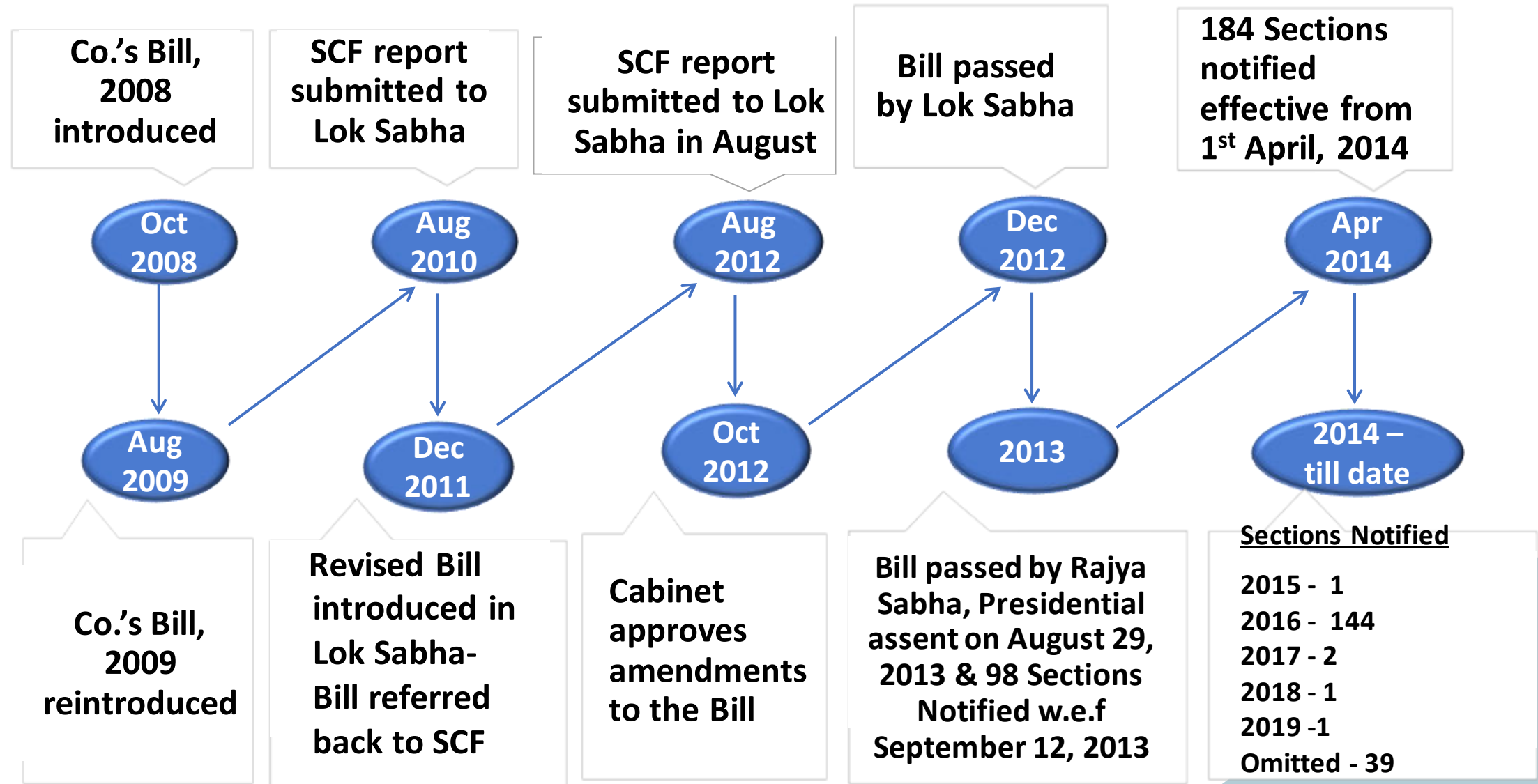


WIRC of ICAI
Company Law Refresher Course
Saturday, June 08, 2019

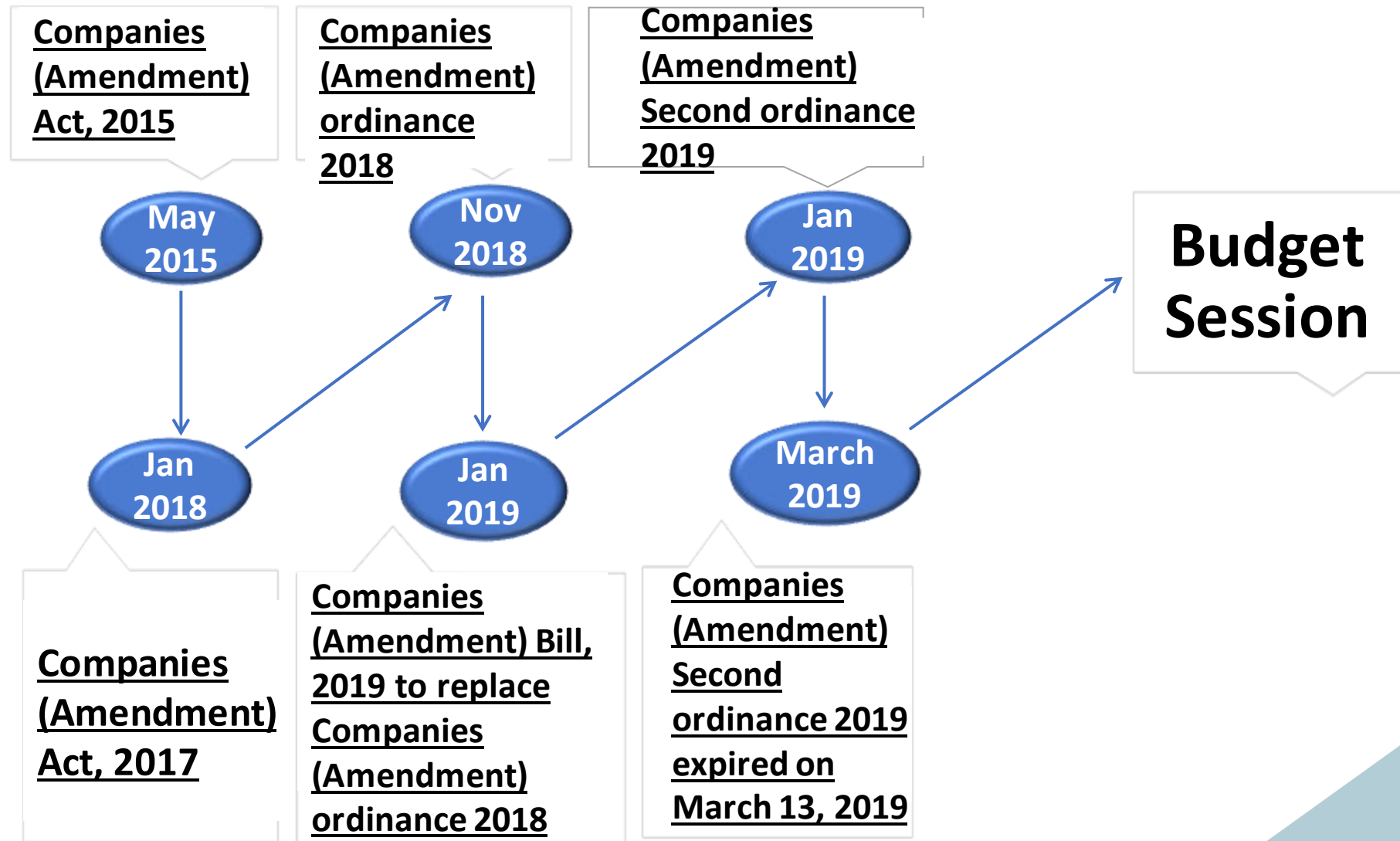
Overview of Key amendments to the Companies Act,
2013 / provisions pertaining to NFRA

- CA Nilesh S. Vikamsey

Passage of Companies Act 2013 ...



Amendment in Companies Act ...



Passage of Companies Ordinance, 2019

- **Ordinance** - Article 123 of Constitution empowers the President in consultation with Cabinet to pass a Ordinance. It must be approved by Parliament within six weeks of reassembling or it shall cease exist
- **Companies (Amendment) ordinance, 2018 introduced as on 02/11/2018**
 - Validity till- 21/01/2019 (6 weeks from start of winter session i.e. 11/12/2018)
 - Later on Approved by Lok Sabha 04-01-2019,
 - Further, Not Approved by Rajya Sabha
 - Before it lapses on 21/01/2019, Reintroduced
- **Companies (Amendment) ordinance, 2019 on 12/01/2019 w.e.f. 02/11/2018**
 - Validity till- 13/03/2019 (6 weeks from start of Budget session i.e. 31/01/2019)
 - Budget session was from 31/01/2019-13/02/2019
 - Further this Ordinance also not approved by Rajya Sabha
 - Before it lapses on 13/03/2019, Reintroduced
- **Companies (Amendment) Second ordinance, 2019 on 21/02/2019**
 - Validity till 6 weeks from 17/06/2019 (Budget session:- 17/06/2019-27/07/2019)

CAO, 2018

CAO, 2019

CAO, 2nd 2019

CA, Bill 2019 ?

