

Matters under Companies Act 2013

Intensive Study Course on Companies Act, 2013

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Contents



- ❖ Key Provisions: Chapter X - Audit and Auditors
- ❖ Key Provisions: Chapter IX- Accounts of Companies
- ❖ CSR
- ❖ Schedule II
- ❖ Reporting on Frauds
- ❖ Companies (Auditor's Report) Order 2016
- ❖ Other Updates

The Companies Act 2013: The dawn of a new era



❖ Key Provisions: Chapter X -
Audit and Auditors

Companies Act 2013 – Independence

Key changes



- Independence requirements under Companies Act 2013 are stricter than existing independence rules under IESBA Code
- Under the 2013 Act, an auditor is not allowed to render, among other services, “management service” to the company, its holding or subsidiary company
- Term management services has not been defined either in 2013 Act or the Rules.

Companies Act 2013 – Non Audit Services

Key changes

Restriction on services (Section 144)

- severe restrictions on providing non-audit services, directly or indirectly to the company, its holding or subsidiary company include:
 - accounting and book keeping services;
 - internal audit;
 - design and implementation of any financial information system;
 - actuarial services;
 - investment advisory services;
 - investment banking services;
 - rendering of out sourced financial services; and
 - management services.
- transition period
 - For existing services complete/terminate all services mentioned above on or before 31 March 2015.
 - Not to enter into any new agreement to render above mentioned services on or after 1 April 2014.

Companies Act 2013 – Restrictions on Auditors-

Restriction on services

Analysis

- whilst the provision of some non-audit services to audit clients can pose a risk, **the objectivity of auditors is not compromised by providing non audit services to audit clients** or their holding companies provided that auditors comply with independence standards.
- scope of service restrictions **significantly hamper the ability of auditors to provide valid non-audit services** that don't impact independence.
- **the risk associated with the audits increases significantly**, and have a severe impact on the cost of professional indemnity insurance and hence costs of audits

Companies Act 2013 – Audit and Auditors-**Tenure and Re-appointment of Auditors(Section 139)**

Key changes

- Auditors appointed in AGM to hold office from the conclusion of that meeting until the conclusion of the ensuing 6th AGM (subject to ratification by members at every AGM)
- an auditor/ audit firm is eligible for re-appointment after expiry of 5 years since completion of the previous tenure
- an audit firm having common partner (s) with another firm which has completed its term is not eligible for re-appointment for a period of 5 years from the completion of the other firm's term
- as per the 2013 Act, before the expiry of the term of appointment, the company may remove the auditors (subject to special resolution and prior approval from CG) and the auditors, as well, have the right to resign

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- rotation requirements apply retrospectively i.e. period prior to the commencement of the 2013 Act, included in computing 5/10 consecutive years.
- incoming auditor/audit firm disqualified for appointment, if associated with the outgoing auditor/audit firm under the same network of audit firms or operating under the same trade mark or brand.

Analysis

- the auditor's tenure will be protected for 5 years as there are stringent provisions on removal of auditors.
- while rotation affects the long-term continuity of the company-auditor relationship, the 5 year appointment, brings in stability for a limited period.



Key changes



- in case of listed companies (or prescribed class of companies) the term of appointment of an individual auditor/ an audit firm is restricted to a period of 5 years/ 10 years
- an auditor/ audit firm should mandatorily rotate at the expiry of the term. Shareholders can mandate:
 - more frequent rotation of audit partner and team
 - audit can be conducted by more than one auditor (joint audit)
- transition period of 3 years provided to comply with the requirement of mandatory rotation of auditor
- Eligible for re-appointment after expiry of 5 years, with a cooling off period of 5 years

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- Auditor rotation mandatory for the following class of companies, excluding OPC and small companies:
 - unlisted public companies with capital of Rs. 10 cr or more
 - private companies with capital of Rs. 20 cr or more
 - all companies with borrowings from bank/public financials institution or public deposit of Rs 50 cr or more

Analysis



- mandatory rotation is expected to change the Indian audit market structure significantly as several large companies have retained their auditors for more than 10 years.
- mandatory rotation could possibly result in both positive and negative influences on the quality of the financial reporting processes and on overall audit quality.

Further the international practice so far is of mandatory partner rotation only. While European Union has very recently issued requirements for mandatory firm rotation the same are applicable to only very large companies and the rotation period could be upto 20 years.

Companies Act 2013 – Audit and Auditors-Eligibility

Key changes (Section 141)

- the new Act proposes that a firm wherein a majority of the partners practicing in India are qualified for appointment, may be appointed to be an auditor of a company.
- where a firm, including a LLP is appointed as an auditor of a company, only partners, who are CAs are permitted to act and sign on behalf of the firm.
- several additional disqualifications included

Analysis

- the introduction of LLP as an auditor and ability to operate with partners who are not CAs is a welcome change and in line with international practices. This will also pave the way for multi-disciplinary partnership firms.
- Auditor needs to submit eligibility certificate before proposal the appointment is taken up
- the company need to file a form with the government within 15 days of appointment of auditors

Key changes



- whose relative is a non-executive/ executive director or KMP of the company.
- who is in full time employment elsewhere.
- holding interest greater than Rs 1 lac face value or indebted for greater than Rs 5 lacs
- any person who has a business relationship with the company / its subsidiary / its associate / its holding company / subsidiary or associate of its holding company
- whose appointment will result in the person being the auditor of more than 20 companies; and
- whose subsidiary or associate or any other form of entity is engaged in providing non-audit services as on the date of appointment (non-audit services disqualifications).
- a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction

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- for auditor's disqualification with respect to business relationships, the term 'business relationships' defined to construe any transaction entered into for a commercial purpose except for
 - commercial transactions in the nature of professional services permitted for auditors under the Act and the CA Act
 - commercial transactions in the ordinary course of business at arm's length price

Analysis



- some of the disqualifications seem to be quite punitive and may be difficult to implement.
- the non-audit services may be provided in the year of the appointment without affecting eligibility provided the engagement is terminated prior to the date of the appointment

Companies Act 2013 – Restrictions on Auditors-**Restriction on audit limits - Restriction on services**

Key changes



Restriction on audit limits

- limit on number of companies that can be audited by a firm: 20 per partner
- provisions prohibit auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company)

Relaxation in audit limits under the 2013 Act



Earlier provision

- As per section 141 (3) (g) of the 2013 Act, *“a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies”* shall not be eligible for appointment as an auditor of a company. 20 companies included all companies without any exemption

MCA notification

- MCA has excluded one person companies, dormant companies, small companies and private companies having a paid up share capital less than 100 crores from the audit limit of 20 companies as specified under section 141(3)(g) of the 2013 Act.

POWERS AND DUTIES OF AUDITOR U/S 143 OF COMPANIES ACT, 2013



- Section 143(1): Make enquiries during audit
- Section 143(2): Prepare report to members of company on the accounts and financial statements.
- Section 143(3): Matters to be reported in audit report.
 - (a) Obtain information & explanation to the best of his knowledge,
 - (b) Maintenance of proper books of accounts,
 - (c) Report of accounts of branch office of a company,
 - (d) Balance sheet and P& L dealt are in agreement with books of accounts,
 - (e) Compliance of Accounting Standards,
 - (f) **Observations or comments having adverse effect on functioning of company,**
 - (g) Disqualification of any director,
 - (h) **Any qualification, reservation or adverse remark on maintenance of accounts.**

Illustrative formats of letters to be submitted by the auditor under section 139 of the 2013 Act



- Ethical Standards Board (ESB) of ICAI has issued following illustrative formats of eligibility letter:
 - (a) Eligibility letter under Section 139(1) of the 2013 Act in following cases:
 - appointment for existing client;
 - appointment for new client;
 - ratification of appointment at each annual general meeting.
 - (b) Eligibility letter under Section 139(6) of the 2013 Act in case of appointment as first auditors.

