

# Guide To Critical Updates 2021 on Companies Act, 2013

June 2021





### **About the publication**

This publication is designed to assist corporate entities in understanding the new compliances and reporting requirements in financial statements under the Companies Act, 2013 which is effective for financial year 2021 - 22 and thereafter. This publication is a compilation of all the updates enforced in financial year 2020 - 21 till 16<sup>th</sup> June 2021.



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# Foreword

*“Compliance is just a subset of governance and not the other way around.”*

~ Anonymous

This publication has been produced by GARV and Affiliates (‘GARV’) to assist corporate entities in understanding the recent compliances under the Companies Act, 2013 (‘the Act’) including with significant accounting, reporting and disclosures requirements under Schedule III of the Act. This publication is compilation of the major amendments being notified by Ministry of Corporate Affairs during financial year 2020-21 and till June 16, 2021 which is relevant on the date of publication of the document. This publication will provide head start on the compliances to be done and getting prepared as follows –

- Training employees in advance for the required compliances including planning for new reporting requirement in the financial statements.
- Putting fewer burdens on valuable accounting, financial reporting and IT resources as the effective dates for the amendments approaches. In view of additional reporting requirements in the financial statements for amendments in Schedule III, data for financial year 2020-21 need to be worked on immediately to avoid last minute hassle.
- Securing the right people, whether by engaging a third party to provide assistance or by reallocation of the existing resources to ensure timely compliances.

The many varied impacts of COVID-19 on entities are ongoing, and the immediate future looks no more settled. The successful organizations will be the ones which ensures regulatory compliances by continually understanding and planning the timely implementation of the recent amendments in regulations.

However, this document should not be used as a substitute for referring to the provisions of the Act or for professional consultation where required.

G A R V is here to help you navigate the challenges ahead and keep you updated to ensure necessary regulatory compliances. We hope you will find this publication insightful and useful. We will be happy to receive your feedback and answer any questions that you may have.



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Partner  
G A R V & Associates

## Schedule III

~ Enhanced transparency in financial reporting

## I. Balance Sheet Presentation

### 1. Share Capital

- a. Disclosures for Share Capital to include 'Shareholding of Promoters'.

'Promoter' means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

- b. Following details to be furnished –

Shares held by promoters at the end of the year				
Sl. No.	Promoter name	No. of Shares	% Of total shares	% Change during the year

#### ▶▶ Key Impact

Along with disclosures on shareholders holding individually more than 5% of shares, companies are now required to report on shareholding by promoters in each class of shares along with percentage change being computed with respect to the number at the beginning of the year or if issued during the year for the first time then with respect to the date of issue.

### 2. Borrowings

- a. 'Current maturities of long-term borrowings' to be disclosed separately under short term borrowings.
- b. Where the company has not used the borrowings from banks and financial institutions for the specific purpose for which it was taken at the balance sheet date, the company shall disclose the details of where they have been used.

The Ministry of Corporate Affairs (MCA), vide a notification dated 24<sup>th</sup> March, 2021 came up with enhanced disclosure and reporting requirements under Schedule III of the Companies Act, 2013 ('Schedule III') w.e.f., 1st April, 2021. Schedule III deals with general instructions for the preparation of financial statements for all companies. Necessary amendments are made in Division I, Division II and Division III of Schedule III, which mandates all companies preparing financials statements either under Ind AS or non Ind AS and even a non-banking financial companies (NBFCs) to comply with the new reporting requirements. The intent of the law seems to bring in more transparency in financial reporting.

- c. Where the Company has borrowings from banks or financial institutions on the basis of security of current assets, it shall disclose the following: -
- whether quarterly returns or statements of current assets filed by the Company with banks or financial institutions are in agreement with the books of accounts.
  - if not, summary of reconciliation and reasons of material discrepancies, if any to be adequately disclosed.
- d. Where any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.
- e. Where a company is a declared wilful defaulter by any bank or financial Institution or other lender, following details to be given:
- Date of declaration as wilful defaulter,
  - Details of defaults (amount and nature of defaults),
- 'Wilful defaulter' here means a person or an issuer who or which is categorized as a wilful defaulter by any bank or

financial institution (as defined under the Act) or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India.

