

**Recent Changes in the
Companies Act 2013
15th June 2021
PCS Foundation Day
Amita Desai & Co. Mumbai**

Disclaimer

The content of this presentation is intended to provide a general guide to the subject matter. Specialist professional advice should be sought about your specific circumstances

The views expressed in this presentation are solely my own views . Should you have any queries on any aspect contained in this presentation , you may contact Amita Desai through e-mail at amita@amitadeai.com

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Recent Changes in the CA 2013

Board
Meetings,
Shareholders
Meeting
&
OPC

Filing of forms
and returns
with RoC
and
Charge related
forms

ID and Test
Plus
Remuneration
to NED & ID

CSR,
CARO 2020 &
Producer Co
Rules, 2021

Recent Changes in the CA 2013

Balance Sheet -
Schedule III
w e f 01042021

Coverage of
Small
Company

Software
used by the
company for
accounts

Additional
Disclosures in
Directors
Report -
Notification
24032021

Recent Changes in the CA 2013

19th Feb 2021

Definition of
Listed
Company
w e f

01 April 2021

PPIRP

04 April
2021

5th March 2021

New Format
of MGT 7
and MGT 7A

MGT 7
and
MGT 9

of Certain Sections of the Companies Act, 2013 to LLP Act, 2008

As per the **Advisory dated February 18, 2021**, MCA has decided to extend eight sections of the Companies Act, 2013 to the LLP Act, 2008.

- Register of Significant Beneficial Owners,
- Disqualifications for Appointment of Directors,
- Number of Directorship,
- Vacation of Office of Directors,
- Power to Call for Information,
- Inspect Books and Conduct Inquiries,
- Conduct of Inquiries and Inspections,
- Appeal to Tribunal and Non-Cognizable Offences

Form MGT-7 and MGT-7A

On **March 05, 2021**, MCA amended Companies (Management and Administration) Rules, 2014 wherein Rule 11 has been substituted as follows:

Every Company shall file Annual Return in **revised Format of Form MGT-7** from the Financial Year 2020-21 onwards.

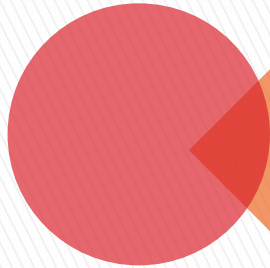
One Person Company (OPC) and Small Company shall file Annual Return in new Format of **Form MGT-7A** from the Financial Year 2020-21 onwards.

Major changes in Form MGT-7

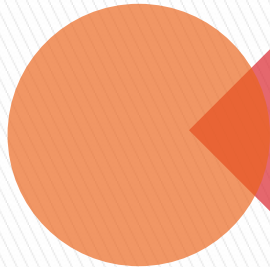
ISIN of the equity shares of the Company to be mentioned at the end of the Table of Share Capital, Debentures and other Securities of the Company.

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

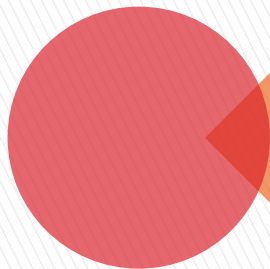
Major changes in Form MGT-7



Two additional points have been inserted in certification of Form MGT-7



The Company has **not issued any securities to the public; &**



Total number of members are **not exceeding 200** & as such the Company is Private Limited Company

Definition of Small Company- Sec 2 (85)

**Notification No. dated
1st February, 2021
Small Company
OTHER THAN PUBLIC
COMPANY
WEF 01.04.2021**

Paid up Share Capital of the Company shall not exceed Rs. 2 Cr from Rs. 50 Lakhs

Max remains same – Rs.10 Cr

Turnover of the Company shall not exceed

Rs. 20 Cr from Rs. 2 Cr

Max remains same – Rs.100 Cr

Definition of Listed Company section 2 (52)

**Notification dated
19th Feb 2021**

- Rule 2A was inserted in the Companies (Specification of definitions details) Rules, 2014.

**Effective from
1st April, 2021**

- Listed Company
- For the purpose of the proviso to clause (52) of section 2 of the Act, the following classes of companies ***shall not be considered as listed companies.***

Definition of Listed Company section 2 (52)

Public companies which have **not listed their equity shares** on a recognized stock exchange but have listed their –

(i)Non-convertible Debt Securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii)Non-convertible Redeemable Preference Shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

Definition of Listed Company section 2 (52)

(b) Private Companies which have listed their Non-Convertible Debt Securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public Companies which have not listed their equity shares on a recognized stock exchange but whose **Equity Shares** are listed on a stock exchange in a **foreign jurisdiction** as specified in sub-section (3) of section 23 of the Act.

Fast Track Merger u/s 233

On 01, February 2021 , MCA has notified Companies (Compromise, Arrangement and Amalgamations) Amendment Rules, 2021

Specified that a Scheme of Merger or Amalgamation u/s 233 (Fast Track of the CA 2013 may be entered into between :

(a) Two or more Start-up Companies ; or

(b) One/more Start-up Company with one/more Small Company



One Person Company

OPC

- UK was the 1st country to pave the way for this OPC concept since 1925. USA also each State has this concept as LLP. Singapore and China also adopted this concept in 2004 and 2005 respectively.

In India

- In India as on 31st March 2021 there are total 36524 OPC were registered with collective Authorised Capital of Rs.1170.68 Crores

Startups

- To encourage Innovator, Young Entrepreneurs and Start- ups to shift from unorganized to organized sector many measures were taken by Govt to incentivize incorporation of more OPC

One Person Company

**If in OPC paid up share capital > Rs.50 lakh and
Average Annual Turnover during the immediately preceding three
consecutive years > Rs.2 crore,**

**It shall cease to be
entitled to
continue as a
OPC**

**Mandated to convert
it into private or public
company.**

**However, MCA on
1st February, 2021 issued
Notification & deleted
this
mandatory provisions
which shall be effective
from
1st April, 2021**

One Person Company



MCA on 1st February, 2021 issued Notification regarding eligibility criteria for incorporation of One Person Companies (OPC)--- Effective from 1st April, 2021



Earlier, only Indian National & Residents were allowed to Form OPC in India



Now Non-Residents with entrepreneurial potential are allowed to set up OPC with no paid up capital and turnover restrictions

One Person Company

**MCA notified
on
1st February, 2021**

**Effective from
01 April 2021**

**Resident of India
requirement of stay
reduced from from
180 days to 120 days**

One Person Company

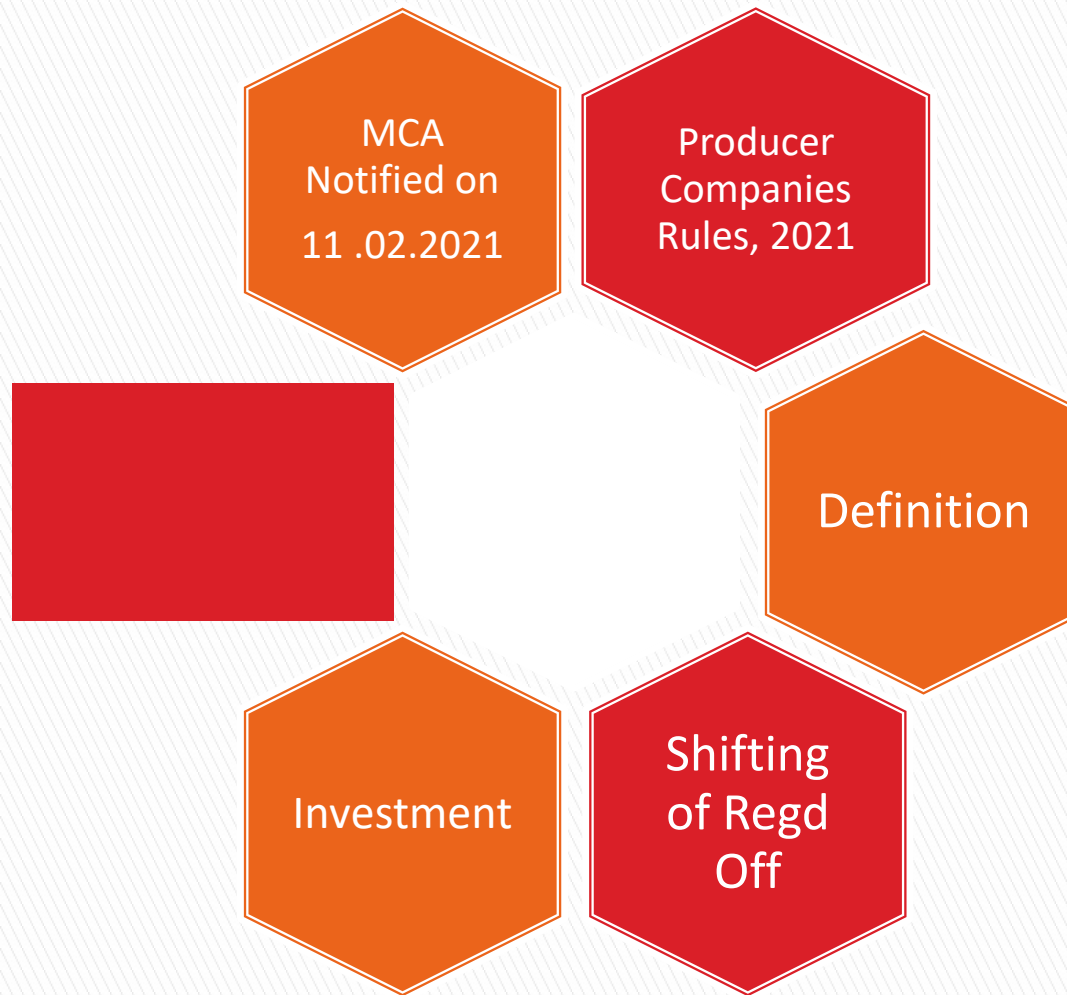
Easy convertible in
any form of
company except
section 8

