



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

e-CS Nitor

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- Small Company under Companies Act, 2013 (A concept introduced to make big difference)
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The Institute of Company Secretaries of India (ICSI) donates Rs. 20 lakhs to Prime Minister’s National Relief Fund in Aid of J & K Flood Victims

Seen in the Picture (From Left to Right) : CS Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI and CS R. Sridharan, President, ICSI handing over the cheque to Shri Arun Jaitley, Hon’ble Union Minister for Finance, Corporate Affairs and Information & Broadcasting.

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Message from President



Dear Member,

We generate, organize, impart, and make use of the knowledge, to represent complex phenomena about various walks of life. We assimilate knowledge consistently and constantly throughout our life span in various roles, capacities and endeavors. In the process the knowledge is preserved by cataloging as memories, stories and in physical modes, such as written text, architecture, art, and so on so forth. Thus, the knowledge is imparted through all means, we, as human beings, used to impact our area of interest, area of influence and area of operation. Not only growth, but the constant development of knowledge is of paramount importance to our understanding of how the knowledge can be applied, imparted, dispersed to the benefit of society at large.

I consider the Institute not only as a professional body, but also as a social enterprise, serving the larger interest of the nation. The dominant ideological attribute of the professionals is to be “moral and intellectual superiority”. Therefore, sharing and application of knowledge, gains more importance for a professional. Decisions, which professionals make, are to be in sync of with expected ideological attributes. They must govern themselves by observing the highest standards of professionalism and in the process distinguish themselves. It is pertinent to note that the clients, stakeholders, regulators and even the society at large, closely watch the behavior of professionals now-a-days, due to information explosion through internet and social media. In the increasingly diverse social, geographical, and business landscape, professionals face a number of challenges to create, maintain and sustain a positive professional image and the need of the hour is the emotional and intellectual attachment towards the profession. I would like to recall the words of Albert Schweitzer- ***“I can do no other than be reverent before everything that is called life. I can do no other than to have compassion for all that is called life. That is the beginning and the foundation of all ethics.”*** I am sure that our members will not dilute impeccable standards and exercise great care and diligence in serving the stakeholders.

This morning, I have sent a communication to all the members of the Institute, emphasizing the need to preserve healthy working life, which is concomitant for a successful professional. Therefore, take care of your health.

CS R. Sridharan

President

president@icsi.edu



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National Seminar on "Indian Financial Code" Recommended by Financial Sector Legislative Reforms Commission

Saturday, the November 29, 2014 3.00 pm to 6.15 pm No Participation Fee

Venue : BSE International Convention Hall, BSE Limited, Mumbai

Chief Guest

Mr. Arun Jaitley

*Hon'ble Minister of Finance, Corporate Affairs, Information and Broadcasting
Government of India*

Guest of Honour

Justice Mr. B. N. Srikrishna

*Former Judge, Supreme Court of India
and Chairman of the FSLRC*

The Financial Sector Legislative Reforms Commission (FSLRC), which submitted its report on March 22, 2013, made several far reaching recommendations, including enactment of the Indian Financial Code (IFC) to meet the needs of tomorrow's India.

In order to facilitate healthy debate on the recommendations of the FSLRC, including the IFC, among the people who matter in the financial markets and to sensitise the various professionals, including Company Secretaries, about the likely reforms path in the financial legislations, the Institute has organised a series of seminars and workshops throughout the country.

The Institute, in association with BSE Ltd., has scheduled another National Seminar on Indian Financial Code on Saturday, the November 29, 2014 at BSE International Convention Hall, BSE Limited, Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai. The Tentative Programme is as under:

Time	Particulars
1.30-2.00	Registration
2.00-3.00	Lunch
3.00-4.45	Inauguration: Broad overview of FSLRC & IFC
4.45-5.00	Tea
5.00-6.15	Technical Session: Regulatory Regime : Architecture , Governance and Approaches

Eminent Speakers: Distinguished experts from government, regulators, industry and academia will deliberate the recommendations of the FSLRC.

There is no participation fee for attending the Seminar. However, prior registration is compulsory. Please confirm your participation at bharkumar.rathod@icsi.edu with following details:

Name	Designation & Organization	Address & Mobile No.	E-mail ID	ACS/FCS/COP/No., if applicable

PCH: Members of the Institute shall be entitled to two PCH.

