



RECENT AMENDMENTS IN COMPANIES ACCOUNTS AND AUDIT RULES

WIRC OF ICAI

MODY

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20th March

MCA UPDATES ON ACCOUNTS RULES, AUDIT AND AUDITORS RULES AND SCHEDULE III OF COMPANIES ACT, 2013



- Ministry of Corporate Affairs (MCA) has issued notification G.S.R. 205(E) dated 24th March, 2021 to further amend the Companies (Accounts) Rules, 2014. These amended rules may be called the Companies (Accounts) Amendment Rules, 2021. They shall come into force on the 1st day of April, 2021.
- In Rule 3, in sub-rule (1), the following proviso shall be inserted, namely: “Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.”
- MCA has issued notification G.S.R. 247(E) dated 1st April, 2021 to issue the Companies (Accounts) Second Amendment Rules, 2021 to further amend the Companies (Accounts) Rules, 2014.
- In the above provision the figures, letters and words “1st day of April, 2021”, the figures, letters and words “1st day of April, 2022” shall be substituted. Impact: The above provision is applicable from 1st day of April, 2022 onwards.

AMENDMENTS IN COMPANIES (ACCOUNTS) RULES, 2014



- In Rule 8, in sub-rule (5), after clause (x), the following clauses shall be inserted namely:-
- (xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year alongwith their status as at the end of the financial year.
- (xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.”
- Impact: Rule 8 relates to “Matters to be included in Board’s Report”. Now the companies are also required to give the above details in Board’s Report.



MCA issued amendments to Schedule III to the Companies Act, 2013

The MCA through a notification dated **24 March 2021** has issued certain amendments to Schedule III to the 2013 Act. Key Amendments are divided into three divisions:





APPLICABILITY

For Financial years beginning on
or after 1st April 2021

- Dry run for FY 20-21 : Super important as comparatives have to be given next year and many amendments will be tough for many companies



A. Enhanced Disclosure for more oversight on Governance

1. Promoter shareholding
2. MSME disclosure on face of B/S
3. Registration and satisfaction of charges
4. More than 2 layers of subsidiaries
5. Compliance with Scheme of Arrangement
6. Working capital reconciliation : Statements filed with banks reconciled with Books of account
7. Revaluation – impact beyond 10%
8. Revaluation by Registered Valuer



B. Financial Discipline/ Solvency

1. Ratios
2. Ageing of Trade receivables (for Ind AS – SICR and Credit impaired)
3. Ageing of Trade payables
4. CWIP Ageing
5. CWIP – time and cost overrun
6. Transactions not recorded in books; undisclosed income...
7. CSR spend



C. Money laundering : early signals

- 1. Dealing with Struck off companies**
- 2. Benami transactions**
- 3. Immovable property not held in company name**
- 4. Wilful Defaulter declaration**
- 5. Loans Given/ Loans received for transfer to other entities**
- 6. End use of borrowed funds**
- 7. Loans and Advances to Promoters/ Directors/ relatives**
- 8. Dealings in Crypto currency/ crypto assets**



D. Minor changes/ edits

- 1. Rounding off – Total Income vs Turnover**
- 2. Replace Total Revenue by Total Income**
- 3. Grants/ Donations for Section 8 companies as Operating income**
- 4. Security Deposit- shift from L& A to Other Non Current Assets**
- 5. Tangible Assets replaced by PPE & IA**
- 6. Lease liabilities presentation for Ind AS Entities**
- 7. SOCIE – revised for Ind AS entities**
- 8. NBFC – disclosure of CRAR and other ratios**

Background to Amendments to Schedule III



- Ministry of corporate affairs vide Notification dated 24 March 2021 has amended Schedule III to the Companies Act, 2013
- Amendments have been made to all three Divisions – I, II and III
- Enhanced disclosures in the financial statements
- Amendments applicable for Financial Years beginning on or after 1 April 2021
- Prior Year comparatives needed – so Companies to start now after FY 21 audit to get the necessary information / develop system / MIS etc.



Companies (Accounting Standards Amendment) Rules, 2021 effective for FY 2021-22 onwards

Companies (Accounting Standards) Rules, 2021



- On 23 June 2021, the Ministry of Corporate Affairs notified Companies (Accounting Standard) Rules, 2021 (“Rules”) in consultation with National Financial Reporting Authority (NFRA).
- These Rules are applicable for non-Ind AS companies i.e. those companies who do not have to apply Indian Accounting Standards as notified under Companies (Indian Accounting Standard) Rules, 2015.

