documents to be Uploaded for Registration**

Following documents, notarised copies are required to be submitted with duly signed and stamped print out of application filed online :

- a. Registration Certificate under Societies Registration Act, 1860.
- b. Registration Certificate under The Maharashtra Public Trust Act.
- c. Registration Certificate u/s. 12A of the Income-tax Act, 1961.
- d. Registration Certificate u/s. 80G of the Income-tax Act, 1961, if available.
- e. Copy of Memorandum of Association and Rules & Regulations of the Trust, certified by the Chief Functionary.
- f. Recommendation Certificate from competent authority. Competent Authority is Collector of the District or related State or Central Government Official (Income Tax Officer, Charity Commissioner etc.) This is made optional.
- g. Obtain copy of commitment letter from Donors or Memorandum of Understanding, if executed with Donor certified by the Chief Functionary – This is applicable for Prior Permission.

- h. Annual Report on activities carried out for preceding three years.
- i. Copies of ITR-V along with Computation of Income of preceding 3 years. Attach all the enclosures and bind them with the application duly numbered starting from covering letter.
- j. Project Report, if any.

### **Processing of the Application for Registration**

After receipt of application, it is either accepted or rejected with reason. After sending the application it is advisable to visit your login Id of Ministry of Home Affairs site to verify the acceptance and status of your application.

Once the application is accepted, it is further referred to IB (Intelligence Bureau) for verification and reporting of the genuinity and activities of the Organisation. The IB officials visit the Trust, verify the work and submit their report to the FCRA Wing. On the basis of their Report the Registration is issued. For prior permission, same procedure is followed.

If the application is rejected, you can apply again through the same login after correcting the defect.

Issue of registration certificate/prior permission is to be ordinarily done within 90 days of submission.

General Reasons for rejection such as Association being in formative stage, Association formed for personal gain, Members of Committee involved in illegal/criminal activities, Sister associations prohibited under the Act, Association involved in anti-national activities, Stated objects of the association not being pursued, Applicant having close links with another association with doubtful credentials, The expenditure on the object of the Trust, for last three years is lower than ? 10 lakhs, Incomplete form or wrong data is entered which is not matching with supporting documents,

### **FOREIGN HOSPITALITY**

“Foreign Hospitality” means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

Any person wishes to avail of foreign hospitality shall apply to the Central Government in Form FC-2 for prior permission to accept such foreign hospitality. Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or Department concerned in case of visits sponsored by a Ministry or Department of the Government. The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized. Provided that no such intimation is required if the value of such hospitality in emergent medical aid is up to one lakh rupees or equivalent thereto.

### **Restriction on acceptance of Foreign Hospitality**

No member of a Legislature or office-bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

### **FILING OF ANNUAL RETURNS**

An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and utilised and submit an annual return, giving details of the receipt and purpose-wise utilisation of the foreign contribution. The return is to be filed for every financial year (covering period 1st April to 31st March) in Form FC-7, where the Foreign

Contribution relates to articles and in Form FC-8, where the Foreign Contribution relates to securities, electronically through your login id on www.mha.gov.in. The return should be uploaded within a period of nine months from the closure of the year i.e by 31st December each year. If there is no receipt/utilization of foreign contribution during the year, is mandatory to submit a 'NIL' returns under the law. From 2016 onwards submission of printed version of Form FC-4, signed by Chief Functionary, duly accompanied with copy of audited accounts with Chartered Accountants Certificate in prescribed format, is discontinued. Online filing with uploading of pdf scanned copies of these relevant documents with scanned signature and stamp of chief functionary is made mandatory from 14th December, 2015 on launch of their new website.

#### **MAIN REASONS FOR CANCELLATION OF CERTIFICATE**

- a. The holder of certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
- b. In the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
- c. If the holder of certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive year or has become defunct.
- d. Any false or incorrect information in the application form will lead to cancellation of certificate
- e. Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant or permission for a minimum period of 3 years from the date of cancellation of certificate.

#### **RENEWAL OF CERTIFICATE**

- Registration is granted for a period of five years.
- Every person, granted a certificate shall renew his certificate within maximum period of 6 months before expiry.
- It can be renewed by making an application in Form FC-5, six months before expiry of registration.
- Application for renewal should be made electronically with pdf scanned copies of relevant documents in Form FC-5 along with fee of ₹ 500/- as applicable.
- Central Government shall renew within the period of 90 days from the date of receipt of application.
- An association granted prior permission or registration under the repealed Foreign Contribution (Regulation) Act, 1976 shall be deemed to have been registered or granted permission or registration under the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and such registration shall be valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016. First renewal process should start in month of October, 2015. The online renewal process is made compulsory after launch of their new website on 14-12-2015 even for those who already applied in hardcopies. For the reason, the date was extended till 15th March, 2016.

#### **MAINTENANCE OF ACCOUNTS**

- Every person, granted permission u/s. 12 shall maintain a designated single bank account for receiving foreign contribution through such one branch of a bank as specified in application form.
- He may open one or more account for utilisation of foreign contribution with the prior approval of Central Government.

#### **AUDIT OF ACCOUNTS**

- Central Government has a power to audit any premises at any reasonable time for the purpose of auditing the prescribed books of account.
- A Gazetted officer or an officer holding Group A post can undertake the audit under Central Government.

#### **DISPOSAL OF ASSETS**

- Any person, permitted for acceptance of foreign contribution under this act, ceases to exist or has become defunct, all the assets of above said person will be disposed off in accordance of relevant provisions of Act.



- Central government in the absence of applicable Act will act with regard to the nature of assets created out of foreign contribution.

## INSPECTION OF ACCOUNTS

- Central government may by general order or special order, authorise such Gazetted officer to inspect any account or report maintained by any person covered in act.
- He may seize such account or record where he has some reasonable cause to believe with the violation of any of provision of Act.
- Such officer should return the seized accounts within the maximum period of 6 months if there is no proceedings are bought for the contravention.

## OTHER PROVISIONS

- Exclusive accounts for utilisation of foreign contribution and audit by the Chartered Accountant.
- Substantial proportion of foreign contribution to be spent on welfare activities. Not more than 50% of the foreign contribution shall be defrayed to meet administrative expenses of the association.
- Date of registration should be the date of registration of the Trust as per Charity Commissioner Certificate and not the date of execution of the deed.
- Any person making false information, declaration or delivering false accounts, providing false intimation u/ s. 9 or 18 or seeks prior permission or regulations by way of means of fraud will liable for imprisonment for a period of six months or with fine or both.
- Provisions relating to Appeals, revision are applicable as per Foreign Contribution (Regulation) Act, 2010 and Foreign Contribution (Regulation) Rules, 2011.

## MAJOR PROVISIONS OF OFFENCES AND PENALTIES

### a. Non-Furnishing of Return

In exercise of the powers conferred by sub-section (1) of section 41, read with section 35 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and rule 17 of the Foreign Contribution (Regulation) Rules, 2011 and in supersession of the notification of the Government of India in the Ministry of Home Affairs number S.O. 1070(E), dated the 26th April, 2013, published in the Gazette of India, Extraordinary, Part-II, section 3, sub-section (ii), except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies that officer specified in column (4) of the table below, may, before institution of any prosecution under this Act, compound the offences specified in column (2), on payment of the amount specified in column (3), of the said table, namely:—

**TABLE**

Sl. No.	Offence	Amount of Penalty	Officer competent for compounding
(1)	(2)	(3)	(4)
1	Non-furnishing of return upto three months after the 31st December every year	Penalty of two percent of the amount of foreign contribution received during the financial year or ten thousand rupees, Whichever is less	The Director or the Deputy Secretary in Charge of the Foreign Contribution (Regulation) Act Wing of Foreign Division in the Ministry of Home Affairs
2	Non-furnishing of return after three months upto six months after the 31st December every year	Penalty of three percent of the amount of foreign contribution received during the financial year or fifty thousand rupees, Whichever is less	The Director or the Deputy Secretary in Charge of the Foreign Contribution (Regulation) Act Wing of Foreign Division in the Ministry of Home Affairs
3	Non-furnishing of return after six months upto one year after the 31st December every year	Penalty of four percent of the amount of foreign contribution received during the financial year or two Lakh rupees, Whichever is less	The Director or the Deputy Secretary in Charge of the Foreign Contribution (Regulation) Act Wing of Foreign Division in the Ministry of Home Affairs
4	Non-furnishing of return after one year upto two years after the 31st December every year	Penalty of five percent of the amount of foreign contribution received during the financial year or five Lakh rupees, Whichever is less	The Director or the Deputy Secretary in Charge of the Foreign Contribution (Regulation) Act Wing of Foreign Division in the Ministry of Home Affairs
5	Non-furnishing of return after two years upto three years after the 31st December every year	Penalty of ten percent of the amount of foreign contribution received during the financial year or ten Lakh rupees, Whichever is less	The Director or the Deputy Secretary in Charge of the Foreign Contribution (Regulation) Act Wing of Foreign Division in the Ministry of Home Affairs

## **b. Acceptance of cheque or draft towards FC**

- o Without registration/ Prior Permission even though it has not been deposited in a bank.... Penalty ? 10,000/- or 2% of the FC, whichever is higher.
- o Without registration/ Prior Permission and deposited in a bank.... Penalty ? 25,000/- or 3% of the FC, whichever is higher.
- o Without registration/ Prior Permission and utilization of the same even though the enquiry reveals that FC was not diverted for purpose other than for which it was received and records of receipt and utilization have been properly kept ..... Penalty ? 1,00,000/- or 5% of the FC, whichever is higher.
- o Without registration / Prior Permission of the Central Government notwithstanding that nothing adverse was reported after inquiry ..... Penalty ? 10,000/- or 2% of FC, whichever is higher.
- c. Compounding
  - o In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution to be initiated.
  - o Receipt of FC in the account through electronic transfer even without the knowledge of the association is violation of the Act.
  - o Where an offence has been compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
  - o However, if offence is committed within a period of 3 years from the date on which similar offence committed was compounded, the provision of compounding the later offence is not available.
  - o Offences that cannot be compounded are liable to investigation and prosecution by CBI or State Police depending upon amount of FC involved.

## **NON-APPLICABILITY OF ACT**

- Any amount received by way of salary, wages or any other form of remuneration due to him or to any other group of persons.
- Amount received by way of payment, in the course of international trade or commerce or in the ordinary course of business transacted by him outside India.
- As an agent of a foreign source in relation to Central Government transaction.
- By way of any scholarship, stipend or any other payment of like nature.
- From relative.

## **LATEST DEVELOPMENTS**

- Recent Amendments were made in Foreign Contribution (Regulation) Amendment Rules, 2015, made effective from 14th December, 2015. The major amendments are as under :
  - o Every registered Association should submit Quarterly Report electronically within 15 days from the end of the quarter with details of donor, amount received and date of receipt.
  - o Banks to report within 48 hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether such person registered or granted prior permission or not.
  - o Association shall intimate electronically through form FC-6 within 15 days of any change in name and address of association, nature, aims, objects, change in bank or branch of a bank of designated foreign contribution account and replacement of more than 50% of key members.
  - o The applicable Forms are changed and consolidated to bring the number from 10 to 6. Also forms are required to submit electronically through the Dept's website. The forms are as under :

- o FC-1 : Intimation of Receipt of Foreign Contribution by way of Gift by Relative in Form of Article or Securities by a candidate for Election.
  - o FC-2 : Application for Prior Permission to accept Foreign Hospitality
  - o FC-3 : Application for Registration, Prior Permission or Renewal under the Act by Associations or Trusts
  - o FC-4 : Account of Foreign Contribution for the year ending on 31st March
  - o FC-5 : Application for seeking permission for Transfer of Foreign Contribution to other Un-registered Person
  - o FC-6 : Intimation of Change of Designated Bank Account. Utilisation Account, Name/Address/Aims/Objectives/Key Members of Registered Institutes.
- A monthly meeting will be held by Directors (FCRA) with genuine representatives of the associations on 5th of every month or on following working day if 5th happens to be holiday on appointment basis for redressal of grievances relating to registration or prior permissions.
  - Ministry is planning to implement digitally signed documents to be submitted online by all associations for FCRA purposes.
  - A messaging system has been set up within the online FCRA systems. Associations can make use of this for sending queries, comments etc.

# FOREIGN DIRECT INVESTMENT (FDI)

Foreign Direct Investment (FDI) policy is given in the Consolidated FDI Policy by the Ministry of Commerce and Industry, and FEMA Regulation No. 20 dated 3rd May 2000. In this Referencer on FDI, main issues have been listed down. It is not a complete list of rules. The Referencer aims to provide a list of key points to be considered/ followed. Portfolio investment and Foreign Venture Capital investment provisions have not been discussed here. Before taking any policy decision, concerned parties should study FDI policy and notification no. 20; and may consult appropriate experts. Law up to 14th December 2016 has been considered for this Referencer.

Under FEMA, there are all encompassing rules:

- i. Who can invest – the investor;
- ii. Who can accept investment – investee;
- iii. Industry/business in which investment can be made;
- iv. Percentage of Equity investment and management control;
- v. Valuation norms;
- vi. Investment instruments;
- vii. Transfer of securities;
- viii. Filing of forms and Annual reports – Procedures.

## 1. GOVERNING LAW

Foreign Direct Investment (FDI) is governed by Foreign Exchange Management Act (FEMA) as well as Consolidated Foreign Direct Investment Policy (FDI Policy).

Under FEMA, Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 [FEMA Notification No. 20 dated 3rd May 2000] provides for regulations. The regulations lay down the regulations for investment and transfer, procedures and other related matters. The regulations are issued by Reserve Bank of India (RBI). These regulations are issued by way of Notifications.

The Consolidated FDI Policy is issued by Department of Policy and Promotion (DIPP) under the Ministry of Commerce and Industry. Earlier, Press notes were issued. This made the reading of the policy difficult. Now a Consolidated FDI policy is issued. The last policy has been issued on 07th June, 2016. The Consolidated FDI policy subsumes and supersedes all press notes, press releases, clarifications, circulars issued prior up to 06th June, 2016. However press note No. 5 dated 24.06.2016 on foreign investment remains in force. Thus one will not have to refer to the past circulars.

If there is a conflict between FDI policy and FEMA law, FEMA law will prevail. See para 3 for more discussion.

## 2. GOVERNING AGENCIES

FEMA is largely regulated by RBI. However for FDI, there are three agencies which regulate FDI. These are:

- 2.1 RBI – It is responsible for monitoring, compliances, transfer of shares, Annual Reports, etc. All “automatic route” investments are under RBI purview. Any approval can be given by FIPB. RBI does not come into picture for FDI approvals. For very few issues like transfer of shares by non-residents which may not come under automatic route, application has to be made to RBI.
- 2.2 DIPP under the Ministry of Commerce and Industry – It is responsible for policy issues of industrial development including FDI, and is in charge of certain kind of approvals. It issues the annual Consolidated FDI policy.
- 2.3 Foreign Investment Promotion Board (FIPB) – It is under Ministry of Finance and has a secretariat in the Ministry. It is an inter-ministerial body. Applications for FDI for which an approval is required, are considered by FIPB. It comes into picture only if an approval is required from the Government. It does not issue any policies, rules or regulations. However it comes out with an Annual Report wherein views of FIPB are discussed.

Investments up to ₹ 2,000 crores will be referred to Minister of Finance. Investments above ₹ 2,000 crores will be referred to Cabinet Committee of Economic Affairs. Based on their observations, FIPB issues approvals.

- 2.4 Authorised Dealer – Banks are not a statutory agency. However many of the compliances are to be done through banks. The banks have to review the application / documents to be filed with RBI.

### **3. DIFFERENCE BETWEEN FDI POLICY AND FEMA**

DIPP may modify FDI policy. After that, RBI issues notifications under FEMA to give effect to the policy. At times, there are differences of views between DIPP and RBI. Hence there used to be a delay in the issue of FEMA notification. Some differences continue till today though by and large, the FDI policy and FEMA are in line with each other. In 2012 the Supreme Court in a PIL [Manohar Lal Sharma vs. UOI, Writ Petition (Civil) 417 of 2012 (SC)] has ruled that press notes issued by DIPP are effective only if FEMA notifications are issued. Now the circulars and notifications are issued simultaneously.

The FDI policy clarifies that if there is a conflict between the FDI policy and FEMA, FEMA notification will prevail. FDI policy is a declaration of Government policy. It is not law. Notification has the legal force.

There are some industries which are sensitive. If there is any doubt as to whether FDI can be made in such an industry, it will be advisable to obtain an approval from FIPB. Some sectors which may be considered as sensitive are – defence; real estate development; telecommunication; information and broadcasting; print media; agriculture based activities; financial industry related sectors like NBFC, commodity exchange, and insurance.

### **4. FOREIGN DIRECT INVESTMENT – MEANING**

FDI refers to investment by a non-resident person or an entity in the capital of the Indian company or Indian Limited Liability Partnership (LLP). (Also see para 5 and 6 for eligible investors.) This being a substantial investment, the investor has some rights of management in the investee company. The objective is for foreigners to participate in the Indian economy by doing business through the Indian company. A foreigner cannot do business directly in India – except in limited circumstances. FDI is distinct from Portfolio investment. Under Portfolio investment, the investor can trade or invest on the stock exchange. The investor has no rights of management of the investee company. India seeks FDI over portfolio investment as it is more stable.

FDI is a Capital Account Transaction. Therefore unless the FEMA regulations permit, FDI cannot be made. Under the FDI policy, there are permissions given which can be broadly classified under Automatic route; FIPB approval route; RBI approval route.

If FDI is permitted, it is on Repatriable basis. Non-repatriable investment is permitted only to NRIs and foreign entities controlled by NRIs. (See para 18 for NRI investment.)

Investment of funds in a branch or an office in India is not considered as FDI. Separate regulations apply.

Investment in other assets like immovable property, mutual funds, etc. are also governed by separate regulations and are not considered as FDI.

### **5. NRIs**

NRIs have a, more liberal policy for investment into India. They can invest on repatriable (under FDI policy) or non-repatriable investments (NRI investment policy). NRI investment is regulated by RBI alone. When we refer to FDI, we are referring to Foreign Direct Investment other than NRI non-repatriable investment. (See paragraph 18 for NRI non-repatriable investment.)

NRIs have so far been permitted to invest under the NRI policy in their individual capacity. Recently vide Notification No. 361 dated 15/2/2016 NRIs have been permitted to invest through their overseas entities on non-repatriable basis. Please see para 18 for more details. These investments are considered as domestic investment.

### **6. ELIGIBLE INVESTORS**

- 6.1 Foreign companies, non-resident individuals (NRIs and non-NRIs) are eligible to invest.

A citizen of Pakistan and an entity incorporated in Pakistan can invest in sectors other than defence, space and atomic energy and sectors prohibited for foreign investment, after obtaining prior approval

from the Government. A citizen of Bangladesh and an entity incorporated in Bangladesh can invest only after obtaining a prior approval from the Government.

NRIs and citizens who are resident in Nepal or Bhutan can invest only if they remit free foreign exchange through banking channels. (For various transactions, people from Nepal and Bhutan can transact freely in Indian rupees. However for investment in India, free foreign exchange must be remitted.)

Registered Foreign Institutional Investors (FIIs) and Foreign Portfolio Investors (FPIs) (including erstwhile Qualified Foreign Investors (QFIs)) who are permitted to invest under portfolio investment route, can also invest under the FDI route. The aggregate FII/FPI investment, in the FDI and Portfolio Investment Scheme, should be within the sectoral caps. FDI received from FIIs and FPIs should be reported as such (see para 17).

Registered Foreign Venture Capital Investors (FVCIs) are permitted to invest in Indian companies engaged in specified sectors – Biotechnology, Infrastructure sector, etc. They can also invest in Start-ups engaged in any sector. They can also invest in Indian Venture Capital Funds / Alternative Investment Funds – Category-I.

OCBs have been derecognized as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route

6.3 Any “unincorporated entity” is not eligible to invest. Thus a private trust cannot invest.

## **7. ELIGIBLE INVESTEE ENTITIES**

7.1 Indian companies can issue capital against FDI.

7.2 Indian partnership firms can accept investment from NRIs on non-repatriable basis. See para 20.

7.3 Indian Limited Liability Partnership firms (LLPs) can accept FDI under the automatic route vide Notification no. 362 dated 15.2.2016. Prior to that FDI was permitted under approval route. FDI in LLP is permitted only in sectors where 100% FDI is permitted on automatic basis, and there are no specific conditions. Thus FDI is not allowed in NBFC, real estate development, agriculture, etc.

FIIs and FVCIs cannot invest in LLPs.

LLPs cannot avail of ECBs.

The designated partner is required to be a resident in India. Therefore to have an LLP with 100% foreign investment is very difficult.

7.4 Venture Capital Funds (VCFs) registered with SEBI as companies can accept FDI from non-residents. VCFs registered as trusts can accept investment from Foreign Venture Capital Investors registered with SEBI. However VCFs registered as trusts can accept investment from other non-residents only with prior approval of FIPB.

7.5 Investment Vehicles (IVs) registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose can accept foreign investment by way of issue of “units”. IVs include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (Invlts) governed by the SEBI (Invlts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.” IVs have been permitted to accept foreign investment vide Notification nos. 355 dated 16.11.2015 and 362 dated 15.2.2016. Citizen of Bangladesh and Pakistan, and entities of Bangladesh and Pakistan cannot invest in IVs.

7.6 No other entity can accept FDI. Thus trusts (except VCF and IV as discussed in para 7.4 and 7.5 above), Association of Persons or joint ventures cannot accept FDI.

## **8. PERMITTED INDUSTRIES**

FDI is permitted in all industries except where there are specific restrictions. During the past one year several policies have been streamlined. Clarity and liberalisation has been brought in for retail trade, e-commerce trade versus market place model, real estate development, chit funds, etc. Notification no. 362 dated 15.2.2016 is one of the important notifications issued for this purpose.

## Broadly, there are following categories of industries:

### 8.1 Prohibited sectors

In the prohibited list of industries, FDI is not permitted at all. This includes industries like lottery, gambling, chit funds, nidhi company, trading in Transferable Development Rights, Real Estate Business or construction of farm houses, manufacturing of cigarettes and like of tobacco and tobacco substitutes and activities not permitted to private sector like atomic energy and railway operations.

### 8.2 Permitted sectors

This list includes industries where FDI is permitted subject to specific conditions. For some industries, there is a limit (referred to as sectoral cap) up to which FDI is permitted. The FDI could be permitted under automatic route or approval route.