For further information, please contact :

Regional Director, ICSI- WIRC
13, Jolly Maker Chamber No.2, Nariman Point, Mumbai-400 021
☎ 022- 61307900 / 01/02



Small Company under Companies Act, 2013 A concept introduced to make big difference

CS Arpita Agarwal*

Assistant Education Officer, Academics, ICSI

"Notice the small things. The rewards are inversely proportional."

-Liz Vassey

Prologue

In the last few years, globalization coupled with contemporary technological dynamics has paved way for creation of new forms of organization and innovative business models. By introducing new form of business entities, the Companies Act, 2013 has further crafted an enabling regime to foster entrepreneurship, investment and growth in the Indian corporate sector. Small company is one of the new forms of business entity introduced by Companies Act, 2013.

"The Committee recognized that the Indian economy is yet in its growing phase. The number of companies being set up will increase over a period of time as new business opportunities emerge and new technological frontiers are scaled. Many new companies will be set up as small companies who will grow big in the future. It is clear that the small companies would contribute significantly to Indian economy. Because of their size, they cannot be burdened with the same level of compliance requirements as, say, the large public listed companies. The small companies have to be enabled to take quick decisions, be adaptable and nimble in the changing economic environment, yet be encouraged to comply with the essential requirements of the law through low cost of compliance."

- J.J. Irani Committee

Understanding What is a Small Company under Companies Act, 2013

Worldwide, the small businesses have been accepted as the engine of economic growth and promotion of equitable development. In India as well, the small businesses play an important role in the economic development of the country as they constitute a major part of the industrial activities in most of the sectors. It is noteworthy to mention that they contribute to the development by bringing innovation, creating employment opportunities and stimulating economic development. In fact, the contribution of Small businesses have been very significant in the development of Indian economy, both in terms of contribution to GDP and creation of employment opportunities.

The J.J. Irani Committee has recognised the importance of the contribution that the small companies can make in the economy and thus suggested classification of companies on the basis of its size.

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



Section 2(85) of the Companies Act, 2013 has defined small companies as:

“small company” means a company, other than a public company,—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this Section shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under Section 8; or
- (C) a company or body corporate governed by any special Act;

Thus, by the virtue of this definition, following class/classes of companies don't qualify to be a small company:

- a public company
- a holding or subsidiary company
- a company registered under Section 8 of the Act
- a company governed by any special Act

Therefore, even if a public company or Section 8 company or a company governed by special Act or holding or subsidiary company or both the holding company and subsidiary company, crosses the thresholds of the capital/turnover requirement of a small company, it will not fall within the purview of small company.

Further, in case a company falls under any of the aforementioned class or classes or company in the relevant financial year, it loses the status of “Small Company” and all the benefits which are available during a particular year may stand withdrawn in the next year. Thus, the status of a company as “Small Company” may change from year to year and accordingly the benefits which are available to a small company also change. This status is determined on the basis of the Annual return which is filed after the end of every financial year.

Exemptions to Small Companies under Companies Act, 2013

The Companies Act, 2013 provides certain exemptions to the small companies which are extended with an objective to provide flexibility, freedom of operation and compliance at a low cost. As per the provisions of the Act read with the Rules made thereunder, exemptions relating to small companies are discussed here under:

- *Exemption regarding Financial Statement*

Section 2(40) states that a financial statement, in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;



- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).

However, the proviso to Section 2(40) clarifies that the financial statement, with respect to a small company may not include the cash flow statement. Thus, a small company has been exempted from the mandatory requirement of preparing cash flow statement as part of its financial statement.

- *Exemption regarding Annual Return*

Proviso to Section 92(1) states that every company shall prepare an annual return in the prescribed form containing the particulars as they stood on the close of the financial year and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

However, the proviso to Section 92(1) provides that in relation to a small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- *Exemption regarding Rotation of Auditors/audit partners*

Section 139(2) inter alia provides that no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years;

and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Rule 5 of Companies (Audit and Auditors) Rules, 2014 prescribes that for the purposes of sub-section (2) of section 139 (dealing with rotation of auditors and audit partners), the class of companies shall mean the following classes of companies **excluding** one person companies and **small companies**:-

- a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- b) all private limited companies having paid up share capital of rupees twenty crore or more;
- c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

Thus, as per the rule, Small companies are exempt from the requirement of mandatory rotation of statutory auditors. The auditor in a small company may continue to serve for any number of years without any requirement of cooling off period in between.



- *Exemption regarding Board Meeting*

Section 173(1) provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board.