The Companies Act 2013: The dawn of a new era



Key Provisions: Chapter IX-
Accounts of Companies

Companies Act 2013 – Accounts-**Financial Statements**

Key changes (Section 129)

- 31 March to be the mandatory FY end (except for the purpose of aligning the FY with that of holding/subsidiary incorporated outside India, with prior approval of the NCLT)
- consolidation mandatory for all companies including unlisted and private companies having subsidiaries (including associates and joint ventures)
- the 2013 Act prescribes the format (similar to existing revised schedule VI of the Act) for preparation of Consolidated Financial Statement (CFS).
- requirement to show minority interest separately within equity on the balance sheet
- in the CFS, the company would need to give all disclosures relevant for CFS only.

Key changes

- **Restatement of FS**
 - Court or NCLT may order re-opening and re-casting of FS upon application by CG or any other statutory body
 - voluntary restatement can be done to comply with AS with the approval of the NCLT

Companies Act 2013 – Accounts-**Financial Statements**

Analysis

- the 2013 Act eliminates the current flexibility in having a FY different than 31 March, as well as in making amendments to the year-end to suit requirements
- consolidation for all companies required, except for intermediate wholly owned subsidiary, other than a wholly owned subsidiary whose immediate parent is a company incorporated outside India. Internationally the requirements apply only to listed companies
- International accounting practices do not require preparation of CFS when the Company has investments only in associates and joint ventures (no subsidiaries). No such exemption from consolidation for these companies is granted under the new Act.
- the requirement to present minority as part of equity is currently not required under the existing Indian accounting practices. However the international practices are consistent with the 2013 Act.

Companies Act 2013 – NFRA

(National Financial Reporting Authority) – Not yet notified

Key changes

- monitor and enforce compliance with accounting and auditing standards
- oversee the quality of service of the profession
- not merely an advisory body but will have power to investigate matters of professional misconduct by CA's or firms
- no other body shall initiate proceedings in matters where investigation initiated by NFRA
- will have the powers vested in a Civil Court while trying a suit



Companies Act 2013 – NFRA

(National Financial Reporting Authority) – Not yet notified

Draft Rules

- NFRA structure to have Committees on ASs, SAs and on Enforcement.
- NFRA shall undertake investigation or conduct quality review of audit of following class of companies:
 - Listed Companies;
 - Unlisted companies with net worth or capital of not less than Rs. 500 cr or annual turnover not less than Rs.1,000 cr as at any end of the previous FY; or
 - Companies having securities listed outside India

Analysis

- the constitution of the NFRA will bring in a significant change to the current structure of standard setting regulations.
- the new risks and liabilities will enforce more responsibility into the role of an auditor.

Consolidated Financial Statements (CFS)



With the Companies Act, 2013 coming into effect

AGENDA

- Applicability of the CFS standard
- Exemptions provided under the Companies Act, 2013
- Areas of Interpretation
- How professional firms assist in preparation of CFS



Companies Act, 2013 establishes the requirement for CFS for Indian Companies(Section 136)

- Preparation of CFS is mandatory for all companies, including unlisted and private companies having subsidiaries (including associates and joint ventures)
- Consolidation is done in accordance with the provisions of Schedule III of the Act and the applicable accounting standards (21, 23 and 27)
- Companies preparing CFS under IFRS would now need to prepare the CFS under Indian GAAP and are required to conform to the accounting policies of the parent company

Applicability of the CFS Standard



- Consolidation will be required even at intermediate levels i.e. each entity within the group which has a subsidiary, associate or joint venture must prepare CFS
- Companies that do not have any subsidiary but only has associates and / or joint ventures also need to prepare CFS
- Unlisted companies that have foreign subsidiary (ies) need to prepare CFS

Applicability of the CFS Standard



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- Companies that do not have any subsidiary but only has associates and / or joint ventures also need to prepare CFS
- Unlisted companies that have foreign subsidiary (ies) need to prepare CFS

Exemptions provided under the Companies Act, 2013



Ministry of Corporate Affairs (MCA) has provided the below exemptions:-

- Intermediate parent companies need not prepare CFS as long as they are wholly-owned and the immediate parent is in India

Companies Act 2013 – Accounts, Audit and Auditors

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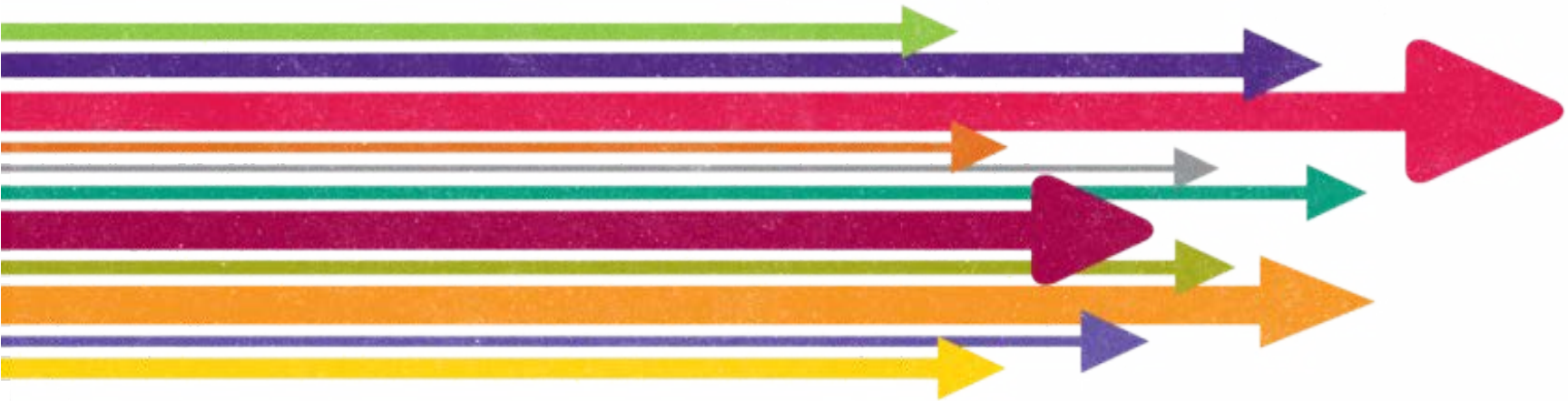
Final Rules(Section 138)

- Internal audit-
 - **unlisted public companies** with capital of Rs. 50 cr more or turnover of Rs. 200 cr or more or outstanding loans or borrowings exceeding Rs. 100 cr or outstanding deposits of Rs. 25 cr or more; and
 - **private companies** with turnover of Rs. 200 cr or more or outstanding loans or borrowings exceeding Rs. 100 cr
- at any point of time **during the last FY**
- secretarial audit- every public company with capital of Rs. 50 cr or more or turnover of Rs. 250 cr or more

Analysis

- mandatory internal audit requirement will strengthen the system of internal controls in the wake of recent corporate frauds
- mandatory secretarial audit report would be a good measure to ensure compliance with legal requirements as any adverse comment in the report could have significant impact from a regulatory perspective

CSR



Companies Act 2013 – Corporate Social Responsibility



Key changes (Section 135)

- select companies to form CSR committee
 - net worth of rupees five hundred crore or more, or
 - turnover of rupees one thousand crore or more or
 - a net profit of rupees five crore or more during any financial year

Contribution- 2% of average net profit of past 3 years (i.e. the three immediately preceding financial years)

- preference to the local areas where it operates
- **CSR activities include (listed in schedule VII)**
 - eradicating extreme hunger and poverty
 - promotion of education
 - promoting gender equality and empowering women
 - reducing child mortality and improving maternal health
 - combating HIV, malaria and other diseases
 - ensuring environmental sustainability
 - social business projects

Companies Act 2013 – Corporate Social Responsibility

Key changes



- **CSR activities include (listed in schedule VII)**

- contribution to the PM National Relief Fund, etc.
- Slum area development
- contribution to the Swach Bharat Kosh set up by the Central Government for the promotion of sanitation
- contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of the river Ganga

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016



- MCA has issued Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 ('Amendment Rules') amending Rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.
- The Amendment Rules, *inter alia*, provide the following:
 - Registered trust or a registered society through which CSR activities will be undertaken should be established by the company either singly or along with any other company;
 - Company established under section 8 of the 2013 Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature are now also included in list of entities through which CSR activities can be undertaken.
- If the Board of Directors of a Company decide to undertake its CSR activities through a company established under section 8 of the 2013 Act or a registered trust or a registered society, other than those specified in Rule 4(2), such company or trust or society should have an **established track record of three years** in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the **modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism**.
- These amendment rules are effective from 23 May 2016.