Sector/Industry/Activity	FDI Cap	Remarks
Agriculture and Animal Husbandary	100%	Subject to specified conditions and in specified sectors.
Plantation Sector	100%	In specified sectors/ activities only. Prior approval of the State Government concerned is required in case of any future land use change
Mining	100%	Mining and exploration of specified metal & non-metal ores, coal & lignite and petroleum and natural gas, subject to specified conditions.
Petroleum & Natural Gas	100% 49%	Exploration activities of oil and natural gas fields and other specified activities subject to specific conditions Petroleum refining by the Public Sector Undertakings under specified conditions
Manufacturing	-	A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval
Defence (Subject to industrial licence under the IDRA)	49%	Government route beyond 49% wherever it is likely to result in access to modern and 'state-of-art' technology in the country
Broadcasting	100% 49%	Government route beyond 49% in broadcasting carriage services In broadcasting content services
Print Media	26% 100%	Government route, newspaper and periodicals dealing with news and current affairs & publication of Indian editions of foreign magazines Government route, scientific and technical magazines & publication of facsimile edition of foreign newspapers
Civil Aviation	100%	Subject to specified conditions and areas of investment Government route beyond 49% for scheduled Air Transport Service and 100% for NRIs
Construction/ Development Projects	100%	Subject to specified conditions. Liberalization in certain conditions for Construction Development including reduction in minimum built-up area and minimum capitalization
Industrial Parks	100%	Subject to specified conditions.
Satellites- establishment and operation	100%	Government route, subject to the sectoral guidelines of Department of Space/ISRO
Private Security Agencies	74%	Government route beyond 49% and up to 74%, subject to compliance with Private Security Agencies (Regulation) (PSAR) Act, 2005 and other conditions specified
Telecom Services	100%	Government route beyond 49%. Subject to sectoral requirements. This will include services provided by telecom Infrastructure Providers Category-I).
Trading	100%	Cash & Carry Wholesale Trading subject to specified conditions
E-commerce activities	100%	Permissible to be engaged only in B2B e-commerce and not in retail trading
Single Brand Retail Trading	100%	Automatic upto 49% and government route beyond 49%, subject to approval and specified conditions
Multi Brand Retail Trading	51%	Government route up to 51%. Subject to approval and specified conditions
Duty Free Shops	100%	Subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.
Rail infrastructure	100%	Subject to specified conditions and areas of investment

Sector/Industry/Activity	FDI Cap	Remarks
Asset Reconstruction Companies	100%	Subject to specified conditions
Banking - Private Sector	74%	Government route beyond 49%. Subject to guidelines for setting up branches / subsidiaries of foreign banks issued by RBI and other specified conditions
Banking- Public Sector	20%	Government route. Subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80
Credit Information Companies	100%	Subject to specified conditions
Infrastructure Company in the Securities Market	49%	In Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations
Insurance	49%	Subject to sectoral requirements. Subject to licensing by the IRDA and other specified conditions.
Pension Sector	49%	Subject to specified conditions and Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.
Power Exchanges	49%	Up to 49% under automatic route. Subject to specified conditions
White Label ATM Operations	100%	Subject to specified conditions
Non-Banking Finance Companies (NBFC)	100%	Subject to specific activities and specified conditions
Pharmaceuticals (including manufacturing of medical devices)	100%	Greenfield-100% (Automatic) Brownfield-Beyond 74% (Government) Subject to specified conditions

### 8.3 Sectoral Caps for FDI

The FDI policy incorporates equity caps at broadly four levels - 26%, 49%, 51% and 74%. These caps reflect the ownership / control levels in a company, under the Companies Act, 2013

Caps	Purpose
> 26%	Equity holding greater than 25% gives a right to block a 'special resolution'.
49%	A level just short of ownership
51%	Ownership and a right to pass all ordinary resolution
74%	The Indian equity holders, acting in unison, can block a special resolution
8.4	Automatic route without specific conditions or sectoral caps

If any industry is not covered under any of the above lists, FDI is freely permitted under automatic route. Only regular FEMA rules and procedures will apply.

### 8.5 Downstream investment

Downstream investment refers to investment by an Indian company which has FDI, in another Indian company. The provisions of indirect foreign investment are complicated. In this Reference, these are simplified considerably. (For proper law, refer to regulation 14 of FEMA regulations.)

For this purpose, FDI policy and FEMA regulations provide that the investment and control in the Indian investor company will be considered. If the investment AND control of the Indian investor company is in the hands of resident Indian citizens (a person should be resident and citizen of India) (directly or indirectly) to the extent of more than 50%, then the Indian investor company will be considered as Indian investment. No approval will be required for downstream investment. However if the non-resident has 50% or more of investment, OR 50% or more of control (directly or indirectly), then the Indian investor company will be considered as indirect foreign investor. FDI rules will apply to the Indian investor company. Thus what can be done by the foreign investor directly from outside India, can be done by the Indian investor company (indirect foreign investor).

An Indian company which is owned or controlled by non-residents to the extent of 50% or more, can make downstream investment as per valuation norms prescribed by SEBI / RBI. Non-residents include all categories of investors – FDI, FPIs, FVCI, etc. However NRI investment on non-repatriable basis is not considered as foreign investment for the purpose of Indirect Foreign Investment. Thus for the first level Indian company, FDI, FII and FVCI investment are governed by separate rules. However for downstream investment, all categories of foreign investment are clubbed together.



Downstream investment can be made by the Indian company by bringing the funds from abroad. (This can be done by issuing shares / fully convertible instruments to the foreign investor. Downstream investment can also be made by internal accruals. However funds cannot be borrowed in Indian market for downstream investment.

If non-resident investment is to be made in an Indian company which will not have any operations, but will just be a company to hold downstream investments, an FIPB approval is required. For operating companies, no approval is required for downstream investments, if it falls within the guidelines.

Wherever there are sectoral caps an FIPB approval is required:

- i. For establishing an Indian company, if the control or ownership in the Indian company is with a non-resident or foreign citizen.
- ii. Where control of an Indian company (owned and controlled by Indian residents and citizens) is being transferred to a non-resident.
- iii. Where ownership of an Indian company (owned and controlled by Indian residents and citizens) is being transferred to a non-resident.

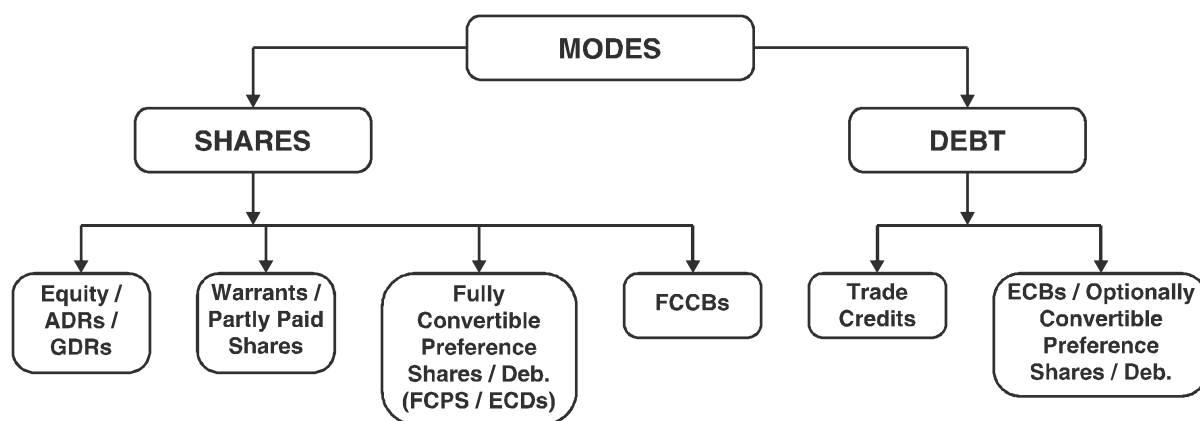
There are controversies surrounding this policy. Theoretically, if the Indian company has 49% equity held by non-residents and the control is with Indian resident and citizens, the Indian company can invest in agricultural sector. Indirectly, the non-residents can participate in the agricultural sector. This is clearly not permitted. Hence extreme care should be exercised to see whether one falls within the policy. It is prudent to take an approval from FIPB for such a downstream investment.

An Indian company with FDI, can make downstream investment in an LLP only if the Indian company and the LLP are operating in sectors where 100% FDI is permitted on automatic basis and there are no FDI specific conditions.

LLPs can make downstream investment in sectors where there are no FDI-linked conditions. Investment can be made in companies or LLPs.

While there are dual conditions regarding ownership and control to determine whether the Indian entity is Indian owned or foreign owned, IVs have only one condition based on control. Foreign investment in IV will not be considered to determine whether IV is foreign owned or Indian owned. Thus the entire unit capital can be invested by foreigners. That will be ignored. The logic is that in case of IV, non-residents do not take part in management. They are mere investors in a fund. Only control criteria will be considered. If the sponsor, manager or investment manager is owned or controlled by non-residents, then the IV will be considered as foreign controlled. It will have to comply with downstream investment rules of FDI.

## 9. INSTRUMENTS OF INVESTMENT



## 10. PRICING OF SECURITIES

The shares can be issued at a price which is equal to or more than the price worked out as per the guidelines.

Listed companies can issue shares at a price as per SEBI guidelines.

Unlisted companies could issue shares at price arrived at as per Discounted Cash Flow (DCF) method. Vide AP Circular No. 4 dated 15.7.2014, price can be considered as per internationally accepted pricing methodology on arm's length basis.

In case of Fully Convertible instruments, it is essential that the price or the basis of price (pricing formula) at which the debentures or preference shares will be converted, should be determined at the time of issue of such securities. The conversion price in any case cannot be lower than the value of the share worked out as per DCF method at the time of issue of such convertible instruments.

## 11. MANNER OF INVESTMENT

The investment should be made in cash – i.e. transfer of foreign exchange through banking channels. However under following circumstances, investment can be made in kind as under:

Lump sum fee for technical knowhow or royalty which is due for payment.

Conversion of ECB (excluding those deemed as ECB).

Under following circumstances, shares can be issued for consideration other than cash by obtaining approval from FIPB:

- Pre-operative and Pre-incorporation expenses. The application has to be made within 180 days from the incorporation of the company.
- Import of new capital goods/machinery/equipment (second hand goods are not permitted). The application is required to be made within 180 days from the shipment of goods.
- Where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. Reserve Bank will have no objection if the borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.
- Vide Notification No. 315 dated 10/7/2014, shares can be issued against amounts payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA.

LLPs can receive FDI only by way of inward remittance.

NRIs can invest from funds held in NRE/FCNR accounts.

## 12. ACQUISITION OF SHARES FROM EXISTING SHAREHOLDERS

A non-resident can also invest in the Indian company by acquiring the shares from another non-resident or an Indian resident. He should of course be eligible to acquire the shares under FDI policy.

### 12.1 Acquisition from another non-resident (other than an NRI)

Any non-resident who is eligible for investment under the automatic route, can purchase shares from another non-resident. There is no reporting required under FEMA for purchase of shares by one non-resident from another non-resident.

A non-resident can also acquire shares from another non-resident as a gift. There is no reporting requirement.

### 12.2 Acquisition from another NRI

For purchase of shares from an NRI, a prior approval from RBI is required. Even a gift requires an approval from RBI. An NRI has slightly more facilities for investment than a Non-NRI. Reasons for requiring prior approval is that in its absence; policy violations can occur. In case an NRI has made investment in sectors where Non-NRIs are not permitted, then under the automatic route, the Non-NRI may acquire shares which is normally not permitted.

An NRI can purchase shares from any non-resident (NRI and Non-NRI).

### **12.3 Acquisition of shares from an Indian resident**

A non-resident can purchase shares from an Indian resident. The purchase will be subject to the pricing guidelines and reporting requirements. The price at which the shares can be purchased has to be at least as per the prescribed value. In case of listed companies, the price as per SEBI guidelines will be applicable. In case of unlisted company, the prescribed value will be as per internationally accepted pricing methodology on arm's length basis. Where pricing guidelines are not met with, other FEMA conditions on sectoral caps and SEBI guidelines have to be fulfilled.

Where the investee company is in financial sector, NOCs were to be obtained from the respective regulator of the investee company, transferor and transferee. Vide AP Circular No. 72 dated 11.11.2013, the requirement of NOC has been dispensed with from FEMA angle. However, any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

An NRI can purchase shares on repatriable basis and non-repatriable basis.

### **13. RIGHTS ISSUE**

Rights issue can be made to non-residents under automatic route. The non-resident can even subscribe to more shares than what he is entitled to – subject to sectoral caps conditions.

To issue shares to erstwhile OCBs, Indian companies require a prior approval from RBI.

The price at which shares can be issued can be determined by the company if it is a listed company. If it is an unlisted company, the price at which shares are issued to the non-residents should be not less than the price at which shares are issued to residents.

Though not stated specifically, Form FC-GPR should be filed with RBI even for rights issue. It has been observed that banks insist on valuation of shares even for rights issue. However in case of rights issue, there is no need of a valuation report. (Regulation 6(2)(iv) of FEMA notification no. 20.) This is because with a rights issue, there is normally no change in the shareholding ratio between non-residents and residents.

### **14. BONUS SHARES**

Bonus shares can be issued without any approval. Even erstwhile OCBs can be issued bonus shares without any approval.

### **15. MERGER/DEMERGER**

Shares can be issued under a merger/demerger order as per the orders of the Competent Court. However the shares issued to non-residents by the transferee company or the new company, should not exceed the sectoral cap. Further the transferor company, transferee company or the new company, should not be engaged in any prohibited activity. If there are conditions prescribed under FDI policy for the business of the transferee company or the new company, those should be complied with.

Thus for example, Company ABC is in clothing business. It has foreign investors. Company XYZ is in NBFC activity. The capital of Company XYZ is less than what is required in case of foreign investment. If Company ABC merges into Company XYZ, then non-resident shareholders in Company ABC, will get shares of company XYZ. As the capital in Company XYZ is not FDI compliant, the shares cannot be issued. The merger effectively cannot take place.

The transferee company or the new company has to file a report with RBI within 30 days giving the details about the shares held by non-residents in the transferor and the transferee/new Company before

the merger/demerger. Further a confirmation should be submitted that all the terms as stipulated in the scheme approved by the High Court have been complied with.

## **16. EMPLOYEE STOCK OPTIONS AND SWEAT EQUITY SHARES**

An Indian company can issue “employees’ stock option” and/or “sweat equity shares” to its non-resident employees/directors. Such stock options and sweat equity shares can also be issued to non-resident employees/directors of Indian company’s holding company or joint venture or wholly owned overseas subsidiary.

“**Employees’ stock option**” has been defined to mean the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

“**Sweat equity shares**” has been defined to mean equity shares issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The scheme for Stock options or sweat equity shares is as per terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013.

Such Stock Options and sweat equity shares are in compliance with the sectoral cap applicable to the said company.

Where foreign investment is under approval route, the issue of Stock options and sweat equity shares will require prior approval of FIPB.

Issue of Stock options and sweat equity shares to an employee/director who is a citizen of Bangladesh/Pakistan will require prior approval of FIPB.

## **17. COMPLIANCES IN CASE OF INVESTMENT**

The requirement of compliances is cast on the Indian company which accepts FDI. Compliances have to be made through Banks. There are various stages at which the Indian Companies accepting FDI have to comply with reporting requirements. These are listed below:

### **17.1 At the time of receipt of funds**

The Indian company has to file a report within 30 days of receipt of funds. The report has to be filed with the Regional office of RBI where the registered office of the company is located. The report has to be filed through the Bank of the Indian company. Following documents are required to be filed:

- Report by the Indian company receiving amount of consideration for issue of shares/Convertible debentures under the FDI Scheme.
- Copy of Foreign Inward Remittance Certificate evidencing the receipt of consideration for issue of shares/convertible debentures. If the funds are received through another bank in India, then that bank should issue the FIRC.
- Know Your Customer (KYC) report from the overseas bank of the investor. The KYC report is generally required to be sent by the overseas bank directly to the bank of the Indian company. Some banks insist on the KYC report by SWIFT mode.

The prima facie responsibility is on the Indian company to see to it that the report is filed by the bank to RBI in time. In case of delays, RBI initially considers the date when the report was ultimately filed by the bank with RBI. It is essential to keep documentary evidence of filing reports with the bank to establish that the investee company has filed the reports in time.

On receipt of the report with the documents, RBI allots a Unique Identification Number (UIN) for the remittance received. This number is required to be quoted at the time of filing the report on allotment of shares.

The reporting for receipt of funds has to be done mandatorily online on ebiz.gov.in website. (AP circular 40 dated 1.2.2016).

## 17.2 At the time of allotment of securities

Note: FEMA regulations provide for filing of the reports on “issue” of securities. It should be considered as “allotment” of securities.

The allotment has to be completed within 180 days of receipt of funds. If the allotment is not done within 180 days, the funds have to be refunded to the investors. If the funds are not allotted nor refunded within 180 days, an application has to be made to RBI for allotment or refund of funds as may be the intention of the company. RBI may ask the company to go for compounding.

On allotment of securities, the Indian company has to file reports for the allotment within 30 days of allotment. The report has to be filed with the Regional office of RBI where the registered office of the company is located. The report has to be filed through the Bank of the Indian company. Following documents are required to be filed:

- i. Form FC-GPR.
- ii. A certificate from the Company Secretary certifying that all requirements of Companies Act, FEMA regulations, etc., have been complied with. Typically the certificate can be issued once the form for allotment is filed with the Registrar of Companies.
- iii. A certificate from the statutory auditors or a Chartered Accountant certifying the value of the shares on the basis of internationally accepted pricing methodology on arm's length basis.

As in case of report to be filed on receipt of funds (paragraph 16.1), the prima facie responsibility is on the Indian company to see to it that Form FC-GPR is filed by the bank to RBI in time.

On receipt of the report with the documents, RBI allots a Registration Number for the foreign investment.

The reporting on allotment of securities has to be done online on ebiz.gov.in website. (AP circular 40 dated 1.2.2016).

17.3 Investment in an LLP has to be reported in Form FOREIGN DIRECT INVESTMENT-LLP(I) within 30 days from the date of receipt of consideration. Valuation report and KYC documents also need to be filed.

17.4 For issue of Employee Stock Options and Sweat Equity Shares, the company has to file Form-ESOP with the Regional Office of RBI within 30 days from the date of issue of such issue of Stock options or sweat equity shares.

## 17.5 Annual reporting

Every year by 15th July, an Annual Return on Foreign Liabilities and Assets (FLA Return) reporting by Indian Companies has to be filed with RBI directly at:

- The Director  
External Liabilities and Assets Statistics Division  
Department of Statistics and Information Management (DSIM)  
Reserve Bank of India  
C 8, Bandra-Kurla Complex  
Bandra (East)  
Mumbai- 400 051

The Annual return can also be submitted by email at [surveyfla@rbi.org.in](mailto:surveyfla@rbi.org.in)

Vide AP Circular No. 22 dated 21.10.2015, it has been provided that LLPs have to file FLA Return.

The Annual return is detailed. Values of investment are required to be filled in based on the market prices in case of listed companies, or at Book Value basis in case of unlisted company. The Annual return may be filled on based on unaudited balance sheet. After the receipt of audited balance sheet, the Annual return can be revised and submitted with the audited balance sheet.

The Statement requires the Indian company to disclose both - foreign assets and foreign liabilities.

For foreign assets in case of Joint Venture (JV)/Wholly Owned Subsidiary (WOS) abroad, a separate Annual Performance Report also has to be filed. Thus there is dual reporting for overseas investment.

Foreign liabilities include short term loans, External Commercial Borrowings (ECBs), etc. There is a separate reporting for ECBs. For Indian companies which have FDI and have taken ECB from the FDI investors, there is dual reporting.

Those Indian companies which have taken ECB from persons other than FDI investors, do not have to file the Statement of Foreign Assets and Liabilities. They only have to file ECB reports.

Thus any Indian company which has FDI, or which has invested abroad in JV/WOS, is required to file a Statement of Foreign Assets and Liabilities.

## **17.6 Indirect foreign investment**

Indian company which makes Downstream investment has to notify Secretariat for Industrial Assistance, DIPP and FIPB of its downstream investment in the form available at <http://www.fipbindia.com> within 30 days of such investment, even if capital instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).

The first level Indian company is required to obtain a certificate from its auditors on an annual basis that its downstream investment is in accordance with the rules. The fact that the auditor has certified that the rules have been complied with, should be stated in the Director's report.

If the auditor has given a qualified report (i.e. rules have not been complied with), the matter should be reported to RBI. RBI will then advise the next steps.

## **18. NON-REPATRIABLE INVESTMENT BY NRIS**

NRIs are permitted to invest on non-repatriable basis in India. Vide Notification no. 361 dated 15.2.2016, foreign entities which are owned and controlled by NRIs, have also been permitted to invest in India.

It should be noted that the meaning of NRI has been amended. Now NRI means "Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India or is an "Overseas Citizen of India" cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955". The reference to the phrase "Person of Indian Origin" has been removed. Now an "NRI" means a non-resident, who is an Indian citizen, or is an OCI Cardholder. Persons of Indian Origin can become OCI Cardholders. If they have not obtained the OCI card, then they are not eligible for non-repatriable investment facility. PIO card holders are deemed to be OCIs. It may be noted that the meaning of NRI has been amended for foreign investment. For bank accounts, NRI and PIO have different meanings. That is given in Notification No. 5(R) on Deposits.

### **Thus NRIs can invest in India as under:**

18.1 NRI can invest individually. He can also invest through a company, trust of a firm incorporated outside India which is owned and controlled by the NRIs.

18.2 Investment can be made in Indian companies, Investment vehicles, firms, LLPs or proprietary concerns.

18.3 Investment can be made in any security issued by a company.

Investment can be made in units of an Investment Vehicle.

Investment can be made in capital of firm or an LLP.

There are no pricing guidelines prescribed.

18.4 There are very few restrictions on the industries in which NRIs can invest. No investment can be made in – Agricultural activities, Real estate activities, construction of farm houses, dealing in Transfer of Development Rights, Nidhi activities. There are no other restrictions.

It has been clarified that Real estate business does not mean construction and development, leasing of property and investment in units of REITs. Thus investment in these activities is also permitted.

There are no reporting requirements.

18.5 There is another Notification No. 24 for investment by NRIs in Partnership firms and proprietary concerns. Investment can be made in the capital of the firm or a proprietary concern. There are similar restrictions on real estate, etc. In this notification, real estate leasing activity cannot be undertaken. There are no reporting requirements. Under this notification, investment in LLP or a company is not possible. Further NRIs can invest individually and not through entities abroad.

In this notification, however, NRI includes a Person of Indian Origin. Thus, PIOs who do not have OCI cards, can invest under this notification.

## **19. APPROVAL**

If any investment requires an approval from the Government, the application should be made to FIPB. Online application also can be made.