02/11/2018

12/01/2019

21/02/2019

17/06/2019 + 6 weeks

Synopsis of Sections notified / Amendments in Companies Act

Particulars	Sections notified	Amendments
2013	99	-
2014	184	-
2015 / Companies Amendment Act, 2015	1	22
2016	144	92
2017 / Companies Amendment Act, 2017	2	-
2018	1	-
2019 / Companies (Amendment) Second Ordinance, 2019	1	31
Omitted	39	-
TOTAL	471	145

Highlights of Companies Act, 2013

- Substantial Portion of the Act by way of rules
- Imprisonment - around 65 times referred to in the Sections
- Special resolution - around 42 times referred to in the Sections
- Prosecution - around 14 times referred to in the Sections
- CG Approval around 8 times referred to in the Sections
- Mandatory CSR
- Enhanced Accountability on Corporates
- Independent Director - Detailed provisions & code for ID

Highlights of Companies Act, 2013

- NFRA (replacing NACAS) given more powers
- Additional disclosures in BoD Report
- Restriction on Inter Corporate Loans/Investments and Guarantee
- M & A procedures streamlined
- 1 Woman Director mandatory in prescribed class of Companies
- Mechanism for Class action suits provided in the Act
- Transfer of shares to IEP Fund along with unpaid/unclaimed dividend

Highlights of Companies Act, 2013

- Changes in Depreciation Provisions
- Private placement clearly defined
- Several exemptions /relaxations / privileges to Private Company now withdrawn & permissible maximum no. of members increased from 50 to 200
- Concept of One Person Company (OPC) introduced
- Small Companies defined and granted some relaxations
- Many new definitions and changes to existing definitions inserted.

Highlights of Companies (Amendment) Act, 2015 (25th May, 2015)

Amendments under the Companies (Amendment) Act, 2015, are broadly aimed at:

- Ease of doing business;
- Reduce compliance burden on genuine commercial transaction;
- Confidentiality of Commercial Interest discussed in resolution;
- Protection of interest of stakeholders and Company;

Highlights of Companies (Amendment) Act 2015

➤ AMENDMENTS TO ADDRESS EASE OF DOING BUSINESS

- No requirement of minimum paid up share capital by a Private and Public company (earlier (Rs. 1 Lakh & 5 Lakh) (Sec. 2(68) & 2(71)).
- Requirement of common seal made optional (Sec. 9, 12, 22, 46 & 223).
- Omitted - Before commencement of business or exercising any borrowing powers, requirement of declaration that every subscriber to the Memorandum has paid the value of shares committed by him/her and that the paid-up share capital of the company is not less than the prescribed (Sec. 11 omitted).

Note:- Companies (Amendment) Second ordinance, 2019 reintroduced

Highlights of Companies (Amendment) Act 2015

➤ AMENDMENTS TO ADDRESS COMPLIANCE BURDEN

- **Related Party Transactions (Section 188):** Only ordinary resolution (earlier Special Resolution) required for certain transactions with related parties. Also, for transactions between Holding and WOS no resolution is required.

Certain transaction - transaction of value not less than:

- Sale / purchase of goods or material - 10% of the turnover or Rs. 100 crore, whichever is less
- Sale / purchase of property - 10% of Net worth or Rs. 100 crore, whichever is less
- Leasing of property - 10% of Net worth or Turnover or Rs. 100 crore, whichever is less
- Availing or rendering of any service - 10% of Turnover or Rs. 50 crore, whichever is less

Highlights of Companies (Amendment) Act,

2015... AMENDMENTS TO ADDRESS COMPLIANCE BURDEN... (Continued)

- Loan to directors - Exceptions added for following
 - Loan / Guarantee / Security provided by Holding Company to its WOS and
 - Guarantee/ Security provided by Holding Company in respect of loan made by bank or financial institution to subsidiary.
- Empowered Audit Committee to give omnibus approval for RPT's subject to conditions specified (Rule 6A of Companies (Meeting of Board and its Power) Rules, 2014). Conditions:
 - Maximum value of the transactions, in aggregate which can be allowed under omnibus.
 - Maximum value per transaction which can be allowed.
 - Extent and manner of disclosure to audit committee whilst seeking omnibus approval.
 - Review at periodic intervals.
 - Transactions which cannot be subject to omnibus approval

Highlights of Companies (Amendment) Act, 2015..

➤ AMENDMENTS TO ADDRESS CONFIDENTIALITY OF COMMERCIAL INTEREST

- Section 117(3):

- i. No person under section 399 shall be entitled to obtain or inspect resolutions specified under clause (g) of Sec. 117(3) which relate to Section 179 (3) (Powers of the board to be exercised at Board Meeting - make calls on unpaid capital, buy-back of securities, issuance of securities, borrow monies, invest funds, grant loans or give guarantee or provide security, approve financial statements and Boards report, diversification, approve amalgamation / merger / reconstruction and take over of another company.)

- ii. Provision relating to filing copy of resolution with the registrar shall not apply to Banking Company for resolution passed to grant loans, give guarantee or provide security in the ordinary course of its business.

Highlights of Companies (Amendment) Act,

2015... AMENDMENTS TO ADDRESS PROTECTION OF INTEREST OF STAKEHOLDERS AND COMPANY

- Punishment for Contravention of Section 73 & 76 for Acceptance of Deposits (Section 76A - New Section):

- In addition to payment of deposit and interest due, fine not less than Rs. 1 Cr. and upto Rs. 10 Cr.

Amendment 2017 :- Fine Rs. 1 Cr. or twice the amount of deposit accepted by the Company whichever is less upto to Rs. 10 Cr.

- Every Officer in default punishable with imprisonment upto 7 years or fine not less than Rs. 25 lakh upto Rs. 2 Cr. or Both.

Amendment 2017 :- imprisonment which may extend to 7 years and with a fine not less than Rs. 25 lakh but may extend to Rs. 2 Cr. or Both.

Highlights of Companies (Amendment) Act, 2015.

AMENDMENTS TO ADDRESS PROTECTION OF INTEREST OF STAKEHOLDERS AND COMPANY

- No declaration of dividend unless carried over past losses and depreciation of previous years is set off against profit for the current year - Sec. 123(1). (Earlier was part of Rules.)
- Section 143 (12) - Fraud > 1 Cr. reported to the Central Government and < & = 1 Cr. report to Audit Committee/ Board. Disclosures of frauds not reported to Central Government in Board's Report.
- Sec. 212(b) - Offences covered u/s 447 i.e. for fraud shall be cognizable and no person accused of offence under this section shall be released on bail or own bond unless Public prosecutor has been given opportunity to oppose and court is satisfied that he is not guilty and not likely to commit any offence while on bail.
- Section 124 (b) - Equity share for which dividend is unclaimed/unpaid should be transferred to IEPF if Unclaimed/unpaid for 7 consecutive years or more. (Earlier transfer even though any of the subsequent years dividend(s) has been claimed /

Highlights of Companies (Amendment) Act, 2017

Amendments under Companies (Amendment) Act, 2017, broadly aimed at:

- Addressing difficulties in implementation owing to stringent compliance requirements;
- Facilitating ease of doing business in order to promote growth with employment;
- Harmonization with the ASs, SEBI Act, 1992, SEBI regulations, the RBI Act, 1934 & the RBI regulations made thereunder;
- Others - Rectifying omissions and inconsistencies in the Act.

Highlights of Companies (Amendment) Act 2017

➤ AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION

- **Sec. 4(5)(i) - Name Reservation / Approval :-**
 - New Company name application - 20 days from the date of approval instead (instead of 60 days of application)
 - Existing Company name change application - 60 days from the date of approval (instead of 60 days of application)
- **Sec. 12(1) - Registered office of the company :-**
 - To have RO within 30 days of its incorporation instead of on and from the 15th day.
- **Sec. 12(4) - Change in Regd. office of the company :-**
 - Notice of every change of situation to be given within 30 days of its change instead within 15 days of its change.
- **Sec. 3A - Effect of number of members falling below minimum :-**
 - Missed in 2013 Act, reintroduced, if company carries on business for more than 6 months while the number of members is so reduced, then every member during that time, shall be severally liable for the payment of whole debts contracted during that time, and may be severally sued.

