"The average age of an Indian startup Founder is 28, which indicates less than a decade of work experience and certainly less legal and finance expertise in case of tech Founders. In case of laws, compliances, filing or corporate governance, every startup, be it in the early stage or growth stage, needs strict abidance of framework and protocols. Besides, the know how of an efficient Board Meeting acts as a lifeline for any startup Founder, as it sets the pace and tone for not only them, but also for the investors and other Board Members.

At IVCA, a part of our mission is ‘to support entrepreneurial activity and innovation, as it helps establish high standards of ethics, business conduct and professional competence’. Thus, it was natural for us to come up with the “IVCA Guidebook for Entrepreneurs,” including a complete section on “Guidelines on Board Meetings”, for which we teamed up with Nishith Desai Associates, AZB & Partners and few other industry leaders who helped us in their personal capacity. I thank each one of them for their contribution and would like to state here that - ‘this would not have been possible without you.’

At the national level, we are scaling to achieve global best practices. This report is a step forward to help startup Founders run a successful business professionally and lead efficient board meetings. I am sure this report will add great value to every entrepreneur who is serious about her/his business...

Happy reading.

Rajat Tandon,
President, IVCA
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WHY DOES MY START-UP NEED TO COMPLY?

We all have been audience to a few recent fiascos where Founders have had some not-so-pleasant encounters with the law. Therefore, it has become essential for Founders to not only be mindful of their roles and responsibilities vis-à-vis legal compliances, but also the liabilities that they take via agreements and contracts.

This guidebook has been curated with the simple objective of being a starting point for you to understand the critical compliances that you must be mindful of. We have also tried to point out the consequence of non – compliance in most places. In case you require further clarification on any point, please do reach out to legal experts.

We hope this is useful to you.

Here's to happy reading!

The contents of this guidebook should not be construed as legal opinion. This guidebook provides general information existing at the time of preparation. The guidebook is intended as a general update and none of the parties involved in its creation neither assume nor accept any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this guidebook. It is recommended that professional advice be taken based on the specific facts and circumstances. This guidebook does not substitute the need to refer to the original legislations or orders.
While the manner in which each company operates varies from the others, there are a set of common questions that a founder can ask herself/himself to evaluate the performance of her/his company. We have listed below a set of such preliminary performance evaluation related questions:

**Relevant Question**

Whether the daily revenues of your company are being monitored in terms of:
-Resources;
-Inflows and outflows;
-Commitments?

**Impact/Consequences/Consequences under law**

A regular monitoring of your resources, inflows, outflows and commitments will help in mitigating the following:
-Risk of insufficient funding or cash to manage the expenses of the company
-Risk of failure in discharging the salaries to employees
-Risk of failure in paying the suppliers
-Inability to grow and expand the business
-Inability to discharge the debts/creditors

**Rationale/Concerns/Requirement under law**

There would be business and commercial consequences, including but not limited to cash flow issues, and inability to discharge the day-to-day operational costs of the company.

**Relevant Question**

What is the percentage of revenues coming in cash versus digital payments (card etc.) and are there systems in process to ensure that:
(i) invoices are issued for all the products/services sold and the corresponding cash collected; and
(ii) list of items where expenses in cash are permitted are clearly documented?

**Impact/Consequences/Consequences under law**

This will help in mitigating under reporting of revenues as well as offsetting any potential tax demands; complaints of improper payments (viz. Corruption) as maybe punishable not only under Indian anti-corruption laws, but also the US FCPA and the UK Bribery Act.

**Rationale/Concerns/Requirement under law**

In the event that transactions are not recorded on the books, not only could it lead to accounting and tax related issues, but also concerns around how such cash is used.
**Relevant Question**

Whether the commitments of your company have been prioritized or key commitments are being tracked?

**Impact/Consequences/Consequences under law**

Tracking/prioritizing commitment helps a company to maintain key capabilities, sustain customer relationships, retain employees, execute strategies, and pursue innovations. This also helps the company to prioritize payments that need to be made to ensure business continuity.

**Rationale/Concerns/Requirement under law**

If not tracked regularly, it might lead to a situation where the company defaults on its commitments, and such defaults then lead to financial or legal repercussions.

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**Relevant Question**

Whether non-priority expenses/redundancies/discretionary costs and spends etc. are being tracked, monitored and addressed by your company?

**Impact/Consequences/Consequences under law**

If expenses and redundancies are tracked and addressed, the business will be more equipped to deliver on its objectives. Ideally non-priority expenses should either be short term or have stage/milestone based payment obligations for the company, allowing it to redeploy resources to other more critical avenues, if the need so arises.

**Rationale/Concerns/Requirement under law**

There would be business and commercial consequences including but not limited to regular payment crisis and failure of payment obligations. It is likely that such crisis and failure may lead to litigations as well.
Relevant Question

Whether your company has attempted to optimize the marketing costs including that of branding etc.?

Impact/Consequences/Consequences under law

A proper evaluation of the marketing strategy would entail doing market studies, research and collecting empirical data on the usage of the product or service of the company and trends existing in the market to which the product or service belongs. Such evaluation will ensure that the company would become more effective at marketing and sales tomorrow. Marketing strategies should be evaluated in light of whether they justify the costs, i.e. whether they are actually helping in (a) actual sales; or (b) brand recognition. Marketing to compete or to follow a ‘me too’ approach may not be suitable for all.

Rationale/Concerns/Requirement under law

More than anything else, a well optimized and thought out marketing strategy would focus on the costs associated with the implementation. Most companies lose sight of this in order to have an edge over the others. The money saved from such optimization can be used by the company in other relevant pursuits.

Relevant Question

Whether the Investors are duly consulted and taken into confidence to decide the next course of action of your company?

Impact/Consequences/Consequences under law

Typically, Institutional Investors have substantial experience in running companies and often offer valuable insights. While in most cases the Investment documentation would provide for you to consult with the investors before you make major decisions, it would be best to seek their counsel even if it may not explicitly be required under the investment documentation. So, it is better to consult the investors and take them into confidence. Most mature Investors do not look down upon Promoters who seek counsel or advice, but instead, admire the capabilities of the leader who wants to work in a collaborative manner and knows when to identify problems and consults them. Investors would want such Founder/Promoter/Management to hold the baton going forward.

Rationale/Concerns/Requirement under law

It might lead to an untimely exit by the investor or non-participation in the next round of funding. Negative publicity is also a plausible consequence.
### Relevant Question
Whether your company is in discussions for any fund raising?

### Impact/Consequences/Consequences under law
Funding would help the company to:
- acquire or buy assets of a competing or complementary company
- buy out early investors who don’t agree with the management’s plans for the future.
- pay off debt
- hire a top notch technical team to design/build a product
- support R&D salaries and expenses to develop a new product
- acquire a brand name, patent rights, physical property location or other valuable assets.

You should always bear in mind that from the minute you raise money from external investors you not only become accountable but you are also entrusted with the responsibility of spending the money of others with great care. Therefore, if there is a lack of clarity on how / where such funding is to be deployed, please evaluate deeply, whether such funding is required in the first place or not.

### Rationale/Concerns/Requirement under law
Inability to raise funds may inhibit the inorganic or organic growth prospects of the company. It might also have a negative impact on the image of the company amongst the investor community.

### Relevant Question
Whether your company has attempted to explore new revenue generating avenues?

### Impact/Consequences/Consequences under law
In this time and age, innovation and disruption is critical. Companies should not get complacent and aim at exploring new avenues for growth and expansion as a matter of practice.

At the same time, it is also important to ensure that the resources that are directed towards revenue generation from new sources should not be at the expense of existing sources.

### Rationale/Concerns/Requirement under law
In the times we live in, innovation and exploration are the keys to business resilience. Stagnating businesses are more prone to failures.
**Relevant Question**

Whether your company regularly evaluates the team cost/size/requirements etc.?

**Impact/Consequences/Consequences under law**

In order to ensure that there are no unnecessary overheads and the company is performing and delivering optimally, the company should evaluate the team and individuals in respect of various aspects like role, responsibilities, hierarchy, salary etc.

In the event that you believe that there are redundancies in personnel or otherwise business divisions that do not justify the expense / cost, you should bring such findings to the Board to help determine how to deal with such situations.

**Rationale/Concerns/Requirement under law**

If such evaluations were not undertaken, the company would be in intellectual deficit by hiring the people who are not fit for the job. Without a good employee base, no company can maximize its potential. Further, hiring more people will have a negative impact on the expenses under the balance sheet.

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**Relevant Question**

Whether there is a trust deficit between the Founders and Investors?

**Impact/Consequences/Consequences under law**

Given that Investors have invested money, it is on the premise that they want to ensure that the best decision is taken to grow the company. That said, since Investors are not tasked with running the business, they rely on Founders to be their ears on the ground. Any trust deficit will not only lead to an atmosphere of secrecy and suppression of details regarding the company, but may also lead to bad publicity in the market, as has been often reported. Additionally, it will ultimately hurt the growth potential of the company.