Increase No. of
Members to
2 or 7

Increase No. of
Directors to
2 or 3

Comply with
section 18
of the Act

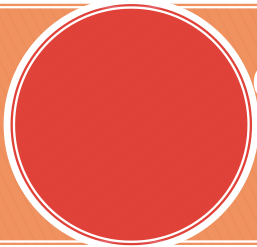
Producer Companies Rules, 2021



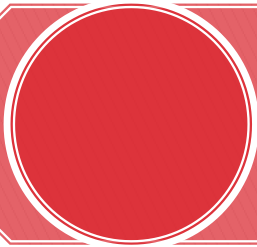
Board Meetings



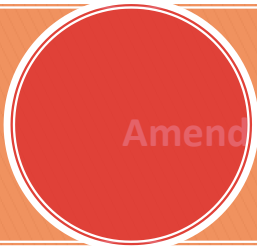
Board Meetings –Thru VC



**Certain Transaction can not be transacted
Without physical meeting**

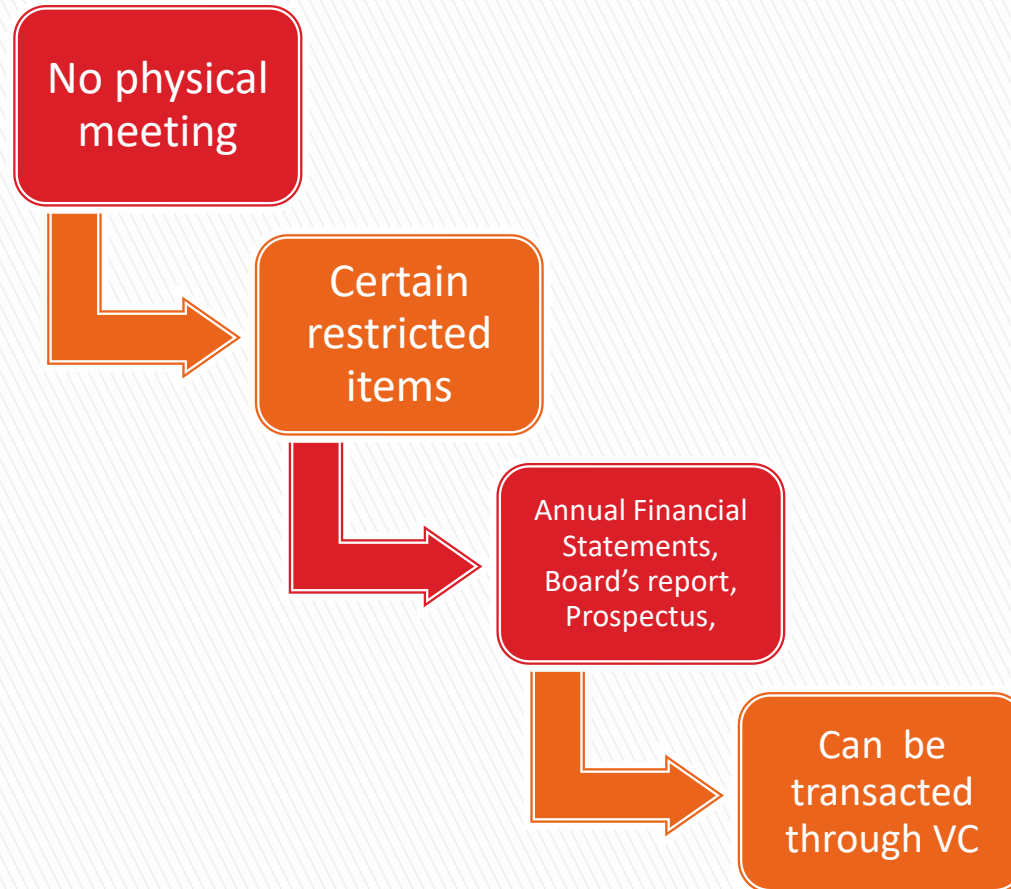


**Original Relaxation was up to 30.06.2020 which is
extended to 30.09.2020 then 31.12.2020
& now it is upto 30.06.2021**



**The Companies (Meetings of Board and its Powers)
Amendment Rules, 2020 (dt. 19.03.2020, 24.06.2020, 29.09.2020 &
30.12.2020)**


Board Meetings – Thru VC



Board Meetings – Gap between two BM can be 180 days

- 
- Minimum Four Meetings to be held in a year with maximum gap of not exceeding 120 days

- 
- MCA circular dated 24.03.2020 & 03.05.2021

- 
- Due to second wave of COVID 19 Pandemic, relaxation has been given for further next two quarters
 - (i.e. up to September 30, 2021)

If A Ltd has held Board Meeting on 10.01.2021. By what latest date it can have next meeting?

Position without relaxation

- Next Meeting – 10.01.2021+120 days
==10.05.2021
- Then Next --10.05.2021+120
days==07.09.2021

Position with relaxation

- Next Meeting – 10.01.2021+180 days
==09.07.2021
- Then Next –09.07.2021+120
days==06.11.2021

If A Ltd has held Board meeting on 10.04.2021. By what latest date it can have next meeting?

Position without relaxation

- Next Meeting – 10.04.2021+120 days
==08.08.2021
- Then Next – 08.08.2021+120
days==06.12.2021

Position with relaxation

- Next Meeting – 10.04.2021+180 days
==07.10.2021
- (max was 01.10.2021)
- Then Next –01.10.2021+120
days==29.01.2022

Board Meetings – Practical Issues

Due to lockdown restrictions, professionals are unable to make any movement and have limited access to statutory records, in such a situation how to see the compliances can be done and records can be maintained ?

Digitally signed document has validity in digital environment

BM/GM Notice; Shorter notice consent; Minutes; Attendance Records; Nomination Resolutions and Proxy forms.=== All can be digitally signed

Board Meetings – Practical Issues



Can a Board pass all restricted items through circular resolutions?



All agenda items can be passed through VC or OAVM upto 30.09.2021
except following

Following items cannot be passed through Circular Resolution

For filling casual vacancy of Director u/s 161(4);

For Items specified in section 179(3)

For contribution to political parties u/s 182(1)

Following items cannot be passed through Circular Resolution

For related party transaction u/s 188(1)

For appointment of MD, WTD or Manager u/s 196

For appointment of a person as MD/Manager who is already MD/Manager in any other Company u/s 203(3)

Board Meetings – Sec 179 items

Section 179 (3) – Only in BM may be thru VC/ OVAM but not thru circulation

- (a) to **make calls** on shareholders in respect of money unpaid on their shares;
- (b) to authorize **buy-back of securities** u/s 68;
- (c) to **issue securities**, including debentures, whether in or outside India;
- (d) to **borrow monies**;
- (e) to **invest the funds** of the company;
- (f) to **grant loans or give guarantee** or provide security in respect of loans;
- (g) to approve **financial statement** and the **Board's Report**;
- (h) to **diversify the business** of the company;
- (i) to approve **amalgamation, merger or reconstruction**;
- (j) to **take over a company** or acquire a controlling or substantial stake in another company;
- (k) any **other matter** which prescribed under Rule 8 of meeting of Board and its Power:

Shareholders Meetings- Recent Changes



Relaxation in conducting EGM through VC/ OAVM

Clarification on passing of Ordinary and Special Resolutions by the Companies

Dispensation from sending physical notices for EGM/Postal ballot.

Shareholders Meetings- Recent Changes

General Circular No. 14/2020 dated 08.04.2020

Permitted convening of EGM's through VC/OAVM



General Circular No. 17/2020 dated 13.04.2020

Clarification that notice through email is sufficient



General Circular No. 22/2020 dated 15.06.2020

Registration of emails and Newspaper advertisement

Shareholders Meetings- Recent Changes

General Circular No. 33/2020 dated 28.09.202

All resolutions to be filed with RoC – MGT 14



General Circular No. 39/2020 dated 31.12.2020

Relaxation extended up to 30.06.2021

Shareholders Meetings- Recent Changes

General Circular No. 18/2020 dated 21.04.2020

Extension of time for holding AGM within 9 months (30.09.2020) for companies whose financial year ended at 31.12.2019



General Circular No. 20/2020 dated 05.05.2020

Relaxation has been given for all AGM due in 2021



General Circular No.02/2021 dated 13.01.2021

AGM of the Companies due to be held in the year 2021, timeline to conduct AGM extended till 31.12.2021

Shareholders Meetings- Recent Changes

Annual General Meeting 2021

Time limit for holding AGM may be extended by three months by general orders of the respective Registrar of Companies.

This is especially required for the Companies whose financial year ended at 31.12.2020

Shareholders Meetings- Content of Notice

Notice

Manner in which the framework provided for conducting the meeting & clear instructions on how to access / participate in the meeting along with helpline numbers

Email id's:

The company shall make efforts by phone call to collect email id's of all members

Dispatch of Notice

Through e-mail only

News paper advertisement to be given at-least 3 days before sending notices in certain cases

Display

The Notice to be displayed on website, if any, of the Company

Shareholders Meetings- Content of Notice

Postal Ballot: The resolutions can be passed through Postal ballot also;

VC or OAVM to conduct meetings:

Companies allowed to hold general meetings through video conferencing (VC) or other audio visual mode (OAVM);

Quorum: Members attending meeting through VC or OAVM shall be counted for quorum;

Proxies: No option to allow participation of members through proxies;

Show of hands if the members are exceeding 50

No option to vote through show of hands

Shareholders Meetings- Recent Changes

Can a Company pass resolution for removal of Director or Auditor in a General Meeting held through VC/OAVM, where Director/Auditor has right to representation?

Yes, provided the Director/Auditor has been provided necessary right of representation

Shareholders Meetings- Recent Changes

Can a Company hold Physical Meeting of Shareholders?