If any of the specified conditions of FDI policy cannot be fulfilled, or an exemption is required, an application has to be made to FIPB.

If any condition has been violated, an application has to be made to FIPB for regularisation of the violation. FIPB may regularise the violation subject to Compounding by RBI.

## **20. ESCROW ACCOUNT**

To facilitate the transactions between residents and non-residents for issue or transfer of shares, banks have been permitted to open non-interest bearing escrow accounts in Indian rupees. Escrow accounts can also be opened for keeping securities to facilitate FDI transactions subject to terms and conditions specified by RBI. [AP Circular No. 58 dated 2.5.2011]. Depository participants can also open escrow accounts for securities.

## **21. SUMMARY**

The whole subject of FDI is complex and confusing because – different authorities issue policy / notifications on the same subject. They sometimes have differences of opinions. They try to control from several different aspects. Rules keep changing frequently.

During the past year, rules have been liberalised and clarity has been brought. Hopefully the FDI regime should be better in times to come.

Before taking any decision, one should carefully study latest FDI policy and FEMA Notification No. 20. One should also be clear about other restrictions under FEMA.

# STAMP DUTIES & FEES

**Rate of Stamp Duty :** The existing rate of stamp duty on some important Article of Schedule 1A of the Indian Stamp Act are mentioned below :

Sl. No.	No. Name of Article	Rate of Stamp Duty	Rate of Regn.Fee
1.	4 Affidavit	Rupees Ten (Rs. 10)	Rs. 7.00
2.	5 Agreement (a) If relating to sale of immovable property (b) if relating to an agreement giving authority to a promoter or developer, by whatever name called, for construction on, or sale of, or transfer (in any manner whatsoever ) of, any immovable property (i) where the market value of the property does not exceed rupees thirty lakh; (ii) where the market value of the property exceeds rupees thirty lakh but does not exceed rupees sixty lakh; (iii) where the market value of the property exceeds rupees sixty lakh but does not exceed one crore ; (iv) where the market value of the property exceeds rupees one crore but does not exceed rupees one and half crore; (v) where the market value of the property exceeds rupees one and half crore but does not exceed rupees three crore; (vi) where the market value of the property exceeds rupees three crore; (There are some other clauses also)	The same as conveyance for market value (No.23) Rupees five thousand Rupees seven thousand Rupees ten thousand Rupees twenty thousand Rupees forty thousand Rupees seventy five thousand	Rs. 7.00
3.	15 Bond	4% of value secured	Under Article A
4.	23 Conveyance 23A Conveyance, in respect of amalgamation, merger, reconstruction, or demerger, of companies, other than amalgamation, merger, reconstruction or demerger, of two banking companies or a banking company with a non-banking financial company, executed on the basis of decree or final order of any Civil Court or every order made by the Tribunal under section 394 of the Companies Act, 1956, as defined by section 2(10), not being a transfer charged or exempted under No. 62, on the market value of the property which is the subject matter of the conveyance, when the property of the transferor company located in the State of West Bengal is transferred to the transferee company by way of such amalgamation, merger, reconstruction, or demerger or companies under the decree of final order of any Civil Court or every order of the Tribunal under section 394 of the Companies Act, 1956:  Provided that on and after the constitution of the National Company Law Tribunal, the expression 'High Court' shall be read as 'Tribunal'.	5% on market value in Panchayet Area 6% on market value in Municipal Areas, Corporation Areas and notified area other than those included in 23(a) and specified mouzas or blocks of South 24 Parganas and North 24 Parganas which are distributed over three action areas of New Town Kolkata Development Authority and divided into a number of blocks.  1% Additional Stamp Duty in both urban and rural areas, if the market value exceeds 40 lakh w.e.f. 02.03.2015.  The same duty as a Conveyance (No. 23) on the aggregate of the market value of the shares issued or allotted, in exchange or otherwise, and the amount of consideration paid- (a) by the transferee company, for such amalgamation or merger: Provided that the amount of such duty chargeable under this article shall not exceed: (i) an amount equal to two per centum of the true market value of the immovable property located within the State of West Bengal of the transferor company, or (ii) an amount equal to half per centum of the aggregate of the market value of the shares issued	Up to Rs. 250 is Rs. 2 Up to Rs. 500 is Rs. 7 Up to Rs. 1000 is Rs. 8 UP to Rs. 5000 is Rs. 9 For Rs. 1000 or part thereof in excess of Rs. 1000. Above Rs. 5000 is Rs. 11 for Rs. 1000 or part thereof in excess of Rs. 5000.



SI. No.	No. Name of Article	Rate of Stamp Duty	Rate of Regn.Fee
		<p>or allotted, in exchange or otherwise, and the amount of consideration paid by such transferor company, for such amalgamation, whichever is higher;</p> <p>(b) by the resulting company, for such reconstruction or demerger</p> <p>- Provided that in case of reconstruction or demerger, the amount of such duty Chargeable under this item shall not exceed-</p> <p>(i) an amount equal to two per centum of the true market value of the immovable property located within the State of West Bengal of the transferor company, or</p> <p>(ii) an amount equal to half per centum of the aggregate of the market value of the shares issued or allotted, to the resulting company and the amount of consideration paid for such demerger, whichever is higher.";</p>	
5.	31 Exchange of property	Same duty as conveyance (No. 23) on market value of the property of greatest value	Same as above
6.	32. Further Charge Instrument of, that is to say, any instrument imposing a further charge on mortgaged property (b) when such mortgage is one of the description referred to in clause (b) of Art no 40 (that is , without possession)- (ii) if possession is not given	Rupees Ten for every Rs. 500 or part thereof, for an amount secured by such deed, subject to the maximum of Rs. 1 lac. w,e,f. 01.06.2014	'A' fee subject to a maximum of Rs. 55,000 w.e.f. 01.06.2014
7.	33 Gift (1) When made to a member of a family (2) When made to an others	0.5% of the market value of the property Same duty as conveyance (No.23) on market value	Same as above with no cap Same as above
8.	in article 35,- "(a) whereby such Lease the rent is fixed and no premium is paid or delivered- (i) where the' lease purports to be for a term not exceeding one year; (ii) where the lease purports to be for a term exceeding one year but not exceeding ten years; (iii) where the lease purports to be for a term exceeding ten years but not exceeding thirty years; (iv) where the lease purports to be for a term exceeding thirty years and for any term renewed. "(b) where such lease is granted for a fine or premium, or for money advanced, or for security charges advanced, and where no rent is reserved- (i) where the lease purports to be for a term not exceeding thirty years; (ii) Where the lease purports to be for a term exceeding thirty years and for any term renewed or in perpetuity or where no term	<p>The same duty as a Bottomry Bond (No. 16) for the whole amount paid, payable or deliverable under such lease.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) on the market value of the property which is the subject-matter of the lease.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or the value of such fine or premium or money advanced, or security charges advanced, as set forth in the lease.</p> <p>The same duty as a Conveyance (No. 23) on the market value of the property which is the subject matter of the Lease.</p>	Same as above

SI. No.	No. Name of Article	Rate of Stamp Duty	Rate of Regn.Fee
	<p>is mentioned.</p> <p>"(c) where such lease is granted for a fine or premium, or for money advanced, or for development charges advanced, or for security charges advanced, in addition to rent reserved –</p> <p>(i) where the lease purports to be for a term not exceeding thirty years;</p> <p>(ii) Where the lease purports to be for a term exceeding thirty years and for any term renewed or in perpetuity or where no term is mentioned.</p> <p>[The expression "or for security charges advanced" referred to in items (b) and (c) of article 35, shall mean non-refundable security charges or deposits only.]</p> <p>(There are some other clauses and explanations.)</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in such lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.</p> <p>The same duty as a Conveyance (No. 23) on the market value of the property which is the subject-matter of the lease; or an aggregate of Stamp duties as a conveyance (No. 23) on rent (three times of the average annual rent) and premium or money advanced or security charges advanced, whichever is higher.</p> <p>Provided that in any case, when an agreement for a lease is stamped or a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed rupees ten."</p>	
9.	<p>43. Note of Memorandum, sent by a broker or agent to his principal intimating the purchase or sale on account of such principal –</p> <p>(a) of any goods exceeding in value twenty rupees;</p> <p>(aa) of any goods exceeding in value twenty rupees but not delivered;</p> <p>(ab) of any goods relating to future and options trading;</p> <p>(ac) of any goods relating to forward contract of commodities traded through an association or otherwise;</p>	<p>Fifty paise for every Rs. 5000 or part thereof</p> <p>Ten paise for every Rs. 5000 or part thereof</p> <p>Ten paise for every Rs. 5000 or part thereof</p> <p>Ten paise for every Rs. 5000 or part thereof</p>	Same as above
10.	45. Partition	0.5% of the market value of the separated share or shares of the property	Same as above
11.	<p>48. Power of Attorney</p> <p>"(g) when given to a promoter or developer, by whatever name called, for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property –</p> <p>(i) where the market value of the property does not exceed rupees thirty lakh;</p> <p>(ii) where the market value of the property exceeds rupees thirty lakh but does not exceed rupees sixty lakh;</p> <p>(iii) where the market value of the property exceeds rupees sixty lakh but does not exceed one crore ;</p> <p>(iv) where the market value of the property exceeds rupees one crore but does not exceed rupees one and half crore;</p> <p>(v) where the market value of the property exceeds rupees one and half crore but does not exceed rupees three crore;</p> <p>(vi) where the market value of the property exceeds rupees three crore;</p> <p>Explanation- Where the proper stamp duty is paid under clause (f) of article 5 on a promoter's or developer's agreement between the same parties in respect of the same property, the proper stamp duty under this clause shall be rupees fifty ."</p>	<p>Rupees five thousand</p> <p>Rupees seven thousand</p> <p>Rupees ten thousand</p> <p>Rupees twenty thousand</p> <p>Rupees forty thousand</p> <p>Rupees seventy five thousand</p>	

SI. No.	No. Name of Article	Rate of Stamp Duty	Rate of Regn.Fee
	(There are some other clauses also)		
12.	46 . Partnership (a) Up to Rs. 500 (b) Up to Rs. 10000 (c) Up to Rs. 50000 (d) Exceeding Rs. 50000	Rs. 20 Rs. 50 Rs. 100 Rs. 150	Rs. 7.00
13.	61. Surrender of the lease, When such lease is chargeable with duty; Surrender of the lease, when such lease is exempted from duty.	Exemption. Rupees one hundred irrespective of the term of lease."	
14.	63. Transfer of Lease a) Govt. land in favour of family members as defined in Article 33. b) in any other case	0.5% on the market value of the property. Same as conveyance on the market value of the property.	Same as conveyance. Same as conveyance.

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### Rate of Stamp Duty for Conveyance (Articles- 23)

SI. No.	Date of effect	Rate of Stamp Duty	Remarks
1.	28.03.1994	10%	Upto 14.07.1996
2.	15.07.1996	5%	Upto 31.03.2002
3.	01.04.2002	Municipal area 6% Panchayet area 5%	Upto 20.10.2002
4.	21.10.2002	Corporation area 8% Municipal area 6% Panchayet area 5%	Upto 04.08.2003
5.	05.08.2003	Corporation area 8% Municipal area 8% Panchayet area 5%	
6.	01.08.2006	Corporation area 6% Municipal area 6% Panchayet area 5%	<b>Additional 2% stamp duty For KIT/HIT removed w.e.f. 01.08.2006.</b>
7.	01.04.2007	<p style="text-align: center;"><u>Above 25 lac</u></p> (a) Corporation (Kolkata/Howrah) Area 7% (b) Municipal Corp./Municipality/Notified Area 7% (c) Other then those included in clause (a) or (b) 6% <p style="text-align: center;"><u>25 lac &amp; its below</u></p> (a) Corporation (Kolkata/Howrah) Area 6% (b) Municipal Corp./Municipality/Notified Area 6% (c) Other then those included in clause (a) or (b) 5%	

# FOREIGN EXCHANGE MANAGEMENT ACT AND REGULATIONS

## 1. INTRODUCTION

Post liberalization in 1991, the need was felt to consolidate and amend the law relating to foreign exchange with the objectives of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. Accordingly, on June 1, 2000, the Foreign Exchange Management Act, 1999 (FEMA) was brought in force to replace the then existing Foreign Exchange Regulation Act, 1973 (FERA). FEMA is an act to manage the foreign exchange of India as opposed to FERA which was enacted to regulate or control the foreign exchange.

FEMA applies to the whole of India and all branches, offices and agencies outside India which are owned or controlled by a person resident in India. It also applies to any contraventions there under committed outside India by any person to whom FEMA applies.

There are 49 sections under FEMA, of which 9 sections (section 1 to 9) are substantive and the rest are procedural / administrative provisions as tabulated below:

Section	Description
1	Application and Commencement of FEMA
2	Definitions
3 to 9	Provisions relating to Regulations and Management of Foreign Exchange
10 to 12	Provisions relating to Authorised Person
13 to 15	Provisions relating to Contraventions and Penalties
16 to 38	Provisions relating to Adjudication, Appeal and Directorate of Enforcement
39 to 49	Miscellaneous Provisions

Section 46 of FEMA grants power to the Central Government to make rules to carry out the provisions of FEMA and Section 47 of FEMA grants power to the Reserve Bank of India (RBI) to make regulations to implement provisions and the rules made under FEMA. Thus RBI is entrusted with the administration and implementation of FEMA.

## RATIONALIZATION OF FEMA NOTIFICATIONS

FEMA was enacted with 25 original notifications and over years had more than 360 amendment notifications. A need was felt to consolidate the regulations and rationalize them. Accordingly, RBI has started revising regulations issued under FEMA. Consequently on issue of revised regulations, original notifications and subsequent amendments stand repealed. For easy identification revised regulations will carry the same numbers as the old regulations with a suffix 'R' along with the year in which they are published. Till date RBI has revised following 13 notifications:

Notification No.	Date	Particulars
5(R)/2016-RB	01.04.2016	Foreign Exchange Management (Deposit) Regulations 2016
6(R)/2015-RB	29.12.2015	Foreign Exchange Management (Export and Import of Currency) Regulations 2015
7(R)/2015-RB	21.01.2016	Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations 2015
9(R)/2015-RB	29.12.2015	Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations 2015
10(R)/2015-RB	21.01.2016	Foreign Exchange Management (Foreign Currency Accounts by a Person resident in India) Regulations 2015
11(R)/2015-RB	29.12.2015	Foreign Exchange Management (Possession and Retention of Foreign Currency), Regulations 2015
12(R)/2015-RB	29.12.2015	Foreign Exchange Management (Insurance) Regulations 2015
13(R)/2016-RB	01.04.2016	Foreign Exchange Management (Remittance of Assets) Regulations 2016
15(R)/2015-RB	29.12.2015	Definition of Currency
18(R)/2015-RB	29.12.2015	Post Office (Postal Orders/Money Orders)
23(R)/2015-RB	12.01.2016	Foreign Exchange Management (Export of Goods and Services) Regulations 2015

22(R)/2016-RB	31.03.2016	Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations 2016
14(R)/2016-RB	03.05.2016	Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016

## MASTER DIRECTIONS

RBI, in the Fourth bi-monthly monetary policy statement 2015-16 pronounced on September 29, 2015 (Para 29) stated that it will update all its master regulations and will streamline the required procedure for compliance with the regulations. All master regulations will be fully updated and placed online. Accordingly RBI decided to issue Master Directions on all regulatory matters. Master Directions so issued shall consolidate instructions on rules and regulations framed by RBI. One Master Direction will be issued for each subject matter covering all instructions on the subject. The same will be updated as and when there is change in rules/regulations or change in policy. The existing set of master circulars issued on various subjects will stand withdrawn with the issue of Master Direction on the subject. In January 2016, total 17 Master Directions have been issued by RBI on various foreign exchange regulations. Master directions can be viewed at –

[https://www.rbi.org.in/scripts/FS\\_Notification.aspx?fn=5&fnn=2764](https://www.rbi.org.in/scripts/FS_Notification.aspx?fn=5&fnn=2764)

## 2. CAPITAL ACCOUNT TRANSACTION AND CURRENT ACCOUNT TRANSACTION

### A. Capital Account Transaction means a transaction which: -

- i. Alters foreign assets and foreign liabilities (including contingent liabilities) of Indian residents.
- ii. Alters Indian assets and Indian liabilities of non-residents.
- iii. Is a specified transaction listed in section 6(3).

Unless permitted by way of notifications and rules or specific approvals, transactions cannot be undertaken. But for two very important purposes no restrictions can be imposed, either by RBI or by the Government of India, viz.

- (a) Drawing of foreign exchange for the repayment of any loans and;
- (b) For replenishing depreciation of direct investments in the ordinary course of business. (Section 6)

### B. Current Account Transaction: means all transactions, which are not capital account transactions. Specifically it includes: -

- Business transactions between residents and non-residents.
- Short-term banking and credit facilities in the ordinary course of business.
- Payments towards interest on loans and by way of income from investments.
- Payment of expenses of parents, spouse or children living abroad or expenses on their foreign travel, medical and education.
- Scholarships / Chairs, etc.

## 3. SOME IMPORTANT definitions UNDER FEMA

- a. **“Foreign Exchange”** means foreign currency and includes,-
  - i. deposits, credits and balances payable in any foreign currency,
  - ii. drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
  - iii. drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; *[Section 2(n)]*

- b. **"Person"** includes -
- i. an individual,
  - ii. a Hindu undivided family,
  - iii. a company,
  - iv. a firm,
  - v. an association of persons or a body of individuals, whether incorporated or not,
  - vi. every artificial juridical person, not falling within any of the preceding sub-clauses, and
  - vii. any agency, office or branch owned or controlled by such person. *[Section 2(u)]*
- c. **"Persons Resident in India"** means -
- i. a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include —
    - (A) a person who has gone out of India or who stays outside India, in either case -
      - a. for or on taking up employment outside India, or
      - b. for carrying on outside India a business or vocation outside India, or
      - c. for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
    - (B) a person who has come to or stays in India, in either case, otherwise than —
      - a. for or on taking up employment in India, or
      - b. for carrying on in India a business or vocation in India, or
      - c. for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
  - ii. any person or body corporate registered or incorporated in India,
  - iii. an office, branch or agency in India owned or controlled by a person resident outside India,
  - iv. an office, branch or agency outside India owned or controlled by a person resident in India. *[Section 2(v)]*
- d. **"Person Resident outside India"** means a person who is not resident in India. *[Section 2(w)]*
- e. **"Repatriate to India"** means bringing into India the realized foreign exchange and -
- i. the selling of such foreign exchange to an authorized person in India in exchange for rupees, or
  - ii. the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly. *[Section 2(y)]*
- f. **"Repatriation outside India"** means buying or drawing of foreign exchange from an authorized dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorized dealer from which it can be converted in foreign currency.

[Regulation 2(d) of FEMA Notification No. 21]

#### **4. FOREIGN CURRENCY ACCOUNTS IN INDIA BY RESIDENT INDIAN**

[Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 - Notification No. FEMA 10(R)/2015-RB dated January 21, 2016 as amended]

##### **A. Resident Foreign Currency Account (RFC Account)**

A person resident in India may open, hold and maintain with an Authorised Dealer (AD) in India a foreign currency account, to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange -

- a. received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- b. realised on conversion of the assets referred to in subsection (4) of section 6 of the Act (i.e. foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was a resident outside India or inherited from a person resident outside India) and repatriated to India; or
- c. received or acquired as gift or inheritance from a person resident in India who has acquired, held or owned such foreign exchange when he was resident outside India or inherited from a person who was resident outside India; or
- d. acquired or received before July 8, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by RBI; or acquired as gift or inheritance there from; or
- e. received as the proceeds of life insurance policy claims/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority (IRDA).

RFC account can be maintained in the form of current or savings or term deposit accounts. The funds in a RFC Account shall be free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form, by whatever name called, outside India.

Resident individuals are permitted to include resident close relative(s) [as defined in section 2(77) of the Companies Act, 2013] as a joint holder(s) in their RFC account on 'former or survivor' basis. However, such resident Indian close relative joint account holder shall not be eligible to operate the account during the life time of the resident account holder.

Upon the return of the non-resident to India for taking a employment in India or change in the residential status from non-resident to resident, the funds in NRE account may be transferred to RFC Account.

Further in case of FCNR(B) deposits held by non-resident who becomes resident, AD Banks may allow to be hold the same till maturity and upon maturity convert such deposits into resident rupee deposit accounts or RFC account as desired by the account holder.

##### **B. Resident Foreign Currency (Domestic) Account (RFC (D) Account)**

A resident individual may open, hold and maintain with AD in India a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques:

- i. while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- ii. from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
- iii. by way of honorarium or gift while on a visit to any place outside India; or
- iv. represents the unspent amount of foreign exchange acquired by him from an authorized person for travel abroad; or
- v. as gift from a 'close relative' as defined in section 2(77) of the Companies Act, 2013; or

- vi. by way of earning through export of goods/services, or as royalty, honorarium or by any other lawful means; or
- vii. representing the disinvestments proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under DR Scheme, 2014 approved by the Government of India; or
- viii. by way of earnings received as the proceeds of life insurance policy claim/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by IRDA.

The account shall be maintained in the form of Current Account and shall not bear any interest. There shall be no ceiling on the balances in the account. Funds can be used for payments towards Current Account transactions in accordance with the Foreign Exchange Management (FEM) (Current Account Transactions) Rules, 2000 and towards permissible Capital Account transactions under the FEM (Permissible Capital Account Transactions) Regulations, 2000

### **C. Exchange Earners' Foreign Currency Account (EEFC Account)**

A person resident in India may open, hold and maintain with AD in India a foreign currency account, to be known as a Exchange Earners' Foreign Currency Account subject to conditions given below:

#### **(a) Limits :**

100% of the foreign exchange earnings as specified below can be credited to the EEFC Account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Following foreign exchange earnings are allowed to be credited to EEFC Account:

- i. Inward remittance through normal banking channel, other than the remittance received pursuant to any undertaking given to RBI or which represents foreign currency loan raised or investment received from outside India or those received for meeting specific obligations by the account holder;
- ii. Payments received in foreign exchange by a 100% Export Oriented Unit or a unit in (a) Export Processing Zone (EPZ) or (b) Software Technology Park (STP) or (c) Electronic Hardware Technology Park (EHTP) for supply of goods to similar such unit or to a unit in Domestic Tariff Area and also payments received in foreign exchange by a unit in Domestic Tariff Area for supply of goods to a unit in Special Economic Zone (SEZ);
- iii. Payment received by an exporter from an account maintained with AD for the purpose of counter trade, in accordance with the approval granted in terms of Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, as amended from time to time;
- iv. Advance remittance received by an exporter towards export of goods or services;
- v. Payment received for export of goods and services from India, out of funds representing repayment of State Credit in U.S. dollar held in the account of Bank for Foreign Economic Affairs, Moscow, with AD in India;
- vi. Professional earnings including director's fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;

#### **(b) Permissible credits to EEFC Account**

- i. A portion of inward remittance/payment received by the recipient in foreign exchange as mentioned above;
- ii. Interest earned on the funds held in the account;



- iii. Recredit of unutilised foreign currency earlier withdrawn from the account;
  - iv. Amount representing repayment by the account holder's importer customer, of loan/advances granted, to the exporter holding such account;
  - v. Representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under the DR Scheme, 2014 approved by Government of India (GOI).
- (c) Permissible debits to EEFC Account
- i. Payment outside India towards all permissible current account transactions and permissible capital account transactions.
  - ii. Payment in foreign exchange for goods purchases from 100% Export Oriented Units or Units in Export Processing Zone or Software Technology Park or Electronic Hardware Technology Park;
  - iii. Payment of custom duty;
  - iv. Trade related loans and advances by exporter holding such account to his importer customer outside India;
  - v. Payment in foreign exchange to a person resident in India for supply of goods and services including payment for airfare and hotel expenditure.