#### ► Key Impact

The revised Schedule III mandates additional disclosures requirements for borrowings. Caution needs to be exercised in reporting figures to the bank/ FIs as an onerous disclosure requirement has been introduced for reconciliation of quarterly returns being submitted and the books of account. Further, adequate documentation needs to be maintained for such submission of details to the bank/FIs as this need to be audited by the statutory auditor for reporting compliances in the Auditor's Report (under CARO reporting).

### 3. Trade Payable

- a. Ageing schedule to be given for trade payable due for payment, as detailed below –

Particulars	Outstanding for following periods from due date of payment #				
	Less than 1 year	1-2 years	2-3 years	More than 3 years	Total
(i) MSME					
(ii) Others					
(iii) Disputed dues – MSME					
(iv) Disputed dues – Others					

# similar information shall be given where no due date of payment is specified in that case disclosure shall be from the date of the transaction.

- b. Unbilled dues to be separately given

### 4. Property Plant and Equipment, Intangibles, Capital Work In Progress (CWIP) and Intangible Assets under Development (IAUD)

- a. 'Tangible Assets' to be replaced with 'Property, Plant and Equipment'.
- b. Any changes due to revaluations to be disclosed separately (if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment and Intangibles) to be disclosed separately.

- c. Where the Company has revalued its Property, Plant and Equipment, the company shall disclose as to whether the revaluation is based on the valuation by a registered valuer as defined under rule 2 of the Companies (Registered Valuers and Valuation) Rules, 2017.
- d. Details of all the immovable properties (other than lease arrangements) to be furnished, where title deeds are not held in the name of the company as per the following schedule –

Particulars	Relevant line item in the Balance sheet			
	PPE	Investment property	PPE retired from active use and held for disposal	others
Description of item of property				
Gross carrying value				
Title deeds held in the name of				
Whether title deed holder is a promoter, director or relative# of promoter*/director or employee of promoter/director				
Property held in which name				
Reason for not being held in the name of the company #				

# also indicate if in dispute

- e. CWIP/ IAUD ageing schedule to be given separately as follows –

Particulars	Amount in CWIP/ IAUD for a period of			
	Less than 1 year	1 – 2 years	2 – 3 years	More than 3 years
Projects in progress				
Projects temporarily suspended				

- f. For CWIP/ IAUD, whose completion is overdue or has exceeded its cost compared to its original plan project-wise timelines to be furnished. Details of projects where activity has been suspended to be given separately.

g. Details of Benami Property held under the Benami Transactions (Prohibition) Act, 1988 and the rules made thereunder to be furnished which should include the following –

- (i) Details of such property, including year of acquisition,
- (ii) Amount thereof,
- (iii) Details of Beneficiaries,
- (iv) If property is in the books, then reference to the item in the Balance Sheet,
- (v) If property is not in the books, then the fact shall be stated with reasons,
- (vi) Where there are proceedings against the company under this law as an abetter of the transaction or as the transferor then the details shall be provided,
- (vii) Nature of proceedings, status of same and company's view on same.

#### ►► Key Impact

In case of revaluation of property an expert (registered valuer) is required to certify the valuation wherein earlier the company could use their discretion for valuation. Further, company need to furnish various details for projects in progress (CWIP) or projects suspended and even Benami properties, which requires early planning to ensure accuracy of information.

## 5. Loans and Advances

Loans or Advances in the nature of loans are granted to promoters, directors, KMPs and the related parties either severally or jointly with any other person will require the following disclosures –

Borrower	Amount of loan or advance in the nature of loan outstanding	% to the total Loans and Advances in the nature of loans
Promoters		
Directors		
KMPs		
Related Parties		

#### ►► Key Impact

It is pertinent to note here that while related party disclosures are already required under applicable accounting standards, this may, to some extent, tantamount to be an overlapping of disclosures. Company need to give proper referencing to avoid such overlapping disclosures.

## 6. Other Non-current Assets

Security Deposits taken to be grouped under non-current assets. Earlier security deposit was part of Long-Term Loans & Advances.

