



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
EASTERN INDIA REGIONAL COUNCIL**

**&**

**VITTA SALAHKAR CHARTERED ACCOUNTANTS' STUDY CIRCLE – EIRC**

*Jointly Organise*

# Company Law Workshop - 2020



**5<sup>th</sup> - 6<sup>th</sup> MARCH 2020**

**EIRC AUDITORIUM • 7, Russell Street, Kolkata - 700 071**



**The Institute of Chartered Accountants of India**  
**President & Vice President, ICAI**



**CA ATUL KUMAR GUPTA**  
President, ICAI



**CA NIHAR NIRANJAN JAMBUSARIA**  
Vice President, ICAI

**Eastern India Regional Council, ICAI**  
**Team EIRC (2020 – 21)**



**CA NITESH KUMAR MORE**  
Chairman, EIRC



**CA SUNIL KUMAR SAHOO**  
Vice Chairman, EIRC



**CA RAVI KUMAR PATWA**  
Secretary, EIRC



**CA DEBAYAN PATRA**  
Treasurer, EIRC



**CA HARI RAM AGARWAL**  
Member, EIRC



**CA SUMIT BINANI**  
Member &  
Immediate Past Chairman, EIRC



**CA (DR.) DEBASHIS MITRA**  
Council Member, ICAI



**CA SUSHIL KUMAR GOYAL**  
Council Member, ICAI



**CA RANJEET KUMAR AGARWAL**  
Council Member, ICAI



THE INSTITUTE OF CHARTERED ACCOUNTANTS' OF INDIA  
EASTERN INDIA REGIONAL COUNCIL

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VITTA SALAHKAR CHARTERED ACCOUNTANTS' STUDY CIRCLE-EIRC

*extends*

*a very warm welcome*

*to*

*all Dignitaries, Guests,*

*Speakers and Delegates*

*at*

Company Law Workshop 2020

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## ICAI Motto

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

**Ya esa suptesu jagarti kamam kamam Puruso nirmimanah |**  
**Tadeva sukram tad brahma tadevamrtamucyate |**  
**Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat ||**

*(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 walking 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 : cf. Eckhart : 'On reaching God all progress ends.'*)

*Source : Kathopanishad*



**ABOUT  
THE INSTITUTE THE CHARTERED ACCOUNTANTS OF INDIA  
AND  
ITS EASTERN INDIA REGIONAL COUNCIL**

ICAI is a statutory body established by an Act of Parliament, for regulating the profession of Chartered Accountancy in our country. The institute, functions under the aegis of the MCA, Government of India. The ICAI is the 2nd largest professional body of CAs in the world. Since 1949, the profession has grown by leaps and bounds with around 3,00,000 members and 8,00,000 students as of now. The EIRC of ICAI was constituted in the year 1952 with its jurisdiction on 10 States and 1 Union Territory. Today it has 13 branch-es, 23 study circles, 7 CPE chapters and 8 study groups. It caters to over 25,000 members and about 90,000 students as on date

## COMPANY LAW WORKSHOP - 2020

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
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&  
VITTA SALAHKAR CHARTERED ACCOUNTANTS' STUDY CIRCLE – EIRC

### **Programme Schedule**

Day 1 : Thursday, 5th March • 5:30 PM to 8:30 PM

**Topic : Companies (Auditor's Report) Order, 2020**

Speakers



CA VIVEK NEWATIA



CA MOHIT BHUTORIA

Day 2 : Friday, 6th March • 5:30 PM to 8:30 PM

**Topic : Recent Changes in Companies Act**

Speaker



CA MANOJ BANTHIA

**Topic : Compounding of Offences**

Speaker



CS MOHAN RAM GOENKA

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## *Message* -----

From Chairman, EIRC



In today's global business world, a broad spectrum of economic and regulatory changes are taking us to new levels of strategic and tactical complexity, creating commensurate pressure on enterprises. In this environment, it is necessary for the professionals to constantly update their knowledge and skills to meet the expectations of the stakeholders. It is indeed the responsibility of the professional bodies to provide members with adequate facilities and opportunities to meet the challenges thrown by the dynamic environment by continuously enhancing their knowledge, skills and professional values.

It gives me immense pleasure to welcome the participants to this 2 Days Seminar on companies Act on 5th & 6th March 2020 being organised by the EIRC of ICAI.

The prime objective of the workshop is to disseminate knowledge on important developments in the field of Company Law like CARO: 2020, Recent changes in Companies Act, Compounding of Offences.

I am sure that this programme will help the Chartered Accountants to update their knowledge skills. I am very confident that all the participants of the programme would be benefited by sharing the experience with the speakers.

I wish the programme a grand success.

CA. Nitesh Kumar More  
Chairman, EIRC

Date: 2nd March, 2020

Place: Kolkata



## COMPANY LAW WORKSHOP - 2020

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### *Message* -----



**From Convenor  
Vitta Salahkar Chartered Accountants Study Circle-EIRC**

Dear esteemed professional Colleagues, Seniors and Guests,

I am delighted to welcome you all to the two-Days workshop on Company law organized by EIRC jointly with Vitta Salahkar CA Study Circle-EIRC.

I hope that members of our CA fraternity will be benefited by the deliberations to be given by galaxy of learned speakers on the different topics of Company law on 5th and 6th March 2020.

I thank all of you from core of my heart for your overwhelming response attending the workshop on Company law.

I congratulate CA Nitesh More Jee for being elected Chairman of EIRC and thank him and his team for giving our study circle an opportunity to be associated jointly with EIRC to organise such an excellent seminar and also convey my sincere thanks to all our executive committee members to make this seminar a grand success.

I wish a happy learning and colourful holi this year to all participants.

With Best Regards,

For and on behalf of Vitta Salahkar Chartered Accountants Study Circle-EIRC

CA Bishnu Basia  
Convenor

### *Message* -----



**From Deputy Convenor  
Vitta Salahkar Chartered Accountants Study Circle-EIRC**

Dear Professional Colleagues and Guests,

It gives me immense pleasure to welcome you all at this 2 day workshop on Company Law jointly organized by Vitta Salahkar CA Study Circle and EIRC- ICAI. We at Vitta Salahkar continuously make efforts to update the members and professionals with the new development in the legal framework. In our urge to update the members we along with EIRC- ICAI have designed this 2 day workshop by bringing in excellent speakers. I would mention my regards for the Chairman CA Nitesh More for making us part of this workshop.

At this Knowledge Fair, I am glad to bring this background material before all of you, which will add up to quench the hunt of knowledge. I sincerely hope that the delegates will be immensely benefitted from this workshop.

I wish delegates a learning experience and the workshop a great success.

CA Mayur Agrawal  
Deputy Convenor



## About Vitta Salahkar

Vitta Salahkar Chartered Accountants Study Circle (VSCASC) of EIRC of ICAI is formed under the aegis of the Institute of Chartered Accountants of India (ICAI). We started off in the year 2012 and we are striving towards the continuous professional education of members of the ICAI to provide them with the strong knowledge base.

Our primary objective is to organize regular group discussions, lecture meetings, seminars and other programs under "Continuing Professional Education" i.e. CPE for benefits of the members of ICAI and our motto is for our members to be updated in all the fields of Direct Taxes, Indirect Taxes, Corporate Laws and other areas of our operations. The background material and Research Material of Speakers is to be provided to all the members and participants. We also aim to provide our members with a strong support system in terms of the professional education on the most untouched and important topics in this dynamic changing environment.

It's our endeavor to have regular meetings for members and invite eminent and experienced speakers from different areas for healthy information base.

The Eastern India Regional Council (EIRC) of ICAI had awarded/recognized us with EIRC Awards in the Year 2013 and 2014 as COMMENDABLE STUDY CIRCLE & HIGHLY COMMENDABLE STUDY CIRCLE award and in the year 2016 as BEST STUDY CIRCLE award in the eastern region (EIRC) of ICAI.

Our Study Circle has been elevated to 1st Position from 23rd position in the Eastern Region in the year 2016.

VSCASC regularly communicate with its members through emails, SMS alerts and posts to various google groups and yahoo groups for updating in the field of Direct Taxes, Indirect Taxes, and Corporate Laws and updated about CPE Seminars.

## COMPANY LAW WORKSHOP - 2020

### PROFILE



CA VIVEK NEWATIA

*He is B.Com. (Hons), B.Sc. Mgmt (LSE), F.C.A., C.I.S.A., I.S.A. (ICAI), Registered Valuer (IBBI)*

Mr. Newatia has been practising as a Chartered Accountant and Partner in S. Jaykishan, a partnership firm with a reputed track record of over 40 years, since 2003. With over 15 years of professional experience he handles assignments relating to diverse services offered by the firm, inter alia: Statutory, Systems & Forensic Audit,

• International Taxation, • Business Valuations, • Mergers and Acquisitions/Amalgamations, • FEMA and consultancy in ERP implementation, • Tax advisory and structuring for various clients, • Ind AS conversion, and • Implementation of IFC.

1. Educational Background - Mr Newatia has attained his Bachelor of Commerce (Hons) from St. Xavier's College, Kolkata. He has also completed his Diploma in Economics and B.Sc. in Management from the University of London (Lead College: LSE). He is a qualified CISA and a holder of Diploma in Information Systems Audit from ICAI. Also, he has successfully completed certificate courses of ICAI on Valuation, International Taxation & IFRS. Recently, he has been registered with IBBI as a Registered Valuer for Securities or Financial Assets becoming the first to attain this qualification in the Eastern Region.

2. Current/Past Committee/Group Affiliations - He has been nominated and has served as co-opted member/special invitee for various Committees like:

• The Committee of International Taxation (ICAI), • Research Committee ICAI, • Corporate & Allied Laws Committee EIRC ICAI, and • Executive Committee member for the International Fiscal Association - Eastern Region.

Presently, Mr Newatia is involved with the ICAI Registered Valuers Organisation course as a Faculty Member, as well as serving on the Panel of Experts for Transfer Pricing. He is also a member of a study group formed for the purpose of updation of existing Accounting Standards and for formulation of study material on notified Ind-AS. Mr. Newatia is a member of the Kolkata Financial Reporting Review Group established for undertaking the review of general purpose financial statements.

3. Special Mentions: He has served as the President of Views Exchange Chartered Accountants Study Circle EIRC in the year 2014-15. Under his leadership, Views Exchange was awarded as the Best Study Circle in the Eastern Region. He has participated in various seminars as a member faculty to give presentations and hold discussions on various topics like Valuation, International Taxation, IND AS, IFRS, etc.

### PROFILE



CA MOHIT BHUTERIA

Edn Qualification: FCA, ICAI(Valuation), Insolvency Resolution Professional

Current Professional : Prof Achievements etc:

Managing Partner in A C Bhuteria & Co, Chartered Accountants

- 1) Stood 1st in Chartered Accountancy Finals in Eastern Region
- 2) Special Invitee at the Expert Advisory Committee of ICAI, New Delhi in 2017
- 3) Member of Corporate Law and Corporate Governance Committee of ICAI for 2018
- 3) Co opted member in Capital Market Committee of Merchant Chambers of Commerce for 2015 and 2016 and Corporate Law Committee (EIRC,ICAI) for 2013, 2015 and 2017
- 4) Copted Member in Study Group of ICAI on Guidance Notes and Upgradation of existing AS on the basis of corresponding Ind AS and Guidance Note on CARO 2016
- 5) Empanelled as Quality Reviewer, Peer Reviewer and with FRRB, ICAI
- 6) Made Presentations on Companies Act for large number of corporates
- 7) Addressed on Taxation, Company Law, Restructuring, Assurance and Non Banking finance Company issues at ICAI, ICSI, MCA, Study Circles under ICAI Comptroller and Auditor General of India (C&AG) and other platforms. 8)Handled in aggregate more than 1000 Statutory Audits of PSU, Banks, and Private Sector Corporates 9)Represented ICAI before CBI
- 10) Member of Governing Council

## COMPANY LAW WORKSHOP - 2020

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### PROFILE



CA MANOJ BANTHIA

He is a Chartered Accountant and Company Secretary by qualification. His in - dept knowledge of company and securities law and his practical approach to the problems of his clients has made him one of the most sought after company law professional in the city. He was the Chairman of the Eastern Regional Council of the Institute of Company Secretaries of India in the year 2003. He has authored several articles and has been a regular speaker at various forums. He has also trained the staff and/or officials of the Ministry of Corporate Affairs on several occasions. He appears regularly before the Company Law Board, Regional Directors and ROCs all across the country and has regular interface with the Ministry and its officials spread all over the country. His clientele include almost every known Corporate House in the Eastern part of the country.