There is no restriction on withdrawal in rupees of funds held in an EEFC account. However amount withdrawn in rupees from EEFC Account shall not be eligible for conversion into foreign currency and for re credit to such account.

EEFC account can be held only in the form of a current account and no interest is payable on EEFC Account. Cheque facility is available for operation of EEFC Account.

Resident individuals are permitted to include resident close relative(s) [as defined in section 2(77) of the Companies Act, 2013] as a joint holder(s) in their EEFC account on 'former or survivor' basis. However, such resident Indian close relative(s), shall not be eligible to operate the account during the life time of the resident account holder.

#### **D. Foreign Currency Account in India in specified cases**

- i. A shipping or airline company incorporated outside India or its agent in India, may open, hold and maintain a Foreign Currency Account with AD in India for meeting the local expenses in India of such airline or shipping company. The credits to such accounts must be only by way of freight or passage fare collections in India or by inward remittances through normal banking channels from its office outside India and, in the case of agent, from his principal outside India.
- ii. Ship-manning/crew managing agencies are permitted to open and maintain non-interest bearing foreign currency accounts in India for the purpose of undertaking transactions in the ordinary course of its business.
- iii. Project office of foreign company in India may be allowed to open, hold and maintain non-interest bearing one or more foreign currency account in India for the projects to be executed in India.
- iv. An AD category – I banks in India may allow firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of the GOI, in force from time to time and the directions as may be issued by RBI, from time to time, to open, hold and maintain Diamond Dollar Accounts (DDAs) in India subject to specified terms and conditions.
- v. An Indian company receiving foreign investment under FDI route may open and maintain a foreign currency account with an AD in India. The Indian investee company should have impending foreign currency expenditure and the account shall be closed immediately after the requirements are completed and in no case shall be operational for more than six months from the date of opening of such account.

- vi. AD in India may allow opening temporary foreign currency accounts by organizers of international seminars, conferences, conventions etc. for holding such events in India for the receipt of delegate fees and payment towards expenses including payment to special invitees from abroad.

#### **E. Foreign Currency Account of a Unit in a SEZ**

A unit located in a SEZ may open, hold and maintain a foreign currency account with AD in India subject to following:

- i. all foreign exchange funds received by such unit are credited to such account;
- ii. no foreign exchange purchased in India against rupees shall be credited to this account without prior permission of RBI;
- iii. funds held in the account shall be used for bona fide trade transactions with the person resident in India or otherwise;
- iv. the balance in the account can be used for transactions specified Schedule III of Current Account Transactions Rules without prior approval of RBI except for item 3 & 4 of the said schedule (i.e. remittances towards gifts and donations exceeding USD 5,000 per financial year per remitter/donor other than resident individual are not permissible);
- v. funds held in these accounts shall not be lent or made available in any manner to any person or entity resident in India not being a unit in SEZ.

#### **F. Foreign Currency Account outside India**

- i. An Indian firm or a Body Corporate may open, hold and maintain in the name of its office or its branch or representative posted outside India, a foreign currency account with a bank outside India by making remittances from India for the purpose of normal business operations of the office/branch/representative subject to following conditions:
  - a. the overseas branch / office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity.
  - b. the total remittances made by Indian entity to all such accounts in an accounting year shall not exceed:
    - 15% of average annual sales/income or turnover of Indian entity during the last two financial years or up to 25% of the net worth, whichever is higher, where the remittances are made to meet initial expenses of the branch or office or representative;
    - 10% of such average annual sales/income or turnover during the last financial years, where the remittances are made to meet the recurring expenses of the branch or office or representative.

The above restrictions are not applicable if the remittances are made out of funds held in EEFC account of Indian entity or the overseas branch / office is set up or representative posted by 100 % EOU or a unit in EPZ or in a HTP or STP, within two years of establishment of the unit.
  - c. The account so opened, held or maintained shall be closed-
    - if the overseas branch / office is not set up within six months of opening the account, or
    - within one month of closure of the overseas branch / office, or
    - where no representative is posted for six months and the balance held in the account shall be repatriated to India.
- ii. A person resident in India, being an exporter who has undertaken a construction contract or turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank outside or in India subject to following –

- a. approval has been obtained for the project/contract/export of goods or services, and
  - b. terms and conditions stipulated in the approval letter have been duly complied.
- iii. AD in India may open, hold and maintain with his branch or head office or correspondent office outside India, a Foreign Currency account for the purpose of transacting foreign exchange business and other matters incidental thereto.

A branch outside India of a bank incorporated in India may open, hold and maintain with a bank outside India, a Foreign Currency account for the purpose of carrying on normal banking business outside India, subject to compliance with directions of Reserve Bank and regulatory authority of the country where the branch is located.

- iv. A person resident in India who has gone abroad for studies or who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that all the credits from India into the account shall be in accordance with the Act, rules and regulations made there under and on his return to India, after completion of his studies, such an account will be deemed to have been opened under the Liberalised Remittance Scheme.
- v. A person resident in India who has gone out of India to participate in an exhibition/trade fair outside India may open, hold and maintain a Foreign Currency Account with bank outside India for crediting the sale proceeds of goods on display in the exhibition/fair. Further, the balance in the account is repatriated to India through normal banking channels within one month from the date of closure of the exhibition / trade fair.
- vi. A citizen of a foreign state resident in India, being an employee of a foreign company or a citizen of India, employed by a foreign company outside India and in either case on deputation to the office/branch/subsidiary/joint venture of such foreign company may open, hold and maintain a foreign currency account with an bank outside India and receive the whole salary payable to him for the services rendered to the office/branch/subsidiary/joint venture in India of such foreign company, by credit to such account, provided tax under Income Tax Act, 1961 is paid on the entire salary as accrued in India.

A citizen of foreign state resident in India, being in employment with an Indian company may open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in rupees to such account for services rendered to such Indian Company, provided tax under Income Tax Act, 1961 is paid on the entire salary as accrued in India.

- vii. An Indian party may open , hold and maintain Foreign Currency Account abroad for the purpose of overseas direct investments subject to the following conditions:
- a. Indian party is eligible for overseas direct investments
  - b. The host country regulations stipulate that the investment into the country is required to be routed through a designated account.
  - c. Remittances sent to such account shall be utilized only for overseas direct investments into JV/WOS abroad.
  - d. Any amount received in account by way of dividend and / or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
  - e. The account so opened shall be closed immediately or within 30 days from the date of disinvestment from JV/WOS or cessation thereof.
- viii. Funds so raised through External Commercial or American Depository Receipt or Global Depository receipt may pending their utilization or repatriation to India, be held in deposits in foreign currency accounts with a bank outside India.
- viii. A shipping or airline company incorporated in India may open, hold and maintain with a bank outside India, a foreign currency account for the purpose of undertaking transactions in the ordinary course of business.

- ix. Life Insurance Corporation of India or General Insurance Corporation of India and its subsidiaries may open, hold and maintain with bank outside India, a Foreign Currency account for purpose of meeting their expenditure incidental to the insurance business carried on by them and for that purpose, credit to such account the insurance premia received by them outside India.

## 5. CRYSTALLIZATION OF INOPERATIVE FOREIGN CURRENCY DEPOSITS

[Foreign Exchange Management (Crystallization of Inoperative Foreign Currency Deposits) Regulations, 2014 – Notification No.FEMA.10A/2014-RB dated March 21, 2014]

Deposit means and includes account balances or deposit of money with an Authorised bank.

1. In case a foreign currency denominated deposit with a fixed maturity date remains inoperative for a period of three years from the date of maturity of the deposit, at the end of the third year, the authorised bank shall convert the balances lying in the foreign currency denominated deposit into Indian Rupee at the exchange rate prevailing as on that date. Thereafter, the depositor shall be entitled to claim either the said Indian Rupee proceeds and interest thereon, if any, or the foreign currency equivalent (calculated at the rate prevalent as on the date of payment) of the Indian Rupee proceeds of the original deposit and interest, if any, on such Indian Rupee proceeds.
2. In case of foreign currency denominated deposit with no fixed maturity period, if the deposit remains inoperative for a period of three years (debit of bank charges not to be reckoned as operation), the authorised bank shall, after giving a three month notice to the depositor at his last known address as available with it, convert the deposit from the foreign currency in which it is denominated to Indian Rupee at the end of the notice period at the prevailing exchange rate. Thereafter, the depositor shall be entitled to claim either the said Indian Rupee proceeds and interest thereon, if any, or the foreign currency equivalent (calculated at the rate prevalent as on the date of payment) of the Indian Rupee proceeds of the original deposit and interest, if any, on such Indian Rupee proceeds.

## 6. BANK ACCOUNTS IN INDIA BY NON-RESIDENTS

[Foreign Exchange Management (Deposit) Regulations, 2016 - Notification No. FEMA 5(R)/2016-RB dated April 01, 2016 as amended]

Particulars	Non-resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-resident) Account Banks Scheme (FCNR(B) Account)	Non-resident (Ordinary) Account Scheme (NRO Account)
Who can open an account?	NRIs and PIOs	NRIs and PIOs	Person resident outside India [Individual/s of Pakistan nationality and entities of Pakistan and Bangladesh ownership require prior RBI approval. Individuals of Bangladesh nationality may be allowed by AD Bank subject to holding of valid VISA and residential permit issued by Foreigner Registration Office (FRO) / Foreigner regional Registration Office (FRRO) concerned.]
Repatriability	Repatriable	Repatriable	Non-Repatriable (Except (i) current income in India net of applicable taxes and (ii) under USD 1 million scheme per financial year)
Type of account	Current, Savings, Recurring or Fixed Deposit Accounts, etc.	Term deposits only	Current, Savings, Recurring or Fixed Deposit Accounts
Joint accounts	Two or more NRIs and / or PIOs NRE Account can also be opened jointly with resident 'close relative(s)' (as defined u/s. 2(77) of the Companies Act, 2013) on former or survivor basis. However, the resident close relative joint account holder shall be eligible to operate the account as a Power of Attorney holder in	Terms and conditions as applicable to NRE Accounts in column I	Jointly with residents on 'former or survivor' basis. NRIs and / or PIOs may hold account jointly with other NRIs and / or PIOs.

Particulars	Non-resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-resident) Account Banks Scheme (FCNR(B) Account)	Non-resident (Ordinary) Account Scheme (NRO Account)
	accordance with the extant instructions during the life time of the resident account holder.		
Nomination	Permitted	Permitted	Permitted
Currency in which account denominated	Indian Rupees	Any permitted currency	Indian Rupees
Operations by Power of Attorney in favour of a resident by the non-resident account holder	Operation in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels. In case where the account holder is eligible to make investment in India, the Power of Attorney Account holder shall be allowed to facilitate such investment. The resident Power of Attorney holder shall not be allowed to repatriate outside India funds held in the account under any circumstances other than to account holder himself, nor to make any payment by way of gift to a resident on behalf of the account holder nor to transfer funds from the account to another NRE account.	Terms and conditions as applicable to NRE Accounts in column I.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. Remittance is subject to the ceiling of USD 1 million per financial year. The resident Power of Attorney holder shall not repatriate outside India funds held in the account under any circumstances other than to the non-resident individual account holder himself nor shall make any payment by way of gift to a resident on behalf of the non-resident account holder nor transfer funds from the account to another NRO account.
Permissible Credits	Remittance in permitted foreign currency, proceeds of personal cheques and of travelers cheques, bank drafts payable in any permitted currency for which reimbursement will be received in foreign currency, proceeds of foreign currency / bank notes tendered during temporary visit to India, transfer from other NRE / FCNR account, interest accrued on funds held in the account, current income due in India, maturity or sales proceeds of any permissible investment in India which was originally made by debit to account holders NRE/FCNR B account or out of remittances received from outside India through normal banking channels, certain specified genuine refunds like refunds of shares/debentures subscriptions to new issues of India companies, refund of application / earnest money / purchase consideration on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, transfer of funds from NRO account to NRE account within the overall ceiling of USD 1 million per financial year etc, any other credit if covered under general or special permission by RBI.	All credits permissible in respect of NRE Accounts as specified in column I shall be permissible in respect of these accounts also.	Remittance in permitted foreign currency, Deposit by account holder during temporary visit to India, transfer from rupee account of non-resident banks, legitimate dues in India of account holder, sale proceeds of assets, gift in rupees from resident close relative and loan in rupees from resident close relative.
Permissible Debits	Local disbursements, remittance outside India, transfer to other NRE / FCNR account etc, investment in shares/securities/commercial paper of an Indian company or the general/special permission granted by the Reserve Bank, any other transaction if covered under general or special permission granted by the Reserve Bank.	All debits permissible in respect of NRE Accounts as specified in column I shall be permissible in respect of these accounts also.	Local rupee payments, transfer of funds from NRO account to NRE account (upto USD 1 million per financial year), Remittance outside India of current income in India (net of taxes) within the overall ceiling of USD 1 million per financial year,
Rate of Interest	Rate of interest applicable to these accounts shall be in accordance with the directions/instructions issued by the Reserve	Refer note 1 below.	Banks are free to determine the interest rates of savings deposits under NRO scheme.

Particulars	Non-resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-resident) Account Banks Scheme (FCNR(B) Account)	Non-resident (Ordinary) Account Scheme (NRO Account)
	Bank of India from time to time.		Interest rates offered by banks on NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits.
Tax Exemption	Interest on balances standing to the credit of NRE Accounts is exempt from Income Tax. Likewise, the balances held are also exempt from wealth tax	Interest is exempt under section 10(15)(iv)(fa) of the Income Tax Act, 1961.	
*Loan – to the account holders	<p>Rupee Loan -</p> <ul style="list-style-type: none"> <li>India - without any ceiling to the extent of balance in NRE account subject to margin requirements.</li> <li>Outside India – Permitted provided no funds are remitted back to India and are used abroad only</li> </ul> <p>Foreign Currency Loan in India -</p> <p>Without any ceiling to the extent of balance in NRE account subject to margin requirements.</p> <p>Purpose –</p> <p><u>In India</u></p> <ul style="list-style-type: none"> <li>For personal purpose or business purpose except for relending or agricultural / plantation activity or for investment in real estate business</li> <li>For direct investment in India in firms / companies on non-repatriation basis</li> <li>For purchase of flat in India for own residential purpose</li> </ul> <p><u>Outside India</u></p> <ul style="list-style-type: none"> <li>Fund based or non-fund based facilities for bonafide purposes</li> </ul>	<ul style="list-style-type: none"> <li>The terms and conditions as applicable to NRE deposits with respect to loans and overdrafts (both in rupees and foreign currency) in India to the depositor as well as loans outside India shall apply mutatis mutandis to FCNR(B) deposits.</li> <li>The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.</li> </ul>	<p>Rupee Loan -</p> <ul style="list-style-type: none"> <li>In India-Permitted against the security of fixed deposits subject to usual norms as are applicable to resident accounts.</li> <li>Outside India – Not permitted.</li> </ul> <p>Foreign Currency Loan in India -</p> <p>Not permitted</p> <p>Purpose –</p> <p><u>In India</u></p> <ul style="list-style-type: none"> <li>For personal purpose or business purpose except for relending or agricultural / plantation activity or for investment in real estate business</li> </ul> <p><u>Outside India</u></p> <ul style="list-style-type: none"> <li>Not permitted</li> </ul>
*Loan – to third parties	<p>Rupee Loan -</p> <ul style="list-style-type: none"> <li>India - without any ceiling to the extent of balance in NRE account subject to margin requirements.</li> <li>Outside India – Permitted provided no funds are remitted back to India and are used abroad only)</li> </ul> <p>Foreign Currency Loan in India -</p> <p>Without any ceiling to the extent of balance in NRE account subject to margin requirements.</p> <p>Purpose –</p> <p><u>In India</u></p> <ul style="list-style-type: none"> <li>Fund based and / or non-fund based facilities for personal purposes or business purposes except for relending or agricultural / plantation activity or for investment in real estate business</li> </ul> <p><u>Outside India</u></p> <ul style="list-style-type: none"> <li>Fund based or non-fund based facilities for bonafide purposes</li> </ul>	<ul style="list-style-type: none"> <li>The terms and conditions as applicable to NRE deposits with respect to loans and overdrafts (both in rupees and foreign currency) in India to third parties as well as loans outside India shall apply mutatis mutandis to FCNR(B) deposits.</li> <li>The margin requirement shall be notionally calculated on the rupee equivalent of the deposits</li> </ul>	<p>Rupee Loan -</p> <ul style="list-style-type: none"> <li>India Permitted against the security of deposits held in NRO Account subject to conditions</li> <li>Outside India – Not permitted</li> </ul> <p>Foreign Currency Loan in India -</p> <p>Not permitted</p> <p>Purpose –</p> <p><u>In India</u></p> <ul style="list-style-type: none"> <li>For personal purpose or business purpose except for relending or agricultural / plantation activity or for investment in real estate business</li> </ul> <p><u>Outside India</u></p> <ul style="list-style-type: none"> <li>Not permitted</li> </ul>
Change of Residential Status of the account holder	NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period. Likewise, when a resident Indian becomes a person resident outside India, his existing	NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts, at the option of	In case account holder becomes resident, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. AD Banks should convert the

Particulars	Non-resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-resident) Account Banks Scheme (FCNR(B) Account)	Non-resident (Ordinary) Account Scheme (NRO Account)
	resident account should be designated as NRO account.	the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.	FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account, at the option of the account holder.

\*The facility of premature withdrawal of NRE/FCNR deposits shall not be available where loans against such deposits are to be availed of.

#### Note 1: Interest rates applicable to deposits accepted under [FCNR(B) Account]

Maturity Period	Prior to August 14, 2013	With effect from August 14, 2013 upto February 28, 2014	With effect from March 1, 2014
1 year to less than 3 years	LIBOR / Swap plus 200 basis points.	LIBOR / Swap plus 200 basis points.	LIBOR / Swap plus 200 basis points.
3 - 5 years	LIBOR/ SWAP plus 300 basis points.	LIBOR/Swap plus 400 basis points.	LIBOR/ SWAP plus 300 basis points.

Deposits of all maturities contracted effective from the close of business in India as on November 23, 2011 to May 2012, interest shall be paid within the ceiling rate of LIBOR/SWAP rates plus 125 basis points for the respective currency/ corresponding maturities (as against LIBOR/SWAP rates plus 100 basis points effective from close of business on November 15, 2008).

On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/ maturity plus 200 basis points / 300 basis points as the case may be and in case of fixed rate deposits interest shall be paid within ceiling of LIBOR rates for the respective currency / maturity plus 200 basis points / 300 basis points as the case may be. For floating rate deposits, the interest reset period shall be six months.

#### • Escrow Accounts:

- i. Non-Resident acquirers can open, hold and maintain Escrow Account and Special Account with Authorised Dealers in India without prior approval of RBI, for acquisition/ transfer of shares/convertible debentures through open offers/delisting/exit offers, subject to the relevant Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Regulations or any other applicable SEBI Regulations/provisions of the Companies Act, 1956 and subject to terms and conditions specified in Schedule 8 of the Foreign Exchange Management (Deposit) Regulations, 2000 (Deposit Regulations).
- ii. Resident or Non-Resident acquirers are permitted, subject to terms and conditions specified in Schedule 5 of the Deposit Regulations, to open, hold and maintain non-interest bearing Escrow accounts with Authorised Dealers India without prior RBI approval, towards payment of share purchase consideration to facilitate Foreign Direct Investment (FDI) transactions. Resident or Non-Resident acquirers can, subject to terms and conditions specified in Schedule 5 of the Deposit Regulations, open and maintain without prior RBI approval, Escrow accounts for securities with SEBI authorised Depository Participants. These facilities will be applicable for both issue of fresh shares to non-residents as well as transfer of shares from/to the non-residents.

#### • Bank Account by Qualified Foreign Investor (QFI):

QFI may open a single non-interest bearing Rupee account with AD in India without the prior RBI approval, for the limited purpose of routing the receipt and payment for transactions relating to purchase and sale of eligible securities as stipulated by RBI, from time to time, subject to specified conditions.

## 7. ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

[Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 - Notification No. FEMA 21/2000-rb dated May 3, 2000 as amended]

Immovable property in India can be acquired / transferred by following persons:

**Table A**

Indian Nationals Resident In India	Indian Citizen Resident Outside India	Persons of Indian Origin Resident Outside India
No restrictions	<ol style="list-style-type: none"> <li>1. Can acquire any immovable property other than agricultural land / plantation / farm house</li> <li>2. Can transfer / sell immovable property including agricultural land / plantation / farm house to person resident in India</li> <li>3. Can transfer / sell any immovable property other than agricultural land / plantation / farm house to a PIO / Indian National resident outside India / Person resident in India</li> </ol>	<ol style="list-style-type: none"> <li>1. Can acquire any immovable property other than agricultural land / plantation / farm house out of foreign currency funds or by way of gift</li> <li>2. Can acquire any immovable property including agricultural land / plantation / farm house by way of inheritance</li> <li>3. Can sell any immovable property other than agricultural land / plantation / farm house to a person resident in India</li> <li>4. Can gift any residential or commercial property to a person Resident in India or to a PIO / Indian National Resident outside India</li> <li>5. Can sell / gift any agricultural land / plantation / farm house to an Indian National resident in India</li> </ol>

Notes: -

1. Persons of Indian Origin do not include citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan.
2. NRI / PIO can borrow money from banks / approved housing finance companies for acquisition / repairs / renovation / improvement of residential accommodation in India.
3. NRI / PIO can repatriate equivalent to the amount of foreign exchange remitted into India at the time of purchase.
4. Payment by NRI / PIO for purchase of immovable property cannot be by way of foreign currency notes or travellerscheques.
5. NRI / PIO employees of Indian companies in India or their branches outside India can also take loans from their employers for purchasing housing property in India or abroad or for any other purpose other than for utilising in the following activities: -
  - a. Chit fund business
  - b. Nidhi company
  - c. Agricultural or plantation activity or in real estate business or construction of farm houses
  - d. Trading in TDR
  - e. Investment in capital market including margin trading and derivatives.