**Rationale/Concerns/Requirement under law**

The organization will not be able to function at its optimum level. Trust is imperative for real growth.
Relevant Question
Whether your company is in the practice of ascertaining liability and cash positions (and if any closure / stop loss options), and can still conserve some cash for a) emergencies; b) repaying the Investors?

Impact/Consequences/
Consequences under law
All business decisions by you must be taken as a guardian and trustee of external monies, therefore, processes must be built to not only ensure that external payments along with salaries to non KMPs are prioritized, but also to ensure that the interest of Investors remain aligned with the interests of the company. Also, there are legal consequences when monies are due to KMP or other employees/lenders/operational creditors etc. and they have not been paid due to lack of proposed assessment of liability or cash positions.

Rationale/Concerns/Requirement under law
It may lead to an untimely exit by the investor or non-participation in the next round of funding. Also, in case of emergencies, it may lead to payment defaults that could have severe legal ramifications for the company.

Relevant Question
Discuss with Investors about the options of strategic sale / merger with another competitor,

Impact/Consequences/
Consequences under law
A company may consider a strategic purchase/sale/merger with another entity or competitor as in the case of a:
- a strategic sale, the company will do away with the non-core business and will be able to focus more on the core businesses.
- a vertical integration, the company will have full control over the supply of raw materials to manufacture its product or service.
- a horizontal integration, the company will be able to further strengthen its position in the market as it will acquire a business that is at the same level of the value chain. Each such decision not only has substantial legal, tax and regulatory aspects that need to be kept in mind, it may also have an impact on the shareholding of all the parties and must therefore, be carefully discussed at the Board level.

Rationale/Concerns/Requirement under law
It might lead to an untimely exit by the Investor or non-participation in the next round of funding. Negative publicity is also a plausible consequence. Further, there might be some consequences even in the acquisition documents executed between the Investors, Promoters and the company.
Relevant Question

Has your company identified areas that may require quick decisions to restructure such as hive off / layoffs / close down segments?

Impact/Consequences/Consequences under law

It is critical that a company identifies non-performing or non-core businesses early on so that businesses don’t impact other performing or core businesses, and can be resuscitated while there is still an opportunity.

Rationale/Concerns/Requirement under law

The company may unnecessarily burn cash and take on liabilities to revive or sustain such segments.

Relevant Question

How is your company achieving the following key performance indicators?
(a) Gross merchandise value (GMV)
(b) Customer acquisitions
(c) Targeted milestones such as expansion of business, new products, new sectors / industries, etc.
(d) Operations of the company including processes, customer satisfaction, innovation in business, technology roadmap, etc.
(e) Employee retention rate, attrition rate, employee satisfaction, recruitment rate, etc.?

Impact/Consequences/Consequences under law

Key Performance Indicators (KPI’s) is a business metric that helps evaluating factors that are important to a business. Organizations have monthly / quarterly / annual KPIs to ascertain the progress of a company and determine the areas of development for a company. This helps streamline the cash flow and the operations of the company and also provides opportunities to explore new markets, products and ideas for a company in the event that any such findings portray results that are not in line with industry standards.

Rationale/Concerns/Requirement under law

In comparison to other players in similar markets, the consequences are purely business performance related.
Relevant Question

How is your company faring vis-à-vis market competition on financial, operational and new marketing initiatives and what can your company do to perform better?

Impact/Consequences/Consequences under law

A company must consistently measure its performance in relation to other similar players in the market in order to understand where it stands in the market. Every company and its business is different and how a company can improve will depend on various factors and differ from case to case.

Rationale/Concerns/Requirement under law

Business consequences and loss of market share.

Relevant Question

How is your company performing financially? Is the company achieving its financial targets? Is your company prepared or is it required to provision to meet any unbudgeted expenses? Does your company have sufficient working capital?

Impact/Consequences/Consequences under law

This becomes relevant to measure whether a company is financially performing or requires capital to be pumped in. Usually, companies follow the annual budget plan that is approved jointly by the Board and the Investors (if any). Significant deviations from the budget plan also require the approval of the Board and the Investors (as applicable). In situations where the company is not prepared, the Board must analyze the cash burn rate and evaluate how close the company is to exhaust the funds in order to plan for its next round of funding. Further, a company must also regularly evaluate the rate at which resources are being utilized and anticipate/allocate resources such that there is no deficit created.

Rationale/Concerns/Requirement under law

If the company is unable to plan for the unbudgeted expenses, this may amount to the company’s expenditures increasing and may also lead to an increase in borrowings by the company. This may also result in the company not being able to pay its employees on time and result in an increase in attrition rate. Accordingly, in the long run, the company may no longer be able to sustain itself financially.
Relevant Question

What are the outstanding liabilities of your company and is your company on the right track to repay such liabilities?

Impact/Consequences/Consequences under law

The Head of Finance can help ascertain the outstanding liabilities of the company and should regularly appraise the Senior Management / Board on the ability of the company to pay its debts. Regular checks, not only by the Head of Finance, but also by the Senior Management are required to ensure that the liabilities are cleared and the company is not in default.

Rationale/Concerns/Requirement under law

If the outstanding liabilities of a company are not paid within the timelines prescribed by its creditors, the company may be subject to bankruptcy proceedings.

The Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 govern the provisions pertaining to winding up due to default in payment of debt and insolvency / bankruptcy.

Relevant Question

What are the encumbrances on the assets of your company and is your company on the right track to get rid of such encumbrances?

Impact/Consequences/Consequences under law

An encumbrance is a charge or a lien or a claim on / against an asset of the company. This is typically created when the company does not have clear / complete ownership of an asset. An encumbrance can affect the transferability of the asset and restrict its free use until the encumbrance is cleared / paid off.

Rationale/Concerns/Requirement under law

If the company is unable to plan for the A charge on the assets of the company could affect the possibility of the company to raise more debt. Further, if the debt remains unpaid, this may also result in the asset being repossessed by the lender.
Relevant Question

Are there any material disputes / litigation that could affect the business of your company? If yes, what is the sum involved?
Are there any significant frauds committed by the company in the preceding six months (this must be enquired every six months)?
Are there any disputes with customers or any complaints filed against the company in consumer forums?
Are there any whistle-blower cases or investigations initiated against the company in the preceding six months (this must be enquired every six months)?

Rationale/Concerns/Requirement under law

Material disputes, litigations and frauds can have a negative effect on a company’s bottom line.
Further, accusations of fraud or contract disputes can also force a company to put business on hold from a loss of reputation perspective. Fraud may also need to be reported to the police / local authorities. If such litigation, disputes or frauds are not addressed early on, they can ultimately diminish a company’s value, drive down sales, or even cause businesses to shut down.
Any whistle-blower cases or investigations initiated against the company point to lack of internal processes to spot such complaints / issues. Such an investigation can impact the business as well as the employees of a company.

Relevant Question

Whether the financial data in the management information systems (MIS) is being generated from the books?
Whether the revenues recognition policy as per MIS is aligned with the audited accounts?
What percentage of debtors are more than 6 (six) months old and 3 (three) months old respectively?
What percentage of debtors are non-recoverable but still appear in the books of accounts?

Impact/Consequences/Consequences under law

The Head of Finance of the company / the Chief Financial Officer, as applicable, must take account of the pending receivables, debtors and creditors of the company and ensure timely repayment towards such persons. Non-payment / default should immediately be escalated to the Senior Management.

Companies must adhere to their internal accounting policies and relevant accounting standards as are applicable to the company.

Questions specific to accounting policies and financial statements must be referred to the Accountant of the company to ensure timely compliance.

An example of the formats in which these reports may be maintained has been included under Annexure A for your reference. However, please note that this is from a general perspective and will need to be modified to meet the requirements of your company in particular.

Rationale/Concerns/Requirement under law

The company may face issues in financing the day-to-day operations of the company.
Relevant Question
If any high level risks are highlighted in the internal audit report, how should they be acted upon?

Impact/Consequences/Consequences under law
In the event that risks have been highlighted in the internal audit report, such risks should be escalated to the Board for seeking inputs/solutions. Further, the company should also reach out to professional advisors (such as auditors, lawyers etc.) to try and address these risks.

Rationale/Concerns/Requirement under law
Business consequences.

Relevant Question
How should Investor relationships be maintained?

Impact/Consequences/Consequences under law
Apart from meeting the Investors regularly to appraise them of the business, companies can maintain an internal report that they can submit to an Investor on a quarterly/half-yearly/yearly basis to ensure they inform the Investors of the progress of the company.

Rationale/Concerns/Requirement under law
Possibility of conflicts with the Investors in the future.
Basic compliances under the Companies Act, 2013

Post incorporation under the Companies Act, 2013, every company in India is required to comply with the following basic requirements and perform certain corporate actions in order to authorize such acts of compliances by the company. Below, we have detailed certain basic compliances for your company and also provided an Annexure detailing the criminal liabilities / penalties on a Founder / Promoter / Company, as applicable. Please note such liabilities, penalties etc. are as of the date of this report, and they may be subject to change / future amendments etc.

