



AUDIT COMMITTEE AND CORPORATE GOVERNANCE

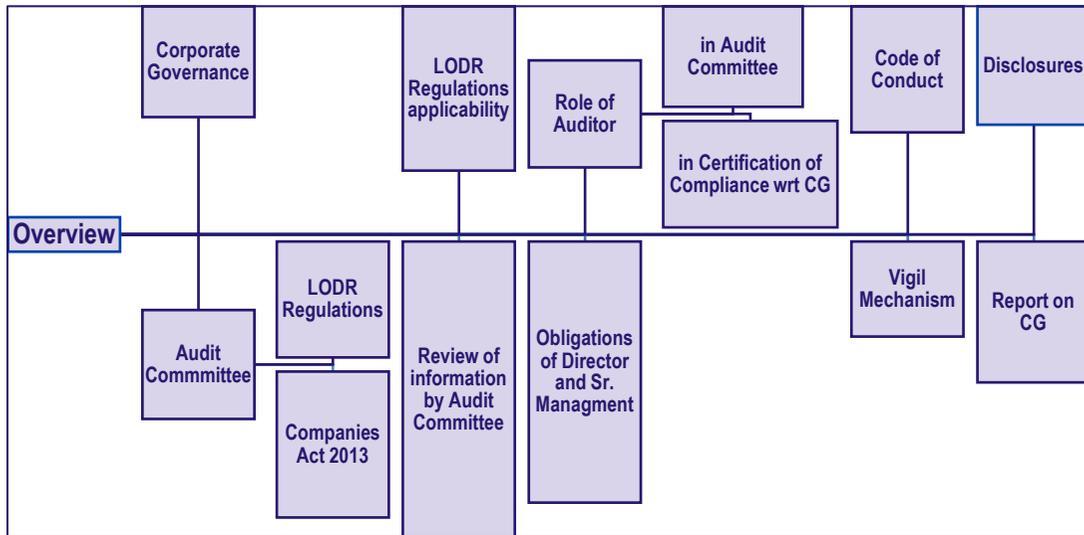


LEARNING OUTCOMES

After studying this chapter, you will be able to:

- ❑ Understand the legal framework of Corporate Governance and Listing Order Disclosure Requirement Regulations 2015.
- ❑ Envisage Role of Audit Committee under LODR Regulations and as per section 177 of the Companies Act, 2013.
- ❑ Gain the knowledge of Role of Auditor in Audit Committee and Certification of Compliance of Conditions of Corporate Governance.
- ❑ Recognise the Obligations of Director and Senior Management.
- ❑ Learn the Code of Conduct and Vigil Mechanism as per LODR Regulations.
- ❑ Analyse the Statement of Deviations, various Disclosure requirements, Report on Corporate Governance, Auditors Certificates, etc.

CHAPTER OVERVIEW



1. INTRODUCTION

Corporate Governance is the system by which companies are directed and governed by the management. Through use of ethical business processes, the management is able to ensure accountability, transparency and fairness in the company operations, thereby ensuring that the interests of shareholders and all other stakeholders are protected. The Board of Directors are responsible for governance of their companies.

2. CORPORATE GOVERNANCE



The word 'Corporate' relates to a large business entity or a large company. Similarly, the word 'Governance' means exercise of authority, direction or control. Thus, the concept of 'Corporate Governance' is the system by which the management of a business entity directs and controls the activities in the best interest of the stakeholders. Issues addressed in the LODR (Listing Obligations and Disclosure Requirements) Regulations regarding corporate governance are discussed in 3.1.

Fig.: What is Corporate Governance?*

* Source : mark wignall

3. THE LEGAL FRAMEWORK

The Securities and Exchange Board of India (SEBI) on September 2, 2015, issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), with the objective of streamlining and consolidating the provisions of various listing agreements in operation for different segments of the capital markets, such as equity shares, preference shares, debt instruments, units of mutual funds, Indian depository receipts, securitised debt instruments and any other securities that the SEBI may specify.

The LODR Regulations are divided into two parts - **the substantive provisions** are incorporated in the main body while the **procedural requirements** are incorporated in the form of schedules. The LODR Regulations also capture the corporate governance principles found in Clause 49 of SEBI’s Model Listing Agreement. It may be noted that the LODR Regulations deal with only post-listing requirements and exclude all pre-listing requirements.

Certain amendments to the LODR Regulations have been made vide SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2019. The LODR Regulations and the amendments made thereto are collectively referred to as LODR Regulations here in below.

3.1 Issues of Corporate Governance

Issues addressed in the LODR Regulations regarding corporate governance are:

- (i) Responsibilities and key functions of the Board, its composition, compensation and disclosures;
- (ii) Code of Conduct and vigil mechanism;
- (iii) Composition, meetings, powers, role and responsibilities of the Audit Committee which is an important pillar of corporate governance;
- (iv) Management of subsidiary companies;
- (v) Procedures related to risk management;
- (vi) Disclosures on important issues regarding related party transactions, accounting treatment, etc.;
- (vii) Content of management discussion and analysis;
- (viii) Information to shareholders;
- (ix) Compliance Certificate by the CEO and CFO;
- (x) Compliance Certificate from either the auditors or practising company secretaries regarding compliance of conditions on corporate governance.

3.2 Applicability of LODR Regulations [Regulation 3]

Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

Applicability	<ul style="list-style-type: none"> (a) specified securities listed on main board or SME Exchange or institutional trading platform; (b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares; (c) Indian depository receipts; (d) securitised debt instruments; (e) security receipts (added w.e.f. September 06, 2018); (f) units issued by mutual funds; (g) any other securities as may be specified by the Board.
---------------	--



4. AUDIT COMMITTEE UNDER LODR REGULATIONS

The summarised requirements of corporate governance are discussed below:

4.1 Qualified and Independent Audit Committee [Regulation 18(1)]

Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

1. The Audit Committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors, **however, in case of a listed entity having outstanding SR (Superior Rights) equity shares, the audit committee shall only comprise of independent directors.**
2. All members of Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation (i): The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

3. The Chairperson of the Audit Committee shall be an independent director and he shall be present at Annual General Meeting to answer shareholder queries.

4. The Company Secretary shall act as the secretary to the committee.
5. The Audit Committee at its discretion shall invite the finance director or the head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee, provided that occasionally, the Audit Committee may meet without the presence of any executives of the listed entity.

