Quick Referencer to Companies Act 2013 (Including Amendments)

The Institute of Chartered Accountant of India
Vasai Branch of WIRC

www.vasai-icai.org

DISCLAIMER

Due care has been taken to ensure that this publication provides relevant and accurate information. In the event of any mistakes coming to light, we seek your pardon and request the readers to bring such mistakes to our attention for improvements. The information and data in this presentation are solely for informational purpose. It does not constitute any professional advice and it is advised that professional advice be taken before taking any action based on the information provided in this presentation.

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Chairman Communications

Dear Professional Colleagues,

We are Proud to Present the VASAI BRANCH Publication on **"Quick Referencer to Companies Act 2013 (Including Amendments)".** It is our endeavor to serve our members and we have been continuously adding to Professional knowledge through our innovative and relevant Publication. This is Vasai branch 2nd Publication of this term and today, I am proud to say that VASAI BRANCH OF WIRC OF ICAI has created a treasure trove of knowledge on a vast range of subject reflecting the varied areas of Practice.

The objective of this publication is aimed at ***bringing standardization.*** It is an effort to ***provide a ready referencer*** to our professional colleagues searching for reporting guidance and Amendments. I am sure this publication will help members and students in Quick.

On the Behalf of entire team I wish to express my sincere thanks to **CA. Nihar N. Jambusaria, Hon'ble President of ICAI and CA (Dr.) Debashis Mitra, Hon'ble Vice President of ICAI** for their guidance and motivation.

I sincerely **Thank CA Pankaj Tiwari** for his efforts in producing this e-publication. I also appreciate the dedicated efforts of CA Avinash Ravani, CS Nishant Bajaj, CS Punit Goyal, CA Pravin Sethia, CS Lalit Rajput & **all the contributors** who have devoted their valuable time and meticulously gathered, documented and collated updated information validated with insightful analysis.

I am confident that all members and other Professional would derive maximum benefit from this publication, enabling them to stay current, relevant and ahead of the curve in the present fluid scenario as well as providing excellent service to all clients and stakeholders.

Jai Hind

Jai ICAI

CA. Abhishek S. Tiwari
Chairman
Vasai Branch of WIRC of ICAI

Foreword

The Companies Act, 2013 was enacted to improve Corporate Governance and better transparency in the corporate sector which is imperative to infuse confidence amongst investor in Indian Market and abroad and to further strengthen regulations for companies, keeping in view the changing economic environment as well as growth of our economy. The Ministry of Corporate Affairs has been taking proactive initiative by making the existing law simple and comprehensive fostering a positive environment for investment and growth.

The book Titled Quick referencer to Companies Act 2013 (Including Latest Amendments) has been designed in a simple format to assist our members and fellow professional in mitigating various queries to the Companies Act 2013.This book has been prepared keeping in mind all latest amendment to various important provisions of the Companies Act 2013. Chapters are structured keeping in mind the importance of the topic and its practical usage.

I would like to compliment CA Abhishek Tiwari – Chairman Vasai Branch, Chief coordinator CA Pankaj Tiwari & the entire team of contributors who have worked tirelessly to come out with this compilation for the benefits of members and students.

I commend the efforts of the Vasai Branch of WIRC and place on record their immense contribution.

I sincerely believe that the members of Profession, industries and other stakeholders will find the publication immensely useful.

CA Manish Gadia
Chairman
WIRC of ICAI

Foreword

The Companies Act 2013 was a complete transformation and step away from the previous Company Acts. This Act was two decades in the making and the thought process that went into this evolutionary Act is clearly visible in that it is a modern and contemporary law enacted after several rounds of deliberations with various stakeholders.

Post-independence of India, the Companies Act, 1956 which contained 658 sections and 15 schedules regulated the entire gamut of activities with regard to companies. The Companies Act, 2013, brought about a sea-change and in essence replaced the existing Company Law. It moves from the regime of control to that of liberalization/ self-regulation.

The Act contains 470 sections under 29 chapters with seven schedules. The Act enables the Central Government (Ministry of Corporate Affairs) to make rules through subordinate legislation.

This Referencer Manual will ensure that readers will get direct reference to topics comprising the Act, and give instant access to all relevant Chapters and Sections. This will enable members to give correct guidance and provide effective solutions thus raising the bar in quality of services provided by our fraternity.

The Vasai Branch of WIRC of ICAI as part of its education initiative is pleased to bring out this ready Referencer on Companies Act, 2013.

I place on record my sincere thanks to CA. Pankaj Tiwari, CA. Avinash Ravani, CS. Lalit Rajput, CS. Nishant Bajaj, CS. Punit Goyal and CA. Pravin Sethia for their efforts and contribution made in the preparation and finalisation of this Referencer.

I commend their dedicated efforts in bringing out this publication and I am confident that this publication shall serve as the perfect work guide for our professional colleagues and finance professionals across the Region.

CA. Lalit Bajaj
Immediate Past Chairman-WIRC &
Ex Officio Member

Foreword

Dear Professional colleagues,

We are proud to present the VASAI BRANCH Publication on **"E-publication of Quick Referencer to Companies Act 2013 (Including Amendments)."**

Today, the breadth of the services rendered by our members reflects their expertise in multiple diverse areas. At the same time, high expectations of the government, business world and society also place huge responsibility on chartered accountants. It is important for today's professional to not only deliver quality services but also strive for excellence in their work and be updated on the latest developments on matters relating to the profession.

I commend the efforts of all the contributors for sharing their knowledge and aiding the members in their work. **CA Abhishek Tiwari – Chairman of Vasai Branch** deserve to be credited for his foresight and dedication.

At VASAI BRANCH OF WIRC of ICAI we are committed to serve the members and willing to work hard towards it. I hope members will appreciate the objective and efforts behind this publication and ***derive maximum benefits*** from it. I am confident that all members will find this publication extremely beneficial and will be able to create qualitative reporting with its assistance.

CA. Lokesh Kothari
Secretary & Treasurer
Vasai Branch of WIRC

Vasai Branch of WIRC of ICAI 2021-22

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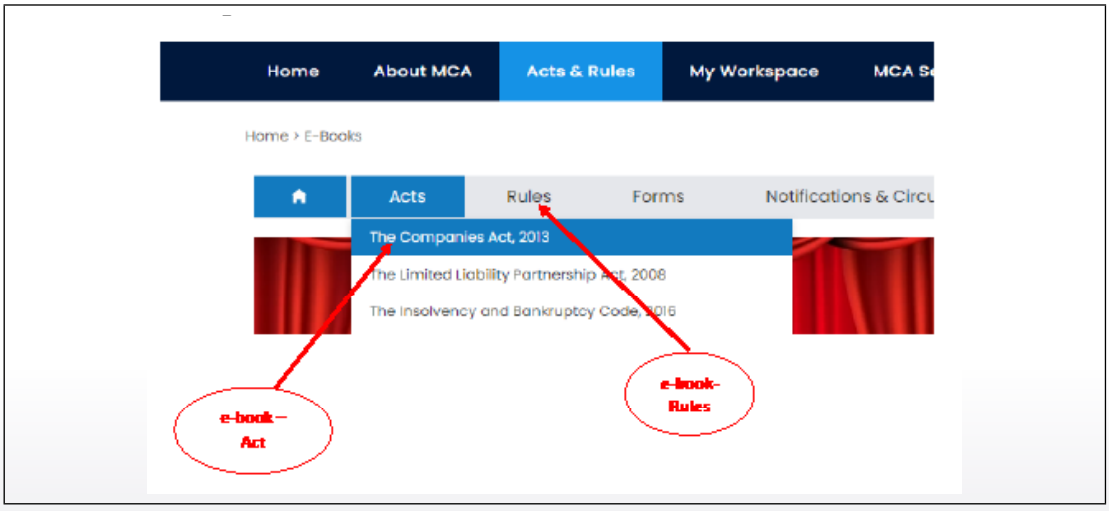
Overview of recent changes in Companies Act 2013

A) Background:

- The MCAS has launched its new website on 24th May 2021. The new website hopefully will be user friendly and will help the users in providing the information/data required on regular basis.
- Along with the launch of new website, the MCA on regular basis has brought various amendments in the sections as well as in the rules. In past during Companies Act 1956 there were rare occasions of amendment in the sections. One can safely say that in recent time the amendment in the companies act 2013 is more than the amendment in Income Tax Act.
- Many Professional find it difficult to keep track of all these amendment and publications available for reference become outdated on regular basis. Therefore, one should also refer e-book on the companies act 2013 available at MCA website for reference as it covers all the latest amendment along with the reference date etc.



One can download the relevant section for future reference as well. This benefit was not available in the earlier version of the website.

B) Recent Amendments:

- The companies act 2013 has been amended through following amendment act over period:
  - Companies (Amendment) Act, 2017

- Companies (Amendment) Act, 2019
- Companies (Amendment) Act, 2020
- Changes in Rules to Companies Act, 2013

- Even through these amendments are name after particular year however the amendment through these are not notified at once. There are notified over a period through gazette notification by the government.
- The Journey of Recent amendment to the companies act 2013 through Companies (Amendment) Act, 2020 is as follows:
  - 17th Mar 2020 introduced in Lok Sabha
  - 19th / 22nd Sept 2020 passed by Lok Sabha / Rajya Sabha respectively
  - 28th Sept 2020 assent given by President of India

  Out of the 66 sections amended through this new act, these were notified over a period which is as follows:
  - 45 sections notified on 21st December 2020
  - 14 sections notified on 22nd January 2021
  - 2 sections notified on 11th February 2021
  - 2 sections notified on 18th March 2021
  - 2 sections notified on 24th March 2021
  - 1 section not yet notified
- We will discuss some of the key amendments in Companies Act 2020 which are not covered separately in the respective chapters:

Section	Amendment
2(52)- Definition of Listed Companies	• Excludes certain companies which have listed or intend to list certain class of securities. As per new rule 2A inserted by the Companies (Specifications of definitions details) 2nd Amendt Rules, 2021, following companies not to be considered as listed companies: • Public companies which have not listed their equity shares on a recognized stock exchange but have listed their – (a) non-convertible debt securities issued on private placement basis in terms of applicable SEBI Regulations; or (b) non-convertible redeemable preference shares issued on private placement basis in terms of applicable SEBI Regulations; or

Section	Amendment
	• Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of applicable SEBI Regulations; • Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified the Act.
Section 62(1)(a) (i) - Further Issue of Share Capital	• This amendment Reduces the time period (earlier 15 to 30 days) for providing the offer letter to the existing shareholders under rights issue.
Section 89- Declaration in respect of beneficial interest in any share	• The CG may by notification, exempt any class or classes of persons from complying with any of the requirements of this section relating to declaration of beneficial interest in shares if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.
Section 117(3) (g)-Resolutions and agreements to be filed – exemptions	• As per the Act, companies are required to file with the RoC, certain resolutions including resolutions of the Board of Directors to borrow money or grant loans. • Exemption granted to - (a) a banking company; (b) any class of NBFCs registered under the Reserve Bank of India Act, 1934; (c) any class of housing finance company registered under the National Housing Bank Act, 1987 from filing resolution passed to grant loans or give guarantee or provide security. • Earlier the exemption was granted only to banking companies.
Section 135- Corporate Social Responsibility (CSR)	• Companies which spend any amount in excess of their CSR obligation in a financial year (FY) can set off the excess amount towards their CSR obligations in subsequent FYs as may be prescribed. MCA through Companies (CSR Policy) Rules, 2014 has prescribed number of succeeding FYs and manner of set off.
Section 149- Independent Director (ID)	• An ID is not entitled to any stock options and is permitted to receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. • Amendment provides that if a company has no profit / profits are inadequate, an ID may receive remuneration which is exclusive of any fees payable as above in accordance with the provisions of Schedule V.

Section	Amendment
Section 197-Overall Maximum Managerial Remuneration	• Companies will now have to pay remuneration to Non-Executive Directors and ID in case of loss or inadequate profits under Schedule V as applicable to Executive Directors earlier.
Section 23-PublicOffer and Private Placement (not yet notified)	• Permits certain class of public companies to issue certain class of securities for being listed on stock exchanges in foreign jurisdictions.

- Some of the key amendments in the rules are as follows which are applicable for audit of FY 2020-21:

Rules	Amendment
Rule 6-Companies (Appointment and Qualification of Directors)	• Every individual who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) 5th Amendment Rules, 2019 (i.e., 1st December 2019), can apply to the Institute of Corporate Affairs (IICA) up to 31st December 2020 (earlier 30th September 2020). • Every individual whose name is included in the IICA maintained data bank should pass an online proficiency self-assessment test within a period of 2 years (earlier 1 year) from the date of inclusion of his name in the data bank. • The passing marks required for the online proficiency self-assessment test is 50% (earlier 60%).
Rule 18-Companies (Share Capital and Debentures) Amendment Rules, 2020	• A listed company which has privately placed its debentures will not be required to invest or deposit a sum which is at least 15% of the amount of its debentures maturing during the year, ending on the 31st March of the next year on or before the 30th April in each year.

Rules	Amendment
Rule 2- Companies (Specification of Definitions Details) Amendment Rules, 2021	• Small Company means a company, other than a public company, o paid-up share capital of which does not exceed ₹ 2 crores (earlier ₹ 50 lakh) or such higher amount as may be prescribed which shall not be more than ₹ 10 crores; and o turnover of which as per profit and loss account for the immediately preceding FY does not exceed ₹ 20 crores (earlier ₹ 2 crores) or such higher amount as may be prescribed which shall not be more than ₹ 100 crores. • Due to the increase of the threshold for Small Companies, relaxations in some sections and reporting may become applicable to more companies.

- There are changes in various sections and rule of the companies act 2013 on regular basis and as an auditor we should be aware about such changes to suggest our clients on future strategies and compliance issues.

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Provisions related to Deposits and Loans under Companies Act, 2013

Unsecured Loan or Deposit is a common source of funds for any business, easily available and most dependable source of fund for any business. The said loans when the same are taken in the private limited companies, the same needs to be taken in compliance with the provisions of Chapter V of the Companies Act, 2013 and compliance with of Rule 1 to Rule 21 of The Companies (Acceptance of Deposits) Rules, 2014 of the Companies Act, 2014.

Section 2 (31) of Companies Act and Rule 2(1)(v) defines deposit as any receipt of money by way of deposit or loan or in any other form, by a company but does not include

- Any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;
- Any amount received from Foreign Governments, foreign or international banks, multilateral financial institutions, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under;
- Any amount received as a loan or facility from any Bank or Financial Institutions;
- Any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934;
- Any amount received against issue of commercial paper or any other instruments issued under guidelines or notification issued by RBI;
- Any amount received by a company from any other company (Inter-corporate Deposits);
- Any amount received towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, provided that securities are allotted within 60 days from the date of receipt of money failing which, money should be refunded within 15 days after the expiry of 60 days, otherwise it shall be treated as deposit;
- Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company, provided it is not being given out of borrowed funds;-

The declaration for the should have been obtained during the course of audit and kept on record.