### PROFILE



CS MOHAN RAM GOENKA

Mr. Mohan Ram Goenka is a Practicing Company Secretary and Insolvency Professional since two decades in the name of MR & Associates with highly devoted Partner. He is a qualified M. Com., F.C.S., C.F.A., PGDFM and PGDPC. He is highly goal oriented person with his vision-mission powers which has designated his firm on greater heights in this current dynamic business environment and competition in the corporate era with his team of experts. He is a dynamic trainer and consultant on Corporate Laws, Secretarial Services and Legal Advising on various provisions of Company Law, Oppression and Mismanagement & Other respective Laws and deals with the various aspects of Corporate Laws, Liquidation and winding up of Companies, Mergers, De-mergers, Amalgamation, Takeover and acquisitions, Corporate Restructuring, Corporate Insolvency Resolution Process (CIRP). He appears / represents the cases before Hon'ble National Company Law Tribunal, Regional Director, Registrar of Companies, Stock Exchanges etc. As such, he has shared his precious knowledge as Honorary Guest Speaker in various Seminars / workshops arranged by various professional bodies like ICAI, ICSI and its various chapters and study Circles Meetings etc. He is a Convenor of "Madhya Kolkata Study Circle for Members of ICSI" - 1st CPE Study Circle of ICSI-EIRC and also a member of PCS Committee of EIRC-ICSI.

**COMPANY LAW WORKSHOP - 2020**

## Clause by Clause Comparison of the Companies (Auditor's Report) Order [CARO]

CARO	2003	2015	2016	2020												
ISSUE DATE	June 2003	10 April,2015	29 March, 2016	25th February,2020												
EFFECTIVE DATE	July 2003	Audits of FY 2014-15 and onwards	Audits of FY 2015-16 and onwards	Audits of FY 2019-20 and onwards												
Para 3 – (clause by clause)	(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;	(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;	(i)(a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;	(i)(a) (A) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of Property, Plant and Equipment;												
	(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;	(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;	(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;	(B) whether the company is maintaining proper records showing full particulars of intangible assets;  (b) whether these Property, Plant and Equipment have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;												
	(c) if a substantial part of fixed assets have been disposed off during the year, whether it has affected the going concern;		(c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;	(c) whether the title deeds of all the immovable properties. (other than properties where the Company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company. If not, provide the details thereof in the format below;												
				<table border="1"> <thead> <tr> <th>Desc-ription of property</th> <th>Gross Carry-ing Value</th> <th>Held in the name of</th> <th>Whether prom-oter director or their relatives or employ-ee</th> <th>Period held- indicate range where appropriate</th> <th>Reason for not being held in the name of the company*</th> </tr> </thead> <tbody> <tr> <td>---</td> <td>---</td> <td>---</td> <td>---</td> <td>---</td> <td>* also indicate if in dispute</td> </tr> </tbody> </table>	Desc-ription of property	Gross Carry-ing Value	Held in the name of	Whether prom-oter director or their relatives or employ-ee	Period held- indicate range where appropriate	Reason for not being held in the name of the company*	---	---	---	---	---	* also indicate if in dispute
Desc-ription of property	Gross Carry-ing Value	Held in the name of	Whether prom-oter director or their relatives or employ-ee	Period held- indicate range where appropriate	Reason for not being held in the name of the company*											
---	---	---	---	---	* also indicate if in dispute											

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
				(d) Whether the Company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets;
				(e) Whether any proceedings have been initiated or are pending against the company for holding any Benami property under the "Benami Transactions (Prohibition) Act, 1988 and Rules made thereunder; if so, whether the Company has appropriately disclosed the details in its financial statements;
	(ii) (a) whether physical verification of inventory has been conducted at reasonable intervals by the management;	(ii) (a) whether physical verification of inventory has been conducted at reasonable intervals by the management;	(ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account;	(ii) (a) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether, in the opinion of the auditor, the coverage and procedure of such verification by the management is appropriate; whether any discrepancies of 10% or more in the aggregate for each class of inventory were noticed and if so, whether they have been properly dealt with in the books of account;
	(b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;	(b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;		(b) whether during any point of time of the year, the Company has been sanctioned working capital limits in excess of Rs. 5 crores, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the Company with such banks or financial institutions are in

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	(c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;	(c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;		agreement with the books of account of the Company. If not, give details.
	(iii) (a) has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and amount involved in the transactions; and	(iii) whether the company has granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 189 of the Companies Act. If so, (a) whether receipt or the principal amount and interest are also regular; and	(iii) whether the company has granted any loans, secured or unsecured to companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so, (a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest;	(iii) whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured to companies, firms, Limited Liability Partnerships or any other parties. If so,  (a) whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-  (A) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates.  (B) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, joint ventures and associates.
	(b) whether the rate of interest and other terms and conditions of loans given by the	(b) if overdue amount is more than rupees one lakh,	(b) whether the schedule of repayment of principal and payment of interest has	(b) whether the investments made, guarantees provided, security given and the terms and conditions of the grant of all loans

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	company, secured or unsecured, are prima facie prejudicial to the interest of the company; and	whether reasonable steps have been taken by the company for recovery of the principal and interest;	been stipulated and whether the repayments or receipts are regular;	and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;
	(c) whether receipt of the principal amount and interest are also regular; and		(c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;	(c) in respect of loans and advances in the nature of loans whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;
	(d) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest;			(d) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;
	(e) has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and the amount involved in the transactions; and			(e) whether any loan or advance in the nature of loan granted which has fallen due during the year, has been renewed or extended or fresh loans granted to settle the overdues of existing loans given to the same parties; If so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year. [Not applicable to companies whose principal business is to give loans];
	(f) whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and			(f) whether the Company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment; if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of



## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
				loans granted to Promoters, related parties as defined in clause (76) of section 2 of the Companies Act, 2013
	(g) whether payment of the principal amount and interest are also regular.			
	(iv) is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.	(iv) is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.	(iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.	(iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.
	v) (a) whether the particulars of contracts or arrangements referred to in section 301 of the Act have been entered in the register required to be maintained under that section; and	(v) in case the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules framed there under, where applicable, have been complied with? if not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?	(v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?	(v) in respect of deposits accepted by the Company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	(b) whether transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time; (This information is required only in case of transactions exceeding the value of five lakh rupees in respect of any party and in any one financial year).			
	(vi) in case the company has accepted deposits from the public, whether the directives issued by the Reserve Bank of India and the provisions of sections 58A, 58AA or any other relevant provisions of the Act and the rules framed there under, where applicable, have been complied with. If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal whether the same has been complied with or not?	(vi) where maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, whether such accounts and records have been made and maintained;	(vi) whether maintenance of (vi) cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained.	(vi) whether maintenance of cost records has been specified by the Central Government under sub section (1) of section 148 of the Companies Act and whether such accounts and records have been so made and maintained.
	(vii) in the case of listed companies and/or other companies having a paid-up capital and reserves exceeding Rs.50 lakhs as at the commencement of the	(vii) (a) is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax,	(vii) (a) whether the (vii) company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of	(vii) (a) whether the company is regular in depositing undisputed statutory dues including Goods and Service Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	financial year concerned, or having an average annual turnover exceeding five crore rupees for a period of three consecutive financial years immediately preceding the financial year concerned, whether the company has an internal audit system commensurate with its size and nature of its business;	wealth tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.	customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;	excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;
		(b) in case dues of income tax or sales tax or wealth tax or service tax or duty of customs or duty of excise or value added tax or cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not constitute a dispute).  (c) whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made thereunder has been transferred to such fund within time.	(b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute).	(b) where statutory dues referred to in sub-clause (a) have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute).
	(viii) where maintenance of cost records has	(viii) whether in case of a company which	(viii) whether the company has defaulted	(viii) (a) whether any transactions not recorded in the books of

**COMPANY LAW WORKSHOP - 2020**

CARO	2003	2015	2016	2020												
	<p>been prescribed by the Central Government under clause (d) of sub-section (1) of section 209 of the Act, whether such accounts and records have been made and maintained;</p>	<p>has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;</p>	<p>in repayment of loans or borrowing to a financial institution, bank, government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and government, lender wise details to be provided).</p>	<p>account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961; if so, whether the previously unrecorded income has been properly recorded in the books of account during the year?</p>												
	<p>(ix) (a) is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, Income-tax, Sales-tax, Wealth Tax, Service Tax, Custom Duty, Excise Duty, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.</p>	<p>(ix) whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;</p>	<p>(ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;</p>	<p>(ix) (a) whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender? If yes, the period and the amount of default to be reported as per the format below:</p> <table border="1" data-bbox="863 841 1166 1252"> <thead> <tr> <th data-bbox="863 841 912 1003">Nature of borrowing including debt securities</th> <th data-bbox="912 841 962 1003">Name of lender*</th> <th data-bbox="962 841 1011 1003">Amount not paid on due date</th> <th data-bbox="1011 841 1060 1003">Whether principal or interest</th> <th data-bbox="1060 841 1110 1003">No. of days delay or unpaid</th> <th data-bbox="1110 841 1166 1003">Remarks, if any</th> </tr> </thead> <tbody> <tr> <td data-bbox="863 1003 912 1252"></td> <td data-bbox="912 1003 962 1252">*lender wise details to be provided in case of defaults to banks, financial institutions and Govt.</td> <td data-bbox="962 1003 1011 1252"></td> <td data-bbox="1011 1003 1060 1252"></td> <td data-bbox="1060 1003 1110 1252"></td> <td data-bbox="1110 1003 1166 1252"></td> </tr> </tbody> </table>	Nature of borrowing including debt securities	Name of lender*	Amount not paid on due date	Whether principal or interest	No. of days delay or unpaid	Remarks, if any		*lender wise details to be provided in case of defaults to banks, financial institutions and Govt.				
Nature of borrowing including debt securities	Name of lender*	Amount not paid on due date	Whether principal or interest	No. of days delay or unpaid	Remarks, if any											
	*lender wise details to be provided in case of defaults to banks, financial institutions and Govt.															
	<p>(b) in case dues of Income tax/ Sales tax/ Wealth tax/ Service tax/ Custom duty/ Excise duty/ cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is</p>			<p>(b) Whether the company is a declared wilful defaulter by any bank or financial institution or other lender?</p>												

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	<p>pending shall be mentioned.</p> <p>(A mere representation to the Department shall not constitute a dispute).</p>			<p>(c) Whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported.</p> <p>(d) whether funds raised on short term basis have been utilised for long term purposes? If yes, the nature and amount to be indicated.</p> <p>(e) whether the Company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures? If so, details thereof with nature of such transactions and the amount in each case</p> <p>(f) whether the Company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies? If so, give details thereof and also report if the company has defaulted in repayment of such loans raised.</p>
	<p>(x) whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;</p>	<p>(x) whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;</p>	<p>(x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;</p>	<p>(x) (a) whether moneys raised by way of initial public offer or further public offer (including debt instruments) during the year were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;</p> <p>(b) whether the Company has made any preferential allotment or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year and if so, whether the requirements of Section 42 and Section 62 of</p>

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
				the Companies Act, 2013 have been complied with and the funds raised have been used for the purposes for which the funds were raised. If not, provide details in respect of amount involved and nature of non-compliance;
	(xi) whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;	(xi) whether term loans were applied for the purpose for which the loans were obtained;	(xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same;	(xi) (a) whether any fraud by the company or any fraud on the Company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;
				(b) whether any report under sub-Section (12) of Section 143 of the Companies Act has been filed by the auditors in Form ADT-4 as prescribed under Rule 13 of Companies (Audit and Auditors) Rules 2014 with the Central Government?  (c) whether the auditor has considered whistle-blower complaints, if any, received during the year by the Company?
	(xii) whether adequate documents and records are maintained in cases where the company has granted loans and advances on the basis of security by way of pledge of shares, debentures and other securities; If not, the deficiencies to be pointed out.	(xii) whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.	(xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1:20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;	(xii) (a) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1:20 to meet out the liability  (b) whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;  (c). whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof

## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	<p>(xiii) whether the provisions of any special statute applicable to chit fund have been duly complied with? In respect of nidhi/mutual benefit fund/societies;</p> <p>(a) whether the net-owned funds to deposit liability ratio is more than 1:20 as on the date of balance sheet;</p> <p>(b) whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/doubtful/loss assets;</p> <p>(c) whether the company has adequate procedures for appraisal of credit proposals/requests, assessment of credit needs and repayment capacity of the borrower;</p> <p>(d) whether the repayment schedule of various loans granted by the nidhi is based on the repayment capacity of the borrower;</p>		<p>(xiii) whether all transactions with the related parties are in compliance with section 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;</p>	<p>(xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;</p>
	<p>(xiv) if the company is dealing or trading in shares, securities, debentures and other investments, whether proper records have been maintained of the transactions and contracts and whether timely entries have been made therein;</p>		<p>(xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act,</p>	<p>(xiv) (a) whether the company has an internal audit system commensurate with the size and nature of its business?</p> <p>(b) Whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor?</p>

**COMPANY LAW WORKSHOP - 2020**

CARO	2003	2015	2016	2020
	also whether the shares, securities, debentures and other investments have been held by the company, in its own name except to the extent of the exemption, if any, granted under section 49 of the Act;		2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance;	
	(xv) whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;		(xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act, 2013 have been complied with;	(xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with;
	(xvi) whether term loans were applied for the purpose for which the loans were obtained;		(xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.	(xvi) (a) whether the company is required to be registered under section 45-1A of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.  (b) whether the Company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration (CoR) from the Reserve Bank of India as per the Reserve Bank of India Act 1934  (c) whether the Company is a Core Investment Company (CIC) as defined under the Regulations by the Reserve Bank of India? If so, whether it continues to fulfil the criteria of a CIC and In case the company is an exempted or unregistered CIC, whether it continues to fulfil such criteria.  (d) Whether the Group has more than one CIC as part of the Group, If yes, indicate the number of CICs which are part of the Group.



