

Full Day Seminar

By Indore Chapter of WIRC of ICSI

On Sunday, the 19th March, 2023

On
Compliances Before 31st March 2023
under the Companies Act, 2013

By
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Disclaimer

No part of this presentation is intended for providing professional advice, or solicitation of professional assignment and its purely for the purpose of sharing and exchange of knowledge

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Check the Status of the Company

Ascertain Status of the Company as at 31st March, 2023 & 2022 whether it is;

- **Status:** OPC, Private Company; Small Company; Start up Company; Public Company; Specified Public Company; Govt. Company; Nidhi Company; Producer Company; Dormant Company; NBFC, Infrastructure Company; Listed Company (SME Platform, Others, categorized as Top 100/500 1,000 or 2000 listed Company, etc.);
- **Applicability of CA-2013:** If it is a Private Company, whether it is a subsidiary (Material or otherwise) of Public Company;
- **Consolidation :** Whether it is Holding Company, Associate Company or Joint Venture;
- **NBFC:** Whether it is NBFC or Deemed NBFC Company as per RBI Act;



Check status from provisional Financial Statement for the following as at 31st March, 2023

Status of Compliance Required as per Financial Statement

- **Paid up share capital** (For Requirement of KMP, Independent Director, Women Director, XBRL applicability);
- **Profit Before Tax** u/s 198 of the CA-2013 (For CSR for 2023-24 and Managerial Remuneration for the year 2022-23/2023-24);
- **Eligibility** for availing Borrowings, Guarantee, disposal of assets/undertakings (**For Section 180** for Public Co. and subsidiary of public company **special resolution** if required);
- **Eligibility** for providing Loans, making investments and providing Guarantee or Security (**Section 186- special resolution** if required);
- **Net Worth** at the end of the financial year 2023 and 2022 [For, NBFC Deposits and CSR];



Status of Compliance Required as per Financial Statements

Check properly status from draft FS for the followings as at 31st March, 2023

- **Employed Capital** (For Managerial Remuneration for Public & Subsidiary of a Public Company);
- **Unpaid or unclaimed amount of Dividend, Deposits, Redemption of Debentures & Redeemable Preference Shares** (For IEPF) Transferred to a Separate Bank Account/ IEPF;
- **Requirements for Reporting under CARO- 2020, Reporting by the Auditors u/s 143, and Rule 3 & 4 of the Companies (Audit and Auditors Report) Rules, 2014;**
- **Directors/CS** required to be confirmed at the AGM, re-appointment of directors liable to retire by rotation, re-appointment of WTD/MD, Disqualifications, if any u/s 164(2A)



Status of Compliance Required as per Financial Statements

- **Status of MSME Creditors** out standing at 31.03.2022, 30.09.2022 and 31.03.2023 falling under MSME category and if so *whether interest is provided for delayed period* and Form MSME-1 is filed with the ROC on half yearly basis, if applicable.
- **Rounding of Figures** in Financial Statements 100/1,000/1,00,000, 10,00,000; crores as well as in Form AOC-4, etc
- **Requirement of Internal Auditor:** Public Company; having paid up capital Rs. 50 Crores or Total income of Rs. 200 Crores or outstanding deposits Rs. 25 Crores at any point of time; and in case of a private company; Total income Rs. 200 Crores or outstanding borrowings of Rs. 100 Crores;
- **Requirement for Secretarial Auditors:** Every listed or a public company Capital Rs. 50 Crores or Turnover Rs. 250 Crores or borrowing Rs. 100 Crores; In case of a Private Company, borrowing exceeding Rs. 100 crores
- **Total Income;** (Status as Small Company, CSR applicability, Internal Audit Applicability of XBRL, Requirement of the Cost Records and Cost Audit, women director);
- **CSR expenses expenditure/Transfer to a separate Bank Account., etc. requirement at u/s 135, if applicable;** Transfer of Unspent Amount of Ongoing Project, if any, as at 31.03.2023 to Separate Bank A/s on or before 30.04.2023 or to Transfer the same to the CSR Fund if any due as on 31.03.2023 on or before 30/09/2023;