- Any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten years, provided the amount of borrowing is not more than the market value of such assets assessed by a registered value;
- Any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India
- Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit;
- Any non-interest-bearing amount received or held in trust;
- Any amount received in the course of, or for the purposes of the business of the company, such as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance. If the subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty-five days shall not apply;
- Any amount received in the course of, or for the purposes of the business of the company which are as follows:

  as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property

  as a security deposit for the performance of the contract for supply of goods or provision of services for supply of capital goods

  as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

  as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

  as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications

  Provided that if the aforesaid amount becomes refundable on account of not getting the requisite approval/ permission, then the money should be refunded within 15 days from the date it becomes due for refund, otherwise it shall be treated as deposit;

- Any amount brought in by the promoters of the company by way of unsecured loan subject to fulfilment of the following conditions, namely:-
- The loan is brought in pursuance of the stipulation imposed by the lending Financial Institution or bank on the promoters to contribute such finance;
- The loan is provided by the promoters themselves or by their relatives or by both and not by their friends and business associates; and

The exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

- Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

The Companies Acceptance of Deposit rules are not applicable to Banking Company, Non-Banking Finance Company registered with RBI, A Housing Finance Company, registered with National Housing Bank Any other Company which the Central Government may specify as they need to comply with the rules made separately for them by the Reserve Bank of India as stated in Section 73(1) effective 1.4.2014 as per the guidelines issued;

Acceptance of Deposits

Section 73 permits, Private Company and Public Company can accept deposits from its members and also permits payment of interest on such deposits and concessions have also been granted also to Public Companies having a net worth of not less than ₹ 100 Cr. or a turnover of not less than ₹ 500 Cr., to accept deposits from the public, subject to compliance of other sections and the required rules and also required to comply with the prescribed norms and regulations specified for acceptances of deposits by the Reserve Bank of India. Such kind of public company, are referred to as 'Eligible Company" for acceptance of deposits under the Companies Act, 2013. An "Eligible Company" needs to undertake following

- Special Resolution to be passed for acceptance of deposit- Section 73(2) and file the same with the Registrar;
- Issuance of a circular to its members including therein a statement showing the financial position of the company
- the credit rating obtained, the total number of depositors;
- and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- depositing, on or before the 30th April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;
- certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;

- providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company
- Section 2(77) of the Act defines the relative which as per Companies Act, is as under:
    - Members of HUF;
    - Husband or Wife;
    - Father (includes "step")
    - Mother (includes "step")
    - Son
    - Daughter
    - Daughter's Husband
    - Brother (includes "step")
    - Sister (includes "step")

Present Limits and Ceilings for the acceptance of Deposits by the Companies

- Deposits from members
    - Private companies
        - Start up company
            - No limit
        - Other than start up
            - Three conditions as stated in the note are satisfied
                - No limit
            - Other than aforesaid companies
                - Then 100% of it's paid up capital, securities premium & free reserves
    - Public companies
        - Specified IFSC public companies
            - Upto 100% of its paid up capital, securities premium & free reserves
        - Eligible companies
            - Upto 10% of its paid up capital, securities premium & free reserves,
        - Other companies
            - Upto 35% of its paid up capital, securities premium & free reserves
- Deposits from public
    - Eligible companies
        - Upto 25% of its paid up capital, securities premium & free reserves
    - Government companies
        - Upto 35 % of its paid up capital, securities premium & free reserves

Three conditions

which is not an associate or a subsidiary company of any other company; and

the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up

share capital or fifty crore rupees, whichever is lower, and

such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73

Punishment for contravention of Section 73 or 76

Where a company contravenes the provisions of acceptance/invitation of deposits or repayment of deposits or any interest done thereon, it shall be liable for punishment as under:

- The company in addition to the payment of the amount of deposit and the interest due, shall be punishable with a fine between ₹1 crore and ₹10 crores.
- Every officer of the company who is in default shall be punishable with imprisonment which may extend to 7 years or with fine between ₹25 lakhs and ₹2 crores.

If it is proved that the officer of the company who is in default, has contravened the provisions relating to acceptance of deposits knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for punishment for committing fraud u/s. 447.

Reporting by Auditors

Clause (v) of the Companies Auditors Report Order, 2016 requires Auditors to report on this matter, to the Companies to which the Order applies, the Auditor needs to report whether

– the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed there under, where applicable, have been complied with? If not, the nature of such contraventions be stated;

– If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?

However, the said reporting now has been expanded under the Companies Auditors' Report Order, 2020, the applicability of which has been deferred to 1st April, 2022 which will require Auditor to additionally report on Deemed Deposit and also to report further on any non-compliance of the Deposits compliance provisions of the Companies Act, 2013.

Management's Responsibility

1. MCA has mandated that the company should disclose the details of the money so accepted in its Board's Report in case of all companies;

2. FORM DPT-3

   - To be filed in pursuant to Section 73 r.w.r. 16 of the Company (Acceptance of Deposits) Rules, 2014- Notification dated 22nd January, 2019, Mandatory information to be filed with MOCA;
   - Forms notified to protect and safeguard the interest of deposit holders or creditors of the Company, the Central Government in consultation with the Reserve Bank of India (RBI);

- Amendment to Rule 16A(3)
- Also be filed in case the loan/ money outstanding is taken from its holding/subsidiary or associate company;
- Fees shall be payable as per the Companies (Registration Offices and Fees) Rules
- Every Company shall furnish onetime information about the outstanding receipt of money or loan by a Company but not considered as deposits. All Companies (Private, Public, OPC, etc.) except Government Companies are required to file DPT-3;
- Filling is required to be done for both secured & unsecured outstanding money/loan not considered deposits are mentioned below which are not treated as deposits as per Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014.

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Overview and Important changes in aspect relating to Accounts of Companies

Background

The Chapter IX of the Companies Act, 2013 deals with the various section relating to the provision for accounts of the companies. Further the Companies (Accounts) Rules, 2014 deals with various operational rules relation to the Section under the above chapter.

Following are sections which are part of Chapter IX relation to the accounts of companies:

Section	Relating to	Section	Relation to
128	Books of Account, etc., to be kept by Company	133	Central Government to Prescribe Accounting Standards
129	Financial Statement	134	Financial Statement, Board's Report, etc.
129A	Periodical financial results**	135	Corporate Social Responsibility
130	Re-opening of Accounts on Court's or Tribunal's Orders	136	Right of Member to Copies of Audited Financial Statement
131	Voluntary Revision of Financial Statements or Board's Report	137	Copy of Financial Statement to be Filed with Registrar
132	Constitution of National Financial Reporting Authority.	138	Internal Audit

Further there are 13 rules as part of the Companies (Accounts) Rules, 2014 which has been amended from time to time.

Analysis of key points and changes:

Since the commencement of the Companies Act 2013 there has been several changes in every Chapter of the Act, and we will analyse and understand such changes through FAQ format in later part of this chapter. Some of the key changes are made in Section 135 which relates to the Corporate Social Responsibility. However, the same has been covered as separate chapter in this reference.

As part of recent amendment, Section 129A- Periodical financial results has been newly added in Chapter IX. The notification for the commencement date is still awaited from Ministry of Corporate Affairs (MCA).

These sections of the act is relevant for both for the management as well as the auditor since this deal with the format of the financials and various other requirements relating to financial statements.

Frequently Asked Questions (FAQ):

Q-1-What are the key points relating to the books of accounts which as an auditor of the company need to be kept in mind while conducting the audit?

- As per Section 128(1) very company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company.
- These books of accounts can be maintained in physical format or in the electronic format. However, in case maintained in electronic mode shall remain accessible in India (i.e. the server for keeping the books of accounts should be maintained in India.)
- Further, for the **financial year commencing on or after the 1st day of April 2022**, every company using the accounting software shall ensure that it has feature of
  - recording audit trail of each and every transaction,
  - creating an edit log of each change made in books of account
  - date when such changes were made and
  - ensuring that the audit trail cannot be disabled.
- In case the auditor is of the view that proper books of accounts are not maintained by the company, the same can be commented upon while reporting under Section 143(3)- *"(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books……".*

Q-2-What is the relevance of Section 129 and the important points to be seen while conducting the audit?

- Section 129(1) prescribed the format of the financial statement i.e. Schedule III in which the financials of different class or classes of companies needs to be prepared and presented. Further Section 129(3) requires each company having one or more subsidiaries or associate companies to prepare a consolidated financial statement.
- The section also requires the companies to disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.
- As an auditor of the company, one should verify the compliance of the requirement of Schedule III (including various disclosures etc.) and the compliance of Consolidated financial statement (if applicable) to the company. Also, the auditor should ensure that the deviation from any accounting standard is disclosed in the financial statements.

Q-3 Why Section 130 and Section 131 of the companies' act are required?

- Before the commencement of the companies act 2013 there was no provision under the stature for revision of the previous financial statements. Therefore, there was need for including the provision relating to re-opening and recasting of the earlier presented financial statements.
- Section 130 deals with re-opening of the accounts on the basis of Court's or Tribunal's Orders. The first of such order was passed in case of ILFS group companies to recast their financial statement for period of 5 years.
- Section 131 is provision for voluntary revision after obtaining the permission from Tribunal.

Q-4-What is the role of the National Financial Reporting Authority (NFRA) constituted under Section 132?

- The NFRA constituted under section 132 has following roles:
  - Recommendation to central government on formulation and laying down of accounting and auditing policies and standards;
  - monitor and enforce the compliance with accounting standards and auditing standard;
  - oversee the quality of service of the professions associated with ensuring compliance with such standard.
- Further, where professional or other misconduct is proved, the NFRA has also the power of:
  - imposing penalty on individuals /firms
  - debarring the member or the firm
- The NFRA has recently conducted the Audit Quality Review in respect of Statutory Audit of IL&FS Financial Services Limited for the Year 2017-18 of BSR & Associates LLP and Deloitte Haskins and Sells LLP which can be accessed at https://nfra.gov.in/aqr.

Q-5-What is the compliance requirement of Section 134? What is the role of auditor in this regard?

- The section 134 prescribes various operational details relating to approval of the financial statements by the Board such as authorisation of the financial statements, comments by Board in respect of the qualifications or comments in Audit Report, dividend declaration etc.

- The section also prescribes various matters to be included as Directors' Responsibility Statement while preparing the Directors report. Some of the key matters are "the directors had prepared the annual accounts on a going concern basis; and he directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- As per SA-720- The Auditor's Responsibilities Relating to Other Information – the Director report is "other information" which the auditor should review and identify the discrepancies if any as compared to disclosures made in the financial Statements. Therefore, the auditor should review the report and also verify the compliance of reporting under Section 134 of the companies act 2013.

Q-6-What is the requirement of Section 136-Right of Member to Copies of Audited Financial Statement?

- The Section 136 requires circulation of copy of the financial statements, including consolidated financial statements along with auditor's report to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company twenty-one days before the date of the meeting.
- However, in case of these are sent less than twenty-one days before the date of the meeting then the same should be considered as complied if not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting has agreed for shorter notice.
- Based on the practical experience, many times in case private limited companies these notices are sent less than 21 days before the AGM. As an auditor, one should be careful about these compliances of Section 136 of the companies' act.

Q-7-When the company need to appoint Internal Auditor under Section 138 of the companies Act? What is the role of auditor is the same is not complied?

- The Section 138 read with Rule 13 of the Companies (Accounts) Rules, 2014 requires the following class of companies to appoint Internal Auditor (individual or a partnership firm or a body corporate):

Listed company	Mandatory irrespective of size
Unlisted Public Company	- Paid up share capital- more than ₹ 50 crore. OR - Turnover- ₹ 250 crore or more during the preceding financial year OR - Outstanding loans or borrowings from banks or public financial institutions- ₹ 100 crore or more at any point of time during the preceding financial year OR

Listed company	Mandatory irrespective of size
	- Outstanding deposits- ₹ 25 crore rupees or more at any point of time during the preceding financial year
Private company	- Turnover of ₹250 crore or more during the preceding financial year; OR - Outstanding loans or borrowings from banks or public financial institutions- ₹ 100 crore or more at any point of time during the preceding financial year

(The internal auditor may or may not be an employee of the company)

- Further, CARO 2020 which is applicable from FY 21-22 requires the auditor to comment upon the appointment of internal auditor and also the review of their reports. In case the company (beyond the above threshold) has not appointed the internal auditor, the auditor should make a comment in the CARO report.

Q-8-What is the exemption for the companies from preparation of consolidated financial statements as per Rule 6 of the Companies (Accounts) Rules, 2014?

- As per Rule 6, the company need not prepare the CFS if it meets the following conditions:

  a) *it is a wholly owned subsidiary or is a partially owned subsidiary of another company and all its other **member do not object** to the company not presenting consolidated financial statements.*

  b) *it is a company whose **securities are not listed** or are not in the process of listing on any stock exchange, whether in India or outside India and*

  c) ***its ultimate or any intermediate holding company** files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.*

- The auditor of the company taking such relaxation should ensure the compliance **of all the above condition** and suitable note/disclosure should be included in the Board of Directors report.

Q-9-What are the recent amendment in Schedule III which will be applicable to companies?

- The Ministry of Corporate Affairs (MCA) has amended schedule III vide its notification dated 24th March 2021. These amendments are applicable to Division I, II and III for class or classes of companies.

- Some of the Key amendments in these divisions are as follows:
  a) Ageing (from due date) of Trade payables into MSMEs, disputed or not, < 1 year, 1- 2 years, 2-3 years, > 3 years.
  b) Ageing of CWIP and Intangible assets under development.
  c) Ageing (from due date) of Trade Receivables into disputed or not, o/s for < 6 months, 6-12 months, 1-2 years, 2-3 years, > 3 years.
  d) Ultimate beneficiaries of loans given (i.e. whether evergreening done);
  e) Reconciliation of quarterly returns of current assets filed with banks and books.
  f) Various financial ratios and basis thereof.
  g) CSR related.
  h) Undisclosed income declared with tax authorities.
- Most disclosures are aligned to CARO 2020 clauses – which is effective for year ended 31st March 2022. The financial statements are drawn to comply with laws and formats applicable upto date of FS i.e. all laws and formats as on 31st March 2021 should apply. Therefore, amendments would apply where year ended is on or after 1st April 2021 – i.e. if year ended of a company is 30 Jun 2021, the amendments would apply.

Q-10-What are the key observations of FRRB or QRB with respect to the compliance of Schedule III of the companies act 2013?

- Following are some of key observations w.r.t. Schedule-III:
  - "a company" is holding more than 51% shares- a specific disclosure regarding shares held by the holding company was not made
  - Share Application Money pending for allotment reflected as part of Share Capital;
  - Reconciliation of each class of shares outstanding was not disclosed
  - Bonds/ Debentures- redemption/ conversion and shall be stated in descending order of maturity or conversion date.
  - Trade Payables should not includes dues payable in respect of statutory obligations like PF, dues towards purchase of fixed assets and other contractual obligations.
  - Advance given for Capital Asset included in Capital Work in Progress;
  - Trading Stock of the Company- was included in Finished Goods Stock not correct disclosure.
  - Goods-in-transit for each category of inventory should be disclosed;

❐

Overview and Important changes in aspect relating to Audit and Auditor

Background:

The Chapter X of the Companies Act, 2013 deals with the various section relating to the provision of auditor of the companies. Further the Companies (Audit and Auditors) Rules, 2014 deals with various operational rules relation to the Section under the above chapter.

Following are sections which are part of Chapter IX relation to the accounts of companies:

Section	Relating to	Section	Relation to
139	Appointment of auditors.	144	Auditor not to render certain services.
140	Removal, resignation of auditor and giving of special notice.	145	Auditor to sign audit reports, etc.
141	Eligibility, qualifications and disqualifications of auditors.	146	Auditors to attend general meeting
142	Remuneration of auditors	147	Punishment for contravention
143	Powers and duties of auditors and auditing standards.	148	Central Government to specify audit of items of cost in respect of certain companies

Further there are 14 rules as part of the Companies (Audit and Auditors) Rules, 2014 which has been amended from time to time.