## 7. Trade Receivables

a. Following ageing schedule to be furnished -

Particulars	Outstanding for following periods from due date of payment #				
	Less than 6 months	6 months - 1 year	1-2 years	2-3 years	More than 3 years
(i) Undisputed Trade receivables – considered good					
(ii) Undisputed Trade Receivables – considered doubtful					
(iii) Disputed Trade Receivables considered good					
(iv) Disputed Trade Receivables considered doubtful					

# similar information shall be given where no due date of payment is specified, in that case disclosure shall be from the date of the transaction.

- b. Unbilled dues shall be disclosed separately.
- c. Same schedule to be given for long term trade receivables

#### ►► Key Impact

Company needs to ensure proper bucketing to be built into the system to ensure that the required information is available. Such enhances disclosures may pose practical difficulties to certain companies having old debtor's position.





## II. Profit and Loss Presentation

### 1. Revenue

In case of section 8 companies, Grants or donations received to be reported separately.

### 2. Undisclosed income

The Company shall give details of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (such as, search or survey or any other relevant provisions of the Income Tax Act, 1961), unless there is immunity for disclosure under any scheme and also shall state whether the previously unrecorded income and related assets have been properly recorded in the books of account during the year.;

### 3. Crypto Currency or Virtual Currency

Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed: -

(a) profit or loss on transactions involving Crypto currency or Virtual Currency

(b) amount of currency held as at the reporting date,

(c) deposits or advances from any person for the purpose of trading or investing in Crypto Currency/ virtual currency.

### 4. Corporate Social Responsibility (CSR)

Where the company covered under section 135 of the Companies Act, 2013, the following shall be disclosed with regard to CSR activities: -

(a) amount required to be spent by the company during the year,

(b) amount of expenditure incurred,

(c) shortfall at the end of the year,

(d) total of previous years shortfall,

(e) reason for shortfall,

(f) nature of CSR activities,

(g) details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard,

(h) where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

### III. Other Reporting requirements

#### 1. Mandatory Rounding Off Norms

Depending upon the Total Income of the company, the figures appearing in the Financial Statements shall be rounded off as given below –

Total Income	Rounding off
(a) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals there of
(b) one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof

#### 2. Relationship with Struck off Companies

Where the company has any transactions with companies struck off under section 248 of the Companies Act, 2013 or section 560 of Companies Act, 1956, the Company shall disclose the following details: -

- (i) Name of struck off Company
- (ii) Nature of transactions with struck-off Company
- (iii) Balance outstanding
- (iv) Relationship with the Struck off company, if any, to be disclosed

#### 3. Ratio Analysis

Certain key ratios need to be disclosed along with explanation on the items included in numerator and denominator for computing the ratios and explanations for any change in the ratio by more than 25% as compared to the preceding year. Following are the listed ratios –

- Current Ratio
- Debt- Equity Ratio
- Debt Service Coverage Ratio
- Return on Equity Ratio
- Inventory turnover ratio
- Trade Receivable turnover ratio
- Trade Payable turnover ratio
- Net capital turnover ratio
- Net Profit Ratio
- Return on capital employed ratio
- Return on investment ratio





#### 4. Compliance with number of layers of companies

Where the company has not complied with the number of layers prescribed under clause (8 7) of section 2 of the Act read with Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the companies beyond the specified layers and the relationship/extent of holding of the company in such downstream companies shall be disclosed.

#### 5. Compliance with approved Scheme(s) of Arrangements

Where any Scheme of Arrangements has been approved by the Competent Authority in terms of sections 230 to 237 of the Companies Act, 2013, the Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company in accordance with the Scheme and in accordance with accounting standards and deviation in this regard shall be explained.

#### 6. Utilization of Borrowed funds and share premium

- i. Where company has advanced or loaned or invested funds (either borrowed funds or share premium or any other sources or kind of funds) to any other person(s) or entity (ies), including foreign entities (Intermediaries) with the understanding (whether recorded in writing or otherwise) that the Intermediary shall directly or indirectly lend/ invest in other persons/ entities identified in any manner whatsoever by or on behalf of the company (Ultimate Beneficiaries) or provide any guarantee, security or the like to or on behalf of the Ultimate Beneficiaries, the company shall disclose the following:-
  - a) date and amount of fund advanced or loaned or invested in Intermediaries with complete details of each Intermediary.
  - b) date and amount of fund further advanced or loaned or invested by such Intermediaries to other intermediaries or Ultimate Beneficiaries along with complete details of the ultimate beneficiaries.
  - c) date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries
  - d) declaration that relevant provisions of the Foreign Exchange Management Act, 1999 and Companies Act has been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering act, 2002;