FAQs on Corporate Social Responsibility under section 135 of the 2013 Act

MCA, through FAQs issued following clarifications on 12 January 2016:

- **Holding or subsidiary of a company** (which fulfils criteria under section 135(1)) to comply with section 135(1) only if it also fulfills such criteria
- **Section 8 companies** not exempted from CSR provisions
- **Foreign company's** balance sheet filed under section 381(1)(b) to contain annexure regarding report on CSR
- **Contribution in kind** cannot be monetized as CSR expenditure
- **Excess amount** spent on CSR cannot be carried forward to subsequent years
- **'any financial year'** referred to under sub-section (1) of section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'



A company which does not meet the criteria in the relevant financial year however, meets criteria in any of the preceding 3 FYs, would need to constitute a CSR Committee and comply with provisions of sections 135 (2) to (5) read with CSR Rules

- Amount spent towards CSR not to be claimed by the company as **business expenditure**
- Computation of net profit for section 135 to be as per section 198 i.e. **'Profit before tax'**

Objective of government behind CSR provisions is not to monitor, but to enable corporates to conduct themselves in socially responsible manner. Monitoring/implementation continues to be the responsibility of BOD/CSR committee/auditors

Companies Act 2013 – Corporate Social Responsibility

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- profits from overseas branches to be excluded in computing the net profits
- CSR activities to be undertaken within India
- should not be exclusively for the benefit of employees of the company or their family members
- contributions to any political party will not be counted
- CSR activities details to be disclosed in board report
- administrative expenditure can also be included within the 5% limit of total CSR expenditure which a company may spend for building its own CSR capacity
- Pursuant to above amendment, salaries paid to regular CSR staff and volunteers (in proportion to company's time spent on CSR) is not considered as CSR expenditure separately, as this is considered as a part of administrative expenditure within the limit of total 5%.
- Now as per the amendment, entities established by the company, "either singly or along with its holding or subsidiary or associate company, or along with any other company or holding or subsidiary or associate company of such other company' or otherwise" can carry out CSR works. However, the company so established by the entities has to be registered under section 8 only.

The Companies Act 2013



Schedule II

Schedule II

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- **Depreciation-** Systematic allocation of depreciable amount of an asset over its useful life
- **Depreciable amount** – cost of an asset and or other amount substituted for cost, less its residual value.
- the **residual value** of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.
- **Useful life** of an asset is the period over which an asset is **expected to be available for use** by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.