Analysis of key points and changes:

This is one of the key chapters for the auditor as well the companies since it deals with various aspects which has an impact on reporting on financial statements of the company.

Since the introduction of this chapter as part of the companies act 2013, there has been very limited changes except few in terms of penalty provisions. However, various new reporting requirements are added as part of the Auditors report through the inclusion in various rules.

Recently, the MCA has added few of the new clauses to be reported as part of the auditor's report which has increased the scope and the responsibility of the auditor in future year.

Frequently Asked Questions (FAQ):

Q-1-What are key points relating to appointment, removal or resignation of the auditor to be kept in mind?

- The company as well as the auditor should keep following points in mind with respect to the provision on appointment:
  - *Maximum Tenure of appointment can be for 5 years and if the auditor is firm can be appointed for another period of 5 years- no need for annual ratification at the AGM;*
  - *Rotation of auditor is mandatory in case of private limited companies only if Paid up share capital is more than ₹50 crore or borrowing from Banks/FI is and deposit is more than ₹ 50 crore.*
  - *No rotation is required if its Small Company;*
  - *If the auditor is appointed in case of casual vacancy , there is a view that the first appointment should not be counted within a period of five years or ten years.*
- The company can remove the auditor during the tenure only after obtaining previous approval of the central government. In case, the auditor wish to resign he can do so after filing a statement with the regulator. Further the auditor needs to comply with the Implementation Guide on Resignation/Withdrawal from an Engagement to Perform Audit of Financial Statements issued by ICAI which requires as follows:
  - auditor should give valid reason like pending/ non-payment of audit fees is a valid reason for resignation;
  - withdrawal or resignation results from an inability to obtain sufficient appropriate audit evidence, the reasons for that inability;
  - circumstances leading to withdrawal or resignation from the engagement were communicated to an appropriate level of the management;
- Further, CARO 2020 also requires the incoming auditor in place of resigned auditor to evaluate the issues, objections or concerns raised by the outgoing auditors.

Q-2-What are the key issues which the company as well the auditor should keep in mind before the appointment as auditor? What are the services not allowed to be provided as the auditor of the company?

- The company as well the auditor should be very careful in evaluating the independence requirement before appointing/accepting an audit assignment. One of the important points which many times missed by the auditor is that ;

  "a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company."

It means if you are providing any services u/s 144 to the holding or subsidiary of the company then the firm/individual will be ineligible to appointed as auditor of the company.

- Further, after appointment as an auditor of the company one should be careful in terms of eligible services to be provided by the auditor as allowed under Section 144 of the companies Act 2013 or under Code of Ethics issued by ICAI.
- One of the issue which sometime puts the auditor in dilemma is the grey area around the definition of "Management Services". One can look at following to understand the scope/coverage of management services:
  - NFRA view in its recent Audit Quality Review report- (a)- in the form of doing actions/functions that would otherwise have to be done/undertaken by the management; or (b) providing any kind of support (inclusive of analysis, research, advice etc.) that is required by management for the performance of those actions/ functions.
  - ICAI Code of ethics has listed various services which are considered as Management Consultancy and other Services.
- Therefore, the auditor as well as the company should be very careful in terms of independence of the auditor while obtaining additional services from its own auditor.

Q-3 What are the points to be kept in mind by the auditor while reporting under Section 143(1) or Section 143(3) of the of the companies' act?

- The auditor should understand the difference in the reporting requirement u/s 143(1) and u/s 143(3). The reporting requirement u/s 143(1) are only to be reported/ commented only if the answer to such questions is in affirmative. However, in case of Section 143(3), the auditor needs to report on these clauses since the same are applicable to most of the companies.
- There is only few exceptional reporting on matters relating to Section 143(1). However, if as an auditor one has commented upon the transactions/event prejudicial to the interest of the company then the same should also be evaluated for reporting under section 143(1). [reporting in CARO clauses]
- While reporting under section 143(3), the auditor should be careful in terms of reporting on certain exceptional matters which may not be applicable in all the companies. Such as:
  - (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
  - (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

It has been observed by FRRB or QRB that the many times the auditor have not reported on the matters which are required to be reported u/s 143(3).

- The auditor should also refer and take guidance from Guidance Note on Reporting Under Section 143(3)(f) and (h) of the Companies Act, 2013, issued by ICAI while reporting on the above matters.

Q-4- Whether the auditor is primarily responsible to identify and report on frauds in the company as part of its auditor responsibility?

- The responsibility of the auditor with respect to the fraud is clearly identified and described in SA 240-The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements which states as follows:

  "An auditor conducting an audit in accordance with SAs is responsible for obtaining reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. There is an unavoidable risk that some material misstatements of the financial statements may not be detected, even though the audit is properly planned and performed in accordance with the SAs."

- Therefore, the auditor is primarily not responsible for identifying and report on frauds in the company. Further, section 143(12) requires such matters which has come to attention in the course of the performance of his duties as auditor and has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees.

Q-5-Whether it is necessary or compulsory for the auditor to attend the Annual General Meetings of the company? What if the auditor is unable to attend?

- *As per Section 146 of the Companies Act 2013 the auditor is require to attend the annual general meeting of the company. However, the auditor many times due to professional occupancy may not be able to attend in such case the auditor should write a letter to the company for leave of absence and keep the same on record as part of audit documents.*

Q-6-what is the requirement of the auditor to report on Internal Financial Control? Whether the auditor is required to report in respect of all the companies?

- As per Section 143(3)(i) the auditor is required to comment upon the adequacy of internal financial controls with reference to financial statements] and the operating effectiveness of such controls.

- However, such reporting requirements are not applicable for all the companies except which are covered as under:

  - which is a one person company or a small company; or

- which has turnover less than rupees fifty crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty-five crore

- The auditor should be careful about reporting under this matter in light of the recent changes in the definition of small company. The requirement of reporting on IFC-FR is not applicable to Small company.

Q-7- What are various specific issues on which the auditor needs to comment upon as per Rule 11 of the Companies (Audit and Auditors) Rules, 2014 ?

- The auditor along with the primary reporting requirement u/s 143(1) and 143(3) also need to report on the certain matters as per rule 11 of the Companies (Audit and Auditors) Rules, 2014. These matters are primarily with respect to the following:
  - disclosure of pending litigation on the company's financial position;
  - Provision towards long term contracts including derivative contracts;
  - Pending transfer to Investor Education and Protection Fund by the company.
- The auditor should specifically identify and make the reporting under each of the above clauses and should ask the management if corresponding disclosure relating to certain matters are not made in the financial statement for e.g. the above clause require disclosure of all litigation and not only direct or indirect tax litigations.
- The auditor should also discuss with the management in case there are certain onerous contract for which the provision is required to be made and not made by the management in the financial statements. Such non-compliance should be reported under the above clause including reporting on compliance of Accounting Standard u/s 133 of the companies act 2013.

Q-8-What are new clauses included in Rule 11 of the Companies (Audit and Auditors) Rules, 2014? Whether such clauses are applicable for FY 2020-21?

- The MCA vide its notification dated 24th March 2021 had included three new clauses to be reported under Rule 11 of the Companies (Audit and Auditors) Rules, 2014. These came into force with effect from the 1st day of April 2021, however the relevant financial year from which such reporting is applicable was not mentioned in the circular.
- Out of these three clauses one clause relating to accounting software was deferred for financial years commencing on or after the 1st April, 2022. However, no dates were notified for the other two clauses. There are two views which are prevalent in the industry on the applicability of such clauses. The majority view is that such clauses are applicable from the next financial year i.e. FY 2021-22 as the corresponding disclosures in the financial statements (particularly with respect to clause (e) is applicable from FY 2021-22.

- These new clauses are relating to following:
  - (e) loans and advances granted or received by the company with understanding to make investment or give loans to ultimate beneficiaries- mainly applicable in case of NBFC
  - (f) compliance of Section 123 relating to dividend declaration
  - (g) accounting software with audit trail – deferred for one year

Q-9-What are important changes in CARO 2020 which will be applicable from FY 2021-22? Which are the key areas that will increase the responsibility on the auditor?

- The CARO 2020 was Issued on 25th February 2020 after consultation with NFRA-applicable for FY 2019-20. However, the same is deferred to FY 2020-21 on 24th March 2020 and to FY 2021-22 on 17th December 2020. The same was deferred as CARO 2020 has put lot of responsibilities on the auditor without any corresponding assessment by the management. However, with the recent changes in Schedule-III now most of the clauses are backed by corresponding assessment by the management.
- The CARO 2020 (should be called as CARO 2022 now) has deleted once clause and added new seven clauses as compared to CARO 2016. These new clauses deal with following:
  - *Transaction Not recorded in Books;*
  - *Ability of Company to meet its Liabilities;*
  - *CSR Transfer of Unspent Amount to Fund*
  - *Statutory Auditor Resignation*
  - *CFS : reference to negative remarks in Subsidiary CARO*
  - *Internal Audit System (CARO 2003)*
  - *Cash Loss (CARO 2003)*
- In CARO 2020 the key areas where the responsibility of the auditor has increased in assessment of qualitative matters of financial statements such as analysis of various ratio, reconciliation of statements furnished to banks with the books etc.

Q-10-What are key observations of the FRRB or ORB on reporting by the auditors?

- Following are some of the key observations w.r.t. auditor reporting:
  - use of the word “reasonable” and “generally” while reporting on CARO clauses;
  - use of the word - As explained to us, We are informed, As informed- should be avoided
  - cost records are at the advance stage of preparation is not the correct reporting in CARO;
  - no fraud noticed or reported during course of audit- any fraud noticed by the company during the year needs to be reported.
  - Not reporting whether Auditor’s opinion is modified or not in respect of emphasis of matter;
  - Not including in the Management’s responsibility paragraph- Accounting standards and the circulars and guidelines issued by the RBI.
  - Not quantifying the impact of qualification

❒

Related Party Transaction (RPT) under the Company Law

Related Party Transactions (RPT) means transactions covered in Section 188 of the Companies Act, 2013, in relation to contracts or arrangements that a company does with parties related to it. Related Party is a Complex Term with multifarious issues. All companies are required to comply with requirements in relation with RPTs. The Company must adopt a Policy pursuant to the provisions of Section 188 of the Companies Act, 2013 ("the Act") read with The Companies (Meetings of Board and its Powers) Rules, 2014 and Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 (LODR will be applicable in case of Listed Company) to describe the process for identifying and approval or ratification of the RPTs including any modification thereof as well as establishing certain reporting requirements.

❑ RPT Provisions under Company Law:

1. Section 2(76) of the Companies Act, 2013:

"Related party", with reference to a company, means—

(i) A director or his relative;

(ii) A key managerial personnel or his relative;

(iii) A firm, in which a director, manager or his relative is a partner;

(iv) A private company in which a director or manager 1[or his relative] is a member or director;

(v) A public company in which a director or manager is a director 2[and holds] along with his relatives, more than two per cent of its paid-up share capital;

(vi) Any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager, **except in case where the advice, directions or instructions given in a professional capacity**

(vii) Any person on whose advice, directions or instructions a director or manager is accustomed to act, **except in case where the advice, directions or instructions given in a professional capacity**

(viii) Any Body Corporate which is—

(a) a holding, subsidiary or an associate company of such company;

(b) a subsidiary of a holding company to which it is also a subsidiary; or

(c) an investing company or the venturer of the company;";

2. Section 177(4) of the Companies Act, 2013

Provisions of Section 177(4) mandates the approval of the Audit Committee for all transactions with related parties (subject to the exception of transactions with wholly owned subsidiaries), would continue to apply. Further the Audit Committee may

make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed in Rule 6A of Companies (Meetings of Board and its Powers) Rules, 2014.

A transaction, other than a transaction referred to in section 188 of the Act, between a holding company and its wholly owned subsidiary company is exempted from the requirement of Audit Committee approval under Section 177 of the Act.

3. Section 188 of the Companies Act, 2013

Provisions of Section 188 of the Act clearly states that if the transactions fall within the meaning of Section 188, then these need to be disclosed in the Board / Director's Report to the shareholders along with a justification in support of the transactions.

Section 188 includes within its ambit any contract or arrangement with a related party with respect to:

a. sale, purchase or supply of any goods or materials;

b. selling or otherwise disposing of, or buying, property of any kind;

c. leasing of property of any kind;

d. availing or rendering of any services;

e. appointment of any agent for purchase or sale of goods, materials, services or property;

f. such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

g. underwriting the subscription of any securities or derivatives thereof, of the company

❑ Current Threshold Limits regarding RTPs (updated till 27.05.2021)

Ministry of Corporate Affairs (MCA) notification dated 18.11.2019 has introduced the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019 further to the Companies (Meetings of Board and its Powers) Rules, 2014 to specify the threshold limits for transactions beyond which RPTs would require shareholders' approval:

Nature of Related Party Transactions	Amended Threshold Limit*
Sale, purchase or supply of any goods or material (directly or through an agent).	Amounting to ten percent (10%) or more of the turnover of the company.
Selling or otherwise disposing of, or buying, property of any kind (directly or through an agent).	Amounting to ten percent (10%) or more of the turnover of the company.
Leasing of property of any kind.	Amounting to ten percent (10%) or more of the turnover of the company.
Availing or rendering of any services (directly or through an agent)	Amounting to ten percent (10%) or more of the turnover of the company
Appointment to any office or place of profit in the company, subsidiary company or associate company	Remuneration exceeding ₹ 2,50,000 per month
Underwriting the subscription of any securities or derivatives of the company	Remuneration exceeding one percent (1%) of net worth

*Note: *limits specified above shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.*

❑ Arm's Length Price & Transactions:

Arm's Length Price means a price at which a transaction has been made by two unrelated parties and parties freely agrees to transact and there is no conflict of interest in the transaction. Arm's Length can be treated as independent relation shared between independent parties. Arm's Length Price demonstrates the price that should have been charged between related parties had those parties were not related to each other.

Arm's Length Transactions: It would mean a transaction between two related parties that is conducted without any conflict of interest. a transaction when conducted as if they were unrelated, so that there is no conflict of interest, do not fall under the ambit of Section 188 and require no Board or shareholder ratifications.

❑ Punishment for Contravention of RPT Provisions:

Section 188(5) of the Companies Act, 2013 deals with the provisions with respect to the penalty / fine in case non-compliance under RPT's:

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the any provisions of section 188 of the Act shall be punishable

In case of Listed Company	In case of Company other than Listed Company
Penalty of ₹ 25,00,000/-	Penalty of ₹ 5,00,000/-

**Penalty Clause has been amended via the Companies (Amendment) Act, 2020. Effective from 21st December 2020*

❑ RPT's Audit Checklist

Sl.	Particulars
1	Whether the company has prepared a list of related parties as per section 2(76) of the Act and there exists a system to check whether any contracts / arrangements are being entered into with any of those Parties. Also any suitable mechanism is derived to intimate the same to the secretarial department.
2	Whether the company has maintained the register of contract/ arrangement entered by the company along with the details of contract and arrangement in Form MBP-4.
3	Check whether the company is claiming exemption from the applicability of the section on the grounds that the transactions are in the ordinary course of business and are on Arm's Length basis. Check whether the Board has taken an informed decision about the nature of transaction based on criteria given in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Sl.	Particulars
4	Check whether the company has entered into a contract/ arrangement with any related party through a board resolution at a meeting of the board.
5	The company has obtained prior approval of the shareholders by a resolution in case of a company having paid up share capital of not less than such amount, or transactions not exceeding such sums as specified in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.
6	Check whether a member of the company, who is a related party and with whom the transaction is being entered into, has not voted on such resolution for approving the same. In case of companies in which 90 percent or more members in number are relatives and related parties the above condition will not apply.
7	The company has annexed explanatory statement to the notice of the board or general meeting as may be applicable disclosing the details required under rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.
8	Check whether any director or related party is appointed as an office or place of profit in the company, its subsidiary or associate company and complied with applicable provisions of Section 188 of the Companies Act, 2013.
9	Check whether omnibus approval for the related party transactions has been given by the Audit committee and is in accordance with Rule 6A of the Companies (Meeting of Board and its powers) Rules, 2014
10	Whether any contract has been entered by the company without the approval of the board/ approval of the company. If Yes, Whether such contract or Arrangement has been ratified by the board / Company as the case may be.