Yes, subject to compliance of Lockdown restrictions & necessary permissions from competent authorities, if any, for holding meeting/physical gathering

Shareholders Meetings- Recent Changes

Can a company avail exemption for sending notice/annual reports through email?

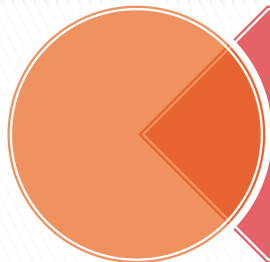
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Board Report

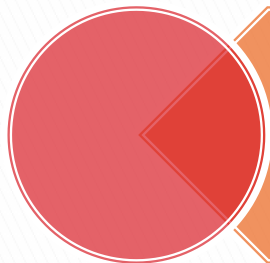


Changes in Report for FY2020-21

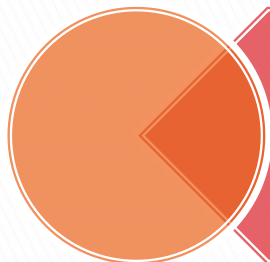
Changes in Board Report



The Companies (Accounts) Amendment Rules, 2021 Effective from 01.04.2021



Application made or any proceeding pending under IBC with status



Difference - valuation – OTS and Avail Loan with reasons.

Companies (Accounts) Amendment Rules, 2021

Accounting Software



Decriminalization of Offences CAA 2020



The Companies Amendment Act 2020 (CAA 2020)

The Companies Amendment Bill, 2020 was passed in

- ❖ **Lok Sabha on September 17, 2020 and in**
- ❖ **Rajya Sabha on September 22, 2020 and has received**
- ❖ **Assent of the President of India on September 28, 2020**

And become the **Companies Amendment Act, 2020 (CAA 2020)** which has amended the Companies Act, 2013 (CA 2013).

Decriminalization of Offences

Fines to Penalties

- For non compliances regarding transfer/transmission of shares under section 56(6);
- For non compliances regarding creation, modification or satisfaction of charges under section 86(1);
- For non maintenance of register of member under section 88(5);
- For non declaration of beneficial interest by the registered holder or beneficiary under section 89(5);

Decriminalization of Offences

- For non filing of beneficial interest by the Company under section 89(7);
- For non compliance regarding SBO under section 90(11) & (12);
- For wrong certification by PCS under section 92(6);
- For sending invitations for appointment of proxies at Company's expense under section 105(5);
- For non compliance regarding unpaid dividend or transfer of shares under section 124(7);

Decriminalization of Offences

- For non compliance regarding signing of financial statement and content & signing of board report under section 134(8);
- For non compliance regarding CSR under section 135(7) & (8);
- For any non compliance in Chapter XI under section 172;
- For non compliance in relation to Audit Committee or NRC under section 178(8);

Decriminalization of Offences

- For non compliance regarding disclosure of interest or participation in agenda items in which he is interested under section 184(4);
- For non compliance regarding requirement of making investments in own name under section 187(4);
- For non compliance regarding transaction with related parties under S 188(5)
- For non compliance regarding Secretarial Audit under section 204(4);

Decriminalization of Offences

- For non compliance of provisions regarding restructuring u/s 232(8);
- For contraventions by Valuer u/s 247(3);
- For non cooperation with Liquidator u/s 284(2);
- Directions regarding forwarding of dissolution order under section 302(3) & (4);
- Prosecution of Delinquent Officers and Members of Company under section 342(6)

Decriminalization of Offences

- Directions regarding forwarding of the order under section 356(2);
- For non furnishing of Information or Statistics to Central Government under section 405(4);
- For offences for which no specific penalty has been provided in the Act under section 450;
- For wrongful withholding of property under section 452(2)

Decriminalization of Offences

March 24, 2021 --Section 23 and Section 45 of the Companies (Amendment) Act, 2020 (CAA 2020) shall come into effect.

Section 23 of CAA 2020 is= Section 124 of the CA 2013

Unpaid Dividend Account of the Company.

With CAA 2020, the provisions of FINE is replaced with PENALTY and penalty is reduced.

Section 45 of CAA 2020 is= Section 247 of the CA 2013

Valuation by Registered Valuer.

With CAA 2020, the provisions of FINE is replaced with PENALTY

Reduction in amount of Penalty

- **Non compliance regarding alteration in capital under section 64(2)** - Per day Penalty reduced from Rs. 1000/- to Rs. 500/- per day and maximum capping of Rs. 5 lacs reduced to Rs. 1 Lac
- **Non compliance in filing of Annual Return under section 92(5)** - Penalty for non filing of Annual return reduced from Rs. 50K to Rs. 10K. No change in Penalty of Rs. 100 per day in case of continuing offence, however maximum penalty reduced from Rs. 5 lacs to Rs. 2 lacs in case of Company and Rs. 50K for officers.

Reduction in amount of Penalty

Non compliance regarding filing of resolutions/ agreements under section 117

- Penalty reduced from Rs. 1 lacs to Rs. 10K,
- Penalty for continuing offence reduced from Rs. 500 to Rs. 100 per day,
- Maximum capping reduced from Rs. 25 lacs to Rs. 2 lacs &
- Penalty for officers reduced from Rs. 50 K to Rs. 10K,
- Penalty for continuing offence reduced from Rs. 500 to Rs. 100 per day &
- Maximum capping reduced from Rs. 5 lacs to Rs. 50K.

Reduction in amount of Penalty

Punishment for non filing of financial statement under section 137(3)

- Penalty for non filing of BS reduced to Rs. 10K,
- Penalty for continuing offence Rs.100 per day subject to Max of Rs. 2 lacs,
- Penalty for MD & CFO or Director or all Directors Rs. 10K &
- Penalty for continuing offence Rs.100 per day subject to Max of Rs. 50K

Punishment for non filing of resignation by Auditor to the Registrar under section 140(3)

- Penalty amount reduced from Rs. 5 lacs to Rs. 2 lacs


Reduction in amount of Penalty

Punishment for failure to discharge duties by Auditors under section 143(3)

- Higher Penalty of Rs. 5 Lakh provided for listed Companies.

Punishment for acceptance of directorship exceeding prescribed limits under section 165(6)

- Penalty amount reduced from Rs. 5K to Rs. 2K per day.
- Further maximum capping of Rs. 2 lacs provided.

A magnifying glass and a wooden gavel resting on a dark blue folder on a wooden surface.

MCA establishes Central Scrutiny Centre for scrutiny of STP e-forms

Central Scrutiny Centre (CSC)

- On March 18, 2021 MCA has established a Central Scrutiny Centre (CSC) under the administrative control of e-governance cell of the MCA.
- CSC shall carry out scrutiny of e-forms filed at **Straight Through Processes (STP)** and forward their findings to the concerned jurisdictional ROC.
- RoC shall then prosecute the **defaulters and initiate action.**

Establishment of Central Scrutiny Centre (CSC)

Challenges faced:

1. Any e-form approved through STP are later **within 8 years found as defective** by CSC, reporting will be made to RoC and RoC shall send Notice to file e-form or document afresh along with fees and additional fees within 30 days timeline.

No opportunity of resubmission or rectification of defect will be given.

Establishment of Central Scrutiny Centre (CSC)

Challenges faced:

2. **Any form other than STP:** RoC will be sending notice and an opportunity be given to company to rectify and resubmit the form **within 15 days time** with any fees or additional fees.
3. ROC through CSC may **open e-forms filed earlier** under STP mode (upto past 8 years).

Effective from 23rd day of March, 2021.

Independent Directors

- The Companies (Appointment and Qualification of Directors) 2nd Amendment Rules, 2020



- The time limit for registration of persons working as ID in
- **Database as on 01.12.2019** has been extended up to
- 13 months i.e. upto **31.12.2020**
- (earlier extended for 5 months and then 7 months).

Independent Directors

As per Rule 6(4) as amended w.e.f 18.12.2020, Every individual whose name is included in the Data Bank should pass an **online proficiency self assessment test** conducted by the institute **within 2 years** from date of inclusion of name in Data Bank.

If he does not appear for the test within the time limit his name will be **removed from the Data Bank.**

Extension of time for registration with Data Base was granted to persons **who are already holding position of ID in any Company.**

Further exemption for Proficiency test?

Any person who has 3 years experience as
Director/KMP of a listed Public Company, unlisted public company having
paid up capital of Rs. 10 cr or more,

Any person who has 3 years experience as
Director/KMP of a Body Corporate listed on any recognised stock exchange
in India or FATF member country

Any person who has 3 years experience as
Director/KMP of foreign bodies corporate having capital of US \$ 2 million or
more

Who is not required to Pass Proficiency test?

Any person who has 3 years experience as

Statutory Corporations setup under an act of parliament or state legislature carrying commercial activities

Any person who has 3 years experience as

In the pay scale of Director or above with MCA, MOF, MOC or MOHIPE

Any person who has 3 years experience as

In the pay scale of CGM or above with SEBI, IRDA, RBI, PFRDA, IREB

Issue of Shares



- Notification dated 11.02.2021,
- Rule 12A has been inserted
- Effective from 01.04.2021



- Right Issue
- Offer Letter min time Seven days from date of offer.

CFSS- 2020

Companies Fresh Start Scheme 2020 (CFSS 2020) was announced enabling filing of all previous forms/ returns without payment of additional fees and providing Immunity from future prosecution.

This Scheme is not applicable to E-Forms relating to Charge and SH-7.

The scheme was valid up to 31.12.2020 and the last date of filing Form for availing Immunity is 30.06.2021.

LLP Settlement Scheme, 2020

MCA issued Modified LLP Settlement Scheme, 2020 vide general circular 13/2020 dated March 30, 2020 in order to provide relief to defaulting LLPs registered in India to focus on taking necessary measures to address COVID-19 threat and to reduce their compliance burden.