Highlights of Companies (Amendment) Act 2017

...

➤ AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION...(Continued)

- **Sec. 139(1) - Annual Ratification of Auditors :-**

- **Not required,** (Provision of ratification was defeating the objective of giving five year term to the auditors. Further there was no clarity in case the shareholders choose not to ratify the auditor's appointment.)

- **Sec. 129(3) - Financial Statements :-**

- For consolidation purposes **associate company** is inserted in addition to the subsidiaries.

- **Sec. 130(3) - Reopening of Accounts of Companies :-**

- Reopened for 8 years on application of court or NCLT and statutory regulatory authority. If CG has earlier given **direction u/s 128(5) for keeping books of accounts for more than 8 years** then books of accounts **may be ordered to be**

Highlights of Companies (Amendment) Act 2017

➤ AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION... (Continued)

- Sec. 134(3A)-Abridged Board's Report for One Person Company and Small Company prescribed by CG.
- Sec. 134(1) - Signing of Financial Statements :-
 - Amendment provides that the CEO shall sign financial statements whether he is a director or not because CEO is a Key Managerial Personnel (KMP), and is responsible for the overall management of the company.
- Sec. 134(3)(a) & 92(3) - Extract of Annual return :-
 - Requirement of including extract of Annual return (Form MGT-9) in Directors Report done away with by just mentioning the web address / link in the Boards Report and placing the copy of annual return on Company website (if any).

Highlights of Companies (Amendment) Act 2017

➤ AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION

- Sec. 135 - Corporate Social Responsibility:-
 - Earlier Companies threshold net worth(≥ 500 Cr.) or turnover(≥ 1000 Cr.) or net profit(≥ 5 Cr) are required to constitute the CSR Committee in any financial year. For above limits, words any financial year replaced by "immediately preceding financial year".
 - In case company not required to appoint Independent directors, allowing composition of CSR committee with two or more directors. (otherwise composition shall be in compliance with Section 149(4))
 - Explanation to Section 135(5) provides "*net profit*" shall not include sum specified in rules and shall be calculated as per Section 198. (earlier "average net profit")

Highlights of Companies (Amendment) Act 2017

➤ AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION

- **Sec. 136 (1) - Right of Members to copies of Audited Financial Statement :-**
 - Audited Financial Statements copies may be sent to Members at less than 21 days before date of meeting if 95% members entitle to vote at the meeting agree for the same.
 - Only Listed Companies to place separate audited account of its each subsidiary on its website. (Earlier every Company having subsidiary or subsidiaries)
 - Foreign subsidiary if audit is not prescribed, then unaudited Financial Statements to be disclosed on the website of listed company.
- **Sec. 92 (1) - Annual return :-**
 - Abridged format for OPC, Small Company and clause related to Indebtedness omitted.

Highlights of Companies (Amendment) Act 2017

...

➤ AMENDMENTS TO FACILITATE EASE OF DOING BUSINESS

- **Sec. 96(2) & 100 (1)- Annual General Meetings and Extraordinary General Meeting:-**
 - Unlisted company to hold AGM & EGM anywhere in India if consented by all members in writing or in electronic mode obtained in advance.
- **Sec. 7 Self declaration to replace Affidavit:-**
 - Incorporation - affidavit⁴ from first subscribers to memorandum and first directors replaced by self declaration.
- **Sec. 160(1)- Deposit for nomination of Director:** Requirement of deposit of Rs. 1 Lakh for nomination of directors not applicable for appointment of independent directors or directors nominated by nomination and remuneration committee.

Highlights of Companies (Amendment) Act 2017

...

➤ AMENDMENTS TO FACILITATE EASE OF DOING BUSINESS

- **Sec. 93- Disclosure to registrar:-**

- Section 93 - omitted which required listed company to file return with Registrar with respect to change in number of shares held by promoters and top ten shareholders. (to avoid duplication of reporting with SEBI)

- **Sec.173(2)-Participation through Video -Conferencing :-**

- Directors allowed to participate through video conferencing or other audio visual means on certain **restricted items** like Approval of Financial Statements, Board Report, prospectus & matters relating to amalgamation, merger, demerger, acquisition, takeover etc and Audit Committee meeting for consideration of Financial Statements to be approved by board , if there is quorum through physical presence of

Highlights of Companies (Amendment) Act 2017

...

➤ HARMONISATION

- **Sec. 26 - Disclosure in Prospectus (with SEBI)**, aligned by omitting information, reports and declarations required in the Companies Act, 2013.
- **Section 194 - Forward dealing in Securities & Section 195 - Insider trading :-Omitted**, Since SEBI Regulations are comprehensive and cover the provisions, sections relating to prohibition on forward dealings in securities of Company and insider trading of securities by director or key managerial personnel are deleted.

➤ RATIONALISATION OF PENAL PROVISIONS:-

- **Rule 3(12) of Companies (Adjudication of Penalties) Rules - Quantum of penalty to be levied taking into consideration:**

- size of company, nature of business, injury to public interest, nature

Highlights of Companies (Amendment) Act 2017

➤ RATIONALISATION OF PENAL PROVISIONS:-

- Penal provisions for procedural and technical defaults rationalized and liabilities reduced.
- Sections 76A (contravention of Section 73 or 76) - Rs. 1 crore or twice the amount of deposit, whichever is lower,
- Section 140 (contravention of Section 140(2) - Rs.50,000 or remuneration, whichever is lower. Continuing failure, further Rs. 500/day maximum of Rs. 5 Lakh. (Form for resignation of Auditor with reasons)
- Section 147 [contravention of Section 139 (Appointment), 143 (Power & duties, 144 (Non rendering of services) or 145 (Signing of Audit Report)] - Fine not less than Rs. 25,000 up to Rs. 5 Lakh or 4 times of remuneration, whichever is lower. Willful default, fine not less than Rs. 50,000 to Rs. 25 Lakh or 8 times of remuneration.
- Section 132 (Professional or other misconduct): In case of firms, penalty reduced from not less than 10 Lakhs to not less than 5 Lakhs

Highlights of Companies (Amendment) Act 2017

➤ OTHER IMPORTANT CHANGES

- Section 197- Managerial Remuneration :-

- CG approval shifted to special resolution for public companies - For Payment of remuneration to directors including MD and WTD and Manager even exceeding 11% of net profits. However, if Company has defaulted in payment dues to bank, financial institutions, non-convertible debentures or other secured creditors prior approval of such entities shall be obtained before obtaining Special Resolution.

- Section 185 - Loan to directors:-

- Company may advance loan / give guarantee / provide security in connection with any loan taken *any person in whom any of the director is interested*, subject to

i. Special Resolution is passed (full details disclosure in Explanatory

Highlights of Companies (Amendment) Act 2017

... ➤ OTHER IMPORTANT CHANGES

Note: Any person in whom any of the director is interested means:

- i. any private Company of which such director is a director or member
- ii. any body corporate in which 25% or more of voting power is exercised by such director or by 2 or more such directors together
- Nothing contained above shall apply to
 - i. Loan given to MD or WTD as part of conditions of service extended by all employees or Special Resolution is passed
 - ii. Company in the ordinary course of business provides loan / guarantee / securities and the interest is charged at a rate not less than rate of prevailing yield 1 / 3 / 5 / 10 years Government security
 - iii. Loan given by a Company to its Wholly owned Subsidiary

Highlights of Companies (Amendment) Act 2017

➤ OTHER IMPORTANT CHANGES (continued...)

iv. Any guarantee given / service provided by a holding Company in respect of loan made by bank or financial institution to its subsidiary Company.

- In case of contravention

- i. Company - minimum fine of Rs. 5 Lakhs upto 25 Lakhs

- ii. Officer in default - minimum fine of Rs. 5 Lakhs upto Rs. 25 Lakhs
(earlier no fine on Officer in default)

- iii. Director or other person - imprisonment upto 6 months or minimum fine of Rs. 5 Lakhs upto 25 Lakhs or both

Highlights of Companies (Amendment) Act 2017

...

➤ OTHER IMPORTANT CHANGES

- **Section 186- Loans and Investments :-**

- Shareholders approval not required where loan or guarantee given or security provided to wholly own subsidiaries or JV or Acquisition of wholly owned subsidiary by Holding Company. Disclosure required in Financial Statements - Section 186(4).

(provisions now realigned with Sec.372A of 1956 Act).

- **S.188-Related party transactions:-**

- No restriction on voting by Related Party in GM in Company in which 90% or more members are relatives of promoter or related parties.

Highlights of Companies (Amendment) Act 2017

...