❑ Conclusion:

The Concept of Related Party Transaction is very wide Complex in nature and mostly depends upon nature of Transaction and Arm's Length Price. The scope of RPT is significantly widened. Company Law, SEBI Act (SEBI LODR) and Account Standards deals with several important aspects regarding transactions with Related Parties. Related party transactions (RPT) regulating both listed and unlisted companies in India. Computation of arm's length pricing for RPTs is very crucial. Non-compliance with the law and rules could render RPTs void and entail penalties for the violator.

❒

Important changes in provisions related to Board of Directors

As per the Narayana Murthy Report on Corporate Governance of 2003, "management of companies must accept the fact that the shareholders of the company are the true owners of the company and this right is inalienable. Management only acts as a trustee on behalf of the shareholders and the essence of corporate governance is about commitment to values, conduct the business in an ethical manner by making a distinction between personal and corporate funds, while managing the company."

The Management has to use strategic oversight over business operations while directly measuring and rewarding management's performance. Simultaneously they have to ensure compliance with the legal framework, integrity of financial accounting and reporting systems and credibility in the eyes of the stakeholders through proper and timely disclosures. Board's responsibilities inherently requires the application of judgment. Therefore the Management necessarily has to be vested with a reasonable level of powers. While corporate governance may comprise of both legal and behavioral norms, no written set of rules or laws can contemplate every situation that a director or the board collectively may find itself in. Besides, existence of written norms in itself cannot prevent a director from abusing his position while going through the motions of proper deliberation prescribed by written norms. Therefore behavioural norms that include informed and deliberative decision making, division of authority, monitoring of management and even handed performance of duties owed to the company as well as the shareholders are equally important. The duties of compliance has to be seen in context of the common law framework prevalent in the country along with a wide variety of ownership structures including family run or controlled or otherwise closely held companies.

Position of Directors

The position held by the directors in any corporate enterprise is a tough subject to explain as held in the case of Ram Chand & Sons Sugar Mills Pvt. Ltd.v. Kanhayalal Bhargava. The position of a director has been cited by Bowen LJ in the case of Imperial Hydropathic Hotel Co Blackpool v. Hampson as a versatile position in a corporate body. Directors are sometimes described as trustees, sometimes as agents and sometimes as managing partners. These expressions are from indicating point by which directors are viewed in particular circumstances.

Duties of Directors

Section 166 deals with provisions related to duties of Directors and state the manner in which a director of a company shall act in accordance with the articles of the company. It is prescribed that A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of

environment. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. A director of a company shall not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Appointment of Directors

The appointment of Directors of a company is strictly regulated by the Companies Act, 2013.

Company to have Board of Directors

Every company is required to have a Board of directors and it should be consisting of individuals as directors and not an artificial person. Section 149 lays down the minimum number of directors required in a company as follows:

Public Company– At least 3 directors

Private company- At least 2 directors

One person company– Minimum 1 director

There can be a maximum of 15 directors. A company may appoint more than 15 directors after passing a special resolution. The Central Government may prescribe a class or classes of a company have a minimum one women director. Every company is also required to have a minimum of one director who has stayed in India for a total period of 182 days during the financial year..

Independent Directors

The provisions of Independent Directors has been laid down under section 149(4) of the Companies Act, 2013. This section lays down that at least one-third of the total number of directors should be independent directors in every listed company The Central Government may prescribe the minimum number of independent directors in public companies.

The following class or classes of companies shall have at least two directors as independent directors -

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Woman Director on the Board.

MCA has prescribed few class of Companies which shall have at least one woman director on its Board and those are -

(i) every listed company;

(ii) every other public company having -

(a) paid–up share capital of one hundred crore rupees or more; or

(b) turnover of three hundred crore rupees or more:

Appointment of directors through election by small shareholders

A listed company is required to have one director who should be elected by small shareholders as per section 151 of the Companies Act, 2013. Small shareholders in this context are referred to shareholders holding shares of the value of maximum ₹ 20,000.

A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a "Small Shareholders Director" elected by the small shareholders:

First Directors

The subscribers of the memorandum appoint the first directors of a company. They are generally listed in the articles of the company. If the first director is not appointed, then all the individuals, who are subscribers become directors. The first director holds the office only up to the date of the first annual general meeting of public company, and the subsequent director is appointed as per the provisions laid down under section 152.

Appointment at the general meeting

Section 152 lays down the provision that directors should be appointed by the company in the General Meetings. The person so appointed is assigned with a director identification number. He also has to make sure in the meeting that he is not disqualified from becoming a director.

The individual appointed has also to file his consent to act as a director within 30 days of appointment with the registrar.

Annual rotation

The retirement of the directors by annual rotation can be prescribed by the company in the Articles. If not so, only one-third of the directors can be given a permanent appointment. The tenure of the rest of them must be determined by rotation.

The first director holds the office only up to the date of the first annual general meeting of public company and , one-third of such directors will go out, and the directors who were appointed first and has been in the office for the longest period will retire in the first place. When two or more directors have been in the office for an equal period of time, their retirement will be determined by mutual agreement, or by a lot.

Reappointment [section 152]

The vacancies created should be filled up at the same general meeting. The general meeting may also adjourned till the same day in the next week at same time and place. . When the meeting resembles and no fresh appointment is made neither there is any resolution for the appointment, then the retiring directors are considered to be reappointed. The exception to this practice is that the retired directors will not be considered to be reappointed when:

- The appointment of that director was put to the vote but lost.
- If the director who is retiring has addressed to the company and its board in writing that he is unwilling to continue.
- If he is disqualified.
- When an ordinary or special resolution is required for his appointment.
- When a motion for appointment of two or more directors by a single resolution

is void due to being passed without unanimous consent under section 162.

Fresh Appointment

When it is proposed that a new director should be appointed in the place of retiring director, then the procedure laid down under section 160 of the Companies Act, 2013 is followed:

Appointment by nomination

The appointment of Directors can also be made with respect to the Company's articles and not only through the general meetings. When an agreement between the shareholders has been included in the articles that entitles every shareholder with more than 10% share to be appointed as a director, then they can be nominated as director. Also subject to the articles of the company, the Board can appoint any nominated person by an institution in pursuance of law as a director.

Appointment by voting on an individual basis

The appointment of a director is made by voting at the general meeting as laid down under section 162 of the Companies Act, 2013. The candidates have to vote individually and the wishes of the shareholders regarding each proposed director are required.

As held in the case of *Raghunath Swarup Mathur v. Raghuraj Bahadur Mathur,* when two or more directors are appointed on the basis of single resolution and voting then it is considered to be void in the eyes of law.

Appointment by proportional representation

As per section 163 of the Companies Act, 2013, the article of a company can enable the appointment of directors through the system of voting by proportional representation. This system of voting is used to make effective minority votes. This system of proportional representation can be followed by a single transferable vote or by the system of cumulative voting or other means.

Appointment of Directors by Board

Generally, the appointment of the directors is done in the annual general meeting of the shareholders but there are two instances when the Board can also appoint a new director: If the article empowers the Board to appoint additional directors along with prescribing the maximum number. Section 161 of the Act also authorises the directors to fill casual vacancies.

Appointment by Tribunal

Under section 242(j) of the Companies act 2013, the National Company Law Tribunal has the power to appoint directors.

Disqualifications

The minimum eligibility requirement for the appointment of directors has been laid down under section 164 of the Companies Act, 2013.

Removal of directors

The removal of directors takes place by:

- Shareholders
- National Company Law Tribunal
- Resignation
- Removal by Shareholders

Section 169 of the Companies Act 2013 provides that a director can be removed from his office before the expiration of his term of office by an ordinary resolution. This section does not apply when

- The director is appointed by the tribunal in pursuance of section 242.
- The company has adopted the system of electing two-thirds of his directors by the method of proportional representation.

Resignation

Earlier, there was no provision for the resignation that by what procedure a director can resign. The resignation was recognised under the provisions laid down under section 318 of the Companies Act, 1956. Under this section, it was held that when a director resigns his office, he is not entitled to compensation.

If the articles mention the provisions for resignation then it will be followed. In the case of Mother Care (India) Pvt. Ltd. v. Ramaswamy P Aiyar, the court held that the resignation of a director is effective even if he is the only director in the office. Now, after the Act of 2013, section 168 lays down the provisions that The director can resign from his office by giving written notice to the company. On receiving the notice, the board has to take notice of it. The registrar needs to be informed by the company within the prescribed time period. The director has to send his copy of the resignation to the registrar along with the detailed reasons within 30 days of the resignation. Even after resignation, the director is held responsible for any wrong associated with him and which happened during his tenure.

Vacation of Office of Director – Section 167

This section deals with provisions related to vacation of office of Director and it has given some criteria for that and which are as follows

(a) he incurs any of the disqualifications specified in section 164;

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Amendment w.e.f. 21st December, 2020– *Earlier the penalty was prescribed as "with imprisonment for a term which may extend to one year or five lakh rupees, or with both" and now it has been relaxed as* "punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees".

Quorum for Meetings of Board - Section 174

Here we will discuss about the quorum for a meeting of the Board of Directors of a company which shall be one third of its total strength or two directors, whichever is higher.

Director can present themselves physically and also online but the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum.

In case of death of one Director out of two or any casual vacancy happened in Board then the continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

In case of related party transactions wherein Director in interested party and Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Powers of Directors

General powers vested under section 179

Section 149 of the Companies Act, 2013 empowers the directors with the general power vested in the Board. The Board of directors is entitled to exercise all the powers and do all required actions which a company is authorised to exercise. But, such action is subject to certain restrictions. The powers of directors are co-extensive with the powers of the company itself. The director once appointed, they have almost total power over the operations of the company. There are two limitations on the exercise of the power of directors which are as follows.

- The board of directors are not competent to do the acts which the shareholders are required to do in general meetings.
- The powers of directors are to be exercised in accordance with the memorandum and articles.

The individual directors have powers only as prescribed by memorandum and articles. The intervention of shareholders in exceptional cases. In following exceptional situations the general meeting is competent to act in matters delegated to the Board:

- When directors have acted mala fide.
- When directors have due to some valid reason become incompetent to act.
- The shareholders can intervene when directors are unwilling to act or there is a situation of deadlock.
- The general meetings of shareholders have residuary powers of a company.

Restrictions on powers under the statutory provision

The Companies Act 2013 also lays the manner in which the powers of the company

is to be exercised. There certain powers which can be exercised only when its resolution has been passed at the Board's meetings. Those powers such as the power:

- To make calls.
- To borrow money.
- To issue funds of the company.
- To grant loans or give guarantees.
- To approve financial statements.
- To diversify the business of the company.
- To apply for amalgamation, merger or reconstruction.
- To take over a company or to acquire a controlling interest in another company.

The shareholders in a general meeting may impose restrictions on the exercise of these powers.

Powers to be exercised with general meeting approval. Section 180 of the Companies Act 2013 states certain powers which can be exercised by the Board only when it is approved in the general meeting:

- To sale, lease or otherwise dispose of the whole or any part of the company's undertakings.
- To invest otherwise in trust securities.
- To borrow money for the purpose of the company
- To give time or refrain the director from repayment of any debt.

When the director has breached the restrictions imposed under the sections, the title of lessee or purchaser is affected unless he has acted in good faith along with due care and diligence. This section does not apply to the companies whose ordinary business involves the selling of property or to put a property on lease.

Power to constitute an Audit committee

The board of directors are empowered under section 177 to constitute an audit committee. It needs to be constituted of at least three directors, including independent directors. In the committee, the independent directors need to be in the majority. The chairperson and members of the audit committee should be persons with the ability to read and understand the financial statements.

The audit committee is required to act in accordance with the terms of reference specified by the Board in writing.

Power to constitute Nomination and Remuneration Committees and Stakeholders Relationship Committee

The Board of directors can constitute the Nomination and Remuneration Committee and Stakeholders Relationship Committee under section 178. The Nomination and Remuneration Committee should be consisting of three or more non-executive directors out of which one half are required to be independent directors.

The Board can also constitute the Stakeholders Relationship Committee, where the board of directors consist of more than one thousand shareholders, debenture holders or any other security holders. The grievances of the shareholders are required to be considered and resolved by this committee.

Power to make a contribution to charitable or other funds

The Board of directors of the company is empowered under section 181 to contribute

to the bona fide charitable and other funds. When the aggregate amount of contribution, in any case, exceeds the 5% of the average net profit of the company for the immediately preceding financial years, then the prior permission of the company in a general meeting is required.

Power to make a political contribution

Under section 182 of the Companies Act 2013, the companies can make a political contribution. The company making a political contribution should be other than a government company or a company which has been in existence for less than three years.

The contribution needs to be sanctioned by a resolution passed by the Board of Directors.

Power to contribute to National Defence Fund

The Board of Directors is empowered to make contributions to the National Defence Fund or any other fund approved by the Central Government for the purpose of National defence under section 183 of the Companies Act 2013. The amount of contribution can be the amount as may be thought fit. This total amount of contribution made should be disclosed in the profit and loss account during the financial year which it relates to.

Latest Amendments

Approval of Matters to be dealt with through Video Conferencing or Other Audio Visual Means – vide amendment dated 30th December, 2020

Vide the Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020 dated 30th December, 2020, due to pandemic during COVID-19, MCA has extended the relaxation period from 31st December 2020 to 30th June 2021 for following matters which can now be dealt with and approved by Board in any meeting held through video conferencing or other audio visual means.-

(i) the approval of the annual financial statements;

(ii) the approval of the Board's report;

(iii) the approval of the prospectus;

(iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and

(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

The above matters were allowed to be discussed and approved only in physical Board meetings and not allowed to be dealt with by Board in any meeting held through video conferencing or other audio visual means.

Amendments in limits prescribed for Related Party Transactions - vide amendment dated 18th November 2019

In this amendment, MCA has rearranged some limits with respect to Contract or Arrangement With a Related Party as follows

a. Any contracts or arrangements with respect to sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

Amendment – Earlier the above criteria was used to be read as "amounting to ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower" but now "or rupees one hundred crore, whichever is lower" is omitted w.e.f. dated 18th November 2019

b. selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

Amendment – Earlier the above criteria was used to be read as "amounting to ten percent or more of net worth of the company or rupees one hundred crore, whichever is lower" but now "or rupees one hundred crore, whichever is lower" is omitted w.e.f. dated 18th November 2019

c. leasing of property any kind amounting to ten per cent or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188;

Amendment – Earlier the above criteria was used to be read as "amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower" but now it has been substituted with "amounting to ten per cent or more of the turnover of the company" w.e.f. dated 18th November 2019

d. availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Amendment – Earlier the above criteria was used to be read as "amounting to ten percent or more of the turnover of the company or rupees fifty crore, whichever is lower" but now "or rupees fifty crore, whichever is lower" is omitted w.e.f. dated 18th November 2019

Relaxation for gap between two board meetings extended to 180 days from 120 days dated 3rd May, 2021

As we are aware that during this pandemic COVID-19 period, it is difficult for every company to hold Board meetings within prescribed time and as provisions of section 173 of Companies Act 2013 requires that every Company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

However MCA has given relaxation to hold Board meetings for the first two Quarter i.e. April to June 2021 and July to September 2021 with a gap of 180 days instead of 120 days.