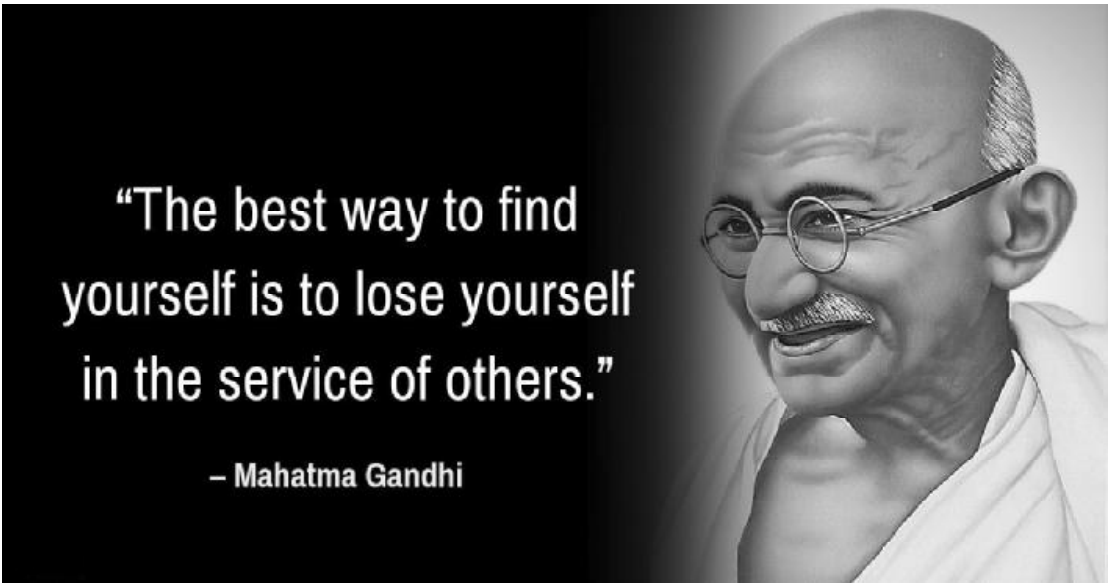
## COMPANY LAW WORKSHOP - 2020

CARO	2003	2015	2016	2020
	(xvii) whether the funds raised on short-term basis have been used for long term investment; If yes, the nature and amount is to be indicated;			(xvii) whether the Company has incurred cash losses in the Financial Year and in the immediately preceding Financial year? If so, state the amount of cash losses
	(xviii) whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under section 301 of the Act and if so whether the price at which shares have been issued is prejudicial to the interest of the company;			(xviii) whether there has been any resignation of the statutory auditors during the year? If so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors?
	(xix) whether security or charge has been created in respect of debentures issued;			(xix) on the basis of the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements, the auditor's knowledge of the Board of Directors and management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date.
	(xx) whether the management has disclosed on the end use of money raised by public issues and the same has been verified;			xx) (a) whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act.  (b) whether any amount remaining unspent under sub-

**COMPANY LAW WORKSHOP - 2020**

CARO	2003	2015	2016	2020
				section (5) of section 135 of the Companies Act pursuant to any ongoing project, has been transferred to special account in compliance with the provision of sub-section (6) of section 135 of the said Act.
	(xxi) whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.			(xxi) whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements? If yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks

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# HIGHLIGHTS OF CARO 2020



CA VIVEK AGARWAL

## COMPANIES AUDITOR REPORT ORDER (CARO) RULES, 2020 - Analyses

The MCA has issued the Companies (Auditor's Report) Order, 2020 (CARO 2020), on 25th February 2020. This order has been issued in supersession of the Companies (Auditor's Report) Order, 2016, and is applicable for reporting on financial statements of companies whose financial year commences on or after 1st April 2019. CARO 2016 was issued by MCA in supersession of CARO 2015.

Now, the MCA has kept the applicability of CARO 2020 to companies same as CARO 2016. The CARO 2020 will not apply to the auditor's report on consolidated financial statements except for clause (xxi) of Clause 3 in regard to any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements. If there is any such remark, then the auditor of CFS, has to indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks. The exemption to small companies has been removed and instead CARO 2020 has defined small company itself.

The total number of clauses in the new CARO is 21. CARO 2020 has enhanced the auditor's reporting requirements in certain areas, such as Loans given, application of Short Term fund, Long term Funds etc.

The provisions of the CARO 2020 are furnished below:

CARO 2020 is applicable from FY 2019-20 and the matters specified therein shall be included in each report made by the auditor under Section 143 of the Companies Act, 2013 on the account of every company to which CARO 2020 applies.

Section 143 (11) of the Act stipulates that the Central Government may order for the inclusion of statement on specified matter in the auditor's report for specified class or description of companies. Accordingly, CARO 2020 is issued in pursuance of Sec. 143 (11) of Companies Act 2013 for inclusion of the matters specified therein in auditors' report. Hence, CARO 2020 should be complied by the statutory auditor of every company on which it applies.

CARO 2020 has been issued after consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013.

### Applicability

CARO 2020 is applicable to every company including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013, except

- i. a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- ii. an insurance company as defined under the Insurance Act, 1938 (4 of 1938);
- iii. a company licensed to operate under section 8 of the Companies Act;
- iv. a One Person Company as defined in clause (62) of section 2 of the Companies Act and a small company as defined in clause (85) of section 2 of the Companies Act; and
- v. a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than one crore rupees as on the balance sheet date and which does not have total borrowings exceeding one crore rupees from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act (including revenue from discontinuing operations) exceeding ten crore rupees during the financial year as per the financial statements.

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

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2019, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable:

Provided this Order shall not apply to the auditor's report on consolidated financial statements except clause (xxi) of paragraph 3.

## COMPANY LAW WORKSHOP - 2020

1. Matters to be included in auditor's report. - The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:-

**Property, Plant and Equipment [clause 3 (i)]**

- i. (a) (A) *whether the company is maintaining proper records showing full particulars, including quantitative details and situation of Property, Plant and Equipment;*
- (B) *whether the company is maintaining proper records showing full particulars of intangible assets;*
- (b) *whether these Property, Plant and Equipment have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;*
- (c) *whether the title deeds of all the immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company, if not, provide the details thereof in the format below:-*

Description of property	Gross carrying value	Held in name of	Whether promoter, director or their relative or employee	Period held - indicate range, where appropriate	Reason for not being held in name of company*
--	--	--	--	--	*also indicate if in dispute

- (d) *whether the company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets;*
- (e) *whether any proceedings have been initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and rules*

*made thereunder, if so, whether the company has appropriately disclosed the details in its financial statements;*

**Comments**

The auditor have to comment on Intangible assets also under this clause. It was not required in CARO 2016.

The pertinent question is how the records would be kept in case of self-generated Intangible Assets, Goodwill, Logo, trademark etc.

The auditor have to disclose, if there has been any revaluation, whether the revaluation has been done by registered valuer and if the change in net value of the asset is more than 10%, then the amount of change has to be informed here.

A new reporting on benami cases has also been added. The promoters may not share details of Benami Cases with the auditors, only Management Representations will do in that cases.

**Inventory [Clause 3 (ii)]**

- ii. (a) *whether physical verification of inventory has been conducted at reasonable intervals by the management and whether, in the opinion of the auditor, the coverage and procedure of such verification by the management is appropriate; whether any discrepancies of 10% or more in the aggregate for each class of inventory were noticed and if so, whether they have been properly dealt with in the books of account;*
- (b) *whether during any point of time of the year, the company has been sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details;*

**Comments**

CARO 2016 used to ask reporting for material discrepancies, but CARO 2020 has defined materiality to be 10% for each class of inventory.

Secondly a new reporting of compliance with working capital is required for company having sanctioned limit in excess of Rs five crore from banks or financial institutions. The auditor is required to report about the quarterly disclosure made by company to bank. This adds to extra

## COMPANY LAW WORKSHOP - 2020

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reporting by auditors who can be held liable if there is a gap.

There may be minor difference in details of debtors, stock valuation etc, Whether Quarterly Debtor confirmation is required in verification.

### Loan given by Company [Clause 3 (iii)]

iii. *whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so, -*

(a) *whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-*

(A) *the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates;*

(B) *the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, joint ventures and associates;*

(b) *whether the investments made, guarantees provided, security given and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;*

(c) *in respect of loans and advances in the nature of loans, whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;*

(d) *if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;*

(e) *whether any loan or advance in the nature of loan granted which has fallen due during the year, has been renewed or extended or fresh loans granted*

*to settle the overdues of existing loans given to the same parties, if so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year [not applicable to companies whose principal business is to give loans];*

(f) *whether the company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in clause (76) of section 2 of the Companies Act, 2013;*

### Comments

This paragraph is a major change in CARO 2020, earlier the reporting was only of loan given to parties covered in Section 189 of Companies Act, 2013, but the clause under CARO 2020 covers all loan granted by the company.

If the loan has been granted, the aggregate amount during the year has to be reported along with balances at balance sheet date, moreover, the loan given to Subsidiary, Associates and joint ventures has to be reported separately and to other separately.

The auditor is also required to report that if any new loan has been given to settle old loan or there has been extension in existing loan, the amount and % age of such loan to total loan has to be reported. This clause will be an issue to many corporates and detailed reporting will be seen in upcoming audit reports.

If there any is any loan repayable on demand or without any terms and condition, then same should be disclosed separately with aggregate amount.

How to document the reasonable steps taken by company/ management to recover loans, whether lawyer certificate etc will be required.

### Loan to director and investment by the company [Clause 3 (iv)]

iv. *in respect of loans, investments, guarantees, and security, whether provisions of sections 185 and 186 of the Companies Act have been complied with, if not, provide the details thereof;*

## COMPANY LAW WORKSHOP - 2020

### Comments

This clause is same as CARO 2016

#### Deposits [Clause 3 (v)]

- v. *in respect of deposits accepted by the company or amounts which are deemed to be 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 and the rules made thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not;*

### Comments

This clause is same as CARO 2016

#### Cost Records [Clause 3 (vi)]

- vi. *whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act and whether such accounts and records have been so made and maintained;*

### Comments

This clause is same as CARO 2016

#### Statutory Dues [Clause 3 (vii)]

- vii. (a) *whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;*
- (b) *where statutory dues referred to in sub-clause (a) have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute);*

### Comments

This clause is same as CARO 2016 except the goods and services tax has been added.

#### Disclosure under Income Tax [Clause 3 (viii)]

- viii. *whether any transactions not recorded in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (43 of 1961), if so, whether the previously unrecorded income has been properly recorded in the books of account during the year;*

### Comments

This is a new clause for reporting in various scheme like Voluntary Disclosure Scheme, Viwad Se Viswas etc. The accounting of disclosures made has to be reported.

If the company reports any figure over here, will this attract fraud reporting paragraph also. This is to be clarified.

#### Repayment of Loan [Clause 3 (ix)]

- ix. (a) *whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below:-*

Nature of borrowing, including debt securities	Name of lender*	Amount not paid on due date	Whether principal or interest	No. of days delay or unpaid	Remarks, if any
	*lender wise details to be provided in case of defaults to banks, financial institutions and Govt.				

- (b) *whether the company is a declared wilful defaulter by any bank or financial institution or other lender;*
- (c) *whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;*

## COMPANY LAW WORKSHOP - 2020

- (d) whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated;
- (e) whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;
- (f) whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised;
- (b) whether the company has made any preferential allotment or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year and if so, whether the requirements of section 42 and section 62 of the Companies Act, 2013 have been complied with and the funds raised have been used for the purposes for which the funds were raised, if not, provide details in respect of amount involved and nature of non-compliance;

### Comments

This clause is same as CARO 2016 and preferential allotment clause (xiv) of CARO 2016 has been added here.