However, sub-section 5 of section 173, exempts a small company from the above requirements and provides that a small company shall be deemed to have complied with the above provisions if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

- *Filing fees*

Fees for filings and other formalities as prescribed under section 403 of the Companies Act, 2013 read with Companies (Registration of Offices and Fees) Rules, 2014 is comparatively lower for the small companies.

End Note

By introducing the concept of small company, the law has provided a framework compatible to growth of small corporate entities thereby facilitating compliance in an easy and cost effective manner. The small companies provide an alternate corporate platform to the small business entities. This will no doubt augment the corporatisation of the Indian business and also assist in business expansion. However, these should not be misused by concealment of true size by any entity or be considered as a barrier to growth of small companies.

References

- [iPleaders http://blog.ipleaders.in/benefits-granted-to-small-companies-under-companies-act-2013/#ixzz3G0kdhIal](http://blog.ipleaders.in/benefits-granted-to-small-companies-under-companies-act-2013/#ixzz3G0kdhIal)
- [http://www.mca.gov.in/Ministry/pdf/Fee Schedule.pdf](http://www.mca.gov.in/Ministry/pdf/Fee%20Schedule.pdf)
- Companies Act, 2013
- J.J. Irani Committee Report



The Companies Act, 2013 will Boost Prevention of Corporate Frauds

CS Delep Goswami*

Advocate, Supreme Court of India

The working of companies practically affects all walks of life with which the ordinary citizens and the investing public are intimately connected and feel concerned. Therefore when the erstwhile Companies Act, 1956 was changed after 57 long years and the new Companies Act, 2013 ('the new Act') was passed by the Parliament in August, 2013, it generated tremendous enthusiasm in the corporate sector, public and the professionals associated with the corporate sector. The numerous corporate scandals which have occurred in the past decade exposed certain loopholes in the erstwhile Companies Act, 1956 which needed to be plugged to ensure efficient working of the corporate sector in the competitive global environment and to ensure good corporate governance practices, many new provisions have been incorporated in the new Act which will have far reaching positive effect. The provisions of the new Act and the rules framed thereunder would ensure good corporate governance and the frequency of corporate frauds will be reduced drastically.

For the purpose of this article, all the changes incorporated in the new Act are not elaborated here, but some of the clauses which will impact the working of the companies, especially those clauses which aim at curbing corporate frauds are highlighted:

- i) **Explanation to the section 447 of the Companies Act, 2013 stipulates that 'fraud'** in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Section 447 also provides that without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years;

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute. The Article was published in Company Law Journal, April, 2014.*



- ii) **Restriction on investments through subsidiary companies:** Since it was not unusual to find that companies resort to diversion of company funds through different levels of investment companies, at times it becomes rather difficult to pinpoint the exact offender through such a web of investment companies. As per **section 186** of the Act investment of company funds can be made through not more than two layers of investment companies and further stipulates its disclosure in the financial statements which are prepared by the Board of Directors for the shareholders/stakeholders. Section 186 stipulates that, unless otherwise prescribed, a company can make investments through not more than 2 layers of investment companies. It is hoped that this will atleast restrict misuse of fraudulent investments by holding company through a chain of subsidiaries.
- iii) **Restriction on related party transactions:** It is also pertinent to state here that **Section 188** restricts related party transactions and mandates prior approval of shareholders by a special resolution in certain cases.
- iv) **Section 192 restricts non-cash transactions** involving directors, or persons connected with them and this will also prevent misuse of property and unjust enrichment of directors or connected persons by transactions entered into without movement of funds.
- v) **Investigation and identification of fraudulent transactions:** To curb fraudulent activities by companies and its identification, **section 206(4)** of the new Act stipulates that where during inquiry and investigation into the affairs of a company, if it is found that the business of the company is being carried on for a fraudulent or unlawful purpose, then the officer-in-default shall be punishable under section 447.
- vi) Further, **proviso to section 213² of the new Act** stipulates, inter-alia, that if investigation by National Company Law Tribunal reveals that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or that the company was formed for any fraudulent or unlawful purpose; or that any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then every officer or persons concerned shall be punishable for 'fraud' under section 447. Even persons who were 'concerned' in the formation of a company including promoters using a front man to commit fraud can be roped in to face trial.
- vii) **Key Managerial Personnel and their responsibilities:** Since experience showed that fraud is perpetrated by the companies through their directors and other key managerial personnel, therefore their role has been enhanced. Under **section 2(51) of the Act, 'key managerial personnel' (KMP)** means the Chief Executive Officer or the managing director or the manager, the company secretary (CS), the whole-time director, the Chief Financial



Officer (CFO) and such other officer as may be prescribed. In the company management, the KMP are the known key functionaries and entrusted with responsibility of ensuring legal compliances, good corporate governance and prevention of corporate fraud. Section 194 of the Act also prohibits forward dealings in securities of companies by directors or any KMP.