Conclusion

The directors of a company are like its brain. They have a major contribution to a company's growth and development and their position is very important for the company. They are given certain powers under the Companies Act 2013 so that they can contribute their best to the company. Along with powers, certain restrictions are also imposed on its exercise to avoid any misuse of such powers.

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Important Amendment in CSR Provision and Rules

Introduction

The CSR Amendment Rules, 2021 issued by the MCA on 22nd January 2021 w.e.f 23rd January 2021 bought in major changes in the CSR regime in India right from the activities which would be considered as CSR to the means of implementing CSR. The amendments are not just limited to the changes made within the section, rather, it extends to form substantial changes within the implementation of the whole CSR activity. Infact, few fresh concepts have also been introduced within the Rules like registering of implementing agencies by filing e-form CSR-1 with the MCA, CFO certificate, mandatory impact assessment. With the approaching into force of this amendment, the penal provisions for non-compliance CSR provisions have also inherit force, and have compulsory mandated the companies to spend CSR or else the companies have to bear the penalties for not adhering to the provisions.

In this article, we discuss the impact of the significant changes made in the CSR Rules by the MCA.

Key Provisions of Companies (CSR Policy) Amendment Rules 2021

The key provisions of the Companies (CSR Policy) Amendment Rules 2021 are as follows:

- Rule 2: Definitions;
- Rule 4: CSR Implementation;
- Rule 5: CSR Committees;
- Rule 7: CSR Expenditure;
- Rule 8: CSR Reporting;
- Rule 9: Website Disclosure;
- Rule 10: Transfer of Unspent CSR

Activities Qualified as CSR.

According to the latest amendment, the following expenditure will now be included in the list of CSR activities:

1. Research & development of new vaccines, medication, and medical devices related to COVID-19 in the firm's normal course of business for financial years 2020-21, 2021-22, 2022-23.
2. Overseas training of Indian sports personnel representing any State or Union territory at national level or India at international level.

According to the latest amendment, the following expenditure will NOT be included in the list of CSR activities:

1. Contribution of any amount directly or indirectly to any political party
2. Activities benefiting employees of the company.
3. Activities on sponsorship basis for deriving marketing benefits for its products or services.

Compulsory Registration of CSR Entity

Every entity referred to earlier, including a trust, society or section 8 company established by the company, either singly or along with any other company or a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, which intends to undertake any CSR activity, must register itself with the Central Government (MCA) by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021,

However, it shall be significant to state that in case a company is undertaking a new CSR project form 01.04.2021, then, in that case, form CSR 1 will need to be first signed and verified by a Practicing CA, CS or Cost Accountant in practice prior to its submission.

On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

Engagement of International Organizations for CSR Designing

A company may engage International Organizations for designing, monitoring and evaluation of the CSR projects and for capacity building of their own personnel for CSR.

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

CFO Certification

The Board of a company shall satisfy itself that the funds so disbursed have been utilized for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

Role of CSR Committee in formulating Annual Action Plan

The CSR Committee of the company to formulate and recommend to the Board of Directors an annual action plan in line with the CSR Policy. The said policy must include the following details:

- A complete list of the approved CSR Programmes and project, based on schedule VII;
- The manner of executing such CSR projects or Programmes;
- The modes of utilizing funds and implementation of schedules for the Programmes or projects;
- The monitoring and reporting mechanism for the CSR projects;
- All the details concerning the need and impact of the projects undertaken by the company;

However the Board of Directors has the power to alter or modify any of the decided plans at any time during the financial year. But the same will only be done after receiving the recommendation from the CSR committee, which should be based on a reasonable justification as well.

Treatment of Unspent Amount Of CSR

If the Company fails to spend 2% of the Average net profit, then the following shall be the treatment of the unspent amount:

Analysis of Unspent Amount	Actionable	Timeline
Unspent amount pertains to 'ongoing project'	Transfer such unspent amount to a separate bank account to be called as "Unspent CSR Account"	Within 30 days from the end of the financial year.
Unspent amount does not pertain to 'ongoing project'	Transfer unspent amount to the National Fund or the Fund prescribed under Schedule VII.	Within 6 months from the end of the financial year

Until a fund is specified in Schedule VII for the purpose of transferring the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act."

Setting off of CSR Expenses

If company wants to spend more amount on CSR activities than decided under section 135 (5) of the Companies Act 2013, then in that case such an excess amount or funds used needs to be set off against the prerequisites mentioned under the said section. Also, it shall be important to note that such an amount needs to set off within the next three financial year, subject to the conditions as follows:

- The amount available for setoff must not include any surplus arising out of the CSR activities.
- The Board of Directors must have passed resolution in that effect;

Thus, excess CSR spend in any particular year can be set off against CSR expenditure over the immediate succeeding three financial years and the Board of the company passing a resolution to that effect.

CSR on Acquisition or Creation of Asset

If a company wants to spend CSR amount on the acquisition or creation of a capital asset, the same shall be held by-

- Company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number.
- beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- a public authority

Impact Assessment of CSR

Every Company, which is having an average CSR Obligation of Rs 10 crores or more in accordance with section 135 (5) of the Companies Act 2013, needs to undertake an impact assessment by way of an independent agency of their CSR plans having an outlay of Rs 1 crore or more, also, which have completed not less than one year prior to undertaking impact study.

Display of CSR Activities on Website

It is mandatory and compulsory for the Board of Directors of the company to disclose the details as mentioned below on the official website:

- Composition of the CSR Committee;

- CSR Plans and Policy approved by the BOD;
- CSR Policy;

Penalty Clause

Penalty on the Company:

Up to twice the amount required to be transferred to fund specified in Schedule VII or Unspent CSR account or ₹ 1 crore, whichever is lower.

Penalty on the Officer in Default:

1/10th of the amount required to be transferred to Fund specified in Schedule VII or Unspent CSR account or ₹ 2 lakhs, whichever is lower.

Conclusion

With these amendments coming into force, companies now face a "comply or suffer" situation, where unspent funds would have to be transferred as specified under the Companies Act, 2013. Companies cannot give fortuitous reasons accounting for the gaps in CSR spending trends. Additionally, in accordance with the Companies Auditor's Report Order ("CARO") 2020, auditors are required to provide their inputs and comments on the CSR provisions with specific reference to the transfer of the unspent amount. The recent changes will infuse more transparency and increase the level of accountability of the companies towards the enhancement of environment and society.

Recent Notifications by MCA for Spending CSR Funds for COVID-19

- MCA vide its circular dated 22nd April 2021 has clarified that spending of CSR Funds for "setting up makeshift hospitals & temporary COVID Care Facilities is an eligible CSR Activity.
- MCA vide its circular dated 05th May 2021 has clarified that spending of CSR funds for 'creating health infrastructure for COVID care, establishment of medical oxygen generation and storage plants, manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 or similar such activities are eligible CSR activities.

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All About Declaration & Payment of Dividend

Introduction

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest. In commercial usage, the term "Dividend" refers to the share of profits of a company that is distributed amongst its Members. The term "Dividend" has been inclusively defined in the Act to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between Interim and Final Dividend

Analysis regarding Provisions of Dividend

a) Section 123(1)(a) provides that dividend shall be paid from (i) profits of the Company for that year (ii) profits of earlier years (iii) Out of both or (iv) Money provided by the Central or State Governments for the payment of dividends in pursuance of the guarantee given by that Government.

b) Transfer to reserves from profits is, in view of the wording of first proviso to Section 123(1), optional. Thus, there is no mandatory requirement in law, as was the case under the Companies Act, 1956 to make such transfer.

c) However, if dividends are sought to be declared out of "accumulated profits" the provisions of the Rules would have to be followed, as provided for in the second proviso to Section 123(1).

i) The recourse to compliance of Rules is attached only if the dividends are sought to be declared out of the accumulated profit earned by it in previous years and **transferred by the company to the reserves.** In other words, it is only if dividends are sought to be declared from reserves created out of profits in previous years, that the question of compliance with the Rules arise. In view of clear provisions of Section 123(1), and read with the second proviso, however, if the dividends are sought to be declared out of the balance in profit and loss account, the requirement of compliance with the Rules does not arise.

ii) The third proviso to Section 123(1) states that no dividends shall be declared from reserves that are not free reserves. Read with the express provisions of Section 123(1) and the first and second provisos, it is clear that this does not operate as a bar on declaration of dividends out of balance in profit on loss account not transferred to reserves. It, however, does operate as a bar on declaration of dividends out of reserves that are not free reserves.

Interim Dividend

a) Section 123(3) provides that the Board may declare interim dividend out of {i) surplus in profit and loss account and {ii) out of profits of the financial year in which the interim dividend is sought to be declared.

   i) The proviso to this sub-section, however, provides for certain restrictions if there has been a loss in the current financial year till the end of quarter preceding the declaration of interim dividend. In such a case, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

   ii) A question may arise as to whether the proviso will restrict declaration of the interims dividends even if there is sufficient balance in Profit and loss account, but there is loss during the current financials years. To take an example, a company seeks to declare a dividend of ₹ 100 Lacs, when it has accumulated balance in the profit and loss accounts of ₹ 2000 lacs while it has suffered a loss during the current financial year of ₹ 50 Lacs. Even after set off of such loss of ₹ 50 lacs, there is a balance of ₹ 1950 lacs. Does this mean that the proviso would apply and the company is restricted to a rate of dividends that is not higher than the average dividends of the past three financials years? While strict reading of the wording of the proviso by themselves do raise a concern, it is submitted that a better view is possible to be taken that interim dividends out of past accumulated profits can be made, after, of course setting, off of losses of currents years. However, a clarification by the Ministry of Corporate Affairs may put such issue beyond doubt.

Declaration of dividends out of reserves

The Rules provide for declaration of dividends out of reserves, in case of inadequacy or absence of profits.

a) The rate of dividends shall not exceed average rate of dividends in the preceding three financial years. However, this will not apply if the Company has not declared any dividend in each of the three preceding financial years.

b) The amount drawn from reserves from such accumulated profits shall not exceed one-tenth of the sum of the company's paid up share capital and free reserves.

c) Such amount so drawn shail be first used to set off the losses incurred during that financial year in respect of which dividends are sought to be declared out of reserves.

d) The balance in reserves after such withdrawal shall not fall below 15% of the paid-up share capital.

Dividend on partly paid-up shares

Clause 83(i) of Table F reads as follows (emphasis provided): -

83. (i) Subject to the rights of persons, if any, entitled to shares with special rights as

to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

Thus, it can be seen that the said clause requires that the dividend on partly paid up shares shall be paid according to the amounts paid up or credited as paid on such shares, unless, of course, the Articles/ terms of issue otherwise provide.

Certain FAQ's For Better Understanding of Provision

1. What is the exact interpretation of "Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf"?

   Answer: - As already explained in detail earlier, the phrase refers to reserves created out of profits in past years.

2. What "Free Reserves" & "Such Accumulated profit" mentioned in rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 exactly refers?

   Answer: - The term will have to be read in light of the provisions of the Act including the definition of free reserves and Section 123. Free Reserves would not include items such as securities premium, revaluation reserves, etc.

3. Whether the limits (one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement) as prescribed in second proviso to section 123(1) r.w. rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 is applicable only to accumulated profits earned by the Company in its previous years which is transferred to the reserves OR accumulated profit and reserves of the Company?

   Answer: - In view of clear use of the term "free reserves", it will refer to all the items that form part of Free Reserves as per the definition of the term in Section 2(43) of the 2013 Act.

4. What will be the situation in case interim dividend is declared after due compliances of relevant provisions however at the end of FY the Company suffers with huge normal / abnormal loss.?

   Answer. - As suggested above, though there is no specific and direct requirement in the Act/Rules it is advisable to ensure that the full year's depreciation for the current year is provided for while calculating amount available for interim dividend. Having considered that, it will have to be seen what the situation was as at the date of declaration of interim dividend. The Board will have to be generally diligent and there should be no reason to believe that the Company may end the year with huge loss. In such a case, there may not be any violation of law

in case interim dividend is declared and paid but the Company at the end of the year has huge and unforeseen loss.

5. Whether the rules (Declaration of Dividends out of reserves) are also applicable to Interim Dividend Declaration out of reserves?

Answer: - Dividends, as per the definition of this term in Section 2(35), includes interim dividend. The second proviso to Section 123(1) permits declaration of dividends out of reserves provided that the prescribed rules are complied with. Section 123(3) provides for declaration of interim dividends out of certain specified surpluses. No further provision has been made in Section 123(3) for declaration of interim dividends out of reserves. There can be two views on whether interim dividends can be declared out of reserves.

One view can be that since dividends include interim dividends, the enabling second proviso to Section 123(1) ought to extend to interim dividends also.

Section 123(3) could be seen, as per this view, as an enabling provision to declare interim dividends even out of current year's profits.

However, the second and, in my opinion, better view is that Section 123(3) creates a special situation in respect of interim dividend and permits declaration of interim dividends out of specified surplus/ profits only. No further enabling provision exists to declare interim dividend out of reserves. In view of this, in my opinion, the better view is that interim dividends cannot be declared out of reserves.

6. Is that a law that Interim Dividend can only be declared out of Surplus available?

Answer. - In light of discussion in reply to immediately preceding query, the answer is Yes. Interim dividend can be declared only out of specified surplus/ profits.

7. What will be situation of dividend declaration in case the Company has during the year ended earned Profit however having accumulated losses of previous years. What compliance need to be taken care of?

Answer: - If there is a net surplus taking into account the profits of current year after adjustment of losses of previous years, an interim dividend can be declared, subject to the limits as specified in the proviso to Section 123(3).

8. Whether it is possible to declare & distribute dividend from the reserves in excess of the limits envisaged under the prescribed provisions through approval of Central Government under the Companies Act, 2013?

Answer:- There is no specific provision in law providing for making an application to the Central Government for approval for declaration of dividends in excess of specified limits under law. Generally, however, attention is invited to the powers of the Court to permit reduction of capital.

9. Apart from penal clauses of Companies Act, 2013, what will be the position of Dividend amount already given? Whether the same need to be recovered back or any waiver of recovery should be applied for?

Answer:- There are no specific provisions in the Companies Act, 2013, for recovery of dividends declared in violation of law or for waiver of such illegal dividends. However, there is an arguable case that such dividends declared in violation of law are void and hence the amounts can be recovered by the Company from the shareholders.

Recommendation of the Board

The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

Depositing the amount of dividend declared into a separate bank account

The dividend declared must be deposited in a separate bank account within five days of its declaration and the same shall be used for payment of dividend.

Dividend to be paid in cash

Dividend shall be paid only in cash. The dividend payable in cash may be paid either by cheque or warrant or in any electronic mode to the shareholders entitled to the payment of dividend.

Penalty for non-distribution of Dividend After Declaration

Where a dividend has been declared by a company but not paid or the warrant in respect thereof has not been posted, within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company who is knowingly a party to the default, shall be punishable with imprisonment for a term which may extend to two years and with a minimum fine of one thousand rupees for every day which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

In the following cases, there would not be any punishment for default

- ✓ Where dividend could not be paid by reason of the operation of any law;
- ✓ Where a shareholder has given directions to the company regarding the payment of the dividend and it is not possible to comply with those directions;
- ✓ Where there is a dispute regarding the right to receive the dividend.
- ✓ Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- ✓ Where, for any other reason, the failure to pay the dividend or post the warrant within the period aforesaid was not due to any default on the part of the company.

