

MCA UPDATES

1. Notification dt March 5th 2021 – Amendment in Section 92 of CA 2012 wrt Annual Return (Section 23 (i) of the Companies (Amendment) Act, 2017 notified and came into effect from March 05, 2021)--- Annual Return

Ministry of Corporate Affairs (MCA) appointed March 05, 2021 as the date on which Section 23 (i) of the Companies (Amendment) Act, 2017 (CAA 2017) shall come into effect. Section 23 (i) of CAA 2017 is corresponding to Section 92 (1) of the CA 2013 which is with respect to Annual Return of the Company. With this amendment there are following changes in the Annual Return:

- (a) Omission of giving details of Indebtedness in the Annual Return;
- (b) Omission of giving details of Names, addresses, countries of incorporation, registration and percentage of shareholding held by Foreign Institutional Investors (FII) in the Annual return ; and
- (c) 2nd proviso has been inserted u/s 92 (1), which states that Central Government may prescribe Abridged Form of Annual Return for One Person Company (OPC), Small Company and such other class or classes of companies, as may be prescribed.

The link for the aforesaid Notification is as below:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_05032021.pdf

2. Notification dt March 05, 2021 -The Companies (Management and Administration) Rules, 2014 amended- Annual Return

Ministry of Corporate Affairs (MCA) amended the Companies (Management and Administration) Rules, 2014 (the Original Rules) and notified the Companies (Management and Administration) Rules, 2021 (the Amended Rules) as follows:

- (a) Rule 11 (1) is **altered** by substituting new Rule which states that every Company shall file Annual Return in revised Format of **Form MGT-7** and One Person Company (OPC) and Small Company shall file Annual Return in new Format of **Form MGT-7A** from the Financial Year 2020-21 onwards.
- (b) Rule 12 is substituted by **deleting** the requirement to attach extract of Annual Return with the Boards Report in **Form MGT 9** and instead of that Form MGT -7 (Annual Return) to be filed with Registrar with the fees.
- (c) Rule 20 is altered by numbering the Explanation I and II after the proviso which was not numbered.
- (d) New Form No. MGT-7 and Form MGT-7A has been prescribed

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Major changes in the new Format of Form MGT-7 are as follows:

1. ISIN of the equity shares of the Company to be mentioned at the end of the Table of Share capital, debentures and other securities of the Company.
2. Names, addresses, countries of incorporation, registration and percentage of shareholding held by Foreign Institutional Investors (FII) to be given at the end of the Table of share holding pattern- Public/other than promoters.
3. Additional two (2) points are inserted in Certification of Form MGT 7, as follows certifying that
 - (a) the company has not issued any securities to the public and
 - (b) the total number of members are not exceeding 200 and as such the company is private limited company.

This two new clauses in certification is as per the format of Annual Return as per Schedule V – Part II of Section 159 of the Companies Act, 1956.

(i) The Company has not, since the date of the closure of the last financial year with reference to which the last return was submitted or in the case of a first return since the date of incorporation of the company, **issued any invitation to the public to subscribe for any securities of the Company.**

(ii) Where the annual return discloses the fact that the numbers of members, (except in case of One Person Company), of the Company exceeds Two Hundred, the excess consists wholly of persons who under second proviso to clause (ii) of sub-section (68) of section 2 of the Act are not to be included in reckoning the number of two hundred.

The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_05032021.pdf

3. Notification dt March 05, 2021 -The Companies (Incorporation) Third Amendment Rules, 2021 – GST application while formation is optional

Ministry of Corporate Affairs (MCA) amended the Companies (Incorporation) Rules, 2014 by altering the Form INC-35 AGILE PRO by **inserting an option to the applicant if they want to make application of registration of Goods and Service Tax Identification Number (GSTIN)** while formation of the Company vide Aadhar Authentication.

The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdAmndtRules_05032021.pdf

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4. Notification dated March 18, 2021 – Section 32 and Section 40 of the Companies (Amendment) Act, 2020 shall come into effect- Executive and Independent Director can be remunerated by loss making company or company having inadequate profits

Ministry of Corporate Affairs (MCA) appointed *March 18, 2021 as the date on which Section 32 and Section 40 of the Companies (Amendment) Act, 2020* (CAA 2020) shall come into effect.