As per the Scheme, filing of all previous e-forms without payment of additional fees and immunity from prosecution for delay in filing.

The scheme was valid up to 31.12.2020.

Changes in Audit Report

Additional Disclosure

The Company **has not advanced or given loan or invested** (either from borrowed funds or share premium or any other sources or kinds of funds) to any person **with the understanding that the intermediary** shall lend or invest in other persons or entities who are the **Ultimate Beneficiaries** of the Company.

The Company **has not received any funds** from any persons or entities including foreign entities, **with the understanding that the intermediary** shall lend or invest in other persons or entities who are the **Ultimate Beneficiaries** of the Company from where such funds have been received.

Dividend paid or declared by the Company during the year is in compliance with Section 123 of Companies Act, 2013.

The **Accounting Software** used by the Company has necessary feature of Audit Trail, Audit Log, etc (Effective from 01.04.2022)

Relaxation from Additional filing fees

MCA issued a **General Circular No. 06/2021 dated May 03, 2021**, relaxing the time and additional fees to be payable by any Company or LLP for Forms which are due for filing between **April 01, 2021 to May 31, 2021** till **July 31, 2021**.

Forms related to Charges (CHG-1, CHG-4 & CHG-9)**are not included** in the general relaxation given under Circular 6 /2021.

Relaxation of time in filing Charge related Forms

MCA issued a **General Circular No. 07/2021 – 03.05.2021**

Relaxing time in case of delay in filing of **Charge related documents** by the Company or the Charge Holder under Form CHG-1 and CHG-9 (“ the Charges”) and

Not for CHG-4, satisfaction of charges.

Relaxation of time in filing Charge related Forms

Time period 01.04.2021 to 31.05.2021 shall not be counted in the time line for filing of certain Charge related forms

CASE 1

The Charge is created / modified prior to April 01, 2021

but 120 days from creation/modification of charge

is not expired as on April 01, 2021 as per section 77

CASE 2

The Charges is created / modified between April 01, 2021 to May 31, 2021 (both dates inclusive).

Relaxation of time in filing Charge related Forms

This Circular **shall not apply to:**

- e-Forms CHG-1 and/or CHG-9 **if filed before** the issue of this Circular
- timeline of filing of e-Forms CHG-1 and/or CHG-9 has already **expired prior to April 01, 2021** (that is 120 days from the date of creation or modification of charge).
- filing of e-Forms CHG-1 and/or CHG-9 **is delayed** beyond 120 days from June 01, 2021, despite the relaxation given of time till **May 31, 2021**.
- Filing of **e-Form No. CHG -4**, for the **Satisfaction of Charge**.

The Companies (Auditor's Report) Order, 2020

MCA has notified the Companies (Auditor's Report) Order, 2020 (**CARO, 2020**) which shall be applicable for the eligible companies for the financial year commencing on or after **1st April, 2021**.

MCA also amended **Schedule III** to the Companies Act, 2013 with effect from 1st April, 2021.

Every company including Foreign Company **except-**

- Banking company,
- Insurance company,
- Section 8 company,
- OPC,
- Small Company,
- Private Company having a paid up share capital and reserve < Rs. 1 Crores and total borrowings < Rs.1 Crore and a total revenue is < Rs.10 crore during the FY as per the financial statements.

Clauses of CARO, 2020

- Non Current Assets- Modified
- Inventory and Other Current Assets- Modified
- Investments, Loans or Advances by Company- Modified
- Loan to Directors and Investment by the Company
- Deposits accepted by the Company
- Maintenance of Cost Record
- Statutory Dues
- Disclosure of undisclosed transactions- Inserted
- Loans and other Borrowings- Modified
- Money raised through IPOs and FPOs- Modified
- Frauds- Modified

Clauses of CARO, 2020

- Nidhi Company
- Related Party Transactions
- Internal Audit System- Modified
- Non- Cash Transactions
- RBI Registration
- Cash Losses- Inserted
- Consideration of outgoing Auditor- Inserted
- Material uncertainty in relation to realization of financial assets and payment of financial liabilities- Inserted
- Compliance of CSR- Inserted
- Qualifications or adverse remarks in the consolidated financial statements- Inserted
- Clause related to Managerial Remuneration in CARO 2016 is omitted

Clauses of CARO, 2020– In detail

Fixed Assets replaced by Property and Plant & Equipment – Intangible assets covered, Immovable Property kept as stock in trade also covered now

Format for providing detail of immovable properties not held in the name of the Company also provided

Revaluation to be based on report of Regd Valuer

Proceedings under Benami Transaction (Prohibition) Act 1988

Material discrepancies defined – variation of 10% or more in a class
Sanction of WC > 5 cr

Statement filed with banks are in agreement with books of accounts

Clauses of CARO, 2020 –in detail

- In addition to Loan, now Investments and Guarantees also covered.
- Not restricted to just persons covered in 189
- Deemed Deposits also covered
- All Statutory dues covered
- Rectification of Books of Accounts
- Reporting of Loan Defaults extended to all lenders instead of Bank & FI. Format also prescribed.
- IPO/FPO proceeds utilization
- Compliances for raising of funds through Private Placement

Clauses of CARO, 2020- in detail

- Additional disclosures on willful defaulters,
- loan utilisation,
- utilisation of short term loan for long term purpose,
- loans taken to meet the obligations of subsidiaries, JV, associates, Loans obtained by pledge of securities of subsidiaries, JV, associates.

Scope of reporting on **fraud extended**.

Now any fraud by the Company or any fraud on the Company to be reported as against frauds committed by the Employees/Directors on the Company.

Clauses of CARO, 2020- in detail

- Additional Disclosure on compliances by Nidhi company
- Disclosure regarding status of NBFC, CIC
- Disclosure regarding resignation by Statutory Auditor
- Comment on capability of the Company to meet liabilities
- Compliances regarding transfer of unutilised CSR funds to fund constituted u/s 135 of CA 2013
- Adverse remarks in CARO to be mentioned in Consolidated Report also
- Clause related to Managerial Remuneration in CARO 2016 is omitted

Amendment in Schedule III of Companies Act, 2013

- Shareholding of Promoters
- Trade Payable with ageing schedule with details of payable to MSME and disputed or not
- Trade Receivables with ageing schedule with details of good or doubtful and disputed or undisputed
- Intangible assets under development ageing schedule
- Use of money borrowed from the Bank and financial institution
- Title Deeds of immovable properties are held in the name of the company or not
- Loans or advances granted to promoters, directors, KMPs and related parties
- Details of Benami Property held
- Whether the company is declared as a willful defaulter by any Bank or Financial institution or other lender.

Amendment in Schedule III of Companies Act, 2013

- Whether the company has any relationship with struck off companies
- If any charges creation or satisfaction is overdue and not registered with reason thereof
- Downstream investment by the company
- Various ratios
- Effect of scheme of arrangement, if any
- Borrowing or lending or giving guarantee to and on behalf of the Ultimate Beneficiaries
- Compliance of FEMA,1999 and no violation of PMLA,2002
- Grant or donation received by section 8 company
- Undisclosed Income
- More details on Corporate Social Responsibility
- Whether the company has traded or invested in Crypto Currency or Virtual Currency

Section 197 and Schedule V of Companies Act, 2013

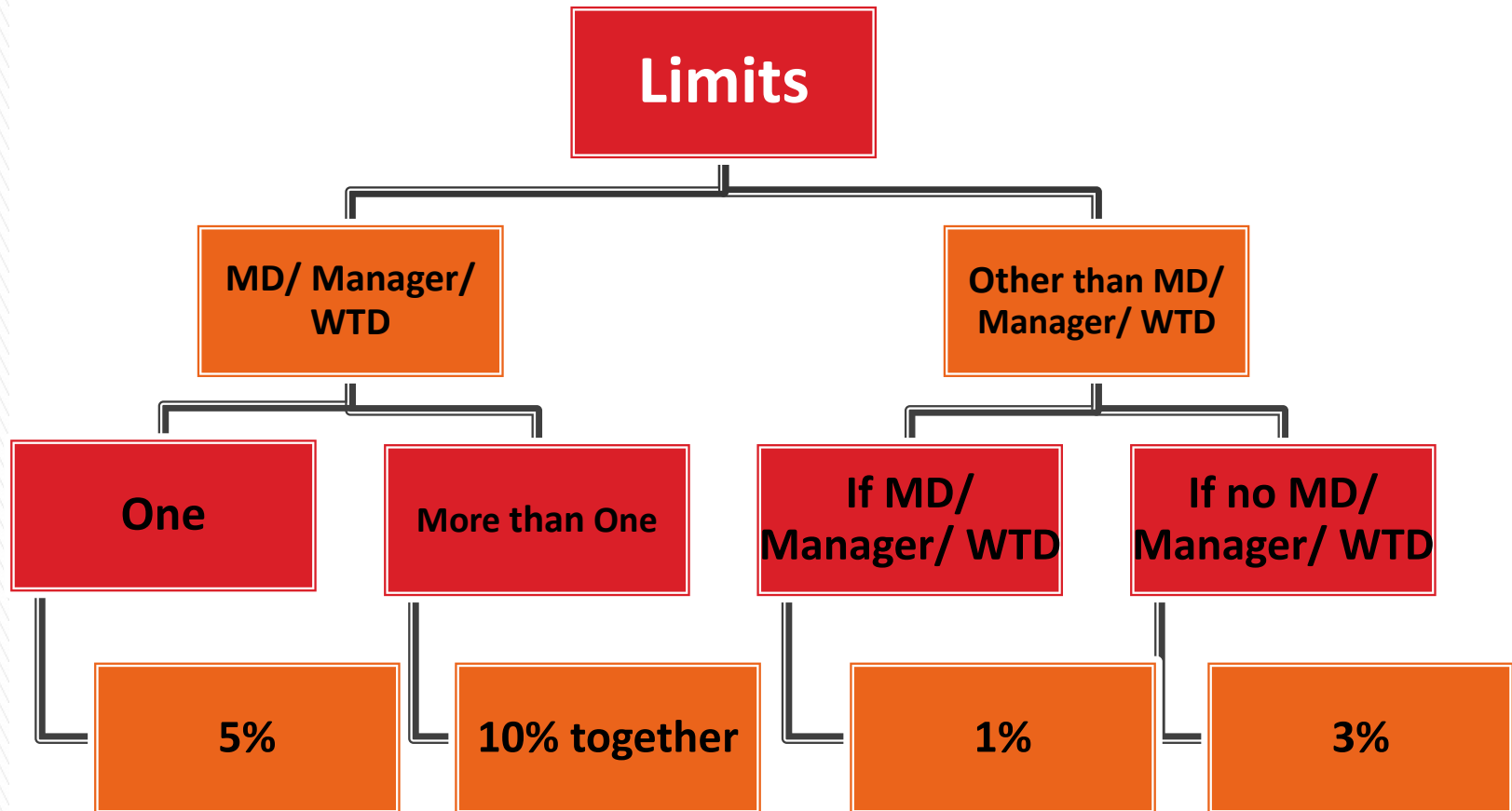
Overall Limit of remuneration by a Public Company in a Financial year is 11% of Net Profit