Unpaid Dividend Account

Sometimes, there may arise a situation that after declaration of dividend, the dividends remain unpaid or unclaimed and the amount

may be unused in the bank. The Act well defines provisions in case such situation arises:

Transfer of Unclaimed Dividend

When the dividend has been declared by the company but has not been claimed by the shareholder within thirty days, then within 7 days of expiry of period of 30 days the company has to transfer the unpaid amount to the special account in the bank known as Unpaid Dividend Account. If the company defaults on transferring the amount to unpaid dividend account within specified time period, the company has to pay a interest on the sum unpaid at 12 %per annum.

Website Disclosures

After transferring money to unpaid dividend account, within the period of ninety days, the company is required to prepare a statement containing names of, addresses of last known and the amount of dividend to be paid to the shareholder and put the same on its website and on any other website provided by central government for the same.

Transfer of unpaid dividend to Investor Education and Protection Fund

If any amount remains unclaimed or unpaid for more than 7 years in Unpaid Dividend Account, the same has to be transferred alongwith the Interest accrued to Investor Education and Protection Fund and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

Transfer of Shares

All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund.

Penalty

If a company fails to comply with any of the requirements of Section 124, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

❐

Registered Valuer: Roles and Importance under the Company Law

After the enactment of Companies Act, 2013 ("Act"), the concept of **'Registered Valuer' (RV)** has been introduced by the Ministry of Corporate Affairs of India under the provisions of Section Chapter XVII & Section 247 of the Act, for or all types valuations to be carried out under the various provisions of Companies Act 2013 which covers valuation aspects in relation to any property, stock, shares, debentures, securities, goodwill or any other assets of the company including its net worth and liabilities.

❑ Define Registered Valuer (RV):

According to Chapter XVII:

Applicable Rule: The Companies (Registered Valuers and Valuation) Rules, 2017

Rule 2 (j): **"valuer"** means a person registered with the authority in accordance with these rules and the term **"registered valuer"** shall be construed accordingly.

Which means, 'Registered Valuer' (RV) is a person registered as a Valuer under Chapter XVII (The Companies (Registered Valuers and Valuation) Rules, 2017) of the Act. The term "Person" includes an Individual (Natural Person) resident in India and Organization (Partnership Entity & Company) both.

The Registered Valuer Organisation (RVO) is an institution that is acknowledged under rule 13 (5) of the Companies (Registered Valuers and Valuation) Rules, 2017.

❑ Provisions Under the Company Law specifically deals with valuation by Registered Valuer (RV)

1. Section 62(1) (c): Valuation report for further issue of shares.

Further issue of share capital, other than Rights Issue and Issue under a Scheme of Employee Stock Option (ESOP).

Provisions as per Act:

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b) of Section 62 (1) of the Act, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report 6 of ***a registered valuer****, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.*

2. Section 192(2): Restriction on Non-cash Transactions Involving Directors.

Valuation of assets involved in arrangement of non-cash transactions involving directors. In short it deals with, Non cash transaction involving directors.

In case of sales or purchases of any asset between the company and directors of

the company (or its subsidiary company, holding company or associate company) or a person connected with the director for consideration other than Cash, in this scenario value of transaction will be calculated by the Registered Valuer.

Provisions as per Act:

*192. (2) The notice for approval of the resolution by the company or holding company in general meeting under section 192 (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a **registered valuer**.*

3. Section 230 (2) (v): Power to Compromise or Make Arrangements with Creditors and Members.

This section deals with the provisions for the requirement of Valuation Report in case of a scheme of compromise or arrangement with creditors or members.

It means, Merger, amalgamation or restructuring under the provisions of Section 230-232, requiring a valuation through a Registered Valuer of assets or shares, or requiring a swap ratio to be calculated for a share swap on merger of two companies.

Provisions as per Act:

230. (2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

*(v) A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a **registered valuer.***

4. Section 230 (3) Power to Compromise or Make Arrangements with Creditors and Members.

Provisions with respect to the requirement of Valuation Report along with notice of creditors/shareholders meeting, under scheme of compromise/arrangement.

Provisions as per Act:

*230. (3)Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the **valuation report**, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

5. Section 232(2) (d): Merger and Amalgamation of Companies

Provisions of this section deals with Valuation Report on effect of compromise

Provisions as per Act:

232. (2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

*(d) the **report** of the expert with regard to valuation, if any;*

6. Section 232 (3) (h): Merger and Amalgamation of Companies

Provisions of this section stated that the valuation report to be made by the tribunal for exit opportunity to the shareholders of transferor Company – under the scheme of compromise/arrangement in case the transferor company is listed company and the transferee company is an unlisted company.

Provisions as per Act:

232. (3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2)has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

*(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a **valuation** is made, and the arrangements under this provision may be made by the Tribunal:*

*Provided that the amount of payment or **valuation** under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;*

7. Section 236(2): Purchase of Minority Shareholding.

Provision of this section are related to the Valuation of equity shares held by the minority shareholders. It says that the Shares of Minority shareholding can be acquired at price calculated by Registered Valuer (except in case of Listed Company).

Provisions as per Act:

*236. (2) The acquirer, person or group of persons under section 236 (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of **valuation by a registered valuer** in accordance with such rules as may be prescribed under Chapter XV & Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

8. Section 281(1): Submission of Report by Company Liquidator.

Provision of this section (Section 281(1) (a) proviso) are related to the Valuing assets by Registered Valuer for submission of report by liquidator.

Provisions as per Act:

281. (1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

(a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:

*Provided that the valuation of the assets shall be obtained from **registered valuers** for this purpose;*

9. Rule 2 of Companies (Acceptance of Deposit) Rules, 2014: Deposit Definition - Separation from deposits:

Provision of this section (Rule 2(c) (ix)) stated that **Valuation (assessed by a registered valuer)** of assets to determine their market value to check whether the amount of secured debentures with a charge on the company exceeds such market value.

Provisions as per Act:

2 (1) (c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include -

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within 6[Ten years]:

*Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a **registered valuer.***

10. Rule 8 (6) (7) (9) of Companies (Share Capital and Debentures) Rules, 2014 - Issue of Sweat Equity Shares.

Provisions of this rule deals with requirement of Valuation through Registered Valuer for the purpose of issue of Sweat Equity Shares.

The sweat equity shares to be issued shall be valued at a price determined by **"REGISTERED VALUER"** as the fair price giving justification for such valuation. Further, the valuation of IPR, know-how, or value additions for which equity shares are to be issued shall also be carried out by a registered valuer with proper justification.

Provisions as per Act:

8. Issue of Sweat Equity Shares.

*(6) The sweat equity shares to be issued shall be valued at a price determined by a **registered valuer** as the fair price giving justification for such valuation.*

*(7) The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a **registered valuer**, who shall provide a proper report addressed to the Board of directors with justification for such valuation.*

*(9) Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the **registered valuer**, such non-cash consideration shall be treated in the following manner in the books of account of the company-*

(a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

❑ Prescribed Valuation Approaches to be considered by a Registered Valuer (RV):

There are certain approaches prescribed under CHAPTER XVII which deals with Valuation by Registered Valuers under the Companies Act, 2013.

	Income Approach:	Market Approach:	Cost Approach:
Approach	Valuation Experts (RV) adopts this approach when reliable market data is hard to find. This approach bases value on the business's ability to generate future economic benefits, it's generally best suited for established, profitable businesses.	Under this approach, the experts (RV) identifies recent, arm's length transactions involving similar public or private businesses and then develops pricing multiples. Several different methods are available.	The cost approach, includes the book value and adjusted net asset methods which derives value from the combined fair market value (FMV) of the business's net assets.

❑ Who can become a Registered Valuer:

1. Eligibility Qualification and Experience for Registration as Valuer: An individual shall have the following qualifications and experience to be eligible for registration:

Asset Class	Eligibility / Qualification	Experience in specified discipline
Plant and Machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	5 years
	(ii) Post Graduate on above courses	3 years
Land and Building	(i) Graduate in Civil Engineering, Architecture, Town Planning or equivalent;	5 Years
	(ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course).	3 years
Securities or Financial Assets	(i) Member of ICSI, ICSI, ICAI (the Institute of Cost Accountants of India), Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance).	3 years
	(ii) Post Graduate in Finance	

2. Eligibility Criteria for Partnership Entity and / or Company to be a registered valuer-

   a. Objects shall be for rendering professional or financial services, including valuation services

   b. Entity is not undergoing for any insolvency resolution / undischarged bankrupt;

   c. All the partners or directors, as the case may be, are eligible as per Valuation Rules, 2017.

   d. Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are registered valuers; or

   e. Partners or Directors of the entity, as the case may be, is a Registered Valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

Kindly note *that some other general norms are prescribed under Rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017. To be a registered valuer, the individual will have to pass the valuation examination and have requisite qualifications.*

❑ Roles and Responsibilities of Registered Valuer:

The Concept of **Registered Valuer** has been introduced under the Companies Act, 2013 through section 247 of the Companies Act, 2013 (the Act)] and the Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules), both applicable with effect from 18 October, 2017, to regulate the scope and regime of Valuation in India and to standardize the valuation in line with International standards.

Registered Valuer is key player who performs the Valuation tasks under the following Acts or Regulations:

a) Companies Act, 2013 (CA, 2013).

b) Insolvency and Bankruptcy Code, 2016 (IBC, 2016).

c) SEBI Regulations.

Under Company Law, A registered Valuer shall perform the valuation according to the provisions mentioned under the Companies (Registered Valuers and Valuation) Rules, 2017.

Registered Valuers are doing good practice in all concerned areas related to valuers and valuation. They are continuously making effort to ensure the fair & true valuation and to bring standardization in this particular domain through transparency and fairness behavior, which will lead to confidence among the concerned stakeholders.

Registered Valuers covers all valuation requirements correctly and in a timely manner. The Companies often enters into mergers, acquisitions, share issues or other capital transactions matters for which Valuation Report is almost a key requirement. It is important for the Corporates to consult a Registered Valuer at the stage of transaction planning, wherever necessary, to get a complete view of what statutes will become applicable including valuation matters. The Registered Valuer is required to exercise due diligence.

❑ A Registered Valuer plays a vitol role in various transactions / assignments under the provisions of Company Law (the Companies Act, 2013 {The Act}) which includes:

a. Issuance of New Shares, except Right Issue under Section 62 of the Act.

b. Valuation required for Merger, amalgamation or restructuring under Section 230-232 of the Act

c. Valuation in case of Acquisition of minority shareholding as per the applicable provisions of the Section 236 of the Act

d. Valuation Report required in case of Issuance of sweat equity

e. Allotment of shares for consideration other than cash under Company Law

f. Requirement of Valuation Report for Liquidation process of a company under the Insolvency and Bankruptcy Code, 2016

g. Recommended for any other corporate actions that involve a value being assigned to equity shares or securities.

❑ Impact of Registered Valuer Concept:

The concept of "Registered Valuer" is likely to have Major impact on Corporate Sector as well for Professional segment. This concept is significantly impacting the industry, professionals, shareholders and government and other concerned Stakeholders.

The rise in the requirements for Valuation related matters, will boost the Professional Sector and this will increase substantial increase in professional opportunities for Chartered Accountants, Company Secretaries and Cost Accountants. Valuation provisions strictly prohibited misleading and incorrect information in the Report and disclose a true, fair and complete view post analysis. A true, fair and transparent Valuation Report will boost the Stakeholder confidence.

❑ Amendment to Section 247 which deals with the provisions of Registered Valuer under the Act:

Ministry of Corporate Affairs (MCA) vide CG-DL-E-28092020-222070 dated 28.09.2020 has published the Companies (Amendment) Act, 2020 further to amend the Companies Act, 2013.

Changes have been notified in Sub – Section (3) of Section 247 and are Effective from 24th March, 2021 vide Gazette ID CG-DL-E-24032021-226078 dated 24th March, 2021.

Notified change in Section 247(3) of the Act:

For the words **"punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees"**, the words **"liable to a penalty of fifty thousand rupees"** shall be substituted

❑ Penal Consequences for Registered Valuers under the Act:

A. According to Section 247 of the Act:

Penal Clause:

1. If a valuer including Registered Valuer contravenes the provisions of Section 247 or the rules made thereunder, the valuer shall be liable to a penalty of ₹ 50,00/-.

2. In case the valuer including Registered Valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1,00,000/- but which may extend to ₹ 5,00,000/-.

B. According to Rules Chapter XVII - The Companies (Registered Valuers and Valuation) Rules, 2017

Punishment for contravention	Punishment for false statement
If a person contravenes any of the provision of these rules he shall be **punishable in accordance with 469 (3) of the Act**	If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,— (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, ***he shall be liable under section 448 of the Act.***

Penalty under Section 469 of the Act:

1. For one time contravention	Person shall be punishable with fine which may extend to ₹ 5000/- only.
2. Continuing contravention	Further fine which may extend to ₹ 500/- for every day after the first during which such contravention continues.

Penalty under Section 447 of the Act

Kindly note that: Penal provisions has been prescribed under Section 447 of the Act with respect to the Punishment for Fraud.

Type of Fraud	Penal Provisions
a) Fraud involving an amount of at least ₹ 10,00,000/- or 1% of the turnover of the company, ***whichever is lower***	Person shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
b) Fraud in question involves public interest	Person shall be punishable with imprisonment for a term which shall not be less than 3 years.
c) fraud involves an amount less than ₹ 10,00,000/- or 1% of the turnover of the company, whichever is lower, and does not involve public interest	Person shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to ₹ 50,00,000/- or with both.

Conclusion:

Introduction of Registered Valuer under the Company Law regime is much required step to ensure the fair & true and governance valuation segment and also bring standardization. **Valuation through a Registered Valuer is more of a precautionary measure, to be safe than sorry in future.** Registered Valuers helps in business valuation which is a complex financial analysis and also helps the business owners to negotiate a strategic sale of their business, minimize the risk of litigation / non – compliance matter in future and many more.

Valuations underpin nearly every financial decision we make. Therefore, we need qualified, expert Registered Valuer for Valuation related matters.

❐

Important aspect of Compromise, Arrangement & Amalgamation

Chapter XV (Section 230 to 240) of Companies Act, 2013 (the Act) contains provisions on 'Compromises, Arrangements and Amalgamations', that covers all kind of compromise or arrangements, mergers, demergers, fast track mergers and various other mode of restructuring. The procedural aspects involved such as format of application / Petition to be made to National Company Law Tribunal (the Tribunal), form of notice and the procedural aspects involved with respect to the substantive law are covered under the Rules made under Chapter XV of the Act.

The scheme of Chapter XV goes as follows.

- Section 230-232 deals with compromise or arrangements or mergers and amalgamation including demergers.
- Section 233 deals with amalgamation of small companies (also called fast track mergers)
- Section 234 deals with amalgamation with foreign company (also called cross border mergers)
- Section 235 deals acquisition of shares of dissenting shareholders.
- Section 236 deals with purchase of minority shareholding.
- Section 237 deals with power of central government to provide for amalgamation of companies in public interest.
- Section 238 deals with registration of offer of schemes involving transfer of shares.
- Section 239 deals with preservation of books and papers of amalgamated companies.
- Section 240 deals with liability of officers in respect of offences committed prior to merger, amalgamation etc.,

In this write-up, we shall be discussing Section 230 to Section 232 in detail.

