

***Corporate & Other Law amendments
(May 01, 2018– October 31, 2018)***

***For CA Intermediate
May 2019 Exams***

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MASTER THE ART OF INTERPRETATION..!!



Preliminary

Section		Amendment
2(6)	Associate Company	<ol style="list-style-type: none"> 1. Instead of 'total share capital'; now 'Total voting power' has to be seen 2. Meaning of Joint Venture is defined as follows now – the expression "Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;
2(87)	Subsidiary	Instead of 'Total share capital'; now 'Total voting power' has to be seen
Rule 2	Definition rules	Clause (r) is omitted which defined that total share capital for associate & subsidiary company means (Equity + Convertible preference capital)

Incorporation

7	Incorporation	In section 7(1)(c), for the words "an affidavit", the words "a declaration" shall be substituted
12	Registered office	<ol style="list-style-type: none"> (a) In sub-section (1), for the words 'on and from 15th day of incorporation'; the words 'within 30 days of its incorporation' shall be substituted (b) In sub-section (4), for the words 'within 15 days'; the words 'within 30 days shall be substituted'
Incorporation Rules	Incorporation	<ol style="list-style-type: none"> 1. In Rule 3(1), for Explanation, the following shall be substituted – <p>Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year.</p> <p>Explanation II - For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted</p> <p style="text-align: right;"><i>(This rule was notified w.e.f. July 27, 2018)</i></p> 2. Entire Rule 15 is substituted with the following – <p style="text-align: center;"><u>Declaration from Subscribers and First Directors -</u></p> <p>For the purposes of section 7(1)(c), the declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9</p>

Prospectus & Allotment of Securities

26	Matters to be stated in prospectus	Clause (a), (b) and (d) of sub-section (1) has been omitted. Now prospectus will contain such disclosures as may be specified by SEBI. Accordingly, Rule 3,4,5 & 6 have been omitted.
Section 42 & Rule 14	Private Placement	Section 42 & Rule 14 have been completely substituted

Private Placement

(1) A company may, **subject to** the provisions of this **section**, **make a private placement** of securities.

Number of Persons

(2)

- A private placement shall be made only to a **select group of** persons
- who have been identified by the Board (herein referred to as "**IDENTIFIED PERSONS**"),
- whose number shall not exceed 50 or such higher number as may be prescribed (**200** is prescribed)
- **EXCLUDING** the
 - **Qualified Institutional Buyers** and
 - **Employees** of the company being offered securities **under ESOP scheme** in terms of provisions of section 62(1)(b)],
- **in a FINANCIAL YEAR**
- subject to such **conditions** as may be prescribed.

Specific Offer

(3)

- A company making private placement shall issue **PRIVATE PLACEMENT OFFER** and **APPLICATION** in such form and manner as may be prescribed
- to identified persons,
- whose names and addresses are recorded by the company in such manner as may be prescribed

Provided that the private placement offer and application shall **NOT carry any right of RENUNCIATION**.

Meaning

Explanation I - "**Private placement**" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II - "**Qualified Institutional Buyer**" means the Qualified Institutional Buyer as defined in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the SEBI Act, 1992.

Offer treated as Public Offer

Explanation III –

- If a company, listed or unlisted, makes an **offer** to allot or invites subscription, or allots, or enters into an agreement to allot, securities
- **to more than the prescribed number of persons**,
- whether the payment for the securities has been received or not or
- whether the company intends to list its securities or not on any recognised stock exchange in or outside India,
- the same shall be **deemed to be an offer to the public** and

→ shall accordingly be governed by the provisions of Part I of this Chapter.

Payment & utilisation of funds

- (4) Every identified person willing to subscribe to the private placement issue
- shall apply in the private placement and application issued to such person
 - alongwith subscription money paid either by cheque or demand draft or other banking channel and
 - **not by cash**

Provided that a **company shall not utilise monies** raised through private placement **unless**

- **allotment is made** and
- the **return of allotment is filed** with the Registrar in accordance with sub-section (8).