**Table B**

Foreign Citizens Resident In India	Foreign Citizens Resident Outside India	Indian Branch / Office of Foreign Concern
No restrictions, except in the case of Nationals of Pakistan, Bangladesh, Sri Lanka, China, Iran, Nepal, Afghanistan, & Bhutan who will require prior permission from RBI in all cases except where the immovable property is acquired by way of lease for less than 5 years	<p>Can acquire and transfer only after prior permission from RBI Foreign Embassy / Diplomat / Consulate General</p> <p>Can acquire and sell immovable property other than agricultural land / plantation property / farm house only after obtaining prior permission from the Ministry of External Affairs, Government of India and the consideration for acquisition is remitted from abroad</p>	Can acquire immovable property which is required for carrying on its activities, a declaration in Form IPI will have to filed with RBI within 90 days of such acquisition (the above procedure is not applicable to a liaison office). Repatriation of sale proceeds requires prior RBI approval



## 8. ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

[Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 - Notification No. FEMA 7(R)/2015-RB dated January 21, 2016 as amended]

1. A person resident in India can acquire immovable property outside India —
  - a. by way of gift or inheritance from a person who has acquired, held or owned such property when he was a resident outside India or inherited from a person who was resident outside India; or from a person resident in India who has acquired such property on or before July 8, 1947 and continued to be held by him with the permission of RBI;
  - b. by way of purchase out of foreign exchange held in RFC account.
  - c. jointly with relative who is a person resident outside India, provided there is no outflow of funds from India.
2. Such immovable property outside India can be transferred, by way of gift, to relative who is a person resident in India.
3. An Indian company having overseas offices can acquire immovable property outside India for its business and for residential purposes of its staff in accordance with direction issued by RBI.

## 9. CURRENT ACCOUNT TRANSACTIONS

### 7.1 CURRENT ACCOUNT TRANSACTIONS

Unless the transaction falls within the below mentioned restrictions, FX can be drawn for the same without any limit.

Broad categories of current account transactions can be classified as under:

- i. Transactions for which FX withdrawal is totally prohibited such as payment for lotteries, transactions with residents of Nepal and Bhutan, etc.
- ii. Transactions for which FX can be withdrawn only with prior approval of Government, such as specified transactions by PSUs, etc. However payments from EEFC, RFC(D) and RFC A/c do not require any approval.
- iii. Transactions for which FX can be withdrawn only with prior approval of Government even if payment is made from EEFC A/c.
- iv. Transactions for which FX can be withdrawn only with prior approval of RBI. However, payments from EEFC, RFC(D) and RFC A/c do not require any approval.
- v. Transactions for which FX can be withdrawn only with prior approval of RBI even if payment is made from EEFC A/c.

Residents are permitted to remit US \$ 2,50,000 for any current and capital account purpose (except those transactions which are prohibited altogether – refer paragraph A below), without any limit. (See para 7.2.6 below for further details on investments abroad by Individuals).

The details of restrictions on Current Account Transactions are as follows:

#### **A. Payments or withdrawal of FX for following purposes are totally prohibited:-**

1. Travel to Nepal and Bhutan.
2. Transactions with a person resident in Nepal and Bhutan.
3. Remittance out of lottery winnings.
4. Remittance of income from racing / riding, etc. or any other hobby.
5. Remittance for purchase of lottery tickets, banned / proscribed magazines, football pools, sweep-stakes, etc.

6. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
7. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
8. Payment related to “Call Back Services” of telephones.
9. Remittance of interest income on funds held in NRSR Scheme Account.
10. Remittance towards participation in lottery schemes involving money circulation or for securing prize money/ awards, etc.

**B.1 The following payments will require prior approval from the Government of India, except where the payment is made from the RFC or RFC(D) or EEFC Account of the remitter:**

Purpose of Remittance	Approval to be obtained from
1. Cultural Tours	Ministry of HRD (Department of Education and Culture)
2. Advertisement in foreign print media for the purpose other than promotion of tourism, foreign investments and international bidding (exceeding US \$ 10,000) by a State Government or its PSU	Ministry of Finance (Department of Economic Affairs)
3. Remittance of Freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
4. Payment of import through ocean Transport by a Government Department or a PSU on c.i.f. basis	Ministry of Surface Transport (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration certificate from the Director General of Shipping
6. Remittance of hiring charges of Transponders (a) TV Channels (b) Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
8. Remittance of prize money/sponsor-ship of sports activity abroad by a person other than International/National/State Level Sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of HRD (Department of Youth Affairs & Sports)

**B.2. Remittance for membership of P & I Club would require prior approval from the Ministry of Finance except where the payment is made from RFC or RFC(D) Account of the remitter.**

**C.1. The following payments will require prior approval of RBI, except where the payment is made from the RFC or RFC(D) or EEFC Account of the remitter:–**

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

- (i) Private visits to any country (except Nepal and Bhutan).
- (ii) Gift or donation.
- (iii) Going abroad for employment.
- (iv) Emigration.
- (v) Maintenance of close relatives abroad.
- (vi) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.
- (vii) Expenses in connection with medical treatment abroad.
- (viii) Studies abroad.
- (ix) Any other current account transaction:

For the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000 (hereinafter referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

Further if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 by the amount so remitted:

Further, for a person who is resident but not permanently resident in India and—

- (a) is a citizen of a foreign State other than Pakistan; or
- (b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,

may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident :

A person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

Facilities for persons other than individual—

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.

- (i) Donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for—
  - (a) creation of Chairs in reputed educational institutes;
  - (b) contribution to funds (not being an investment fund) promoted by educational institutes;
  - (c) contribution to a technical institution or body or association in the field of activity of the donor Company.
- (ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more.
- (iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

For the purposes of this sub-paragraph, the expression "infrastructure" shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000- RB, dated the May 3, 2000.

- (iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

### **3. Procedure**

The procedure for drawal or remit of any foreign exchange under this Schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme

## **10. LIBERALISED REMITTANCE SCHEME (LRS) OF USD 2,50,000 FOR RESIDENT INDIVIDUALS**

Limits for remittances by resident individual under Liberalised Remittance scheme have been increased to USD 2,50,000 vide A.P. (DIR Series) Circular No. 106 dated June 01, 2015.(i) Resident individuals (including

minors) are allowed to remit up to USD 2,50,000 per financial year (April-March) for any permitted Current or Capital Account transactions or a combination of both.

- ii. Remittances under this Scheme can be made for the following purposes:
  - a. to acquire and hold immovable property outside India [vide A.P. (DIR Series) Circular No. 5 dated July 17, 2014], or shares (of listed companies or otherwise) or debt instruments or any other asset outside India without prior RBI approval;
  - b. remittances towards gift and donation;
  - c. for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of GOI;
  - d. for acquisition of ESOPs; the Scheme is in addition to acquisition of ESOPs linked to ADR / GDR and acquisition of qualification shares.
  - e. for rupee gift / loan to a NRI / PIO close relative (as defined u/s. 6 of the Companies Act, 1956) by way of credit to NRO account of NRI / PIO close relative;
  - f. for investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes, etc. Investment in such securities can also be made out of the bank account opened abroad under the Scheme;
  - g. for repayment of loan availed abroad as a non-resident;
  - h. for remittance in the form of a DD either in the resident individual's own name or in the name of beneficiary with whom he intends putting through the permissible transactions at the time of private visit abroad, against self declaration of the remitter in the format prescribed;
  - i. for opening, maintaining and holding foreign currency accounts with a bank outside India.
  - j. With effect from August 05, 2013, this Scheme, can be used by Resident individuals to set up Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) outside India for bonafides business activities within the limit of USD 125,000 subject to the terms & conditions stipulated in FEMA Notification No.263.
- iii. Remittances under the facility can be consolidated in respect of family members subject to individual family members complying with the terms and conditions of the Scheme.
- iv. Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making the remittances under the scheme without prior approval of the Reserve Bank. The foreign currency accounts may be used for putting through all the transactions connected with or arising from remittances eligible under this Scheme.
- v. Banks should not extend any kind of credit facilities to resident individuals to facilitate remittance under the scheme.
- vi. This scheme is not available for remittances for any purposes specifically prohibited under Schedule I or any item restricted under Schedule II of the Current account Rules (as listed above at para 8-A & B).
- vii. Investor can retain and reinvest the income earned on investments made under this Scheme.
- viii. Remittances directly or indirectly to Bhutan, Nepal, or to countries identified by Financial Action Task Force (FATF) as non co-operative countries and territories as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org), or as notified by Reserve Bank, is not permitted under this scheme. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks is also not permitted.
- ix. For undertaking transactions under this Scheme, resident individuals may use the prescribed application-cum-declaration form. PAN number is mandatory to make remittances under the Scheme.

## **11. REMITTANCE FACILITIES FOR NRIS/PIOS/FOREIGN NATIONALS WITHOUT RBI APPROVAL**

### **A. Remittance of assets by a foreign national of non-Indian origin**

[Foreign Exchange Management (Remittance of Assets) Regulations, 2000 – Notification No. 13/2000-RB dated May 3, 2000]

- a. A foreign national of non-Indian origin (not being a citizen of Nepal & Bhutan) who has retired from an employment in India or who has inherited assets from a person resident in India or who is a widow of an Indian citizen resident in India is allowed to remit upto USD 1 million, per financial year.
- b. NRI or PIO is permitted to remit upto USD 1 million per financial year, out of the balances held in his NRO /sale proceeds of assets (inclusive of assets acquired by way of inheritance or legacy or settlement), for all bona fide purposes.

Repatriation of sale proceeds of residential property purchased by NRI/PIO out of foreign exchange or out of funds raised by way of loans (to the extent of such loan/s repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts) to the extent of the amount paid for acquisition of immovable property in foreign exchange, is restricted to not more than two such residential properties. Repatriation is permitted for amounts representing the refund of application/earnest money/purchase consideration made by the house building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential/commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels.

A person or his successor who has acquired immovable property in accordance with Section 6(5) of FEMA, 1999 cannot repatriate sale proceeds of such property outside India except with prior permission of RBI.

The remittance facility in respect of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal, Bhutan, Macau and Hong Kong; and in respect of remittance of sale proceeds of other financial assets is not available to citizens of Pakistan, Bangladesh, Nepal and Bhutan.

### **B. Remittance of current income**

Remittance of current income like rent, dividend, pension, interest etc. of NRIs/PIOs who maintains NRO account/or do not maintain NRO Account is freely allowed. The resident Power of Attorney holder is not permitted to repatriate outside India funds held in the account other than to the non-resident individual account holder nor to make payment by way of gift to a resident on behalf of the non-resident account holder or transfer funds from the account to another NRO account.

### **C. Remittance of Salary**

A citizen of a foreign state, resident in India, being an employee of a foreign company or a citizen of India, employed by a foreign company outside India and in either case on deputation to the office /branch /subsidiary /joint venture in India of such foreign company is permitted to open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/branch/subsidiary/joint venture in India of such foreign company, by credit to such account, provided that Income-tax chargeable under the Income-tax Act, 1961 is paid on the entire salary as accrued in India.

A citizen of a foreign state resident in India being an employee of a company incorporated in India may open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India for the services rendered to the Indian company, to such account, provided that Income-tax chargeable under the Income-tax Act, 1961 is paid on the entire salary accrued in India

### **D. Facilities for students going abroad for studies**

Students going abroad for studies are treated as Non- Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.

As non-Residents, Students going abroad for studies are eligible to receive remittances from India (i) up to USD 1 million out of sale proceeds of assets/balances in their account maintained with an AD in India and (iii) upto USD 2,50,000 per financial year under the Liberalized Remittance Scheme. Educational and other loans

availed of by them as residents in India will continue to be available as per FEMA regulations. All other facilities available to NRIs under FEMA are equally applicable to the students.

## E. International Credit Cards

NRIs/PIOs can be issued International Credit Cards without RBI approval and transactions can be settled by inward remittance or out of balances held in the cardholder's FCNR/NRE/NRO accounts.

## 12. INBOUND INVESTMENTS

[Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 - Notification No. 20/2000-RB dated May 3, 2000 as amended and Consolidated FDI Policy Circular 1 of 2014]

(Reserve Bank vide a press release on May 22, 2015 clarified that in terms of the Regulations framed under FEMA, 1999, an Indian company receiving FDI does not require any prior approval of the Reserve Bank of India at any stage. It is only required to report the capital inflow and subsequently the issue of shares to the Reserve Bank in prescribed formats.

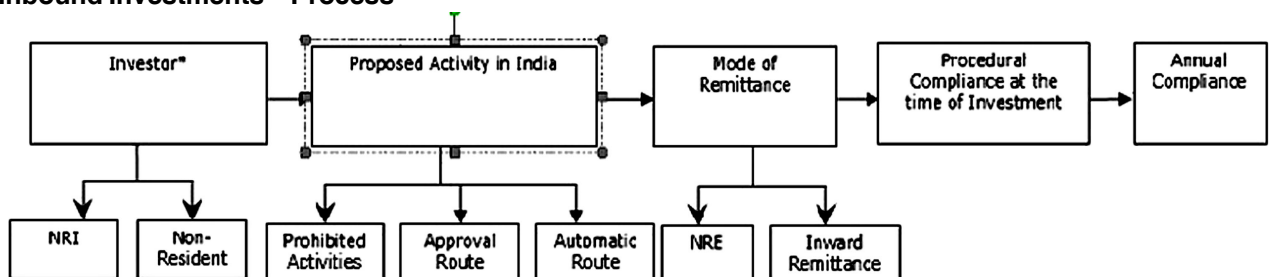
It may be noted that, FDI in India can be made through two routes, namely, the automatic route, where no prior approval from any authority is needed for an Indian company to receive FDI and the approval route, where the company receiving FDI requires prior approval of the Foreign Investment Promotion Board (FIPB). FDI under both the routes is subject to FDI policy and the conditions laid down in the relevant Regulations framed under FEMA).

Inbound investment in India is governed by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Inbound Regulations). Inbound Regulations provides for the following schemes for inbound investments in India.

Schedule 1	Foreign Direct Investment Scheme (discussed below)
Schedule 2	Purchase/Sale of Shares or Convertible Debentures or Warrants of an Indian Company by a registered Foreign Institutional Investor (FII) under Portfolio Investment Scheme (PIS)
Schedule 2A	Purchase/Sale of Shares or Convertible Debentures or Warrants of an Indian Company by Registered Foreign Portfolio Investor (RFPI) under Foreign Portfolio Investment Scheme (FPI) scheme.
Schedule 3	Purchase/Sale of Shares and/or Convertible Debentures by a NRI on a Stock Exchange in India on repatriation and/or non-repatriation basis under Portfolio Investment Scheme
Schedule 4	Purchase and Sale of Shares or Convertible Debentures or Warrants by NRI, on Non-Repatriation basis
Schedule 5	Purchase and Sale of Securities other than Shares or Convertible Debentures of an Indian Company by a Person Resident Outside India.
Schedule 6	Investment in an Indian Venture Capital Undertaking by a Registered Foreign Venture Capital Investor
Schedule 7	Indian Depository Receipts by eligible companies resident outside India
Schedule 8	Scheme for investment by Qualified Foreign Investors in Equity Shares
Schedule 9	Scheme for acquisition / transfer by a person resident outside India of capital contribution or profit share of Limited Liability Partnerships (LLPs)
Schedule 10	Issue / Transfer of eligible securities to a Foreign Depository for the purpose of Issuance of Depository Receipts by the eligible person(s)
Schedule 11	Investment by a person resident outside India in an Investment Vehicle

In this section, FDI scheme and investment by QFIs are discussed in detail. For detail of other scheme of Inbound Regulations, please refer respective schedules of Inbound Regulations as specified above.

### Inbound Investments – Process



- \*1. A citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route with the prior approval of Foreign Investment Promotion Board(FIPB) . Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route with the prior approval of FIPB, subject to the prohibitions applicable to all foreign investors and the Indian company, receiving such foreign direct investment, should not be engaged in sectors / activities pertaining to defense, space and atomic energy
2. Erstwhile OCBs which are incorporated outside India and are not under adverse notice of the Reserve Bank can make fresh investments under the FDI Scheme as incorporated non-resident entities, with the prior approval of the Government of India, if the investment is through the Government Route; and with the prior approval of the Reserve Bank, if the investment is through the Automatic Route.

## Foreign Direct Investment (FDI) Scheme

### A. Types of instruments permitted:

- i. Equity shares (including those having an \*optionality clause w.e.f. 30 December, 2013)
- ii. Fully, compulsorily and mandatorily convertible debentures
- iii. Fully, compulsorily and mandatorily convertible preference shares (including those having an \*optionality clause w.e.f. 30 December, 2013)
- iv. Partly paid shares/ warrants (w.e.f. July 8, 2014), subject to the following conditions-
  - a. The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months;
 

Time period for receipt of balance consideration within 12 months shall not be insisted upon where the issue size exceeds 500 crore and the issuer complies with Regulation 17 of SEBI Regulations regarding monitoring agency.

In case of unlisted Indian company, balance consideration can be received after 12 months if issue size exceeds 500 crores.
  - b. The pricing of the warrants and price/ conversion formula shall be determined upfront and 25% of the consideration amount shall also be received upfront. The balance consideration towards fully paid up equity shares shall be received within a period of 18 months;

The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant FEMA Regulations and pricing guidelines stipulated by RBI from time to time.

Remittance received by an Indian company via issuance of Depository Receipts (DRs) and Foreign Currency Convertible Bonds (FCCBs) are treated as FDI and counted towards FDI.

An Indian company taking on record in its books any transfer of its shares or convertible debenture by way of sale from a resident to a non-resident and a non-resident to a resident shall disclose in its balance sheet for the financial year, in which the transaction took place, the details of valuation of share or convertible debentures, the pricing methodology adopted for the same as well as the agency that has given/certified the valuation.

\*Additional guidelines in case of shares having an Optionality clause -

The optionality clause will oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return. The provision of optionality clause shall be subject to the following conditions:

1. Minimum lock-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher, (lock in period effective from the date of allotment of such shares or convertible debentures or as prescribed for defence and construction development sectors, etc.)
2. After the lock-in period, the non-resident investor shall be eligible to exit -

- a. In case of a listed company, at the market price prevailing at the recognised stock exchanges;
- b. In case of unlisted company, w.e.f July 8, 2014 the non-resident investor shall be eligible to exit from the investment in equity shares of the investee company at a price as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.

**B. Entities into which FDI can be made**

- i. Indian Company
- ii. Partnership Firm / Proprietary Concern
- iii. Venture Capital Fund
- iv. Limited Liability Partnership

**C. Pricing guideline for issue and transfer of shares**

i. For issue of shares:

- Price of shares issued to persons resident outside India shall not be less than -
  - a. In case of listed companies, the price worked out in accordance with the SEBI guidelines
  - b. In case of unlisted companies, the fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology.

The pricing guidelines as above are subject to pricing guidelines as enumerated in paragraph above, for exit from FDI with optionality clauses by non-resident investor.

- The price/conversion formula of convertible capital instruments should be determined upfront at the time of issue of such instruments. The price at the time of conversion should not in any case be lower than the fair value worked out as above.
- The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical know how fee / royalty due for payment/repayment or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

Where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion.

- In case of investments by non-residents (including NRIs) in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to eligibility to invest under the FDI Policy.
- In case of preferential allotment of shares, the issue price shall not be less than the price as applicable to transfer of shares from resident to non-resident.

ii. For transfer of shares:

- In case of transfer of shares by way of sale under private arrangement by a person resident in India to a person resident outside India (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII), price of shares transferred shall not be less than -
  - a. In case of listed companies, the price at which the preferential allotment of shares can be made under the SEBI guidelines, as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares.
  - b. In case of unlisted companies, the fair value to be determined by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology.



- In case of transfer of shares by way of sale under private arrangement by a person resident outside India (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) to a person resident in India, price of shares transferred shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.

iii. For Right issue of shares:

The offer on right basis to the persons resident outside India shall be:

- In case of listed companies, at a price as determined by the company
- In case of unlisted companies, at a price which is not less than the price at which the offer on right basis is made to resident shareholders

#### **D. Sectors for FDI**

i. FDI is prohibited in the following activities/sectors:

- Lottery Business including Government /private lottery, online lotteries etc.
- Gambling and Betting including casinos etc.
- Chit fund
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities / sectors not opened to private sector investment including Atomic Energy and Railway Operations (other than permitted activities mentioned in entry 18 of Annex B of FEMA 20).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

ii. Sector specific FDI Policy

FDI up to the limit indicated against each sector/activity mentioned in the FDI Chapter is allowed subject to applicable laws/ regulations; security and other conditionalities. For detail of such conditions, refer Consolidated FDI Policy Circular of 2016 issued by Department of Industrial Policy and Promotion (DIPP) available on website of DIPP.

In sectors/activities not listed below, FDI is permitted upto 100% on the automatic route, subject to applicable laws/ regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

Manufacture of items reserved for production in Micro and Small Enterprises (MSEs): FDI in MSEs will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a MSE, but manufactures items reserved for the MSE sector would require Government approval where foreign investment is more than 24% in the capital.

Government route means the investment in the capital of resident entities by non-resident entities can be made only with the prior approval from FIPB, Ministry of Finance or Secretariat of Industrial Assistance (SIA), DIPP as the case may be.

## **E. FDI in Partnership Firm / Proprietary Concern**

NRIs / PIOs are permitted to invest, on non-repatriation basis, in Partnership Firm or Proprietorship concern by way of contribution to the capital of a firm or a proprietary concern in India under Automatic Route. Such investment shall be made by inward remittance or out of NRE/FCNR(B)/NRO account. An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation or real estate business or print media sector.

Investment in sole proprietorship concerns/partnership firms with repatriation option requires RBI approval. A person resident outside India other than NRIs/PIO will also require prior approval of RBI for investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with GOI.

## **F. FDI in Venture Capital Fund (VCF):**

If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF with FIPB approval. However, if a domestic VCF is set-up as an incorporated company under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms, etc.

## **G. FDI in Limited Liability Partnership (LLP):**

FDI in LLP is allowed under Automatic route, in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions (such as 'NBFCs' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).