Relevant Question

Is your company complying with the corporate compliance requirements in relation to:
- Annual General Meeting (AGM);
- Statutory Registers;
- Books of Accounts and financial statements;
- Financial Statements;
- Annual Returns;
- Minimum number of Directors?

Compliance under the Companies Act

Under the Companies Act, 2013, a private limited company is required to undertake the following compliances in relation to:
(a) Annual General Meeting (AGM)

- An AGM is to be held every year.
- First AGM – Within 9 months of closure of the first financial year of the company.
- Subsequent AGM – Within 6 months of closure of the financial year or 15 months from the date of the previous AGM, whichever is earlier.

(b) Statutory Registers

A company is required to maintain and continuously update the following registers:
- Register of Members
- Register of other Security Holders (debentures)
- Register of Directors and other Key Managerial Persons.
- Minutes Books of Board and Shareholders meetings.
- Register of Charges.
- Register of Contracts in which the Directors are interested
- Register of Securities/ Shares bought back
- Books of Accounts
- Register of loans, investments, guarantees and securities

(c) Books of Accounts and financial statements

- A company to appoint a qualified chartered accountant to prepare the Books of Account and financial statements.
- Such Books of Account and financial statements are to be kept at the registered office of the company.
- The first audit to be done within 18 months from the incorporation followed by annual audits.

(d) Financial Statements

- The company is required to prepare financial statements for every financial year.
- To file a return of such financial statements in form AOC-4 within 30 days of the AGM.
(e) Annual returns

The company is required to prepare and file annual returns in form MGT-7 with the ROC within 60 days from the AGM.

(f) Minimum number of Directors

A company is required to have a minimum of 2 Directors out of which at least one needs to be a Resident Director.

Consequences of Non-compliance

In case of non-compliance with (a) and (b), the company will be liable to pay a monetary penalty as prescribed under the Companies Act, 2013.

In case of contravention of (c) and (d), the Managing Director/whole time Director in charge of Finance/the Chief Financial Officer, or any other person charged by the Board with this duty, will be held liable and can be subject to imprisonment or with a fine or both.

In case of non-compliance with (e), the company shall be punishable with a fine and every officer who is in default can be subject to imprisonment or with a fine or both.

In case of non-compliance with (f), where no specific penalty has been provided, the company and every officer of the company who is in default may be subject to monetary penalty (including a continuing monetary penalty) as prescribed under the Companies Act, 2013.
Relevant Question

Is your company complying with ‘Director’ specific corporate compliances such as?
(a) Director Identification Number (“DIN”)  
(b) Digital Signature Certificate (“DSC”)  
(c) Consent to be appointed as Director  
(d) Provide a declaration that the Director is not disqualified?

Compliance under the Companies Act

Under the Companies Act, 2013, a private limited company is required to undertake the following compliances in relation to a Director:

a) Director Identification Number (“DIN”)  
   - A new Director of the company must apply for and provide his DIN within one month of its receipt.  
   - The company must intimate the same to the relevant Registrar of Companies within 15 days of the Director’s intimation.

b) Digital Signature Certificate (“DSC”)  
   A new Director must obtain and register his DSC with the Registrar of Companies while the existing Directors must ensure that their DSC has not expired.

c) Consent to be appointed as Director  
   A Director must submit Form DIR-2 to the company and also file it along with DIR-12 with the Registrar of Companies within 30 days of appointment.

d) Provide a declaration that the Director is not disqualified  
   A Director must submit Form DIR-8 to the company at the end of every financial year.

e) Appointment to be at a Shareholders’ meeting  
   The Board of Directors must pass a resolution to convene a Shareholders’ meeting in which the Shareholders must approve the appointment of the Director.
Consequences of Non-compliance

In case of non-compliance with (a) and (d), the Director(s) will be punishable with imprisonment.

In case of contravention of (a), (b) and (c) by the Director(s) of the company, such Director will be punishable with imprisonment or with a fine (including a continuing fine if the contravention is continuing).

Relevant Question

Have the Directors in your company made required disclosures during his / her appointment and resignation?
(a) Disclose interest in any company, body corporate, firm, association of individuals;
(b) Disclose concern / interest in any contract / arrangement;
(c) Cap on Directorship;
(d) Loans / guarantees / securities from the company;
(e) Insider Trading;
(f) Resignation.

Compliance under the Companies Act

Under the Companies Act, 2013, a Director is required to make the following disclosures during his appointment and resignation:

a) Disclose interest in any company, body corporate, firm, association of individuals
He must disclose such interest in Form MBP-1 which is to be submitted to the company at:
- first Board meeting,
- first Board meeting of every financial year and
- every time there is a change in the last disclosure made.
b) Disclose concern / interest in any contract / arrangement:

- A Director must disclose the nature of interest/concern at the meeting where such a contract/arrangement is being discussed, and not participate in the meeting.

- If the Director becomes interested after the execution of the contract, then he must disclose immediately or at the first meeting of the Board held after the Director becomes interested.

c) Cap on Directorship

- A Director must resign if he is a Director of more than 20 companies (or 10 public companies) or a lesser number as determined by a Shareholders’ special resolution.

d) Loans / guarantees / securities from the company

- The company is prohibited from providing a loan to the Directors.
- It can only provide a loan to the Managing or Whole Time Director:
  - as part of the conditions of service or
  - in pursuance of a scheme approved by the Shareholders through a special resolution.

e) Insider Trading

A Director cannot engage in insider trading. A communication made in the ordinary course of business has been exempted.

f) Resignation

- A Director must provide notice to the company and file DIR-11 with the ROC. The resignation takes effect from the date the notice is received by the company or date specified in notice, whichever is later.
- The company must also file DIR-12 within 30 days of resignation of such Director.
Consequences of Non-compliance

In case of non-compliance with (a), (b) and (e), the Director shall be punishable with imprisonment.

In case of non-compliance with (d), the officer-in-default will be punishable with imprisonment.

Relevant Question

Is your company complying with compliances regarding Board Meetings?
(a) Number of Board Meetings in a year;
(b) Quorum;
(c) Attendance in a period of 12 month;
(d) Participation;
(e) Resolutions.

Compliance under the Companies Act

Under the Companies Act, 2013, a private limited company is required to undertake the following compliances in relation to:

a) Number of Board Meetings in a year

A company must hold at least 4 meetings.
-First meeting: to be held within 30 days of incorporation.
-Subsequent meetings: Not more than 120 days between 2 consequent meetings.
b) Quorum

- One-third of the total strength of the Board or two Directors (whichever is higher).
- The Shareholders’ agreement may prescribe different quorum requirements

c) Attendance in a period of 12 months

- A Director cannot absent himself from all meetings of the Board with or without seeking leave of absence of the Board.

d) Participation

- A Director can participate in the meetings:
  - in person; or
  - via video conferencing; or
  - other audio-video means capable of being recorded and recognizing participation of the Directors.

e) Resolutions

- A Resolution can be passed:
  - at the meetings; or
  - by circulation\(^3\).

\(^3\)The Companies Act, 2013 restricts certain items from being passed by circulation such as issuance of securities, borrowing money, investment of funds, etc.
Consequences of Non-compliance

Non-compliances of the provisions with regard to holding, conducting and organizing Board Meetings will result in monetary penalty as prescribed under the Companies Act, 2013.

Relevant Question

Is your Board of Directors performing its functions?
(a) Approving financial statements of the company;
(b) Approval of inter-corporate loans/guarantees;
(c) Appointment of additional Directors;
(d) Appointment of alternate Directors;
(e) Appointment of First Auditor;
(f) Remuneration;
(g) Restrictions on the powers of the Board.

Compliance under the Companies Act

Under the Companies Act, 2013, a private limited company is required to undertake the following compliances in relation to:

a) Approving financial statements of the company

- The Board must approve the financial statements (including the balance sheet and cash flow statement) of the company.

b) Approval of inter-corporate loans/guarantees

- The Board must approve the inter-corporate loans/guarantees
c) Appointment of Additional Directors

- The Board must appoint additional Directors, which must be permitted by the Articles of Association.
- The Shareholders should approve the appointment in the next AGM.
- The signatories of the Memorandum of Association of the company are deemed as first Directors, while appointment has to be regularized at the next AGM.

d) Appointment of Alternate Directors

- The Board must approve the appointment of any person as an alternate.
- It should be authorized by the Articles of Association or by a Shareholders’ resolution.
- The DIR-11 and DIR-12 will have to be filed each time the original Director returns to India.

e) Appointment of First Auditor

- The Board must appoint the first auditor within 30 days from the date of registration of the company.

f) Remuneration

- The remuneration of a Managing Director, whole-time Director or Manager has to be approved by the Board. It is also subject to the Shareholders’ approval.

g) Restrictions on the powers of the Board

- The Board can exercise the following powers only with the consent of the Shareholders by special resolution:
  - Sell, lease or otherwise dispose of the whole or substantially whole of the undertaking;
  - Invest in trust securities the amount of compensation received by it because of any merger or amalgamation;
  - Borrow money where the total money to be borrowed will exceed the aggregate of the company’s paid up capital and free reserves;
  - To remit or give time for repayment of any debt due from a Director.
Consequences of Non-compliance

In case of non-compliance with (a) and (b), the Officer-in-Charge will be punishable with imprisonment.