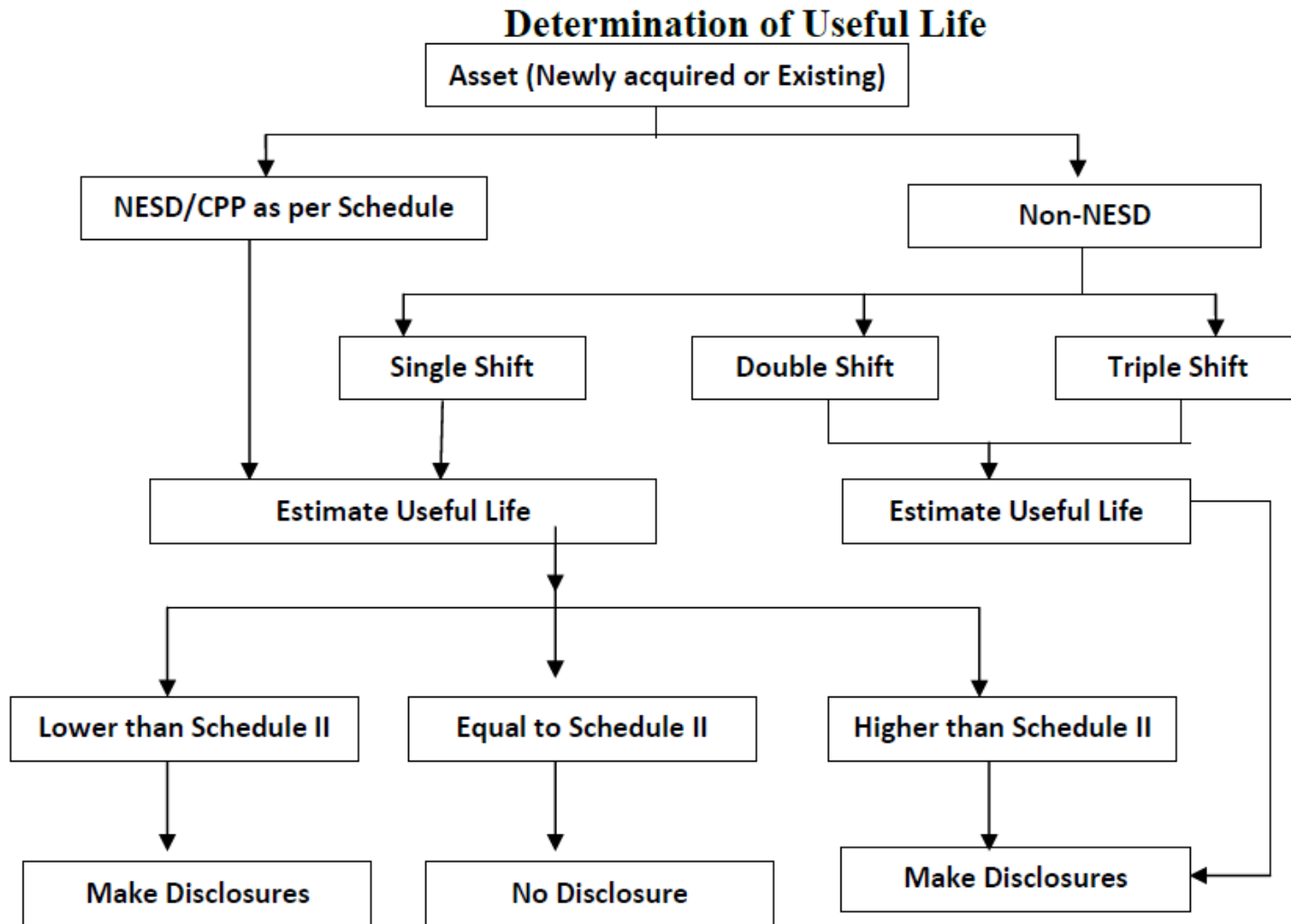
Companies Act 2013 – Schedule II

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Final Rules

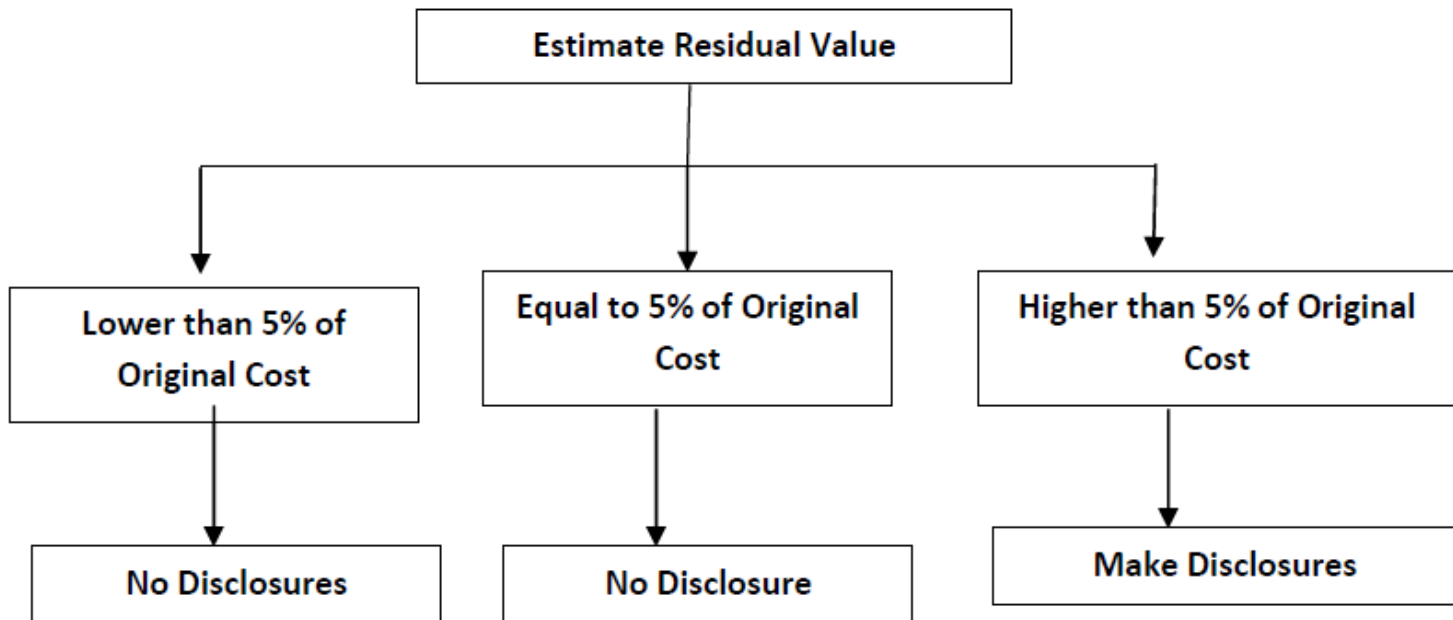
- Useful life of an asset and residual value shall not be different from that indicated in Schedule II – Part C
- In case of entity chooses a useful life or residual value different from Schedule II, it shall disclose the justification of the same
- The carrying amount of the asset on the date this Schedule becoming effective:
 - a) shall be depreciated over the remaining useful life of the asset as per this Schedule;
 - b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.

Useful Life: Disclosure



Determination of Residual Value

Determination of Residual Value



Guidance Note (GN) on Accounting for Depreciation in Companies



- The GN provides guidance on significant issues arising from **practical application** of Schedule II like:
 - multiple shift depreciation
 - estimation of residual value
 - revaluation of assets
 - depreciation on low value items
 - component approach
 - pro rata depreciation etc.
- Extra shift depreciation applicable where useful life estimated on single shift basis **at the beginning of the year**
 - Company, which estimated the useful life of an asset on single shift basis at the beginning of the year, used the asset on double /triple shifts during the year, the depreciation expense to be increased by 50% /100%.
- Unlike Schedule XIV, **no requirement** to provide depreciation at the rate of 100% any for low value items in Schedule II
 - a company may have a policy to fully depreciate the assets upto certain threshold limits considering materiality aspect in the year of acquisition.
- GN applicable for accounting periods beginning **on or after 1 April 2016**; earlier application is encouraged

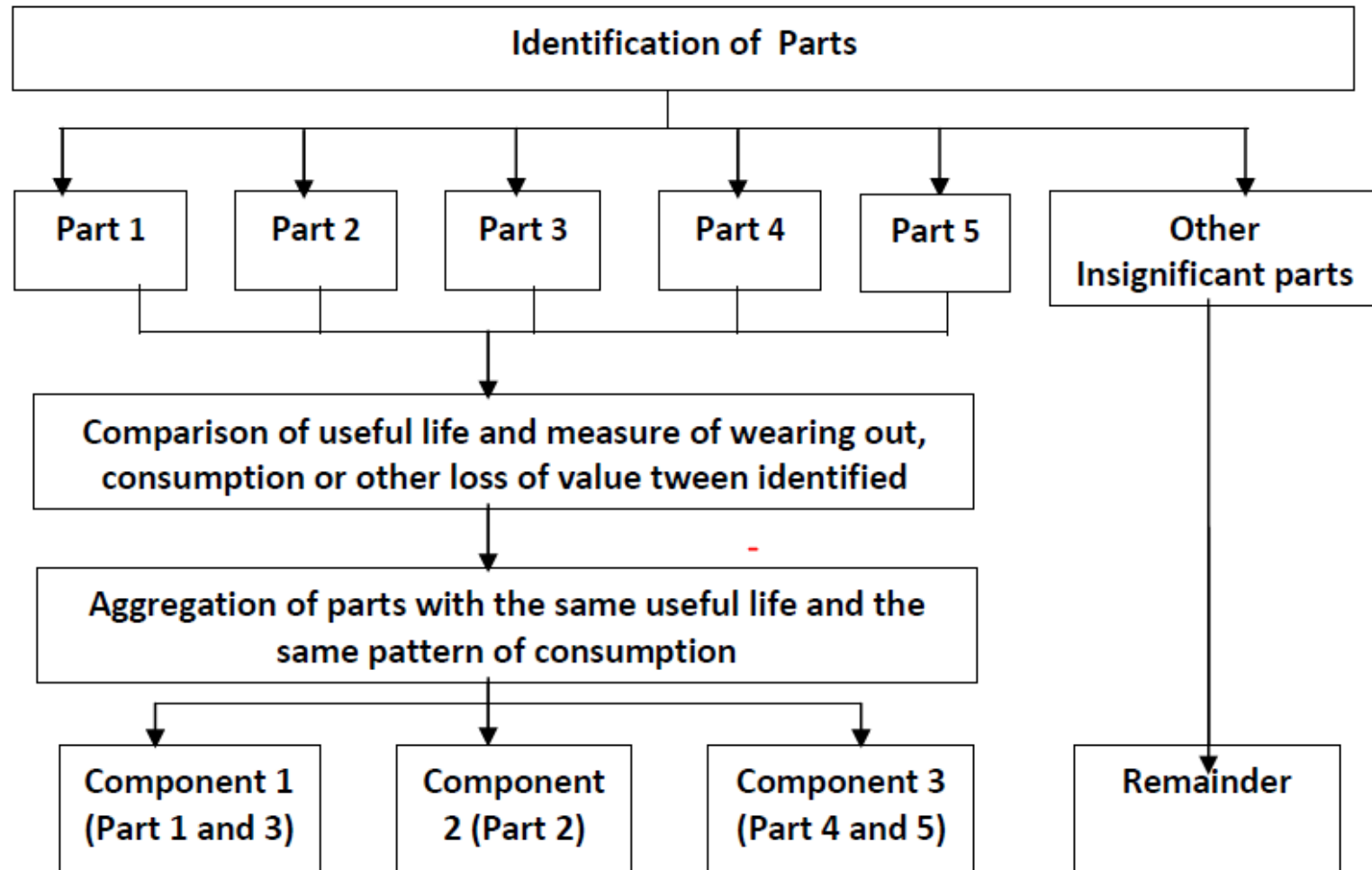
Companies Act 2013 – Schedule II



Component Approach

- Component approach already permitted in paragraph 8.3 of the current AS 10. Under AS 10, there seems to be a choice in this matter; however, Schedule II requires mandatory application of component accounting.
- **Component approach** made **mandatory** under Schedule II – **effective from 1 April 2015**
 - Companies will need to identify and depreciate significant components with different useful lives
- **Any cumulative impact (net of taxes) due to its applicability to be recognised in revenue reserves and disclosed separately**

Determination of Components



RECAP- Schedule II



Key Differences: Schedule II Vis-à-vis Schedule XIV- Recap

- Useful life is the period over which an asset is expected to be available for use by an entity.
- Schedule II prescribes indicative useful lives of various assets instead of Straight Line Method (SLM)/ Written Down Value (WDV) rates.
- Depreciation is systematic allocation of the depreciable amount of an asset over its useful life.
- depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value.
- Companies allowed to follow different useful life/residual value if an appropriate justification is given supported by technical advice.
- Useful lives of significant parts of an asset to be determined separately.
- No reference to depreciation on low value assets
- No separate rate for double/ triple shift; depreciation to be increased based on the double shift/triple shift use of the assets

Companies Act 2013 – Schedule II

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Disclosures

- The following information shall also be disclosed in the accounts
 - a) Depreciation method used
 - b) The useful lives of the assets for computing depreciation, if they are different from life specified in the schedule.