Status of Compliance Required for Statutory Records

- **Minutes** of the Board, Audit Committee, NRC, CSR and Resolutions passed u/s 135, 185, 186, 188, 196-197 if applicable;
- **Check the Reports** of the Auditors, Internal, Cost & Secretarial Auditors, as may be applicable;
- **Register of Members** and Share Transfer for ascertaining holding of shares in d-mat etc. in case of a public company or subsidiary of a public company;
- **Disclosure received in the Form MBP-1** and entry in the Register of Contracts in which Directors / KMPs are interest [For Section 184/188 and Disclosure as required under AS];
- **Auditors:** Status of the **tenure for Appointment of Auditors**, Cost Auditors, Secretarial Auditors and requirements for Filing of Form ADT-1, CAR-2, MGT-14, etc.
- **Confirmation of declaration for independency of the Independent Directors**, to be recorded in the Minutes; **check the tenure of Independent Director**, in Listed and Specified Companies, and if required get appointment of new Independent directors, by the Board and seek their confirmation at the AGM in 2023.
- **Various Forms filed** with the ROC [Form MGT-14, DPT, DIR-12, Directors KYC etc.]



Status of Compliance Required for Statutory Records

- In case of a Public whether Co. has **providing facility to hold shares in D-mat Form**
- **Approvals** of the RPT (u/s188 & SEBI LODR), Loan & Investments made, and Guarantee or Security provided (u/s 186) Loan to Related Party (u/s 185) by the Audit Committee and the BOD, Members by Ordinary/special Resolution.
- **Requirements for filing of the Form BEN-2** for change in the Significant Beneficial Ownership, if any.
- **Requirements for filing of Form MSME-1** on 31/03/2022; 30/09/2022 and 31/03/2023
- **Requirement for Filing of the Web-Form CSR-2** for the year 2021-22 after filing of Form AOC-4 within a reasonable time



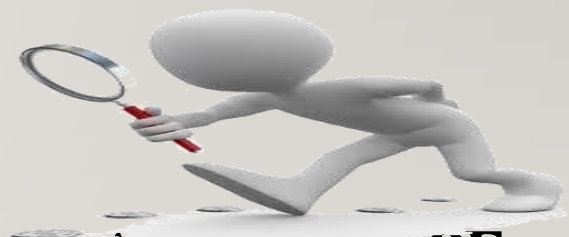
Status of Compliance for Deposit Rules



- **Check the Deposits accepted from Director/Relative of Directors;**
- **Check the deposits accepted from Members by private Company, if so whether the resolution is passed at the General Meeting**
- **Check the Form DPT-3 for 31/03/2022 is filed for acceptance of deposits/ amount accepted but not considered as Deposits (exempted deposits accepted) with the DSC of the Auditor;**
- **Declaration** received from the depositors at the time of each transaction at the time of acceptance of amount that the amount deposited with the company is not from the borrowed sources
- **Register of Deposits**, for acceptance and renewal therefore
- **Deposit Receipts issued** for deposits accepted from members and renewal thereof if any
- **Credit Balance of sundry Debtors exceeding 365 days, etc.**

Status of Compliance for Deposit Rules

- **Credit balance of security application money** if remaining unallotted exceeding 60 days; excess application money is refunded within 15 days to the applicants after allotment of securities, Transfer to Unclaimed A/c;
- **Amount due on redemption of the preference shares/Debentures, become matured and not paid/unclaimed**, transferred to the separate Bank Account and reported to IEPF Authority
- **Maintaining Liquid Deposits of 20% to a separate Bank Account**
- **Rate of Interest, Deposit Period**
- **Unpaid/unclaimed amount of Deposits, Transferred to separate Bank Account/ IEPF**
- **Filing of Form IEPF-1, IEPF-2 and**



Status of Compliance for Secured Charges

- **Check the status of Charges** for Registration, Modification and Satisfaction of Charges are duly registered
- **Charges on the Vehicles**, if any, is duly registered
- **Charges for Guarantee and Security** provided on assets of Company is duly registered
- **Charge on the investment in the shares** (of Subsidiary Company is registered)
- **Charge on the Lien on the FDR** (OD against the FC) is registered
- **Entry for charges** are duly made in the **Register of Charges**
- **Check the Index of Charges** available at the **Portal of MCA with Register of Charges**
- **Check the amount of the secured loan** as reflected in the financial statement along with the name of charge holders is appears in the Index of Charges



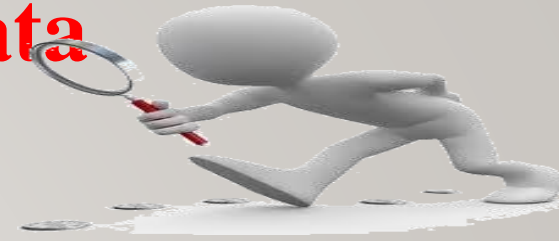
Cross Verification of the Financial Data