Basic filing requirements under exchange control laws

Relevant Question

Is your company complying with the FEMA (Foreign Exchange Management Act, 1999) requirements?
- Advance Reporting Form and KYC requirement;
- Filings for issue of securities;
- Filings for transfer of securities;
- Annual return on Foreign Liabilities and Assets.

Compliances under FEMA

A company must fulfil the following compliances under FEMA in case the company has non-resident Shareholders.

a) Advance Reporting Form and KYC requirement

In case of an Indian company receiving investment from outside India for issuing shares and certain other securities, the amount of consideration, and the KYC form in respect of non-resident investor must be reported to the RBI within 30 days from the receipt of the investment consideration.
b) Filings for Issue of securities

-In case of any issue of securities to a non-resident by an Indian company, Form FC-GPR (on the e-biz platform of the Government of India) must be submitted to AD Category I bank within 30 days from the date of receipt of the amount of consideration by the Indian company.

c) Transfer of securities

-On the transfer of shares or securities of an Indian company from a Resident to a Non-Resident, or from a Non-Resident to a Resident, Form FC-TRS on the e-biz platform of the Government of India must be submitted to AD Category I bank within 60 days from the date of receipt of the amount of consideration. Such Form FC-TRS is to be submitted by transferor or the transferee resident in India.

d) Annual return on Foreign Liabilities and Assets

-Annual return on foreign liabilities and assets to be submitted by Indian companies, which have received FDI and/or made an overseas investment in the previous year including the current year.
- Filing must be based on the company’s audited financial statements

Non-compliances

-Non-compliances under FEMA stated here can lead to monetary penalty as prescribed under FEMA, read with its regulations and rules, as applicable.
-Criminal Implications under FEMA: A contravention under FEMA will render the concerned person liable to pay a sum of up to thrice the sum involved in such contravention where the sum is quantifiable, or up to INR 2,00,000 (Indian Rupees Two Lakh only) when it is not quantifiable, and a further penalty of INR 5,000 (India Rupees Five Thousand only) for every day for which the penalty continues. Further, if a person fails to make the full payment of the penalty so imposed on him within a period of 90 days from the date on which the notice for payment of such penalty is served on him, he shall be liable for civil imprisonment under Section 14 of FEMA.
Basic compliances under applicable Labour Laws

Relevant Question
Is your company complying with labour related legislations?

Compliances under Labour Laws

Please refer Annexure C for details

Consequences of Non-compliances

Non-compliance can lead to monetary penalty and/or imprisonment as detailed under the Annexure C.

Compliances under various other Laws:

We have listed below a set of common questions that the Board / Founders can refer to for a regular compliance check with various other laws that may be applicable to their business. Please note that this is a general list of questions applicable to businesses across various industries. These compliances may be applicable at different stages of your company and the Founders and / or the Board must ascertain their applicability accordingly.

♦ Applicable law
Property – Real and Intellectual Property

Relevant Question
Has your company received any notice challenging the interest in the land/building/material assets (including Intellectual Property Rights) that it owns / or that has been leased / licensed to the company? Does the company have the right to use the property that it is using?
**Applicable law**
Material Contracts and Arrangements

**Relevant Question**
- Are there any restrictions on the transfer of funds or ownership by or to your company in relation to any material contract?
- Is any encumbrance proposed to be created on the assets of your company or assets that you propose to acquire?
- Has your company received any material correspondence affecting the financing facilities offered by the lenders?
- Are contracts vetted for compliance under the goods and service tax ("GST") regime?
- Have suppliers been paid on time? Is there any invoice that is more than 30 days past its due date?
- Are all material contracts validly entered into and subsisting? Has your company received any notices for breach or default in relation to any material contract?

**Applicable law**
Employees, Managers and Advisors

**Relevant Question**
- Are there any confidentiality obligations imposed on the employee?
- Are there any labour disputes – ongoing or threatened? Is there any correspondence concerning pending or threatened labour stoppage?
- Have any key employees served notice for termination of employment?
- Has your company complied with applicable labour laws?
- Does the company propose to enter into any stock option or employee benefit plans?
- Are there any managerial remuneration schemes in place or being contemplated?
- Are there any bonus stock issues contemplated by your company?
- Does your company intend to on-board any Advisors in exchange for access to market, knowledge etc.? Is any equity granted to the Advisors?

**Applicable law**
Regulatory
Relevant Question
- Have all licenses required by the business of your company been obtained and current?
- Are there any ongoing or recurring filings that are required to be done pursuant to such license?
- Are there any restrictions or approvals/consents required for any change in Shareholders or control of the company?

◆ Applicable law
Acquisition and Divestiture

Relevant Question
- Is your company looking to carry out an acquisition or enter into a partnership or joint venture agreement? If yes, does such an activity require approval of Shareholders? Does the counter party have the right to the assets it uses? Has due diligence been conducted? Are there any regulatory approvals required for such an action?
- Does your company want to dispose of any businesses, undertakings or units? If yes, in addition to the above does it impose any non- compete obligations on the company?

◆ Applicable law
Litigation

Relevant Question
- Is there any pending or threatened (i.e. material litigation, arbitration and governmental proceedings) involving your company or the Founders?
- Are there any material disputes with suppliers, competitors or customers? Does your company want to settle any litigation or arbitration?
- Are there any adverse decrees, orders or judgments of courts or governmental agencies against the company?
◆ **Applicable law**  
**Taxation**

**Relevant Question**  
- Has your company received any notice of assessment, revenue agents’ reports, etc. from the central or state authorities with respect to any currently ‘open’ years?  
- Have income tax and other returns been filed on time?  
- Is your company in compliance with the GST regime?  
- Is the company conducting businesses with related parties? If yes, is a transfer pricing study required?  
- Is the company conducting business across borders, are there any permanent establishment concerns?

◆ **Applicable law**  
**Insurance and liability**

**Relevant Question**  
- Have any material insurance policies of your company (covering property, liabilities and operations, including product liabilities) or any “key man” or Director indemnification policies lapsed?  
- Are there any pending claims against your company?
DOES MY COMPANY HAVE GOOD CORPORATE GOVERNANCE STANDARDS?

Founders of start-ups repeatedly find themselves asking if there is a right formula to maintain “good corporate governance” in their company. In addition to the legal compliance stated in B above, it is essential that Founders also understand the language of their employees and always think one step ahead as to how their brainchild can perform better. Corporate governance is not only about the running a company that is in “compliance with law”, but it is also about maintaining the organizational culture, values and principles of an organization to ensure it functions seamlessly, as a family. Each time there is a Board Meeting, the Chairman of the Board Meeting must not only go over the agenda but also address the concerns of the employees, strategies that the company can adopt to perform better and imbibe principles that are ethical and close to an organization’s core functions.

We’ve included below a few principles that Founders may use as a reference for their own customized manuals of good corporate governance.

1. Board of Directors
- The Board of Directors (“Board”) is required to be properly structured, capable of taking independent and objective decisions.
- There must be a proper balance between executive and non-executive Directors.
- There must be appropriate representation of the minority ‘Shareholders’ interests.
- The Board must effectively and regularly monitor the functioning of the management team.
- Evaluation of the Board along with the Board compensation policy must be maintained.
- The Board should establish a succession plan for key executives and other Board Members to ensure that there is a strategy for continuity of operations.
- Meetings of the Board must be duly conducted and recorded.
- The Board is responsible for identifying, discussing and ensuring the dissemination of the organization’s values and principles. It should define strategies and make decisions that protect and raise the organization’s value, optimize the return on long-term investment, and seek to balance the expectations of all stakeholders.
- The Board should promote an organizational culture focused on the organization’s values and principles, and promote an environment where people can express dissenting thoughts and discuss ethical dilemmas.
2. Disclosure, transparency and other responsibilities

- There must be emphasis on integrity and ethical dealings along with timely and accurate disclosures (continual as well as individual).
- Not only must Directors declare conflicts of interest and refrain from voting on matters in which they have an interest, but also promote a culture of integrity and compliance with laws and policies without fear of recrimination.
- Adoption of a ‘conflict of interest’ policy, prohibition of insider trading, a code of business conduct setting out the company’s requirements; and a process to report and deal with non-compliance should be put in place.
- Disclosure of financial statements with explanations on their management should be made.
- The company shall lay down procedures to inform the Board Members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that the Executive Management controls risk through means of a properly defined framework.
- Details and criteria of remuneration of the Directors to be disclosed in the Annual Report.
- As a part of the Director’s Report, a ‘Management Discussion and Analysis’ to form a part of the Annual Report to the Shareholders. Such report shall discuss the following matters – (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.
- Company to have an adequate whistle-blower policy, sexual harassment policy, as well as an equal employment policy.
- Employees as well as the Board should have a no – discrimination policy regardless of caste, creed, religion etc. Further, the employees should be provided training on gender sensitivity as well as rights of differently abled individuals.
- To strive to engage in Corporate Social Responsibility ("CSR") activities, whether or not such CSR is mandated under Section 135 of the Companies Act, 2013 for that particular company.
- To strive to comply with all applicable labour legislations pertaining to payment of bonus and gratuity, gender sensitization and have adequate mechanism for sexual harassment complaints, compliance with maternity leave provisions, applicable labour laws for the disabled etc.
- Board to ensure that Shareholders and other stakeholders are provided with high-quality disclosures on the financial and operating results of the entity that the Board has been entrusted with governing.

