

# COMPANIES AMENDMENT RULE

# 2021

## DISCLAIMER

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The Ministry of Corporate affairs have issued some circulars towards the end of the financial year 2020-21 covering important areas like Disclosure of Financial Statements in Schedule II, need for audit trail for electronic books, Amendments in Managerial remuneration, Changes in audit and auditors rule etc.

We will look at the amendments in detail. In the below updates, are the changes to Schedule III that have not been dealt with.

## **1. Companies (Accounts) Amendment Rule 2021**

**Audit Trail through the system:** It was proposed in the Notification dated 24th March 2021 that, all companies which use accounting software for maintaining books of accounts should also ensure that there is sufficient recording of audit trail for transactions, log for changes made in the books of accounts and must ensure that the same has no facility to disable the same.

An audit trail is defined as a step-by-step sequential record which provides evidence of the documented history of financial transactions to its source. An auditor can trace the financial data of a particular transaction right from the general ledger to its source document with the help of the audit trail.

This was applicable from 1st April 2021 as per the said notification; however, a second amendment was proposed on 1st April deferring the applicability by 1 year. Hence, from now all companies must ensure that the accounting packages used by them give an audit trail and log of changes from 01st April 2022.

**Changes in Directors report:** The following two points have to be added in all directors' report for the accounts for the year ended 31st March 2021:

- The details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year.

- The details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

If no such situations exist for the company the directors must confirm that the same is not applicable to the company.

## **2. Companies (Audit and Auditors) Amendment Rule 2021 – notification dated 24th March 2021**

The Auditors of all the companies have an additional responsibility to report the following in the audit report given under section 143 of the companies act:

### **Additional points**

**(e) (i)** Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), 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 identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

**(ii)** Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, 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 Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

**(iii)** Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

**(f)** Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

**(g)** 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.

From the above we can see that clause “e” of the rule requires that the auditors ensure that in no way the Ultimate Beneficiary gets any benefit. This is to address the round tripping of funds from the primary company.

Under Clause “f” the auditors have to confirm the compliance of Sec 123 which is related to the dividend declared or paid during the year.

Clause “g” is a consequential amendment to Companies (Accounts) Amendment Rule 2021 which requires the auditor to ensure that there is audit trail in the accounting software maintained by the company. Since the applicability of the same has been deferred by a year there is a second amendment rule for Companies (Audit and Auditors) Amendment Rule 2021 which has amended clause g as follows:

Whether the company, in respect of financial year commencing from on or after 1st April 2022, 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.

### **3. Amendment to Schedule V - notification dated 18th March 2021**

MCA has amended the Schedule V of the Companies act, 2013 which deals with Managerial remuneration. Now the provisions of the schedule are not only applicable to Managerial persons but also to Directors. The limit permissible for the director to draw remuneration in case of no profits or inadequate profits is as follows:

<b>Sl. No.</b>	<b>Where the effective capital (in rupees) is</b>	<b>Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director</b>
<b>(i)</b>	Negative or less than 5 crores.	12 lakhs
<b>(ii)</b>	5 crores and above but less than 100 crores.	17 lakhs
<b>(iii)</b>	100 crores and above but less than 250 crores.	24 lakhs
<b>(iv)</b>	250 crores and above.	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:]”

Section 149 of The Companies Act was also amended to give impact to the above change in Schedule V. The newly inserted provision to sub section 9 now reads as follows:

“Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.”