4.2 Meeting of Audit Committee [Regulation 18(2)]

The Audit Committee shall meet at least four times in a year and not more than one hundred and twenty days shall lapse between two meetings. The quorum shall be either two members or one third of the members of the Audit Committee, whichever is greater, but there should be a minimum of two independent directors present.

4.3 Powers of Audit Committee [Regulation 18(2)]

The Audit Committee shall have powers, which should include the following:

- (1) To investigate any activity within its terms of reference.
- (2) To seek information from any employee.
- (3) To obtain outside legal or other professional advice.
- (4) To secure attendance of outsiders with relevant expertise, if it considers necessary.

It may be noted that the powers mentioned above are only illustrative and not exhaustive.

The auditor should check whether the terms of reference of the Audit Committee have been suitably framed mentioning the above powers. It is mandatory for the above-mentioned four powers to be vested in the Audit Committee. The Board may delegate/vest further powers to the committee.

4.4 Role of Audit Committee [Part C(A) of Schedule II]

The role of the Audit Committee shall include the following:

1. Oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. Recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;

3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the Board for approval, with particular reference to:
 - (a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013;
 - (b) Changes, if any, in accounting policies and practices and reasons for the same;
 - (c) Major accounting entries involving estimates based on the exercise of judgment by management;
 - (d) Significant adjustments made in the financial statements arising out of audit findings;
 - (e) Compliance with listing and other legal requirements relating to financial statements;
 - (f) Disclosure of any related party transactions;
 - (g) Modified opinion(s) in the draft audit report;
5. Reviewing, with the management, the quarterly financial statements before submission to the Board for approval;
6. Reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/ prospectus/ notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;
7. Reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
8. Approval or any subsequent modification of transactions of the listed entity with related parties;
9. Scrutiny of inter-corporate loans and investments;
10. Valuation of undertakings or assets of the listed entity, wherever it is necessary;
11. Evaluation of internal financial controls and risk management systems;
12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
14. Discussion with internal auditors of any significant findings and follow up there on;

15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board;
16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
18. To review the functioning of the Whistle Blower mechanism;
19. Approval of appointment of Chief Financial Officer after assessing the qualifications, experience and background, etc. of the candidate;
20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.
21. Reviewing the utilization of loans and/ or advances from /investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments.

If the company has set up an Audit Committee as per section 177 of the Companies Act, 2013, the company must ensure that the said Audit Committee has such additional functions / features as are contained in the LODR Regulations.

5. AUDIT COMMITTEE UNDER SECTION 177 OF THE COMPANIES ACT, 2013

- (i) As per section 177 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, every listed public company and the following classes of companies shall constitute an Audit Committee –

- (a) all public companies with a paid up capital of ten crore rupees or more;
- (b) all public companies having turnover of one hundred crore rupees or more;
- (c) all public companies, having in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

However, following class of unlisted public companies shall not be covered:

- 1) a joint venture;
- 2) wholly owned subsidiary; and
- 3) a dormant company as covered u/s 455.

Explanation- The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

Section 139(11) provides that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

- (ii) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. It may be noted that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.



6. FUNCTIONS OF THE AUDIT COMMITTEE

The Audit Committee performs various important functions like investigating the matters referred by board, discuss about internal control system etc. The sub-sections of Section 177 are reproduced hereunder which specify the terms of reference as well as functions of the Audit Committee:

Sub Section 4: "Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,—

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company (***However, in case of Government Company, it is limited to the recommendation for remuneration***);
- (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

(However, the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

In case of transactions other than transactions referred to in section 188 of the Companies Act 2013, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

Also, in case any transaction involving an amount not exceeding Rupees 1 crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from

the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

These provisions shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.”

Sub Section 5: “The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company”.

Sub Section 6: “The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.”

Sub Section 7: “The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor’s report but shall not have the right to vote.”

Sub Section 8: “The Board’s report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.”

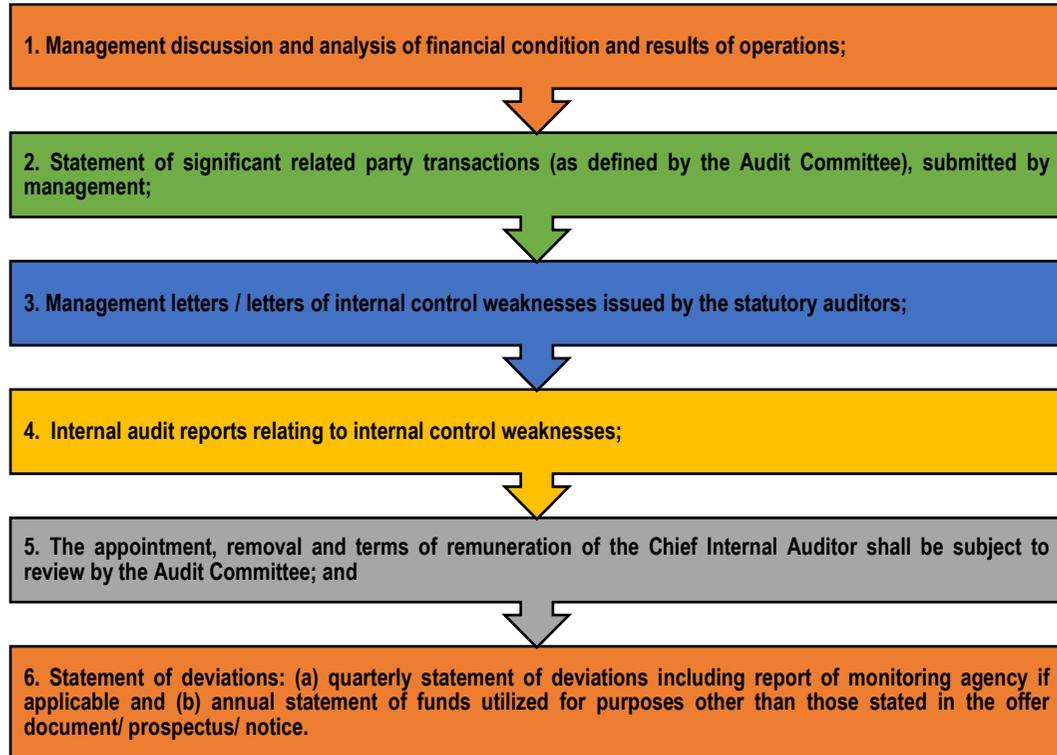
Sub Section 9: “Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.”