Section 32 of CAA 2020 is corresponding to Section 149 of the CA 2013 which is with respect to Appointment and Qualification of Directors of the Company.

Section 40 of CAA 2020 is corresponding to Section 197 of the CA 2013 which is with respect to Overall Maximum Managerial Remuneration and managerial remuneration in case of absence or inadequacy of profits of the Company.

With this amendment:

- (a) A new proviso is inserted in section 149(9), which provides that if a company has no profits or inadequate profits, the company can **remunerate Independent Director**, in accordance with Schedule V to the Act
- (b) Section 197 (3) was amended by stating that if in a financial year a company has no profits or its profits are inadequate, the company **can pay to its Directors including Non-Executive Director and Independent Director in accordance with Schedule V to the Act**

The link for the aforesaid Notification is as below:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_18032021.pdf

5. Notification dated March 18, 2021 –under the Heading “Remuneration” of Schedule V Part II of the Companies Act,2013- Executive and Independent Director can be remunerated by loss making company or company having inadequate profits

Ministry of Corporate Affairs (MCA) amended **Part II of Schedule V** to the Companies Act, 2013 under the heading **“Remuneration”** as follows:

- (a) **In Section I** (where details are given for the Remuneration payable by companies having profits) and in Section II (where details are given for the Remuneration payable by companies having no profits or inadequate profit) to managerial person or persons the words “or other director or directors” were inserted.
- (b) **In Section II** Table (A) is substituted as follows. This new Table provides an additional column (3) for Limit of yearly remuneration **“in case of other director”**(**other Director includes Non Executive and Independent Director**).

Sl. No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (Rupees) in case of managerial person	Limit of yearly remuneration payable shall not exceed (Rupees) in case of other director.
(i)	Negative or less than 5 Crores.	60 Lakhs	12 Lakhs

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(ii)	5 Crores and above but less than 100 Crores.	84 Lakhs	17 Lakhs
(iii)	100 Crores and above but less than 250 Crores.	120 Lakhs	24 Lakhs
(iv)	250 Crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crores:	24 lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crores:

- (i) **In Section III** which is for Remuneration payable by the companies having no profits or inadequate profits in certain special circumstances wherever “managerial person”, was mentioned is now replaced with words “managerial person or other director” which shall mean a Non-Executive Director or an Independent Director.”

The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_18032021.pdf

6. Notification dt March 18, 2021, effective from March 23, 2021- Established Central Scrutiny Centre (CSC) at New Delhi

1. MCA established a Central Scrutiny Centre (CSC) under the administrative control of e-governance Cell of the MCA. CSC shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.
2. CSC shall carry out scrutiny of e-Forms filed as Straight Through Processes (STP) and forward their findings to the concerned jurisdictional Registrar of Companies (RoC)
3. RoC shall then prosecute the defaulters and initiate action.
4. Link of the notification <http://egazette.nic.in/WriteReadData/2021/225985.pdf>

Aim of MCA: We understand that MCA aims to have accurate and readable proper data and information from the corporate and professionals and hence Central Scrutiny Centre (CSC) has been established by MCA. CSC which shall carry out scrutiny of e-Forms filed as Straight Through Processes (STP). CSC will then send the report to RoCs for necessary penal action by initiating Adjudication process.

Challenges after March 23, 2021

1. Any **e-Form approved through STP** are later within 8 years found as defective by CSC, then it will report to RoC and RoC will send Notice to file e-Form or document afresh **along with the fees** and additional fees in 30 days time. Please note there is no opportunity being given for resubmission or rectification of defect.
2. Whereas for any **other e-Form other than STP**, RoC will be sending notice and give opportunity to company to rectify and resubmit the form in 15 days time **without any fees or additional fees.**
3. RoC through CSC may open e-Forms filed earlier under STP (upto past 8 years) and Rule 10 (6) of these Rules provide that RoC may issue notice. Provisions were already there in these Rules, however the same was not so far implemented, which now on establishment of CSC will be implemented.