No fresh offer/ invitation

- (5)
- **No fresh offer** or invitation under this section shall be made **unless**
 - the allotments with respect to any **offer** or invitation **made earlier**
 - have been **completed** or that offer or
 - invitation has been **withdrawn** or abandoned by the company

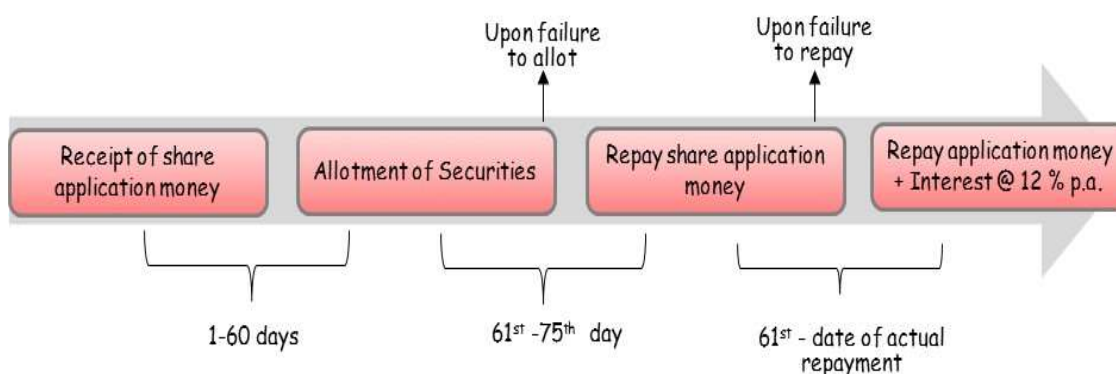
Provided that,

- subject **to the maximum** number of **identified persons** under sub-section (2),
- a **company may**, at any time,
- make **more than one issue of securities**
- **to such** class of **identified persons** as may be **prescribed**.

Time for allotment of securities

- (6)
- A company making an offer or invitation under this section shall **allot its securities within 60 days from the date of receipt of the application money** for such securities and
 - if the company is **not able to allot** the securities within that period,
 - it shall **repay** the application money to the subscribers **within 15 days** from the expiry of 60 days and
 - **if the company fails to repay** the application money within the aforesaid period,
 - it shall be liable to **repay that money with interest at the rate of 12% per annum** from the expiry of the 60th day

[also refer Rule 2(1)(c)(vii) of Companies (Public Deposit) Rules, 2014]



Provided that **monies received** on application under this section shall be **kept in a separate bank account** in a scheduled bank and shall **not be utilised** for any **purpose other than** –

- (a) for **adjustment against allotment** of securities; or
- (b) for the **repayment of monies** where the company is unable to allot securities.

No Marketing

- (7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

Return of Allotment

- (8) A company making any allotment of securities under this section, shall
- file with the Registrar a return of allotment within 15 days from the date of the allotment in such manner as may be prescribed,
 - including a complete list of all allottees, with their full names, addresses, number of securities allotted and
 - such other relevant information as may be prescribed

Consequences of contravention

- (9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to

Penalty for each default	=	INR 1,000 for each day during which such default continues but ≤ INR 25 lakh.
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- (10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section,

Who is liable?	Penalty
The company, its promoters and directors	<ul style="list-style-type: none"> - Up to amount raised through private placement, or - INR 2 crore <p style="text-align: right;">whichever is lower</p>

and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of 30 days of the order imposing the penalty.

Deemed Public Offer

- (11) Notwithstanding anything contained in sub-section (9) and sub-section (10),
- any private placement issue not made in compliance of the provisions of sub-section (2)
 - shall be deemed to be a public offer and
 - all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 shall be applicable

Rule 14 – Private Placement**Conditions of Private Placement**

- (1) For the purposes of sub-section (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a **SPECIAL RESOLUTION** for each of the offers or invitations

Provided that in the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made -

- (a) particulars of the offer including date of passing of Board resolution;
- (b) kinds of securities offered and the price at which security is being offered;
- (c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- (d) name and address of valuer who performed valuation;
- (e) amount which the company intends to raise by way of such securities;

- (f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Provided further that this sub-rule shall not apply in case of offer or invitation for **NON-CONVERTIBLE DEBENTURES**, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in section 180(1)(c) and in such cases relevant **Board resolution** under section 179(1)(c) would be adequate

Provided also that in case of offer or invitation for **NON-CONVERTIBLE DEBENTURES**, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in section 180(1)(c), it shall be sufficient if the company passes a **previous special resolution only once in a year** for all the offers or invitations for such debentures during the year.

