



# The Companies Act 2013

*Enlightening Nation*

## E-newsletter

NOVEMBER, 2018

### About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the November month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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## **National Financial Reporting Authority Rules, 2018**

### **✚ Introduction**

The National Financial Reporting Authority (NFRA) is a body constituted under the provisions of Section 132 of the Companies Act, 2013. The constitution of this authority is effective from 1st October 2018. According to Section 132 of Companies Act 2013, "NFRA is responsible for recommending accounting and auditing policies and standards in the country, undertaking investigations, and imposing sanctions against defaulting auditors and audit firms in the form of monetary penalties and debarment from practice for up to 10 years.

### **✚ Why NFRA came into existence?**

After the Satyam scandal took place in 2009, the Standing Committee on Finance proposed the concept of the National Financial Reporting Authority (NFRA) for the first time in its 21st report. After that non-performing assets (NPA) situation illustrates all that is wrong with auditing. Even banks are subject to different kinds of Audit (e.g. Concurrent/Branch/Stock audit etc.) yet NPAs are at alarming levels. Tax evasion have played major roles in bringing the NFRA into existence. Also, Most of the major economies of the world have independent audit regulators and therefore, India also needs to match up with them as well.

So, Companies Act, 2013 then gave the regulatory framework for its composition and constitution.

The Union Cabinet approved the proposal for its establishment on 1 March 2018. The establishment of NFRA as an independent regulator for the auditing profession will improve the transparency and reliability of financial statements and information presented by listed companies and large unlisted companies in India.

### **Key aspects specified by the NFRA rules:**

- Classes of companies and bodies corporate governed by the NFRA Authority,
- Functions and duties of NFRA,
- Annual return,
- Recommending accounting standards and auditing standards,
- Monitoring and enforcing compliance with accounting standards and auditing standards,
- Overseeing the quality of Audit service and suggesting measures for improvement,
- Power to investigate,
- Disciplinary proceedings,
- Manner of enforcement of orders passed in disciplinary proceedings,
- Punishment in case of non-compliance
- Role of chairperson and full-time members
- Advisory committees, study groups and task forces
- Financial reporting advocacy and education

### **Which Companies will be covered by NFRA?**

NFRA has the power to investigate and also conduct quality reviews for a certain prescribed class of companies. While the draft NFRA Rules have not been prescribed yet, they would include the following class of companies if implemented as it is:

- Companies listed in India.
- Unlisted Companies whose:
  - ✓ Net worth  $\geq$  Rs. 500 crore; or
  - ✓ Paid up Capital  $\geq$  Rs. 500 crore; or
  - ✓ Annual turnover  $\geq$  Rs. 1000 crore (As on 31st March of the preceding financial year); OR
  - ✓ Companies whose securities are listed outside India
- All Banks/ Insurance/ Electricity Companies;
- Any Company or Person (Auditor), on a reference made to the Authority by the Central Government in public interest;
- Foreign Subsidiary/Associate company of Any Indian Company as mentioned in above 4 points if Income/Net worth of such Foreign Subsidiary/Associate company exceeds 20% of consolidated Income/Net worth of Above mentioned Indian companies.

### **Filing of NFRA-1**

Every existing body corporate other than a company governed by these rules, shall inform the Authority within thirty days of the commencement of these rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

Every Body Corporate other than Company as defined u/s 2(20) formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139, inform the Authority in Form NFRA-1, the particulars of the auditor appointed by such body corporate.

Once a Company falls under the above limits under NFRA, will be covered by NFRA for 3 More years EVEN IF LIMITS ARE REDUCED/ LISTED STATUS CHANGES LATER ON.

### **Exemption from NFRA-1**

- Private company or any other company which is not regulated by NFRA.

### **Composition of the NFRA**

The Companies Act requires the NFRA to have a chairperson who will be appointed by the Central Government and a maximum of 15 members.

The terms and conditions relating to the appointment of the chairperson and members have not yet been prescribed. However, the draft NFRA rules outline the following composition of the authority:

1. Chairperson is a Chartered Accountant and a person of eminence having expertise in accountancy, auditing, finance or law;
2. Member – Accounting;
3. Member – Auditing;
4. Member – Enforcement;
5. One representative of the MCA not below the rank of Joint Secretary or equivalent (ex-officio)
6. One representative of RBI, being a member of the RBI Board is to be nominated by the RBI;
7. One representative of SEBI, being the Chairman of SEBI or whole-time member of SEBI is to be nominated by SEBI;
8. A retired chief justice of high court or a person who has been the judge of a high court for more than 5 years is to be nominated by the Central Government,
9. President of the Institute of Chartered Accountants of India (ex-officio)

## **Investigating power of NFRA**

The NFRA also holds the power of investigation of a certain class of bodies corporate or persons (auditors) in relation to matters of professional or other misconduct by a member or firm of Chartered Accountants or auditors.