However, the following persons shall not be eligible to invest in LLPs:

- i. a citizen/entity of Pakistan and Bangladesh or (ii) a SEBI registered Foreign Institutional Investor (FII) or (iii) a SEBI registered Foreign Venture Capital Investor (FVCI) or (iv) a SEBI registered Qualified Foreign Investor (QFI) or (v) a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India(Foreign Portfolio Investors) Regulations, 2014 (RFPI).

FDI in LLP is permitted subject to the following conditions:

- i. FDI in LLP operating in agricultural/plantation activity, print media or real estate business is not permitted.
- ii. LLPs with FDIs are not allowed to make any downstream investments.
- iii. An Indian company or an LLP having FDI, will be permitted to make downstream investment in another company or LLPs only if, both the company as well as the LLP are operating in sectors where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- iv. Such investment in LLP shall be brought in cash by way of inward remittance, through normal banking channels, or by debit to NRE/FCNR(B) account.
- v. Such LLP are also not allowed to avail ECBs.
- vi. In case, an LLP with FDI, has a body corporate as a Designated Partner(DP) or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the Limited Liability Partnership Act, 2008, such a body corporate should only be a company registered in India under the provisions of the Companies Act, as applicable and not any other body. For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the Limited Liability Partnership Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999
- vii. DP will be responsible for compliance with all the above conditions and be liable for penalties on the LLP for their contraventions, if any.
- viii. Conversion of a company with FDI, into an LLP will be allowed only if the above conditions are met and with the prior approval of FIPB / Government.

## H. Transfer of shares and convertible debentures:

- i. Non-residents/NRIs are allowed to acquire shares by way of transfer of shares by any of the following modes subject to pricing guidelines, wherever applicable and compliances:
  - a. A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
  - b. NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
  - c. A person resident outside India can transfer any security to a person resident in India by way of gift.
  - d. A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
  - e. Transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India is also permitted.
  - f. Transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company is also permitted under the Automatic route.
- ii. A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscribers shares), of an Indian company under private arrangement to a person resident outside India subject to pricing guidelines and compliances.

RBI approval in certain cases for transfer of security:

1. A person resident in India who proposes to transfer to a person resident outside India any security by way of gift;
2. A person resident in India who proposes to transfer to a person resident outside India any shares or convertible debentures of an Indian company under FDI scheme by way of sale where:
  - a. The transaction does not fall under the exceptions given in para 3 below;
  - b. If the non-resident acquirer proposes deferment of payment of the amount of consideration.
3. Relaxation from obtaining RBI approval in following cases:
  - i. Transfer from a Non Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met subject to certain specified conditions;
  - ii. Transfer of shares from Resident to Non Resident -
    - a. where the transfer of shares requires the prior approval of the Government conveyed through FIPB as per the extant FDI Policy subject to certain specified conditions;
    - b. where the transfer of shares attract SEBI (Substantial Acquisition of Shares and Takeovers) Regulations subject to the adherence with the pricing guidelines and documentation requirements as specified by RBI from time to time;
    - c. where the transfer of shares does not meet the pricing guidelines under the FEMA, 1999 subject to certain specified conditions;
    - d. where the investee company is in the financial sector provided that subject to certain specified conditions
  - iii. In exercise of the powers conferred by clause (b) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB, dated 3rd May, 2000) namely:

In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement. For this purpose, if so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement or if the total consideration is paid by the buyer to the seller, the seller may furnish an indemnity for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the payment of the full consideration

#### **I. Issue of shares requiring Government approval:**

Issue of equity shares in following cases requires FIPB approval of GOI –

- i. if the Indian company is engaged or proposes to engage, in any sector / activity where FDI is prohibited;
- ii. issue of shares beyond sectoral limits or the activity falls under the Government approval route as discussed above;
- iii. swap of share (i.e. in lieu of consideration to be paid for shares acquired in the overseas company);
- iv. import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the conditions specified by GOI and RBI from time to time;
- v. pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the conditions specified by GOI and RBI from time to time.

#### **J. Conversion of ECB/Lump sum Fee/Royalty etc. into Equity**

An Indian company is permitted to issue equity shares / preference shares, subject to pricing guidelines, to a person resident outside India -

- i. being provider of technology / technical know-how, against Royalty / Lump sum fees due for payment
- ii. against External Commercial Borrowing (ECB) (excluding those deemed as ECB)
- iii. against import of capital goods by units in SEZs, subject to the valuation by a Committee consisting of Development commissioner and the appropriate Customs Officials provided the foreign equity in the company after conversion of Royalty / Lump sum fee / ECB into equity is within the sectoral cap, if any;

Where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion.

#### **K. Investment by Qualified Foreign Investors (QFIs)**

QFI is defined to mean *a person who satisfies the following criteria:*

- (i) *Resident in a country that is a member of FATF or a member of a group which is a member of FATF; and*
- (ii) *Resident in a country that is a signatory to IOSCO's MMoU (and referred to as Appendix A Signatories therein) or a signatory of a bilateral MoU with SEBI*

*Provided that the person is not resident in a country listed in the public statements issued by FATF from time to time on jurisdictions having strategic AML/CFT deficiencies to which counter measures apply or that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies;*

*Provided that such person is not resident in India;*

*Provided further that such person is not registered with SEBI as a FII or Sub-Account of an FII or FVCI.*

*Explanation – For the purposes of this clause:*

1. "bilateral MoU with SEBI" shall mean a bilateral MoU between SEBI and the overseas regulator that, inter alia, provides for information sharing arrangements.
2. Member of FATF shall not mean an associate member of FATF."

*Investment in Equity Shares [ under schedule 8 to Inbound Regulations]*

*i. Purchase and Sale -*

QFIs are permitted to invest through SEBI registered Qualified Depository Participants (QDPs)

- a. in equity shares of listed Indian companies through SEBI registered stock broker on recognized stock exchanges in India
- b. in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations
- c. in equity shares by way of right shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions.

QFIs are allowed to sell the equity shares so acquired by way of sale –

- a. Through recognized brokers on recognized stock exchanges in India
- b. In an open offer in accordance with SEBI regulations
- c. Through buyback of shares by a listed Indian company subject to the relevant SEBI guidelines.

*(ii) Limits -*

The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under PIS for foreign investment in India. Further, wherever there are composite sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps.

*Investment in other securities [under schedule 5 to Inbound Regulations]*

- i. A QFI may purchase on repatriation basis, subject to the terms and conditions stipulated by the SEBI and the RBI in this regard from time to time in the following rupee denominated units of
  - a. equity schemes of SEBI registered domestic mutual funds,
  - b. debt scheme of SEBI registered domestic mutual funds which invest in infrastructure,
  - c. any scheme of SEBI registered domestic mutual funds that hold at least 25% of their assets (either in debt or equity or both) in infrastructure (as defined in terms of the ECB guidelines).

The above securities can be purchased under the following routes:

- a. Direct Route- SEBI registered QDP route;
  - b. Indirect Route – Unit Confirmation Receipt (UCR) route
- ii. A QFI may purchase, on repatriation basis through SEBI registered QDPs, listed non-convertible debentures, listed bonds of Indian companies and listed units of Mutual Fund Debt Schemes directly from the issuer or through a registered stock broker on a recognized stock exchange in India and sell through a registered stock broker on a recognized stock exchange in India or by way of buyback or redemption by the issuer.
  - iii. A QFI may also invest in primary issues of non-convertible debentures / bonds provided such non-convertible debentures / bonds are committed to be listed within 15 days of such investment. In the event of such non-convertible debentures / bonds issued to the QFI not being listed within 15 days of issuance to the QFI for any reason, then the QFI shall immediately dispose of these non-convertible debentures / bonds either by way of sale to a third party or to the issuer and the terms of offer to QFI should contain

a clause that the issuer of such debt securities shall immediately redeem / buyback the said securities from the QFIs in such an eventuality

- iv. QFI may purchase, on repatriation basis through SEBI registered QDP, either directly from the issuer or through a registered broker on recognized Stock Exchange in India the following securities, subject to terms and condition as specified by the SEBI and the RBI from time to time;
  - a. dated Government securities/ treasury bills;
  - b. commercial papers issued by an Indian company;
  - c. Security Receipts issued by Asset Reconstruction Companies provided that the total holding by an individual QFI in each tranche of scheme of Security Receipts shall not exceed 10% of the issue and the total holdings of all eligible investors put together shall not exceed 49% of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies
  - d. Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital as defined by Reserve Bank, and modified from time to time) provided that the investment by eligible investors in Perpetual Debt instruments (Tier I) shall not exceed an aggregate ceiling of 49% of each issue, and investment by individual QFI shall not exceed the limit of 10% of each issue;
  - e. listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines;
  - f. non-convertible debentures / bonds issued by NBFCs categorized as 'Infrastructure Finance Companies'(IFCs) by the RBI;
  - g. Rupee denominated bonds/units issued by Infrastructure Debt Funds.
  - h. Credit enhanced bonds.
  - i. Listed non-convertible/ redeemable preference shares or debentures issued in terms of regulation 7(2) of these regulations.

**L. Investment by Registered Foreign Portfolio Investors (RFPIs) under Foreign Portfolio Investment (FPI) Scheme**

- i. The portfolio investor registered in accordance with SEBI guidelines shall be called 'Registered Foreign Portfolio Investor (RFPI)'. The existing portfolio investor class, namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be subsumed under RFPI
- ii. RFPI may purchase and sell shares and convertible debentures of Indian company through registered broker on recognised stock exchanges in India as well as purchases shares and convertible debentures which are offered to public in terms of relevant SEBI guidelines/ regulations.
- iii. The individual and aggregate investment limits for the RFPIs shall be below 10% or 24% respectively of the total paid-up equity capital or 10% or 24% respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps;
- iv. RFPI shall be eligible to open a Special Non-Resident Rupee (SNRR) account and a foreign currency account with Authorised Dealer (AD) bank and to transfer sums from foreign currency account to SNRR account at the prevailing market rate for making genuine investments in securities. The AD bank may transfer repatriable proceeds (after payment of applicable taxes) from SNRR account to foreign currency account;
- v. RFPI shall be eligible to invest in government securities and corporate debt subject to limits specified by the RBI and SEBI from time to time;
- vi. The investment by RFPI will be made subject to the SEBI (FPI) Regulations 2014, modified by SEBI/ Government of India from time to time;

- vii. RFPI shall be permitted to trade in all exchange traded derivative contracts on the stock exchanges in India subject to the position limits as specified by SEBI from time to time;
- viii. RFPI may offer cash or foreign sovereign securities with AAA rating or corporate bonds or domestic Government Securities, as collateral to the recognized Stock Exchanges for their transactions in the cash as well as derivative segment of the market.

Any foreign institutional investor who holds a valid certificate of registration from SEBI shall be deemed to be an RFPI till the expiry of a block of 3 years for which fees have been paid as per the SEBI (Foreign Institutional Investors) Regulations, 1995. A QFI may continue to buy, sell or otherwise deal in securities subject to the SEBI (FPI) Regulations, 2014 for a period of 1 year from the date of commencement of these regulations, or until he obtains a certificate of registration as foreign portfolio investor, whichever is earlier.

However, all investments made by that FII/QFI in accordance with the regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit.

RFPI shall report the transaction to RBI as being reported by FII in LEC Form as per the extant practice.

### 13. OUTBOUND INVESTMENTS

[Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 - Notification No. 120/2004-RB dated July 7, 2004 as amended]

“Direct investment outside India” i.e. outbound investment can be made by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange (excluding portfolio investment).

Outbound Investment can be made either under automatic route or with the approval of RBI.

#### A. Entities by which outbound investment can be made i.e. Indian Party:

- i. Company incorporated in India
- ii. Body created under the Act of Parliament
- iii. Partnership firm registered under the Indian Partnership Act, 1932
- iv. Limited Liability Partnership having perpetual succession duly formed and incorporated under the LLP Act, 2008.
- v. Any other entity in India notified by RBI

#### B. Automatic Route:

- i. Investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) engaged in a bona fide activity (other than in a foreign entity engaged in real estate - meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges or banking business), can be made upto 100% of the net worth of the Indian Party as on the date of the last audited balance sheet. The total financial commitment of the Indian party, in all the JVs / WOSs put together, shall not exceed 400% of the net worth of the Indian party as on the date of the last audited balance sheet;
- ii. Investment in Pakistan is not permitted under the automatic route.
- iii. For the purpose of determining ‘total financial commitment’ within the limit of 400% (Limit has again been restored to 400% vide A.P. (DIR Series) Circular No.1 dated July 3, 2014) of the net worth, following shall be reckoned –
  - a. 100% of the amount of equity shares or compulsorily and mandatorily convertible preference shares;
  - b. 100% of the amount of other preference shares;
  - c. 100% of the amount of loan;

- d. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian party;
  - e. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian party.
  - f. 50% of the amount of performance guarantee issued by the Indian party provided that the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of RBI is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.
- iv. The Indian Party should not be on RBI's exporters' caution list / list of defaulters to the banking system or under investigation by any investigation / enforcement agency or regulatory body.
  - v. All transactions relating to a JV / WOS should be routed through one branch of AD to be designated by it.
  - vi. The Indian Party should have submitted its Annual Performance Report in respect of all its overseas investments in Part III of Form ODI.
  - vii. Indian entities may offer any form of guarantee - corporate or personal (including the personal guarantee by the indirect resident individual promoters of the Indian Party)/ primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India within the limit of 100% of networth on the date of the last audited balance sheet of the Indian party.
  - viii. No guarantee should be 'open ended' i.e. the amount and period of the guarantee should be specified upfront. In the case of performance guarantee, time specified for the completion of the contract shall be the validity period of the related performance guarantee.
  - ix. Investments in incorporated or unincorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd. (OVL) and Oil India Ltd. (OIL) is permitted without any limit, provided such investments are approved by the competent authority
  - x. Other Indian companies are also permitted to invest in unincorporated entities overseas in the oil sector under the automatic route up to the limit prescribed provided the proposal has been approved by the competent authority and is duly supported by certified copy of board resolution approving such investment. . Investment in excess of the prescribed limit shall require prior RBI approval.
  - xi. Indian companies can participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route.
  - xii. Investment in JV/WOS abroad by Indian parties through the medium of a Special Purpose Vehicle (SPV) is also permitted under the automatic route.

### **C. Method of Funding**

Investment in an overseas JV/WOS may be funded out of one or more of the following sources:

Not exceeding 400% of the net worth -

- i. drawal of foreign exchange from an AD bank in India
- ii. capitalisation of exports
- iii. swap of shares
- iv. proceeds of ECB/FCCBs
- v. in exchange of ADRs/GDRs subject to valuation norms and sectoral cap

Without limit -

- i. balances held in EEFC account of the Indian party; and
- ii. proceeds of foreign currency funds raised through ADR/GDR issue



## D. Valuation

In case of investment in an existing company outside India, valuation of shares of the company outside India shall be as under:

Mode of investment	Valuation by
<ul style="list-style-type: none"><li>Investment by way of remittance from India &gt; USD 5 million</li><li>Investment by way of swap of shares, irrespective of the amount #</li></ul>	Category I Merchant Banker registered with SEBI or Investment Banker / Merchant Banker outside India registered with the appropriate regulatory authority in the host country
Other cases	Chartered Accountant or Certified Public Accountant

# Subject to FIPB approval

## E. Investments in Financial Services Sector

Investment by an Indian Party engaged in financial services sector in an entity outside India shall be subject to following conditions:

- It should be registered with the regulatory authority in India for conducting the financial sector activities
- It has earned net profit during the preceding 3 financial years from the financial services activities
- It has obtained approval from the regulatory authorities concerned both in India and abroad, for venturing into such financial sector activity
- It has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India

Any additional investment by an existing JV/WOS or its step down subsidiary in the financial services sector is also subject to the above conditions.

Opening of Branch / Subsidiary / Joint Venture / Representative Office or Undertaking Investment abroad by Non-Banking Financial Companies (NBFCs):

All NBFCs desirous of making any overseas investment are required to obtain "No Objection" (NoC) of the Department of Non-Banking Supervision of RBI before making such investment, from its Regional Office in whose jurisdiction the head office of the company is registered. A NoC in this regard will be issued by RBI to a NBFC, subject to the NBFC fulfilling the conditions enumerated in the NBFC (Opening of Branch/Subsidiary/ Joint Venture/Representative Office or Undertaking Investment abroad by NBFCs) Directions, 2011 issued by RBI vide Notification No. DNBS(PD)229/CGM(US)/2011 dated June 14, 2011. These directions are in addition to those prescribed by Foreign Exchange Department of RBI for opening of branches abroad or for investments in Joint Venture/Wholly Owned Subsidiary.

Overseas Investment by Core Investment Companies (CICs)

In terms of the Core Investment Companies - Overseas Investment (Reserve Bank) Directions, 2012 issued by RBI vide Notification No. DNBS.(PD)252/CGM(US)-2012 dated December 06, 2012, all CICs (whether registered with RBI or exempted from registration as CICs) desirous of investing in joint ventures/subsidiaries/representative offices overseas in financial sector shall hold a Certificate of Registration from RBI and need to comply with all the regulations applicable to registered CICs. However exempted CICs do not require to be registered with RBI for making investments in non-financial sector.

Acquisition/ transfer of control of NBFCs: (Notification No.DNBS(PD) 275/GM(AM)/2013-14 dated May 26, 2014)

The prior written permission of RBI shall be required for –

- any takeover or acquisition of control of an NBFC, whether by acquisition of shares or otherwise;
- any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquirer / another entity control of the NBFC;

- iii. any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.
- iv. Prior written approval of the Reserve Bank would also be required before approaching the Court or Tribunal under Section 391-394 of the Companies Act, 1956 or Section 230-233 of Companies Act, 2013 seeking order for mergers or amalgamations with other companies or NBFCs.

**F. Investment in agriculture operations overseas directly or through overseas offices – General Permission**

Indian company or a partnership firm registered under the Indian Partnership Act, 1932, is permitted to undertake agricultural operations including purchase of land incidental to such activity either directly or through overseas offices subject to conditions.

**G. Investment in Equity of Companies Registered Overseas/Rated Debt Instruments**

i. Portfolio Investments by listed Indian companies:

Listed Indian companies are permitted to invest up to 50% of their net worth as on the date of the last audited balance sheet in (i) shares of listed overseas company and (ii) rated bonds/fixed income securities issued by listed overseas companies. Every such transaction shall be routed through the designated branch of AD.

ii. Investment by Mutual Funds:

- Indian Mutual Funds registered with SEBI are permitted to invest within an overall cap USD 7 billion in:
  - a. ADRs/GDRs of the Indian and foreign companies;
  - b. equity of overseas companies listed on recognised stock exchanges overseas;
  - c. initial and follow on public offerings for listing at recognized stock exchanges overseas;
  - d. foreign debt securities in the countries with fully convertible currencies, short-term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;
  - e. money market instruments rated not below investment grade
  - f. repos in the form of investment, where the counterparty is rated not below investment grade. The repos should not, however, involve any borrowing of funds by mutual funds;
  - g. government securities where the countries are rated not below investment grade;
  - h. derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;
  - i. short-term deposits with banks overseas where the issuer is rated not below investment grade;
  - j. units/securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators and investing in (1) aforesaid securities, (2) Real Estate Investment Trusts (REITS) listed on recognized stock exchanges overseas, or (3) unlisted overseas securities (not exceeding 10% of their net assets).
- A Limited number of qualified Indian Mutual Funds are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds as may be permitted by SEBI.
- Domestic Venture Capital Funds registered with SEBI may invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million.

General permission is available to the above categories of investors for sale of securities so acquired.

## **H. Approval Route**

All other cases of direct investment abroad where the conditions for automatic route are not satisfied would require prior RBI approval. Application for RBI approval together with necessary documents can be submitted in Form ODI through AD.

Investment where specific RBI approval is required:

- i. Registered Trusts and Societies engaged in manufacturing/educational/hospital sector are allowed, subject to satisfying specified criteria, to make investment in the same sector(s) in a JV/WOS outside India, with the prior RBI approval.
- ii. Proprietorship / unregistered partnership firm being a DGFT recognized Star Export House are allowed to set up JVs/WOS outside India with the prior approval of RBI subject to satisfying certain specified eligibility criteria.
- iii. Overseas Investments in Pakistan.
- iv. Issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries are considered under the Approval Route, provided the Indian Party directly or indirectly holds 51% or more stake in the overseas subsidiary for which such guarantee is intended to be issued.
- v. Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realization will require prior RBI approval.
- vi. Undertaking Financial Commitment without equity contribution in JV / WOS.
- vii. Creation of charge in the form of pledge / mortgage / hypothecation on the immovable / movable property and other financial assets of the Indian Party and their group companies in favour of a non-resident entity within the overall limit fixed (presently 100%) for financial commitment requires RBI approval.

## **I. Issue of guarantee by an Indian Party to step down subsidiary of JV /WOS**

Indian Parties are permitted to issue corporate guarantees on behalf of their first level step down operating JV / WOS set up either as operating or as a SPV under the Automatic Route, subject to the condition that the financial commitment of the Indian Party is within the extant limit for overseas direct investment. Irrespective of whether the direct subsidiary is an operating company or a SPV, the Indian promoter entity may extend corporate guarantee on behalf of the first generation step down operating company under the Automatic Route, within the prevailing limit for overseas direct investment. Such guarantees will have to be reported to RBI in Form ODI.

Further, the issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries will be considered under the Approval Route, provided the Indian Party indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

## **J. Capitalisation of exports and other dues**

Indian party is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Indian software exporters are permitted to receive in the form of shares upto 25% of the value of exports to an overseas software start-up company without entering into JV Venture Agreements, with prior RBI approval.

## **K. Restructuring of the balance sheet of the overseas entity involving write-off of capital and receivables**

The Indian promoters who have set up WOS abroad or have at least 51 per cent stake in an overseas JV, are allowed to write off capital (equity / preference shares) or other receivables, such as, loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS, even while such JV /WOS continue to function, as under:

- a. In case of listed Indian companies - under the Automatic Route up to 25% of the equity investment in the JV /WOS; and

- b. In case of unlisted companies - under the Approval Route up to 25% of the equity investment in the JV / WOS.

Such write-off / restructuring have to be reported to RBI through the designated AD bank within 30 days of write-off/ restructuring. The write-off / restructuring is subject to the condition that the Indian Party should submit the prescribed documents for scrutiny along with the applications to the designated AD Category – I bank under the Automatic as well as the Approval Routes.