3. Management review and responsibility

- Formal evaluation of the performance of the Board.
- Engage in effective risk management: companies should regularly identify and assess the risks they face, including financial, operational, reputational, environmental, industry-related, and legal risks:
- The Board to regularly assess and review the risk-management systems currently in place by the management, and to make adequate disclosures.
- The Board should establish specific policies that control the organization’s risk-exposure and to manage the risk quotient.

4. Shareholders

- Establishment of effective machinery to address the concerns of Stakeholders.
- Disclosures regarding the appointment or re-appointment of Directors.
- The quarterly report, along with additional information and official news releases, are to be posted on the website (if any).
- Ensuring maximum participation of Shareholders in the decision-making process.
- Transparency as to the reasons and possible impacts of any decision, thus allowing Shareholders to evaluate the advantages and disadvantages and to make an informed decision about it.
- Disclosure of full and clear information concerning the political and economic rights associated with each type or class of shares or quotas, as well as the way in which control will be exercised in the organization.
- Create adequate structures at the Board and the general meeting levels, to ensure that interested Directors/Shareholders do not participate where there is a conflict of interest, and such decision is taken by non-conflicted Directors or the remaining Shareholders.
- The company should strive to encourage and facilitate voting, including by means such as e-voting.
- The voting rules in any meeting must be clear to all Shareholders.
- The company should seek to facilitate interaction among Shareholders to identify each other's interests.
- The Shareholders must have access to the register of Shareholders.
- The corporate governance framework should also protect 'the Shareholders' rights.

Basic Shareholder rights include the right to:
- have evidence of ownership of shares
- freely transfer shares
- receive information from the company on a timely basis
- participate and vote in the general Shareholders meeting
- have the ability to appoint and remove Directors
- be entitled to dividends
## FINANCIAL SNAPSHOT FOR THE MONTH OF __

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Actual Jan-17</th>
<th>Budget Jan-17</th>
<th>Prev. Mnt. Dec-16</th>
<th>Prev. Yr. Jan-16</th>
<th>Actual YTD Jan-17</th>
<th>Budget YTD Jan-17</th>
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### ASSET SIDE UPDATE

- Addition / Deletion to Fixed Assets
- Doubtful Debtors / Debtors over 3 months
- Any Other Assets Items

### LIABILITY SIDE UPDATE

- Creditors due over 3 months
- Overdue Debt / Liability
- Any Other Liabilities Items

### MAJOR EVENT/ITEM UPDATE

- Customer / Client Sign-up or Exit
- HR Recruitment or Resignation
- Compliance Registration or Cancellation
- Legal / Litigation update, if any

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# Financial Summary from Apr-16 to Jan-17 (10 Months)

<table>
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<tr>
<th>Particulars</th>
<th>YTD Actual Jan-17</th>
<th>YTD Budget Jan-17</th>
<th>YTD Jan-16</th>
<th>FY 2015-16</th>
<th>% Over 15-16</th>
<th>Ratios 16-17</th>
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<td><strong>Revenue Generation</strong></td>
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<tr>
<td>Average Ticket size / Order (Gross Revenue/# of Orders)</td>
<td>₹0.0</td>
<td>₹0.0</td>
<td>₹0.0</td>
<td>₹0.0</td>
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<td>Cost of Goods Sold (Net of cancellations)</td>
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<td>₹0.0</td>
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<td>No. of Orders</td>
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<td>Cost of Goods Sold (Net of cancellations)</td>
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### SCH. - 1B : CLIENT / CUSTOMER REPORT

**Period : YTD ___**

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### SCH. - 2A : COMMENT ON FINANCIALS

**Period**: YTD ___

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<td><strong>BALANCE SHEET</strong>&lt;br&gt; - Fixed Assets&lt;br&gt; - Investments&lt;br&gt; - Current Assets&lt;br&gt; - Current Liabilities&lt;br&gt; - Loan Liabilities&lt;br&gt; - Share Capital (incl. reserves)&lt;br&gt; - Other Items</td>
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<td><strong>CASHFLOW STATEMENT</strong>&lt;br&gt; - Operational Activities&lt;br&gt; - Investing Activities&lt;br&gt; - Financing Activities&lt;br&gt; - Other Items</td>
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<td><strong>OTHER UPDATE</strong>&lt;br&gt; - Whistleblower cases&lt;br&gt; - Statutory Compliance issue&lt;br&gt; - Litigation / Enquiry / Scrutiny:&lt;br&gt;   - Direct Tax Authority&lt;br&gt;   - Indirect Tax Authority&lt;br&gt;   - Employees / Consultant&lt;br&gt;   - Customers / Prospect&lt;br&gt;   - Others&lt;br&gt;   - Other Item</td>
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**Website**: www.ivca.in  
**Email**: info@ivca.in
### SCH. - 2B : COMMENT ON COMPLIANCES

**Period : YTD ___**

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## SCH. - 3A : SUNDRY DEBTORS

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| 11-Dec 17 | 11-Dec 17 |
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**Department 1**

**Department 2**

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### SCH. - 4A : EXISTING BUSINESS UPDATE

**Period : YTD ___**

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<thead>
<tr>
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<th>Budgeted Billing</th>
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## SCH. - 5: MOVEMENT OF TEAM

**Period:** YTD ___

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<tr>
<th>Employee's Name</th>
<th>Department/Division</th>
<th>Date (Joined/Resigned)</th>
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### SCH. - 6 : MAJOR EXPENSES INCURRED (DETAILS)

**Period : YTD ___**

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<thead>
<tr>
<th>Name of Employee</th>
<th>Client’s Name (if any)</th>
<th>Purpose (Foreign Travel, Events, Advertisement, etc.)</th>
<th>Approx. Amount</th>
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## SCH. - 7: INVESTORS AUDIT QUERY REPLY

**Period:** YTD

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<th>Particulars</th>
<th>Explanation</th>
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### SCH. - 8 : ANY RED FLAG EVENTS

**Period : YTD**

<table>
<thead>
<tr>
<th>Particulars</th>
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<th>Monetary Impact (if any)</th>
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**Total**

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<th>HoD</th>
<th>FD</th>
<th>HR</th>
<th>BD</th>
<th>VD</th>
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<th>Remarks</th>
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<td>(c) Opening New Branch/s (within India)</td>
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Note: Above item i.e. 2(a) to 2(e) to be put up to the BoD on an annual basis for ratification.

BoD: Board of Directors  
EI: Executive Investor  
ED: Executive Director / CEO  
CFO: Chief Finance Officer  
HoD: Head of Department  
FD: Finance Department  
HR: Human Resource Department  
BD: Business Development Officer  
VD: Vendor Development Committee  
AM: Accounts Manager  
1: Responsibility  
2: Review  
3: Approve
## TRANSACTIONS

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</tbody>
</table>

**Legend:**

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**Remarks:**

1: Responsibility  
2: Review  
3: Approve  
4: As per Norms  
5: As per MoA & AoA

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**KEY LIABILITIES ON THE FOUNDER/ PROMOTERS AND THE COMPANY**

Detailed below are the provisions of the Companies Act, 2013 ("Companies Act"), as set out in Part I, and the Foreign Exchange Management Act, 1999 ("FEMA"), as set out in Part II, which prescribe criminal penalties on the (a) Founder/Promoter1 of a private limited company and (b) the company, as the case may be.

**OVERVIEW OF CRIMINAL LIABILITIES UNDER THE COMPANIES ACT**

Set out below is a list of the key provisions of the Companies Act that prescribes criminal penalties on the Founders/Promoters of a private limited company.

Note: Section 447 of the Companies Act that prescribes punishment in case of fraud committed by any person, covers violations of various provisions of the Companies Act. The punishment under Section 447 is imprisonment for a term of not less than six months but which may extend to ten years and a fine that shall not be less than the amount involved in the fraud, but which may extend to three times such amount.