Net profit is as per Section 198 of the Act

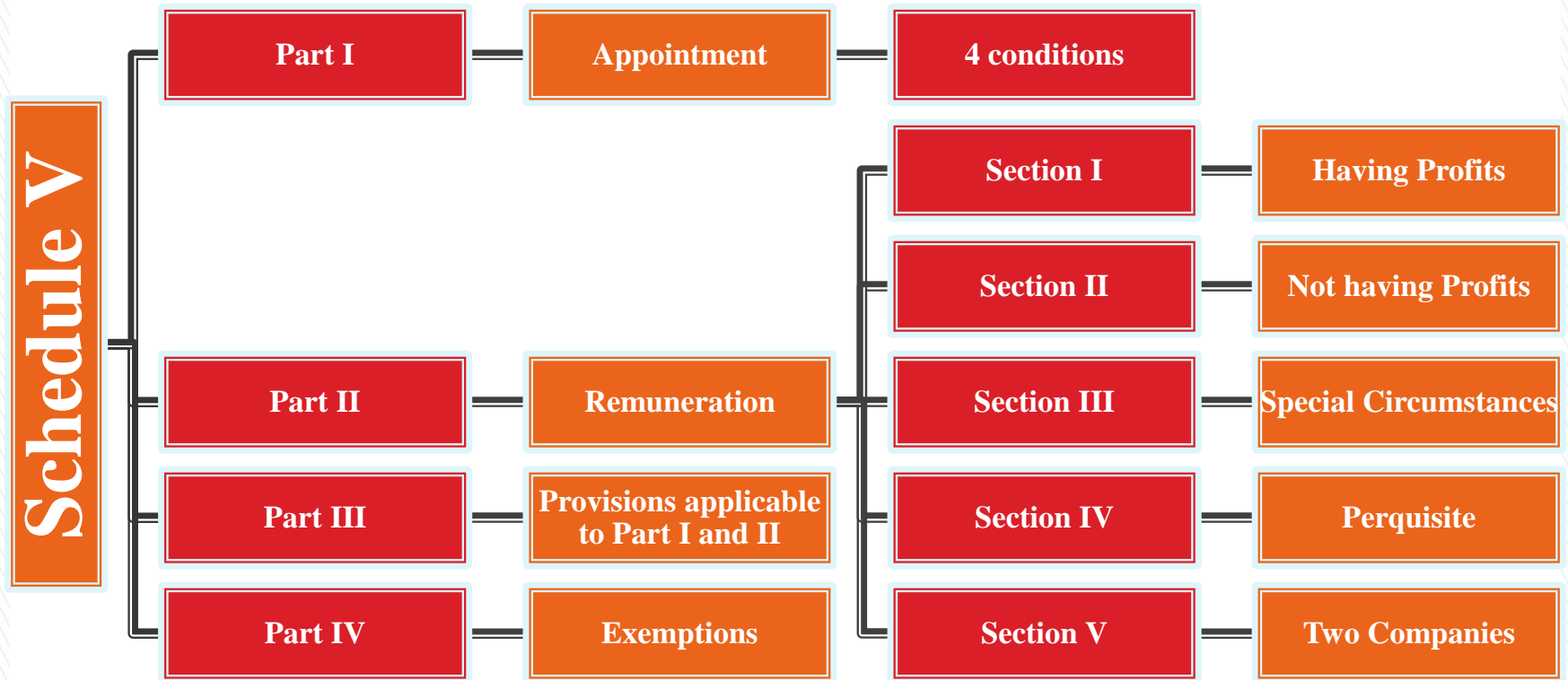
can pay more than 11% of net profits

No approval from the Central Government is required now Except for Part I of Schedule V

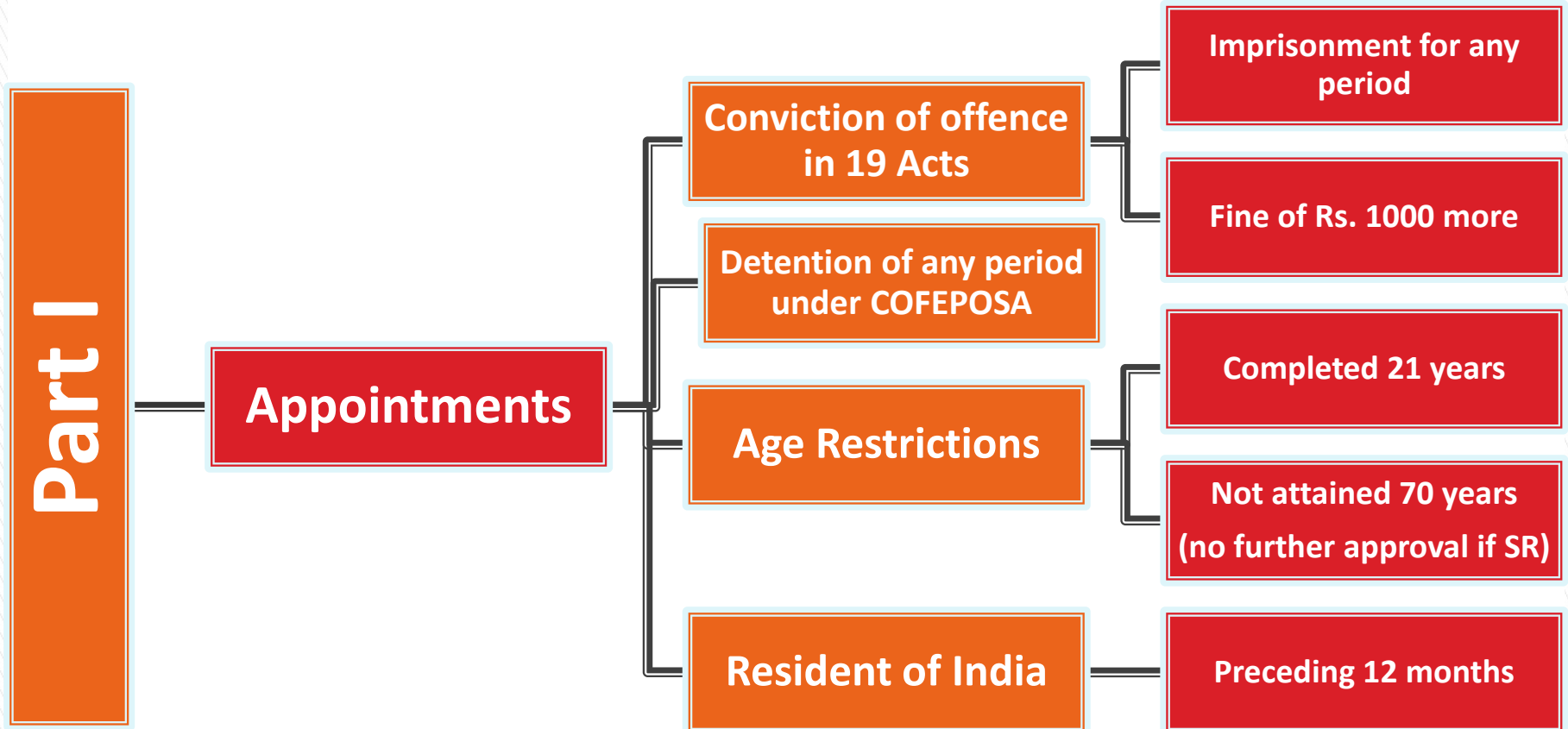
Section 197 and Schedule V of Companies Act, 2013