- viii) Penalty for furnishing wrong/false information:** To curb the practice and tendency of companies to furnish wrong/false information to the regulatory authorities, section 448 stipulates that if a person makes a false statement in any return, report, certificate, financial statement, prospectus, statement or other document required by or for the purposes of any of the provisions of the Act or omits to disclose any material fact, then such a person shall be liable for 'fraud' as defined in section 447 of the Act.
- ix) Restrictions relating to issue of 'securities':** Even though the Securities and Exchange Board of India (SEBI) may be directly concerned with the issue and dealings in corporate securities in listed public companies, the new Act also contains stricter provisions to curb fraud in securities. For instance, section 34 prevents issue, circulation, distribution of prospectus containing untrue, false, deceptive, misleading information or concealing material information in connection with issue or subscribing for securities and such actions/inactions could be tried as 'fraud' under section 447 of the Act.
- x) Restrictions on making false/reckless statements:** In relation to issue of securities by companies, section 38 provides that any person who makes an application in a fictitious name to a company for acquiring or subscribing for its securities or makes multiple applications by different methods for the same or induces a company to allot securities to him or to any other person in a fictitious name, then such actions will be treated as 'fraud' and tried under section 447 of the Act. If the person is convicted, the Court may order disgorgement of gain, if any, made by such person, besides seizure and disposal of the securities in possession of such person.
- xi) Report on compliance by Company Secretary:** To plug the loopholes which may allow concealment of legal non-compliances which may point out/indicate 'fraud', onerous responsibility has been casted on the in-house Company Secretary (CS). Section 205 of the new Act stipulates that the CS has to report to the Board of Directors (BOD) about compliances with the provisions of the Companies Act and the rules made there-under, and the CS has also to report about compliance by the company with other applicable laws.
- xii) Setting up of Special Courts and its powers :** In the Sessions Court, trial of offences committed by the companies, including cases of 'fraud' usually take many years and such long delay prompts the company directors and professionals associated with companies involved in fraudulent transactions to draw comfort and solace from the fact that since the various Sessions Courts in the country are clogged with huge pending cases, by the time the trials of corporate fraud cases are actually taken up for hearing and arguments are completed and verdicts given, there will be a long gap between the time of commissioning



of fraudulent activities and the pronouncement of verdict by the Court against the fraudsters. But, the new Act will change this position because section 435 provides that Special Courts will also be set up to try all offences under the new Act and to remove doubts, section 436 of the new Act elaborates the offences which are to be tried by the Special Courts set up under the new Act. Such Special Courts can also try offences in a summary way.

The regularity with which the law enforcement agencies and the police arrest the officials on charges of fraud and cheating, reveals that despite stringent laws and penal provisions, how the white-collar crimes are cleverly and intelligently devised in dubious ways to cheat and defraud the investing public. It becomes apparent that companies involved in such fraudulent activities give a complete shake to the principles of good-governance norms and shun away from legal/secretarial audit. Such irresponsible and illegal activities give a bad name to the corporate form of business enterprise. In the national interest, it is imperative that the corporate professionals and the enlightened citizens rise up to the occasion.



Fraud under Companies Act, 2013 - An Overview

CS Lakshmi Arun*

Deputy Director, Academics, ICSI

When business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

What is fraud? - Some legislative definitions

Fraud is defined in section 17 of Indian Contract Act, 1872 as follows:

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract;

- (1) The suggestion as a fact, of that which is not true, by one who does not believe it to be true;
- (2) The active concealment of a fact by one having knowledge or belief of the fact;
- (3) A promise made without any intention of performing it;
- (4) Any other act fitted to deceive;
- (5) Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.

Fraud under Companies Act 2013

Explanation (i) to Section 447 has defined fraud in relation to affairs of a company or any body corporate to include, any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

‘Wrongful gain’ in terms of Explanation (ii), means “the gain by unlawful means of property to which the person gaining is not legally entitled”. On the other hand, explanation (iii) to section 47 has defined “wrongful loss” to mean the loss by unlawful means of any property to which the person losing is legally entitled”.