<table>
<thead>
<tr>
<th>Section</th>
<th>Punishable Action</th>
<th>Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 7 - Incorporation of company</td>
<td>Furnishing false or incorrect information or suppressing material information of which a person is aware of, or any fraudulent action during the process of incorporation of a company.</td>
<td>(a) Promoters, (b) the persons named as the first Directors of the company and (c) the persons making declaration under clause (b) of subsection (1) of Section 7 - Liability under Section 447.</td>
</tr>
<tr>
<td>Section 36 - Punishment for fraudulently inducing persons to invest money</td>
<td>Any person who, either knowingly or recklessly makes any false statement or promise, to induce another person to enter into- (a) any agreement for, acquiring, disposing of, subscribing for, or underwriting securities; or (b) any agreement to secure a profit from the yield of securities or by reference to fluctuations in the value of securities; or (c) any agreement for, or with a view to obtaining</td>
<td>(a) Any person liable under this Section - Liability under Section 447.</td>
</tr>
<tr>
<td>Section</td>
<td>Punishable Action</td>
<td>Liability</td>
</tr>
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<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 38 - Punishment for personation for acquisition, etc., of securities</td>
<td>Against any person who makes or abets making of an application in a fictitious name, or multiple applications in different names or different combinations, or otherwise induces a company for acquiring, or subscribing for, its securities</td>
<td>(a) Any person liable under this Section - Liable under section 447. The Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.</td>
</tr>
<tr>
<td>Section 46 - Certificate of shares</td>
<td>Default in complying with provisions of Section 48 i.e. failure to obtain the required consent or pass a special resolution, as the case may be, for varying the rights attached to the shares of any class.</td>
<td>(a) Company – Fine not less than five times the face value of shares involved in the issue of the duplicate certificate, but which may extend to ten times of such face value or INR 10 crore, whichever is higher. (b) Officer in default – Liability under Section 447</td>
</tr>
<tr>
<td>Section 48 - Variation of shareholders' rights</td>
<td>A company with intent to defraud issues a duplicate certificate of shares.</td>
<td>(a) Company – Fine between INR 25,000 and INR 5 lakh (b) Officer in default – Imprisonment up to 6 months and/or fine between INR 25,000 and INR 5 lakh</td>
</tr>
<tr>
<td>Section 53 - Prohibition on issue of shares at discount</td>
<td>Issuance of shares at a discount in contravention of Section 54 which relates to the issue of sweat equity.</td>
<td>(a) Company – Fine between INR 1 lakh and INR 5 lakh (b) Officer in default – Imprisonment up to 6 months and/or fine between INR 1 lakh and INR 5 lakh</td>
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<tr>
<td>Section 58 - Refusal of registration and appeal against refusal</td>
<td>Where any person contravenes the order of a Tribunal under Section 58</td>
<td>(a) Any person liable under this Section: Imprisonment not less than 1 year which may extend to 3 years, and/or fine between INR 1 lakh and INR 5 lakh</td>
</tr>
<tr>
<td>Section</td>
<td>Punishable Action</td>
<td>Liability</td>
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</table>
| Section 59 - Rectification of register of members | Where default is made in complying with the order of a Tribunal in relation to rectification of the register of members under Section 59. | (a) Company – Fine between INR 1 lakh and INR 5 lakh  
(b) Officer in default – Imprisonment up to 1 year and/or fine between INR 1 lakh and INR 3 lakh |
| Section 66 - Reduction of share capital | If any Officer of the company --  
(a) knowingly conceals the name of any creditor entitled to object to the reduction;  
(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or  
(c) abets or is privy to any such concealment or misrepresentation as aforesaid. | (a) Any Officer of the company - Liability under section 447. |
| Section 67 - Restrictions on purchase by company or giving of loans by it for purchase of its shares | If a company contravenes the provisions of Section 67 which relate to restrictions on buy back of shares / giving loans by a company for its shares | (a) Company – Fine between INR 1 lakh and INR 25 lakh  
(b) Officer in default – Imprisonment up to 3 years and/or fine between INR 1 lakh and INR 25 lakh |
| Section 68 - Power of company to purchase its own securities | Where the company violates any provisions relating to buy-back of its own securities | (a) Company – Fine between INR 1 lakh and INR 3 lakh  
(b) Officer in default – Imprisonment up to 3 years and/or fine between INR 1 lakh and INR 3 lakh |
<p>| Section 71 - Debentures | If any default is made in complying with the order of the Tribunal under Section 71. | (a) Officer in default – Imprisonment up to 3 years and/or fine between INR 2 lakh and INR 5 lakh |</p>
<table>
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<tr>
<th>Section</th>
<th>Punishable Action</th>
<th>Liability</th>
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<tr>
<td>Section 74 - Repayment of deposits, etc., accepted before commencement of this Act</td>
<td>Where any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter.</td>
<td>(a) Company – In addition to payment of deposit and interest, fine between INR 1 crore and INR 10 crore (b) Officer in default – Imprisonment up to 7 years and/or fine between INR 25 lakh and INR 2 crore</td>
</tr>
<tr>
<td>Section 75 - Damages for fraud</td>
<td>Where a company fails to repay the deposit or part thereof or any interest referred to in section 74 within the time specified and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose.</td>
<td>Every Officer of the company responsible for acceptance of such deposit – In addition to liability under Section 74 and 447, personal liability without any limitation of liability for any losses/damages incurred by depositors</td>
</tr>
<tr>
<td>Section 76A - Punishment for contravention of section 73 or section 76</td>
<td>- Where a company accepts or invites deposit in contravention of conditions under Sections 73 and 76. - Where a company fails to repay such deposit within the time specified under Sections 73 and 76 or by the Tribunal</td>
<td>(a) Company – In addition to deposit, fine between INR 1 crore and INR 10 crore (b) Officer in default – Imprisonment up to 7 years and/or fine between INR 25 lakh and INR 2 crore. If the contravention is willful so as to deceive, then additional liability under Section 447.</td>
</tr>
<tr>
<td>Section 86 - Punishment for contravention</td>
<td>If any company contravenes any provision of Chapter VI pertaining to registration of charges.</td>
<td>(a) Company – Fine between INR 1 lakh and INR 10 lakh (b) Officer in default – Imprisonment up to 6 months and/or fine between INR 25,000 and INR 1 lakh</td>
</tr>
<tr>
<td>Section 92 - Annual Return</td>
<td>If a company fails to file its annual return under subsection (4) of Section 92, before the expiry of the period specified under section 403 with additional fee.</td>
<td>(a) Company – Fine between INR 50,000 and INR 5 lakh (b) Officer in default – Imprisonment up to 6 months and/or fine between INR 50,000 and INR 5 lakh</td>
</tr>
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<tr>
<td><strong>Section 134 - Financial statement, Board’s report, etc.</strong></td>
<td>If a company contravenes the provisions of Section 134 pertaining to financial statements and board’s report.</td>
<td><em>(a) Company – Fine between INR 50,000 and INR 25 lakh&lt;br&gt;(b) Officer in default – Imprisonment up to 3 years and/or fine between INR 50,000 and INR 5 lakh</em></td>
</tr>
<tr>
<td><strong>Section 147 - Punishment for contravention</strong></td>
<td>If any of the provisions of sections 139 (appointment of Auditors), 140 (removal, resignation of Auditors), 141 (eligibility of Auditors), 142 (remuneration of Auditors), 143 (auditing standards and powers of Auditors), 144 (Auditors not to render certain services), 145 (auditor reports) and 146 (auditor to attend Board Meeting) is contravened. These provisions deal with appointment and functions of Auditors.</td>
<td><em>(a) Company – Fine between INR 25,000 and INR 5 lakh&lt;br&gt;(b) Officer in default – Imprisonment up to 1 year and/or fine between INR 10,000 and INR 1 lakh</em></td>
</tr>
<tr>
<td><strong>Section 182 - Prohibitions and restrictions regarding political contributions</strong></td>
<td>If any donation is made to prescribed political parties in contravention of Section 182.</td>
<td><em>(a) Company – Fine which may extend to five times the amount so contributed&lt;br&gt;(b) Officer in default – Imprisonment up to 6 months and fine which may extend to five times the amount so contributed</em></td>
</tr>
<tr>
<td><strong>Section 185 - Loan to Directors, etc.</strong></td>
<td>If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1) of Section 185</td>
<td><em>(a) Company – Fine between INR 5 lakh and INR 25 lakh&lt;br&gt;(b) Director or other person to whom loan is advanced or guarantee or security is given – Imprisonment up to 6 months and/or fine between INR 5 lakh and INR 25 lakh</em></td>
</tr>
<tr>
<td><strong>Section 186 - Loan and investment by company</strong></td>
<td>If a company contravenes the provisions of Section 186 in relation to inter-corporate loans etc.</td>
<td><em>(a) Company – Fine between INR 25,000 and INR 5 lakh&lt;br&gt;(b) Officer in default – Imprisonment up to 2 years and/or fine between INR 25,000 and INR 1 lakh</em></td>
</tr>
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</table>
| Section 187 - Investments of company to be held in its own name | If a company contravenes the provisions of Section 187 in relation to investments of the company in its own name. | (a) Company – Fine between INR 25,000 and INR 25 lakh  
(b) Officer in default – Imprisonment up to 6 months and/or fine between INR 25,000 and INR 1 lakh |
| Section 195 – Prohibition on insider trading of securities | If any person contravenes the provisions of Section 195 in relation to insider trading | (a) Any person liable under this Section – Imprisonment upto 5 years and/or fine not less than INR 5 lakh but which may extend to INR 25 crore or three times the profit made from insider trading, whichever is higher. |
| Section 207 - Conduct of inspection and inquiry | If any Director or Officer of the company disobeys the direction issued by the Registrar or the Inspector under this Section 207. | (a) The Director or the Officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than INR 25,000 but which may extend to INR 1 lakh. |
| Section 213 - Investigation into company’s affairs in other cases | Where the business of the company is being conducted with the intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose or in any manner prescribed in Section 213. | Every Officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs – Liability under Section 447. |
| Section 232 - Merger and amalgamation of companies | Contravention of section 232.                                                    | Transferor/Transferee Company – Fine between INR 1 lakh and INR 25 lakh  
Officer in default – Imprisonment up to one year and/or fine between INR 1 lakh and INR 3 lakh |

