

MCA NEWS LETTER _ SUMMARY

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Auditor Obligations on Internal Financial Controls: A new Rule 10A has been inserted in the Companies (Audit and Auditors) Rules, 2014 in the context of Section 143(3)(i), to make it obligatory for the auditor to make a statement about existence of adequate internal financial controls system and its operating effectiveness for the financial years commencing on or after 01.04.2015. For financial year commencing on or after 01.04.2014 and ending before 31.03.2015, inclusion of such a statement has been made voluntary (**Notification G.S.R. 722(E) dated 14.10.2014**).

Consolidation of Accounts: For consolidation of accounts, two exceptions have been carved out of Rule 6 of the Companies (Accounts) Rules, 2014 (**Notification G.S.R. 723(E) dated 14.10.2014**). An intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India, is exempted in respect of preparation of consolidated financial statement. A company having no subsidiaries but only having associate company (ies) and/or joint venture(s) is exempted from consolidation of financial statement in respect of associate company (ies) and/or joint venture(s) for the financial year commencing on or after 01.04.2014 and ending before 31.03.2015. It is also clarified vide **General Circular No. 39/2014** dated 15.10.2014 that while preparing notes in Consolidated Financial Statement (CFS) under Schedule III to the Companies Act, 2013, the company would need to give all disclosures relevant for CFS only and not provide a mere repetition of the disclosures made by it under stand-alone accounts.

Election of Director in Not-For-Profit Companies: A person contesting for directorship in a company incorporated under Section 8 of the Companies Act, 2013 (corresponding to section 25 of Companies Act, 1956) is required to deposit a sum of rupees one lakh as per Section 160(1) of the Companies Act, 2013. However, the law is silent on the mode of disposal of such money if the person fails to secure more than twenty five per cent of the total valid votes. The Ministry has clarified vide **General Circular No. 38/2014** dated 14.10.2014 that in such cases, the Board of Directors is empowered to decide as to whether such a deposit is to be forfeited or refunded.

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CSR: Under Section 135 of the Companies Act, 2013, companies meeting any or all of the following minimum thresholds : (i) net worth of Rs. 500 crore, (ii) turnover of Rs. 1000 crore, (iii) net profit of Rs. 5 crore, are required to make a CSR Policy and spend 2% of their 3-years' average net profit on CSR activities. The CSR activities of companies have to be disclosed in their Annual Board's Reports, and a return is to be filed with the Ministry regarding the CSR policy of the company and the activities undertaken in the prescribed form.

Maintenance of Books of Accounts by Companies: As per the Section 128 of the Companies Act, 2013, the companies have to maintain their books of accounts at the registered office, and if the companies to maintain the same at any other place, the same has to be conveyed to the Registrar of Companies. A new e-formAOC-5 has been prescribed for giving the requisite notice for the changed place of maintenance of accounts (GSR dated 16.01.2015).

Relaxation in Consolidation of Financial Statement: Under Section 129(3) of the Companies Act, 2013, the companies having one or more subsidiaries have to prepare a consolidated financial statement of the company and all its subsidiaries. A one-time relaxation has been permitted in respect of companies having one or more subsidiaries incorporated outside India for the financial year commencing after 01.04.2014 (GSR dated 16.01.2015).

Resignation by Foreign Directors: Under Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014, any director who resigns from a company has to file Form DIR-11 to inform the ROC of his resignation and the reasons for resignation within thirty days. This requirement has been relaxed in case of resignation by foreign directors. A foreign director of a company who resigns is now permitted to authorize a practicing chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 on his behalf, to inform the ROC of the reasons for resignation (**Notification No. G.S.R 42(E)** dated 19.02.2015).

CSR Activities of Multiple Companies through Common Trusts etc.: Under the Rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules 2014, a company can undertake CSR activities either (i) by itself, or (ii) through a registered trust/society/company under section 8 of the Act, established by the company or its holding, subsidiary or associate company or (iii) if the trust, society or company through which the CSR activity is to be executed is not established by the company or its group companies, an established track record of three years in undertaking similar programs or project is required. Rule 4(3) also permits companies to

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collaborate and implement CSR projects, subject to the condition that the arrangement permits separate reporting by each of the companies about their CSR activities. The Ministry has allowed multiple companies and their group companies to join together establish trust/ society/company under section 8 of the Act, for conducting their CSR activities (vide **Notification NO. G.S.R. 43(E)** dated 19.01.2015).

Small Companies: Private limited companies with a paid-up share capital not exceeding Rs. 50 lakh or turnover not exceeding Rs. 2 crore are defined as “Small Companies” under Section 2(85) of the Companies Act, 2013. A small company is provided certain relief/exemptions similar to those provided to ‘One Person Company’. The Government vide the Companies (Removal of Difficulties) Order, 2015[see **S.O. 504(E)** dated **13.02.2015**] has clarified that a small company must conform to both the ceilings.

The Companies (Indian Accounting Standards) Rules, 2015 : to bring the Ind AS into force as per the following schedule has been notified on 16.02.2015:

- (i) First Phase: w.e.f. 01.04.2015 on voluntary basis for all companies;
- (ii) Second Phase: w.e.f. 01.04.2016 on mandatory basis for listed and unlisted companies having net worth of Rs. 500 crore or more; and
- (iii) Third Phase: w.e.f. 01.04.2017 on mandatory basis to all listed companies, and unlisted companies having net worth of Rs. 250 crore or more.

Associates, subsidiaries, joint ventures and holding companies of above referred companies shall follow Ind AS simultaneously as above.

Insofar as Companies in the Insurance and Banking sectors and Non-Banking Financial Companies (NBFCs) are concerned, a separate road map will be notified.

Acquisition of Securities by Finance Sector Companies : Acquisition of securities of any other body corporate, directly or indirectly, beyond certain limits linked to paid-up share capital, free reserves and securities premium account, are prohibited under Section 186(2)(c) of the Companies Act, 2013. Exemptions have been granted in favour of NBFCs and companies whose principal business is the acquisition of securities from operation of this restriction, as per Section 186(11)(b). The Government has also exempted banking, insurance and housing finance companies,

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from this restriction, enabling them to acquire securities in their ordinary course of business [see S.O. 504(E) dated 13.02.2015].

Furnishing Information to RoC in Respect of Defective e-forms: If a company files an incomplete or a defective e-form, the Registrar of Companies (RoC) is empowered to issue a notice for rectification of such defect, and also may ask for further information. The information required by RoC have to be furnished by using newly introduced e-form GNL-4 (vide Notification No. **G.S.R. 122(E) dated 24.02.2015**)

Information on Appointment of Cost Auditors: As per rule 6 (2) of the Companies (Cost Records and Audit) Rules, 2014, companies are required to inform the Central Government of appointment of cost auditor by filing e-Form CRA-2, within a period of thirty days of the concerned Board meeting or within a period of 180 days of the commencement of the financial year, whichever is earlier.