Companies (Accounting Standards) Rules, 2021



- The Rules contains the definition of Small and Medium sized company (SMC) which is different from the previous equivalent definition.
- This may change the SMC/ non-SMC status of a company and resultantly cause changes due to optional exemptions/relaxations from the measurement and disclosure requirements under certain accounting standards.

Effective Date



- The Accounting Standards shall come into effect in respect of accounting periods commencing on or after the 1st day of April, 2021.

Applicability



- Every company, other than companies on which Indian Accounting Standards as notified under Companies (Indian Accounting Standards) Rules, 2015 are applicable, and its auditor(s) shall comply with the Accounting Standards in the manner specified in the Annexure.
- The Accounting Standards shall be applied in the preparation of Financial Statements.

Three-tier Accounting Standards Framework



- Therefore, with these Rules coming into effect, we would have a three-tier Accounting Standards framework for companies under Companies Act, 2013.
- It must be noted that the accounting standards issued by the ICAI shall be applicable for non-corporate enterprises such as LLPs, partnership firms, proprietary concerns or other enterprises carrying out business, industrial or commercial activities.

Three-tier Accounting Standards Framework



Ind AS

- Listed companies
- Companies with net worth of Rs.250 crores or more
- Holding, subsidiary, joint venture or associate companies of the above companies

IFRS converged standards i.e. IFRS based standards with certain carveouts

AS

All companies not covered in the Ind AS criteria i.e. non-listed companies with net worth less than Rs. 250 crores and not having holding, subsidiary, joint venture or associate companies covered in the Ind AS criteria.

Non-converged accounting standards

Banks & Insurance companies currently apply AS.

AS (with relaxations)

Non- Ind AS companies meeting all following criteria:

- Turnover not exceeding Rs. 250 crores
- Borrowings not exceeding Rs. 50 crores
- Not holding or subsidiary company of non-SMC.

Non-converged accounting standards with certain measurement exemptions and reduced disclosures.

Definition of Small and Medium Sized Company (SMC)



- Whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;
- Which is not a bank, financial institution or an insurance company;
- Whose turnover (excluding other income) does not exceed two hundred and fifty crore rupees in the immediately preceding accounting year;
- Which does not have borrowings (including public deposits) in excess of fifty crore rupees at any time during the immediately preceding accounting year; and
- Which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation: For the purposes of this clause, a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

Cumulative Exclusion Criteria



- The definition of SMC is cumulative ie in order to be considered as SMC, a company shall not fall in any of the four criteria in the definition.

Example:

A company has turnover of Rs. 240 crores The company's borrowings is Rs. 55 crores

It shall be considered as a non-SMC since it is not meeting the borrowings criteria.



- The definition excludes companies whose either equity or debt instruments are listed on any stock exchange in India or abroad.

Debt Listed companies

- MCA notification dated 22 January 2021, amended the definition of ‘listed’ company under Section 2(52).
- Post these amendments, companies whose debt instruments are listed shall be excluded from the general definition of ‘listed’ company under section 2(52) of the Companies Act, 2013.
- *Whether such companies can be considered as SMCs under these Rules and therefore would benefit from the SMC exemptions?*

Listed Criterion



- The definition covers any stock exchange in India or outside India. Therefore, even if a company's instruments are listed outside India.
 - Example, a company's fully convertible bonds are listed in a stock exchange abroad, it would get covered as a listed company under the definition and would therefore be a non-SMC.
- Date of Assessment- to be assessed on which date??

Listed Criterion: Date of Assessment



- It is not clear whether the listed status shall be assessed
 - At the date of the notification of the Rules i.e. 23 June 2021; or
 - At the end of the immediately preceding financial year i.e. 31 March 2021 as is the case for the turnover or borrowing criteria; or
 - At the end of the first financial year, at which point these Rules are applicable i.e. 31 March 2022; or
 - At any point of time after these Rules were notified.

Listed Criterion: Companies in the process of listing



- The definition also excludes companies in the process of being listing from the definition of SMC.
- A question may arise as to at what stage can it be said that a company is in the process of listing as a company may have listing aspirations within the next 3-5 year time horizon.