### Reporting of Fraud [Clause 3 (xi)]

xi. (a) whether any fraud by the company or any fraud on the company has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated;

(b) whether any report under sub-section (12) of section 143 of the Companies Act has been filed by the auditors in Form ADT-4 as prescribed under rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government;

(c) whether the auditor has considered whistle-blower complaints, if any, received during the year by

the company;

### Comments

This clause is same as CARO 2016 only para b and c are additional, these are for compliance of Sec 143 and additional responsibility of whistle blower complaints

### Nidhi Company [Clause 3 (xii)]

xii. (a) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability;

(b) whether the Nidhi Company is maintaining ten percent. unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;

### Comments

This is again detailed reporting required in CARO 2020. In CARO 2016 it was limited to default in repayment of loans and borrowing to a financial institution, banks, government or dues to debenture holders but in CARO 2020 the reporting is about default in payment of loan or interest to any lenders and the reporting has to be done lender wise in given format.

The Auditor have to Report whether all loans has been used for the purpose for which it was taken, term loan and Short-Term Loan, it brings back earlier CARO paragraphs

The Auditor also has to make additional reporting of loan taken to meet obligation of subsidiaries, associates and joint ventures, as well as loan taken by pledge of shares of Subsidiary, associates or joint venture.

### Utilisation of IPO and further public offer [Clause 3 (x)]

x. (a) whether moneys raised by way of initial public offer or further public offer (including debt instruments) during the year were applied for the purposes for which those are raised, if not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;



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- (c) *whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof;*

### Comments

This clause is same as CARO 2016 only para C is additional Related Party Transaction [Clause 3 (xiii)]

- xiii. *whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act where applicable and the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards;*

### Comments

This clause is same as CARO 2016

### Internal Audit [Clause 3 (xiv)]

- xiv. (a) *whether the company has an internal audit system commensurate with the size and nature of its business;*  
(b) *whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor;*

### Comments

This clause has made a comeback, it was not there in CARO 2016. The para b of the clause is new, it derives itself from Standards on Auditing where using the work of Internal Auditors is discussed.

Earlier this clause talked about Internal control relating to Purchase and sales only, now the scope is very wide

### Non Cash Transaction [Clause 3 (xv)]

- xv. *whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with;*

### Comments

This clause is same as CARO 2016 only para C is additional Register under RBI Act 1934 [Clause 3 (xvi)]

- xvi. (a) *whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) and if so, whether the registration has been obtained;*  
(b) *whether the company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration (CoR)*

*from the Reserve Bank of India as per the Reserve Bank of India Act, 1934;*

- (c) *whether the company is a Core Investment Company (CIC) as defined in the regulations made by the Reserve Bank of India, if so, whether it continues to fulfil the criteria of a CIC, and in case the company is an exempted or unregistered CIC, whether it continues to fulfil such criteria;*  
(d) *whether the Group has more than one CIC as part of the Group, if yes, indicate the number of CICs which are part of the Group;*

### Comments

The para a of this clause is same as CARO 2016. The para b to d are new. The auditor is required to report on activities carried by the company of NBFC, HFC without valid certificates. The Company is a CIC or the number of CIC in group. This has been asked to be reported after recent issues in NBFC,

### Cash Losses [Clause 3 (xvii)]

- xvii. *whether the company has incurred cash losses in the financial year and in the immediately preceding financial year, if so, state the amount of cash losses;*

### Comments

This is new reporting requirements of CARO 2020, calculation of cash losses to be done. This is visible from Cash Flow but now separate reporting is also required.

### Resignation of Auditors [Clause 3 (xviii)]

- xviii. *whether there has been any resignation of the statutory auditors during the year, if so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors;*

### Comments

CARO 2020 takes auditor resignation more seriously and after recent increase in numbers of resignation and their timings it's a welcome move, how the auditor has taken care of issues of earlier auditor.

### Capable to Meet Liabilities [Clause 3 (xix)]

- xix. *on the basis of the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements, the auditor's knowledge of the Board of Directors and management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities*



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*existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date;*

### Comments

CARO 2020 brings additional clause on capability of company to meet its liability, its again in line with going concern reporting which was made stringent by SA 570 lately, the above clause give more clarity of cash flows and will give some tension to new companies and its fund management. The auditors should take detail justification for above and do a walkthrough.

### Corporate Social Reporting [Clause 3 (xx)]

- xx. (a) *whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act;*
- (b) *whether any amount remaining unspent under sub-section (5) of section 135 of the Companies Act, pursuant to any ongoing project, has been transferred to special account in compliance with the provision of sub-section (6) of section 135 of the said Act;*

### Comments

The Reporting about CSR was missing and now its brought in by CARO 2020. This clause is again an issue as some companies were not taking CSR in true sense and added responsibility has been given to auditor.



The major issue is that the section 135(5)&135(6) of Companies Act 2013 has not yet been notified still auditors have to report on same.

### Justification [Clause 3 (xxi)]

*xxi. whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks.*

### Comments

The auditor have to give proper reasoning for qualification or adverse remarks in audit report. A new paragraph introduced by CARO 2020

### Reasons to be stated for unfavourable or qualified answers:-

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

### Comments

The above two para again increase the responsibility of the auditor in respect to cases where auditor is not able to express any opinion on any matter or has to give detail reason for unfavourable or qualified comments on any of the para stated above.

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# COMPOUNDING OF OFFENCES U/ S 441



CS MOHAN RAM GOENKA

To understand the meaning of Compounding, it becomes incumbent to understand the main concept of OFFENCE and COMPOUNDING first.

*“Offence” shall mean any act or omission made punishable by any law for the time being in force.*

*“To compound” means “to settle a matter by a money payment, in lieu of other liability.*

*Compounding in other words is simply as “SETTLEMENT MECHANISM”*

## WHEN CAN THE OFFENCE BE COMPOUNDED ?

Any offence punishable under the Companies Act 1956 / 2013 (whether committed by a company or any officer thereof) can be compounded either before or after the institution of any prosecution,

- (a) Offence compounded before the institution of any prosecution,

No prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

- (b) Offence compounded after the institution of any prosecution,

The Compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

## HOW CAN THE OFFENCE BE COMPOUNDED ?

Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

Application shall also be filed in Form GNL 1 with the Registrar of Companies

Offence is compounded on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify.

Further, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

For Filing the Compounding Application, generally the NCLT rules are followed and the various formats like Heading of the applications, Titles, Fact of the Case and the Affidavit verifying applications and the Memorandum of Appearances, it is better to follow the NCLT Rules.

## Documents Accompanying the Compounding Applications

- a) Application in NCLT-1
- b) Heading as per NCLT-4
- c) Affidavit verifying the Application- NCLT-6
- d) Memorandum of Appearance / Vakaltnama
- e) Copy of Show Cause Notices, if any, of MCA
- f) Latest MOA
- g) Latest Annual Report
- h) All Correspondences in relation with the said Sections as submitted with regulators
- i) If suo moto, then that has to be mentioned accordingly.
- j) Justification of the Fact of the cases
- k) If the prosecution is going on, then the respective court supporting papers to be annexed with the current status and the leave of the court taken for the move of the Compounding Application or not

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- l) The offence if made good then Ok or the affirmation that the same has been rectified in the subsequent year Annual Report.
- m) Any Filing Fees with Regional Director of NCLT – No Fees

Authorities involved :-

Offences where maximum amount of fine may be imposed upto Rs. 50,000/- (upto 31.03.2014), upto Rs. 5 lakhs (from 01.4.2014 to 01.11.2018) and upto Rs. 25 lakhs (onwards 02.11.2018) - By the Regional Director or any officer authorised by the Central Government,

Offences where maximum amount of fine may be imposed exceeds Rs.50,000/- (upto 31.03.2014), exceeds Rs.5 lakhs exceeds Rs. 25 lakhs - By Tribunal on or after 02.11.2018

Process of Compounding

The Application is processed by the Legal Cell of the Registrar of Companies and then subsequently forwarded to the appropriate authority on the basis of the Fines calculations— to the Regional Director or to the NCLT- as tabled above. We generally submit the Original set of Applications and one Xerox Copy with the Registrar of Companies. After due processing of the Application the Filed up papers in original are sent to the respective Authority. Necessary follow up is to be done in time of intervals in respective departments in order to know the status of the Applications. Once it is send the Regional Director of NCLT, then the necessary notices are issued by the respective authority and the hearing is fixed. We have to appear on the said date and time with proper documents and make our submission before the Hon'ble member. After our submission a particular fines is levied after compounding of the same and we are give a time of fortnight or so as agreed upto to submit the same. In case of the Regional Director the Fines has to be submitted by MCA portal throught miscellaneous fees by online mode and in case of the NCLT the fined has to be submitted by pay order or DD in the name of PAY & ACCOUNS OFFICER, MINISTRY of CORPOTAE AFFIRS payable at Kolkata \*\*\*\*\* . Once the payment is clear then the respective authority issue the order and the same has to be submiited in ONC-28 as stated below.

COMPOUNDING OPTION U/S 441 OF THE ACT DEPENDS ON PUNISHMENT INVOLVED IN OFFENCES

OFFENCES TO BE COMPUDED

- (i) Offence punishable with fine only, or
- (ii) Offence punishable with fine or imprisonment or both.

OFFENCES NOT TO BE COMPOUNDED

- (i) Offence punishable with imprisonment only.
- (ii) Offence punishable with both imprisonment and fine.
- (iii) Where investigation has been initiated or is pending against the company;
- (iv) Where similar offence has been compounded within last three years.

Filing of Order with ROC – File e-form INC 28 within 7 days from the date on which the offence is so compounded i.e., Date of Order..

Failure to comply with NCLT / RD Order - (5) Any officer or other employee of the company shall be punishable with imprisonment for a term which may extend to 6 months, or with fine not exceeding Rs. 1,00,000/-, or with both.

Prosecution to be cleared

Suppose in any of the Section, the regulators has filed the prosecution against the directors and the Company say for Example under Section 159/166 for Non Filing of Annual Return and balance Sheet Under Companies Act, 1956. The same is generally reflected in the Company Master Data in the MCA portal and the bankers if approached for any financial assistances direct the company to clear such non compliances. In such situations either to go for compounding as stated above and after obtaining the order of the Compounding request the regulators to submit the withdrawal applications in the respective court where the prosecutions is filed. The necessary appearance by both the party will be done on the date of the hearing in the respective court and the order of the due compliances be issued accordingly. The Company representative will submit the copy of the Court order and request the regulators to rectify the Company Master Data in the MCA Portal, so that the financial assistance, if any, is cleared by the bankers.

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## RECENT AMENDMENT IN COMPANIES ACT, 2013

Reference	Date	Topic	Description
General Circular No. 07-2019	27-06-2019	Filing of DIR-3 KYC under the Companies Act, 2013	It is hereby informed that it is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service. <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf</a>
No. NF-11/1/2019-O/o Secy-NFRA	01-07-2019	Last date of filling up Form NFRA — 1	It is intimated that NFRA-1 Form has been deployed on the website of NFRA (nfra.gov.in) and accordingly the last date of filing the same by the Entities concerned will be 31.7.19. <a href="http://mca.gov.in/Ministry/pdf/FormNFRA1_0207019.pdf">http://mca.gov.in/Ministry/pdf/FormNFRA1_0207019.pdf</a>
S.O. 2269 (E)	01-07-2019	Commencement of Section 81 of the Companies (Amendment) Act, 2017 w.e.f. 15th Aug. 2019	Substitution of new section for section 406 of the Companies Act, 2013. Provision relating to <i>Nidhis</i> and its application, etc. <a href="http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01072019.pdf">http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01072019.pdf</a>
	01-07-2019	Form BEN-2 Deployed	Form BEN-2 (Return to the Registrar in respect of declaration under Section 90) notified vide the Companies (Significant Beneficial Owners) second Amendment Rules, 2019 dated 1st July 2019 is available for filing purposes now.
General Circular No. 08-2019	29-07-2019	Relaxation of additional fees and extension of last date of filing of Form BEN-2	It is hereby, informed that the time limit for filing e-form No. BEN-2 is extended up to 30.09.2019 without payment of additional fee and thereafter fee and additional fee shall be payable. <a href="http://mca.gov.in/Ministry/pdf/GeneralCircular_29072019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular_29072019.pdf</a>
S. O. --- (E)	14-08-2019	Commencement of few sections of the Companies (Amendment) Act, 2019 w.e.f. 15th August, 2019	In exercise of the powers conferred by sub-section (3) of section 1 of the Companies (Amendment) Act, 2019 (22 of 2019), the Central Government hereby appoints the 15th day of August, 2019 as the date on which the provisions of sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, section 20, section 31, sections 33, 34 and 35 and sections 37 and 38 of the said Act shall come into force. <a href="http://mca.gov.in/Ministry/pdf/CommencementNotification_14082019.pdf">http://mca.gov.in/Ministry/pdf/CommencementNotification_14082019.pdf</a>
		Simplification of process of Incorporation of Section 8 Companies:	1) With a view to simplify the process for incorporating Section 8 Companies, requirement of prior filing of INC-12 for new section-8 companies is being dispensed with vide the Companies(Incorporation) Sixth Amendment Rules, 2019 dated 7th June, 2019.2) Henceforth, Section 8 Companies can be