- ii. Where company has received funds from any persons or entities including foreign entities with the understanding that company shall directly or indirectly lend or invest or provide any guarantee, security or the like on behalf of fund providers (the parties to be funded or the parties to whom guarantee is being provided are identified either by the funding party or on any other person on behalf of funding party), then the company shall disclose the following:
  - a) date and amount of fund received from Funding parties with complete details of each Funding party
  - b) date and amount of fund further advanced or loaned or invested other intermediaries or Ultimate Beneficiaries along with complete details of the other intermediaries' or ultimate beneficiaries
  - c) date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries
  - d) declaration that relevant provisions of the Foreign Exchange Management Act, 1999 and Companies Act has been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering act, 2002.

## IV. Additional Amendments applicable for Ind AS financial statement reporting (under Division II of Schedule III)

### 1. Lease Liabilities

Non-Current and Current lease liabilities to be disclosed on the face of the Balance Sheet under financial liabilities.

### 2. Statement of Changes in Equity

- a. Effect of accounting for errors on Equity Share Capital and restated balance at the beginning of the reporting period to be disclosed separately.
- b. Similarly, changes in accounting policy or prior period errors on Other Equity and restated balance at the beginning of the reporting period to be disclosed separately.

# Corporate Social Responsibility (CSR)

~ Comply or Pay Penalty



As per Section 135 of Companies Act, 2013 (the 'Act') prescribes Corporate Social Responsibility (CSR) as a statutory obligation for companies along with specifications and procedure to be followed by the companies while fulfilling their CSR obligations.

CSR compliances are mandatory for companies having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year. The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years.

Significant amendments in CSR compliances brought by the Companies (Amendment) Act, 2020, have been made effective by MCA, vide its notification dated January 22, 2021. This includes the following amendments –

- Immediately preceding financial year to be applied for a newly formed company computing CSR spending
- Treatment for unspent CSR Expenditure
- Exemption from forming CSR Committee
- Enlargement of scope of CSR
- CSR Implementation
- Annual Action plan by CSR Committees
- CSR Expenditure (Administrative Overheads & Capital Assets related amendments)
- CSR Reporting related disclosure
- Display of CSR activities on the website
- Miscellaneous clarifications from MCA vide different circulars keeping in view the Global pandemic across the country
- Introduction of penal provisions for non-compliances

### 1. Calculation of CSR spending for companies which have not completed 3 years since incorporation

Where a company has not completed three years since its incorporation can consider immediately preceding financial year for the calculation of CSR spending.

### 2. Transfer of the unspent CSR Expenditure

If a company have any unspent amount other than for *Ongoing Project* then it must within a period of six months of the expiry of the financial year transfer the unspent amount to a Fund specified in schedule VII.

If any amount remains unspent related to any *Ongoing Project* undertaken by the company in pursuance of the CSR policy, then the company shall transfer the fund within 30 days from the end of the financial year to a special account newly opened by the company named as '*Unspent Corporate Social Responsibility Account*'. The transferred amount shall be spent towards CSR within a period of three financial years from the date of such transfer failing which the company shall transfer the same within 30 days from the completion of the third financial year to a fund as specified in schedule VII.

### 3. Exemption from forming CSR Committee

No company is required to form a CSR committee where the amount to be spent by a company does not exceed fifty lakh rupees and the functions of such Committee shall be discharged by the Board of Directors of such company.