Banks, Financial institutions and Insurance companies



- The definition has excluded public interest entities such as banks, financial institutions and insurance companies from the definition of SMC.
- These companies are not SMCs irrespective of their turnover/ borrowing threshold or listed status.
- Such companies shall have to continue to apply the Accounting Standards in full (except financial institutions that are covered in the Ind AS NBFC Roadmap), of course in tandem with the relevant RBI/ IRDA regulations.

Turnover Criteria



- Unlike the applicability criteria in Ind AS Roadmap, the definition of SMC in the Rules have a turnover criterion ie of Rs. 250 crores.
- The definition states that the turnover criterion shall be assessed based on the immediately preceding accounting year of the company.
- For example, if a company is evaluating whether it is a SMC or otherwise under these Rules for financial year 2021-22. It shall consider the turnover (without other income) as reported for financial year 2020-21.

Other Income



- The definition clarifies that turnover for the purpose of the Rules shall exclude other income.
- What is meant by the term “other income”?
- Which items should be classified under this head vis-à-vis under the head “Revenue” or, more particularly, “other operating revenue” within revenue?

Other Income



- ICAI's GN on Schedule III states that other operating revenue would include revenue arising from a company's operating activities, i.e., either its principal or ancillary revenue-generating activities, but which is not revenue arising from sale of products or rendering of services.
- Whether a particular income constitutes "other operating revenue" or "other income" is to be decided based on the facts of each case and detailed understanding of the company's activities.

Other Income: Example



- A group engaged in manufacture and sale of industrial and consumer products also has one real estate arm. If the real estate arm is continuously engaged in leasing of real estate properties, the rent arising from leasing of real estate is likely to be “other operating revenue”.
- On the other hand, consider a consumer products company which owns a 10 storied building.
- The company currently does not need one floor for its own use and has given the same temporarily on rent. In that case, lease rent is not an “other operating revenue”; rather, it should be treated as “other income”.

Other Income: Examples



- Sale of Property, Plant and Equipment which not an operating activity of a company, and hence, profit on sale of Property, Plant and Equipment should be classified as other income and not other operating revenue.
- On the other hand, sale of manufacturing scrap arising from operations for a manufacturing company should be treated as other operating revenue since the same arises on account of the company's main operating activity.

Borrowing Criterion



- The definition of SMC excludes companies which do not have borrowings (including public deposits) in excess of Rs. 50 crores at any time during the immediately preceding accounting year.
- Borrowing is not defined in the Rules. It shall generally include all loans, debentures, bonds and other debt instruments issued by the company and public deposits.
- Under Companies (Acceptance of Deposits Rules), 2014 an advance/ deposit/ credit balance in the books of a company may be considered as a deemed deposit. The author believes that such deemed deposits shall be also covered in the term borrowing for the purpose of SMC definition. Preference share capital shall not be included in the term borrowings. ³⁰

Borrowing Criterion



- The threshold is not based on the year end borrowing balance, but based on borrowing at any point in time during immediately preceding financial year
- Therefore, if a company had borrowed funds in excess of Rs. 50 crores, but had repaid part of the borrowing prior to the year end, it would be considered as non-SMC, despite of the year end balance being below the threshold of Rs. 50 crores.

Holding-Subsidiary Relationship Criterion



- If a company is a holding company or subsidiary company of another company which is a non-SMC.
- Therefore, if a company has a non-SMC company in its group (subsidiary or holding) it shall be a non-SMC.
- The criterion does not cover joint ventures or associates, unlike the Ind AS Roadmap under Companies (Indian Accounting Standards) Rules, 2015. Therefore, if a company has a joint venture or associate of a non-SMC, it can still fall in the definition of SMC if it meets all the other criteria.

Holding-Subsidiary Relationship Criterion



- The definition provides an explanation that states that for the purposes of this criterion i.e. only the holding or subsidiary relation criteria, a company shall qualify as a SMC, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.
- This means that, for example, a company A Ltd. had a non-SMC subsidiary on 1 April 2021.
- On 1 March 2022, A disposes off the non-SMC subsidiary. A Ltd. meets all other criteria in the SMC definition of the Rules.
- Since A Ltd. does not have a non-SMC subsidiary as at 31 March 2022, it shall be considered as a SMC on 31 March 2022 and would, therefore, be eligible for the exemptions/relaxations provided in the standards for SMCs.