Sub Section 10: “The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board’s report.”



7. REVIEW OF INFORMATION BY AUDIT COMMITTEE

The Audit Committee shall mandatorily review the following information as per Part C(B) of Schedule II:



The auditor should ascertain from the minutes book of the Audit Committee and other sources like agenda papers, etc. whether the Audit Committee has reviewed the above-mentioned information. The auditor should ascertain whether as a part of Directors' Report or as an addition thereto, a Management Discussion and Analysis report forms part of the annual report to the shareholders. The auditor should further ascertain whether the Management Discussion and Analysis report includes discussion on the matters stipulated in Schedule V(B).

Where certain deficiencies or adverse findings are noted by the Audit Committee, the auditor will be required to see that these have been suitably dealt with by the management in the report on corporate governance.

The auditor should ascertain that the information reviewed by the Audit Committee is consistent with the reporting in the financial statements including those drawn up giving segment wise break-up for compliance with Accounting Standard (AS) 17 (Segment Reporting)/ Indian Accounting Standard 108 (Operating Segments).

8. ROLE OF AUDITOR IN AUDIT COMMITTEE AND CERTIFICATION OF COMPLIANCE OF CONDITIONS OF CORPORATE GOVERNANCE

The LODR Regulations as well as the Companies Act, 2013 in respect of the constitution of Audit Committee underline the importance of audit process and its contribution to the corporate governance process.



Regulation 18(1)(f) stipulates that a representative of the statutory auditor, when required, shall be invited to the meetings of the Audit Committee. Similarly, Section 177 of the Companies Act, 2013 provides the auditors of a company and the key managerial personnel the right to be heard in the meetings of the Audit Committee when it considers the auditor's report but they shall not have the right to vote.

The auditor must ensure that he communicates frequently and openly with the Audit Committee on key accounting or auditing issues that, in the auditor's judgment, give rise to a greater risk of material misstatement of the financial statements, and also ensure that he addresses any questions or concerns voiced by the Audit Committee.

He can contribute significantly in assisting and advising the Audit Committee on improving corporate governance, oversight of financial reporting process, implementation of accounting policies and practices, compliance with accounting standards, strengthening of the internal control systems in regard to financial reporting and reporting processes.

The auditor must devote substantial professional time in assisting the management and the Audit Committee to enable them to discharge their functions effectively and in certification of the requirements of corporate governance.

The auditor has to keep in mind that his role is not to drive corporate governance directly. Rather, it is the management's responsibility to do so and, in the process, he should play a significant role in assisting management to ensure better standards of corporate governance.

8.1 Auditor's Responsibility

The auditor's responsibility in certifying compliance with the requirements of corporate governance relates to the verification and certification of factual implementation of requirements of corporate governance as stipulated in the LODR Regulations. Such verification and certification is neither an audit nor an expression of opinion on the financial statements of the company.

The certificate from the auditor as regards compliance with the requirements of corporate governance is neither an assurance as to the future viability of the company, nor the efficiency or effectiveness with which the management has conducted the affairs of the company.

8.2 General Principles of Audit

The standards set out in the Standards on Auditing (hereinafter referred to as SA) would be applicable in the performance of certification with the requirements of corporate governance by the auditor, to the extent relevant.

As in the case of other professional assignments, in certifying the compliance with the requirements of corporate governance, the auditor should comply with the “Code of Ethics” issued by the Institute of Chartered Accountants of India (ICAI).

The auditor should conduct verification of compliance with the requirements of corporate governance as stipulated in the LODR Regulations, in accordance with the Guidance Note on Certification of Corporate Governance issued by ICAI.

8.3 Documentation

The auditor should document matters, which are important in providing evidence to support the certificate of factual findings, in accordance with SA 230 on “Audit Documentation”.

8.4 Management Representations

The auditor should consider obtaining management representations in accordance with SA 580, “Written Representations”.

8.5 Verification regarding Composition of Board [Regulation 17 and 17A]

- (i) The auditor should ascertain whether, throughout the reporting period, the Board of Directors comprises an optimum combination of executive and non-executive directors, with at least one woman director and not less than 50% of the Board of Directors comprising non-executive directors. It may be noted that the Board of directors of the top 500 listed entities shall have at least one independent woman director (and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020).

The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

The auditor should also ensure that no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

- (1) A person shall not be a director in more than eight listed entities (and in not more than seven listed entities with effect from April 1, 2020).

It may be noted that a person shall not serve as an independent director in more than seven listed entities.

- (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of above-mentioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

The minutes of the Board of Directors' meetings should be verified to ascertain whether a director is an executive director or a non-executive director.

- (ii) The auditor should also verify that where the Chairperson of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case the listed entity does not have a regular non-executive Chairperson, at least half of the Board of Directors should comprise independent directors. Further, if the regular non-executive Chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the listed entity shall consist of independent directors.

In determining the number of requisite independent directors and/or non-executive directors, the fraction, if any, in the number of one-half or one-third as the case may be, should be rounded off. Since the terms in this clause refer to 'not less than' and 'at least', it would be appropriate to compute the number by rounding off any fraction to the next integer. For example, in a Board headed by a non-executive Chairman and comprising of six other directors (i.e., seven directors), the independent directors should be three or more.

No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

- (iii) The auditor should ensure that the board of directors of the top 1000 listed entities (and the top 2000 listed entities with effect from April 1, 2020) shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.

- (iv) ***With effect from April 1, 2020, the audit shall ensure that the Chairperson of the board of the top 500 listed entities is - (a) a non-executive director; (b) not related to the***

Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013.

It may be noted that this provision shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.

It may also be noted that the top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

- (v) ***In case of listed company having outstanding SR equity shares, the auditor shall check that at least half of the board of directors comprises of independent directors.***
- (vi) Annual disclosure submitted by the directors to the Board of Directors may be examined for this purpose. If the Board of Directors has followed any particular procedure(s) to ascertain the independence of directors, the auditor should examine the same. Effect of changes in the composition of the Board and/or its Chairman and its impact on compliance throughout the reporting period should also be examined.
- (vii) An independent non-executive director, apart from receiving remuneration, should not have had/ should not have any material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year. Also, such independent director, either by himself or with any of his relatives should not be a material supplier, service provider or customer or a lessor or lessee of the listed entity, and should not also be a substantial shareholder of the listed entity. In determining ‘not a substantial shareholder’, he (together with his relatives) should not own 2% or more of total voting power of the listed entity.