➤ OTHER IMPORTANT CHANGES...(Continued)

- Non ratification of RPT shall be voidable at the option of the Board or Shareholders , (Earlier Board only).
- Lower punishment and fine for small frauds(Section 447):-
 - Fraud involving < Rs. 10 Lakhs or 1% of the T/O of the company, whichever is lower, not involving public interest, Punishment:- Imprisonment upto Max. 5 years OR with fine: upto 20 Lakhs or with both fine and imprisonment. (Compoundable)

*Companies (Amendment) Second Ordinance, 2019 has increased Max. fine limit from 20 to 50 L.

- Fraud involving >= 10 Lacs or 1% of the T/O of the company, whichever is lower, Punishment:- Imprisonment for Min. 6 months upto 10 years AND Max. 3 times of fraud.(Non -Compoundable)

Highlights of Companies (Amendment) Act 2017

...

➤ OTHER IMPORTANT CHANGES...(Continued)

- Lower penalties for OPC & Small co (Section 446B) :- Not more than one-half of the fine or imprisonment or fine and imprisonment, in case of failure to

Section	Penalty for Normal Company	Officer in default
92(5) – Failure to file Annual Return within prescribed time	Rs. 50,000, further penalty in case of continuing failure Rs. 100/day subject to maximum of Rs. 5 Lakhs	Rs. 50,000, further penalty in case of continuing failure Rs. 100/day subject to maximum of Rs. 5 Lakhs
117(2) – Failure to file resolution and agreement within prescribed time	Rs. 5 Lakhs, further penalty in case of continuing default of Rs. 500/day subject to maximum of Rs. 25 Lakhs	Rs. 50,000, further penalty in case of continuing default of Rs. 500/day subject to maximum of Rs. 5 Lakhs
137(3) – Failure to file copy of Financial Statements within prescribed time	Rs. 1,000 / day subject to maximum of Rs. 10 Lakhs	MD and CFO or any other director who is charged by the Board – Rs. 1 lakhs, further penalty of Rs. 100/day sub. to max of Rs. 10 Lakh

Highlights of Companies (Amendment) Act 2017

... ➤ OTHER IMPORTANT CHANGES...(Continued)

- Reopening of accounts (Section 130) :-
 - Before passing an order, the Tribunal required to serve notice to any other person concerned* also, who may submit their concerns.
 - Other concerned parties: e.g. Auditor/Chartered Accountant.
- Section 143(3)(i): Auditors' Report shall state about existence of internal financial controls with reference to financial statements and its operating effectiveness, earlier it was Internal Financial Control System.

Highlights of Companies (Amendment) Act 2017

...

➤ OTHER IMPORTANT CHANGES...(Continued)

- Foreign companies:-

- i. Sec. 384 (2) - Provisions of Section 92 (Annual Return) and 135 (CSR) apply to foreign companies also. (Subject to exceptions / modifications / adaptations under Rules)

- ii. Sec. 379 - Ambiguity wrt application of Chapter XXII (Companies incorporated outside India) due to disconnect in definition between Sec. 2(42) and 379. It is clarified Companies falling under both the definitions are required to Comply with Chapter XXII.

- Sec. 2(42) - "foreign company" means company incorporated outside India which has place of business in India and conducts business activity in India

- Sec. 379 (2) - Companies where not less than 50% paid up capital³³ of a

Highlights of Companies (Amendment) Act 2017

...

➤ OTHER IMPORTANT CHANGES...(Continued)

- **Deposit Repayment Account[Section 73(2)] :-** Maintenance of Deposit Repayment Account with a scheduled bank for Public Deposits has been **changed to 20% of the amounts maturing during the next financial year in place of 15% of the amounts maturing during the year and next financial year.**
- **Deposit insurance removed**

Highlights of Companies (Amendment) Act 2017

... ➤ RELAXATION/EXEMPTIONS TO PRIVATE COMPANIES VIDE NOTIFICATION NO. G.S.R 583 DT. 13/06/2017

- Section 2(40) - Start up private Company - No cash flow statement.
- Section 92 - Private Companies disclose aggregate remuneration of directors.
- **Section 143(3):** ICFR is not applicable to private companies (i) which is OPC or a small company; or (ii) which has turnover less than rupees fifty crores as per latest audited financial statement or which has aggregate borrowings from banks / financial institutions / any body corporate less than rupees twenty five crore;

Highlights of Companies (Amendment) Act 2017

... ➤ RELAXATION/EXEMPTIONS TO PRIVATE COMPANIES VIDE NOTIFICATION NO. G.S.R 583 DT. 13/06/2017

- **Section 73(2):** Section 73(2) (a) to (e) will not apply to following private companies:
 - i. Which accepts deposits from its members not exceeding 100% of paid up share capital, free reserves and **securities premium**
 - ii. Which is a **start up*** for 5 years from the date of its incorporation
*start-up means a private company incorporated under the Act (including 1956) and recognized as star-up in accordance with notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry
 - iii. Which **fulfills all** of the following conditions:
 - Which is not an associate or subsidiary of any other company
 - Borrowings is less than twice its paid up capital or Rs. 50 crore, whichever is lower
 - Company has not defaulted in repayment of borrowings at the time of

Highlights of Companies (Amendment) Act 2017

... ➤ RELAXATION/EXEMPTIONS TO PRIVATE COMPANIES VIDE NOTIFICATION NO. G.S.R 583 DT. 13/06/2017...(continued)

- **Section 173(5):** A start-up private company can have least one meeting of Board of Directors in each half of calendar year and gap between the two meetings is not less than ninety days.
- **Section 174:** Where time the number of interested directors $>$ or $=$ two thirds of the total strength of the BODs, the no. of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.
- **Section 174(3):** Interested Director counted for quorum after disclosure of interest under section 184.

Highlights of Companies (Amendment) Second Ordinance 2019

Main reforms undertaken through the Ordinance:

➤ Earlier Fine by HC/Tribunal, Now Penalty by RD/ROC

- Re-categorizing offences which are compoundable offences to in-house adjudication framework. However, no change made for any of the non-compoundable offences.
- Ensuring compliance of default and prescribing stiffer penalties in case of repeated defaults.

➤ Power vested with Central Government (earlier NCLT):

- a) To approve alteration in Financial Year. (Sec. 2(41))
- b) To approve cases of conversion of public companies into private companies. (Sec. 14(1))

Highlights of Companies (Amendment) Ordinance 2019...

➤ Other corporate governance related reforms

- Re-introduction of commencement of business provision;
- Greater accountability with respect to filing documents related to creation, modification and satisfaction of charges;
- Holding of directorships beyond permissible limits to trigger disqualification of such directors
- Non-maintenance of registered office to trigger de-registration process; etc.

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ **Re-categorising of offences:-** The Ordinance re-categorizes 16 offences as civil offences, where RoC may levy penalty instead of courts (NCLT)

- i. S. 53(3) - Prohibition on issue of shares at discount
- ii. S. 64(2) - Notice to be given to Registrar for alteration of share capital
- iii. S. 92(5) - Annual Return
- iv. S. 102(5) - Statement to be annexed to Notice
- v. S. 105 - Proxies
- vi. S. 117(2) - Resolutions and Agreements to be filed
- vii. S. 121(3) - Report on annual general meeting
- viii. S. 137(3) - Copy of financial statement to be filed with Registrar
- ix. S. 140(3) - Removal, resignation of auditor and giving of special notice
- x. S. 157(2) - Company to inform DIN to Registrar
- xi. S. 159 - Punishment for Contravention - in respect of DIN
- xii. S. 165(6) - Number of Directorships
- xiii. S. 191(5) - Payment to Director for Loss of Office
- xiv. S. 197(15) - Overall managerial remuneration and remuneration in case of absence of profits
- xv. S. 203(5) - Appointment of KMP
- xvi. S. 238(3) - Registration of the offer of scheme involving transfer of shares

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ Ensuring compliance of default and prescribing stiffer penalties in case of repeated defaults.

- 454(3) Adjudication of Penalties :-

- a) Adjudicating officer can now impose penalty on company, officer in default, or any other person and

- b) Can provide any direction to the company or officer in default or any other person.

- c) Introduction of 'any other person' widens the power of the adjudicating officer.

- 454(3) Adjudication of Penalties :-

- The adjudicating officer shall also give direction of making good of the default at the time of levying penalty.

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ **Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.**

- **454(B) Adjudication of Penalties :-**

- Default occurs when the company or officer in default would fail to comply with the order of the adjudicating officer or RD as the case may be.

- **454A Penalty for repeated default :-**

- New section inserted - Where a penalty is imposed on a person, and the same default is committed again within a period of three years from the date of Penalty order passed by the adjudicating officer / RD, the person shall be liable for the second and every subsequent defaults for twice the amount of Penalty provided for such default.