Change in SMC Criteria



Non-SMC to SMC	SMC to non-SMC
<p>Clause 5 of the Rules states that when a non-SMC becomes a SMC, it shall not avail any SMC exemption / relaxation in the accounting standards until the company remains SMC for two consecutive accounting periods.</p>	<ul style="list-style-type: none">• Clause 1.2 of the Annexure A. General Instructions to the Rules states that when a company that was previously meeting SMC definition not longer meets the SMC definition, all the relevant accounting standards and requirements shall become applicable from the current period.• The figures for the corresponding period of previous year need not be revised/ restated merely due by reason of it having ceased to become SMC.• The company shall disclose the fact that it was an SMC in the previous period and it had availed SMC exemptions/ relaxations shall be disclosed in the notes to the financial statements.

Change in SMC Criteria: Example Non SMC to SMC



- A Ltd., a non-SMC on 31 March 2021, meets all the SMC criteria as on 31 March 2022. For FY 2021-22, A Ltd. can not apply any of the SMC exemption / relaxation in the accounting standards.
- If A Ltd. continues to fulfil all the criteria in the SMC definition as on 31 March 2023, it shall be eligible to apply the SMC exemption / relaxation in the accounting standards for FY 2022-23.
- However, alternatively, if A Ltd. does not meet any of the criteria in the SMC definition, it shall continue to apply full accounting standards without any exemptions/ relaxations in FY 2022-23 despite of being SMC on 31 March 2022.

Change in SMC Criteria: Example SMC to Non SMC



- A Ltd., an SMC on 31 March 2021, fails to meet the SMC criteria as on 31 March 2022.
- For FY 2021-22, A Ltd. can not apply any of the SMC exemption / relaxation in the accounting standards. A has to apply full accounting standards.
- In the financial statements for FY 2021-22, the figures for the corresponding period of previous year (FY 2020-21) need not be revised/ restated merely due by reason of it having ceased to become SMC.
- A Ltd. shall disclose the fact that it was an SMC in the previous period and it had availed SMC exemptions/ relaxations in the notes to the financial statements.

Unreserved and Explicit Statement of Compliance



- Clause 1.1 of the Annexure A. General Instructions to the Rules states that a SMC which avails any exemption/ relaxation in any accounting standards including disclosure exemption/ relaxation, it shall provide a note in the financial statements the fact that it is an SMC and has complied with the Accounting Standards in so far as they are applicable to an SMC. The clause provides the format for the note as follows:

The Company is a Small and Medium Sized Company (SMC) as defined in the Companies (Accounting Standards) Rules, 2021 notified under the Companies Act, 2013. Accordingly, the Company has complied with the Accounting Standards as applicable to a Small and Medium Sized Company.

Disclosure of Exemptions / Relaxations in the Accounting Standards



- If an SMC opts not to avail of the exemptions or relaxations available to an SMC in respect of any but not all of the Accounting Standards, it shall disclose the standard(s) in respect of which it has availed the exemption or relaxation.
- For example, if an SMC avails the exemption in AS 15 for recognition and measurement of short-term accumulating compensated absences. However, the company does not avail any other exemptions. In the financial statements in notes to accounts, the company shall disclose the fact that it has availed that specific exemption.
- This disclosure requirement would enable comparability of the financial position and performance³⁸ with other non-SMC companies.

Exemptions Optional and not mandatory



- Clause 1.4 of the Annexure A. General Instructions to the Rules states that if an SMC desires to disclose the information not required to be disclosed pursuant to the exemptions or relaxations available to the SMCs, it shall disclose that information in compliance with the relevant accounting standard.
- Therefore, the Rules are clear that the exemptions and relaxations in the accounting standards for SMCs are optional and not mandatory in nature. However, the Rules require clear disclosures of the exemptions/ relaxations availed.

Exemptions Optional and not mandatory



- Clause 1.5 of the Annexure A. General Instructions to the Rules states that the SMC may opt for availing certain exemptions or relaxations from compliance with the requirements prescribed in an Accounting Standard.
- However, such a partial exemption or relaxation and disclosure shall not be permitted to mislead any person or public.
- Cherry picking of the exemptions/ relaxations is not allowed if it leads to misleading any person or public

Legal Override



- Accounting Standards, which are prescribed, are intended to be in conformity with the provisions of applicable laws.
- However, the Rules state that if due to subsequent amendments in the law, a particular accounting standard is found to be not in conformity with such law, the provisions of the said law will prevail and the financial statements shall be prepared in conformity with such law.