The judicial authorities involved in the process:- The Tribunal herein referred as the 'Tribunal' or the 'NCLT'.

A brief structure of the overall procedure within the ambit of sections 230, 232 and the rules under the Act has been depicted below in the order of occurrence:

1. Filing of Company Application:

- An Application u/s 230 to 232 needs to be filed with the Tribunal in **Form NCLT-1** with all the required documents under Rule 3 of the Rules and Affidavit disclosing the matters under section 230(2) of the Act.
- Prescribed fees of Rs 5,000/- as per the Rules shall be submitted along with the Application.

2. Hearing of Company Application:

- The Tribunal shall fix the date of the hearing.
- On hearing the Application, the Tribunal may give following directions in its Application Stage Order.
  - ✓ determining the class or classes of creditor or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meeting for any class or classes or creditors in terms of sub-section (9) of section 230;
  - ✓ fixing the day, time and place of the meeting(s);
  - ✓ appointing a Chairperson and scrutinizer for the meeting(s) to be held including remuneration;
  - ✓ fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronics means;
  - ✓ determining the values of the creditors or the members, or the creditors or member of any class, as the case may be, whose meetings have to be held;
  - ✓ notice to be given of the meeting or meetings and the advertisement of such notice;
  - ✓ notice to be given to sectoral regulators or authorities as required under sub-section (5) of section 230;
  - ✓ Advertisement to be published at least one English newspaper and in at least one vernacular newspaper having wide circulation in the State in which the registered office of the Company is situated;
  - ✓ Appointment of the Auditor to forsee whether the affairs of the company have been conducted in proper manner or not;
  - ✓ the time within which the chairperson of the meeting of the meeting is required to report the result of the meeting to the tribunal; and
  - ✓ such other matters as the Tribunal may deem necessary.

However, the Tribunal may dispense with calling of the meeting of creditors or class of creditors where such creditors or class of creditors, at least ***ninety percent in value***, agree and give their No Objection Certificate by way of an affidavit to the Scheme.

Further, the Tribunal in past had also dispense with calling of shareholder's meeting if **one Hundred percent** consent is obtained by the shareholders by way of an affidavit to the Scheme.

3. Filing of Form GNL-1:

The Company shall file Form GNL-1 with Registrar of Companies post receipt of the Application order by the Tribunal

4. Notice of the Meeting:

- The Chairperson shall issue a notice u/s 230 with all the accompanying documents such as:

  a. a statement disclosing the details of the compromise or arrangement;

  b. Valuation Report, if applicable, and its effect;

  c. Explaining the effect of the Scheme on creditors, key managerial personnel,

  promoters and non-promoter members, and the debenture holders etc.

  to all the creditors, members and debenture holders of the Company in **Form No. CAA 2** and to the statutory regulators whichever applicable in **Form No. CAA-3** like the Central Government (Regional Director), Income Tax authorities, Registrar of Companies, Official Liquidator (if Scheme pertains to merger / amalgamation), the Reserve Bank of India if the Company is a Non-Banking Financial Company (NBFC), to the Securities and Exchange Board of India (SEBI) & Stock Exchanges if the Company is a listed entity, etc.

5. Advertisement before the meeting:

The notice of the meeting shall be advertised in **Form No. CAA.2** in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting.

6. Service of Notice to the Tribunal:

An affidavit regarding compliance of directions regarding the issue of Notice and advertisement to be filed with Tribunal at least seven days before the date of the meeting by the Chairperson or any other person as directed.

7. Objections:

The persons to whom the Notice of the meeting is sent can vote either themselves or through proxies or by postal ballot to confirm the adoption of the Scheme within ***one month*** from the date of receipt of such Notice.

Provided that objections can be made within one month only by:

a. Persons holding not less than ***ten per cent*** of the total shareholding, or

b. Persons having outstanding debt amounting to not less than ***five per cent*** of the total outstanding debt as per the latest audited financial balance sheet.

Further, any objections or representations may be made by the statutory authorities to the Tribunal within ***thirty days*** of receipt of the Notice and a copy of the same shall be sent to the Company.

8. Conducting the meeting:

When the meeting is held, the majority of persons representing ***three-fourths in value*** of the creditors, or class of creditors

or members or class of members, voting in person or proxy or by postal ballot, shall agree to the Scheme of Compromise or Arrangement.

9. Report of the meeting:

A report on the proceedings of the meeting conducted shall be submitted to the Tribunal by the Chairperson in **Form CAA-4** within ***three days*** of conducting the meeting or within the time prescribed by the Tribunal in the Application Order.

10. Filing of Company Petition:

Within ***seven days*** of the filing of the report by the Chairperson, a Petition in **Form No. CAA-5** shall be presented to the Tribunal for sanction of the Scheme of Compromise or Arrangement.

11. Hearing of Company Petition:

The hearing shall be held with the Tribunal, where the Tribunal checks whether the directions given in the previous orders have been complied. Thereafter the Tribunal may issue such additional directions (as required) to be complied with before the next or final hearing, as the case may be.

12. Advertisement before the hearing in newspapers:

The Tribunal shall fix a date for the hearing and the same shall be published in the same newspapers in which the notice of the meeting was advertised, or in such other newspaper as the Tribunal may direct, not less than ***ten days*** before the date of hearing.

13. Submission of Report by the Regulatory Authorities:

The Regional Director and Official Liquidator (only in Merger / Amalgamation) shall submit its report with the Tribunal along with their observations, if any.

14. Final hearing:

In final hearing, the Tribunal shall take note of all the compliances made by the Applicant and if it deems fit, shall sanction the compromise or arrangement u/s 230 and the order for which shall be given in **Form No. CAA-6.**

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a **certificate by the Company's Auditor** has been filed with the Tribunal to the effect that the accounting treatment, if any proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Act.

The order shall direct that a certified copy of the same shall be filed with the Registrar of Companies within ***thirty days*** of receipt of the order.

15. Filing of Order with the Registrar of Companies:

A certified copy of the order is to be filed with the Registrar of Companies in **Form No. INC-28** within ***thirty days*** of receipt of the order.

Note: Until the completion of the Scheme under section 232, every Company under section 232 shall file a statement in **Form No. CAA-8** within ***two hundred and ten days*** from the end of the Financial Year indicating that the Scheme had complied with the order of the Tribunal and the same shall be duly certified by a practising CA/ CS/CMA.

❐

Gist of Notifications and Circulars issued by Ministry of Corporate Affairs relating to Accounts For The Financial Year 2020-21

Amendments related to Disclosure in Annual Returns

Notification No.	Effective Date	Summary of Notification	Implication
S.O. 1066(E) dated 05.03.2021.	5th March, 2021	**Section 23(1) of The Companies (Amendment) Act, 2017**, seeks to amend Section 92 (Annual Returns) of the Companies Act, 2013	The Companies will not be required to give the following details in the Annual Returns namely: (i) Indebtedness (ii) In respect of shares held by or on behalf of Foreign Institutional Investors - their name, addresses, countries of incorporation, registration/ percentage of shareholding held by them. The Central Government may prescribe abridged form of Annual Returns for OPCs, Small Companies such other class/classes of companies as may be prescribed

Expenditure on CSR:

Notification No.	Effective Date	Summary of Notification	Implication
S.O. 325 (E) dated 22.01.21	22nd January, 2021	**Section 27 of The Companies (Amendment) Act, 2020,** seeks to amend Section 135 (Corporate Social Responsibility)	• Companies which spend any amount in excess of their CSR obligation in a financial year (FY) **can set off the excess amount towards** their CSR obligations in subsequent FYs as may be prescribed. MCA

Notification No.	Effective Date	Summary of Notification	Implication
			through Companies (CSR Policy) Rules, 2014 has prescribed the number of succeeding FYs and manner of set off. • If a company fails to transfer the unspent amount to the Fund specified in Schedule VII or Unspent CSR Account, following penalty will be imposed: a) twice the amount required to be transferred or ₹ 1 crore whichever is less; b) every officer of the company who is in default will be liable to a penalty of 1/10th of the amount required to be transferred or ₹ 2 lakhs, whichever is less; • Where the amount to be spent by a company towards CSR does not exceed ₹ 50 lakh, exemption is granted from constitution of CSR Committee and such functions will be discharged by the BoD of the company.

Notification No.	Effective Date	Summary of Notification	Implication
G.S.R. 526(E) dated 24.08.2020	24th August, 2020	**Rule 2 of The Companies (CSR Policy) Amendment Rules, 2020, Amendment of Schedule VII** seeks to amend the definition of CSR.	I. Any company engaged in research and development (R&D) activity of new vaccine, drugs and medical devices in their normal course of business may undertake R&D activity related to COVID19 for FYs 2020-21, 2021-22 and 2022-23 subject to the following conditions: • R&D activities should be carried out in collaboration with any of the institutes/ organisations mentioned in item (ix) of Schedule VII to the Act. • Details of such activity should be disclosed separately in the Annual Report on CSR included in the Board's Report.
G.S.R. 40(E) dated 22.01.2021	22nd January, 2021	Changes in Definition, Implementation, CSR committee, CSR Expenditure, CSR Reporting,	**I. Definition** • Certain definitions revised or new definitions have been introduced e.g., CSR, CSR Policy, administrative overheads, ongoing projects etc.

Notification No.	Effective Date	Summary of Notification	Implication
			II. CSR Implementation • Every entity who intends to undertake any CSR activity should register itself with the CG by filing the form CSR-1 electronically with the Registrar of Companies (RoC) with effect from 1st April 2021. **III. CSR Committee** • The CSR Committee should formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy **IV. CSR Expenditure** • The Board should ensure that the administrative overheads should not exceed 5% of total CSR expenditure of the company for the FY.

Notification No.	Effective Date	Summary of Notification	Implication
			• Any surplus arising out of the CSR activities - should not form part of the business profit of a company and should be ploughed back into the same project or should be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII within a period of 6 months of the expiry of the FY. **V. CSR Reporting:** • Report of BoD should include an Annual Report on CSR activities for FY commencing on or after 1st Apr 2020 • In case of a foreign company, the Balance Sheet filed under Section 381(1)(b) should contain an Annual Report on CSR activities

Notification No.	Effective Date	Summary of Notification	Implication
			• Every company having average CSR obligation of ₹ 10 crore or more in the 3 immediately preceding FYs, should undertake impact assessment, through an independent agency, of their CSR projects having outlays of ₹ 1 crore or more, and which have been completed not less than 1 year • The impact assessment reports should be placed before the BoD and annexed to the Annual Report on CSR. • A company undertaking impact assessment may book the expenditure towards CSR for that FY, which should not exceed 5% of the total CSR expenditure for that FY or ₹ 50 lakh, whichever is less.

Notification No.	Effective Date	Summary of Notification	Implication
Circular No. 15/2020 10.04.2020	10th April, 2020	FAQs on CSR	Following spending **will qualify** as CSR Expenditure: • Contribution made to "PM CARES Fund" under item no (viii) of Schedule VII of the Companies Act, 2013. • Contribution made to "State Disaster Management Authority" to combat COVID-19 under item no (xii) of Schedule VII of the 2013. • Spending CSR funds for COVID-19 related activities under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management; • If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above wages, specifically for the purpose of fighting COVID 19, the same will be admissible towards CSR expenditure with an explicit declaration by the Board of the company, duly certified by the statutory auditor.

Notification No.	Effective Date	Summary of Notification	Implication
			Following spending **will not qualify** as CSR Expenditure: • Contribution to "Chief Minister's Relief Fund" or "State Relief Fund for COVID-19". • Payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements). • Payment of wages to temporary or casual or daily wage workers during the lockdown period.
Circular No. 1/2021 dated 13.01.2021	13th January, 2021	Clarification on spending CSR funds **for awareness and public outreach on COVID19 Vaccination programme**	Spending of CSR funds for carrying out awareness campaigns / programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under Schedule VII of the Act
Circular No. 5/2021 dated 22.04.2021	22nd April, 2021	Clarification on spending **CSR funds for setting up makeshift hospitals and temporary COVID Care facilities**	Spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities is an eligible CSR activity under Schedule VII of the Act.

Companies (Audit and Auditors) Amendment Rules, 2021.

Notification No.	Effective Date	Summary of Notification	Implication
G.S.R. 206(E) dated 24th March, 2021	1st April, 2021	Reporting in Audit Report	Deletion of Reporting of Clause (d) in Audit Report; Addition of Reporting on 3 Clauses in the Audit Report after point (d) e(i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; (ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts,

Notification No.	Effective Date	Summary of Notification	Implication
			no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement (f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013; (g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all

Notification No.	Effective Date	Summary of Notification	Implication
			transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.". (Reporting has been deferred to 1st April, 2022 vide Notification No. G.S.R. 247(E) dated 1st April, 2021)

Notifications related to Directors

Notification	Effective Date	Summary of Notification	Implication
G.S.R.774(E) dated 18.12.2020	18th December, 2021	Qualification Relaxation for Appointment of Director	Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank. Percentage Mark reduced from 60% to 50% in self proficiency test.
S.O. 1255(E) dated 18.03.2021	18th March, 2021	**Section 32 of the Companies (Amendment) Act, 2020** seeks to amend Section 149 Independent Directors (ID)	An ID is not entitled to any stock options and is permitted to receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. Amendment provides that if a company has no profit / profits are inadequate, an ID may receive remuneration

Notification	Effective Date	Summary of Notification	Implication
			which is exclusive of any fees payable as above in accordance with the provisions of Schedule V
S.O. 1255(E) dated 18.03.2021	18th March, 2021	**Section 40 of the Companies (Amendment) Act, 2020** seeks to amend Section 197 (Overall Maximum remuneration and Managerial remuneration in case of absence or inadequacy of Profits)	• Companies will now have to pay remuneration to Non-Executive Directors and ID in case of loss or inadequate profits under Schedule V as applicable to Executive Directors earlier.
S.O. 1256(E) dated 18.03.2021	18th March, 2021	**Table A stating the yearly remuneration limits has been substituted**	The Revised Table A is appended below

Where effective capital is (₹ Crores)	***Limit of yearly remuneration payable should not exceed in case of a managerial person (₹ Lakhs)***	***Limit of yearly remuneration payable should not exceed in case of other Director * (₹ Lakhs)***
Negative or up to 5	*60*	*12*
5-100	*84*	*17*
100-250	*120*	*24*
250 and above	*120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 cores*	*24 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores*

(*) The term other Director means Non Executive director/ Independent Director

Other Notification related to Accounts & Related Matters

Notifications & Circulars	Effective Date	Summary of Notification	Implication
S.O. 1303 (E) dated 24th March, 2021	24th March, 2021	Section 23 and Section 45 of the Act	Section 124(7) Unpaid Dividend Account, Section 247(3)- Valuation by Registered Valuers

Notifications & Circulars	Effective Date	Summary of Notification	Implication
			Accordingly, w.e.f. 24.03.2021, penalty has been reduced under section 124(7) and 247(3) for failure in complying with the provisions under section 124 and contravention of the provisions of section 247 or the rules made thereunder respectively
G.S.R. 92 (E) dated 1st February, 2021	1st April, 2021	Section 2(85) of the Act	Definition of the Small Company modified to increase the paid up capital limit from 50 lakhs to 2 crores and turnover limit from 2 crores to twenty crores.
General Circular 20/2020	5th May, 2020	Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)	AGM for accounts during the calendar at year 2020, have been allowed to hold their AGM by 30th September,2020, subject to compliance of conditions of the conditions stated in the said circular.
G.S.R. 372 (E) dated 5th June, 2020	5th June, 2020	Companies (Share Capital and Debentures) Amendment Rules, 2020	The company may issue equity shares with differential rights upon expiry of ten years instead of five year from the end of the financial year in which such default was made good, in respect of he company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest

Notifications & Circulars	Effective Date	Summary of Notification	Implication
			payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi): Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year".