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Fraud is punishable with imprisonment for a term of not less than six months but it may extend to ten years. The liability towards fine is not less than the amount involved in the fraud but it may extend to three times the amount involved. Where the fraud involves public interest, the imprisonment shall not be less than three years. This is without prejudice to the repayment of any debt involved in fraud.

Survey by Ernst & Young on “impact of Companies Act 2013” on fraud.¹

E&Y during the webcast on October 21, 2013 asked the following questions through webcast on the impact of Companies Act 2013 on fraud:

1. Do you think making certain transgressions cognizable offences will deter potential fraudsters?
 2. Do you think an empowered SFIO will increase the number of prosecutions?
 3. Do you think the provision for class action suits will help to curb investor related fraud?
 4. Do you think a vigil mechanism will help companies detect fraud and unethical practices?
- Around 77% of the respondents to EY’s survey were of the opinion that the stringent punishment prescribed under section 447 will succeed in serving as a deterrent, while the remaining 23% were doubtful of the effect such a provision would have. We believe the true outcome of such penalizing provisions relies heavily on their implementation.
 - 75% of the respondents were of the view that introduction of class action suits against defaulting companies will help to curb investor-related fraud
 - Around 89% of the respondents believed that conferring a statutory status on the SFIO and providing exclusivity to it to investigate company-related frauds will increase the number of prosecutions in corporate scams, while only a minimal 11% believed that it will not.
 - The vast majority of people (around 95% of the respondents) seemed positive that enforcement of the Companies Act 2013 will improve corporate governance standards in India — only 5% had a different opinion.
 - A large number of the respondents (87%) believed that enabling such a provision will help companies detect fraud and unethical practices and provide optimum solutions for these, while 13% were of the opinion that the true impact of the provision will only be gauged with time.

¹ *Companies Act, 2013 – What will be its impact on fraud in India ? – by Ernst & Young.*



Sections That Attract Liability under Section 447

Section	Particulars	Who is punishable?
7(5)	Furnishing any false or incorrect particulars of any information or suppression any material information, in any of the documents filed with the Registrar in relation to registration of a company	Person furnishing false information
7(6)	After the incorporation of a company, if it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action	Promoters, first directors of the company and the persons making declaration for incorporation
Proviso to Section 8(11)	When it is proved that the affairs of the companies formed with charitable objects, were conducted fraudulently	Every officer in default
34	Criminal liability for misstatement in prospectus	Every person who authorises the issue of such prospectus
36	Fraudulently inducing persons to invest money	The person so inducing
38(1)	Punishment for personation for acquisition, etc., of securities	The person doing so
46(5)	Issue of duplicate share certificates with an intent to defraud	Every officer of the company who is in default
75(1)	Deposits were accepted with intent to defraud depositors or for any fraudulent purpose	Every officer of the company who was responsible for the acceptance of such deposit
206(4)	Where business of a company has been or is being carried on for a fraudulent or unlawful purpose	Every officer of the company who is in default
213	If after investigation it is proved that— (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful	Every officer in default of company and persons concerned in the formation of company or the management of its affairs



	<p>purpose, or that the company was formed for any fraudulent or unlawful purpose;</p> <p>or</p> <p>(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith</p> <p>been guilty of fraud</p>	
229	<p>Where a person who is required to provide an explanation or make a statement during inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—</p> <p>(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company/body corporate;</p> <p>(b) makes, or is a party to the making of, a false entry in any document concerning the company/ body corporate; or</p> <p>(c) provides an explanation which is false or which he knows to be false,</p>	Person doing so
251(1)	Application for removal of name from register with the object of evading liabilities/intent to deceive	The persons in charge of the management of the company
339(3)	Where any business of a company is carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose	Every person who was knowingly a party to the carrying on of the business in the manner aforesaid
448	If in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of this Act or rules thereunder, any person makes	Person making such statement



	a statement,— (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material	
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Role of Statutory Auditors/Cost Auditors/Secretarial Auditors in reporting fraud (Section 143(12) to 143 (15) & Rule 13 of Companies (Audit & Auditors) Rules 2014)

Reporting of Frauds by Auditor - Section 143(12) to 143 (15) & Rule 13

Section 143 (12) and Rule 13 provides that if the auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than 60 days of his knowledge and after following the procedure indicated herein below:

- (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days;
- (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations;
- (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

The report shall be in the form of a statement as specified in Form ADT-4 on the letter-head of the auditor containing postal address, e-mail address, contact number, Membership Number and be signed & sealed by the auditor and same shall be sent through Registered Post with AD/speed post followed by an e-mail in confirmation to the Secretary, MCA of the same.