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			<p>incorporated by either reserving names through Run and filing SPICe thereafter or by directly filing SPICe. Licence No. for a section 8 company shall henceforth be allotted at the time of incorporation itself.3) In view of the above, all pending INC-12 SRNs for new Companies pending at respective ROCs would be marked as 'Rejected' on 15th August 2019. Such applicants may thereafter directly file SPICe for obtaining License Number and for incorporation of Section 8 Companies.4) Stakeholders who have already obtained License Numbers and are yet to file SPICe form for incorporating Sec 8 companies may do so at their convenience but may please note that the forms shall be processed only after a certain time lag to allow for work flow changes to take effect.5) Those stakeholders who have already filed SPICe forms which are pending at CRC may kindly await processing of these forms after the work flow changes take effect.</p>
		Changes in AOC-4 Non-XBRL form for NBFC	<p>The Central Government has made further amendments to Schedule III to the Companies Act, 2013 vide Notification dated 11th October 2018. As per the said notification, Division III has been inserted in respect of Financial Statements for a Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015. The changes to AOC-4 Non-XBRL form necessitated by insertion of Division III in Schedule III of CA 2013 are under development and the revised form exclusively for such class of companies would be made available for filing purposes soon. Stakeholders may kindly take note and plan accordingly.</p>
		Changes in forms related to IEPF	<p>IEPF Second Amendment Rules, 2019 have been notified and are available on <a href="http://www.iepf.gov.in">www.iepf.gov.in</a>. Accordingly IEPF-1, IEPF-2 and IEPF-4 forms shall be revised, new IEPF-1A shall be available and IEPF-6 shall be deprecated from 20th August 2019. Stakeholders are requested to plan accordingly.</p>
General Circular No. 09-2019	21-08-2019	Clarification under Sec 232(6) of Companies Act, 2013	<p>It is hereby clarified that:</p> <p>(a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfillment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.</p> <p>(b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).</p> <p>(c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to</p>

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			<p>be specifically brought out in the scheme and it should not be against public interest.</p> <p>(d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.</p> <p><a href="http://mca.gov.in/Ministry/pdf/GeneralCircular_21082019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular_21082019.pdf</a></p>
General Circular No. 10-2019	21-08-2019	Extension time for filing BEN-2	<p>It is hereby, informed that the time limit for filing e-form No. BEN-2 is extended up to 31.12.2019 without payment of additional fee and thereafter fee and additional fee shall be payable.</p> <p><a href="http://mca.gov.in/Ministry/pdf/GeneralCircular_24092019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular_24092019.pdf</a></p>
		Amendments to Schedule III to the Companies Act, 2013	<p>The Central Government has made further amendments to Schedule III to the Companies Act, 2013 vide Notification dated 11th October 2018. As per the said notification, Division III has been inserted in respect of Financial Statements for a Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015. The changes to AoC-4 Non-XBRL form necessitated by insertion of Division III in Schedule III of CA 2013 are under development and the revised form exclusively for such class of companies would be made available for filing purposes soon. Once the form is deployed in MCA21 portal for filing purposes, suitable notice would be published and adequate time would be given for filing the form without levying additional fee.</p>
		Changes in Costing Taxonomy 2019	<p>Costing Taxonomy 2019 to cater to the annual filing of CRA-4 (Cost audit report) for FY 2018-19 is under development. The companies which are required to file CRA-4 (Cost audit report) for FY 2018-19 are required to use Costing Taxonomy 2019 only. Those who have already filed CRA-4 (Cost Audit Report) using the existing Costing Taxonomy 2015 for FY 2018-19 are NOT required to file afresh. However, those companies which are yet to file their Cost Audit Reports are requested to await deployment of Costing Taxonomy 2019 on MCA21 portal. Once the Costing Taxonomy 2019 is deployed, sufficient time would be given for filing CRA-4 without levying additional fee.</p>
General Circular No. 11-2019	25-10-2019	Relaxation of Additional Fee and Extension of Last of Filing Form IEPFA-1A and form IEPF-2	<p>It has been decided to relax the additional fees payable by companies on filling form IEPFA-1A upto 31.12.2019 and form IEPF-2 upto 30.11.2019.</p> <p><a href="http://mca.gov.in/Ministry/pdf/GeneralCircular1_25102019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular1_25102019.pdf</a></p>

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General Circular No. 12-2019	25-10-2019	Relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report) for FY 2018-19 under the Companies Act, 2013	It is hereby informed that the Companies (cost records and audit) Amendment Rules, 2019 and Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment Rules, 2019 have been notified on 15.10.2019 and simultaneously the work of deployment of costing taxonomy 2019 is under process. In view of above and the difficulties expressed by various stakeholders for extending the last date of filing of CRA-4 (cost audit report), it has been decided to extend the last date of filing of CRA-4 (cost audit report) for all eligible companies for the FY 2018-19, without payment of additional fee till 31st December, 2019. <a href="http://mca.gov.in/Ministry/pdf/GeneralCircular_25102019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular_25102019.pdf</a>
General Circular No. 13-2019	29-10-2019	Relaxation of additional fee AOC-4 and MGT-7	Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2019 on account of various factors, it has been decided to extend the due date for filing of e-forms AOC-4, AOC (CFS) AOC-4 XBRL upto 30.11.2019 and e-form MGT-7 upto 31.12.2019, by companies without levy of additional fee. <a href="http://mca.gov.in/Ministry/pdf/GeneralCircular_29102019.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircular_29102019.pdf</a>
General Circular No. 14-2019	27-11-2019	Extension of last date of filing NFRA-2	It is stated that the time limit for filing Form NFRA-2 will be 90 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA). <a href="http://mca.gov.in/Ministry/pdf/NFRA_27112019.pdf">http://mca.gov.in/Ministry/pdf/NFRA_27112019.pdf</a>
General Circular No. 16-2019	28-11-2019	Extension of last date of filing Form PAS-6	It is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry. <a href="http://mca.gov.in/Ministry/pdf/FormPAS6_28112019.pdf">http://mca.gov.in/Ministry/pdf/FormPAS6_28112019.pdf</a>
		Registration on Independent Directors' Databank	Registration on Independent Directors' Databank will commence on 2nd December, 2019 from 11.30 AM onwards
General Circular No. 17-2019	30-12-2019	Relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report) for FY 2018-19 under the Companies Act, 2013	In continuation to this Ministry's General Circular No. 12/2019 dated 24.10.2019 it is informed that the last date of filing of CRA-4 (cost audit report) for all eligible companies for the Financial Year 2018-19, without payment of additional fee, has been further extended till 29.02.2020. <a href="http://mca.gov.in/Ministry/pdf/Circular17_30122019.pdf">http://mca.gov.in/Ministry/pdf/Circular17_30122019.pdf</a>
General Circular No. 1-2020	01-12-2020	Extension for filing BEN-2	In continuation to this Ministry's General Circular No. 10/2019 dated 24.10.2019 it is informed that the last date of filing of BEN-2 is extended up to 31.03.2020. <a href="http://mca.gov.in/Ministry/pdf/Circular1_01012020.pdf">http://mca.gov.in/Ministry/pdf/Circular1_01012020.pdf</a>

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		Incorporation of new Company	<p>(i) Stakeholders may please note that as part of Government of India's Ease of Doing Business(EODB) initiatives, the Ministry of Corporate Affairs would be shortly notifying &amp; deploying a new Web Form christened 'SPICE+' (pronounced 'SPICE Plus') replacing the existing SPICE form.</p> <p>(ii) SPICE+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. It will also facilitate allotment of GSTIN wherever so applied for by the Stakeholders. After deployment of SPICE+ web form, RUN shall be applicable only for change of name of existing companies.</p> <p>(iii) Upon notification &amp; deployment, all new name reservations for new companies as well as new incorporations shall be applied through SPICE+ only</p> <p>(iv) However, incorporation of companies for names reserved through the existing RUN service shall continue to be filed in the existing SPICE eform along with related linked forms as applicable and if marked under resubmission shall be resubmitted in SPICE eform.</p> <p>(v) Resubmission of SPICE forms submitted prior to date of deployment of SPICE+ web form shall also be filed in the existing SPICE eform and related linked forms as applicable.</p>
General Circular No. 2-2020	30-01-2020	Relaxation of additional fees and extension of last date of filing of AoC-4 NBFC (Ind AS) and AoC-4 CFS NBFC (Ind AS) for FY 2018-19 under the Cos. Act, 2013	<p>It is hereby informed that the two new eforms namely AoC-4 NBFC (Ind AS) and AoC- 4 CFS NBFC (Ind AS) are likely to be deployed on 31st January, 2020 and 17th February, 2020 respectively. In view of above, it has been decided to extend the last date of filing of AoC-4 NBFC (Ind AS) and AoC-4 CFS NBFC (Ind AS) for FY 2018-19 without payment of additional fees till 31st March, 2020.</p> <p><a href="http://mca.gov.in/Ministry/pdf/Circular_30012020.pdf">http://mca.gov.in/Ministry/pdf/Circular_30012020.pdf</a></p>
General Circular No. 3-2020	17-02-2020	Filing of forms in the Registry (MCA-21) by the IP (IRP or RP or Liquidator) appointed under Insolvency Bankruptcy Code, 2016	<p>Keeping in view the requirements for statutory compliances by such companies under the Companies Act, 2013 and to enable compliance of such requirements by such Resolution Professionals, it is hereby clarified that the following procedures shall be followed in respect of all such cases:-</p> <p>The IRP/ RP/ Liquidator would have to first file the NCLT order approving him as the IRP/RP/Liquidator in form INC-28 on the MCA21 portal by selecting the option "Others" at serial no. s(a)(i) from the drop down menu in the form. After filling in the form, the IRP/RP/Liquidator while affixing his DSC, shall choose his designation as "Others" in the declaration box.</p> <p>Jurisdictional ROC, shall thereafter examine and approve the INC-28 form so filed if the same is found to be in order. If the filed Form is not in order, he shall mark the form as under Re-submission / Rejected category as applicable. Once the INC-28</p>



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			form is approved, only the IP (IRP/ RP/ Liquidator) shall thereafter be allowed to file any form on behalf of the company. For all subsequent filings, the IP shall choose his designation as "Chief Executive Officer" (CEO), for the purpose of filing e-forms, in various e-forms. <a href="http://mca.gov.in/Ministry/pdf/Circular_17022020.pdf">http://mca.gov.in/Ministry/pdf/Circular_17022020.pdf</a>
S.O.(E)	04-02-2020	Commencement notification dated 03.02.2020	In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 3rd Day of February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the said Act shall come into force. <a href="http://mca.gov.in/Ministry/pdf/Notification_04022020.pdf">http://mca.gov.in/Ministry/pdf/Notification_04022020.pdf</a>

Nidhi (Amendment) Rules, 2019 Dated 1st July 2019, Effective from 15th August, 2019

Form NDH-4 introduced and other amendments. Form NDH-4 will be used for filing application for declaration as Nidhi Company and for updation of status by Nidhis.

[http://www.mca.gov.in/Ministry/pdf/NidhiRules\\_01072019.pdf](http://www.mca.gov.in/Ministry/pdf/NidhiRules_01072019.pdf)

Companies (Significant Beneficial Owners) second Amendment Rules, 2019, Dated 1st July 2019

New Form BEN-2 introduced.

[http://mca.gov.in/Ministry/pdf/CompaniesSignificantRules\\_01072019.pdf](http://mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf)

The Companies (Amendment) Act, 2019, Dated 31st July 2019, Effective from 2nd November, 2018 except few

All the provisions of companies Amendment Bill, 2018 has become part of the Act now. Few new amendments have been made related to provisions of CSR, Demat of Shares, Investigation by SFIO etc.

[http://mca.gov.in/Ministry/pdf/AMENDMENTACT\\_01082019.pdf](http://mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf)

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019, Dated 14th August 2019

Effective from 20th August, 2019 except rule 6 which is effective from 20th September, 2019

Based on the representations made by the stakeholders, MCA has revised the aforesaid Rules with respect to transfer of shares. The revised rules has further made the process of transfer of dividend/shares to and claiming of refund from the Investor Education and Protection Fund ("the Fund") effortless.

[http://mca.gov.in/Ministry/pdf/IEPFRules\\_19082019.pdf](http://mca.gov.in/Ministry/pdf/IEPFRules_19082019.pdf)

The Companies (Share Capital and Debentures) Amendment Rules, 2019, Dated 16th August 2019

The Ministry of Corporate Affairs has amended the provisions relating to issue of shares with Differential Voting Rights (DVRs) and Employee Stock Options (ESOPs) vide this amendment rules.