8.6 Limited Review of the audit of all the Entities whose accounts are to be consolidated with the Listed Entity

The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS / IndAS in accordance with guidelines issued by SEBI on this matter”. Consequently,

-  ***all listed entities whose equity shares and convertible securities are listed on a recognised stock exchange,***
-  ***the statutory auditors of such entities,***
-  ***all entities whose accounts are to be consolidated with the listed entity and***
-  ***the statutory auditors of entities whose accounts are to be consolidated with the listed entity***

shall comply with the prescribed procedure.

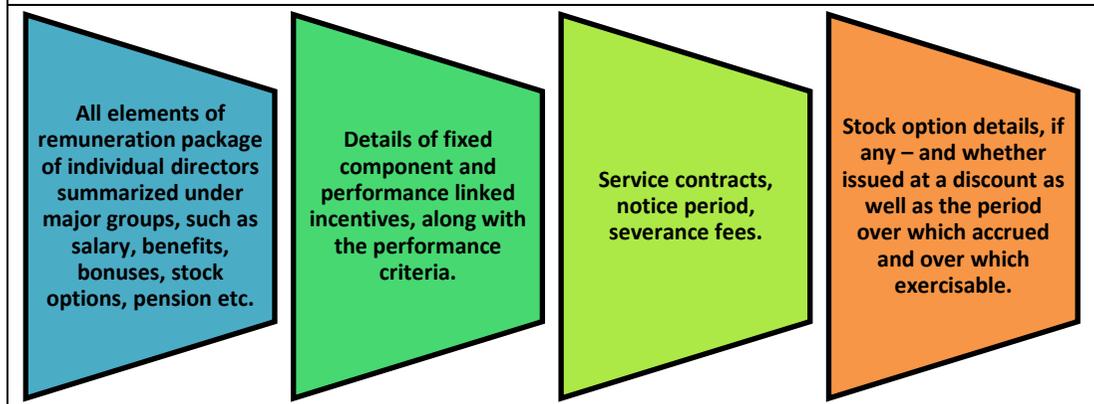
[Students may note that independent director means a non-executive director other than a nominee director of the listed entity (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience (b) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of promoter group of listed entity and who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company (c) apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year (d) none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year, (e) who, neither himself nor any of his relatives (i) holds or has held the position of a key managerial personnel or is or has been employee of the listed entity 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 listed entity or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the listed entity, 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 listed entity; 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 listed entity, 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 listed entity (v) is a material supplier, service provider or customer or a lessor or lessee of the listed entity (f) who is not less than 21 years of age and (g) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.]

9. REMUNERATION OF DIRECTORS [PART C OF SCHEDULE V]

Disclosure requirements regarding directors' remuneration are stated below:

- | | |
|------|--|
| (i) | All pecuniary relationship or transactions of the non-executive directors vis-à-vis the listed entity shall be disclosed in the Annual Report. |
| (ii) | Criteria of making payments to non-executive directors. Alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report. |

- (iii) In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:



9.1 Approval of Remuneration of Directors [Regulation 17(6)]

All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate. However, approval of shareholders by special resolution shall be obtained every year, in case the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors.

The requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government. Provided further that independent director shall not be entitled to any stock option.

The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

- (i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
- (ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

It may be noted that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director. For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.

In this context, the auditor should:

1. ascertain from the minutes of the Board of Directors' meetings, shareholders' meetings, relevant agenda papers, notices, explanatory statements etc., whether the remuneration of non- executive directors has been decided by the Board of Directors after receiving prior approval of the shareholders in the general meeting;
2. refer to the Articles of Association of the company, wherever applicable;
3. examine the Report of the Board of Directors on corporate governance to be included in the annual report of the company and ascertain whether the same contains the disclosures with respect to remuneration of directors and compensation to non-executive directors. The auditor should correlate this data with that contained in the financial statements.

Where application of this clause requires the value of ESOP to be determined, the services of expert may have to be utilized. In this regard, reference may be made to SA 620 dealing with "Using the Work of an Auditor's Expert".

10. OBLIGATIONS WITH RESPECT TO EMPLOYEES INCLUDING SENIOR MANAGEMENT, KEY MANAGERIAL PERSONS, DIRECTORS AND PROMOTERS [REGULATIONS 17(2) TO 17(4), 17A, 25(5), 25(6), 26(1), 26 (2), 26(4) TO 26(6)]

- (i) The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. The quorum for every meeting of the board of directors of the top 1,000 listed entities and of the top 2,000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director. The participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. The top 1,000 and 2,000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time:

- (a) A person shall not be a director in more than eight listed entities (and in not more than seven listed entities with effect from April 1, 2020):

It may be noted that a person shall not serve as an independent director in more than seven listed entities.

- (b) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of above-mentioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

- (ii) A director shall not be a member in more than ten committees or act as Chairperson of more than five committees across all listed entities in which he is a director. Furthermore, every director shall inform the listed entity about the committee positions he occupies in other listed entities and notify changes as and when they take place.

It may be noted that for the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded and for the purpose of reckoning the limit under this sub-clause, Chairpersonship/membership of the Audit Committee and the Stakeholders' Relationship Committee alone shall be considered.

- (iii) The Board shall periodically review compliance reports of all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.
- (iv) Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed entity in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.
- (v) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the LODR Regulations.
- (vi) Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large.



In case of dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the

same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution.

It may be noted that such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination.

It may also be noted that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting.

It may be further noted that if the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting.

In addition to this it may also be considered that all interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

Explanation - For the purposes of the above-mentioned provision, 'interested person' shall mean any person holding voting rights in the listed entity and who is in any manner, whether directly or indirectly, interested in an agreement or proposed agreement, entered into or to be entered into by such a person or by any employee or key managerial personnel or director or promoter of such listed entity with any shareholder or any other third party with respect to compensation or profit sharing in connection with the securities of such listed entity.

- (vii) An independent director who resigns or is removed from the Board of Directors of the listed entity shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later.

It may be noted that where the listed entity fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

- (viii) The Board of Directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

10.1 Meeting of Board of Directors

Section 173(1) of the Companies Act, 2013 provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

It may be noted that the Central Government may, by notification, direct that the provisions of this

sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

With reference to the above Para, it has been notified that, in case of Section 8 company, section 173 (1) shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.