#### 4. Enlargement of scope in the definition of Corporate Social Responsibility

The following activities have been excluded from the definition of CSR: -

- i) Activities undertaken in pursuance of normal course of business of the company.  
However, in the definition MCA has further exempted the Companies engaged in the research and development activity of the new vaccine, drugs and medical device related to the COVID 19 for the financial years 2020-21, 2021-22, 2022-23 subject to the certain conditions.
- ii) Activities undertaken outside India by the company. (except for training of Indian sports personnel representing any State or Union territory at National level or India at International level).
- iii) Contribution of any amount directly or indirectly to any political party of the Act.
- iv) Activities that benefit the employees of the company as defined in section 2(k) of the Code on Wages, 2019.
- v) Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- vi) Activities carried out for fulfilment of any other statutory obligations under any law in force in India;

#### 5. CSR Implementation

A company is allowed to undertake its CSR implementation either by itself or through the following implementing agencies: -

- A company established under Section 8 of the Companies Act, or
- A registered public trust, or
- A registered society

(i) established by the company either singly or along with any company; or

(ii) established either by the company itself or by the Central Government or State Government; or

(iii) any of the above established under the act of the parliament or state legislature; or

(iv) any of the above having track record of at least three years in undertaking similar activities.

Following points need to be considered in this respect-

- ✓ *Registration under Section 12A and 80G of the Income Tax Act, 1961 becomes mandatory.*
- ✓ *Form CSR 1 filing is mandatory for the entities who intends to undertake CSR Activities with effect from 1<sup>st</sup> Day of April, 2021.*

#### 6. Annual Action plan by CSR Committees

An annual action plan to be formulated by the committee to the board in pursuance of its CSR policy. The aforesaid plan shall include the following:

- i. list of CSR projects to be undertaken under Schedule VII of the Companies Act;
- ii. manner of execution of such projects;
- iii. modalities of utilisation of funds and implementation schedules;
- iv. monitoring and reporting mechanism for the projects; and
- v. details of need and impact assessment, if any, for the projects undertaken.

#### 7. CSR Expenditure (Administrative Overheads & Capital Assets related amendments)

- i. The administrative overheads in relation to CSR shall not exceed 5% of total CSR expenditure of the company.

- ii. Excess expenditure made in one year (>2%), may be set off with spending requirements of succeeding years after complying the following conditions:
- set off shall not include surplus arising out of CSR Profits; and
  - The Board shall pass a resolution to that effect.

Furthermore, it has been clarified in the recent circular dated 20th May, 2021 that where a company has contributed any amount to 'PM Cares Fund' as on 31.03.2020, which is over and above the minimum amount as prescribed in the Act for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend in terms of the aforementioned appeal, then the same shall not be viewed as a violation subject to the certain conditions.

- iii. The CSR amount may be spent by the company for creation or acquisition of a capital asset held by:
- company established under section 8 of the Act, a registered public trust or a registered society, having charitable objects and CSR Registration Number;
  - beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
  - a public authority.

Any CSR asset created before introduction of this rule shall comply with it within a period of 180 days of the commencement of this rule (Board may extend it by 90 days).

## 8. CSR Reporting related disclosure

- The Board's Report of company shall include an annual report on CSR in format of Annexure I (for previous FY) and Annexure II (Current FY).
- Companies having average CSR obligation of ten crore rupees or more in three immediately preceding financial years are required to undertake impact assessment through an independent agency of their CSR projects. The Impact Assessment Reports to be annexed to the annual report on CSR.
- Impact assessment expenditure for a financial year shall not exceed five percent of the total CSR

expenditure for that financial year or fifty lakh rupees, whichever is less.

## 9. Display of CSR Activities on website

Now the Board of Directors shall mandatorily disclose the following on website of the company: -

- the composition of the CSR Committee,
- CSR Policy; and
- Projects approved by the Board on their website for public access.

## 10. Miscellaneous clarifications received from MCA vide different circulars keeping in view the Global pandemic across the country

MCA has clarified that spending of CSR funds for COVID-19 is an eligible CSR Activity.

It is further clarified that spending of CSR funds on the following shall be an eligible CSR Activity under items of schedule VII relating to health care, including preventive healthcare and disaster management respectively.

- setting up makeshift hospitals and temporary COVID care facilities.
- creating health infrastructure for COVID care.
- establishment of medical oxygen generation and storage plants, etc.

## 11. Penal provision

### • **On Company**

Lower of:

- ✓ 2x the amount required to be transferred to fund specified in Schedule VII or Unspent CSR A/c, or Rs. 1 crore.

### • **On officer in default**

Lower of:

- ✓ 1/10 of amount required to be transferred to fund specified in Schedule VII or Unspent CSR A/c, or Rs. 2 lakhs.