The provision of section 143 applies mutatis-mutandis to Cost Accountants in practice conducting Cost Audit under section 148 or the Company Secretary in practice conducting secretarial audit under section 204. If any auditor, cost accountant or company secretary in practice fails to comply with the provisions of section 143 (12) for reporting of an offence involving fraud, they will be punished with a fine of minimum Rs. 1 lakh and upto Rs. 25 lakhs but they will not be punished if Auditor has done such reporting in good faith.



**Circulars, Notifications, Orders, Amendments, Rules
under Companies Act, 2013**
(since last issue of e-CS Nitor)



[To be published in the Gazette of India, Extraordinary, Part II, section 3 sub-section (i)]

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 3rd November, 2014

G.S.R.____ In exercise of the powers conferred by section 642 read with sub-section (2) of section 637A of the Companies Act, 1956 (1 of 1956) and the removal of difficulty Orders issued by the Central Government under section 470 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Company Law Board (Fees on Applications and Petitions) Rules, 1991 namely:-

- 1 (1) These rules may be called the Company Law Board (Fees on Applications and Petitions) Amendment Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Company Law Board (Fees on Applications and Petitions) Rules, 1991, in the Schedule, after serial number 33 the following shall be inserted, namely:-

“34	2(41) of the Companies Act, 2013	Allowing any period other than April to March as financial year.	5,000
35	58 and 59 of the Companies Act, 2013	Rectification of register of members	500
36	73(4) of the Companies Act, 2013 read with section 76	Directing the company to pay the sum due or for any loss or damage incurred as a result of such non-payment.	100
37	74(2) of the Companies Act, 2013	Allow further time as considered reasonable to the company to repay the deposit.	5,000.”

[F. No. 1/19/2014-CL-V]

Sd/-

Amardeep Singh Bhatia

Joint Secretary to the Government of India

Note: The Principal Notification was published vide No: GSR 290(E) dated 31.5.1991 and subsequently amended by:-

Serial Number	Notification Number	Notification Date
1.	GSR 787(E)	29-9-1992
2.	GSR 219(E)	6-3-2000
3.	GSR 510(E)	22-7-2002
4.	GSR 547(E)	10-7-2012



General Circular No. 42/2014

**No. 1/40/2013/CL.V-Part
Government of India
Ministry of Corporate Affairs**

5th Floor, "A" Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi.
Dated: 12th November, 2014

To
All Regional Directors,
All Registrars of Companies
All Stakeholders

Subject: Clarification on matters relating to the Companies (Cost Records and Audit) Rules, 2014

Sir,

Government has received representations from stakeholders seeking clarifications about Rules 5(1) and 6(2) of the Companies (Cost Records and Audit) Rules, 2014 regarding maintenance of cost records and filing of notice of appointment of the Cost Auditor in Form CRA-2 in electronic mode. The matter has been examined in the Ministry and the following is clarified:

Considering delay in availability of Form CRA-2 on the MCA website, it has been decided to extend the date of filing of the said Form without any penalty/late fee up to 31st January, 2015. Form CRA-2 will be made available on the MCA website soon. It is noted that some companies have filed Form 23C for appointment of Cost Auditor for the financial year 2014-15. It is clarified that such companies need not file form CRA-2 afresh for the financial year 2014-15.

2. This issues with the approval of the Competent Authority.

Yours faithfully,

Sd/-

(Kamna Sharma)
Assistant Director

Copy to:-

1. E-governance Section and web contents officer to place this circular on the Ministry's website.
2. Guard File.



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We invite the members to contribute articles/checklist/reviews/points of view or any other relevant material pertaining to the Companies Act, 2013 for inclusion in the coming issues of **e-CS nitor** through e-mail at: ecsnitor@icsi.edu. The article should ordinarily have 1500 to 2000 words.

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• Handbook on Internal Audit of Operations of Depository Participants	150	• Circulars, Notifications, Orders, Amendment Rules under Companies Act, 2013-A Compendium	100
• A Guide a to Company Secretary in Practice	200	• Legal & Professional Writing & Drafting in Plain Language	100
• CG Insights	200	• E-Voting (Ready Reckoner)	100
• DNA of Integrity	200	• Companies Act, 2013 A Ready Referencer (Revised Edition)	100
• Independent Directors	100	• Board Committees - A Handbook	100
• Corporate Social Responsibility	100	• Independent Directors - A Handbook	100
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