Exemptions or relaxations to SMC



- AS 3 : Cash Flow Statements – small company exempt
- AS 15 : Employee benefits – many measurement and disclosure exemptions
- AS 17 : Segment Reporting – not mandatory for SMC
- AS 19 : Leases – disclosure exemption for finance lease and operating lease for lessor and lessee
- AS 20 : Earnings per share – diluted EPS is not mandatory for SMC
- AS 28 : Impairment of Assets – measurement : no need to use DCF method for calculating “value in use”
- AS 29 : Provisions, Contingent Liabilities and Contingent Assets – exemptions from disclosure of movement in provision during the year



Recent Amendments in Companies (Audit and Auditors) Rules, 2014

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- (i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- (ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities (“Funding Parties”), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
- (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- As per para 8.9.14.1 of the guidance note on Division I Schedule III to the Companies Act, 2013 the term “Intermediary” is not defined. The identification of the same shall be made on the basis of their objective of a receiving funds by way of advance or a loan or investment from the company with the understanding that they/it shall –
 - (i) Directly or indirectly lend or invest in other persons or entities or identified on behalf of the company (ultimate beneficiaries) or
 - (ii) Provide any guarantee (viz corporate, bank, personal or any other form of guarantee), security (viz any assets, comfort letter, letter of credit, buyers credit, promissory note, etc.) to or on behalf of the ultimate beneficiaries.
- The ultimate beneficiary is the company, when disclosure is to be made for the utilization of funds.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- As per para 8.9.14.2 of the guidance note on Division I Schedule III to the Companies Act, 2013 the term “funding party” is not defined in the act. The identification of the same shall be made on the basis of their objective of providing funds to the company with the understanding that they/it shall –
 - (i) Directly or indirectly lend or invest in other persons or entities identified by or on behalf of the funding party (ultimate beneficiaries) or
 - (ii) Provide any guarantee (viz corporate, bank, personal or any other form of guarantee), security (viz any assets, comfort letter, letter of credit, buyers credit, promissory note, etc.) to or on behalf of the ultimate beneficiaries.
- The ultimate beneficiary is the funding party, when disclosure is to be made for the receipt of funds.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- As per para 8.9.14.3 of the guidance note on Division I Schedule III to the Companies Act, 2013 the disclosure requires company to cover transactions that do not take place directly between the company and the ultimate beneficiary but are camouflaged by including a pass-through entity in order to hide the ultimate beneficiary. The pass-through entity acts on the instructions of the company for channeling the funds to the ultimate beneficiary.
- It is implied that advances given or received in the ordinary course of business (Example- advance to employees, advance to customers or suppliers against provision of goods or services, etc.) shall not be covered as part of this disclosure requirement.
- The disclosure envisages only the pass-through transactions during the current year i.e. for the funds received on or after 1.04.2021 and the amounts unutilized as on 1.04.2021 which are now utilized in the current year.
- The disclosure of complete details would mean name, registered address, any identification number (PAN, SSN, CIN, etc.) and relationship with the company making the disclosure.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021