[Note – The limit u/s 180(1)(c) is 100% of (Paid up share capital + Free reserves + Securities Premium)]

- (2) For the purpose of section 42(2), an offer or invitation to subscribe securities under private placement shall not be made to more than **200 persons** in the **AGGREGATE IN A FINANCIAL YEAR**

Provided that any offer or invitation made to **QIBs**, or to **employees** of the company under a scheme of **ESOP** as per provisions of section 62(1)(b) shall **not be considered** while calculating the limit of 200 persons.

Explanation - For the purposes of this sub-rule it is hereby clarified that the **restrictions aforesaid** would be **reckoned individually for each kind of security** that is **equity share, preference share or debenture**.

PPO cum Application Letter

- (3) A private placement offer cum application letter shall be in the form of an application in **Form PAS-4** serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within 30 days of recording the name of such person pursuant to of section 42(3)

Provided that **NO person other than the person so addressed** in the private placement offer cum application letter shall be **allowed to apply** through such application form and any application not conforming to this condition shall be treated as invalid

Record of Private Placement

- (4) The company shall maintain a complete **record of private placement** offers in **Form PAS-5**.

Payment

- (5) The payment to be made for **subscription to bank account** of the person subscribing to such keep the record of the bank account from where been received

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application

Provided further that the provisions of this sub-rule shall **not apply in case of issue of shares for consideration other than cash**.

Return of Allotment

- (6) A **return of allotment** of securities under section 42 shall be filed with the Registrar within 15 days of allotment in **Form PAS-3** and with the fee as provided in the Companies (Registration offices and Fees) Rules, 2014 along with a complete list of all the allottees containing-

- (i) the full name, address, permanent Account Number and E-mail ID of such security holder;
- (ii) the class of security held;
- (iii) the date of allotment of security;
- (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if tire securities were issued for consideration other than cash.

Exemption from limit of maximum 200 persons

- (7) The provisions of **sub-rule (2)** shall **not be applicable to** -
- (a) **NBFCs** which are registered with the RBI under the RBI Act, 1934 and
 - (b) **Housing Finance Companies** which are registered with the National Housing Bank under the National Housing Bank Act, 1987,

if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

Filing resolution in the Registry

(8) A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry

Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under section 179(3)(c).

Share capital & Debentures

54(1)	Sweat Equity shares	The condition in clause (c) that atleast 1 year elapsed since company had commenced business has been omitted
Rule 8	Share capital Rules – Issue of sweat equity shares	In the meaning of permanent employee – 1 year condition is removed

Deposits

73	Acceptance of deposits	<p>In section 73(1),</p> <p>i For clause (c), the following shall be substituted –</p> <p>(c) depositing, on or before the 30th day of April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called DEPOSIT REPAYMENT RESERVE ACCOUNT</p> <p>ii Clause (d) shall be omitted</p> <p>iii In clause (e), for the words “such deposits”; the following words shall be substituted –</p> <p>“such deposits and where a default had occurred, the company made good the default and a period of 5 years had lapsed since the date of making good the default”</p>
74	Repayment of deposits accepted before commencement	<p>In section 74(1)(b), the following clause shall be substituted –</p> <p>(b) repay within 3 years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier</p> <p>Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder</p>
Deposit Rules	Deposit	<p>1. Rule 4(1), after proviso, the following proviso shall be inserted</p> <p>Provided further that</p> <p>→ a certificate of the statutory auditor of the company shall be attached in Form DPT-1,</p> <p>→ stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted</p> <p>→ either before or after the commencement of the Act and</p> <p>→ in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits,</p> <p>→ a certificate of the statutory auditor of the company shall be attached in Form DPT-1,</p> <p>→ stating that the company had made good the default and</p> <p>→ a period of five years has lapsed since the date of making good the default as the case may be.</p> <p>2. Rule 5 shall be omitted</p> <p>3. In Rule 13, for proviso, the following shall be substituted</p> <p>Provided that the amount remaining deposited shall not at any time fall below 20% of the amount of deposits maturing during the financial year</p> <p>4. Rule 14(1)(k) shall be omitted</p>