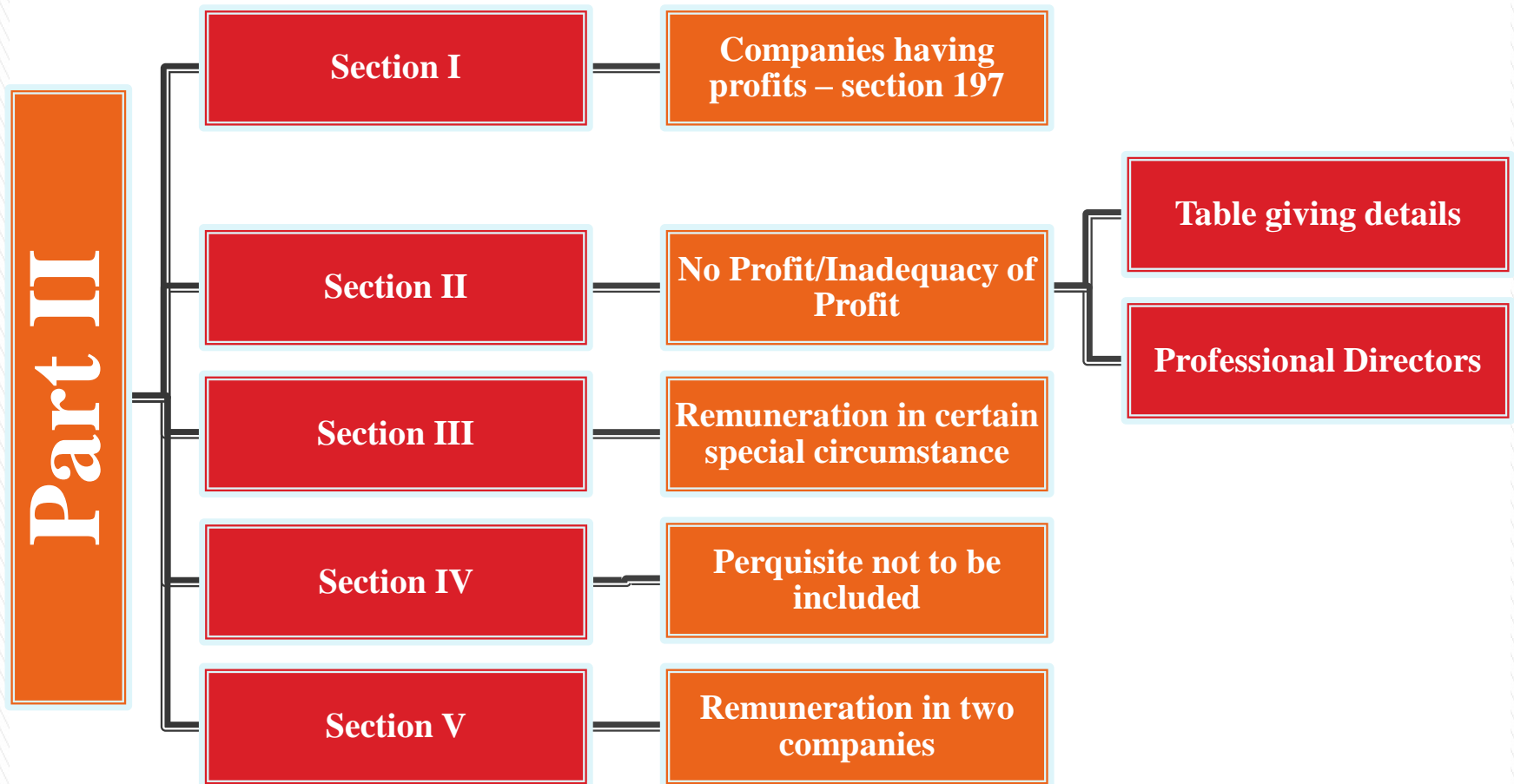
Section 197 and Schedule V of Companies Act, 2013



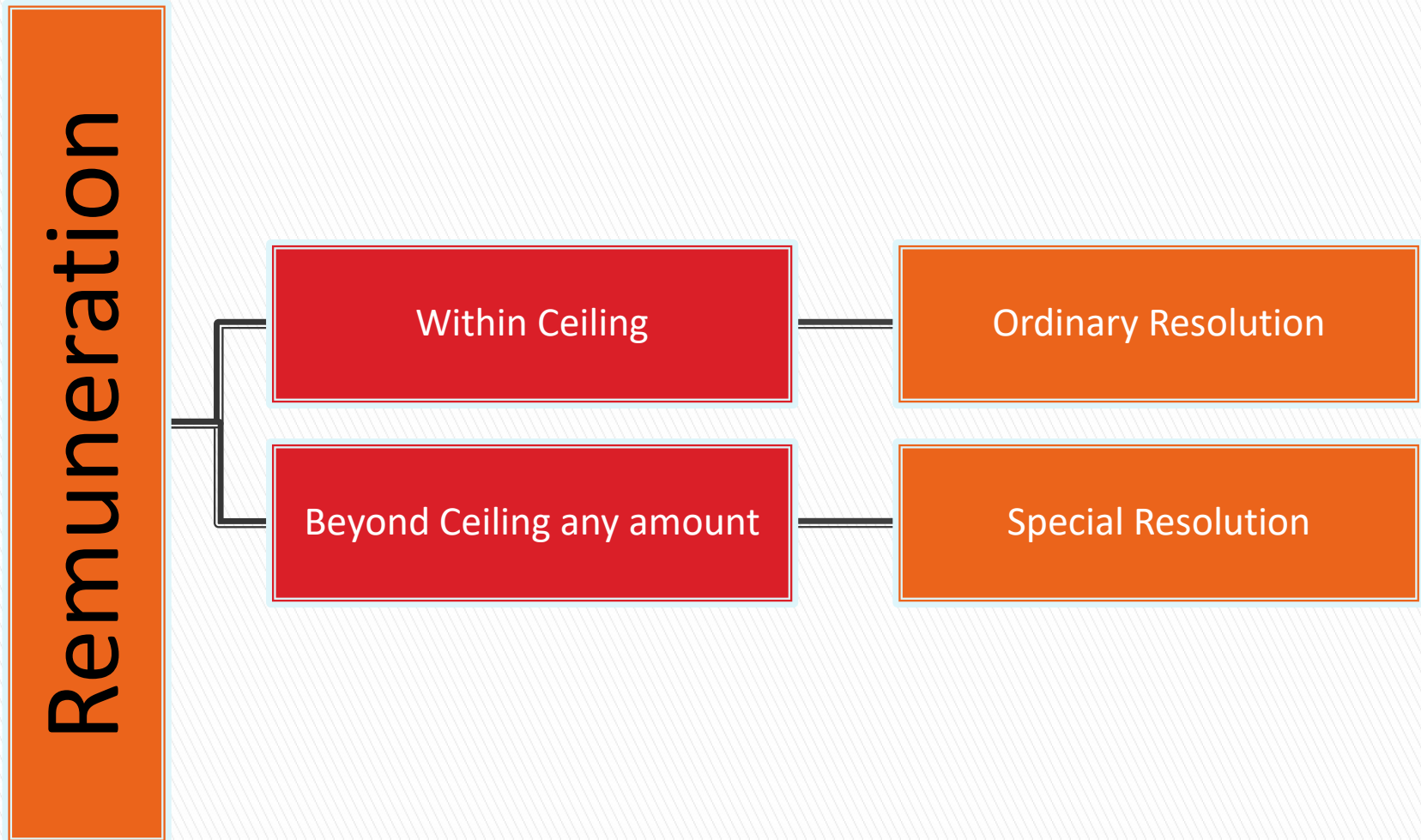
Schedule V relating Appointment



Section 197 and Schedule V of Companies Act, 2013



Schedule V relating Appointment



Schedule V relating to Remuneration

Effective capital	Limit yearly remuneration in Rs. (in case of Managerial Personnel)
Negative or less than 5 crore	60 lakhs
5 crores and above but less than 100 crores	84 lakhs
100 crores and above but less than 250 crores	120 lakhs
250 crores and above	120 lakhs plus 0.01% of effective capital in excess of Rs. 250 crore

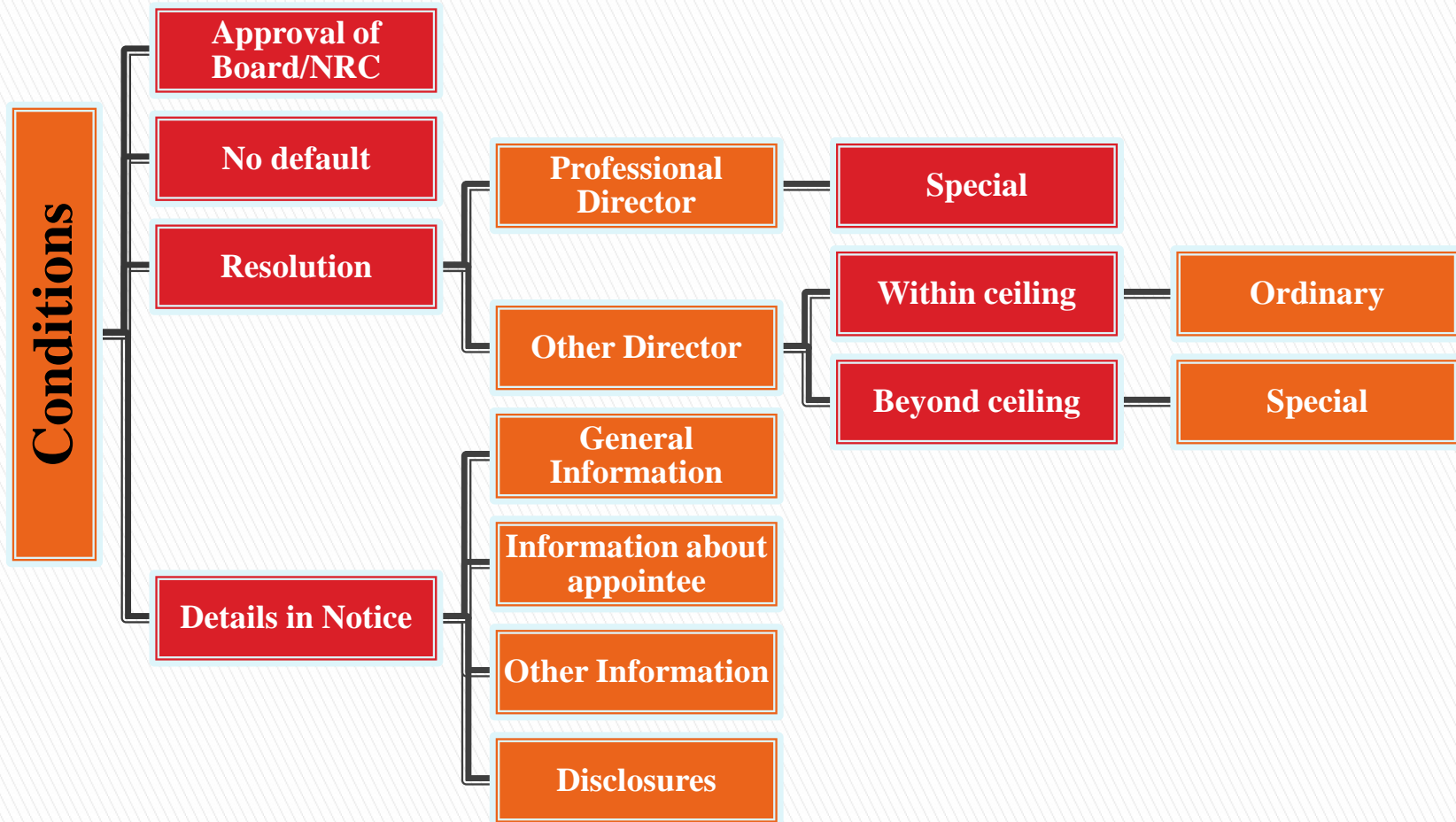
Effective capital	Limit yearly remuneration in Rs. (in case of Other Directors)
Negative or less than 5 crore	12 lakhs
5 crores and above but less than 100 crores	17 lakhs
100 crores and above but less than 250 crores	24 lakhs
250 crores and above	24 lakhs plus 0.01% of effective capital in excess of Rs. 250 crore