## Other Amendments under Companies Act, 2013

~ Ensures transparency and ease of business



The Ministry of Corporate Affairs (MCA) came up with various amendments especially in view of the COVID 19 outbreak from 2020 onwards for ease of business.

The major highlights of the amendments are as follows: -

- Changes in the manner of books of accounts to be kept in Electronic mode
- Changes in respect of matters to be included in the Board's Report
- Changes in respect of other matters to be included in the Auditors' Report
- Allowing EGM through Video Conferencing (VC) and matters to be dealt with in Video Conferencing or Other Audio-Visual Mode (OAVM)
- Relaxation in respect to holding Board Meetings
- Introduction of Annual Return E-form separately for small companies
- Changes in the definition of One Person company (OPC)
- Changes in the definition of listed company
- Changes in the definition of small company
- Extension of Company name application (Spice+) and obtaining Shops and Establishment Registration
- Waiver of additional fees on late filing of some e-forms
- Introduction of a new rule stating the manner of transfer of shares under section 90(9) of the Act to the Investor Education and Protection Fund (IEPF)

### 1. Audit trail for books of accounts to be kept in electronic mode

New proviso has been inserted stating that the companies should use accounting software which has the following feature:-

- Recording **audit trail** of each transaction
- Creating an edit log of each change made in books of account along with date of change.
- Ensuring that the audit trail cannot be disabled.

*Effective date: 1<sup>st</sup> April, 2022*

### 2. Matters to be included in the Board's Report

In the existing rule, following two clauses has been inserted vide notification dated 24.03.2021:-

- 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.
- 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.

*Effective date: 1<sup>st</sup> April, 2021*

### 3. Other matters to be included in Auditors' Report

- a) Omission of clause in respect to 'whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.'

b) Following new clauses has been inserted:

- the auditor's need to take representation from the management regarding the loan or advance received by the company and to see that based on the audit procedures nothing contains material misstatement in any of the newly inserted clauses.
- Dividend declared or paid during the year under section 123 of the Companies Act, 2013.
- Whether the company, in respect of financial years commencing on or after the 1st April, 2022, 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.

*Effective date: 1st April, 2021*

#### 4. EGM through Video Conferencing (VC) and matters to be dealt with in Video Conferencing or Other Audio-visual Mode (OAVM)

MCA circular dated 31<sup>st</sup> December, 2021, the ministry decided to allow the companies to conduct their EGMs through VC or OAVM or transact items through postal ballot upto 30<sup>th</sup> June, 2021.

Further, the Ministry vide circular dated 15th June'2021, has omitted the clause relating to matters that were not allowed to be dealt through video conferencing or other audio-visual means such as approval of annual financial statements, Board's Report, Prospectus etc.

##### ►► Key Impact

It is a welcome change considering the current pandemic situation and post also it will be a boon for companies.

#### 5. Board Meetings under section 73 of the Companies Act, 2013

Gap between two board meeting has been increased from 120 days to 180 days i.e., increase of 60 days in

view of the difficulties arising due to Covid-19 surge in the country and requests received by the stakeholders.

The above benefit can be availed in the first two quarter of the financial year 2020-21 i.e., April, 2021 to June, 2021 and July, 2021 to September, 2021.

MCA also came with a special measure of non-compliance of minimum residency requirement in India for a period of at least 182 days in a year by at least one director in every company shall not be treated as non-compliance for the financial year 2020-21 in view of the covid-19 outbreak.

#### 6. Filing of Annual Return

Introduction of E-form MGT-7A i.e., annual return for OPC and small Companies separately.

*Effective date: From the financial year 2020-21 onwards.*

#### 7. One Person Company (OPC)

a) A natural person who is an Indian Citizen whether resident in India or otherwise is eligible to incorporate OPC. Earlier it was mandatory to be a resident in India.

b) The definition of resident in India has been amended and the period of 182 days have been substituted by 120 days as mentioned below: -

"Resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

c) Previously there was a restriction the an OPC cannot convert itself into any kind of company before two years have expired from the date of incorporation except in case if company exceeds the threshold of paid-up capital beyond fifty lakhs and average annual turnover beyond two crores. The same has been omitted.