Charges

77(1)	Duty to Register charges	A fourth proviso inserted - Provided also that this section shall not apply to such charges as may be prescribed in consultation with RBI
78	Application for registration of charges by Charge-holder	For the words 'register the charge within the period specified in section 77, the words 'register the charge within the period of 30 days referred to in section 77(1)' are substituted.
82	Satisfaction of Charge	<ol style="list-style-type: none"> 1. In section 82(1), the following words are omitted – “and the provisions of section 77(1) shall, so far as may be, apply to an intimation given under this section” 2. and the following proviso is inserted – “Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of such additional fees as may be prescribed”
Charges' rules	Charges	<ol style="list-style-type: none"> 1. In Rule 3(1), in place of words 'and filed' the words 'shall be filed' shall be substituted 2. In place Rule 8(1), the following shall be substituted – (1) company or charge holder shall within a period of 300 days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee 3. In Rule 12(1), for the words '30 days' the words '300 days' shall be substituted.

Management and Administration

89(7)	Declaration of beneficial ownership	Benefit of section 403 is removed
89(10)	Declaration in respect of beneficial ownership	<p>A new sub-section (10) is inserted –</p> <p>(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to -</p> <p style="margin-left: 40px;">(i) exercise or cause to be exercised any or all of the rights attached to such share; or</p> <p style="margin-left: 40px;">(ii) receive or participate in any dividend or other distribution in respect of such share</p>
90	Register of Significant Beneficial Owner in a company	The entire section has been substituted by this new one –

Declaration by SBO

- (1) Every **INDIVIDUAL**,
- who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India,
 - holds beneficial interests,
 - of not less than 25% or such other percentage as may be prescribed (**10%**),
 - in shares of a company or the right to exercise, or
 - the actual exercising of significant influence or control as defined in section 2(27),
 - over the company (herein referred to as "SBO"),
 - shall **make a DECLARATION** to the company, (**in Form BEN-1**)
 - specifying the nature of his interest and other particulars,
 - in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed

Provided that CG may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

Register of SBO

- (2) Every **company shall maintain a REGISTER (in Form BEN-3)** of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.
- (3) The **register** maintained under sub-section (2) shall be **open to inspection** by any member of the company on payment of such fees as may be prescribed.

Return of SBO

- (4) Every company shall **file a RETURN of SBOs (in Form BEN-2)** of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

Notice to identify SBO

- (5) A company shall give **NOTICE (in Form BEN-4)**, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe -
- to be a SBO of the company;
 - to be having knowledge of the identity of a SBO or another person likely to have such knowledge; or
 - to have been a SBO of the company at any time during the 3 years immediately preceding the date on which the notice is issued,
- and who is not registered as a significant beneficial owner with the company as required under this section.
- (6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.
- (7) The company shall –
- where that person fails to give the company the information required by the notice within the time specified therein; or
 - where the information given is not satisfactory,
- apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.
- (8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed.
- (9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

Penalty for not making declaration

- (10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with

Fine	
Minimum	Maximum
INR 1 lakh	INR 10 lakh
If continuing offence, further fine of INR 1,000 per day after the first day during which failure continues	

- (11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with

Fine	
Minimum	Maximum
INR 10 lakh	INR 50 lakh
If continuing offence, further fine of INR 1,000 per day after the first day during which failure continues	

- (12) If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

The Companies (Significant Beneficial Owners) Rules, 2018**Rule 2 – Meaning of Significant Beneficial Owner**