#### **L. Transfer of shares of a JV / WOS outside India**

##### *i. sale of shares:*

An Indian party, without prior RBI approval, may divest (transfer by way of sale) to another Indian party which complies with the Regulation 6 of these regulations or to person resident outside India, any shares or security held by it in a JV/WOS outside India subject to the following conditions:

- a. the sale does not result in any write-off of the investment made
- b. the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed
- c. if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS
- d. the Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS
- e. the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to RBI
- f. the Indian party is not under investigation by CBI / ED/ SEBI / IRDA or any other regulatory authority in India

The Indian party is required to submit details of such disinvestment through the designated AD within 30 days of the disinvestment.

An Indian party, which does not satisfy the above conditions, shall have to apply to RBI for prior permission.

##### *ii. Sale of shares of a JV / WOS involving write off of the investment*

Indian Parties may disinvest, without prior approval of the Reserve Bank, in any of the under noted cases where the amount repatriated after disinvestment is less than the original amount invested:

- a. in case where the JV / WOS is listed on the overseas stock exchange
- b. in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than ? 1 billion;
- c. where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million;
- d. where the Indian Party is a listed company with net worth of less than USD 1 billion but investment in an overseas JV/WOS does not exceed USD 10 million.

Such disinvestments shall be subject to the conditions (b) to (f) listed at (i). The Indian party is required to submit details of such disinvestment through the designated AD within 30 days of the disinvestment.

An Indian party, which does not satisfy the above conditions, shall have to apply to RBI for prior permission.

##### *iii. Pledge of shares*

An Indian party may transfer, by way of pledge, the shares of JV/WOS as a security for availing of any credit facility for itself or for the JV/WOS abroad, to an AD Category – I bank or a public financial institution

in India or to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian party remain within the limit stipulated by RBI for overseas investments in JV/WOS.

#### **M. Hedging of Overseas Direct Investments**

Resident entities having overseas direct investments are permitted to hedge the foreign exchange rate risk arising out of such investments. AD Category - I banks may enter into forward / option contracts with resident entities who wish to hedge their overseas direct investments (in equity and loan), subject to verification of such exposure.

If a hedge becomes naked in part or full owing to shrinking of the market value of the overseas direct investment, the hedge may continue to the original maturity. Rollovers on the due date are permitted up to the extent of market value as on that date.

#### **N. Permission for purchase/ acquisition of foreign securities by a person resident in India being an individual**

General permission has been granted to a person resident in India being an individual—

- i. to acquire foreign securities as a gift from any person resident outside India;
- ii. to acquire shares under cashless Employees Stock Option Programme (ESOP) issued by a company outside India, provided it does not involve any remittance from India;
- iii. to acquire shares by way of inheritance from a person whether resident in or outside India;

A person resident in India being an individual is also permitted to accept equity shares offered by a foreign company under its ESOP Schemes, if he is an employee or a director of an Indian office or branch of a foreign company or of a subsidiary in India of a foreign company irrespective of the percentage of the direct or indirect equity stake in the Indian company provided –

- i. the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and
- ii. an Annual Return is submitted by the Indian company to the RBI through the AD Category – I bank giving details of remittances / beneficiaries, etc.

A person resident in India may transfer by way of sale the shares acquired as stated above provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.

#### **O. Acquisition or setting up of a JV or WOS abroad by resident individual-**

With effect from August 05, 2013, a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification) satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme (presently USD 2,50,000).

#### **P. General permission in certain cases**

Persons resident in India being an individual are permitted to acquire a foreign security, if it represents –

- a. qualification shares for becoming a director of a company outside India to the extent prescribed as per the law of the host country where the company is located provided it does not exceed the limit prescribed for the resident individuals under the LRS in force at the time of acquisition;
- b. part/ full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value is restricted to the overall ceiling prescribed for the resident individuals under the LRS in force at the time of acquisition.
- c. rights shares in a company outside India provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force;

- d. purchase of shares of a JV/WOS abroad of the Indian promoter company, by the employees/directors of Indian promoter company engaged in the field of software where the consideration for purchase does not exceed USD 10,000 or its equivalent per employee in a block of five calendar years; the shares so acquired do not exceed 5% of the paid-up capital of the JV/WOS outside India; and after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment;
- e. purchase of foreign securities under ADR/GDR linked stock option schemes, by resident employees (including working directors) of Indian companies in the knowledge based sectors provided purchase consideration does not exceed USD 50,000 or its equivalent in a block of five calendar years.

#### **14. BORROWING AND LENDING IN FOREIGN EXCHANGE**

[Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 - Notification No. 3/2000-RB dated May 3, 2000 as amended]

Borrowing in foreign exchange from Non Residents is governed by Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.

Reserve Bank has issued revised framework for External Commercial Borrowing vide A.P. (DIR Series) Circular No. 32 dated November 30, 2015 having a more liberal approach, fewer end use restrictions on end uses, higher all-in-cost ceilings etc., having a more liberal regime for INR denominated ECBs, expanding list of overseas lenders, alignment of list of infrastructure entities eligible for ECB with the Harmonised List of Government of India.

#### **BORROWING IN FOREIGN EXCHANGE:**

##### **A. EXTERNAL COMMERCIAL BORROWINGS [ECB]**

ECB is an important component of India's overall external debt. ECB refers to commercial loans availed from non-resident lenders in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments e.g. floating rate notes and fixed rate bonds, etc. by Corporates including hotels, hospitals, software sector with a minimum average maturity of 3 years. Further ECB can also be availed by Units in Special Economic Zones (SEZ) and certain NGO & MFI. Individuals, Trusts and Non-Profit making organisations are not eligible to raise ECB.

ECB can be availed by NGO engaged in micro finance and MFI registered as societies, trusts and co-operatives and engaged in micro finance: -

- i. If they have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorised to deal in foreign exchange in India and
- ii. They would require a certificate of due diligence on fit and proper' status of the Board / Committee of management of the borrowing entity from the designated AD bank.

ECB can also be availed in India Rupees in certain cases. It is important to note that foreign investment by way of investment in non-convertible preference shares / non-convertible debentures (either in part or full) is considered as ECB and all provisions / guidelines will accordingly apply.

#### **For what can the ECB funds be used**

- a. Except for the prohibited activities, ECBs can be used for any bona fide business requirement such as import of capital goods, import of services, technical know-how and payment of licence fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors, new projects, modernisation / expansion of existing production units in the real sector – industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India.
- b. Utilisation of ECB proceeds is permitted in the first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.

- c. Utilisation of ECB proceeds is permitted for direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) either by way of fresh investment or expansion of existing JV / WOS including for mergers and acquisitions.
- d. Interest During Construction (IDC) for Indian companies which are in the infrastructure sector provided the IDC is capitalised and forms part of the project cost.
- e. For lending to self-help groups or for micro-credit or for bona fide micro finance activity including capacity building by NGOs engaged in micro finance activities.
- f. Payment for obtaining licence/permit for Spectrum allocation.
- g. Infrastructure Finance Companies (IFC) are permitted to avail of ECB, including the outstanding ECB, up to 50% of their owned funds, for on-lending to the infrastructure sector.
- h. Utilisation of ECB is permitted for capital expenditure incurred for the purpose of maintenance and operations of toll systems for roads and highways provided the same form part of the original project.
- i. Fresh ECB can also be raised for refinancing existing ECB.
- j. For general corporate purposes in case the same is borrowed from eligible foreign equity holder.

### **Restriction on ECB utilisation**

Funds borrowed by way of ECB cannot be used for

- a. Onward lending, investment in capital market, acquiring a company (or a part thereof) in India by a corporate.
- b. Working capital requirement (except where specifically permitted), general corporate purposes and repayment of existing Rupee loans (except where specifically permitted).
- c. For real estate activities.

### **From whom can one borrow**

One can raise ECB from internationally recognised sources such as:

- i. International banks, international capital markets, multilateral financial institutions such as IFC, ADB, CDC, etc.
- ii. Export credit agencies.
- iii. Suppliers of equipment, foreign collaborators and foreign equity holders.
- iv. Individuals – only in case of Companies registered under Section 25 of the Companies Act, 1956 / NGO engaged in micro finance and MFI registered as societies, trusts and co-operatives.

Note:

- 1. In case of borrowing from Foreign Equity holder ECB up to US \$ 5 million can be raised wherein the minimum direct foreign equity holding is of 25%.
- 2. Where ECB above US \$ 5 million is to be raised from Foreign Equity holder then the following two requirements have to be complied with:
  - a. The lender should have a minimum direct foreign equity holding of 25%; and
  - b. Debt-equity ratio of the borrowing company should not exceed 4:1.
- 3. For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

### **PARKING & UTILISATION OF ECB PROCEEDS OVERSEAS**

- 1. ECB up to US \$ 750 million per borrowing company (US \$ 200 million for corporates in the services sector viz. hotels, hospitals and software sector) per financial year under the automatic route is permitted

for rupee and foreign currency expenditure for permissible end-uses and these funds have to be parked until actual requirement in India. However, NGO engaged in micro finance activities and MFI can raise ECB up to US \$ 10 million or its equivalent only during a financial year. Different borrowing limits have been prescribed for NBFC, SIDBI, etc.

2. Borrowers are permitted to either keep ECB proceeds abroad or subject to certain conditions, remit these funds to India for parking them in fixed deposits with banks for a maximum period of 6 months, pending utilisation for permissible end-uses. However, ECB proceeds meant for Rupee expenditure are required to be repatriated to India immediately after drawdown.

## TOTAL COST OF BORROWING

The total cost of borrowing should not exceed: -

Minimum Average Maturity Period	All-in-cost Ceilings over six month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

\* for the respective currency of borrowing or applicable benchmark.

Total cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. Further, total cost will also exclude payment of withholding tax in Indian Rupees.

## PREPAYMENT OF ECB

Prepayment up to US \$ 500 million is allowed without obtaining prior approval of RBI, subject to compliance with the minimum average maturity period as applicable to the loan.

## DIFFERENT POSSIBILITIES OF TAKING ECB

ECB can be accessed under two routes:

- i. Automatic Route
- ii. Approval Route

### AUTOMATIC ROUTE

Automatic route is available when ECB is for the purpose of investment in India in real sector – industrial sector, payment for obtaining licence / permit for 3G Spectrum, especially infrastructure sector ((i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat). Under the automatic route the borrower is not required to obtain any RBI / Government approval. However, drawdown is permitted only after obtaining Loan Registration Number (LRN) from RBI.

#### i) Who can borrow

Only companies registered under the Companies Act, 1956 except financial intermediaries (such as banks, financial institutions (FI), housing finance companies and NBFC) are eligible to borrow.

Normally trusts (and all persons who are not companies), are not eligible for raising ECBs. However, now certain Non Governmental Organisations (NGOs) engaged in micro financing, are eligible to raise up to US \$ 10 million during financial year under automatic route. They can borrow from certain overseas organisations and individuals. ECB proceeds can be utilized for lending to self-help groups or for micro-credit or for bona fide micro finance activity including capacity building. Detailed guidelines have been issues for this purpose.

Entities in the Service Sector viz. hotels, hospitals and software companies can borrow up to US \$ 200 million or its equivalent in a financial year for meeting foreign currency and / or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

#### ii) Amount and Maturity



- a. ECB up to US \$ 20 million or equivalent with minimum average maturity of three years
- b. ECB above US \$ 20 million and up to USD 750 million or equivalent with minimum average maturity of five years
- c. ECB up to US \$ 20 million can have call/put option provided the minimum average maturity of 3 years is complied before exercising call/put option.

Important note: It should be noted that though the route is automatic, the borrower has to file in duplicate the form with the details of the loan and submit the same to the Authorised Dealer. The RBI will give the registration number. Only after that the loan can be drawn.

## **APPROVAL ROUTE**

The following types of proposals for ECB will be covered under the Approval Route. These proposals will be approved by the empowered committee of RBI. There is no restriction as such on the amount of borrowing.

### **Who can borrow**

- a. Financial institutions (either directly or through Special Purpose Vehicles) dealing exclusively with infrastructure or export finance such as SIDBI, IDFC, ILFS, Power Finance Corporation, Power Trading Corporation, IRCON and EXIM Bank.
- b. Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government will also be permitted to the extent of their investment in the package and assessment by RBI based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c. ECB with minimum average maturity of 5 years by Non-banking Financial Companies.
- d. Foreign Currency Convertible Bonds (FCCB) by housing Finance Companies satisfying the prescribed criteria.
- e. Multi-State Co-operative Societies engaged in manufacturing activity.
- f. Indian Companies engaged in the development of integrated townships including housing, commercial premises, hotels resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and manufacture of building materials, development of land and providing allied infrastructure.
- g. SEZ developers can avail of ECB under the Approval Route for providing infrastructure facilities, as defined in the ECB policy, within the SEZ.
- h. Cases falling outside the purview of the automatic route limits and maturity period indicated above come under approval route.
- i. Companies eligible to borrow under the automatic route can borrow an additional amount of up to US \$ 250 million with an average maturity of more than 10 years. Prepayment and call / put options are not permitted for such borrowing up to a period of 10 years.
- j. Housing Finance Companies (HFC) / National Housing Bank (NHB) can avail of ECB for financing prospective owners of low cost affordable housing units.

## **B. TRADE CREDITS**

Trade Credits (TC) refer to credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than three years. It may be noted that buyers' credit and suppliers' credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.

### **a) Amount and Maturity**

Up to US \$ 20 million per import transaction for permissible imports with a maturity period up to one year (from the date of shipment). For import of capital goods up to US \$ 20 million per import transaction with a maturity

period of more than one year and less than five years (from the date of shipment). No roll-over/extension will be permitted beyond the permissible period.

## **b) All-in-cost Ceilings**

The existing all-in-cost ceilings are as under

Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points
More than one year and up to three years	—
More than three years and up to five years	—

\* for the respective currency of credit or applicable benchmark

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/ processing charges, out of pocket and legal expenses, if any.

## **C. Foreign Currency Convertible Bond (FCCB)**

- FCCBs mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency.
- FCCBs are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.
- The policy for ECB is also applicable to FCCBs.
- The issue of FCCBs is also required to adhere to the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 as amended from time to time.
- Buyback of FCCB was permitted upto March 31, 2013 subject to compliance of the prescribed terms and conditions mentioned in A.P. (DIR Series) Circular No.1 dated July 5, 2012.
- Refinancing of outstanding FCCBs by Indian companies is allowed under automatic route subject to prescribed conditions.
- Restructuring of FCCBs involving change in the existing conversion price is not permissible. However, proposals for restructuring of FCCBs not involving change in conversion price are considered under the approval route depending on the merits of the proposal.

## **D. Preference Shares (non-convertible, optionally convertible or partially convertible)**

Preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and need to comply with ECB policy. Accordingly, all the norms applicable for ECBs, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. shall apply to such borrowing. Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

## **E. Rupee Denominated Bonds**

Eligible resident entities can issue only plain vanilla rupee denominated bonds in a FATF compliant financial centres. The bonds can be either privately placed or listed on exchanges as per host country regulations.

### **Available routes and Limits:**

Rupee denominated bonds can be issued under both automatic and approval route.

Automatic route – borrowing up to INR 50 million per financial year.

Approval route – cases beyond above limit are under approval route.

Parameters:

Minimum Maturity	3 years
Eligible borrowers	Any corporate or body corporate, REITS and INVITs are also eligible
Recognised Investors	Rupee denominated bonds can be only issued in a country and can only be subscribed by a resident of a country: <ul style="list-style-type: none"><li>• that is a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; <b>and</b></li><li>• whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India (SEBI) for information sharing arrangements</li><li>• should not be a country identified in the public statement of the FATF as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.</li></ul>
All in cost	should be commensurate with prevailing market conditions
End Use	Proceeds can be used for all purposes except: <ul style="list-style-type: none"><li>• Real estate activities other than development of integrated township / affordable housing projects;</li><li>• Investing in capital market and using the proceeds for equity investment domestically;</li><li>• Activities prohibited as per the foreign direct investment guidelines;</li><li>• On-lending to other entities for any of the above purposes; and</li><li>• Purchase of Land</li></ul>

Indian banks should not have access to these bonds but can act as arranger and underwriter.

**F. Other Borrowings**

**i. Advance Against Exports:**

An Indian exporter can receive Advance against Exports from its overseas buyer, subject to following conditions:

- a. Such advance payment can be with or without interest, from a buyer outside India.
- b. Shipment of goods should be made within one year from the date of receipt of advance payment;
- c. The rate of interest, if any, payable on the advance payment should not exceed LIBOR + 100 basis points; and
- d. The documents covering the shipment are routed through AD bank through whom advance payment is received.
- e. In case export agreement provides for shipment of goods beyond one year from the date of receipt of advance payment, the exporter shall obtain prior RBI approval.
- f. In case exporter's inability to make shipment of goods within one year from the date of receipt of advance payment, no remittance towards refund of un utilised portion of advance payment or towards payment of interest, shall be made after the expiry of one year, without the prior RBI approval.

**ii. Structured Obligations - debt guaranteed by Non Resident:**

Both borrower and lender are Indian residents and debt is also in Indian rupees, however, such debt is guaranteed by Non-resident. There is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee by remitting funds from abroad or through NRE / FCNR accounts.

**iii. Borrowing under USD 250,000 scheme by Indian Individual Residents:**

An individual resident in India may borrow a sum not exceeding USD 250,000 or its equivalent from his close relatives (as defined in section 6 of the Companies Act, 1956) outside India, subject to the conditions that—

- a. the minimum maturity period of the loan is one year;

- b. the loan is free of interest; and
- c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

Repayment of such loans to NRE / FCNR (B) account of the lender concerned is permitted.

- iv. Indian Residents may borrow whether by way of loan or overdraft or any other credit facility from a foreign bank for following purposes
  - a. for execution of turnkey project or civil construction contract, outside India
  - b. for exports on deferred payment terms

The above referred borrowings are subject to the terms and conditions stipulated by the authority granting approval for such project or contract or export on deferred terms in accordance with Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

- v. An importer of goods in India may avail of foreign currency credit from overseas supplier for maximum 6 months. The import should be in compliance with the Export Import Policy of GOI in force.

### **LENDING IN FOREIGN EXCHANGE:**

#### **1. By an Authorised Dealer (AD)**

AD in India or its branch outside India may lend in foreign currency subject to circumstances and conditions mentioned below:

- i. Foreign branch of AD bank may extend foreign currency loans outside India in the normal course of its banking business;
- ii. AD may grant loans to its constituents in India for meeting its foreign exchange requirements, rupee working capital requirements or capital expenditure, subject to compliance with prudential norms, interest rate directives and guidelines (if any) issued by RBI in this regard;
- iii. AD may extend credit facilities to an overseas WOS or JV of an Indian entity where such Indian entity holds at least 51% of such WOS/JV;
- iv. AD may grant loans in foreign exchange to his constituent maintaining RFC Account against the security of funds held in such account. AD may grant such loan in its commercial judgment and in compliance with the prudential norms issued by RBI;
- v. Foreign branch of AD banker may extend foreign currency loans against the security of funds held in NRE/FCNR deposit accounts maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2000;
- vi. AD in India may extend foreign currency loans to another AD in India, subject to the directions or guidelines issued by RBI from time to time;
- vii. AD may grant foreign currency loans in India against the security of funds held in FCNR (B) account only to the account holder, subject to the guidelines issued by RBI in this regard.

#### **By persons other than AD:**

- i. Indian corporate may lend in foreign exchange to its overseas WOS or JV. Such WOS or JV should, however, be constituted in compliance with Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2000.
- ii. Indian Resident may lend out of EEFC Account for trade related purposes to overseas importer customer. In case such lending is more than USD 100,000 the same should be supported by guarantee from a bank of international repute situated outside India in favor of Indian lender.
- iii. Foreign currency loans may be extended by Exim Bank, IDBI, IFCI, ICICI, SIDBI or any other institution in India to their constituents in India out of foreign currency borrowings raised by them with the approval of the Central Government for the purpose of onward lending.

- iv. Indian companies may grant loans in foreign currency to the employees of their branches outside India for personal purposes provided that the loan shall be in accordance with the lender's Staff Welfare Scheme/ Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.

## **15. BORROWING AND LENDING IN INDIAN RUPEES**

[Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000 - Notification No. 4/2000-RB dated May 3, 2000 as amended]

### **BORROWING IN INDIAN RUPEES BY RESIDENTS**

#### **1. By a person resident in India other than Indian company:**

A person resident in India, not being a company incorporated in India, is allowed to borrow in rupees on non-repatriation basis from a non-resident Indian or a person of Indian origin resident outside India, subject to the following conditions:

- i. Loan shall be received by way of inward remittance from outside India or out of NRE / NRO / FCNR / NRNR/ NRSR account of the lender maintained with AD.
- ii. Period of loan shall not exceed 3 years;
- iii. Rate of interest on the loan shall not exceed 2% points over the Bank rate prevailing on the date of availment of loan;
- iv. Where loan is made out of funds held in NRSR account, payment of interest and repayment of loan shall be made by credit to that account and in other cases the same shall be made by credit to the lender's NRO or NRSR account as desired by the lender;
- v. Borrowed amount shall not be allowed to be repatriated outside India;

#### **2. By Indian company:**

A company incorporated in India is allowed to borrow in rupees on repatriation or non-repatriation basis, from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions:

- i. Issue of NCDs is made by public offer;
- ii. Rate of Interest does not exceed 300 bps + PLR of the State Bank of India on the date on which the resolution approving the issue is passed;
- iii. Period for redemption is not less than 3 years;
- iv. Borrowing company does not and shall not carry on agricultural/plantation/real estate business/Trading in TDRs or does not and shall not act as Nidhi or Chit Fund company;
- v. Following are filed with RBI –
  - a. full details (as prescribed) of the remittances received within 30 days from the date of receipt of remittance for investment in NCDs;
  - b. full details (as prescribed) of the investment within 30 days from the date of issue of NCDs.
- vi. Issue of NCDs on repatriation basis shall be subject to the additional conditions as stipulated;
- vii. Issue of NCDs on non-repatriation basis shall be subject to the additional conditions as stipulated;

Amount borrowed in the manner above shall be utilized for own business purpose and shall not be utilized for the business of chit-fund, Nidhi Company, agricultural or plantation activities, real estate business, construction of farm houses or trading in TDRs. For this purpose, real estate business shall not include development of townships, construction of residential/commercial premises, roads & bridges.

The amount borrowed shall not be utilized as investment, whether by way of capital or otherwise, in a company or partnership firm or proprietorship concern or any equity, whether incorporated or not, or for lending.

## LENDING IN INDIAN RUPEES TO NON-RESIDENTS

1. Subject to the direction issued by RBI from time to time, AD is allowed to grant loan to a non-resident Indian:
  - i. against the security of shares or other securities held in the name of the borrower;
  - ii. against the security of immovable property (other than agricultural or plantation property or farm house) subject to specified conditions;
  - iii. for any purpose as per the loan policy laid down by the Board of Directors of AD subject to specified conditions;
  - iv. Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under ESOP Scheme subject to specified conditions.