It may be noted that, in case of specified IFSC public and private company, it shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold at least one meeting of the Board of Directors in each half of a calendar year.

Both the LODR Regulations and Section 173 stipulate that Board meetings shall be held at least four times a year and that the maximum time gap between any two meetings should not exceed one hundred and twenty days (except for certain specified companies).

The auditor should ascertain from the minute's book of the Board meetings whether Board meetings were held at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. The auditor should also ascertain whether the minimum required information was made available to the Board.

The auditor should also ascertain that a director of the company is not a member in more than ten committees or is acting as Chairman of more than five committees across all companies in which he is a director. A suitable declaration from director should be obtained to this effect. This information should be verified from the mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies as well as from the changes notified by the director as and when they take place.

10.2 Compliance of SA 250, “Consideration of Laws and Regulations in an Audit of Financial Statements”

For the purpose of reviewing compliance reports of all laws applicable to the company, the said reports prepared by the company as well as steps taken by the company to rectify instances of non-compliances, the auditor should take into consideration **SA 250, dealing with “Consideration of Laws and Regulations in an Audit of Financial Statements”**. It is the management's responsibility to ensure that company operations are conducted in accordance with laws and regulations. The responsibility for the prevention and detection of non-compliance rests with the management. The auditor's responsibility is limited to verification that management has taken suitable steps and has put in place policies and procedures to ensure compliance with laws and regulations and to detect deviation from such procedures. The auditor should obtain written representations that management has disclosed to the auditor all known actual or possible non-compliance with laws and regulations whose effects should be considered when preparing financial statements.

11. CODE OF CONDUCT [REGULATIONS 17(5), 26(3), 46(2) AND PART D OF SCHEDULE V]

(i) The Board shall lay down a code of conduct for all Board members and senior management of the listed entity.	(ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis.
(iii) The Annual Report of the company shall contain a declaration to this effect signed by the CEO.	(iv) The code of conduct shall be posted on the website of the company.
(v) The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.	

For this purpose, the term “senior management” shall mean personnel of the listed entity who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the **chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer.**

The auditor should ascertain whether the Board of Directors of the company has laid down a Code of Conduct for all Board members and senior personnel of the company and obtain a copy of the same. He should also verify whether all Board members and senior management personnel have affirmed compliance with the code on an annual basis and whether the code has been posted on company’s website.

12. VIGIL MECHANISM [REGULATIONS 22, 46 AND PART C OF SCHEDULE V]

- (i) The listed entity shall establish a vigil mechanism for directors and employees to report genuine concerns.
- (ii) This mechanism should also provide for adequate safeguards against victimization of director(s) / employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.
- (iii) The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board’s report.



13. SUBSIDIARY OF LISTED ENTITY [REGULATIONS 16(C), 24 AND 46 AND PART C OF SCHEDULE V]

- (i) As per Regulation 16(c), “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. [Explanation- The listed entity shall formulate a policy for determining ‘material’ subsidiary.]

Regulation 24(1) provides that at least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.

[Explanation- For the purposes of Regulation 24(1), notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year]

- (ii) The Audit Committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
- (iii) The minutes of the Board meetings of the unlisted subsidiary shall be placed at the Board meeting of the listed entity. The management of the unlisted subsidiary shall periodically bring to the notice of the Board of Directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

- (iv) The company shall formulate a policy for determining ‘material’ subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report.
- (v) A listed entity shall not dispose off shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.
- (vi) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior

approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

- (vii) Where a listed entity has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

Regulation 24 requires the Audit Committee of the listed entity to review the financial statements and in particular, the investments made by the unlisted subsidiary. This is required in regard to all unlisted subsidiaries, without reference to materiality or place of incorporation etc. Where however the subsidiary of a listed entity is itself a listed entity.

13.1 Secretarial Audit of Listed Entity and its Material Unlisted Subsidiaries [Regulation 24A]

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.

14. NOMINATION AND REMUNERATION COMMITTEE [REGULATION 19 AND PART D OF SCHEDULE II]

- A. The Board of Directors of every listed public company shall constitute the Nomination and Remuneration Committee which shall comprise of at least three directors, all of whom shall be non-executive directors and at least half shall be independent directors, **however, in case of a listed entity having outstanding SR equity shares, two thirds shall comprise of independent directors**. Chairperson of the committee shall be an independent director.

It may be noted that the Chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such committee.

The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.

The nomination and remuneration committee shall meet at least once in a year.

- B. The role of such committee shall, inter-alia, include the following:
- (i) Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board of Directors a policy, relating to the remuneration of the directors, key managerial personnel and other employees;

- (ii) Formulation of criteria for evaluation of performance of independent directors and the Board of Directors;
 - (iii) Devising a policy on Board diversity;
 - (iv) Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal;
 - (v) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
 - (vi) recommend to the board, all remuneration, in whatever form, payable to senior management.
- C. The Chairperson of the Nomination and Remuneration Committee may be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairperson to decide who shall answer the queries.



15. STAKEHOLDERS RELATIONSHIP COMMITTEE [REGULATION 20 AND PART D OF SCHEDULE II]

(i)	The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.
(ii)	The chairperson of this Committee shall be a non-executive director.
(iii)	At least three directors, with at least one being an independent director, shall be members of the Committee. However, in case of a listed entity having outstanding SR equity shares, at least two thirds of the Committee shall comprise of independent directors.
(iv)	The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.
(v)	The Stakeholders Relationship Committee shall meet at least once in a year.
(iv)	The role of the committee shall inter-alia include the following- <ul style="list-style-type: none"> (1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc. (2) Review of measures taken for effective exercise of voting rights by shareholders.

- (3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.
- (4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

The auditor should ascertain from the minutes book of the Board meetings whether a Board committee, namely a Stakeholders Relationship Committee has been set up under the chairmanship of a non-executive director to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of annual report, non-receipt of declared dividends, etc. Further, the auditor should also ascertain from the minutes book of the Committee meetings whether such committee is prima facie functioning.

The auditor should also verify from the records of the Committee as well as from the certificate obtained by the listed entity from SEBI and stock exchange(s), if any, as regards the investors' grievances pending up to the date of certificate of compliance of conditions of corporate governance.