In this regard, as per the draft NFRA rules, the auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network/brand to which it belongs) whether directly or indirectly, are covered:

- Audit of  $\geq 200$  companies in a year;
- Audit of  $\geq 20$  listed companies;
- Company or companies (whether listed or not), having:
  - Net Worth  $\geq$  Rs. 500 crores; or
  - Paid up Capital  $\geq$  Rs. 500 crores; or
  - Annual turnover  $\geq$  Rs. 1000 crores;(As on 31st March of the immediately preceding financial year); OR
  - Company or Companies listed outside India

Note: The above restriction of companies will not apply where:

- A reference is made by the Central Government or any regulator to the NFRA to conduct such an investigation; or
- The NFRA by itself decides to conduct an investigation in public interest

## **Powers under Section 132 of the Companies Act, 2013**

- ✓ **Monitoring and Regulating Powers** –Recommend Central Government w.r.t. Accounting Standards and Auditing Standards and checking proper compliance of the same.
- ✓ **Investigating and Summoning Powers** –Investigation of audit firms, summoning and enforcing attendance, Inspection of records.
- ✓ **Penalizing Powers** –Individual Auditors (INR 1 Lakh to 5 times of Fees), Firm of Auditors (INR 5 Lakhs to 10 times of Fees).
- ✓ **Debarring Powers**--Debarring from Practice as a member of ICAI for a period of 6 months to 10 years.

### **Functions and Duties of NFRA**

- Maintain details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3;
- Recommend accounting standards and auditing standards for approval by the Central Government;
- Monitor and enforce compliance with accounting standards and auditing standards;
- Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;
- Promote awareness in relation to the compliance of accounting standards and auditing standards;
- Co-operate with national and international organizations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and
- Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

### **Conclusion**

The purpose of these rules is to regulate the auditors of certain class of companies, But the present rules are creating the responsibility of filing form NFRA – 1 on such class of companies which are outside the purview of these rules. The purpose and the present rules do not co-relate with each other. Further the e-form is not yet notified so it is expected that government will come out with certain clarification or revision in the rules. Though rules are notified still no further action can be planned at this stage.



### **A. THE COMPANIES (AMENDMENT) ORDINANCE, 2018 vide Notification Dated 02<sup>nd</sup> November, 2018:**

The Companies (Amendment) Ordinance, 2018 promulgated on November 02, 2018 thereby amending some of the sections of the Companies Act, 2013.

The Ordinance shall come into force at once as Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Giving effect to the recommendations placed in the Report of the Committee to review Offences under the Companies Act, 2013, the Companies (Amendment) Ordinance, 2018 provides much needed relief to the corporates and professionals alike by decriminalizing a host of offences. Considering re-categorization of certain 'acts' punishable as compoundable offences to 'acts' carrying civil liabilities, the Ordinance further promotes the Indian Government's intent to promote ease of doing business.

**[READ NOTIFICATION IN DETAIL](#)**

### **B. G.S.R.1108(E) Notification - Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, Dated – 13<sup>th</sup> November, 2018**

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-

1. (1) These rules may be called the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules"), in rule 1,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:-

“Short title, commencement and application”;

(b) after sub-rule (2), the following sub-rule shall be inserted, namely:-

“(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

**Explanation.-** It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.”.

**[READ NOTIFICATION IN DETAIL](#)**

**C. G.S.R.1111(E) Notification - National Financial Reporting Authority Rules, 2018, Dated – 13<sup>th</sup> November,2018**

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, sub-section (1) of section 139 and sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :-

**1. Short Title and Commencement.—**

(1) These rules may be called the National Financial Reporting Authority Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.—** (1) In these rules, unless the context otherwise requires, —

(a) “accounting standards” means the ‘accounting standards’ as defined in clause (2) of section 2 of the Act;

(b) “Act” means the Companies Act, 2013 (18 of 2013);

(c) “auditing standards” means the ‘auditing standards’ as defined in clause (7) of section 2 of the Act;

(d) “auditor” means an individual or a firm including a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009) or any other Act for the time being in force, who has been appointed as an auditor of a company or a body corporate under section 139 of the Act or under any other Act for the time being in force;

(e) “Authority” means the National Financial Reporting Authority constituted under sub-section (1) of section 132 of the Act;

(f) “chairperson” means the chairperson of the Authority;

(g) “Division” means a division established by the Authority for the purpose of organising and carrying out its functions and duties;

(h) “Form” means the Form annexed to these Rules;

(i) “full-time member” means a member who has been appointed as such under sub-section (3) of section 132 of the Act;

(j) “part-time member” means a member of the Authority other than a full-time member.

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

**[READ NOTIFICATION IN DETAIL](#)**



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