Such loan can be repaid by any relative (as defined in Section 6 of the Companies Act, 1956) of the borrower in India by crediting the borrower's loan account through the bank account of such relative.

2. AD or a housing finance institution in India are permitted to provide housing loan in rupees to a Non-resident Indian or a person of Indian origin resident outside India, for acquisition of a residential accommodation in India, subject to specified conditions.
3. A body corporate registered or incorporated in India can grant rupee loan to its employees who is a non-resident Indian or a Person of Indian Origin, subject to specified conditions.
4. A resident individual can grant interest free loan to a NRI/ PIO close relative (as defined in Section 6 of the Companies Act, 1956) by way of crossed cheque/ electronic transfer within the overall limit under LRS for a minimum maturity of 1 year. The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes in India and shall not be utilised, either singly or in association with other person, for the business of chit-fund, Nidhi Company, agricultural or plantation activities, real estate business, construction of farm houses or trading in TDRs. The loan amount should be credited to the NRO Account of the NRI /PIO and cannot be remitted outside India. Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the NRO / NRE / FCNR account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.
5. AD may permit a temporary overdraft for value not exceeding 50 million, in rupee accounts maintained with him by his overseas branch or correspondent or Head Office outside India, subject to such terms and conditions specified by RBI.

### 16. Establishment of Branch / Liaison Office in India

[Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2016 - Notification No.22(R)/2016-RB dated March 31, 2016 as amended]

- A body corporate incorporated outside India (including a firm or other association of individuals) desirous of opening/ establishing in India a Branch Office (BO) or a Liaison Office [also known as Representative Office] (LO) or any other place of business by whatever name called have to obtain prior approval of RBI. An application to establish a BO or LO in India shall be made to RBI through AD in prescribed form along with the prescribed documents. The BOs/LOs established with the RBI's approval will be allotted a Unique Identification Number (UIN).
- Without prior permission of the RBI, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran China, Hong Kong or Macau can establish in India, a BO or a LO or a PO or any other place of business. Entities from Nepal are allowed to establish only LOs in India.
- General permission is given to foreign companies to -
  - a. establish a branch/ unit in SEZ to undertake manufacturing and service activities provided such units:
    - i. are functioning in sectors where 100% FDI is permitted;
    - ii. comply with Chapter XXII of the Companies Act, 2013,
    - iii. function on a stand-alone basis
  - b. establish Project Offices (POs) in India, provided they have secured a contract from an Indian company to execute a project in India, subject to specified conditions.

In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an AD Category – I bank with the documents as mentioned under "Closure of Liaison / Branch Office" except the copy of the letter granting approval by the RBI.

- Foreign banking company does not require separate approval under FEMA, for opening BO or LO in India if such banking company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development (DBOD), RBI.
- Similarly, foreign insurance company does not require separate approval under FEMA, for opening LO in India if such insurance company has obtained necessary approval under the provisions of the Insurance Regulatory and Development Authority.

### **Eligibility Criteria:**

An application from a foreign entity to establish BO / LO in India is considered on the basis of following two criteria:

#### **1. Basic criteria**

- i. **RBI Route** — Principal business of the foreign entity falls under sectors where 100% FDI is permitted under the automatic route.
- ii. **Government Route** — Principal business of the foreign entity falls under the sectors where 100% FDI is not permitted under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations / Non - Profit Organisations / Government Bodies / Departments are considered by RBI, in consultation with Ministry of Finance, GOI.

#### **2. Additional criteria**

- i. **Track Record**
  - a. For BO — a profit making track record during the immediately preceding 5 financial years in the home country.
  - b. For LO — a profit making track record during the immediately preceding 3 financial years in the home country.
- ii. **Net Worth** [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name].
  - a. For BO — not less than USD 100,000 or its equivalent.
  - b. For LO — not less than USD 50,000 or its equivalent.

Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies may submit a Letter of Comfort from their parent company, subject to the condition that the parent company satisfies the eligibility criteria as prescribed.

### **Permitted activities for a BO/LO in India:**

#### **1. Branch Office**

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up BOs in India with specific approval of RBI. Such BOs are permitted to represent the parent / group companies and undertake the following activities in India:

- i. Export/import of goods (Procurement of goods for export and sale of goods after import are allowed only on wholesale basis).
- ii. Rendering professional or consultancy services.
- iii. Carrying out research work, in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v. Representing the parent company in India and acting as buying/ selling agent in India.
- vi. Rendering services in Information Technology and development of software in India.

- vii. Rendering technical support to the products supplied by parent/group companies.
- viii. Foreign airline/shipping company.

Normally, the Branch Office should be engaged in the activity in which the parent company is engaged. Retail trading activities of any nature is not allowed for a BO in India. A BO is not allowed to carry out manufacturing or processing activities in India, directly or indirectly. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes

## 2. Liaison Office

A LO can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by an AD Category I bank.

A LO can undertake the following activities in India

- i. Representing in India the parent company / group companies.
- ii. Promoting export / import from / to India.
- iii. Promoting technical/ financial collaborations between parent / group companies and companies in India.
- iv. Acting as a communication channel between the parent company and Indian companies.

## Reporting requirements

### 1. Annual activity certificates to be submitted by BOs/ LOs

BOs / LOs have to file Annual Activity Certificates (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category I bank and a copy accompanied by audited financial statements including receipt and payment account to the Directorate General of Income Tax (International Taxation), New Delhi.

- 2. The foreign company establishing a PO in India is required to furnish report incorporating the prescribed details through the concerned AD branch, to the concerned Regional Office of RBI under whose jurisdiction the PO is set up.

The PO shall also submit to the AD branch on an annual basis, a Certificate from a Chartered Accountant showing the Project Status and certifying that the accounts of the PO has been audited and the activities undertaken are in conformity with the General / Specific permission given by the RBI.

- 3. All the new entities setting up LO/BO/PO are required to -
  - i. submit a report containing information in the prescribed format within 5 working days of the LO/BO/ PO becoming functional to the DGP of the state concerned in which LO/BO/PO has established its office; if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India;
  - ii. a copy of the report as per the prescribed format shall also be filed with the DGP concerned on annual basis along with a copy of the AAC/Annual report required to be submitted by LO/BO/PO concerned, as the case may be.
  - iii. a copy of report thus filed as above shall also be filed with AD by LO/BO/PO concerned.

The existing LO/BO/PO are required to report the information as per the prescribed format along with the copy of AAC/Annual report to DGP of state concerned and also file a copy of the same with AD bank.

## 17. HOLDING/SURRENDER OF FOREIGN CURRENCY

[Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations 2015 - Notification No.9(R)/2015-RB dated December 29, 2015 as amended]



Persons resident in India are required to realize, repatriate and bring to India all foreign exchange that is due or accrued to them and sell it to an authorised person in India in exchange for rupees or retain or hold it in account with AD or use it for discharge of a debt or liability denominated in foreign exchange within 180 days. They are however permitted to hold foreign coins without any limit and foreign currency notes and traveller's cheques up to USD 2,000.

A uniform period of 180 days is prescribed for surrender of received/realized/unspent/unused foreign exchange by resident individuals from the date of receipt/realization/purchase/acquisition or date of return to India of the traveller, as the case may be.

**Export and Import of Currency:** Any person resident in India may take outside India or having gone out of India (other than Nepal and Bhutan) on a temporary visit, may bring into India (other than to and from Nepal and Bhutan) currency notes of GOI and RBI notes up to an amount not exceeding Rs.25,000 per person.

## 18. CONTRAVENTIONS OF PROVISIONS OF FEMA

[Foreign Exchange (Compounding Proceedings) Rules, 2000]

Contravention of any provisions of FEMA, rules or regulations or notification, direction or any order issued thereunder is punishable under section 13 of FEMA with a penalty upto three times the sum involved in such contravention where such amount is quantifiable, or upto Rs. 200,000 where the amount is not quantifiable. In case of continuing contravention, a further penalty is levied upto Rs. 5,000 for every day. Such contraventions can be compounded in accordance with Foreign Exchange (Compounding Proceedings) Rules, 2000. The responsibility of administering compounding proceeding is placed with the RBI, except contraventions under section 3(a) of FEMA. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener

### A. Compounding Powers

- i. RBI has been empowered to compound the contraventions of all the Sections of FEMA except clause (a) of Section 3 of FEMA.
- ii. Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA (dealing essentially with Hawala transactions)

### B. Delegation of Powers

Compounding powers are delegated to the Regional Offices of the RBI mentioned below to compound the contraventions of FEMA involving (i) delay in reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule I to the Inbound Regulations.

FEMA Regulation	Brief Description of Contravention
Paragraph 9(1)(A) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in reporting inward remittance received for issue of shares.
Paragraph 9(1)(B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in filing form FC(GPR) after issue of shares.
Paragraph 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
Paragraph 5 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Violation of pricing guidelines for issue of shares.
Regulation 2(ii) read with Regulation 5(1) of FEMA 20/2000-RB dated May 3, 2000	Issue of ineligible instruments such as nonconvertible debentures, partly paid shares, shares with optionality clause, etc.
Paragraph 2 or 3 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Issue of shares without approval of RBI or FIPB respectively, wherever required.
Regulation 10A(b)(i) read with paragraph 10 of Schedule I of FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
Regulation 10B(2) read with paragraph 10 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
Regulation 4 of FEMA20/2000-RB dated May 3, 2000	Taking on record transfer of shares by investee company, in the absence of certified form FC-TRS.

The work of three divisions of Foreign Investment Division (FID) viz. Liaison/ Branch/ Project office(LO/ BO/ PO) division, Non Resident Foreign Account Division (NRFAD) and Immovable Property (IP) Division has been transferred to FED, CO Cell, New Delhi with effect from July 15, 2014. Accordingly the officers attached to the FED, CO, Cell at New Delhi office are now authorized to compound the contraventions as under:

<b>FEMA Regulation</b>	<b>Brief Description of Contravention</b>
FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India
FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India
FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office ,Liaison Office or Project office
FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000

The above contraventions can be compounded by all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (Rs.1,00,00,000/-). The contraventions above Rupees one hundred lakh (Rs.1,00,00,000/-) under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

### **C. Process of Compounding**

An application for compounding of a contravention under FEMA can be submitted to the Compounding Authority on being advised either through a memorandum or suo motu by contravener on being made or on becoming aware of the contravention in the prescribed format along with the prescribed details and the prescribed fee of Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable either at place where the concerned Regional Office is situated or at Mumbai, as the case may be. The application is examined to assess whether the contravention is compoundable and the amount of contravention is accordingly quantified. The compounding proceedings are concluded and an order issued by the Compounding Authority within 180 days from the date of the receipt of the application for compounding. On issue of compounding order, the sum for which the contravention is compounded as specified in the order of compounding is payable by way of a demand draft in favour of the "Reserve Bank of India" within fifteen days from the date of the order of compounding of such contravention after which a certificate in this regard shall be issued by the RBI subject to the specified conditions, if any, in the order.

Where there is sufficient cause for further investigation, the RBI may refer the matter to the Directorate of Enforcement for further investigation and necessary action under FEMA or to the Anti- Money Laundering Authority instituted under the Prevention of Money Laundering Act, 2002 (PMLA) or to any other agencies, as deemed fit. Such applications will be disposed of by returning the application to the applicant. Further, cases of contravention, such as, those having a money laundering angle, national security concern and / or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA or to the authority instituted for implementation of the PMLA or to any other agencies, for necessary action, as deemed fit.

In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded. Such contravention would be dealt with under relevant provisions of the FEMA for contravention. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

Contraventions relating to any transaction requiring approvals or permission from the Government or statutory authority concerned, as the case may be would not be compounded unless the required approvals are obtained from the authorities concerned.

## 19. Important Forms under FEMA

Form	Description
<b>Advance Remittance Form (ARF) Intimation for Receipt of Funds alongwith KYC report on non-resident investor (This is now to be filed online on e-Biz Portal)</b>	Report by the Indian Company receiving amount of consideration for issue of shares/ as per Foreign Direct Investment Scheme
<b>FC - GPR (Part A) – (This form is also to be filed online on e-Biz Portal)</b>	Reporting of issue of shares by the company receiving fresh investment
<b>Return of FLA</b>	Annual return on Foreign Liabilities and Assets
<b>FC - TRS – (This form is also to be filed online on e-Biz Portal)</b>	Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares / debentures by way of sale from resident to non-resident / non-resident to resident
<b>Form ESOP</b>	Return to be filed by Indian company who has issued shares under Employees Stock Options (ESOP) Scheme and / or sweat equity shares
<b>DRR</b>	Return to be filed by the Domestic Custodian who has arranged issue/transfer of Depository Receipts
<b>Form FOREIGN DIRECT INVESTMENT-LLP (I)</b>	Report by the Limited Liability Partnerships (LLPs) receiving amount of consideration for capital contribution and acquisition / transfer of profit shares under the Scheme
<b>Form FOREIGN DIRECT INVESTMENT LLP II</b>	Declaration regarding transfer of capital contribution/profit shares of a Limited Liability Partnership from resident to non-resident/non-resident to resident
<b>ODI</b>	Application to Reserve Bank of India for Direct Investment in a Joint Venture (JV)/Wholly Owned Subsidiary Overseas (WOS)
<b>APR</b>	Annual Performance Report (APR) on the functioning of Indian Joint Venture (JV)/Wholly Owned Subsidiary (WOS) abroad
<b>ECB</b>	Application for raising External Commercial Borrowings (ECB) under Approval Route
<b>83</b>	Reporting of loan agreement details under Foreign Exchange Management Act, 1999 (for all categories and any amount of ECB)
<b>ECB - 2</b>	Reporting of actual transactions of External Commercial Borrowings (ECB) under Foreign Exchange Management Act, 1999 (for all categories and any amount of loan)
<b>TC</b>	Approval of Trade Credit granted by all branches during the (Month/Year)
<b>BEF</b>	Statement showing details of remittances effected towards import in respect of which documentary evidence has not been received despite reminders
<b>CDF</b>	Currency Declaration Form
<b>EFC</b>	Application for opening foreign currency account with a bank in India or abroad by exporters
<b>GR</b>	Exchange Control Declaration (GR) Form No.
<b>IPI</b>	Declaration of immovable property acquired in India by a person resident outside India
<b>SOFTEX</b>	Declaration of Software Exports through data-communication links and receipt of Royalty on the Software Packages/Products exported
<b>EDF</b>	Declaration of Exchange Control (Exporters Declaration)
<b>A2 - Application-cum-Declaration</b>	For drawal of Foreign Exchange
<b>Application-cum-Declaration</b>	For purchase of foreign exchange under the Liberalised Remittance Scheme of USD 2,50,000 for Resident Individuals
<b>FNC</b>	Application for Establishment of Branch/ Liaison Office in India
<b>XOS</b>	Report of export bills outstanding beyond the prescribed period/due date of realisation of as at the end of half-year
<b>LEG</b>	Application for remittance of legacies, bequests or inheritances to beneficiaries outside India.

For details of forms under FEMA and reporting requirements FED Master Direction No. 18/2015-16 dated January 1, 2016 on Reporting under Foreign Exchange Management Act, 1999 and forms available on Reserve Bank of India's website can be referred.

Format of forms will be available in the Master Direction and on RBI's website also.

The link of master direction is – [https://www.rbi.org.in/Scripts/BS\\_ViewMasterDirections.aspx](https://www.rbi.org.in/Scripts/BS_ViewMasterDirections.aspx)

The link of format of forms on RBI's website is - [https://www.rbi.org.in/scripts/FS\\_Forms.aspx?fn=5](https://www.rbi.org.in/scripts/FS_Forms.aspx?fn=5)

# COMPARATIVE SUMMARY OF ENTRY OPERATIONS IN INDIA

Particulars	LIASON OFFICE	PO or BRANCH OFF	Subsidiary Company	LLP
1. Setting up requirements	<p>Prior approval of RBI required.</p> <p>Intimation to Director General of Police of state with prescribed information within five working days of becoming operational.</p>	<p>Prior approval of RBI required for BO (other than undertaking manufacturing and service activities in SEZs)</p> <p>Prior approval not required to set up PO on fulfillment of certain conditions.</p> <p>Intimation to Director General of Police of state with prescribed information within five working days of becoming operational.</p>	<p>No prior approval required, but only post facto filings to be undertaken with RBI if activities/sectors come under the ambit of the automatic route.</p> <p>GOI/FIPB approval required in other cases as well as for post facto filings, which need to be undertaken with RBI.</p>	<p>Foreign investments allowed in sectors covered under 100% automatic route with prior approval from GOI/FIPB.</p>
2. Permitted activities	<p>Only liaison/representation/communication/promotion role permitted.</p> <p>No commercial or business activities allowed to be undertaken.</p>	<p>Activities listed/permitted by RBI allowed to be undertaken.</p> <p>Manufacturing and processing activities (except in SEZ units) not permitted for BOs.</p> <p>PO permitted only to undertake specific activities in relation and incidental to execution of a project.</p>	<p>Any activity specified in the memorandum of association of the company.</p> <p>Wide range of activities permitted, subject to FDI guidelines.</p>	<p>LLP has to be engaged in sectors/activities for which 100% FDI is allowed through automatic route; no FDI-linked performance conditions applicable.</p> <p>LLPs with foreign investment not eligible to make downstream investments.</p>
3. Funding of local operations	<p>Local expenses to be met out of inward remittances received from head office through normal banking channels.</p>	<p>Local expenses to be met through inward remittances from head office or from earnings from permitted operations.</p> <p>Prior approval of RBI required for local borrowings by BOs.</p>	<p>Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas, according to prescribed norms) or internal accruals.</p>	<p>Capital contribution in LLP to be in cash by inward remittance; LLPs not eligible to raise ECB.</p>
4. Limitation of liability	<p>Unlimited liability</p>	<p>Unlimited liability</p>	<p>Liability limited to extent of equity participation in Indian company.</p>	<p>Liability of partners limited to their agreed contribution to an LLP, except in event of fraud wrongful acts, etc.</p>
5. Compliance requirements under Cos Act	<p>Registration and periodical filing of accounts/other documents.</p>	<p>Significantly and periodical filing of accounts/other documents.</p>	<p>Significantly high statutory compliance and filing requirements.</p>	<p>Registration with ROC required.</p> <p>Filing annual and submitting and annual statement of solvency</p>
6. Compliance requirements under foreign exchange management regulation.	<p>Required to file Annual activity Certificate (by auditors in India) with RBI</p> <p>In case of multiple LOs the Nodal Office can file combined annual activity certificate with respect to all its offices in India.</p>	<p>Required to file an Annual activity Certificate (by auditors in India) with RBI.</p> <p>In case of multiple BOs the Nodal Office can file combined annual activity certificate with respect to all its offices in India.</p>	<p>Required to file Periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issuance of shares to foreign investors.</p>	<p>No filing requirements prescribed as of now.</p>

Particulars	LIASON OFFICE	PO or BRANCH OFF	Subsidiary Company	LLP
	Report to be sent to Director General of Police of state with prescribed information along with copy of Annual activity Certificate	PO to submit certificate from a chartered accountant, detailing the status of the project and certifying that the accounts of the PO have been audited to the Authorized Dealer branch on an annual basis  Report to be sent to Director General of Police of state with prescribed information along with copy of Annual Activity Certificate		
7. Income tax rate and compliance	Lo not subject to Tax in India , since not permitted to undertake any business activity in the country  Lo required to undertake annual compliance measures by filing annual information in the prescribed form	Liable to be taxed on income earned at the rate applicable to foreign corporations,i.e.,43.26%(including surcharge <sup>1</sup> and cess) and required to file returns of income in India.  MAT <sup>2</sup> applicable to BOs/POs at the rate of 20.008%(including surcharge and cess) of their book profits	Liable to be taxed on global income at 34.608% (including surcharge and cess)on net income basis.  Subsidiary company liable to MAT at the rate of 21.342% (including surcharge and cess)of its book profits	Liable to be taxed on global income at 34.608% (including surcharge and cess) on net income basis.  LLP liable to AMT at the rate of 21.342% (including surcharge and cess) of its adjusted total income
Annual Activity Certificate to be submitted to the Directorate General of Income Tax (International Taxation) accompanied by audited financial statements including receipt and payment accounts	No further tax on repatriation of profits, which are permissible in both cases Indian transfer pricing regulation applicable Annual Activity Certificate of BO to be submitted to the Directorate General of Income Tax (International Taxation) accompanied by audited financial statements, including receipt and payment account	Dividend declared freely remittable but subject to distribution tax of 17.304% on dividends declared/distributed/ paid, pursuant to which dividend is tax free for all shareholders  Distribution tax to be paid only on amount of dividend distributed after reducing dividends received from subsidiary, provided distribution tax has been paid by subsidiary company Indian Transfer pricing regulation applicable	Indian transfer pricing regulation applicable	No DDT levied on profit distribution
8. Permanent Establishment( PE)	LOs generally do not constitute PE under DTAA due to limited scope of activities (however, PE/ taxable presence is likely to be constituted in India if activities of the LO go beyond scope of preparatory or auxiliary parameters provided in the DTAA)	Generally constitutes PE and taxable presence under DTAA and domestic IT provisions	Independent taxable entity and not PE of foreign company	An independent taxable entity(however, whether an interest in an LLP results in a PE for a foreign partner is still ambiguous under an LLP)
9. Repatriation of funds on an ongoing basis	Typically, not permitted to undertake any business activity in India; as such, may not be any repatriations from LO (However in the event of closure of LO, any surplus cash may be repatriated with RBIs approval).	Approval required for remittance of post-tax profits to head office outside India, subject to filing of requisite documents with RBI.	Does not require any approval for remittance of post-tax profits; dividends declared will be subject to distribution tax.	Does not require any approval for remittance of post-tax profits.
10. Exit mechanism	Requirement of prior approval of RBI, ROC and income tax	Requirement of prior approval of RBI, ROC and income tax authorities.	Exit can be through sale of shares, winding up of	Foreign Partner permitted to transfer its stake in the LLP or

Particulars	LIASON OFFICE	PO or BRANCH OFF	Subsidiary Company	LLP
	authorities.		operations or liquidation. Winding up/liquidation can be a long and complex process.	dissolve it. Rules framed by GOI on winding up and dissolution of LLP to be followed.

1. Surcharge for FY is 7% if the total income is above INR10m. Surcharge for FY 16 is 7% for income exceeding 10m but less than 100m. Where the income exceeds 100m for the FY 16 the surcharge is to be calculated at 12 %.
2. Taxation under MAT / AMT provisions is triggered when tax liability, computed at a specified percentage of book profit, is higher than that under the normal tax computation.

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