Now there is no restriction on OPC in conversion into any kind of company

- d) Rule 6 of Companies (Incorporation) Rules, 2014 has been substituted by new rule stating the procedure of conversion of OPC into a Public Company or a Private Company and form INC-6 to be filed for the same purpose. Form INC-5 does not form part of this rule anymore.

*Effective date: 1st April, 2021*

## 8. Companies not to be considered as listed companies

Insertion of rule 2A in Companies (Specification of definitions details) Rules, 2014 stating that following shall not be considered as listed companies: -

- Public Companies who have not listed its shares in any recognized stock exchange but have listed their non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or both.
- Private companies who have listed their non-convertible debt securities on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act

*Effective date: 1<sup>st</sup> April, 2021*

## 9. Definition of Small Company

Small Companies definition has now been revised by increasing their thresholds for paid up capital from 'not exceeding Rs.50 lakhs' to '*not exceeding Rs 2 crores*' & Turnover from 'not exceeding Rs 2 crores' to '*not exceeding Rs 20 crores*'.

This will decrease the burden of compliances for over 2 lakhs companies and will also be beneficial in the following more ways: -

- a) Fast Track Merger at Regional Director level can be done. More companies to get the benefit of it from now onwards.
- b) It can hold only 2 meetings during the year.
- c) Auditor rotation is not mandatory.
- d) Preparation of cash flow statement is not mandatory.
- e) Professional certification in the annual return and many other e-forms as well is not mandatory.
- f) Penal provisions are less in case of small companies.
- g) Auditor is not mandatorily required to give internal financial control in its auditors' report.
- h) An abridged director's report to be prepared.
- i) Aggregate amount of remuneration drawn by the directors will be disclosed in the reports and details in depth is not required.
- j) Many provisions give exemption to small companies which will reduce the compliance burden

*Effective date: 1st April, 2021*

## 10. Extension in Company Name application (Spice+) and obtaining Shops and Establishment Registration

At the time of making name application for incorporating a new company the name granted/approved by the MCA is valid till 20 days from the date of approval. But now Ministry has added a feature in spice+ where once can apply for extension in the approved name on or before expiry of 20 days by paying a normal fee to MCA.

Further vide MCA notification dated 7th June'2021, it is now possible to apply for Shops and Establishment Registration at the time of incorporation of a company.

## 11. Waiver of additional fees on late filing of some E-forms

Amidst this Covid-19 pandemic and lockdown situation many requests were received by MCA. Hence MCA came

up with waiver of additional fees for some forms to meet the difficulties faced by the stakeholders in the current situation.

The relaxation is given for forms that were due for filing on 1st April, 2021 except e-forms (wrt. Charges) CHG-1, CHG-4 and CHG-9.

Please find the list as on 03.06.2021 in the below mentioned link: -

<https://www.mca.gov.in/bin/dms/getdocument?mcs=N2pXvsmVDKIDdx0TtXM3Ow%253D%253D&type=open>

## 12. Introduction of a new rule stating the manner of transfer of shares under section 90(9) of the Act to the Investor Education and Protection Fund (IEPF)

- a) The shares shall be credited to DEMAT Account of the Authority within a period of thirty days of such shares becoming due to be transferred to the Fund which shall be deemed to be transmission of shares. Further, shares shall be transferred to the Authority without any restrictions and no application shall be filed for claiming back such shares from the Authority.
- b) A separate procedure for transfer of such shares has been introduced.
- c) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken.
- d) The voting rights on shares transferred to the Fund shall remain frozen. However, for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares shall not be excluded while calculating the total voting rights.
- e) All benefits accruing on such shares except right issue shall also be credited to such DEMAT account.
- f) If the company is getting delisted or being wound up, the Authority shall surrender shares on behalf of the shareholders and the proceeds realised shall be credited to the Fund into the specified account of the IEPF Authority maintained in the Punjab National Bank [and the details thereof shall be furnished to the Authority in Form No. IEPF-7 within thirty days from

the date of remittance] and a separate ledger account shall be maintained for such proceeds.

- g) Any further dividend received on such shares shall be credited to the Fund as mentioned above.





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For your feedback and suggestion, write us at: [info@garvca.com](mailto:info@garvca.com)

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