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ **De-clogging the NCLT:-** Enlarging the jurisdiction of RD by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.

- **441(1)(b) Compounding of Certain Offences :-**

- **Power of RD to compound offence punishable increased from 5 L to 25 L.**

(Pre-Amendment, where maximum fine amount did not exceed five lakh rupees, such offence was compounded by RD or any officer authorised by the Central Government.)

- Post Amendment, where maximum fine amount does not exceed Twenty-five lakh rupees, such offence shall be compounded by RD or any officer authorised by the Central Government.

- **441(B)(a) Compounding of Certain Offences:-**

- Section 441(B) (a), which requires the **permission of the Special Court**

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ Other Corporate Governance related reforms:-

- Insertion of new section 10A Commencement of business, etc.:-
 - Re-introduction of section 11 earlier omitted under the Companies (Amendment) Act, 2015 for Declaration (that every subscriber to memorandum has paid the value of shares agreed to be taken by him) by a company having share capital before it commences its business or exercises borrowing power. Where no declaration has been filed within 180 days , Registrar may initiate action for removal of name.
- Registered Office of Company(Section 12) :-
 - Insertion of sub-section (9) to section 12, "If Registrar has reasonable cause to believe that the company is not carrying on any business or operation, he can do physical verification of Registered office of the company and if default is found he may initiate action for the removal of

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ Other Corporate Governance related reforms...(Continued) :-

- Register of significant beneficial owners in a company (Section 90) :-
 - Punishment for violation of section 90(1) prescribed under section 90(10) enhanced contravention is punishable with fine or imprisonment or both, instead of being punishable with only fine.
- Disqualifications from appointment of directors :-
 - New Sec. 164(1)(i), Disqualification if a person accepts directorships exceeding the maximum number (Max. 10 in Public company and Max. 20 in all companies) (Section 165).

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ Other Corporate Governance related reforms...(Continued)

• Duty to Register Charges (Section 77):-

- Charge to be registered within 30 days of creation. Earlier Registration within of 300* days of creation with additional fees. Now, 300 days is reduced to 60 days.

*If not registered within 300 days then needs to be done within 6 months from this ordinance.

• Punishment for contravention of Section 77 (Section 86) :-

- Willful furnishing of any false or incorrect information or knowingly suppressing any material information shall be liable to action u/s 447. (Punishment for fraud)

• Overall maximum Managerial Remuneration (Section 197) :-

- Clause 7 of section referring that Independent directors (IDs) shall not be entitled to ESOP removed. Accordingly remuneration of IDs include not⁴⁶ only

Highlights of Companies (Amendment) Ordinance 2019 ...

➤ Other Corporate Governance related reforms...(Continued)

- Power of Registrar to Remove name of the company (Section 248) :-

In following situations registrar can remove the name of the company (2 new clause added)

- a) Failed to commence business within 1 year of incorporation.
- b) Not carrying out any business or operations for a period of two years
- c) Dormant company under section 455
- d) If the subscribers of MoA of the Company have not paid the subscription amount and have not furnished a declaration in this regard within 180 days
- e) If the Company is revealed to not having any registered office after physical verification of registered office.

Companies Rules Year wise introduction

Particulars	2014	2015	2016	2017	2018	2019
The Companies (Central Government's) General Rules and Forms Amendment Rules, 2014	✓					
The Companies (Acceptance of Deposits) Rules, 2014	✓					
The Companies (Accounting Standards) Rules, 2006			✓			
The Companies (Accounts) Rules, 2014	✓					
The Companies (Adjudication of Penalties) Rules, 2014	✓					
The Companies (Appointment and Qualifications of Directors) Rules, 2014	✓					
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	✓					
The Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding meetings and provision for offices and officers) Rules. 2016			✓			
The Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017				✓		

Companies Rules Year wise

Particulars	2014	2015	2016	2017	2018	2019
The Companies (Audit and Auditors) Rules, 2014	✓					
The Companies (Authorised to Registered) Rules, 2014	✓					
The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016			✓			
The Companies (Cost Records and Audit) Rules, 2014	✓					
The Companies (Corporate Social Responsibility Policy) Rules, 2014	✓					
The Companies (Declaration and Payment of Dividend) Rules, 2014	✓					
The Companies (Filing of Documents and Forms in XBRL) Rules, 2015		✓				
The IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016			✓			
The Companies (Incorporation) Rules, 2014	✓					
The Companies (Indian Accounting Standards) Rules, 2015			✓			
The Companies (Inspection, Investigation and Inquiry) Rules, 2014	✓					
The Companies (Management and Administration) Rules, 2014	✓					
The Companies (Mediation and Conciliation) Rules, 2016			✓			

Companies Rules Year wise

Particulars	2014	2015	2016	2017	2018	2019
The Companies (Meetings of Board and its Powers) Rules, 2014	✓					
The Companies (Miscellaneous) Rules, 2014	✓					
National Company Law Appellate Tribunal Rules, 2016			✓			
The National Financial Reporting Authority Rules 2018					✓	
The National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018					✓	
The NCLAT (Salaries and Allowances and other terms and conditions of service of the Chairperson and other Members) Rules, 2015.		✓				
The NCLT Rules, 2016			✓			
The Nidhis Rules, 2014	✓					
The National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016			✓			
The Companies (Prospectus and Allotment of Securities) Rules, 2014	✓					

Companies Rules Year wise

Particulars	2014	2015	2016	2017	2018	2019
The Companies (Registered Valuers and Valuation) Rules, 2017				✓		
The Companies (Registration of Charges) Rules, 2014	✓					
The Companies (Registration of Foreign Companies) Rules, 2014	✓					
The Companies (The Registration Offices and Fees) Rules, 2014	✓					
The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016			✓			
The Companies (Restriction on Number of Layers) Rules, 2017				✓		
The Companies (Share Capital and Debentures) Rules, 2014	✓					
The Companies (Significant Beneficial Owners) Rules, 2018					✓	
The Companies (Specification of Definitions Details) Rules, 2014	✓					
The Companies (Issue of Global Depository Receipts) Rules, 2014	✓					
NFRA (Meeting for Transaction of Business) Rules, 2019						✓
The Companies (Transfer of Pending Proceedings) Rules, 2016			✓			
TOTAL	24	2	11	3	3	1

Synopsis of Amendments in Companies Rules

Amendments in these Rules	No. of times amended
The Companies (Acceptance of Deposits) Rules, 2014	9
The Companies (Accounting Standards) Rules, 2006	1
The Companies (Accounts) Rules, 2014	7
The Companies (Adjudication of Penalties) Rules, 2014	1
The Companies (Appointment and Qualifications of Directors) Rules, 2014	11
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	3
The Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding meetings and provision for offices and officers) Rules. 2016	1
The Companies (Audit and Auditors) Rules, 2014	7
The Companies (Authorised to Registered) Rules, 2014	3
The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	1
The Companies (Cost Records and Audit) Rules, 2014	6
The Companies (Corporate Social Responsibility Policy) Rules, 2014.	4
The Companies (Declaration and Payment of Dividend) Rules, 2014	3
The Companies (Filing of Documents and Forms in XBRL) Rules, 2015	4
The IEPF (Accounting, Audit, Transfer and Refund) Rules,2016	1
The Companies (Incorporation) Rules, 2014	19
The Companies (Indian Accounting Standards) Rules, 2015	5
The Companies (Management and Administration) Rules, 2014	9
The Companies (Meetings of Board and its Powers) Rules, 2014	7

Synopsis of Amendments in Companies Rules

Amendments in these Rules	No. of times amended
The Companies (Miscellaneous) Rules, 2014	1
National Company Law Appellate Tribunal Rules, 2016	5
The NCLT Rules, 2016	1
The Companies (Prospectus and Allotment of Securities) Rules, 2014	7
The Companies (Registered Valuers and Valuation) Rules, 2017	4
The Companies (Registration of Charges) Rules, 2014	5
The Companies (The Registration Offices and Fees) Rules, 2014	13
The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016	2
The Companies (Share Capital and Debentures) Rules, 2014.	10
The Companies (Significant Beneficial Owners) Rules, 2018	1
The Companies (Specification of Definitions Details) Rules, 2014	2
The Companies (Transfer of Pending Proceedings) Rules, 2016	2
TOTAL	155

The Companies (Incorporation) Rules, 2014

- **Companies (Incorporation) Amendment Rules, 2015:-** OPC to convert itself into public or a private Company if paid up share capital exceeds Rs. 50 Lakhs and average annual turnover during the relevant period exceeds Rs. 2 crore.
- **Companies (Incorporation) Third Amendment Rules, 2015:-**
 - a) A natural person shall not be:
 - i. Member of more than a OPC
 - ii. Nominee of more than a OPC
 - b) Every company which has a **website for conducting online business** or otherwise, shall **disclose/publish** its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the **landing/home page of the said website.**

The Companies (Incorporation) Rules, 2014

- Change of name shall not be allowed to a company
 - i. which has not filed annual returns or financial statements or
 - ii. which has failed to pay or repay matured deposits or debentures or interest thereon.
- Conversion of Unlimited liability company with or without share capital into Limited liability company by shares or guarantee by a special resolution in GM and application is filed in Form No. INC-27.
- Companies (Share Capital and Debentures) Third amendment Rules, 2016:
 - i. Equity shares with differential rights: Defaulting company may issue equity shares with differential rights upon expiry of five years from the year in which default was made good. Default in respect of followings:-
 - Payment of Dividend on Preference shares

The Companies (Share Capital & Debentures) Rules, 2014

- Repayment of any term loan from public financial Institution/State Financial Institution/Scheduled Bank
- Payments relating to its employees
- Transfer the amount to IEPF.

ii. Issue of Duplicate share certificate by Unlisted companies within a period of 3 months and Listed companies within 45 days (Earlier 15 days in case of listed companies)

Exemptions to Startup Company.