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7. Notification dated March 24 2021 – Section 23 and Section 45 of the Companies (Amendment) Act, 2020 shall come into effect(relating to penalty for Unpaid Dividend Account and for valuation by Registered Valuer)

Ministry of Corporate Affairs (MCA) appointed March 24, 2021 as the date on which Section 23 and Section 45 of the Companies (Amendment) Act, 2020 (CAA 2020) shall come into effect. This is relating to penalty for Unpaid Dividend Account and for valuation by Registered Valuer.

Section 23 of CAA 2020 is corresponding to Section 124 of the CA 2013 which is with respect to Unpaid Dividend Account of the Company.

Section 124(7) has been substituted which provides for non-compliance of this section. With CAA 2020, the provisions of FINE is replaced with PENALTY and penalty is reduced.

- (a) For company – the penalty will be Rs.1 Lakh and in case of continuing failure, with a further penalty of Rs.500/- for each day after the first during which such failure continues, subject to a maximum of Rs.10 Lakh
- (b) For every officer of the company who is in default, the penalty will be Rs. 25,000/- and in case of continuing failure, with a further penalty of Rs 100/- for each day after the first during which such failure continues, subject to a maximum of Rs.2 Lakh.

Section 45 of CAA 2020 is corresponding to Section 247 of the CA 2013 which is with respect to valuation by Registered Valuer.

Section 247 (3) has been altered which is for liability for contravention of the provisions of section 247. With CAA 2020, the provisions of FINE is replaced with PENALTY and penalty is now Rs.50,000/- on valuer if he contravenes this section.

The link for the aforesaid Notification is as below:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_24032021.pdf

8. Notification dated March 24, 2021 –Amendment in the Companies (Accounts) Rules, 2014- Mandated that software used for accounts must have feature for Audit Trail

Ministry of Corporate Affairs (MCA) amended the Companies (Accounts) Rules, 2014 (the Original Rules) and notified the Companies (Accounts) Amendment Rules, 2021 (the Amended Rules) which will be effective from April 01, 2021.

1. Rule 3- Manner of books of accounts to be kept in electronic mode-Specification in accounting software:

With this amendment, a proviso is added to Rule 3 (1) which reads that from FY from April 01, 2021 onwards, every Company which uses accounting software for maintaining its books of account, shall use only such accounting software **which has a feature of**

- (a) recording **audit trail** of each and every transaction,
- (b) creating **an audit log** of each change made in books of account along with the date when such changes were made and
- (c) company to ensure that the audit trail cannot be disabled.

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2. Rule 8 – Matters to be included in Board’s Report –More Disclosure

With this amendment in Sub Rule (5) now the Company is required to give disclosure in the Directors Report by giving following:

- a. Details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.
- b. Details of difference between amount of valuation done at the time of One Time Settlement (OTS) and the valuation done while taking loan from Banks or Financial Institutions along with the reasons thereof.

The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

9. Notification dated March 24, 2021 -The Companies (Audit and Auditors) Rules, 2014 amended--- More reporting by Auditors about Accounting Software, Related Party Transaction, Unpaid dividend

Ministry of Corporate Affairs (MCA) amended the Companies (Audit and Auditors) Rules, 2014 (the Original Rules) and notified the Companies (Audit and Auditors) Amendment Rules, 2021 (the Amended Rules) as follows:

Rule 11 – Other matters to be included in Auditors Report

- a. Clause (d) is omitted which was regarding disclosure by the Auditors about holding and dealing by the Company in Specified Bank Notes, during the period from 8th November, 2016 to 30th December, 2016. The same is not required to be continued as disclosure and hence it is omitted
- b. Following new disclosures (e) to (g) are added , which Auditors are required to Report now:
 - (1) (i) whether the management has represented that **no funds have been advanced or loaned or invested** (either from borrowed funds or share premium or any other sourced or kind of funds) by the company to or any other persons or entities, including foreign entities (“Intermediaries”), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities indentified in any manner whatsoever (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries:
 - (ii) whether the management has represented that **no funds have been received by the company from any person(s) or entity(ies), including foreign entities** ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
 - (iii) Based on such audit procedure that **the auditor has considered reasonable and appropriate** in the circumstances, nothing has come to their notice that has caused them to believe that

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the representations made by the management for above item (i) and (ii) contain any material mis-statement.