[http://mca.gov.in/Ministry/pdf/ShareCapitalRules\\_16082019.pdf](http://mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf)

The Companies (Incorporation) Seventh Amendment Rules, 2019, Dated 28th August 2019

In the Companies (Incorporation) Rules, 2014, in the annexure to the said rules, forms RD-1 and RD GNL-5, shall be substituted.

[http://mca.gov.in/Ministry/pdf/SeventhAmendmentRules\\_28082019.pdf](http://mca.gov.in/Ministry/pdf/SeventhAmendmentRules_28082019.pdf)

The National Financial Reporting Authority (Amendment) Rules, 2019, Dated 5th September, 2019

Form NFRA 2 notified i.e. Annual Return to be filed by auditors with the National Financial Reporting Authority.

[http://mca.gov.in/Ministry/pdf/NFRA\\_05092019.pdf](http://mca.gov.in/Ministry/pdf/NFRA_05092019.pdf)

The Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2019, Dated 30th September, 2019

For the financial year ending on 31st March, 2019, the individual shall submit e-form DIR-3 KYC or web form DIR-3 KYC-WEB, as the case may be, on or before the 14th October, 2019.

[http://mca.gov.in/Ministry/pdf/Companies4thAmendRules\\_30092019.pdf](http://mca.gov.in/Ministry/pdf/Companies4thAmendRules_30092019.pdf)

The Companies (Registration Offices and Fees) Fifth Amendment Rules, 2019, Dated 30th September, 2019

For the financial year ended on 31st March, 2019, no fee shall be payable in respect of e-form DIR-3 KYC or DIR-3 KYC-WEB through web service till 14th October, 2019.

[http://mca.gov.in/Ministry/pdf/Companies5thAmendRules\\_30092019.pdf](http://mca.gov.in/Ministry/pdf/Companies5thAmendRules_30092019.pdf)

The Companies (Incorporation) Eighth Amendment Rules, 2019, Dated 18.10.2019

The amendment is related to Non Active Companies can change directors in below situations:

- (a) Cessation of any director or (b) appointment of directors in such company where the total number of directors are less than the minimum number provided

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in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164. (c) Appointment of any director in such company where DINs of all or any of its director(s) have been deactivated. (d) Appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016

[http://mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules\\_18102019.pdf](http://mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf)

The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, Dated 22.10.2019, Effective from 01.12.2019

Amendment is related to compliances required by a person eligible and willing to be appointed as an independent director.

Every individual – (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or (b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company: Provided that any individual, including a

[http://mca.gov.in/Ministry/pdf/CmpFifthAmndtRules\\_22102019.pdf](http://mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf)

The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019, Dated 18.11.2019

The amendment is related to the change in threshold limit of criteria for a contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188

[http://mca.gov.in/Ministry/pdf/Comp2Amndt\\_18112019.pdf](http://mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf)

The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020, Dated 03.01.2020, Effective from 01.04.2020

Every private company which has a paid up share capital of ten Crore rupees or more shall have a whole-time company secretary. Earlier the limit was 5 Crs.

Secretarial Audit shall be applicable for every company having outstanding loans or borrowings from banks or

public financial institutions of one hundred Crore rupees or more. Additional condition added.

[http://mca.gov.in/Ministry/pdf/AmndtRules\\_06012020.pdf](http://mca.gov.in/Ministry/pdf/AmndtRules_06012020.pdf)  
The Companies (Winding Up) Rules, 2020, Dated 24.01.2020, Effective from 01.04.2020

These rules shall apply to winding up under of Companies Act 2013. Detailed procedures, formats and provisions have been notified in these rules.

[http://mca.gov.in/Ministry/pdf/Rules\\_28012020.pdf](http://mca.gov.in/Ministry/pdf/Rules_28012020.pdf)  
The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020, Dated 03.02.2020

A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

[http://mca.gov.in/Ministry/pdf/Rules1\\_04022020.pdf](http://mca.gov.in/Ministry/pdf/Rules1_04022020.pdf)  
The Nidhi (Amendment) Rules, 2020, Dated 03.02.2020, Effective from 10.02.2020

New Form NDH-1, NDH-2 & NDH-3 has been introduced.

[http://mca.gov.in/Ministry/pdf/Rules2\\_04022020.pdf](http://mca.gov.in/Ministry/pdf/Rules2_04022020.pdf)  
The National Company Law Tribunal (Amendment) Rules, 2020, Dated 03.02.2020

Application under section 230 – An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B

[http://mca.gov.in/Ministry/pdf/Rules3\\_04022020.pdf](http://mca.gov.in/Ministry/pdf/Rules3_04022020.pdf)  
The Companies (Incorporation) Amendment Rules, 2020, Dated 18.02.2020, Effective from 23.02.2020

SPICe+ form has been notified vide this amendment.

[http://mca.gov.in/Ministry/pdf/rule\\_22022020.pdf](http://mca.gov.in/Ministry/pdf/rule_22022020.pdf)  
The Companies (Incorporation) Amendment Rules, 2020, Dated 18.02.2020, Effective from 23.02.2020

SPICe+ form has been notified vide this amendment.

[http://mca.gov.in/Ministry/pdf/rule\\_22022020.pdf](http://mca.gov.in/Ministry/pdf/rule_22022020.pdf)  
The Companies (Auditor's Report) Order, 2020, Dated 25.02.2020, Effective from the financial years commencing on or after the 1st April, 2019

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2019, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable

[http://mca.gov.in/Ministry/pdf/Orders\\_25022020.pdf](http://mca.gov.in/Ministry/pdf/Orders_25022020.pdf)

# INDEPENDENT DIRECTORS DATABANK – AN INTENT TO STRENGTHEN THE CORPORATE GOVERNANCE NORMS & ROLE OF INDEPENDENT DIRECTOR'S UNDER THE COMPANIES ACT 2013.



CS HANSRAJ JARIA

*“What I would like to do is to leave behind a sustainable entity of a set of companies that operate in an exemplary manner in terms of ethics, values and continue what our ancestors left behind.” .....Ratan Tata*

## I. INTRODUCTION

The concept of Independent Director (ID), as a part of Corporate Governance process, has grown up globally, originally on a voluntary basis, followed by mandated legal provisions. IDs play a significant role in warranting robust Corporate Governance and thereby help in enhancing the corporate image.

An ID is a non-executive director of a company who helps the company in improving corporate credibility and governance standards. The term “Independent Director” has been defined in the Companies Act 2013 (Act), along with several new requirements with regard to their appointment, duties, role, and responsibilities.

The demand for IDs has significantly increased due to the mandatory requirements provided under Companies Act, 2013 and rules thereunder and various regulations issued by Securities and Exchange Board of India (“SEBI”) with respect to presence of IDs in the Board of Directors of certain companies.

## II. IMPORTANT PROVISIONS UNDER THE COMPANIES ACT 2013

Section 149 of the Companies Act, 2013 read with Rules of the Companies (Appointment and Qualification of Directors) Rules, 2014 deals with the appointment of IDs in Companies.

Sec. & Rules	Provisions
Sec. 2 (47)	“IDs” means an IDs referred to in sub-section (6) of section 149;
Sec. 149(4)	Every listed public company shall have at least 1/3rd of the total number of directors as IDs
Rule 4	The following class or classes of companies shall have at least two directors as IDs -(i) the Public Companies having paid up share

capital of Rs. 10 crores or more; or(ii) the Public Companies having turnover of Rs. 100 crores or more; or(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crores

Sec. 149(6)	It provides for various criteria needs to be fulfilled by an ID.
Sec. 149(7)	Every ID shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an ID, give a declaration that he meets the criteria of independence as provided in sub-sec. (6).
Sec. 149(8)	The company and ID shall abide by the provisions specified in Schedule IV – CODE FOR IDs.
Sec. 149(10)	An ID shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
Sec. 149(12)	An ID, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
Sec. 149(13)	The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of IDs.

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Rule 5	An ID shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.	<ul style="list-style-type: none"> <li>(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;</li> </ul>
Sch – IV, Clause VII	Separate meetings:(1) The IDs of the company shall hold at least one meeting in a financial year, without the attendance of Non-IDs and members of management;(3) The meeting shall:(a) review the performance of Non-IDs and the Board as a whole;(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.	<ul style="list-style-type: none"> <li>(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;</li> <li>(d) none of whose relatives—               <ul style="list-style-type: none"> <li>(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding Rs. 50 lakhs or 2% of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;</li> </ul> </li> </ul>
Sch – IV, Clause VIII	Evaluation mechanism:(1) The performance evaluation of IDs shall be done by the entire Board of Directors, excluding the director being evaluated.(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the ID.	<ul style="list-style-type: none"> <li>(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;</li> <li>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or</li> <li>(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);</li> </ul>
<p>IDs shall strive to be present in all the Board meetings as well as the Committee meetings, of which he / she is a member, of the Company, as a matter of good governance and practice, so as to guide the Board in taking appropriate decisions and also to prevent the management from taking decisions that is likely to affect the interest of the stakeholders.</p> <p>III. CRITERIA OF INDEPENDENCE FOR AN ID {Sec. 149 (6)}</p> <p>An ID means a director other than a managing director or a whole-time director or a nominee director, —</p>		<ul style="list-style-type: none"> <li>(e) who, neither himself nor any of his relatives—</li> </ul>
<ul style="list-style-type: none"> <li>(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;</li> <li>(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;</li> </ul>		

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- (i) holds or has held the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;  
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
- (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
- (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
- (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;
- (iii) holds together with his relatives 2% or more of the total voting power of the company; or
- (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed.

#### IV. POSITION OF IDs IN COMMITTEES OF THE BOARD

Section	Rules	Name of the Committee	Applicability	Number of IDs
Sec. 177	Companies (Meetings of Board and its Powers) Rules, 2014	Audit Committee	(i) the Public Companies having paid up share capital of Rs. 10 crores or more; or (ii) the Public Companies having turnover of Rs. 100 crores or more; or (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crores	The Committee shall consist of a minimum of three directors with IDs forming a majority.
Sec. 178	Companies (Meetings of Board and its Powers) Rules, 2014- (Rule 6)	Nomination and Remuneration Committee	Same as above	The committee shall consist of three or more non-executive directors out of which not less than one-half shall be IDs
Sec. 135	Companies (Corporate Social Responsibility Policy) Rules, 2014	Corporate Social Responsibility Committee	(i) any company with an average profit of at least Rs 5 crore; (ii) any company with net worth exceeding Rs 500 crore; or (iii) any company having turnover exceeding Rs 1,000 crore in the last three years; will have to mandatorily allocate 2% of its profits on social welfare.	The Committee shall consist of three or more non-executive directors out of which at least one should be an ID

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### V. OTHER PROVISIONS UNDER THE COMPANIES ACT 2013

1. Any vacancy in the office of ID shall be filled in the very next Board Meeting or within 3 months of such vacancy, whichever is later.
2. A person must be an ID in not more than seven listed companies at a time
3. A person can be appointed as an alternate director for an ID. But he must be qualified to be appointed as an ID.
4. If the Board meeting is called at shorter notice so as to transact some urgent business, then the presence of at least 1 ID is mandatory. Where all the IDs are absent from such a meeting, decisions taken at such meeting shall be final only if the same has been ratified by atleast one ID.
5. IDs who are generally appointed as the Chairman of the Committees like the Audit Committee, Nomination and Remuneration Committee etc. shall be present in all the General meetings of the company to answer the queries and to provide an assurance to all the shareholders of the company that the business is run in an ethical manner.
6. A small shareholder director shall be considered as an ID, if-
  - (a) he is eligible for appointment as an ID u/s 149 (6),
  - (b) he gives a declaration of his independent u/s 149(7).
7. The Companies Act, 2013 expressly disallows IDs from obtaining stock options and remuneration other than sitting fees and reimbursement of travel expenses for attending the board and other meetings. Sitting fees to be paid to IDs for attending the Board Meetings pursuant to Section 197(5) which is maximum of Rs.1,00,000/- per meeting is to be decided by the Board. Profit related commission may be paid to IDs subject to the approval of the shareholders.
8. IDs are part of a vigil mechanism in the Board and various Committees of the Board set up by the company, in accordance with Companies Act, 2013 and rules made thereunder,

### VI. INDEPENDENT DIRECTOR DATABANK

MCA has vide notification no. G.S.R. 804(E) dated 01st December, 2019 introduced new rules called the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 for person eligible and willing to be appointed as an ID.