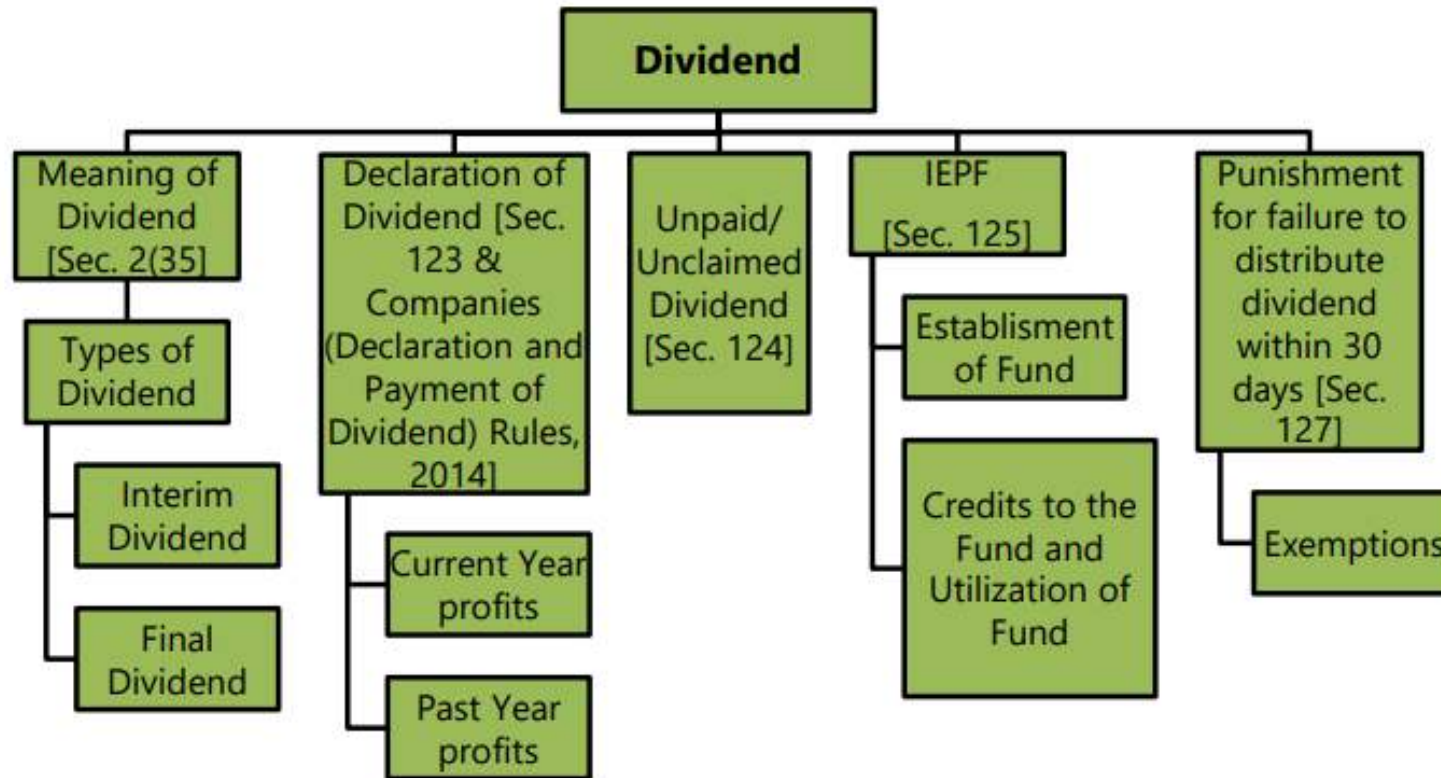


- The term “with the understanding (whether recorded in writing or otherwise)” shall be construed basis appropriate evidences for e.g., board or shareholder resolutions, investment agreements, share purchase agreements, term sheets, etc.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.



Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Section 2 (35) of the Companies Act, 2013 while defining the term “dividend” simply states that dividend includes any interim dividend.
- Dividend is the shareholders’ return on their investment/capital in the company. It is a part of the distributable profits which has been paid out to them i.e. a portion of profits earned and allocated as payable to the shareholders whenever declared.
- The company in general meeting may declare dividend, but no dividend shall exceed the amount recommended by the board. Dividend is not a liability unless it is declared by the shareholders at a validly constituted general meeting by passing an ordinary resolution at the rates recommended by the board or such lower rates as they may decide. Rate higher than that recommended by board is not permitted.
- Dividend is declared as a proportion of nominal/face value of a share.
- Interim dividend is said to be declared and paid between two AGMs. The source for declaring interim dividend include:

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Surplus in the P&L A/c ; or
- profits of the financial year in which such dividend is sought to be declared ; or
- Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend
- Interim dividend shall be ratified at the ensuing AGM by the members
- If the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, the rate of such dividend shall not be higher than the average of immediately preceding three financial years
- The amount of the dividend shall be deposited in a separate account maintained with a scheduled bank within 5 days from the date of declaration

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- The sources for declaration of dividend
 - a) Profits of the current financial year
 - b) Profits of any previous financial year or years i.e. credit balance in P&L A/c and free reserves
 - c) Both (a) and (b)