The Companies Act 2013

Reporting on Frauds



Companies Act 2013 – Fraud Reporting



What is fraud?

As per the Act- "fraud" in relation to affairs of a co or any body corporate, includes:

- a. any act;
- b. omission;
- c. concealment of any fact; or
- d. abuse of position committed by any person or any other person with the connivance in any manner.-
 - i. with the intent to deceive,
 - ii. to gain undue advantage from, or
 - iii. to injure the interests of-
 - the co; or
 - its shareholders; or
 - its creditors' or
 - any other person,whether or not there is any wrongful gain or wrongful loss

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud, u/s 143(12) of the 2013 Act

Persons covered for fraud reporting

- statutory auditor of a co
- cost accountant, conducting cost audit u/s 148
- co secretary, conducting secretarial audit u/s 204
- branch auditor appointed u/s 139

Persons not covered for fraud reporting

- other professionals, rendering other services to the co (e.g. tax auditor, sales tax or VAT auditors)
- internal auditors covered u/s 138

Note: This sec includes fraud by officers or employees of the co and does not include fraud by third parties such as vendors and customers.

MCA prescribes threshold for fraud reporting

Effective date

- MCA notified **14 December 2015** as the date of commencement of provisions of **Companies (Amendment) Act, 2015** relating to reporting of fraud

Rules notified

- MCA issued **Companies (Audit and Auditors) Amendment Rules, 2015**
 - all frauds to be reported to audit committee/board immediately
 - no later than 2 days of auditor's knowledge of the fraud
 - fraud involving/expected to involve individually **INR 1 crore or more** to be reported to Central Government
 - frauds not reported to Central Government : Board report to disclose specified details
 - amended provisions also applicable to cost auditor and secretarial auditor

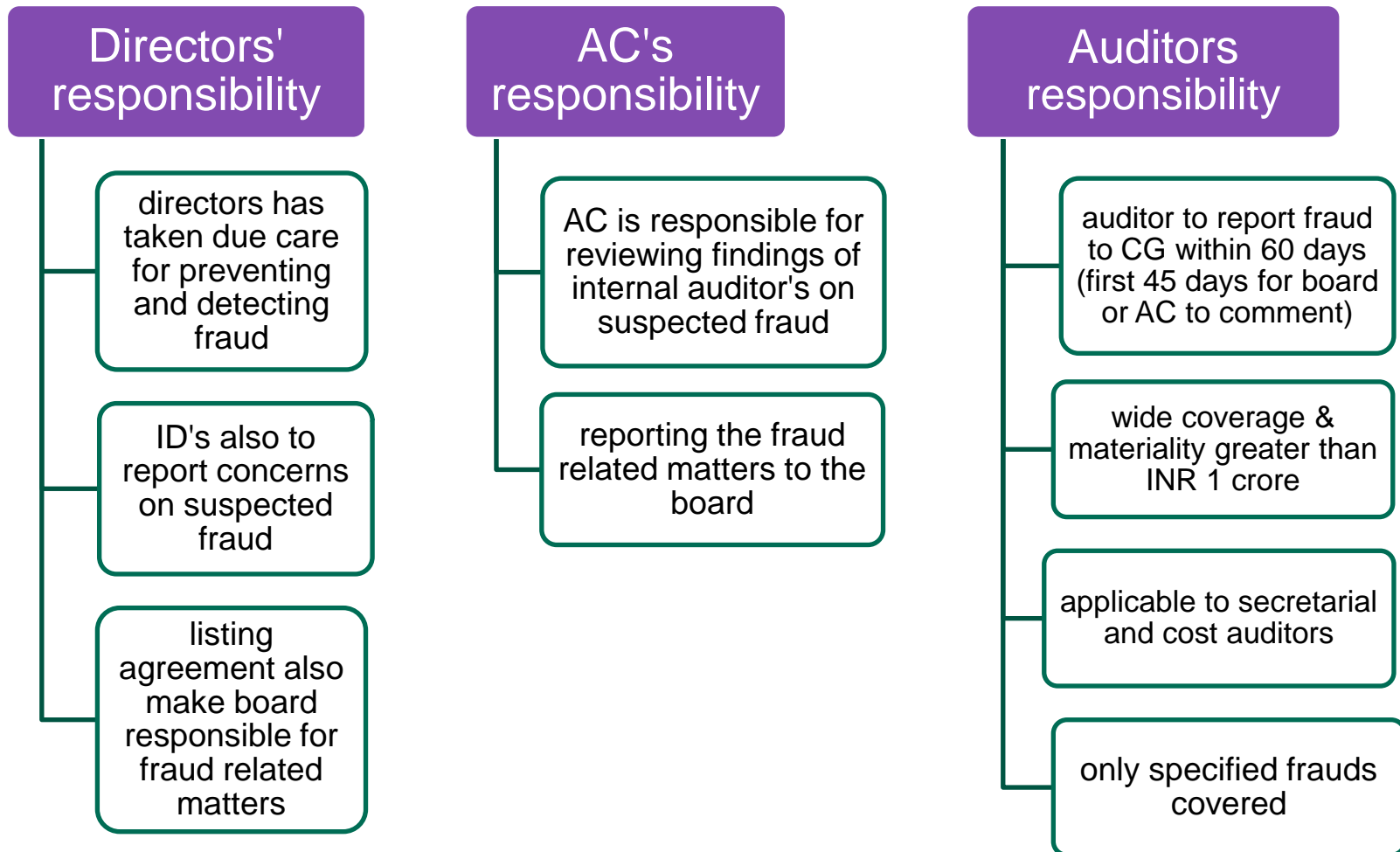
Guidance Note on Reporting on Fraud under section 143(12) of the Companies Act, 2013 (Revised 2016)

Guidance Note

-Erstwhile GN modified pursuant to amendment to section 143(12) of the 2013 Act and Rule 13 of the Companies (Audit and Auditors) Rules, 2014, which require the statutory auditor to report to the Central Government only for frauds which involve/expected to involve individually an amount =>INR 1 crore

-In case of fraud involving lesser than above amount, statutory auditor to report matter to the audit committee/Board of company instead of Central Government.

Companies Act 2013 – Fraud Reporting



Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud, issued by ICAI (Cont'd.)

Auditor's responsibility for consideration of fraud

- Sec 143(12) requires an auditor to report on fraud if **in the course of performance of his duties as an auditor**, the auditor has reason to believe that an offence involving fraud is being or has been committed against the co by its officers or employees.
- The term, “**in the course of performance of his duties as an auditor**” implies in the course of performing an audit as per the SAs. The definition of fraud as per SA 240 and the explanation of fraud u/s 447 of the 2013 Act are similar, except that **u/s 447, fraud includes ‘acts with an intent to injure the interests of the co or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.’**
- However, an auditor may not be able to detect acts that have intent to injure the interests of the co or cause wrongful gain or wrongful loss, unless the financial effects of such acts are reflected in the books or FS of the co.
- Therefore, the requirements of the SAs would be considered, insofar as it relates to the risk of fraud, including the definition of fraud as stated in SA 240 while performing his audit of FS to address the risk of material misstatements due to fraud.