A. Sweat Equity Shares:-

- Company not to issue sweat equity shares for more than 15% of existing paid up equity share capital in a year or 5 crores, whichever is higher.

The Companies (Share Capital & Debentures) Rules, 2014

- Sweat equity shares not to exceed 25% of paid up equity capital at any time.
- However, Startup company may issue sweat equity shares not exceeding 50% of paid up capital upto, five years from the date of its incorporation or registration.

B. ESOPs:- Definition of Employees include Employees of subsidiary company but does not include:

- (i) an employee who is a promoter or a person belonging to the promoter group; or
- (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company

The Companies (Share Capital & Debentures) Rules, 2014

The Companies (Share capital and Debentures) amendment rules, 2015

Issue of shares on Preferential Basis:-

- No need for special resolution or sending private placement offer cum application letter (PAS-4). If preferential offer is made to one or more existing members only.
- Price of shares / other securities issued on preferential basis not less than price determined on the basis of valuation report of a registered valuer. - **The Companies (Share Capital and Debentures) Amendment Rules, 2014**
- **Buy Back of shares or other Securities:-**
- Offer for buy-back to remain open for a period not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer. **Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days (Inserted).** - **The Companies (Share Capital and Debentures) Second Amendment Rules, 2016**

The Companies (Share Capital & Debentures) Rules, 2014

In case of Buyback of securities, Auditors report addressed to the BOD should state -

(i) they have inquired into the company's state of affairs;

(ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;

(iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than 6 months old from the date of offer document;

Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company.

The Companies (Share Capital & Debentures) Rules, 2014

Issue of Debentures:- following company may issue secured debentures for a period exceeding 10 Yrs. but not exceeding 30 Yrs. (Max. 10 Yrs. for other companies)

- Companies engaged in setting up of infrastructure projects;
- Infrastructure Finance Companies
- Infrastructure Debt Fund Non-Banking Financial Companies
- Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority

Above issue of debentures shall be secured by the creation of charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due

The Companies (Share Capital & Debentures) Rules, 2014

- **Security for Debentures:-** the security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee on followings:-
 - any specific movable property of the company or **its holding company or subsidiaries or associate companies or otherwise**; or
 - any specific immovable property wherever situate, or any interest therein.
- Provided that in case of non-banking financial company, the charge or mortgage under sub-clause (i) may be created on any movable property.
- Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply.

The Companies (Share Capital & Debentures) Rules, 2014

- Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company. -
The Companies (Share Capital and Debentures) Amendment Rules, 2015

The Companies (Share Capital & Debentures) Rules, 2014

Companies (Share Capital and Debentures) Third Amendment Rules, 2016

- **Debenture Redemption Reserve:-**

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997, (Inserted) and for Housing Finance Companies registered with the National Housing Bank 'the adequacy' of DRR will be 25% "of the value of outstanding debentures" (earlier "value of debentures") issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and no DRR is required in the case of privately placed

The Companies (Share Capital & Debentures) Rules, 2014

- Debenture Redemption Reserve...(Continued):-

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% **"of the value of outstanding debentures"** (earlier **"value of debentures"**) issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% **of the value of outstanding debentures**.

- Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule.

The Companies (Audit and Auditors Rules)-2014

- Rule 9 : Liability to devolve on concerned partners only - In case of criminal liability of an audit firm, liability other than fine shall devolve only on the concerned partner(s), who acted in fraudulent manner / abetted / colluded in any fraud -Omitted. - The Companies (Audit and Auditors) Second Amendment Rules, 2018

The Companies (Acceptance of Deposits) Rules, 2014

- Definition of Deposits amended by way of amendment Rules, 2015 and 2016.
- Terms and conditions of acceptance of deposits by companies:
 - (a) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3.
 - (b) The credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies.

The Companies (Acceptance of Deposits) Rules, 2014

Maintenance of liquid assets and creation of deposit repayment reserve account:

- Every company referred to u/s 73(2) and every eligible company shall on or before the 30th day of April of each year deposit the sum with any scheduled bank.
- Deposited amounts shall not be utilized for purposes other than for deposit repayment.
- Amount remaining deposited shall not at any time fall below 20% (Earlier 15% of the amount maturing in current and next financial year) of the amount of deposits maturing during the financial year.

Disclosures in the financial statement:

- Every company (Except Pvt. Co.) shall disclose in financial statements by way

The Companies (Acceptance of Deposits) Rules, 2014

- Certificate of the statutory auditor of the company is required to be attached in form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits.
- **No company referred u/s 73(2) shall accept or renew any deposit if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds**
 - **from its members :- 35% (Earlier 25%) of the aggregate of the paid-up share capital, free reserves and (Inserted) securities premium account.**
 - **from others:- 25% of aggregate of the paid-up share capital, free reserves and (Inserted) securities premium account.**

The Companies (Accounts) Rules, 2014

- Board report shall report highlights of performance of subsidiaries, associates and joint ventures and their contribution to the overall performance.
- Matters to be included in Board report of One Person & Small Company is prescribed:-
 - Web address ,if any, in Annual return.
 - No. of Board meetings.
 - Directors responsibility statements.
 - Details of frauds.
 - Companies states of affairs.
 - Highlights of financial summary
 - Material changes in nature of business from the date of closure of financial year

The Companies (Meeting of Board & Its Powers) Rules, 2014

- Limits for various types of transactions prescribed u/s 188 for which prior approval of company by way of resolution is required.
- Following powers earlier to be exercised only in Board Meeting u/s 179(3), removed:-
 - to buy, sell investments constituting 5% or more of paid up share capital and free reserved of investee company
 - to take note of the disclosure of director's interest and shareholding
 - to invite or accept or renew public deposits and related matters;
 - to review or change the terms and conditions of public deposit;
 - to approve quarterly, half yearly and annual financial statements or financial results as the case may be.
- Audit committee may make Omnibus approval for related party transactions on annual basis.

The Companies (CSR Policy) Rules, 2014

CSR Activities: The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the 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

The Companies (Appointments and Remuneration of Managerial

- Board's report shall include names of the top ten employees (earlier every employee) in terms of remuneration drawn and the name of every employee, who if -

(i) Employed throughout the F.Y., was in receipt of remuneration \geq Rs. 1.2 Cr. p.a. (earlier Rs. 60 Lakhs p.a.)

(ii) Employed for a part of the F.Y., was in receipt of remuneration for any part of that year, at a rate which \geq Rs. 8.5 Lakhs p.m. (earlier Rs. 5 Lakh)

- No filing of a return of appointment of CEO, CS & CFO within 60 days of the appointment, with the Registrar in Form No. MR-1.

Return of Deposits (DPT - 3)

- Rule 16 of Companies (Acceptance of Deposits) Amendment Rules, 2019 - Every Company other than Government Company shall file return in Form DPT 3 on or before June 30 of every year containing information as on March 31 duly audited by auditor.
- Rule 16A:
 - i. Every Company other than Government Company shall file one time return of o/s receipt of money or loan not considered as deposits in terms of Rule 2(1)(c) from April 1, 2014 to March 31, 2019 in Form DPT 3 within 90 days from March 31, 2019.
 - ii. Every Company shall in its Financial Statements disclose by way of notes, money received from director. (In case of Private Companies, money received from relative of director also to be disclosed)
- Non compliance - Fine of Rs. 5,000 and for continuing offence fine of Rs.