Cross verification from :

- **Corporate Governance Report filed to SE** – dates of BM, AC, NRC, and attendance of directors with the Board Report attached with the Financial Statements;
- **Website of MCA, SE, and Company** for the Financial Results, Out come of BM & GM;
- **Status of directors from MCA-Company's Board Meeting & Register of Directors and KMP;**
- **Status of Charges on MCA Portal under Index of Charge** - Secured Creditors statement in the Financial Statement & the Register of Charge; **specifically charges on Vehicles & pledge of FDRs**
- **Form DPT-3** - with B/S for the amount of deposits & amount not considered as Deposits, etc;



Cross Verification of the Financial Data



Cross verification from :

- **Details of the MSME Creditors disclosed with the Form MSME-1 -with the List of MSME creditors given under Schedule III and Interest if any is Provided;**
- **Whether any Debtor/loans given, or security provided is under CIRP, if so necessary provisions for Out standing Balance & Admitted Clams by the RP has been made;**
- **Whether there is any debtor, creditor, shareholders, loans and advances provided or received to those Company/LLP which have been Struck off? From the portal of MCA**

Relevant Rules as Modified by the MCA

Amendment in the CSR Rules [By Notification No. G.S.R. 715(E) dated 20.09.2022]

Rule 3(1) Proviso inserted

“Provided further that a company having any amount in its Unspent CSR Account as per section 135(6) shall constitute a CSR Committee and comply with the provisions contained in sections 135(2) to (6)”;

sub-rule (2) shall be omitted

Rule 4(1) substituted, -

‘(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through, –

(a) a company established u/s 8 of the Act, or a registered public trust or a registered society, **exempted u/s 10(23C) (iv), (v), (vi) or (via) or** registered un/s 12A and approved u/s 80G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or

(b) a company established u/s 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; **[a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.]** or

(d) a company established u/s 8 of the Act, or a registered public trust or a registered society, exempted u/s, **10(23C) (iv), (v), (vi) or (via)** or registered u/s 12A and approved u/s 80G of the Income Tax Act, 1961 **and** having an established track record of at **least three years in undertaking similar activities**.

Relevant Rules as Modified by the MCA

Amendment in the CSR Rules [By Notification No. G.S.R. 715(E) dated 20.09.2022]

Rule 8(3)(c)

- (i) for the words “*five percent*”, the words “*two per cent.*” be substituted;
- (ii) for the words “*whichever is less*”, the words “*whichever is higher*” be substituted.

Amendment in Companies (Specification of definition details) Rules, 2014 [By Notification G.S.R. 700 dated 15.09.2022]

Rule 2(1)(t), the following clause substituted,

(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2(85)(i) and (ii), paid up capital and turnover of the small company shall not exceed Rs. 4.00 Crores and Rs. 40.00 Crore respectively.”

Amendment in Companies (Acceptance of Deposits) Rules, 2014 [By Notification G.S.R. 663 dated 29.08.2022]

Rule 16,

after the words —auditor of the company, the words, letters and figure —”and declaration to that effect shall be digitally signed by the auditor in Form DPT-3” be inserted;

Rules as Modified by the MCA

Amendments in the Companies (Registration of Charges) Rule 2014 [By Notification No. G.S.R. 664(E) dated 29.08.2022]

New Rules 13 inserted

“13. Signing of charge e-forms by IRP or RP or liquidator for companies under resolution or liquidation.- The Form CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by IRP or RP or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.

Amendment in Companies (Incorporation) Rules, 2014, [By Notification No. G.S.R. 643(E) dated 18.08.2022]

After rule 25A, the Rule 25B inserted, namely:-

25B. Physical verification of the Registered Office of the company.-

(1) The ROC, based upon the information or documents made available on MCA 21, shall visit at the address of the registered office of the company and may cause the physical verification of the said registered office for the purposes of section 12(9), in presence of two independent witness of the locality in which the said registered office is situated and may also seek assistance of the local Police for such verification, if required.