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Reporting on suspected offence involving frauds identified during audit/limited review etc.

- If an suspected offence involving fraud identified during **limited review/audit of the quarterly financial results, tax Audit** etc.;
 - is of such amount that may be **considered to be material to the FS** of the co prepared under the 2013 Act or;
 - if the auditor uses or **intends to use the information that is obtained** in the course of performing such **attest or non - attest services when performing the audit** under the 2013 Act,
then in such cases, the matter may **become reportable u/s 143(12)**.
- This would require **exercise of professional judgment in evaluating** if the amount involved will be **material to the FS** to be prepared under the 2013 Act.
- If the auditor considers that the amount involved will be **material to the FS to be prepared under the 2013 Act, the auditor should report the offence** involving such fraud to the CG as required by the 2013 Act

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Reporting on frauds detected by the management or other persons and already reported u/s 143 (12) by such other person

- Fraud already reported or detected by the management / company's vigil mechanism and has been/is being dealt with by them, then the **auditor will not be required to report** the same u/s143 (12)
- The auditor should apply **professional skepticism to verify that the fraud was indeed detected by the management** etc.
- **Distinction** should be clearly made with respect to **frauds detected due to matters raised by the auditor** vis-à-vis those **identified by the co** through its internal control mechanism.
- However, the auditor should **review the steps taken by the management** w.r.t. such fraud, and if he is **not satisfied, he should request the management to perform additional procedures** to enable the auditor to satisfy himself that the matter has been **appropriately addressed**.

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Reporting by auditors u/s 143(12) if the fraud is required to be/has been reported under any other statute

- For instance, in case of a fraud **identified in a bank**, the bank auditor should report the fraud to the RBI. If the bank is a co, then additionally the auditor may also report to the CG, if covered u/s143(12)

When does an auditor commence reporting u/s 143(12) – based on suspicion - reason to believe – knowledge – or on determination of offence?

- per para 3 of SA 240, although the auditor may suspect or, in rare cases, identify the occurrence of fraud, the auditor **does not make legal determination of whether fraud has actually occurred.**
- On a harmonious reading of sec 143(12), Rule 13 of the Companies (Audit and Auditors) Rules, 2014 and Form ADT - 4, reporting on fraud is applicable only when the auditor has **sufficient reason to believe and has knowledge that a fraud has occurred or is occurring** i.e., when the auditor has evidence that a fraud exists.

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Concept of materiality for reporting on fraud

- The auditor should continue to apply the concept of materiality in performing the audit as per SA 320, “Materiality in Planning and Performing an Audit”.

Reporting in case of corruption, bribery, money laundering and non-compliance with other Laws and Regulations

- In case of corruption, bribery and money laundering, the **direct effect** of such act (benefit or penal consequence) is on the co.
- The auditor should **comply with the relevant SAs** with regard to illegal acts (e.g. SA 240 and SA 250, “Consideration of Laws and Regulations in an Audit of FS”) when performing the audit.
- If the auditor, in the course of performance of his duties, comes across these instances **the auditor would need to evaluate the impact of the same** in accordance with SA 250 to determine whether the **same would have a material effect on the FS.**
- The auditor should **also consider these for the purpose of reporting** u/s 143(12) as per SA 250

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Reporting when the suspected frauds relates to prior periods

- if the fraud relates to earlier years (1956 Act applicable), reporting u/s 143(12) will be done only if the suspected offence involving fraud is **identified by the auditor during the FYs beginning on or after 01 April 2014** and to the extent that the same **was not dealt with in the prior FYs** either in the FS or in the audit report or in the Board's report under the 1956 Act.

Evaluation of impact on the FS, audit opinion on the FS and IFC

If a fraud has been reported u/s 143(12), the auditor will **evaluate its implications on his audit opinion and on any other related matter u/s 143(1) to (3)** including effectiveness of the IFC.

Additionally, following will need to be considered by the auditor in this regard:

- When the auditor believes that the **management is involved in the fraud**, how the **auditor re-evaluated the risks of material misstatement** due to fraud and reliability of the evidences previously obtained.
- When the auditor confirms that, or is unable to conclude whether the FS are materially misstated due to fraud, how the **auditor evaluated the implications for the audit**.

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Consideration of disclosure of frauds in the Board's Report

- SA 720 requires the auditor to **read the other information in documents** that contain audited FS because the credibility of the audited FS may be **undermined by material inconsistencies between the audited FS and other information.**
- Pursuant to the proposed amendments to sec 143(12), the auditor may be required to **report frauds only to the AC or the BOD if the amounts involved are less than the thresholds** that are now specified by MCA.
- Such frauds may have been **appropriately dealt with in the audited FS of the co** However, as per the proposed amendment, the co should **disclose details of such fraud in its Board's report.**
- Since the BR also includes audited FS, the auditor should **read the disclosures relating to fraud in the BR** to determine if they are consistent with the **matter reported by the auditor and dealt with in the audited FS.**
- In case the auditor **observes any material inconsistency** in the disclosure in the BR in this regard, the auditor should consider the requirements of SA 720 to **determine the manner of dealing with the inconsistency observed.**

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Responsibility of the management

Primary responsibility to establish adequate internal control systems to prevent and detect frauds and errors is that of the management of the entity.

In the case of a co, the BOD, in terms of the provisions of sec 134(5) of the 2013 Act, are required to, inter alia, state as a part of the directors' responsibility statement in the BR to the shareholders, that they had taken proper and sufficient care for safeguarding the assets of the co and for preventing and detecting fraud and other irregularities.

In the case of a listed co, clause (e) of sub-sec 5 of sec 134 to the 2013 Act requires the directors' responsibility statement to also state that the directors, had laid down IFC to be followed by the co and that such IFC are adequate and were operating effectively.

Companies Act 2013 – Fraud Reporting



Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Reporting on suspected frauds in case of consolidated FS ('CFS')

- The auditor of the **parent co in India** will be required to **report on suspected offence involving frauds in the components of the parent co**, if the **suspected offence involving fraud in the component is being or has been committed by employees or officers of the parent co** and if such suspected offence involving fraud in the component is against the parent co, if:
 - a) the principal auditor **identifies/detects such suspected offence** involving fraud in the component “in the course of the performance of his duties as an auditor” of the CFS; or
 - b) the **principal auditor is directly informed of such a suspected offence** involving fraud in the component by the component auditor and the management had not identified / is not aware of such suspected offence involving fraud in the component; or
 - c) a **component that is not a company** since the component auditors of such components are not covered u/s 143(12).

Companies Act 2013 – Fraud Reporting

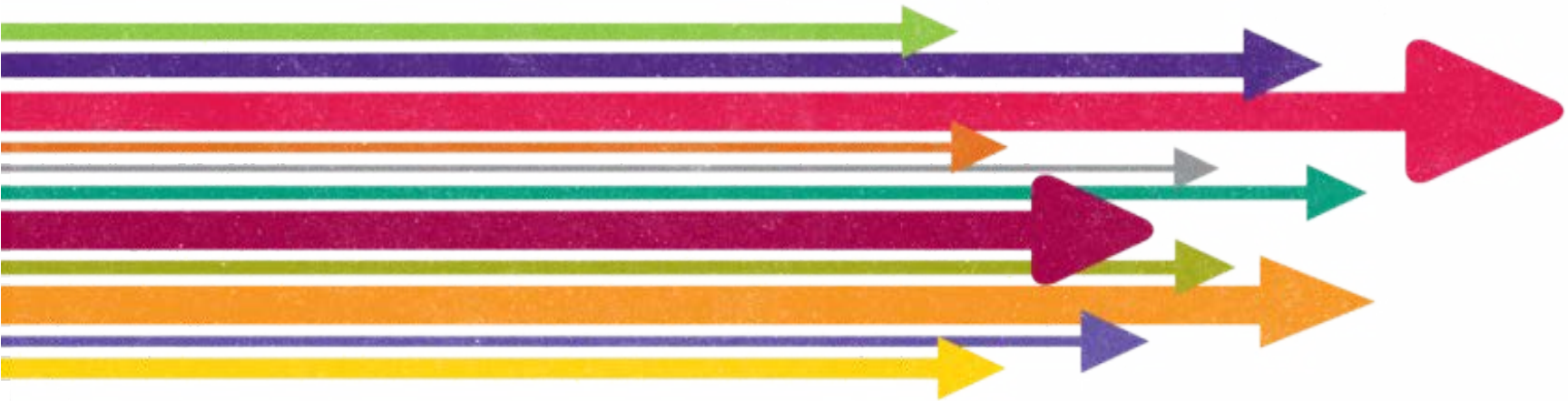


Clarifications provided by the GN on reporting on fraud u/s 143(12) of the 2013 Act (Cont'd.)