Return of Deposits (DPT - 3)

- **Rule 2(1)(c):** Deposit includes any receipt of money by way of deposit or loan but **does not include:**
 - i. Amount received from CG, SG, Local Authority or Statutory Authority
 - ii. Amount received from Foreign Government, Bank etc as per FEMA
 - iii. Amount received from Banks, PFIs, CPs
 - iv. Inter Company Deposits
 - v. Amount received from director out of his own funds
 - vi. Amount received from relative of director for Private Company out of his own funds (**inserted**)
 - vii. Convertible bond / debentures - shares within 5 years
 - viii. Interest free security deposit from employees - upto 1 year of salary

Return of Deposits (DPT - 3)

- ix. Interest free security deposit from employees - upto 1 year of salary
- x. Share application money, except not allotted / refunded
- xi. Non-interest bearing amount received and (earlier 'or') held in Trust
- xii. Subscription to chit under Chit Fund Act (inserted)
- xiii. Amount received from AIF, Domestic VC Funds, MF and REIT registered with SEBI (inserted)
- xiv. Promoters - stipulation of any FI or banks
- xv. Amount received by the Company under any collective investment scheme in compliance with regulations framed by SEBI (inserted)
- xvi. Amount received by Nidhi Companies
- xvii. Rs. 25Lakh or more by startup company in single tranche by convertible notes (in equity or repayable within 5 years) (inserted)

Return of Deposits (DPT - 3)

xviii. Specified IFSC Public Company can accept from its member monies not exceeding 100% of aggregate of paid up share capital, free reserves and securities premium and such company shall file the details of monies so accepted to the Registrar in Form DPT3

xiv. Business advances:

- Supply of goods / services - within 365 days
- Against immovable property - if adjusted as per agreement
- Security deposit for performance of contract for supply of goods or services
- Advance under long term projects for supply of capital goods
- Advance received and as allowed by sectoral regulator as per CG / SG (inserted)
- Advance for subscription towards publication (inserted)
- Advance for providing future services in form of warranty or

Rule 25A of Companies (Incorporation) Rules, 2014 Form INC 22A-Active

- **Mandatory Requirement:** - MCA has mandated the tagging of Active companies. Every company formed on or before 31st December 2017 must file the particulars of the company and its registered office in INC 22A- ACTIVE (Active Company Tagging Identities and Verification) to enable common public to be aware of KYC (Know Your Company) status of the companies and their directors. This form should be filed on or before 15th June '19.
- **Fees:** - Rs. 10,000 on or after 16th June '19.
- **Companies not required to file INC 22A:** -
 - Struck off Companies or Companies under the process of striking off, Liquidation or amalgamation or dissolution.
 - Company not filed financials and Annual returns or both with ROC unless such company is under management dispute and Registrar has recorded the same.

Rule 25A of Companies (Incorporation) Rules, 2014 Form INC 22A-Active

- Information required to be filled in form INC-22A:
- Address of registered office along-with its longitude and latitude on map
- **Details of Directors** - It is to be ensured that all associated directors DIN status is in approved status, not marked for disqualification
- **Details of Statutory auditors** -The Company must have filed form ADT-1 for appointment of statutory auditor for FY 18-19.
- **Details of Cost Auditor**, in case the Company is required to appoint one - In case it is required, the Company must have been filed Form CRA-2 for appointment of cost auditor for FY 2018-19.
- **Details of Company Secretary of the company** -The Company must have a whole time Company secretary in case its paid up share capital is Rs. 5 Crore.

Rule 25A of Companies (Incorporation) Rules, 2014 Form INC 22A-Active

- **Details of the Managing director or Chief Executive Officer (CEO) or Manager or Whole-time Director of the company** -The Company must have on board managing director, or Chief Executive Officer or manager and in their absence, a whole-time director in case company is listed company or public company having a paid-up share capital of ten crore rupees or more
- **Details of the Chief Financial Officer (CFO) of the company** -The Company must has CFO in case company is listed company or public company having a paid-up share capital of Rs. 10 Crore or more.
- **Details of forms AOC-4/AOC-4 XBRL and MGT-7 filed for FY 2017-18**-The Company must ensure to file these forms before filing form INC-22A.
- **Photograph of Registered Office** showing external building and inside office also showing therein at least one director/KMP who has affixed his/her Digital Signature to the form.

Rule 25A of Companies (Incorporation) Rules, 2014 Form INC 22A-Active

- An OTP shall be sent to the mail ID of the Company entered into the form which shall be valid for a span of 30 minutes and shall be entered mandatorily into the form before its filing.
- Consequences of Non-Filing: -
 - Defaulting companies shall be marked as "Active-Non-compliant" and shall be liable for action under section 12(9) of the Act.
 - Company would be restricted from filing event-based forms such as the forms for change in authorized capital, change in paid up capital, change in directors except cessation, change in registered office etc.
 - In order to revive the company as "Active Compliant", there would be a penalty of Rs. 10,000.

Significant Beneficial Owner (SBO) - New Concept ?

➤ Concept of identifying significant beneficial owner is not a new. Already been prescribed by following:

- SEBI under Guidelines on Identification of beneficial ownership;
- RBI under RBI (KYC) Directions 2016
- Rules 9 of Prevention of Money Laundering (Maintenance of Records) Rules 2005
- Section 187C/ 187 D of the Companies Act 1956.

Section 89

- MGT 4 - declaration by registered owner, who is holding beneficial interest within 30 days from name entered in members' register.
- MGT 5 - declaration by beneficial owner - within 30 days of acquiring interest.
- MGT 6 return to be filed by Company within 30 days of receipt of declaration

Section 89 (10) - Effective from 13.06.2018

- S. 90 substituted to provide for Register of significant beneficial owners in a company.
- Beneficial Interest is defined in S. 89 (10):
 - Beneficial Interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to :
 - Exercise or cause to be exercised any or all of the rights attached to such share; or
 - Receive or participate in any dividend or other distribution in respect of such share.

Section 90 (5) - Effective from 13.06.2018

- Company shall give notice, in BEN 4, to any person (whether or not a member of a Company) whom the Company knows or has reasonable cause to believe:
 - To be a significant beneficial owner of the company;
 - To be having knowledge of the identity of a SBO or another person likely to have such knowledge; or
 - To have been a SBO of Company at any time during the 3 years immediately preceding the date on which the notice is issued.
- and who is not registered as a SBO with the Company as required under this section.

SBO

- In case declaration is not made or it is not satisfactory, then Company to apply within 15 days for restrictions on with regards to transfer of interest, suspension of all rights attached to such shares to NCLT u/s 90(7)
- A person aggrieved by order of such restriction u/s 90(8) may apply for relaxation - time period applying for relaxation restricted to 1 year from date of Order. (Ordinance 2019).
- If no application made for relaxation within 1 year - shares shall be transferred to IEPF without any restrictions (Ordinance 2019)
- Every Reporting Company - to find out if there is any individual who is a SBO and cause such individual to make a declaration in Form No. BEN-1.

Company SBO Rules, 2019

- Every reporting company shall give notice in BEN 4 in all cases where its member (other than an individual), holds not less than 10% of its; -
 - Shares or
 - Voting rights or
 - Right to receive or participate in the dividend or any other distribution payable in a FY.

Company SBO Rules, 2019

- BEN 1 - Every individual who is a SBO to file to Company within 90 days from 8th Feb 2019 and within 30 days of any change in SBO. If change within 90 days from 8th Feb 2019 - 30 days to begin after 90 days.
- BEN 1 - within 30 days of acquiring or change therein
- BEN 2 - Company to file within 30 days of receipt of BEN 1 to ROC.
- BEN 3 - Register of SBO
- BEN 4 - Notice

Company SBO Rules, 2019

- Rules are not applicable to the extent the share of the reporting Company is held by:
 - IPEF
 - Its Holding reporting company: Provided that the details of such Holding Reporting company shall be reported in Form BEN 2.
 - CG, SG or any local authority
 - A reporting company, or a body corporate, or an entity controlled by CG/SG or in combination thereof
 - SEBI registered Investment Vehicles such as MF's alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs)
 - Investment Vehicles regulated by RBI, or IRDA, or PFRDA.