Rules as Modified by the MCA

25B. Physical verification of the Registered Office of the company.-

- (2) The ROC shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant of the property whereat the said registered office is situated.
- (3) The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.
- (4) The report of the physical verification shall be prepared in the following format namely:-
Report on Physical Verification of the Registered Office of the Company:
1. Name and CIN of the company:-
 2. Latest address of the registered office of the company as per MCA 21 record:-
 3. Date of authorisation letter issued by the Registrar of Companies:-
 4. Name of the Registrar of Companies:-
 5. Date and Time of visit for physical verification of the registered office:-
 6. Location details along with Landmark:-

Rules as Modified by the MCA

25B. Physical verification of the Registered Office of the company.-

7. Details of the person available, if any at the time of the visit-

(i) Name:- (ii) Father's Name:- (iii) Residential address:- (iv) Relationship with the company, if applicable:-

8. Remarks if any:-

9. Documents attached:-

(i) Copy of the agreement/ownership/rent agreement/No Objection Certificate of the registered office of the company from owner/tenant/lessor:-

(ii) Photograph of the registered office:-

(iii) Self Attested ID-Card of the person available, if any:-

(iv) Any other document(s):- Date: Place: Signature Name and Designation of the official with official address.

(5) Where the registered office of the company is found to be not capable of receiving and acknowledging all communications and notices, the ROC shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of 30 days from the date of the notice before taking further actions in accordance with the provisions of section 248 of the Act."

Relevant Amendments in Rules by the MCA

Companies (Accounts) Fourth Amendment Rules, 2022 (By Notification G.S.R.624(E). dated 05.08.2022]

Rules, 2014, in rule 3,-

- (i) in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” be substituted;
- (ii) in sub-rule (5), in the proviso, for the words “periodic basis”, the words “daily basis” **substituted;**
- (iii) in sub-rule (6), after clause (d), the following clause shall be inserted, namely:-
“(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”.

Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 (By Notification G.S.R.410(E). dated 01.06.2022]

in rule 8, after the proviso, the following proviso inserted, namely:-

“Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Govt. of India shall also be attached alongwith the consent.”;

Relevant Amendments in Rules by the MCA

Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 (By Notification G.S.R.410(E). dated 01.06.2022]

(ii) Rule 10, in sub-rule (1), the following proviso inserted, namely: -

“Provided that no application number shall be generated in case of the person applying for DIN is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Govt. of India has been attached alongwith application for DINirector Identification Number”.

(iii) in the Annexure, -

(A) in Form DIR-2, for Declaration, the paragraph be inserted, namely:-

“(ii) I further declare that - I am not required to obtain the security clearance from the Ministry of Home Affairs, Govt of India before seeking appointment as director; or I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director and the same has been obtained and is attached. ”;

(B) in FORM NO. DIR-3, the following inserted, namely:-

“3A. I am not required to obtain the security clearance from the Ministry of Home Affairs, Govt.of India under rule 10(1) before applying for DIN;or I am required to obtain the security clearance from the Ministry of Home Affairs, Govt. of India under rule 10(1) before applying for DIN and the same has been obtained and is attached. ; and ”

Relevant Amendments in Rules by the MCA

Companies (Compromises, Arrangements and Amalgamations) Rules, 2014 (By Notification G.S.R.401(E). dated 30.05.2022]

Rule 25A, after sub-rule (3), the following sub-rule (4) inserted namely: —

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form CAA-16 shall be required at the stage of submission of application u/s 230 of the Act.

Companies (Prospectus and Allotment of Securities) Rules, 2014 (By Notification G.S.R.338(E). dated 05.05.2022]

Rule 14, in sub-rule (1), after the fourth proviso, the following proviso inserted, namely :-

“Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Govt. approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.”.

Relevant Amendments in Rules by the MCA

Companies ((Share Capital and Debentures) 2014. (By Notification G.S.R.335(E). dated 04.05.2022]

in Form SH-4, before the Enclosures, the following declaration inserted, namely.-

“Declaration:

*Transferee is not required to obtain the Govt. approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares; **or***

Transferee is required to obtain the Govt. approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.”.

Nidhi (Amendment) Rules, 2022. (By Notification G.S.R.301(E). dated 19.04.2022]

Relevant Amendments in Rules by the MCA

Companies (Accounts) Rules, 2014 (By Notification G.S.R.235(E). dated 31.03.2022]

In Rule 3 Proviso the period extended to 1st April, 2023

[Provided that for the financial year commencing on or after the [1st day of April, 2023], 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.]



NOW, GET, SET AND GO.....



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Thanks for your interest and appreciation

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