Consideration in joint audits

- Where a suspected fraud against the co is identified/noted by **one of the joint auditors**, such joint auditor should **communicate the same to the other joint auditor(s)** to enable them to consider and evaluate for his areas and each of the joint auditor should individually comply with the requirements of this GN.
- The reporting to **those charged with governance and to the CG may be carried out** by the joint auditor who identified/noted the suspected fraud or by any or all of the joint auditors together.
- When the reporting in Form ADT – 4 is carried out, only by the joint auditor who identified/noted the suspected fraud, such joint auditor should **provide a copy of the Form ADT – 4 to the other joint auditors.**

Companies (Auditor's Report) Order 2016



Companies (Auditor's Report) Order 2016 (CARO 2016)

Applicability

- Supersedes CARO 2015 w.e.f. FY commencing on or after 1 April 2015
- Exemption to private limited company, not being a subsidiary or holding company of a public company satisfying all the following conditions:
 - paid up capital and reserves and surplus \leq INR 1 crore
 - total borrowings \leq INR 1 crore
 - total revenue \leq INR 10 crores
- Private company which is a parent/subsidiary of a public company not exempted.

CARO 2016 not applicable to Consolidated financial statements – A welcome relief!

Key Notes on Applicability

- Private company shall satisfy all the conditions collectively to be exempt.
- Criteria of applicability of CARO Order for Revenue also includes Other Revenue and Revenue from Discontinuing operations
- Reserves/Surplus shall include capital reserves and revenue reserves including revaluation reserve. Debit balances in Profit and loss account to be netted off
- CARO Reporting also applicable to Branch Auditor

CARO 2016 not applicable to Consolidated financial statements – A welcome relief!

Exclusions

- Banking company
- Insurance company
- Company licensed to operate under section 8 of the Act 2013
- Small Company and One person Company as defined under the Act 2013

CARO 2016 is now compatible with The Companies Act ,2013!!!

Companies (Auditor's Report) Order 2016



Matters Omitted in CARO 2016 as compared to CARO 2015

- Reporting on procedures of physical verification for inventory
- Reporting on maintenance of records of Inventories
- Reporting on internal control system- purchase of FA/inventory, sale of goods/services.
- Whether amount has been transferred to Investor Education and Protection Fund.
- Reporting on accumulated losses and cash losses.
- Reporting on guarantees for loans taken by others from bank or financial institutions and Terms and conditions of the guarantee

Companies (Auditor's Report) Order 2016



New Clauses

- Reporting on title deeds of the immovable properties in the name of the company
- Clause on reporting whether company has granted any loans, secured or unsecured to companies, firms or other parties
 - LLPs also included
 - additional reporting whether terms and conditions in respect thereof are not prejudicial to the company's interest and whether schedule of repayment/payment is stipulated.
- Reporting of amounts overdue for > 90 days instead of monetary limit.
- Reporting on compliance with Section 185 and 186 of The Companies Act ,2013
- Additional reporting on whether moneys raised by way of IPO/ further public offer (including debt instruments) have been applied for the purposes for which those are raised. If not, the details thereof

New Clauses

- Reporting on managerial remuneration and compliance with Section 197 of The Act.
- In case of Nidhi Company, Compliance with Nidhi Rules, 2014
- Reporting on compliance with Section 177 & 188 of The Companies Act, 2013
- Reporting on preferential allotment or private placement of shares
- Reporting on non cash transaction with the directors or persons connected with him as per Section 192 of The Act
- Requirement for registration of The Company under Section 45 IA of the Reserve Bank of India Act

Audit Procedures & Documentation

- Obtain a questionnaire on all important matters covered by the order
- Make specific enquiries in writing on all important matters not covered in questionnaire
- Where the explanations are not already separately provided recorded maintain a record of the discussions with management
- Insist that replies of the company are received in writing and signed by responsible officer
- Prepare an independent checklist

CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>1. Short title, application and Commencement :</p> <p>1) This order may be called the Companies (Auditor's Report) Order, 2015.</p>	<p>Short title, application and Commencement :</p> <p>1) This Order may be called the Companies (Auditor's Report) Order, 2016</p>	CARO 2015 v/s CARO 2016
<p>2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except -</p>	<p>2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except-</p>	No change
<p>(i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);</p>	<p>(i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);</p>	No change



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(ii) an insurance company as defined under the Insurance Act, 1938 (4 of 1938);	(ii) an insurance company as defined under the Insurance Act, 1938 (4 of 1938);	No change
(iii) a company licensed to operate under section 8 of the Companies Act;	(iii) a company licensed to operate under section 8 of the Companies Act;	No change
(iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and	(iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and	No change



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>(v) a private limited company with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution and does not have a turnover exceeding rupees five crore at any point of time during the financial year.</p>	<p>(v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements</p>	<p>A Private company not being a subsidiary or holding company of a public company excluded now from the Order 2016.</p> <p>The term 'reserve' has been replaced with 'reserve and surplus'</p> <p>The limit w.r.t to capital and reserves (and surplus) has been increased from Rs. 50 lakhs to Rs. 1 crore</p> <p>The term 'loan outstanding' has been replaced with 'total borrowings'</p> <p>The limit w.r.t to loan (borrowings) has been increased from Rs. 25 lakhs to Rs.1crores</p>



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
		<p>The limit wrt to turnover (revenue) has been increased from Rs. 5 crores to Rs. 10 crores</p> <p>All the thresholds were earlier seen at any point of time during the financial year. Now, wrt to capital and reserves (and surplus), it has been changed to as on the balance sheet date and wrt turnover (revenue), it has been changed to during the financial year.</p>



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>2. Auditor's report to contain matters specified in paragraphs 3 and 4. – Every report made by the auditor under section 143 of the Companies Act, on the accounts of every company examined by him to which this Order applies for the financial year commencing on or after 1st April, 2014, shall contain the matters specified in paragraphs 3 and 4.</p>	<p>2. Auditor's report to contain matters specified in paragraphs 3 and 4. - Every report made by the auditor under section 143 of the Companies Act, 2013 on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after 1st April, 2015, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable: Provided the Order shall not apply to the auditor's report on consolidated financial statements.</p>	<p>The words 'examined by him' have been replaced by 'audited by him'. Order 2015 applies for the financial year commencing on or after 1 April 2014, while the Order 2016 applies w.ef..1April 2015. Order 2016 shall not apply to the auditor's report on consolidated financial statements.</p>



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>3. Matters to be included in the auditor's report. - The auditor's report on the account of a company to which this Order applies shall include a statement on the following matters, namely:—</p> <p>(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;</p> <p>(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;</p>	<p>3. Matters to be included in the auditor's report. - The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:-</p> <p>(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;</p> <p>(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;</p>	No Change
	<p>(c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;</p>	New clause