Penalty

- S. 90 - Register of Beneficial Ownership to be maintained by Co. - file return.
- Penalty:
 - On person not making declaration:
 - Rs. 1 lakhs to Rs. 10 Lakhs - continuing Rs. 1 K per day or
 - Imprisonment upto 1 year or both
 - On company for not maintaining register and filing return - Rs. 10 lakh to Rs. 50 Lakh - continuing Rs. 1K per day
 - Willfully false or incorrect information or suppress - (S. 447)

National Financial Reporting Authority

(NFRA)

- Section 132 not part of original Companies Bill, 2009 - was introduced midway without prior debates
- NFRA is proposed for
 - i. Recommending accounting and auditing standards to Central Government
 - ii. Monitor and enforce compliance with accounting and auditing standards
 - iii. Oversee quality of service of professionals associated with compliance and suggest measures for improvements in quality
 - iv. Perform such other functions relating to clauses a), b) and c).
- In many countries the accounting body is a 'not for profit' organization and unlike ICAI is not formed under an Act of parliament. And therefore the need and rationale for creation of a separate NFRA in India remains arguable.
- ICAI represented by 3 of its Council Members, i.e. President, Chairperson of Accounting Standard Board and Chairperson of Auditing and Assurance Standards Board.
- Replaces NACAS - body earlier entrusted with function of recommending /

NFRA Rules, 2018

➤ Entities covered under NFRA : -

- All listed entities
- Unlisted Company having paid up capital of Rs. 500 crore or more, annual turnover of Rs. 1000 crore or Outstanding loans, debentures and deposits of Rs. 500 crore or more as on the last day of immediately preceding financial year.
- Banking Companies / Insurance Companies / Electricity generation / distribution companies and Companies covered under section 1(4) of the Act.
- Overseas associates or subsidiaries of any of the above if the overseas income or net worth exceeds 20% of the consolidated income or net worth.
- Any other Company, Body Corporate or entity as may be referred to NFRA by

NFRA Rules, 2018

➤ Once a Company is covered under NFRA Rules, it shall remain so for 3 years even after it ceases to be listed or any of the limits prescribed above falls below the stated limit.

➤ 8000 Companies are estimated to be covered by NFRA Rules.

➤ **Following entities are not covered under NFRA Rules:**

- Unlisted public companies not satisfying any of the above thresholds.
- Private limited companies, Section 8 Companies, OPC's
- Non Corporate entities like Partnership Firms, Trusts, LLP's etc.

Note: The above entities would continue to be governed by ICAI under framework of the Chartered Accountants Act.

➤ Some Issues on applicability of NFRA framework:

- Section 132(4) states "professional or other misconduct "under NFRA framework shall have the same meaning assigned under section 22 of the CA Act. Therefore 2 views can be taken:

NFRA Rules, 2018

- i. Apart from Statutory Audit, all other professional services in nature of internal audit, tax audit, consultancy assignments or special purpose certification would continue to be governed / regulated by ICAI.
- ii. All professional services by a CA for entities covered under NFRA are proposed to be covered.
- Section 132(4), if NFRA has initiated investigation, no other institute or body shall initiate or continue any proceedings. As per Rule 10(3), the action for professional or other misconduct shall be initiated only by NFRA and no other institute or body. It appears that the Rule supersedes the section and there can be questions about process of initiation and practical difficulties could arise.
- Where complaint is lodged with NFRA but for reasons of materiality or other reasons, NFRA doesn't initiate action; then such matters can't be initiated by ICAI considering the above rules. Unlike provisions of CA Act, there is no mention of any provisions of complaints to be lodged

NFRA Rules, 2018

- Disciplinary proceedings under Rule 11(5) - The decision will be by way of summary procedure and personal hearing will be given *'...where necessary or appropriate of being heard in person and after considering the submissions, if any, made by the auditor,.....'*. Whereas in ICAI framework, the Disciplinary process is two levels i.e. the prima facie which is a summary procedure and if considered guilty the committee have to give option of personal hearing. Under the NFRA framework, right to personal hearing is dependent on the discretion of NFRA.

➤ Functions, Duties and Powers of NFRA

- Protect public interest and interests of investors, creditors and other associated with the entities covered under NFRA rules.
- Maintain details of auditors of entities covered under NFRA rules.

To facilitate maintenance, the covered entities have been obligated

to file particulars of auditors in Form NFRA 1

NFRA Rules, 2018 ...

- Recommend accounting and auditing standards for approval by GOI, monitor compliance thereof and promote awareness about compliance to these standards.
- Oversee the quality of service of the professionals associated with compliance and suggest measures for improvements in quality.
- Co-operate with national and international organizations of independent audit regulators.
- Perform such functions as are ancillary or incidental or as may be delegated by GOI.
- NFRA shall receive recommendations and may seek additional information from ICAI on proposals for new / amendments in accounting or auditing standards.

- In performing the above functions and duties, NFRA may exercise the

NFRA Rules, 2018 ...

- Review working papers, including audit plan, risk evaluation methodology, documentation, manner of documentation of auditors to monitor compliance.
- Direct auditors' to implement measures for improvement of audit quality and refer the cases for overseeing quality of audit to QRB set up by ICAI.
- Investigate in any matter referred to it or *suo moto* and forward findings for enforcement. And also take disciplinary actions in the fitting cases of misconduct including issuance of Show Cause Notice to entities or auditors.
- In case of professional or other misconduct, NFRA is empowered to:
 - i. impose penalty of not less than Rs. 1 Lakh extending to 5 times of fees received in case of individuals and not less than Rs. 5 Lakhs extending to 10 times of fees received in case of firms AND

NFRA Rules, 2018 ...

➤ Some matters for consideration:

- NFRA rules do not seem to contain details about appellate body, framework and procedures; there could be another set of Rules notified concerning appellate tribunal as referred in Section 132(5).
- Penalty, if any, levied on the accused auditor is not paid or appealed against by depositing 10% with Appellate Tribunal within 30 days, NFRA shall inform each Company where said person / firm is auditor to appoint new auditor. This provision needs to have some mitigating provisions for genuine cases to avoid undue hardships.

NFRA Rules, 2018 ...

➤ NFRA vis a vis ICAI

- Misconception of ICAI as a self regulatory body is not fully correct as members of the following compositions are nominated by Government:
 - i. 20% of the central council of ICAI (8 members)
 - ii. 2 out of 5 member in Disciplinary Committee
 - iii. Chairman and 2 members in appellate authority (remaining 2 members being past central council members appointment is approved by Government)
 - iv. Chairperson and majority of 11 members of QRB (remaining 5 are approved by GOI)
- The Disciplinary mechanism of ICAI with nominees of GOI has been working reasonably well considering the fact most decisions are by and large upheld by High courts.

NFRA Rules, 2018 ...

➤ NFRA vis a vis ICAI

strengthening regulatory forum of ICAI with more powers and necessary infrastructure.

- It is reiterated that ICAI under the CA Act never had power to regulate Firms of CA or errant companies / auditees.
- The CA Act was amended in 2006 to improve speed of Disciplinary matters by debottlenecking the process. Post these amendments, pendency of Disciplinary matters has been brought down to 3 to 4 years which was earlier 8 to 10 years with further effort being made to reduce it despite many constraints.
- Even if the need for independent regulatory body is considered indispensable, the executive mechanism shall be cautious without it being too bureaucratic as it would be necessary to have updated

NFRA Rules, 2018 ...

➤ NFRA vis a vis ICAI

- The draft NFRA rules circulated in June 2018 were observed to be travelling far beyond authority conferred to it in Section 132 with an attempt to make NFRA a parallel institute requiring registration by auditors, providing draft code of ethics, prescribing eligibility conditions for auditors. All these provisions in draft rules were, prima facie, ultra vires the Act / CA Act.
- ICAI made representation to MCA for avoiding such overlapping / ultra vires provision in the final notified NFRA rules, which was affirmed too by the MCA.
- The CA Act / Regulations have not been changed despite periodic requests from ICAI.
- Initiative of ICAI in framing and recommending accounting and auditing

NFRA Rules, 2018 ...

➤ NFRA vis a vis ICAI

- The primary responsibility to ensure compliance of Accounting Standards is of Company's management and KMPs else be penalized. ICAI couldn't ensure compliance to these and penalize the errant companies.
- Hence, both the regulators can together play role of complimenting each other and provide qualitative regulatory framework

➤ Conclusion

- ICAI would continue to play pivotal role as 'Partner in Nation building' despite odds against it and will continue to regain its regulatory powers for unlisted public companies and private companies and others not covered under NFRA Rules.
- It will continue to critically review international accounting and auditing standards and

NFRA Rules, 2018 ...

➤ Conclusion (continued...)

making them converged to Indian conditions and forwarding them to NFRA to recommend to GOI for notifying the same.

- ICAI will continue its best practices in Financial Reporting and auditing profession along with its contribution through QRB, FRRB and PRB.
- Its representation in NFRA, (3 out of 13 members) though abysmally low, would provide professional input in deciding complex professional and disciplinary matters.
- Success of NFRA would largely depend on bureaucracy giving its way to pragmatic and solution oriented approach towards betterment of financial reporting, being open to take help of professionals to decide on Quality, Disciplinary & Investigative matters and thrust on regulatory



Thank You