Meaning of Effective Capital as per Schedule V of Companies Act, 2013

Effective capital means The aggregate of the:

- Paid-up share capital (excluding share application money or advances against shares);
- Share premium account;
- Reserves and surplus (excluding revaluation reserve);
- long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements)
- Reduced by the aggregate of :
 - any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities),
 - accumulated losses and preliminary expenses not written off.

Section 197 and Schedule V of Companies Act, 2013



Remuneration in case of Inadequacy or losses

Earlier Schedule V
was only for Managerial
Remuneration

- Having Profits or inadequate profits

18th March 2021

CAA 2021 provisions
amending Section 149 and
197 are notified and Schedule
V is now applicable to
NED and ID also

- Having Profits or inadequate profits

Managerial Remuneration under Schedule V – Remuneration from more than one Companies

Subject to the provisions of Sections I to IV of
Schedule V,

*provided that the total remuneration drawn from the
companies does not exceed*

*the higher maximum limit admissible from any one of the
companies of which he is a managerial person*

Schedule V of Companies Act, 2013

Approval by a Resolution of the Shareholders in general meeting

Certificate of Auditor or the Secretary or PCS certifying that the requirements of Schedule V have been complied with

Such certificate to be filed with the Form filed with RoC

Exemption
Central Government may exempt any class or classes of companies from any of the requirements contained in this Schedule

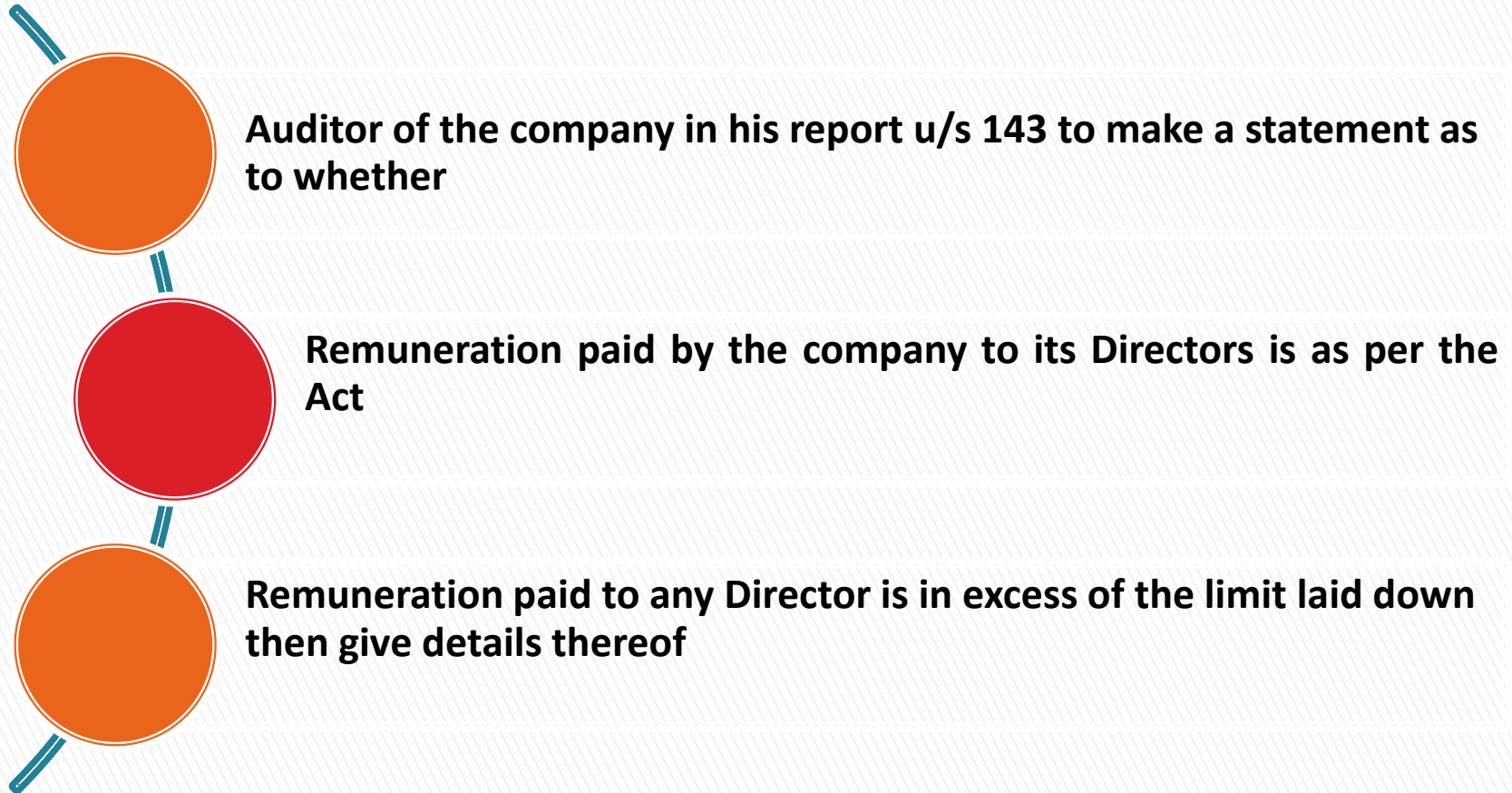
Provisions of Schedule V applicable incase of services offered by Directors in other capacity

Remuneration to Directors for Services

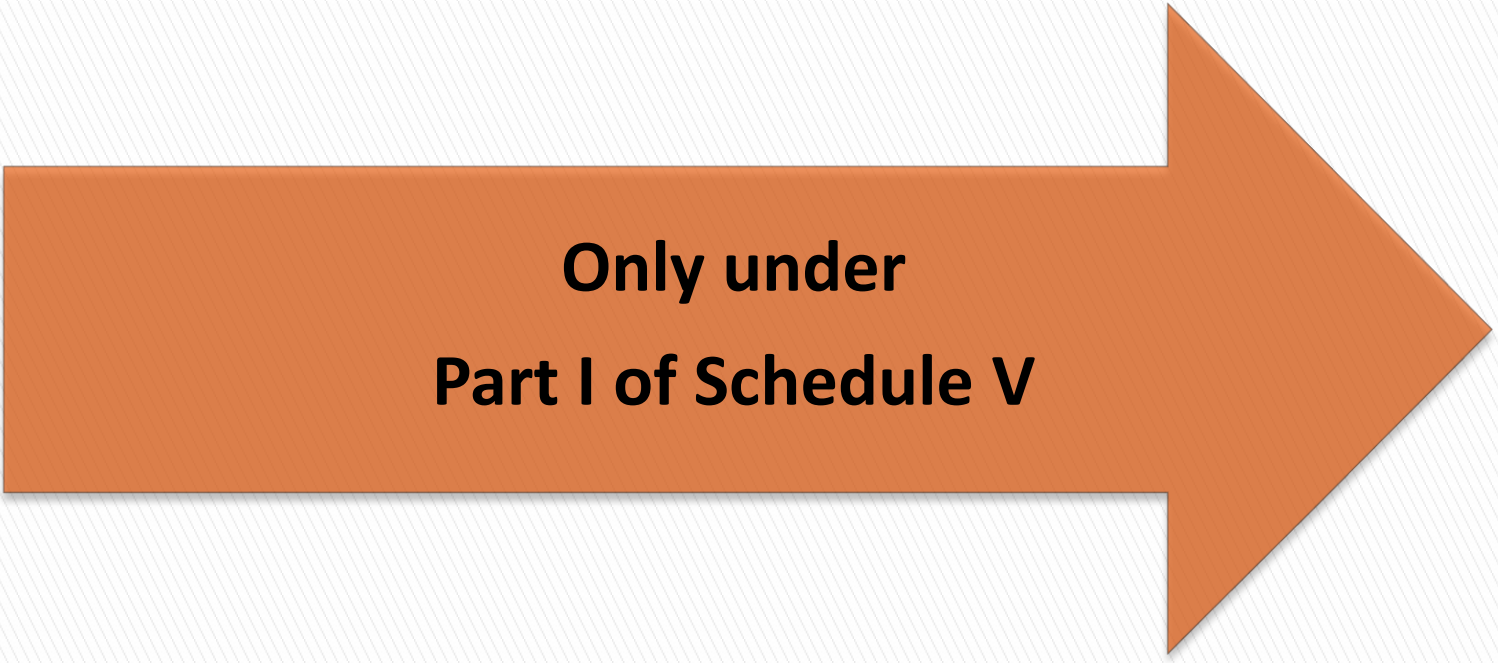
If Professional nature

Approval of NRC

Auditors Responsibility under Schedule V of CA 2013



Application to CG for only appointment



**Only under
Part I of Schedule V**

Remuneration to NED and ID -18/3/2021 Notification

Remuneration to NED and ID-18 March 2021 Notification:

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

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**

Remuneration to NED and ID-18 March 2021 Notfn

Remuneration to NED and ID

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 – amended on 18th March 2021

As per effective capital-
company can pay from Rs.12 Lac pa to Rs. 24 lakhs
plus 0.01% of the effective capital in excess of Rs. 250 Crores:

Non – Executive Directors

Non-executive Directors of a company can be paid remuneration (besides sitting fees) **within prescribed limit**.