- Transfer of profits to reserves for any financial year has been left to the discretion of the company.
- Declaration of dividend when there is inadequacy or absence of profits
- The company can declare dividend out of past profits transferred by it to the free reserves in accordance with Rule 3 of the Companies (declaration and payment of dividend) Rules, 2014.
- Free reserves shall not include any amount representing unrealized gains, notional gains or revaluation of assets or any change in carrying amount of an asset or of a liability recognized in equity including surplus in P&L A/c on measurement of the asset or the liability at fair value

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021

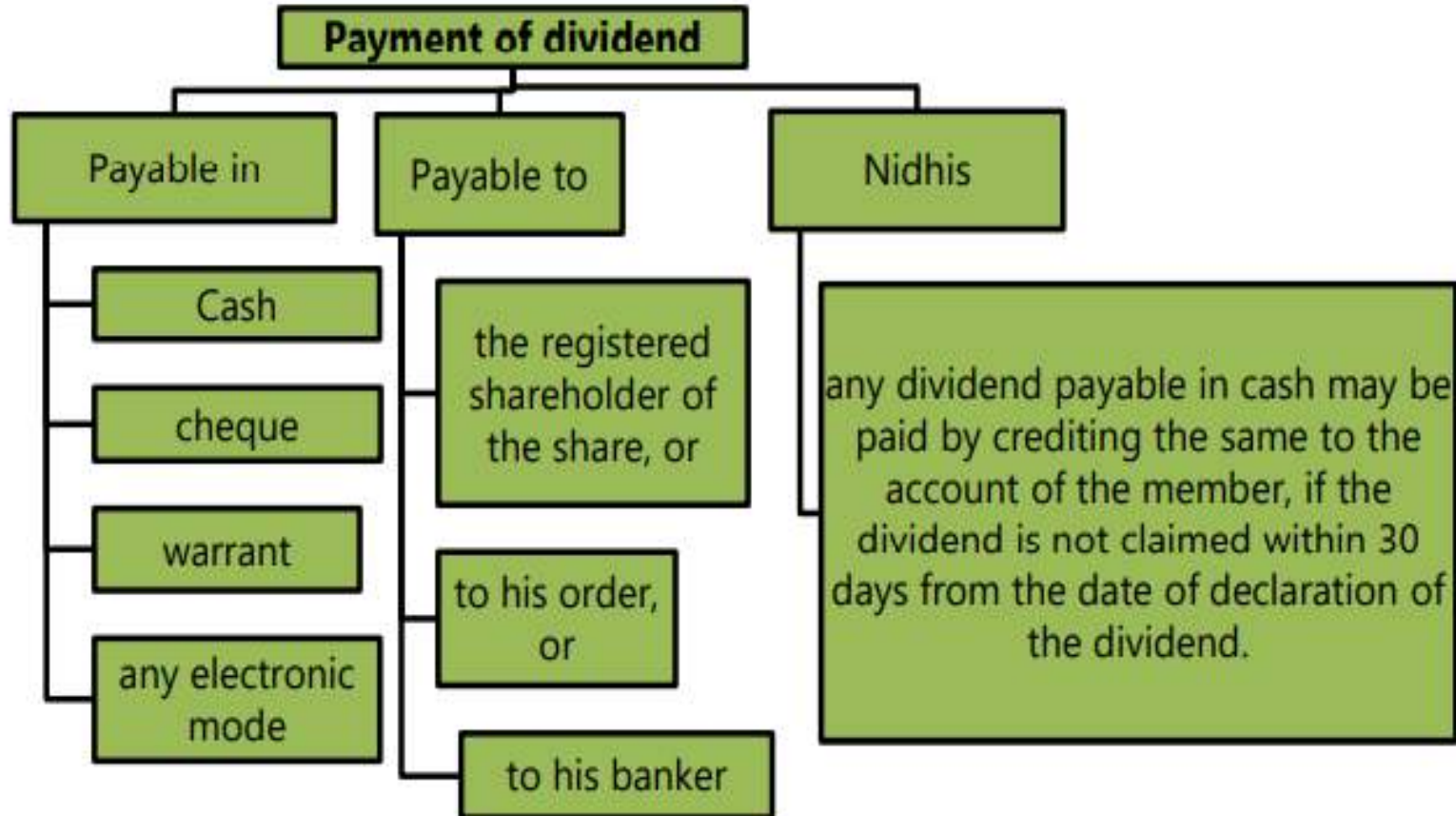


- Conditions as per Rule 3 :
 - Condition 1 – The rate of dividend shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding 3 years. This condition does not apply if dividend is not declared in any of the preceding 3 years.
 - Condition 2 – Total amount to be drawn from such accumulated profit shall not exceed 10% of its paid-up share capital and free reserves as per audited financial statement. The amounts so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
 - Condition 3 – The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Payment of dividend



Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Prohibition on declaration of dividend :
 - 1) Prohibition in case of any defaulting company – A defaulting company under Section 73 & 74 of the Companies Act shall not, so long as such failure continues, declare any dividend on its equity shares.
 - 2) Prohibition in case of Section 8 companies – A company having license under Section 8 (formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Case Study

ABC Ltd. Is facing loss in business during the financial year 2021-22. In the immediately preceding 3 financial years, the company had declared dividend at the rate of 9%, 13% and 14% respectively. The Board of Directors has decided to declare 15% interim dividend. Is the act of the Board of Directors valid ?

Answer :

As per Section 123(3) of the Companies Act, 2013 the Board of Directors may declare interim dividend out of surplus in the P&L A/c and out of profits of the financial year in which such interim dividend is sought to be declared. Provided if the company has incurred loss during the current financial year, such interim dividend cannot exceed the average dividends declared by the company during the immediately preceding 3 financial years.

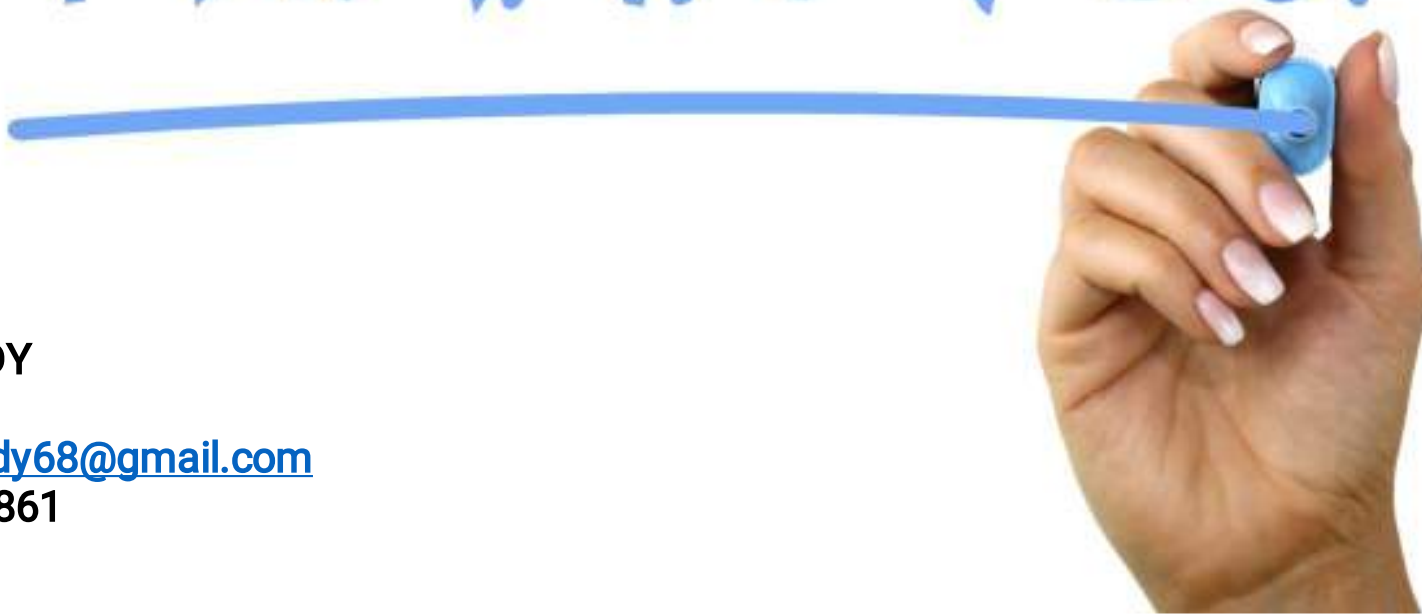
Rule 11 of Companies (Audit and Auditors) Rules, 2014 vide notification dated 25 March, 2021



- Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.”. (this clause has been deferred for FY 2022-23)



THANK YOU



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