16. RISK MANAGEMENT COMMITTEE [REGULATION 21]

- (a) The Board of Directors shall constitute a Risk Management Committee.
- (b) The majority of members of Risk Management Committee shall consist of members of the Board of Directors. **However, in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise of independent directors.**
- (c) The Chairperson of the Risk Management Committee shall be a member of the Board of Directors and senior executives of the listed entity may be members of the committee.
- (d) The risk management committee shall meet at least once in a year.
- (e) The Board of Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit and such function shall specifically cover cyber security.
- (f) The provisions of this regulation shall be applicable to top 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. A majority of this Committee will be the members of the Board of Directors. Senior executives of the company may be also be members

of the Committee, but the Chairperson of the Committee shall be a member of the Board of Directors.

17. STATEMENT OF DEVIATION(S) OR VARIATION(S) [REGULATION 32 AND PART C OF SCHEDULE II]

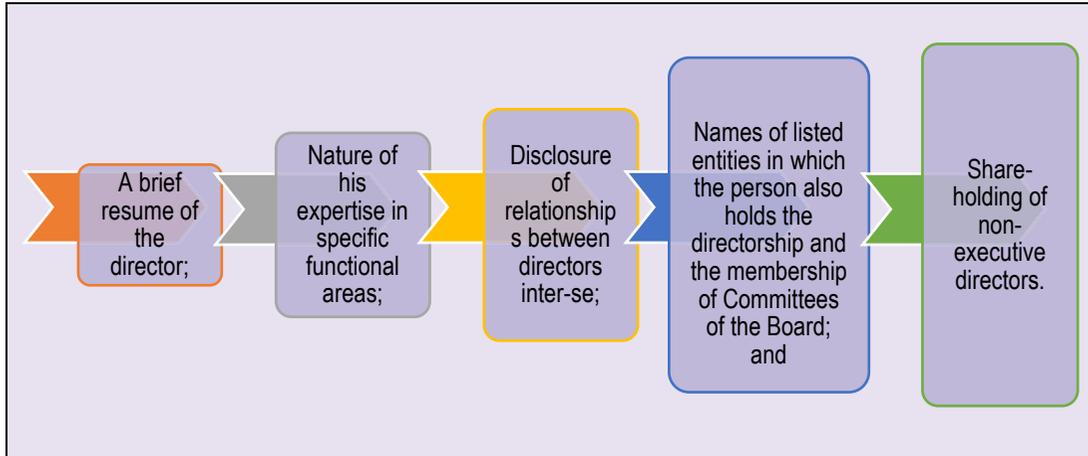
- (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc.:
 - (a) Indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
 - (b) Indicating category-wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.
- (2) The statement(s) shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.
- (3) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

The audit committee shall mandatorily review:

- (a) Quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).
- (b) Annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice.

18. INFORMATION TO SHAREHOLDERS [REGULATION 36]

In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:



The auditor should ascertain from the communications sent, whether in the case of appointment of a new director or re-appointment of a director, the shareholders have been provided with the information stipulated above.

19. TRANSFER OR TRANSMISSION OR TRANSPOSITION OF SECURITIES [REGULATION 40]

The Board of Directors of a listed entity shall delegate the power of transfer of securities to a committee or to the compliance officer or to the registrar to an issue and/or share transfer agents.

However, the board of directors and/or the delegated authority shall attend to the formalities pertaining to transfer of securities at least once in a fortnight. It may be noted that the delegated authority shall report on transfer of securities to the board of directors in each meeting.

The auditor should ascertain from the minutes book of the Board meetings whether the listed entity has delegated the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The auditor should also verify from the records maintained to ascertain whether the delegated authority has attended to share transfer formalities at least once in a fortnight. The auditor may verify whether any transfer request are pending for more than a fortnight and are not attended to in terms of this Regulation.

20. COMPLIANCE CERTIFICATE [PART B OF SCHEDULE II]

The Chief Executive Officer and the Chief Financial Officer shall certify to the Board that:

- (a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

- (i) These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - (ii) These statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- (b) There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- (c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of the internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- (d) They have indicated to the auditors and the Audit committee:
- (i) Significant changes in internal control over financial reporting during the year;
 - (ii) Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - (iii) Instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

Part B of Schedule II clearly brings out that -

The responsibility entrusted to the CEO and CFO is in relation to establishing and maintaining internal controls over financial reporting.

The Compliance Certificate has to assert that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting.

The Compliance Certificate will further state the manner in which deficiencies (if any) in the design or operation of such internal controls has been disclosed to the auditors and the Audit Committee.

The Compliance Certificate will also state the steps they have taken or propose to take to rectify these deficiencies in the design or operation of such internal controls pertaining to financial reporting.

In the context of internal controls, the auditor should ensure that -

The management has instituted an internal control framework with respect to financial reporting controls. The framework should be examined in the context of the documentation created for each significant process in terms of the related risk and mitigating control;

He has further examined whether the assessment process followed for evaluation of controls is reasonable and there is a process by which significant deficiencies as well as steps taken to correct them is communicated to the Audit Committee and to the auditors; and

He should also examine whether a process exists in the listed entity whereby all significant changes in the accounting policies and in the system of internal controls are communicated to the Audit Committee and the auditors.

The auditor should examine the adequacy of the process followed for issuing the Compliance Certificate and should review the same in regard to matters stated above and the consideration of the same by the Audit Committee. For this purpose, he should refer to the minutes of the Audit Committee meetings.

In situations where negative or adverse comments or exclusions/disclaimers are contained in the Compliance Certificate, the auditor should take cognizance of the same in the Audit Report and/or the certificate of compliance of conditions of corporate governance.

21. DISCLOSURES - MANAGEMENT DISCUSSION AND ANALYSIS [SCHEDULE V]

As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:

(a) Industry structure and developments.	(b) Opportunities and Threats.	(c) Segment-wise or product-wise performance.
(d) Outlook	(e) Risks and concerns.	(f) Internal control systems and their adequacy.
(g) Discussion on financial performance with respect to operational performance.	(h) Material developments in Human Resources / Industrial Relations front, including number of people employed.	
(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key	(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.	

financial ratios, along with detailed explanations therefor, including: <ul style="list-style-type: none"> (i) Debtors Turnover (ii) Inventory Turnover (iii) Interest Coverage Ratio (iv) Current Ratio (v) Debt Equity Ratio (vi) Operating Profit Margin (%) (vii) Net Profit Margin (%) or sector-specific equivalent ratios, as applicable.	
---	--

The above information presented by the management is likely to include non-financial information, which may be outside the auditor's area of expertise. In such situations, the auditor may keep in mind SA 315 relating to "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment" and the fact that he is only required to review the compliance with disclosure requirements and not verify the particular facts as disclosed by the management.