The payment beyond the prescribed limit can be made with permission of shareholders by way of **Special Resolution**.

Section 197(6) explicitly provides that a Director or Manager may be paid remuneration either by way of a **monthly/quarterly/half-yearly payment** or at a specified percentage of the Net Profits of the company or partly by **one way and partly by the other**.

Non – Executive Directors

Hence NED's can be paid remuneration either by way of commission after the end of a financial year on the basis of Net Profit computed in accordance with section 198 or quarterly/half-yearly remuneration or partly by one way and partly by another way.

A company may pay a fixed monthly remuneration and pay more in lump-sum after the amount of Net Profit is available, but the total remuneration paid must be within the limit of 1% or 3% as applicable.

NFRA --List (Provisional) of Data Base of Companies as of 31.03.2019

National Financial Reporting Authority (NFRA), a regulatory body that oversees **Public Interest Entities** as regards their compliances to accounting and auditing standards,

has compiled a provisional Data Base of companies and their Auditors as of 31 March 2019 .

This Data base includes total 6500 companies.

This has been published on the website of NFRA

1. 5300 listed companies
2. 1000 unlisted companies &
3. 200 Insurance and Banking companies

NFRA --List (Provisional) of Data base of Companies as of 31.03.2019

- Listed Companies (In India or overseas)
- Unlisted Public Companies
- having paid-up capital > Rs.500 crores or
- having Annual Turnover of > Rs.1000 crores or
- having in aggregate, outstanding loans, debentures and deposits of >Rs.500 crores as on the 31st March of immediately preceding financial year.
- Insurance companies,
- Banking companies,
- companies engaged in the Generation or Supply of Electricity,
- companies Governed by any Special Act for the time being in force or
- bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act

List (Provisional) of Companies within the scope of NFRA dated 4th May, 2021

PUBLIC INTEREST ENTITIES

NFRA publishes provisional database of companies, auditors

OUR BUREAU

New Delhi, May 7

The National Financial Reporting Authority (NFRA), a regulatory body that oversees public interest entities as regards their compliance to accounting and auditing standards, has compiled a provisional database of companies and their auditors as of March 31, 2019.

This includes about 6,500 companies comprising listed companies (around 5,300), unlisted companies (around 1,000), and insurance and banking companies.

Available on website

The auditor details for many of these companies have been compiled while for the remaining cases, this exercise is

in progress. This provisional data has been published on the website of the NFRA (https://www.nfra.gov.in/nfra_domain), an official release said. This data will be updated/revised going forward based on the collection of further data and information. "Similar exercise for compilation of the database as of March 31, 2020 will be undertaken shortly," release added.

Public interest entities group includes all listed companies, and large unlisted companies. To establish this database, the NFRA has been engaging with the Corporate Data Management (CDM) division of the Ministry of Corporate Affairs (MCA) and three recognised stock exchanges in India.

Condonation of Delay for co. restored

1. Introduction of Scheme namely Scheme for Condonation of Delay for companies **restored with RoC** between 1st December, 2020 to 31st December, 2020 by NCLT u/s 252 of the Act
2. Condone delay in filing forms with RoC with additional fees.
3. Scheme is operational from 1st February, 2021 and will be available for filing any overdue e-forms till 31st March, 2021.

Condonation of Delay for co. restored

- Circular provides for relaxation on levy of additional fees upto **15th February, 2021** for filing of e-forms AoC-4, AoC-4 (CFS), AoC-4 (XBRL) and AoC-4(Non XBRL) in respect of FY ended on 31st March, 2020.
- Only **normal fees** shall be payable for the filing of the aforesaid e-forms during the said period.

PPIRP UNDER IBC 2016

The Country wide lock down from March 2020 adversely affected MSME. To protect small businesses

(a) the minimum amount of default to file an Insolvency Application was increased by CG from **Re. 1 lakhs** to **Rs. 1 Crores** and

(b) It was notified that no Application for initiating Insolvency to be filed for any default arising **after March 25, 2020** till **March 24, 2021**. During this period MSME were also insulated.

PPIRP UNDER IBC 2016

Meanwhile CG had changed the **criteria for MSME**,

Any enterprises having investment in Plant and Machinery or Equipment up to Rs.50 crore and turnover up to Rs.250 crore would be considered under MSMEs.

With this definition, about 70% of companies would fall in the ambit of MSME

PPIRP UNDER IBC 2016

- ▶ The period of insulating MSME expired on March 24, 2021 and to save viable units during Pandemic, on April 04, 2021 an Ordinance was promulgated by the President amending IBC, 2016 by adding a new Chapter III A (Section 54A to 54P) to implement settlement framework under IBC in the form of ***Pre-packaged insolvency resolution process (PPIRP)***. PPIRP shall provide speedier resolutions and hence a new Chapter under IBC was added with all checks and balances.
- ▶ Further on 09th April 2021 the Central Government has specified ***Rs.10 Lakh as the minimum amount of default*** for the matters relating to the Pre-Packaged Insolvency Resolution Process (PPIRP) of Corporate Debtor under Chapter III-A of IBC 2016

PPIRP UNDER IBC 2016

PPIRP is definitely a boon to MSME sector in India and ***provide a chance to promoter to save their enterprise.***

Pre-Pack or PPIRP is nothing but ***consensual restructuring*** where there is mutual agreement between CD and Creditors (Informal) and ***then judicial approval*** of Adjudicating Authority (Formal)

In case of PPIRP, it's only ***Corporate Debtor (CD)*** and not the Creditors who can file the Application and submit Base Resolution Plan (BRP).

The entire process of PPIRP to be completed in maximum **120 days** unlike CIRP which can go up to 330 days or beyond.

PPIRP UNDER IBC 2016

Applicable provisions for PPIRP

Insolvency and Bankruptcy Code, 2016 (IBC,2016)

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021

Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021

Company Incorporation – Form SPICe+

On March 05, 2021 –MCA notified The Companies (Incorporation) Third Amendment Rules, 2021 – GST application with Aadhar Authentication

(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**.

Company Incorporation – Form SPICe+

On **June 7, 2021** MCA has notified the Companies (Incorporation) Fourth Amendment Rules, 2021.

As per the amendment under Rule 38A the application for incorporation of a company under Rule 38 shall be accompanied by e-form [AGILE-PRO-S] (INC-35) containing an application for registration of **Shops and Establishment Registration** number also.

Accordingly Form INC-35 has been amended to incorporate the amendment which includes **registration of Shops and Establishment.**

Circular No. 1 dt January 13, 2021

Clarification on spending CSR Funds for COVID-19 awareness

Spending of CSR funds for carrying out awareness campaign/ programmes or public outreach campaigns on COVID -19 vaccination programme

is an eligible CSR activity subject to fulfilment of the Companies (CSR Policy) Rules, 2014.

Circular No. 5 dt April 22, 2021

Clarification on spending of CSR funds

MCA clarified that companies spending CSR fund on activities on “setting up makeshift hospitals and temporary COVID Care Facilities” shall be considered as an eligible CSR activity.

Latest Circular No. 9 dt 03 May 2021

Circular No. 9/2021 dated 03.05.2021 MCA further clarified that spending of CSR funds for

‘creating health infrastructure for COVID care’,

‘establishment of medical oxygen generation and storage plants’,

‘manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities

are eligible CSR activities relating to promotion of health care, including preventive health care, and, disaster management.

Latest Circular No. 9 dt 03 May 2021

MCA clarified

- That any contribution to specified R & D projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.
- That the companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to compliances

Latest Circular dt 20 May 2021

MCA on May 20, 2021 had issued a Circular clarifying on offsetting the excess CSR spent for FY 2019-20

(any spend made on 30th March 2020 in FY 2019-20 which is in excess can be set off against the mandatory spent in FY 2020-21)

On March 30, 2020 Indian Government had made an Appeal to MDs/CEOs of top 1000 companies in terms of market capitalization, to contribute generously to “*Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund*” (PM CARES Fund) for Covid related use.

Latest Circular dt 20 May 2021

In Appeal it was said that such contribution may, inter-alia, include the unspent CSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, which can later be offset against the CSR obligation arising in subsequent financial years.

In pursuance to the said appeal, certain companies claimed to have contributed CSR funds to the 'PM CARES Fund' over and above their prescribed CSR amount for FY 2019-20.

Latest Circular dt 20 May 2021

Circular dated 20th May 2021 that where a company has contributed any amount to 'PM CARES Fund' on 31.03.2020, which is over and above the minimum amount it has to spend on CSR

Then such excess amount or part thereof is offset against the requirement of a company for mandatory CSR spend in FY 2020-21, then the same shall not be viewed as a violation subject to following **three conditions**.

- (1) the amount offset as such shall have factored the unspent CSR amount for previous FY, if any;
- (2) the CFO to certify that the contribution to "PM-CARES Fund" was indeed made on 31st March, 2020 in pursuance of the appeal and the same shall also be so certified by the Statutory Auditor of the company; and
- (3) the details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of section 134 (3) (o) of the Companies Act, 2013 with respect to CSR.





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