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Email: info@ivca.in
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</thead>
<tbody>
<tr>
<td><strong>Section 242 - Powers of Tribunal</strong></td>
<td>Contravention of order of the Tribunal.</td>
<td>Company – Fine between INR 1 lakh and INR 25 lakh Officer in default – Imprisonment up to 6 months and/or fine between INR 25,000 and INR 1 lakh</td>
</tr>
<tr>
<td><strong>Section 245 - Class action</strong></td>
<td>Contravention of order of the Tribunal.</td>
<td>Any person liable under Section 245 – Fine between INR 5 lakh and INR 25 lakh Officer in default – Imprisonment up to 3 years, and/or fine between INR 25,000 and INR 1 lakh</td>
</tr>
<tr>
<td><strong>Section 274 - Directions for filing statement of affairs</strong></td>
<td>If any Director or Officer of the company contravenes the provisions of Section 274.</td>
<td>Director or Officer in default – Imprisonment up to 6 months and/or fine not less than INR 25,000 but may extend to INR 5 lakh</td>
</tr>
<tr>
<td><strong>Section 284 - Promoters, Directors, etc., to cooperate with Company Liquidator</strong></td>
<td>If any person, without reasonable cause, fails to discharge his obligations under sub-section (1) of Section 284.</td>
<td>Any person liable under Section 284 – Imprisonment up to 6 months, and/or fine up to INR 50,000</td>
</tr>
<tr>
<td><strong>Section 336 - Offences by Officers of companies in liquidation</strong></td>
<td>If any person, who is or has been an Officer of a company which, at the time of the commission of the alleged offence, is being wound up, by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act has committed any of the contraventions as mentioned in Section 336.</td>
<td>Any person liable under Section 336 - Imprisonment for a term which shall not be less than three years but which may extend to five years and with fine between INR 1 lakh and INR 3 lakh.</td>
</tr>
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<td>Section</td>
<td>Punishable Action</td>
<td>Liability</td>
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</tr>
<tr>
<td>Section 337 - Penalty for frauds by Officers</td>
<td>Fraud committed by the Officers as mentioned in Section 337.</td>
<td>Such Officers to be punishable with imprisonment not less than 1 year but may extend to 3 years, and fine between INR 1 lakh and INR 3 lakh.</td>
</tr>
<tr>
<td>Section 448 - Punishment for false statement</td>
<td>Any person making false statement in any return, report, certificate, financial statement, prospectus, statement or other document</td>
<td>(a) Any person liable under Section 448 – Liability under section 447.</td>
</tr>
<tr>
<td>Section 449 - Punishment for false evidence</td>
<td>Any person giving false evidence – Upon any examination on oath or solemn affirmation under the Companies Act, and In any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any other matter</td>
<td>(a) Any person liable under Section 449 – Imprisonment for a term which shall not be less than three years but which may extend to seven years and fine up to INR 10 lakh</td>
</tr>
<tr>
<td>Section 451 - Punishment in case of repeated default</td>
<td>If a company or an Officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years.</td>
<td>(a) The company and every Officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.</td>
</tr>
</tbody>
</table>
II. OVERVIEW OF KEY LIABILITIES UNDER THE FEMA AND SEBI REGULATIONS

A company will need to ensure compliance with the FEMA and the rules and regulations issued thereunder, if applicable. A contravention of the provisions of the FEMA or any applicable rules and regulations will render the concerned person liable to pay a sum of up to thrice the sum involved in such contravention where the sum is quantifiable or up to INR 200,000 when it is not quantifiable and a further penalty of INR 5,000 for every day for which the penalty continues. Further, if a person fails to make full payment of the penalty so imposed on him within a period of 90 days from the date on which notice for payment of such penalty is served on him, he shall be liable for civil imprisonment under Section 14.

Additionally, the Securities and Exchange Board of India (Collective Investment Schemes), Regulations, 1999, deals with registration and other obligations of a collective investment management company. Failure to register and comply with the obligations under this regulation for running a collective investment management company can attract penalties such as cancellation of registration, debarment, warning etc. as specified under the SEBI (Intermediaries) Regulations, 2008.
Set out below is an overview of the compliances and filings to be made to the appropriate labour authorities under key labour laws in India, along with related penalties. It may be noted that the nature of these compliances and filings are regular. In addition to the penalties set out in the legislations discussed below, any non-compliance with the provisions of these legislations which comes to the attention of the authorities will leave the Company open to increased scrutiny by the labour authorities. The table set out below provides for registration, filing, contribution requirements and maintenance of statutory registers by the Company, in its capacity as employer under the labour law statutes.

<table>
<thead>
<tr>
<th>S.NO</th>
<th>LEGISLATION</th>
<th>APPLICABILITY</th>
<th>REGISTRATION</th>
<th>REGISTERS</th>
<th>FILINGS</th>
<th>CONTRIBUTION</th>
<th>PENALTY</th>
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<tbody>
<tr>
<td>1.</td>
<td>Contract Labour (Registration and Abolition) Act, 1970</td>
<td>The Act applies to an establishment in which 20 or more ‘workmen’ are or were employed on any day in the preceding 12 months as contract labour.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>❌</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>2.</td>
<td>Employees’ Provident Fund and Miscellaneous Provisions Act, 1952</td>
<td>The Act applies to every establishment engaged in one or more of the industries specified in the Act, employing 20 (5 in case of cinema theatres) or more persons.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3.</td>
<td>Employees’ State Insurance Act, 1948</td>
<td>The Act is applicable to shops and other establishments employing 20 (the threshold in certain states is 10) or more persons.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>S.NO</td>
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<td>4.</td>
<td>Equal Remuneration Act, 1976</td>
<td>The Act mandates all companies to offer men and women employees the same remuneration for the same work or work of a similar nature.</td>
<td>×</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>5.</td>
<td>Maternity Benefit Act, 1961</td>
<td>The Act is applicable to all establishments in which 10 or more persons are employed or were employed on any day of the preceding 12 months.</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>6.</td>
<td>Minimum Wages Act, 1948</td>
<td>The Act mandates establishments as mentioned in the Act to pay minimum rates of wages based on the industry and nature of employment.</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>7.</td>
<td>Payment of Bonus Act, 1965</td>
<td>The Act applies to companies employing 20 or more employees. The Act mandates payment of minimum bonus to employees whose monthly salary is less than INR 21,000.</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>S.NO</td>
<td>LEGISLATION</td>
<td>APPLICABILITY</td>
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<td>REGISTERS</td>
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<tr>
<td>8.</td>
<td>Payment of Wages Act, 1936</td>
<td>The Act applies to payment of wages in a factory and other establishments as listed in the Act. Further, this Act does not apply to wages payable which amount to above INR 18000 per month on an average.</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>Fine and imprisonment in the case of subsequent conviction</td>
</tr>
<tr>
<td>9.</td>
<td>Payment of Gratuity Act, 1972</td>
<td>The statute is applicable to an organization having 10 or more employees on any day of the preceding 12 months.</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>Imprisonment and / or fine</td>
</tr>
<tr>
<td>10.</td>
<td>Sexual Harassment of Women at Workplace (Prevention, Prohibition &amp; Redressal) Act, 2013</td>
<td>The Act requires every company having 10 or more employees (including workers engaged through a contractor) to set up an internal complaints committee to receive, investigate and redress grievances of workplace sexual harassment in a confidential and time bound manner.</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>Fine, extending to cancellation of business license in case of subsequent offence</td>
</tr>
<tr>
<td>11.</td>
<td>Shops and establishments legislations</td>
<td>Applicability differs state-wise.</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>Differs statewise</td>
</tr>
</tbody>
</table>
The Board of Directors of a company are a group of individuals elected to act as the representatives of the Shareholders of a company, establish corporate management policies and decide major issues pertaining to the company. The Board is paramount in ensuring that the business of the company prospers by collectively directing the company’s affairs, whilst also keeping in mind the interests of its Shareholders and other stakeholders. In addition to business and financial issues, the Board of Directors must also deal with challenges and issues relating to corporate governance, corporate social responsibility and ethics, contributing towards building the culture of an organization.

The Board is directly accountable to the Shareholders and an Annual General Meeting is required to be held every year, at which, the directors must provide a report to Shareholders on the performance of the company, its future plans, changes to the vision / mission of the company, its policies, strategies and also submit themselves for re-election to the Shareholders.

Below we have included various compliance related aspects that govern the functioning of the Board of Directors in a company. We have extensively relied on the secretarial standards\(^1\), which are issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government for our analysis below.