“Significant Beneficial Owner” means an individual referred to in section 90(1) (holding ultimate beneficial interest of not less than **10%**) read with section 89(10), but whose name is not entered in the register of members of a company as the holder of such shares, and the term ‘significant beneficial ownership’ shall be construed accordingly;

Explanation I - For the purpose of this clause, the significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under-

- i. where the member is a company, the SBO is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than 10% share capital of the company or who exercises significant influence or control in the company through other means;
- ii. where the member is a partnership firm, the SBO is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than 10% of capital or has entitlement of not less than ten per cent. of profits of the partnership;
- iii. where no natural person is identified under (i) or (ii), the SBO is the relevant natural person who holds the position of senior managing official;
- iv. where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than 10% interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

Explanation II – It is hereby clarified that instruments in the form of GDRs, Compulsory Convertible Preference Shares or Compulsory Convertible Debentures shall be treated as ‘shares’ for the purpose of this clause.

Non-applicability

These rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/ investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

92	Annual Return	Benefit of section 403 is removed
93	Return to be filed in case promoters’ stake changes	Section 93 and corresponding Rule 13 and Form MGT-10 have been omitted.
94	Place of keeping & Inspection of Registers etc.	<ol style="list-style-type: none"> 1. In first proviso to sub-section (1), the following words are omitted – “and the Registrar has been given a copy of proposed SR in advance” 2. In sub-section (3), the following proviso shall be inserted – Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section
96	AGM	In sub-section (2), a new proviso is inserted – Provided that AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by ALL the members in advance.
Rule 18	Notice through electronic mode	Explanation to sub-rule (3) has been omitted
Rule 22	Postal Ballot	Specified businesses can be conducted u/s 108 using electronic means

117	Resolutions & Agreement to be filed	<p>1. In sub-section (1) & (2), benefit of 403 is removed</p> <p>2. In sub-section (2), the penalty is changed as follows</p> <table border="1" data-bbox="582 315 1345 461"> <thead> <tr> <th data-bbox="582 315 970 360">Who is liable?</th> <th data-bbox="978 315 1158 360">Minimum</th> <th data-bbox="1166 315 1345 360">Maximum</th> </tr> </thead> <tbody> <tr> <td data-bbox="582 365 970 398">- the company</td> <td data-bbox="978 365 1158 398">INR 1 lakh</td> <td data-bbox="1166 365 1345 398">INR 25 lakh</td> </tr> <tr> <td data-bbox="582 403 970 461">- every officer in default, including liquidator</td> <td data-bbox="978 403 1158 461">INR 50,000</td> <td data-bbox="1166 403 1345 461">INR 5 lakh</td> </tr> </tbody> </table> <p>3. In sub-section (3), clause (e) shall be omitted</p> <p>4. Clause g a new proviso is inserted –</p> <p>Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under of section 179(3)(f) in the ordinary course of its business</p>	Who is liable?	Minimum	Maximum	- the company	INR 1 lakh	INR 25 lakh	- every officer in default, including liquidator	INR 50,000	INR 5 lakh
Who is liable?	Minimum	Maximum									
- the company	INR 1 lakh	INR 25 lakh									
- every officer in default, including liquidator	INR 50,000	INR 5 lakh									
121	Report on AGM	In sub-section (2) & (3), benefit of section 403 is removed									

Accounts of the Company

129(3)	Financial Statements	The Explanation is removed and the word associate companies is added along with subsidiaries in sub-section (3) itself.
132	NFRA	NFRA constituted w.e.f. October 1, 2018. All sub-sections have been notified. For ease, all the sub-sections (including those notified earlier) have been re-produced –

- (1) **CG may**, by notification, **constitute a National Financial Reporting Authority** to provide for matters relating to accounting and auditing standards under this Act.

Functions of NFRA

- (2) **Notwithstanding** anything contained in **any other law** for the time being in force, **NFRA shall –**
- (a) **make recommendations to CG** on the formulation and laying down of **accounting and auditing** policies and **standards** for adoption by companies or class of companies or their auditors, as the case may be;
 - (b) **monitor and enforce the compliance** with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) **oversee the quality of service of the professions** associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - (d) **perform such other functions** relating to clauses (a), (b) and (c) as may be **prescribed**.