New Rule 6 provides that every individual who is an ID as on 1st December 2019 or who would be appointed as an ID on or after 1st December 2019 would be required to comply with the following requirements as per the new enactment:

Requirements	Particulars
Registration	The ID of every company within 5 months of the enactment of the said new regulation would be required to apply to the Indian Institute of Corporate Affairs (ICA) for inclusion of his/her name in the databank of IDs for one year, five years or life time, till such person holds office as ID. The said databank would be maintained by the said ICA. (Last date of Registration is 30th April, 2020)
Renewal	The renewal application shall be made by the individual to the ICA for a further period of one year or five years as the case may be within 30 days of expiry of the original period of application to the ICA.
Disclosure	Every ID shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) pertaining to registration and renewal, to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.
Self Assessment Test	Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the ICA within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the ICA

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Exemption from Test (SAT)	An individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or KMP, for a total period of not less than 10 years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-(a) listed public company; or(b) unlisted public company having a paid-up share capital of Rs. 10 crores or more; or(c) body corporate listed on a recognized stock exchange: <i>(For the purpose of calculation of the period of 10 years referred to above, any period during which an individual was acting as a director or as a KMP in two or more companies or bodies corporate at the same time shall be counted only once.)</i>
Fee Structure	For ID Registration :Rs. 5,000 + 18% GST for 1 Year subscriptionRs. 15,000 + 18% GST for 5 Years subscriptionRs. 25,000 + 18% GST for Lifetime subscription
Pass Marks	An individual who has obtained a score of not less than 60% in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;
Limit on Attempts	There shall be no limit on the number of attempts that could be taken by an individual for passing the exam.
Scheme of SAT	Total Marks – 100 MarksTotal No. of MCQs – 50 Total Time Duration – 75 Minutes Marks Assigned to Each Question – 2 Marks
Steps to appear for SAT	a) Login into the Databank b) Go to the dashboard c) Take a mock (practice) Test d) Select the slot as per your convenience for attempting the test e) Attempt the test as per the slot booked f) Get test result and reports published

### A. CONTENT OF DATA BANK

Under the purview of Rule 3, the data bank of IDs would contain the following details:

- (a) DIN (Director Identification Number), if applicable;
- (b) Income Tax PAN;
- (c) The name and surname in full;
- (d) The father's name;
- (e) The date of Birth;
- (f) Gender;
- (g) The nationality;
- (h) The occupation;
- (i) Full Address with PIN Code (present and permanent);
- (j) Phone number;
- (k) E-mail id;
- (l) The educational and professional qualifications;
- (m) Experience or expertise, if any;
- (n) Any pending criminal proceedings as specified in clause (d) of sub-section (1) of section 164;
- (o) the list of limited liability partnerships in which he is or was a designated partner along with -
  - (i) The name of the limited liability partnership;
  - (ii) The nature of industry; and
  - (iii) The duration- with dates;
- (p) The list of companies in which he is or was director along with-
  - (i) The name of the company;
  - (ii) The nature of industry;
  - (iii) The nature of directorship-Executive or Non-executive or Managing Director or ID or Nominee Director; and
  - (iv) Duration - with dates.

### B. PROCESS OF REGISTRATION OF IDs

Process in MCA Portal ( <a href="http://www.mca.gov.in">www.mca.gov.in</a> )	
Step – 1	Process in MCA Portal
Step – 2	Go to "ID Databank Registration" section under "MCA Services" and click on "Individual Registration."
Step – 3	Enter DIN/PAN/Passport details and click on "Submit".

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Step – 4	Enter email ID and mobile no. (if not pre-populated). Enter Country code and Click on “Send OTP”.
Step – 5	Enter OTP & click on “Verify OTP”.
Step – 6	Upon successful verification, click on “Proceed” button to receive credentials for Databank in email and mobile.
Process in Databank Portal ( <a href="https://iica.nic.in">https://iica.nic.in</a> )	
Step – 1	Login to Independent Director’s Databank
Step – 2	Fill profile with Personal, Educational, and Experience Details and submit declaration.
Step – 3	After submitting details, pay subscription fee.
Step – 4	Download the invoice and the Registration Certificate for future reference

### C. PROCESS OF REGISTRATION OF CORPORATES

Process in MCA Portal ( <a href="http://www.mca.gov.in">www.mca.gov.in</a> )	
Step – 1	Process in MCA Portal
Step – 2	Go to “ID Databank Registration” section under “MCA Services” and click on “Corporate Registration”.
Step – 3	Enter CIN details and click on “Submit”.
Step – 4	Email ID will be pre-populated. Click on “Send OTP”.

Step – 5	Enter OTP & click on “Verify OTP”.
Step – 6	Upon successful verification, click on “Proceed” button to receive credentials for Databank in email.
Process in Databank Portal ( <a href="https://iica.nic.in">https://iica.nic.in</a> )	
Step – 1	Login to Independent Director’s Databank
Step – 2	Fill your company details, assign up to 2 designated officers, who will have access to Databank. Accept terms and conditions.
Step – 3	After submitting details, pay subscription fee.
Step – 4	Access and search profiles of IDs by using several options

### VII. CONCLUSIONS

The Act empowers the IDs to manage the Company in order to strengthen Corporate Governance and to exercise strategic oversight over business operations and they must ensure that such extensive powers are not exercised in an unbridled manner, but in a rational and accountable way.

Introduction of ID’s Databank and online proficiency self-assessment examination for IDs with intent to foster the growth of Corporate Governance, is definitely a welcome move for enabling the IDs to gear up to the new challenges.





# CRITICAL ASPECTS OF CORPORATE RESTRUCTURING



CS ADITYA PUROHIT

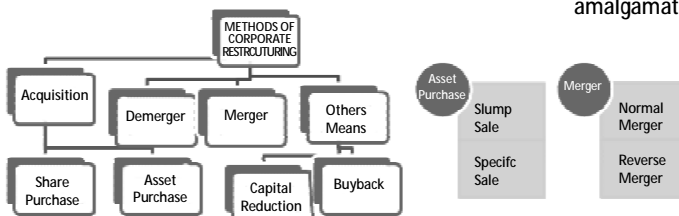
This article on Corporate Restructuring is written with an intent to provide the reader a perspective on restructuring with different strokes on operational efficiency.

## WHAT IS CORPORATE RESTRUCTURING?

Corporate Restructuring is the process of making changes in the structure of a corporate or an entity having one or more business portfolios in order to have a lucrative and profitable enterprise wherein the very first stage is to visualise the barriers with respect to the companies involved and a major gist of the law / circulars/ notifications prohibitive on certain arrangement needs to be looked in before execution. Major statutes involved in corporate restructuring are:-

- 1) Companies Act, 2013
- 2) SEBI ACT, 1992
- 3) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- 4) SEBI (Delisting of Equity Shares) Regulations, 2009
- 5) Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018
- 6) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- 7) SEBI (Prohibition of Insider Trading) Regulations, 2015
- 8) Securities Contracts (Regulation) Rules, 1957
- 9) Foreign Exchange Management Act 1999 and FDI Policy
- 10) Stamp Act

## METHODS OF RESTRUCTURING



## MAJOR PROHIBITIVE POINTS TO BE KNOWN BEFORE PLANNING RESTRUCTURING:-

### SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

- If the arrangement involves listed company then we must be aware of SEBI circular dated 03-Jan-2018 [CFD/DIL3/CIR/2018/2] wherein the intent is to prevent misuse of schemes with an intent to bypass regulatory requirements and most importantly the amended Para (I)(A)(3)(b) of Annexure I of the circular states:-

*“The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the “merged” company on a fully diluted basis shall not be less than 25%.”*

Hence any restructuring the result of which is may be in violation of the above paragraph may not be approved.

- Any arrangement by virtue of which any buyback is proposed and may lead to delisting of shares from recognised exchanges is involved, may not be in tandem with the regulators since Regulation 4 of the Securities And Exchange Board Of India (Delisting of Equity Shares) Regulations, 2009 prohibits buyback of shares which may have been used to comply with Regulation 17 of chapter VI of the Delisting Regulations.

### COMPANIES ACT, 2013

Sections 230 to 240 of the Companies Act, 2013 (“CA, 2013”) facilitates compromise, arrangements and amalgamations.

While planning for merger following dates needs to be looked in for better planning:-

### Appointed Date:

- Date on which assets and liabilities of the transferor company vest in and stand transferred to the transferee company.

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- Accounts on the appointed date which form the basis for valuation of shares and determination of share exchange ratio.
- Appointed date relevant for the purpose of assessment of income of the transferor and transferee companies.
- (Can future appointed date be fixed??) REFER REFER MCA General Circular No. 09/2019 dated: 21st August, 2019 para6(d).

### Effective Date

- Date on which scheme is complete & effective i.e. certified copy of the Court order is filed with Registrar of Company or the last date on which approvals are obtained.
- From the effective date amalgamation becomes effective and transferor company stands dissolved. However section 232(6) states: The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

TO DECLOG NCLT, Central Governmentwide Notification No. S.O. 4090(E) dated 19th December, 2016 introduced A NEW CONCEPT Fast Track Merger (FTM) wherein Regional Directors, Registrar of Companies and Official Liquidator are the authorities whose approval are required. The whole process may take 3-5 months time for completion.

In Fast Track Merger, a scheme of merger or amalgamation may be entered into between-

- two or more small companies, or
- a holding company and its wholly-owned subsidiary company.

### CRITICAL AREAS OF MERGER/ DEMERGER:-

GOVERNMENT SANCTIONS/ APPROVALS INCLUDING RBI/ INCOMETAX/ REGIONAL DIRECTOR/ REGISTRAR OF COMPANIES/ OFFICAL LIQUIDATOR, ETC

• ISSUES EXAMINED BY HON'BLE REGIONAL DIRECTOR BEFORE ISSUING AFFIDAVIT:

- Whether any of the companies are listed on any Stock Exchange? If so, NOC from exchange is submitted?
- Whether any NRI/foreign investment in the Companies? If yes, whether necessary approvals obtained and compliance of FEMA/RBI?
- Whether Employees interest is protected?
- Whether the company belongs to any specific sector, if yes, sectoral approval granted or not?

- Whether the companies or its directors have contravened any provisions of the Companies Act?
- Whether the companies involved have been inspected u/s 209A of Companies Act, 1956?
- Whether Valuation report submitted, if so share exchange ratio is as per report and accounting principles?
- Whether Accounting Treatment clause is as per AS-14 and in tune with provisions of section 211(3A)/211(3C) of the Act?
- Whether meeting of class of shareholders/creditors is conducted?
- Whether details of related party transactions are furnished?
- Whether consideration is made in cash other than that of shares?
- Whether provisions of buy back is attracted?
- Whether any reduction of share capital is involved?
- Whether authorized share capital of transferee company is sufficient?
- Whether any qualification has been made by Statutory Auditor?
- Whether a listed company is merging with an unlisted company?
- Whether the promoters holding in listed company is increased?
  - ISSUES TO BE EXAMINED BY ROCS:
    - Filing Position.
    - Any Investor Grievances.
    - Any Inspection/ Investigation/ Technical Scrutiny.
    - Any Pending Prosecution.
    - Anyone furnishes comments on the scheme.

• ISSUES CONSIDERED BY TRIBUNAL IN A SCHEME OF ARRANGEMENT:

- Compliance with the Provisions
  - Protection of interest - creditors and shareholders
  - Reasonable arrangement
  - Scheme in consonance with public interest
- ISSUES EXAMINED BY INCOME TAX AUTHORITIES AND RBI:
- Whether any Tax evasion is there or any pending tax payment is being compromised? Reserve Bank of India is involved when an NBFC or foreign party is involved and they seek compliance with reference to respective RBI/ FEMA Laws

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However in case of Apex Investments Pvt. Ltd. (1992) CLA 20 (Del), the Hon'ble Delhi High Court held that an arrangement for reconstruction or amalgamation is essentially a contract and therefore parties involved are free to decide:

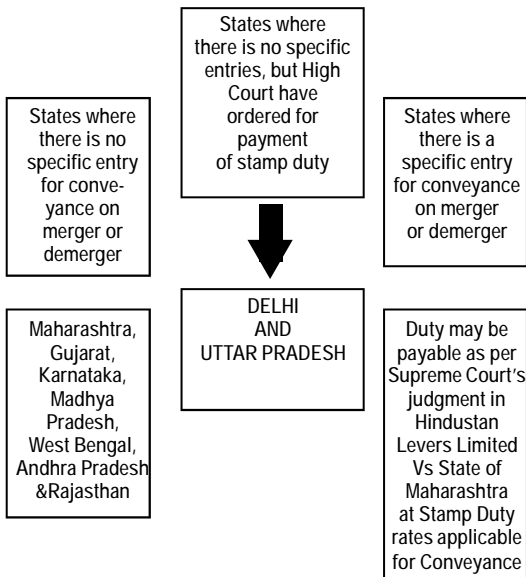
- its terms and conditions
- consideration to be paid

### LIMITED LIABILITY PARTNERSHIP MERGER WITH THE COMPANY:

Under Companies Act, 2013 there is no such provision for merger of an LLP into a Company. However, the Hon'ble NCLT, Chennai Bench in Real Image LLP with and into M/s Qube Cinema Technologies Private Limited has approved the scheme of amalgamation of an Indian LLP with and into Indian Company clarifying that Section 60 to 62 of the Limited Liability Act, 2008 ("LLP Act, 2008") and Section 230 to 234 of the Companies Act, 2013 deals with the merger, amalgamation and arrangement of two or more LLPs and companies, respectively.