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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;	Reporting on material discrepancies, reported separately earlier (point c) clubbed with this point
(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;		Omitted
(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;		Omitted



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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,	(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,	LLPs are also covered now
	(a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest;	New Clause
(a) whether receipt of the principal amount and interest are also regular; and	(b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;	Reporting on schedule of repayment added.
(b) 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;	(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;	Any overdue amount (exceeding 90 days) is to be stated as against exceeding Rs. 1 lakh earlier (for any period)



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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.		Omitted
	(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.	New clause



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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 thereunder, 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?	No Change
(vi) where maintenance of cost records has been specified by the Central Government under subsection (1) of section 148 of the Companies Act, whether such accounts and records have been made and maintained;	(vi) whether maintenance of cost records has been specified by the Central Government under subsection (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained.	Word ' so ' added



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>(vii) (a) is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, 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.</p>	<p>(vii) (a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;</p>	<p>Reporting on wealth tax omitted</p>
<p>(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)</p>	<p>(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).</p>	<p>Reporting on wealth tax and cess omitted</p>



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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.		Omitted
(viii) 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;		Omitted
(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	(viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided).	The word 'dues' has been replaced with 'loans or borrowing' The word 'government' added Lender-wise details are now asked to be provided



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
(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;		Omitted
(xi) whether term loans were applied for the purpose for which the loans were obtained;	(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;	Reporting w.r.t moneys raised by way of IPO or further public offer (including debt instruments) added. Reporting requirements added with respect to details, delays or default and subsequent rectification.
(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.	(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;	As against all the frauds on or by the company, only the fraud by the company and on the Company by its officers or employees are to be reported now



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
	(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;	New clause
	(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;	New clause
	(xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards	New clause



CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
	(xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of noncompliance;	New clause
	(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;	New clause
	(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.	New clause

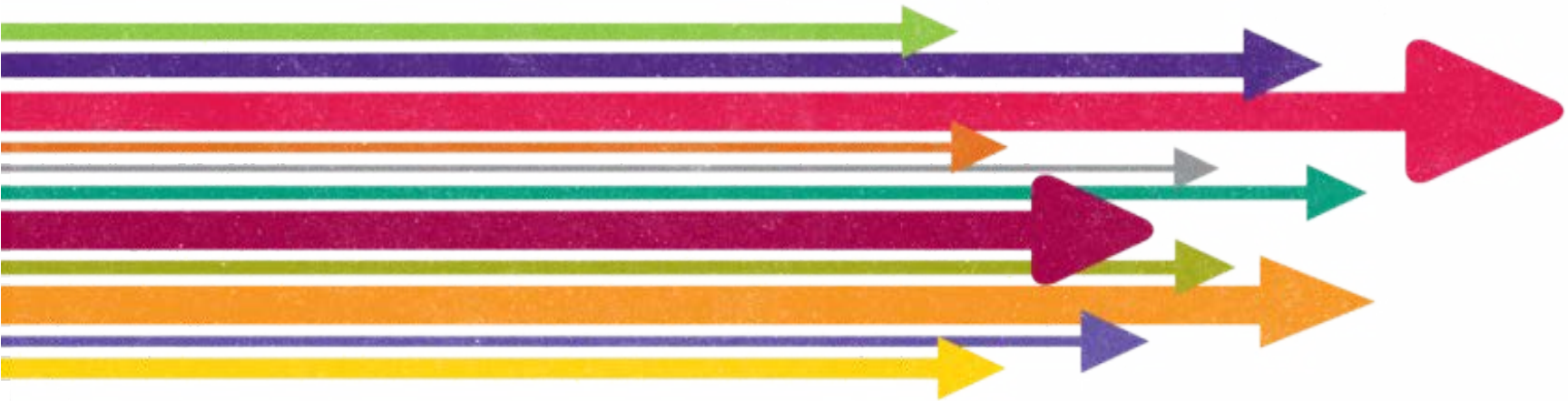


CARO 2015 Vs. CARO 2016-Modifications

CARO 2015	CARO 2016	Change
<p>4. Reasons to be stated for Unfavorable or qualified answers</p> <p>(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 reasons for such unfavourable or qualified answer, as the case may be.</p>	<p>4. Reasons to be stated for Unfavorable or qualified answers</p> <p>(1) Where, in the auditor's report, the answer to any of the questions referred to in paragraph 3 is unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.</p>	<p>No Change</p> <p>The word 'basis' used in place of 'reasons'</p>
<p>(2) Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.</p>	<p>(2) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with the reasons as to why it is not possible for him to give his opinion on the same.</p>	<p>The word 'any specified matter' used in place of 'a particular question'</p>



Other Updates



Omnibus approval by Audit Committee

Effective date

- MCA notified **14 December 2015** as the date of commencement of provisions of Companies (Amendment) Act, 2015 relating to **omnibus approval** for related party transactions (RPTs)

Rules notified

- MCA issued **Companies (Meeting of Board and its Powers) Second Amendment Rules, 2015** to permit omnibus approval for RPTs subject to prescribed conditions including:
 - audit committee to consider certain factors while specifying criteria for omnibus approval
 - criteria to be approved by board; consideration for approval include:
 - repetitiveness of the transaction (in past or in future)
 - justification for the need of omnibus approval
 - omnibus approval to be valid only for a period of 1 financial year
 - no omnibus approval for selling/disposing of the undertaking of

Amended rules aligned with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Companies (Amendment) Bill, 2016 introduced in Lok Sabha



Companies (Amendment) Bill, 2016 (the Bill)

- Finance Minister introduced the Bill on 16 March 2016 in Lok Sabha
- On **1 February 2016** MCA issued report of Companies Law Committee (CLC) proposing several changes to the 2013 Act
- Recommendations would result in changes in 78 sections and more than 100 changes in the 2013 Act; proposed 50 amendments in rules
- Report aims at further improving ease of doing business and proposes to
 - address transitional-cum-implementation challenges
 - removal of inconsistencies between the 2013 Act and Accounting Standards/SEBI requirements
 - rectifying omissions and inconsistencies in the Act
- The Bill proposes amendments based on comments received from stakeholders, ministries/departments and recommendations of the CLC Report

Companies (Amendment) Bill, 2016 introduced in Lok Sabha



Key Amendments Proposed

- Definition of **subsidiary company** and **associate company** to be amended
 - term 'total share capital' to be replaced by 'total voting power' for determining holding subsidiary relationship
 - **significant influence** means control of at least 20 percent of total voting power or control of or participation in taking business decisions under an agreement
- Removal of requirement for **annual ratification** of appointment or continuance of auditor
- **Re-opening** of financial statements **restricted to eight years**
- Removing restriction on layers of subsidiaries and investment companies
- Simplification of the **private placement process** by doing away with separate offer letter
- Removing provisions relating to **forward dealing and insider trading** from the existing company law
- **Replacing central government approval** with special resolution approval of shareholders in case managerial remuneration crosses the prescribed thresholds
- Introduction of test of **material for pecuniary interest** for testing independence of independent directors

Companies (Amendment) Bill, 2016 introduced in Lok Sabha



Key Amendments Proposed

- Companies may **advance loan** to any other person in whom director is interested subject to prior approval by special resolution
- Align prescription for companies to have **Audit Committee and Nomination and Remuneration Committee** with that of Independent Directors
- Exempting class of **foreign companies** from **registering and compliance** regime under the Act
- Process of **incorporation** to be made easier for companies and unrestricted objects clauses to be permitted in the Memorandum of Association
- The **requirement** of deposit of INR one lacs is proposed to be done away with in cases of independent directors and directors nominated by Nomination and Remuneration committee
- Disclosure in **prospectus** to be aligned with SEBI regulations (omitting prescription in 2013 Act and allowing these prescriptions to be made by SEBI)
- Central Government to prescribe **abridged form of annual return** for One Person Company and small company

Thank You