The auditor should ascertain that the segment-wise or product-wise performance (sub-clause (c) as stated above) is consistent with what is reported in financial statements complying with AS 17 (Segment Reporting)/ Indian Accounting Standard 108 (Operating Segments) and also as per provisions of Section 133, 134 and 143 of the Companies Act, 2013.

22. OTHER DISCLOSURES

The LODR Regulations on Corporate Governance requires disclosure of certain transactions which are discussed below.

22.1 Disclosure and Transparency [Regulation 4]

DISCLOSURES

The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the Listed entity, in the following manner:

- (a) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

- (b) Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.
- (c) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

22.2 Related Party Disclosure [Regulations 23, 27, 46 and Schedule V]

The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.

Details of all material transactions with related parties shall be disclosed therein. The report shall be signed either by the compliance officer or the chief executive officer of the listed entity.

The company shall disclose the policy on dealing with related party transactions on its website and a web link thereto shall be provided in the Annual Report.

The listed entity shall disclose the transactions with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.

The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.

22.3 Disclosure of Accounting Treatment [Schedule V]

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

In this regard, the auditor should refer to Sections 133, 134 and 143 of the Companies Act, 2013. Also, the auditor should refer to the Compliance Certificate issued in accordance with Regulation 17.

22.4 Disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Schedule V).

Amongst other matters, following should be disclosed in the section on Corporate Governance of the Annual Report:

a.	number of complaints filed during the financial year
b.	number of complaints disposed of during the financial year
c.	number of complaints pending as on end of the financial year



23. REPORT ON CORPORATE GOVERNANCE [REGULATION 27 AND SCHEDULE II]

The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within 15 days from the close of quarter. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the listed entity.

The auditor should ascertain whether the Board of Directors have included in the Annual Report of the listed entity, a separate section on corporate governance with a detailed compliance report on corporate governance.

Any data in the report on corporate governance should not be inconsistent with that contained in the financial statements. (For detailed contents of Report on Corporate Governance, students are advised to refer Appendix given at the end of this Chapter)



24. AUDITORS' CERTIFICATE

As per Schedule V, a listed entity shall obtain a compliance certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance and shall annex it to the Directors' Report.

Adverse or Qualified Statement : Depending upon the facts and circumstances, some situations may require an adverse or qualified statement or a disclosure without necessarily making it a subject matter of qualification in the Auditors' Certificate, in respect of compliance of requirements of corporate governance for e.g.,



- (a) The number of non-executive directors is less than 50% of the strength of Board of directors.
- (b) A qualified and independent audit committee is not set up.
- (c) The Chairman of the audit committee is not an independent director.
- (d) The Audit Committee does not meet four times a year.
- (e) The necessary powers in terms of Part C of Schedule II have not been vested by the Board in the Audit Committee.
- (f) The time gap between two Board meetings is more than one hundred and twenty days.
- (g) A director is a member of more than ten committees or acts as Chairman of more than five committees across all companies in which he is a director.

- (h) The information of quarterly results is neither put on the listed entity's website nor sent in a form so as to enable the stock exchange on which the entity's securities are listed to enable such stock exchange to put it on its own website.
- (i) The power of share transfer is not delegated to an officer or a committee or to the registrar and share transfer agents.

CASE STUDIES

Statements appearing in the Auditors' certificate on compliance of conditions of corporate governance:

1. ABC Oil & Natural Gas Commission - Non-compliance with (a) appointment of minimum number of independent directors (b) filling up the vacancies caused due to the resignation or retirement of independent directors within the specified time period and (c) appointment of woman director to the Board during certain specified periods.
2. XYZ Bank - Non-compliance with appointment of woman director to the Board for the F.Y.2015-16.
3. PQR Electrification Corporation Limited - Non-compliance with appointment of woman director to the Board.
4. RST Oil Corporation Limited - Non-compliance with (a) minimum number of independent directors in the composition of Board of Directors (b) appointment of woman director from 29.10.2015 (c) filling up the vacancies caused due to the retirement of independent directors for part of the year.
5. RKP National Fertilizers Limited - Non-compliance with (a) minimum number of independent directors in the composition of Board of Directors (b) appointment of woman director (c) performance evaluation of independent directors by the entire Board of Directors and (d) performance evaluation by the independent directors of the non-independent directors, that of the board of directors as a whole and that of the Chairperson of the company.

A proforma of the certificate to be issued by the auditors regarding compliance of conditions of corporate governance is shown below:

CERTIFICATE

To,

The Members of.....

(Name of the entity)

We have examined the compliance of conditions of corporate governance by (name of the entity) for the year ended on as stipulated in Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter called as “SEBI (LODR) Regulations, 2015”).

The compliance of conditions of corporate governance is the responsibility of the management. Our examination was limited to procedures and implementation thereof, adopted by the company for ensuring the compliance of the conditions of the corporate governance. It is neither an audit nor an expression of opinion on the financial statements of the company.

In our opinion and to the best of our information and according to the explanations given to us, we certify that the company has complied with the conditions of corporate governance as stipulated in the above mentioned Regulations.

OR (as applicable)

In our opinion, and to the best of our information and according to the explanations given to us, subject to the following:

- 1)
- 2)

We certify that the company has complied with the conditions of corporate governance as stipulated in the above mentioned Regulations.

We state that such compliance is neither an assurance as to the future viability of the company nor the efficiency or effectiveness with which the management has conducted the affairs of the company.

For & on behalf of

XYZ & Co.

Chartered Accountants

(Partner / Proprietor)

Membership No.

Place.....

Date.....