Constitution of NFRA

- (3) NFRA shall **consist of a chairperson**, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by CG **and such other members not exceeding 15** consisting of part-time and full-time members as may be prescribed

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed

Provided further that the **chairperson and members shall make a declaration** to CG in the prescribed form **regarding no conflict of interest** or lack of independence in respect of his or their appointment

Provided also that the **chairperson and members**, who are in full-time employment with NFRA shall **not be associated with any audit firm** (including related consultancy firms) **during** the course of their appointment **and 2 years after ceasing to hold such appointment**.

Powers of NFRA

- (4) **Notwithstanding** anything contained in any other law for the time being in force, NFRA shall -
- (a) **have the power to investigate**, either suo moto or on a reference made to it by CG, for **such class of bodies corporate or persons**, in such manner **as may be prescribed into the matters of professional or other misconduct** committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where NFRA has initiated an investigation under this section;
 - (b) **have the same powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely –
 - (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by NFRA;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;

- (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
 (iv) issuing commissions for examination of witnesses or documents;

(c) where professional or other misconduct is proved, have the **power to make order for -**

(A) imposing **PENALTY** of –

In case of	Minimum	Maximum
Individuals	INR 1 lakh	5 times of the fees received
Firms	INR 5 lakh	10 times of the fees received

(B) **DEBARRING the member** or the firm from engaging himself or itself from practice as member of ICAI referred to section 2(1)(e) of the Chartered Accountants Act, 1949 for a **minimum period of 6 months** or for such higher period **not exceeding 10 years** as may be decided by NFRA.

Explanation - For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

- (5) **Any person aggrieved** by any order of NFRA issued under clause (c) of sub-section (4), may prefer an **appeal before the Appellate Tribunal** (NCLAT) in such manner and on payment of such fee as may be prescribed.
- (6) [Omitted]
- (7) [Omitted]
- (8) [Omitted]
- (9) [Omitted]

Miscellaneous provisions

- (10) **NFRA shall meet at such times** and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be **prescribed**.
- (11) **CG may appoint a secretary and such other employees** as it may consider necessary for the efficient performance of functions by NFRA under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.
- (12) The **head office** of NFRA shall be **at New Delhi** and NFRA may, meet at such other places in India as it deems fit.
- (13) NFRA shall **cause to be maintained such books of account** and other books in relation to its accounts in such form and in such manner as CG may, in consultation with the CAG prescribe.
- (14) **The accounts of NFRA shall be audited by CAG** at such intervals as may be specified by him and such accounts as certified by CAG together with the audit report thereon shall be forwarded annually to CG by NFRA.
- (15) **NFRA shall prepare** in such form and at such time for each financial year as may be prescribed its **ANNUAL REPORT** giving a full account of its activities during the financial year and forward a copy thereof to CG and CG shall cause the annual report and the audit report given by CAG to be laid before each House of Parliament.

134	Board's Report	<p>1. For sub-section (1), the following shall be substituted –</p> <p>(1) The financial statement, including consolidated financial statement, if any, shall be → approved by the Board of Directors</p>
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		<ul style="list-style-type: none"> → before they are signed on behalf of the Board by → the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and → the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or → in the case of OPC, only by one director, for submission to the auditor for his report thereon <p>2. In sub-section (3),</p> <p>i for clause (a), the following shall be substituted –</p> <p>(a) the web address, if any, where annual return referred to in section 92(3) has been placed</p> <p>ii In clause (p), for the words “annual evaluation has been made by the Board of its own performance and that of its committees and individual directors”, the following shall be substituted –</p> <p>“annual evaluation of the performance of the Board, its Committees and of individual directors has been made”</p> <p>iii After clause (q), the following provisos shall be inserted, namely –</p> <p>Provided that</p> <ul style="list-style-type: none"> → where disclosures referred to in this sub-section have been included in the financial statements, → such disclosures shall be referred to instead of being repeated in the Board's report. <p>Provided further that</p> <ul style="list-style-type: none"> → where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, → it shall be sufficient compliance of the requirements under such clauses if → salient features of the policy and any change therein are specified in brief in the Board's report and → the web-address is indicated therein at which the complete policy is available <p>3. A new sub-section (3A) shall be inserted –</p> <p>(3A) CG may prescribe an abridged Board's report, for the purpose of compliance with this section by OPC or small company</p>
Accounts Rules	Accounts of Company	<p>1. In Rule 8(5), matters to be included in Board's report, after clause (viii), the following shall be inserted –</p> <p>(ix) a disclosure, as to whether maintenance of cost records as specified by the CG under section 148(1) of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,</p> <p>(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</p> <p>2. Rule 8(6) shall be inserted –</p> <p>This rule shall not apply to OPC or Small Company</p> <p>3. New Rule 8A is inserted –</p>