Amendments to Schedule III.

(G.S.R. 207 (E) Dated 24.03.2021, w.e.f. 1.04.2021.

The Additional Requirements have been mandated for disclosure in the Schedule III which shall be applicable for the accounting period commencing from 1st April, 2021, alternatively the figures for the previous financial period will also be required to be stated.

LIABILITIES/EQUITY

I. A company shall disclose additionally Shareholding of Promoters as below:

Shares held by promoters at the end of the year			% Change during the year***
S. No.	Promoter's name	No. of Shares**	% of total shares**
Total			

*Promoter here means promoter as defined in the Companies Act, 2013.

** Details shall be given separately for each class of shares

*** percentage change shall be computed with respect to the number at the beginning of the year or if issued during the year for the first time **then with respect to the date of issue.**]

Note: Classification of Promoters and Shareholders which was available in Directors' Report is now available in Financial Statements

II. Current Maturities of Long Term Borrowings shall be disclosed separately under the head Short Term Borrowings, which was earlier under the head Current Liabilities.

III. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

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

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

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

(d) the amount of interest accrued and remaining unpaid at the end of each accountang year; and

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

Explanation.-The terms 'appointed day','buyer','enterprise','micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.]

The following ageing schedule shall be given for Trade payables due for payment:-

Trade Payables ageing schedule

				(Amount in ₹)	
Particulars	Outstanding for following periods from due date of payment				
	Less than 1 year	1-2 years	2-3 years	More than 3 years	Total
(i)MSME					
(ii)Others					
(iii) Disputed dues –					
MSME					
(iv) Disputed dues -					
Others					

similar information shall be given where no due date of payment is specified in that case disclosure shall be from the date of the transaction.

Unbilled dues shall be disclosed separately.

ASSETS:

I. Property Plant and Equipment:

A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations, amount of change due to revaluation (if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment) and other adjustments and the related depreciation and impairment losses/ reversals shall be disclosed separately.]

II. Intangible Assets:

A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations, amount of change due to revaluation (if change is 10% or more in the aggregate of the net carrying value of each class of intangible assets) and other adjustments and the related depreciation and impairment losses or reversals shall be disclosed separately.]

III. Security Deposits

(ii) Others (specify nature);

(iii) Long term Trade Receivables, shall be sub-classified as:

(iv) For trade receivables outstanding, following ageing schedule shall be given:

Trade Receivables ageing schedule

					(Amount in ₹)	
Particulars	Outstanding for following periods from due date of payment					
	Less than 6 months	6 months -1 year	1-2 years	2-3 years	More than 3 years	Total
(i) Undisputed Trade receivables – considered good						
(ii) Undisputed Trade Receivables – considered doubtful						
(iii) Disputed Trade Receivables considered good						
(iv) Disputed Trade Receivables considered doubtful						

Similar information shall be given where no due date of payment is specified, in that case disclosure shall be from the date of the transaction.

Unbilled dues shall be disclosed separately.

IV. Where the company has not used the borrowings from banks and financial institutions for the specific purpose for which it was taken at the balance sheet date, the company shall disclose the details of where they have been used.

V. Additional Regulatory Information

(i) Title deeds of Immovable Property not held in the name of the Company.

The company shall provide the details of all the immovable property (other than properties where the Company is the lessee and the lease agreements are duly executed in favour of the lessee) whose title deeds are not held in the name of the company in format given below and where such immovable property is jointly held with others, details are required to be given to the extent of the company's share.

Relevant line item in the Balance sheet	Description of item of property	Gross carrying value	Title deeds held in the name of	Whether title deed holder is a promoter, director or relative# of promoter*/ director or employee of promoter/ director	Property held since which date	Reason for not being held in the name of the company**
PPE -	Land Building	-	-	-	-	**also indicate if in dispute
Investment property -	Land Building					
PPE retired from active use and held for disposal -	Land Building					
others						

#Relative here means relative as defined in the Companies Act, 2013.

*Promoter here means promoter as defined in the Companies Act, 2013.

(ii) Where the Company has revalued its Property, Plant and Equipment, the company shall disclose as to whether the revaluation is based on the valuation by a registered valuer as defined under rule 2 of the Companies (Registered Valuers and Valuation) Rules, 2017.

(iii) Following disclosures shall be made where Loans or Advances in the nature of loans are granted to promoters, directors, KMPs and the related parties (as defined under Companies Act, 2013,) either severally or jointly with any other person, that are:

(a) repayable on demand or

(b) without specifying any terms or period of repayment

Type of Borrower	Amount of loan or advance in the nature of loan outstanding	Percentage to the total Loans and Advances in the nature of loans
Promoters		
Directors		
KMPs		
Related Parties		

(iv) Capital-Work-in Progress (CWIP)

(a) For Capital-work-in progress, following ageing schedule shall be given:

CWIP aging schedule

				(Amount in ₹)	
	Amount in CWIP for a period of				Total*
CWIP	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Projects in progress					
Projects temporarily suspended					

*Total shall tally with CWIP amount in the balance sheet.

(b) For capital-work-in progress, whose completion is overdue or has exceeded its cost compared to its original plan, following CWIP completion schedule shall be given**:

				(Amount in ₹)	
	To be completed in				
CWIP	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Project 1					
Project 2					

**Details of projects where activity has been suspended shall be given separately.

(v) Intangible assets under development:

(a) For Intangible assets under development, following ageing schedule shall be given:

Intangible assets under development aging schedule

				(Amount in ₹)	
	Amount in CWIP for a period of				Total*
Intangible assets under development	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Projects in progress					
Projects temporarily suspended					

* Total shall tally with the amount of Intangible assets under development in the balance sheet.

(b) For Intangible assets under development, whose completion is overdue or has exceeded its cost compared to its original plan, following Intangible assets under development completion schedule shall be given**:

				(Amount in ₹)	
	To be completed in				
Intangible assets under development	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Project 1					
Project 2					

**Details of projects where activity has been suspended shall be given separately.

(vi) Details of Benami Property held

Where any proceedings have been initiated or pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and the rules made thereunder, the company shall disclose the following:-

(a) Details of such property, including year of acquisition,

(b) Amount thereof,

(c) Details of Beneficiaries,

(d) If property is in the books, then reference to the item in the Balance Sheet,

(e) If property is not in the books, then the fact shall be stated with reasons,

(f) Where there are proceedings against the company under this law as an abetter of the transaction or as the transferor then the details shall be provided,

(g) Nature of proceedings, status of same and company's view on same.

(vii) Where the Company has borrowings from banks or financial institutions on the basis of security of current assets, it shall disclose the following:-

(a) whether quarterly returns or statements of current assets filed by the Company with banks or financial institutions are in agreement with the books of accounts.

(b) if not, summary of reconciliation and reasons of material discrepancies, if any to be adequately disclosed.

(viii) Wilful Defaulter*

Where a company is a declared wilful defaulter by any bank or financial Institution or other lender, following details shall be given:

(a) Date of declaration as wilful defaulter,

(b) Details of defaults (amount and nature of defaults),

* wilful defaulter" here means a person or an issuer who or which is categorized as a wilful defaulter by any bank or financial institution (as defined under the Act) or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India.

(ix) Relationship with Struck off Companies

Where the company has any transactions with companies struck off under section 248 of the Companies Act, 2013 or section 560 of Companies Act, 1956, the Company shall disclose the following details:-

Name of struck off Company	Nature of transactions with struck off Company	Balance outstanding	Relationship with the Struck off company, if any, to be disclosed
	Investments in securities		
	Receivables		
	Payables		
	Shares held by stuck off company		
	Other outstanding balances (to be specified)		

(x) Registration of charges or satisfaction with Registrar of Companies

Where any charges or satisfaction are yet to be registered with the Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.

(xi) Compliance with number of layers of companies

Where the company has not complied with the number of layers prescribed under clause (87) of section 2 of the Act read with Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the companies beyond the specified layers and the relationship/extent of holding of the company in such downstream companies shall be disclosed.

(xii) Following Ratios to be disclosed:-

(a) Current Ratio,

(b) Debt-Equity Ratio,

(c) Debt Service Coverage Ratio,

(d) Return on Equity Ratio,

(e) Inventory turnover ratio,

(f) Trade Receivables turnover ratio,

(g) Trade payables turnover ratio,

(h) Net capital turnover ratio,

(i) Net profit ratio,

(j) Return on Capital employed,

(k) Return on investment.

The company shall explain the items included in numerator and denominator for computing the above ratios. Further explanation shall be provided for any change in the ratio by more than 25% as compared to the preceding year.

(xiii) Compliance with approved Scheme(s) of Arrangements

Where any Scheme of Arrangements has been approved by the Competent Authority in terms of sections 230 to 237 of the Companies Act, 2013, the Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company in accordance with the Scheme' and in accordance with accounting standards' and deviation in this regard shall be explained.

(xiv) Utilisation of Borrowed funds and share premium:

(A) Where company has advanced or loaned or invested funds (either borrowed funds or share premium or any other sources or kind of funds) to any other person(s) or entity(ies), including foreign entities (Intermediaries) with the understanding (whether recorded in writing or otherwise) that the Intermediary shall

(i) directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (Ultimate Beneficiaries) or

(ii) provide any guarantee, security or the like to or on behalf of the Ultimate Beneficiaries;

the company shall disclose the following:-

(I) date and amount of fund advanced or loaned or invested in Intermediaries with complete details of each Intermediary.

(II) date and amount of fund further advanced or loaned or invested by such Intermediaries to other intermediaries or Ultimate Beneficiaries alongwith complete details of the ultimate beneficiaries.

(III) date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries

(IV) declaration that relevant provisions of the Foreign Exchange Management Act, 1999 (42 of 1999) and Companies Act has been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering act, 2002 (15 of 2003).;

(B) Where a company has received any fund from any person(s) or entity(ies), including foreign entities (Funding Party) with the understanding (whether recorded in writing or otherwise) that the company shall

(i) directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (Ultimate Beneficiaries) or

(ii) provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries, the company shall disclose the following:-

(I) date and amount of fund received from Funding parties with complete details of each Funding party.

(II) date and amount of fund further advanced or loaned or invested other intermediaries or Ultimate Beneficiaries alongwith complete details of the other intermediaries' or ultimate beneficiaries.

(III) date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries

(IV) declaration that relevant provisions of the Foreign Exchange Management Act, 1999 (42 of 1999) and Companies Act has been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering act, 2002 (15 of 2003).]

General Instructions related for preparation of Statement of Profit and Loss Account

1. Grants or donations received (relevant in case of section 8 companies only)

2. Undisclosed income

The Company shall give details of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (such as, search or survey or any other relevant provisions of the Income Tax Act, 1961), unless there is immunity for disclosure under any scheme and also shall state whether the previously unrecorded income and related assets have been properly recorded in the books of account during the year.;

3. Corporate Social Responsibility (CSR)

Where the company covered under section 135 of the companies act, the following shall be disclosed with regard to CSR activities:-

(a) amount required to be spent by the company during the year,

(b) amount of expenditure incurred,

(c) shortfall at the end of the year,

(d) total of previous years shortfall,

(e) reason for shortfall,

(f) nature of CSR activities,

(g) details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard,

(h) where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

4. Details of Crypto Currency or Virtual Currency

Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:-

(a) profit or loss on transactions involving Crypto currency or Virtual Currency

(b) amount of currency held as at the reporting date,

(c) deposits or advances from any person for the purpose of trading or investing in Crypto Currency / virtual currency.]

Notification	Effective Date	Summary of Notification	Implication
G.S.R. 206(E) Dated 24.03.2021	1st April, 2021	In exercise of the powers conferred by sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014	I. Other matters to be included in Auditor's Report: :- **Clause (d) deleted** – related to specified bank notes :- **Clause (e) inserted** - "whether management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts:

Notification	Effective Date	Summary of Notification	Implication
			• No funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries.
			• No funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by

Notification	Effective Date	Summary of Notification	Implication
			or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries. :- **Clause (e) inserted as** "whether management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts: ... iii. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under points (i) and (ii) above contain any material mis-statement. This is popularly called the 'ever-greening' principle – may apply mainly to NBFCs, FIs and similar companies. :- **Clause (f) inserted as** "whether the Dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013. This would require auditors to report on adequacy of profits for dividend especially when dividends paid out of reserves. Also, compliance of Sec 73 (deposits) is required before paying any dividends.

Notification	Effective Date	Summary of Notification	Implication
			:- **Clause (g) inserted as** "Whether the company has used such accounting software for maintaining books of account which has a feature of recording audit trail and the same has been operated throughout the year for all transactions recorded in the software and the audit trail has not been tampered and the audit trail has been preserved by the company as per statutory requirements? ***Amended to "FY commencing from 1st April 2022"*** *Notification amendment dated 1st April 2021 added this: Whether the company 'in respect of financial years commencing on or after 1st April 2022' Does this imply that since only for clause (g) the date is deferred, for clauses (e) and (f), reporting is required?*
S.O. 4588 (E) Dated 17.12.2020	17th December, 2020	CARO 2020 effective from FY 2021-22	The MCA has extended the applicability date of Companies (Auditor's Report) Order, 2020 (CARO) for 1 more year, i.e., for the FYs commencing on or after the 1st April 2021 (earlier 1st April 2020). Accordingly, CARO, 2020 will be applicable from FY 2021-22 and onwards.

Criteria for MSME Classification (w.e.f. July 1, 2020):

Composite Criteria: Investment in Plant and Machinery/Equipment and Annual Turnover

Classification	Micro	Small	Medium
Manufacturing Enterprises and Enterprises rendering Services	• Investment in P&M/Equipment not more than ₹ 1 crore and • Annual Turnover not more than ₹ 5 crores	• Investment in P&M/Equipment not more than ₹ 10 crores and • Annual Turnover not more than ₹ 50 crores	• Investment in P&M/Equipment not more than ₹ 50 crores and • Annual Turnover not more than ₹ 250 crores

Erstwhile MSME Classification Criteria: Investment in Plant and Machinery/Equipment

Classification	Micro	Small	Medium
Manufacturing Enterprises and	• Investment not more than ₹ 25 lakhs	• Investment not more than ₹ 5 Crores	• Investment not more than ₹ 10 Crores
Enterprises rendering Services	• Investment not more than ₹ 10 lakhs	• Investment not more than ₹ 2 Crores	• Investment not more than ₹ 5 Crores

Other relevant points:

- Revised classification will result in much more entities being classified as MSME
- Several concessions available to MSMEs
  - i. From banks
  - ii. Preference for PSU tenders, etc.
- Mandatory interest for delayed payments Mandatory disclosures for payments due to MSMEs
- Companies need to obtain information of MSME registration from all vendors for goods and services.

❐

MOTTO

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।
तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।
तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

Ya eṣa supteṣu jāgarti kāmam kāmam purūṣo nirmimāṇaḥ I
Tadeva śukram tad brahma tadevāmṛtamucyate I
Tasminlokāh ṣritāh sarve tadu nātyeti kaścan I Etad vai tat II

That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman that, indeed is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends'.

Source: Kathopanishad