### STAMP ACT

Provisions levying Stamp duty:-



### Levy of stamp duty

When does the liability to pay stamp duty arise?

Liability to pay stamp duty arises if the Instrument is mentioned in the Schedule of the State Stamp Act and not on transactions.

### • Key Definitions under Stamp Act STAMP DUTY

- A type of tax which is paid to the Government for the transaction performed by way of document or Instrument under the provisions of the respective state stamp law or under the Indian Stamp Act. 1Q99.
- Stamp Duty is payable on instruments/documents and not on transactions

### INSTRUMENT

[INDIAN STAMP ACT. 1899 - SECTION 2(14)]

- Definition of the term 'Instrument' is very wide. Instrument means any document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

### CONVEYANCE

[INDIAN STAMP ACT. 1899 - SECTION 2(1 O)]

- Includes a conveyance on sale and every Instrument by which property, whether movable or immovable, is transferred /infer v/Vos and which is not otherwise specifically provided for by Schedule I.
- Stamp Duty Chargeability  
States namely Maharashtra, Gujarat, Karnataka, Rajasthan, Chhattisgarh, Madhya Pradesh, Andhra Pradesh, West Bengal and Uttar Pradesh - have included the merger orders passed by courts in the definition of 'Conveyance'.

Hindustan Lever Vs. State of Maharashtra (2004) 1 CLJ 148 (SC) - held that order of the Court is an instrument constituting a transfer inter-vivos and therefore, falls within the ambit of the definition of conveyance

The Hon'ble High Court of Calcutta vide its order dated 8th February, 2012, in the matter of Emami Biotech Limited (CP. No. 627 of 2011) and ITP Limited (CP No. 398 of 2011) and Brijbhumi Agents Private Limited (CP No. 474 of 2011) held that an order sanctioning a scheme of amalgamation or demerger under the Companies Act answer to the description of the words "instrument" and "conveyance" within the meaning of the Indian Stamp Act, 1899 as applicable in the State of West Bengal and is, accordingly, Chargeable to stamp duty.

### CONCLUSION

To conclude I can say that whenever we try any restructuring we should look at the bottleneck situation and then accordingly plan since it's never easy to restart and in real life scenarios there are no trials we need to be on our front foot from the commencement of the innings itself.



# Applicability of Valuation under Companies Act, 2013.



CA HARSHA SARAF

## Introduction:

The Ministry Corporate Affairs (MCA) has, since October 2017, notified Section 247 of the Companies Act, 2013 and introduced the Companies (Registered Valuers and Valuation) Rules, 2017 (RV Rules). In order to give the valuation industry some time for adopting the new regime, the MCA allowed time till 31 January 2019 for existing valuers to continue their valuation services and register themselves into a registered valuer.

Now, from 31 January 2019 onwards, only a 'registered valuer' is permitted to undertake valuation required under the Companies Act and rules made thereunder. For the first time, the profession of valuers has received a statutory recognition similar to profession of Chartered Accountants, Company Secretary and Insolvency Resolution Professionals and has been subjected to various rules and regulations for governing it.

The MCA has designated the Insolvency and Bankruptcy Board of India (IBBI) as the authority for implementing the new regime of registered valuers in addition to the insolvency resolution professionals.

Registered Valuers are registered under different asset classes:

(i) Land and Building; • (ii) Plant and Machinery • (iii) Securities and Financial Assets

From 1 February 2019, no one, other than an IBBI "Registered Valuer", is authorized to conduct valuations under the applicable provisions of the Companies Act, 2013. The Insolvency and Bankruptcy Code, SEBI ICDR Regulations, 2018 and SEBI (REIT and InvIT).

Valuer as a person who is registered under section 247 of the Companies Act, 2013.

At the same time the Income Tax Act, 1961 has provision relating to taxability on issue of unquoted equity shares, if issued at a premium. Only a SEBI Registered Merchant Banker is authorised to undertake such valuation by Discounted Free Cash Flow Method.

Thus issue of Equity Shares by a Company may require dual valuation by an IBBI Registered Valuer as well as a SEBI Registered Merchant Banker for meeting regulatory requirements of Companies Act and Income Tax Act respectively. Interestingly, though the Companies Act Valuation requirement is of minimum value, the Income Tax valuation requirement is that of maximum value.

## SPECIFIC PROVISIONS UNDER THE COMPANIES ACT, 2013 WHICH REQUIRES VALUATION REPORT FROM A "REGISTERED VALUER"

Companies Act 2013			
Sl.	Section /Rule	Description	Particulars
1	62(1)(c) with Rule 13(1) of (Share Capital and Rules, 2014.	For Further Issue of Shares Debentures)	When a company having share capital proposes to increase its subscribed share capital by a fresh issue of shares, such shares shall be offered to: > To Existing shareholders > Employees under a scheme of Employees' Stock Option > Any other persons except those mentioned above, if authorised by a special resolution: Issue of shares on a Preferential Basis In all of the above cases, the price of the shares issued must be determined by the valuation report of a registered valuer subject to prescribed conditions.
Sl.	Section /Rule	Description	Particulars
2	177(4)(vi)	Terms of reference of Audit Committee	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which also includes Valuation of undertakings or assets of the company, wherever it is necessary.

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3	230(2)(C)(v)	Power to compromise or make arrangement with creditors & members	A valuation report in respect of the shares and property and all the kinds of assets of the company by a registered valuer is to be disclosed to the Tribunal by affidavit while making an application for compromise or arrangement with the creditor.
4	232(2)(d)	Merger and Amalgamation of Companies	Where an order has been made by the Tribunal, merging companies or the companies in respect of which a division is proposed, the report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members.
5	232(3)(h)	Merger and Amalgamation of Companies	Where under a Scheme of Compromise / Arrangement, the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal
6	236(2)	Purchase of minority shareholding	The acquirer, person or group of persons shall offer to the minority shareholders of the company for buying the equity shares held by them at a price determined on the basis of valuation by a registered valuer.
7	281(1)(a)	Submission of report by a Company Liquidator	Where the tribunal has made a winding up order or appointed a company liquidator, such liquidator shall submit a report containing the nature and details of the assets of the company including their location and value.
8	Rule 6(1) of Companies (Acceptance of Deposit) Rules, 2014	Creation of security	For the purpose of providing security, every company referred to in relevant section and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.
9	Rule 8 of Companies (Share capital and Debentures) Rules, 2014	Issue of Sweat Equity Shares	This rule applies to all companies except listed companies issuing sweat equity shares to its directors or employees. The rule prescribes that the sweat equity shares shall be issued at a price determined by a registered valuer as the fair price giving justification for such valuation. Also, the value of the intellectual property or know-how or any other value additions, for which the sweat equity shares have been issued to its directors or employees shall be determined by a valuation report of a registered valuer. If the sweat equity shares are issued for a non-cash consideration, the value of such non-cash consideration shall be based on a valuation report by a registered valuer. Additionally, if the sweat equity shares are issued pursuant to acquisition of an asset, the value of such asset shall also be determined based on a valuation report by a registered valuer.
Sl.	Section /Rule	Description	Particulars
10	Rule 16(1)(c) of the Companies (Share Capital and Debentures) Rules, 2014.	Provision of money by company for purchase of its own shares by employees or by trustee.	The company shall not make a provision of money for the purchase of its own shares for the benefits of the employees of the company unless one of the following condition where shares of a company are not listed on a recognized stock exchange, the value at which the shares are to be purchased shall be made by a registered valuer.



# VITTA SALAHKAR CHARTERED ACCOUNTS' STUDY CIRCLE

## EXECUTIVE COMMITTEE FOR THE YEAR 2019-2020



**CA Bishnu Basia**  
Convenor



**CA Mayur Agrawal**  
Deputy Convenor



**CA Chimpu Lal Agarwal**  
Deputy Convenor



**CA Rajesh Bagla**  
Treasurer



**CA Ranjeet Kr. Agarwal**  
Executive Member



**CA S.N. Agarwal**  
Executive Member



**CA Hari Ram Agarwal**  
Executive Member



**CA Dilip Kr. Parmanandka**  
Executive Member



**CA Lal Babu Chourasia**  
Executive Member



**CA Adesh Kr. Jain**  
Executive Member



**CA G. P. Agarwal**  
Executive Member



**CA Sarbananda Gattani**  
Executive Member



**CA Rikky Agarwalla**  
Executive Member



**CA Anurag Kr. Khetan**  
Executive Member



**CA Ajay Kr. Gupta**  
Executive Member



**CA Ramesh Kr. Kedia**  
Executive Member



**CA Abhishek Sonthalia**  
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**CA Navin Sureka**  
Executive Member



**CA Pawan Kr. Agarwal**  
Executive Member



**CA Manu Rishi Varma**  
Executive Member



**CA Shashi Kant Kamani**  
Executive Member



**CA Vishal Jalan**  
Executive Member



**CA Kamal Kr. Agrawal**  
Executive Member



**CA Virat Sharma**  
Executive Member



**CA Umang Jhunjunwalla**  
Executive Member



**CA Ajay Kr. Luharuka**  
Executive Member



**CA Devendra Kr. Agarwal**  
Executive Member

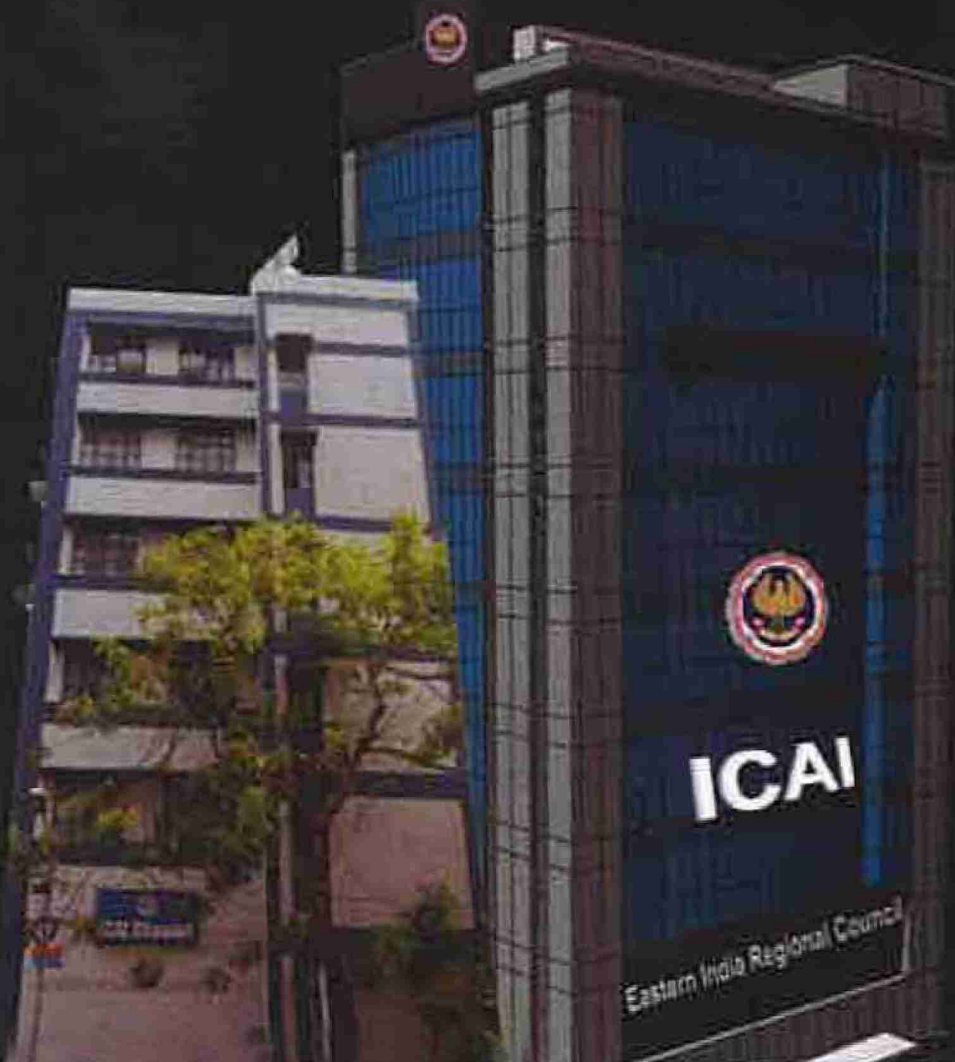
The Institute of Chartered  
Accountants of India



## Eastern India Regional Council

ICAI Bhawan  
7, Anandilal Poddar Sarani  
Kolkata - 700 071

ICAI Bhawan  
382A, Prantik Pally, Rajdanga, Kasba  
Kolkata - 700 107



**Ms. SUTAPA BOSE PAUL**

(Online Registration &  
Website related issues)

033-3021-1132

Other Regional Council  
Related Issues

033-30211-1125/104/108/134/133