\(^1\) https://www.iicsi.edu/docs/Website/55-1%20Final.pdf
A. How often should the Board assemble?

Under the Companies Act, 2013, the Board of Directors of a company should meet at least once every quarter, with a maximum interval of one hundred and twenty days (120 days) between any two (2) consecutive meetings of the Board, such that at least four (4) meetings are held in each calendar year ¹.

However, it is advisable that the Board meets once every six (6) – eight (8) weeks for better management of a company. If a Director is unable to attend the meeting physically then he may choose to attend the meeting through a video conferencing mode or other audio visual mode by intimating the company sufficiently in advance so that company is able to make suitable arrangements in this behalf ².

B. How will the Board know what will be discussed?

Agenda and Notice

Notice and notes to agenda items should be served to Directors of the Board either via electronic means such as email/facsimile etc. or via speed post/ registered post / courier. Such notice along with agenda items and other relevant documents should be sent to the Directors at least seven (7) days in advance to scheduled Board Meeting date.

¹. As per Section 173 (1) of the Companies Act, 2013.
². As per Section 173 of the Companies Act, 2013.
To transact urgent business, the notice, agenda and notes on agenda may be given at a shorter period i.e. less than seven (7) days’ time, if majority of the Directors present at the meeting approved such resolutions, or they are ratified by the majority of Directors of the company subsequently.

The matters for discussion may be considered as per the agenda that is circulated amongst the Directors. Unless new matters are proposed for discussion, the Directors usually discuss and conclude on the matters listed in the agenda.

C. What should be discussed at a Board Meeting?

Each item of business requiring approval at the meeting should be supported by a note setting out the details of the matter to be discussed, relevant material facts that would enable the directors to understand the scope of the matter that requires their attention.

D. How should a Board Meeting be conducted?

Chairman
The Chairman of the company should be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board. The Chairman of the Board should conduct the meetings of the Board.
If the Chairman himself is interested in any item of business, he should first submit disclosure of interest in prescribed manner and form, before such item of business is taken up.

Unless otherwise provided in the Articles of Association of the company or in any other agreement, in case of an equality of votes, the Chairman may have a second or casting vote.

**Quorum**

The quorum of a Board Meeting is one-third (1/3rd) of the total strength of the Board subject to not less than two (2) Directors, present throughout the meeting. If the Articles of Association of the company or any other agreement prescribe a quorum higher than one-third of the total strength, the company should conform to such higher requirement. Usually, investor Directors would necessarily be required to be present to form quorum where some critical items are being discussed.

**Voting**

Each Director will usually have a single vote and items on the agenda of a Board Meeting should be decided by way of a vote which maybe passed by way of a simple majority. Therefore, it is recommended that the number of Directors on a Board should be an odd number.
Usually, Directors interested in a particular matter should disclose such interest and recuse themselves from voting on such matters.

Minutes

The company should maintain a minute book in accordance with the procedure prescribed under the Companies Act, 2013 evidencing the proceedings of the Board. The minutes should help in understanding the deliberations and decisions taken at the meeting. The minutes may be maintained in physical or in electronic form as prescribed under the law and as may be decided by the Board. It is important that the minutes are captured properly so that it can be used as evidence in the court of law by the Board Members in case of conflicts between them or with third parties.

E. Matters that must be discussed before the Board of Directors:

1) Noting minutes of meetings of audit committee and other committees.
2) Approving financial statements and the Board’s report.
3) Status of compliance with laws applicable to the business of the company.
4) Matters of litigation / complaints filed against the Directors / company.
5) Appointment of secretarial auditors and internal auditors.
6) Making calls on Shareholders in respect of money unpaid on their shares.
7) Approving remuneration of the Managing Director, Whole-time Director and Manager Appointment or removal of key managerial personnel.
8) Appointment of a person as a Managing Director / Manager in more than one company.
9) If the company wishes to authorize key managerial personnel for the purpose of authentication of documents, proceedings and contracts.
10) If the company wishes to consider matters relating to issue of securities through rights issue, bonus issue or private placement.
11) If the company wishes to call for an extraordinary general meeting to consider any matter which requires the consent of the Shareholders.
12) Appointment of Additional Director, Alternate Director and Nominee Director.
13) Borrowing money otherwise than by issue of debentures.
14) Investing the funds of the company.
15) Granting loans or giving guarantee or providing security in respect of loans.
16) According sanction for related party transactions which are not in the ordinary course of business or which are not on arm’s length basis.
17) Purchase and sale of assets which are not in the normal course of business, approve payment to Director for loss of office.
18) Authorize buy back of securities Issue of securities, including debentures, whether in or outside India approving amalgamation, merger or reconstruction.
19) Diversify the business, takeover another company or acquiring controlling or substantial stake in another company.

1. As per Section 173 (1) of the Companies Act, 2013.
2. As per Section 173 of the Companies Act, 2013.
20) If the company wishes to convert from one class of company to another class (for example - public company to private company).
21) For filing a petition for winding up of the company.
22) Decision on voluntary winding up of the company.
23) Presentation of a full statement of the position of the affairs of the company together with a list of creditors for the creditor’s meeting.
24) Assignment, license, encumber or otherwise deal with any intellectual property of the company.

F. Matters that require the Board’s attention:

Other than matters listed herein immediately above, every business would have a list of matters that require the immediate attention of a Board of Directors. Some of these matters are also important from the perspective of investors, as typically, they would want to have a veto right in relation to such matters as they impact the growth and functioning of the company:

1) Risks that are highlighted in the internal audit report by the internal Auditors.
2) In situations where the company is not performing financially, the Board must analyze the cash burn rate and evaluate how close the company is to exhausting existing funds, in order to plan for the next round of funding.
3) Redundancies in personnel or business divisions that do not justify the expenses/costs and involve unnecessary overheads should be brought to the Board to help determine how to deal with such situations.
4) Urgent matters relating to – operations, finance, human resources etc.
5) In case of abrupt increase in the attrition rate of the company
6) Amendments to the business plan / strategy which has not been agreed to by the Board.
7) Any changes to the existing contractual rights and/ or obligations of the company under the material contracts of the company.
8) Any creation of a new role in relation to key managerial personnel or appointment of existing key managerial personnel in a new role (including the Chief Financial Officer and/ or Chief Executive Officer) of the company.
9) Grant, modify, expand, alter or terminate a Power of Attorney in favor of any Director, Officer or Employee of the company (other than in the normal course of business).
10) Delegation of any powers or authorities to key managerial personnel of the company.
11) Make any applications to any governmental authority for any matter that is not in the normal course of business of the company.
12) Acquisition of any material assets excepting such acquisitions, which were presented to the Board as part of the business plan for the year.
13) Provision or rejection of any consent by the company that may be required under any material contract and/or waiver of any of its rights under any material contract.

14) Making any change to the branding strategy in relation to any of the products or services of the company.

15) Finalize or revise any rates to be charged for any of the products or services of the company if the aggregate rates being charged vary by at least 10% (ten percent) from the previous rates being charged by the company.

16) Enter into any agreement, commitment or arrangement in respect of the above.

G. Conclusion

The Board should not be controlled by either the Founder; the CEO; or the largest Shareholder. It should be a voice of the all the Stakeholders and their interest. It must act in the best interests of the company and its major stakeholders; the employees, the customers, the shareholders, the debt holders, and everyone else that is relying on the company to deliver on its promises.

We hope that you, adhere to these basic guidelines enumerated above, as in the long run this will prove to be really beneficial for the overall growth and corporate governance standards followed by your company.
Nishith Desai Associates is a research-based Indian law firm with offices in Mumbai, Silicon Valley, Bangalore, Singapore, Mumbai BKC, Delhi and Munich that aims at providing strategic, legal and tax services across various sectors; some of which are IP, pharma and life-sciences, corporate, technology and media. We contribute insight through articles and other resourceful reports to publications on the growing Indian economy and its legal impact on the US and other developed nations. Our firm has had many accomplishments and won several accolades internationally as well as domestically for being an industry leader; and continues to be ranked consistently as one of the top 5 in India.

Our expertise and opinion is regarded as an authority amongst the upper echelons of international law. In addition, our client list includes many of the Fortune 500 and other successful Indian businesses. As an intimately sized firm, we have an intensive client selection process in order to maximize our strengths to areas where we can best add value.
AZB & Partners is one of the top corporate law firms in India, active inter alia in Mergers & Acquisitions, Joint Ventures & General Corporate, Private Equity, Banking & Finance, Infrastructure & Project Finance, Real Estate, Arbitration and Litigation, Regulatory Advisory with offices in New Delhi, Mumbai, Bangalore and Pune. The firm’s senior partners are Ajay Bahl, Zia Mody and Bahram Vakil. India today has placed the firm’s revenue at Rs. 300 crores. The firm entered into a ‘best friend’s agreement’ with UK-based Clifford Chance in early 2009, which was terminated by mutual agreement in January 2011. While access to know-how and management expertise may have brought benefits to AZB, the two firms shared few instructions over the course of their ‘best-friends’ arrangement.
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