APPENDIX

SCHEDULE II: CORPORATE GOVERNANCE

PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS

[See Regulation 17(7)]

- A. Annual operating plans and budgets and any updates.
- B. Capital budgets and any updates.
- C. Quarterly results for the listed entity and its operating divisions or business segments.
- D. Minutes of meetings of audit committee and other committees of the board of directors.
- E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of Chief Financial Officer and the Company Secretary.
- F. Show cause, demand, prosecution notices and penalty notices, which are materially important.
- G. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.
- I. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.
- J. Details of any joint venture or collaboration agreement.
- K. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- L. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- M. Sale of investments, subsidiaries, assets which are material in nature and not in normal course of business.
- N. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- O. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

TEST YOUR KNOWLEDGE

Theoretical Questions

1. State the main features of the Qualified and Independent Audit Committee set up SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
2. Write short notes on the following:
 - (a) Content of Management Discussion and Analysis.
 - (b) Corporate Governance
3. Dishonest Limited, a company incorporated in India has six members in its Audit Committee. Due to recessionary conditions in India the revenue of the company is going down and there is slow down in other activities of the company. Therefore, it was expected that there would not be significant work for members of the Audit Committee. Considering the overall recession in the company and the economy, the members of the Committee decided unanimously to meet once in a year only on March 31, 2018. They reviewed monthly information system of the Company and found no errors. As an auditor of Dishonest Limited would you consider the decision taken by the Audit Committee is in line with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?

Multiple Choice Questions

1. The Audit Committee should consist of the following:
 - (a) minimum of 3 directors with independent directors forming a majority.
 - (b) minimum of 4 directors with only one independent director.
 - (c) minimum 2 directors which are independent.
 - (d) minimum 5 directors with 1 independent woman director
2. ABC Ltd is one of the top 1000 listed entities on the basis of market capitalisation. The Board of Directors of ABC Ltd does not comprise of any women director. The Statutory Auditor who is certifying Corporate Governance as per SEBI regulations, has to ascertain that –
 - (a) the Board of directors will have at least 2 independent woman director.
 - (b) the Board of directors will have at least 1 independent woman director.
 - (c) the Board of directors will have at least 5 independent woman director.
 - (d) None of the above

3. The auditor should ensure that the board of directors of the top 100 listed entities shall comprise of –
- (a) not less than 7 directors.
 - (b) not less than 4 directors.
 - (c) not less than 6 directors.
 - (d) not less than 2 directors
4. Annual Remuneration payable to a single non-executive director of ABC Ltd exceeds 25% of the total annual remuneration payable to all non-executive directors.
- (a) Approval of shareholders by special resolution shall be obtained every year.
 - (b) Approval of shareholders in general meeting shall be obtained every year.
 - (c) None of the above
 - (d) Approval of Board of Directors.
5. The Board of Directors of XYZ Ltd, one of the top 2000 listed entities meets 4 times a year. What should be the quorum of the Board of Directors from 1st April 2020-
- (a) 1/3rd of its total strength or 3 directors, whichever is higher, including at least 1 independent director.
 - (b) 1/3rd of its total strength or 4 directors, whichever is higher, including at least 1 independent director.
 - (c) 1/3rd of its total strength or 3 directors, whichever is higher, including at least 2 independent director.
 - (d) 1/3rd of its total strength or 3 directors, whichever is higher, including at least 1 non-executive director.

Answers to Theoretical Questions

1. The main features of a qualified and independent audit committee to be set up under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are as follows:
- (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors, **however, in case of a listed entity having outstanding SR (Superior Rights) equity shares, the audit committee shall only comprise of independent directors;**
 - (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;

Explanation (i): The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- (iii) The Chairperson of the Audit Committee shall be an independent director;
 - (iv) The Chairperson of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
 - (v) The Audit Committee at its discretion shall invite the finance director or the head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee; provided that occasionally, the Audit Committee may meet without the presence of any executives of the listed entity;
 - (vi) The Company Secretary shall act as the secretary to the committee.
2. (a) **Content of Management Discussion and Analysis:** As part of the directors’ report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company’s competitive position-
- (i) Industry structure and developments.
 - (ii) Opportunities and Threats.
 - (iii) Segment-wise or product-wise performance.
 - (iv) Outlook.
 - (v) Risks and concerns.
 - (vi) Internal control systems and their adequacy.
 - (vii) Discussion on financial performance with respect to operational performance.
 - (viii) Material developments in Human Resources/Industrial Relations front, including number of people employed.

- (ix) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:
- (1) Debtors Turnover
 - (2) Inventory Turnover
 - (3) Interest Coverage Ratio
 - (4) Current Ratio
 - (5) Debt Equity Ratio
 - (6) Operating Profit Margin (%)
 - (7) Net Profit Margin (%)

or sector-specific equivalent ratios, as applicable.

- (x) Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.

- (b) **Corporate Governance:** Corporate governance is the system by which companies are directed and controlled by the management in the best interest of the shareholders and others ensuring greater transparency and better and timely financial reporting. The Board of Directors are responsible for governance of their companies. A number of reports and codes of corporate governance have been published internationally.

SEBI on September 2, 2015, issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), with the objective of streamlining and consolidating the provisions of various listing agreements in operation for different segments of the capital markets, such as equity shares, preference shares, debt instruments, units of mutual funds, Indian depository receipts, securitised debt instruments and any other securities that the SEBI may specify.

The LODR Regulations are divided into two parts - the substantive provisions are incorporated in the main body while the procedural requirements are incorporated in the form of schedules. The LODR Regulations also capture the corporate governance principles found in Clause 49 of SEBI's Model Listing Agreement. It may be noted that the LODR Regulations deal with only post-listing requirements and exclude all pre-listing requirements.

3. One of the following additional requirement as stipulated under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") on which Section 177 of the Companies Act, 2013 (relating to audit committee) is silent is – The Audit Committee should meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings. The quorum shall be either two members or one third of the members

of the audit committee, whichever is greater, but there should be a minimum of two independent directors present.

Besides, there is a mandatory review requirement and to review only monthly information system is not sufficient. Here the audit committee members reviewed only monthly information system of the company and the same is not sufficient as per LODR Regulations.

The Audit Committee shall mandatorily review the following information as per LODR Regulations:

- (i) Management discussion and analysis of financial condition and results of operations;
- (ii) Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;
- (iii) Management letters / letters of internal control weaknesses issued by the statutory auditors;
- (iv) Internal audit reports relating to internal control weaknesses;
- (v) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee; and
- (vi) Statement of deviations: (a) quarterly statement of deviations including report of monitoring agency if applicable and (b) annual statement of funds utilized for purposes other than those stated in the offer document/ prospectus/ notice.

Applying the above, the decision taken by the audit committee is not in line with the LODR Regulations.

Answers to Multiple Choice Questions

- 1 (a) 2 (b) 3 (c) 4 (c) 5 (a)