		<p>(1) The Board's Report of OPC and Small Company shall be prepared based on the stand-alone financial statement of the company, which shall be in abridged form and contain the following –</p> <ol style="list-style-type: none"> (a) the web address, if any, where annual return referred to in section 92(3) has been placed; (b) number of meetings of the Board; (c) Directors' Responsibility Statement as referred to in section 134(5); (d) details in respect of frauds reported by auditors under section 143(2) other than those which are reportable to the Central Government; (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report; (f) the state of the company's affairs; (g) the financial summary or highlights; (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company; (i) the details of directors who were appointed or have resigned during the year; (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future. <p>(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in section 188(1) in the Form AOC-2</p>
135	CSR	<ol style="list-style-type: none"> 1. In sub-section (1), for the words "any financial year", the words "the immediately preceding financial year" shall be substituted 2. In sub-section (1), the following proviso shall be inserted – "Provided that where a company is not required to appoint an independent director under section 149(4), it shall have in its CSR Committee two or more directors." 3. In sub-section (3)(a), the words "as specified in Schedule VII", the words "in areas or subject, specified in Schedule VII" shall be substituted 4. In sub-section (5), the explanation is substituted by following – 'Explanation -For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'
CSR Rules	Rules	<ol style="list-style-type: none"> 1. In Rule 2(1), following amendments are there – <ul style="list-style-type: none"> ▪ In sub-clause (i)(c), after the words "relating to activities", the words "areas or subjects" shall be inserted ▪ In sub-clause (ii)(c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted ▪ In clause (e), for the words "company as", the words "company in areas or subjects" shall be substituted 2. In Rule 5(1)(i), for the words "an unlisted public company or a private company" the words "a company" shall be substituted 3. In Rule 6 <ul style="list-style-type: none"> ▪ In sub-rule (1)(a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted

		<ul style="list-style-type: none"> ▪ In second proviso to sub-rule (1)(b) for the words “activities included in Schedule VII” the words “areas or subjects specified in Schedule VII” shall be substituted <p>4. In Rule 7, for the words “purview of”, the words “areas or subjects, specified in” shall be substituted</p>
137	Financial statement to be filed with RoC	<p>1. In sub-section (1), second proviso, sub-section (2) & (3), benefit of section 403 is withdrawn</p> <p>2. In sub-section (1), a 5th proviso is inserted as follows –</p> <p>Provided also that</p> <ul style="list-style-type: none"> → in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), → which is not required to get its financial statement audited under any law of the country of its incorporation and → which does not get such financial statement audited, → the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and → where such financial statement is in a language other than English, along with a translated copy of the financial statement in English <p>Note - Foreign subsidiary unaudited account – circular 11/ 2015 now inserted in law</p>

Audit & Auditors

139(1)	Appointment of auditor	First proviso is omitted i.e. the requirement of ratification at every AGM has been done away with
Auditor rules	Auditor	<p>1. In Rule 3(7), proviso and explanation is removed i.e. the requirement of ratification has been done away with</p> <p>2. Rule 9 on criminal liability of partners is omitted as same was already inserted in section</p> <p>3. In Rule 10A, after words “internal financial controls” the words “with reference to financial statements” is inserted</p>