- (2) Whether the **dividend declared or paid** during the year by the company is in compliance with section 123 of the Companies Act, 2013.
- (3) Whether the company has used such **accounting software** for maintaining its books of account which has a **feature of recording audit trail** (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the **audit trail** has been preserved by the company as per the statutory requirements for record retention."

The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_24032021.pdf

10. Notification dated March 24,2021 -The Schedule III of Companies Act, 2013 has been amended--- **Change in format of Balance Sheet under Schedule III**

Ministry of Corporate Affairs (MCA) had made many amendment in Schedule III of Companies Act, 2013 which is regarding Financial Statement of the company and many new disclosures to be given some are mentioned below:

1. Shareholding of Promoters
2. Trade Payable with ageing schedule with details of payable to MSME and disputed or not
3. Trade Receivables with ageing schedule with details of good or doubtful and disputed or undisputed
4. Intangible assets under development ageing schedule
5. Use of money borrowed from the Bank and financial institution
6. Title Deeds of immovable properties are held in the name of the company or not
7. Loans or advances granted to promoters, directors, KMPs and related parties
8. Details of Benami Property held
9. Whether the company is declared as a willful defaulter by any Bank or Financial institution or other lender.
10. Whether the company has any relationship with struck off companies
11. If any charges creation or satisfaction is overdue and not registered with reason thereof
12. Downstream investment by the company
13. Various ratios
14. Effect of scheme of arrangement, if any
15. Borrowing or lending or giving guarantee to and on behalf of the Ultimate Beneficiaries
16. Compliance of FEMA,1999 and no violation of PMLA,2002
17. Grant or donation received by section 8 company
18. Undisclosed Income
19. More details on Corporate Social Responsibility
20. Whether the company has traded or invested in Crypto Currency or Virtual Currency

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The link for the aforesaid Scheme is as below:

http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

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Things to do from April, 2021 under the CA 2013

All companies are require to do the following from April, 2021 for Companies Act compliances:

1. Ensure to have **Accounting Software** from FY 2021-22 which has feature of Audit Trails;
2. Auditors to flag any transaction that is **changed, tweaked or deleted by the company**
3. Details of valuation done for **OTS and while taking loan** to be disclosed in Directors Report from FY 2020-21
4. **CARO 2020** will be effective from FY 2021-22 where in Auditors are required to give more disclosures
5. Definition of **small company** is altered wef 01 April 2021 as a company whose paid up capital is less than 2 crore and turnover is less than 20 crore.
6. **CSR Policy** to be revised and CSR Committee Terms of Reference to be modified in Board Meeting
7. Auditors to investigate/ flag accounting entries dealing with **related parties**.
8. **EGM can be thru Video Conferencing facilities till 30th June 2021**
9. Board can pass certain **resolutions thru Video Conferencing facilities till 30th June, 2021** which otherwise to be passed only in Meeting held with physical presence.
10. Companies to take on Record **Form MBP-1** given by the Directors and KMPs disclosing his interest and concern in any company (ies), body corporate(s), firm(s) or other association of individual other entities including shareholding more than 2% shareholding of body corporate either singly or along with other director (along with the list of his relatives).
The Director need to disclose
 - (a) Name of company (ies) where he is Director or member holding more than 2% shareholding of that company, either himself or along with other Director ;
 - (b) Name of Body Corporate (s) in which he is holding more than 2% shareholding of that Body Corporate, either himself or along with other Director;
 - (c) Name of Body Corporate(s) in which he is a promoter, manager , Chief executive Officer of that Body Corporate(s);
 - (d) Name of Firm (s) in which he is partner ;
 - (e) Name of any other entity(ies) in which he is partner, owner or member.
11. Companies to take on record **Form DIR -8** received from the Directors confirming whether he has incurred any disqualification for his appointment or re-appointment
12. Company to confirm is all the Directors have filed **Form DIR -3 KYC** before 30 September, 2021
13. Company to file following Forms with RoC
 - (a) **Form MSME-1** by 30th April, 2021
 - (b) **Form DPT-3** by 30th June 2021
 - (c) **Form CSR-1** from 01st April, 2021 for its own Section 8 company, Registered Trust or Registered Society having Section 12A and Section 80G registration under the Income Tax Act, 1961
 - (d) **Form CFSS-2020** by 30th June 2021 for forms / returns filed under the Company Fresh Start Scheme 2020

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