

Corporate Law Update – March 2021

The following are few of the important updates in Companies Act 2013 during March 2021

I. Companies (Incorporation) Second Amendment Rules, 2021

G.S.R. 159(E) dated 5th March 2021 ð In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014.

The key changes in Companies (Management and Administration) Rules 2021 are :

- (i) Every Small company & One Person Company (OPC) will file their Annual Return referred as Abridged Annual Return in e-form MGT 7A from the Financial Year 2020 - 21.

After the proviso to sub rule 2 of Rule 20, definition of Nidhi companies and various other terms related to electronic voting has been provided.

This amended Rules shall come into force from 5th March 2021.

II. Commencement Notification with regard to the amendment in Sec 92

S.O. 1066(E).ð In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the day of 05th March, 2021 as the date on which the provisions of clause (i) of section 23 of the said Act shall come into force. i.e Section 92 of Companies Act, 2013 has been amended to include the provision for abridged form of annual return in addition to some omission in few sub sections.

i.e., the concerned sections as amended by the said amendment Act is notified on 5.3.2021.

III. Companies (Incorporation) Third Amendment Rules, 2021

G.S.R. 158(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:ð

In incorporation spice+ forms, INC 35 (AGILE PRO) enabled the option to authenticate through Aadhar for GSTIN Registration.

This amended Rule shall come into force from 5th March 2021.

IV. Amendment in Schedule V – Remuneration

S.O. 1256(E).ð In exercise of the powers conferred by sub-sections (1) and (2) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to Schedule V of the said Act.

The key changes in Schedule V with regard to remuneration to directors / KMP is

Where in any financial year during the currency of tenure of a managerial person or other director, a company **has no profits or its profits are inadequate**, it may, pay remuneration to the managerial person or other director **not exceeding**, the limits under (A) below:-

	(1)	(2)	(3)
Sl. No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(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:"

In Section I, Section II & Section III, after the words managerial personne , wherever occurred, the words or other directors shall be inserted except in Clause (i) of the proviso in Section III.

For this purpose **other director** shall mean Non-executive Director or an Independent Director.

This amendment shall come into force from 18th March 2021.

V. Commencement Notification with regard to the proviso to Sec 149 (9)

S.O. 1255(E). In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the 18th March, 2021 as the date on which the provisions of section 32 and section 40 of the said Act shall come into force. i.e.

Proviso to Sec 149 (9) has been amended as :

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

In short, the **non-executive / Independent Director may also receive remuneration** within the limit as provided in column (3) of the table given above in addition to sitting fees.

Section 197 (3) has been amended as

Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager **or any other non-executive director, including an independent director**, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V

This amendment shall come into force from 18th March 2021.

VI. Amendment to Schedule III – Format of Balance Sheet, P & L

G.S.R. (E).—In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in Schedule III to the said Act with effect from 1st day of April, 2021, namely:-

The Key Changes in the schedule excluding few terminology changes is given below for companies required to comply with the Companies (Accounting Standards) Rules, 2006 :-

Notes to Account to contain

- a) Change in Promoters shareholding to be given in the notes.

Shares held by promoters at the end of the year				% Change during the year***
S.No	Promoter name	No. of Shares**	%of total shares**	
Total				

- b) Trade Payable ageing to be given like

Particulars	Outstanding for following periods from due date of payment#				Total
	Less than 1 year	1-2 years	2-3 years	More than 3 years	
(i)MSME					
(ii)Others					
(iii) Disputed dues ó MSME					
(iv) Disputed dues - Others					

c) Trade Receivables ageing schedule to be like

Particulars	Outstanding for following periods from due date of payment#					Total
	Less than 6 months	6 months - 1 year	1-2 years	2-3 years	More than 3 years	
(i) Undisputed Trade receivables ó considered good						
(ii) Undisputed Trade Receivables ó considered doubtful						
(iii) Disputed Trade Receivables considered good						
(iv) Disputed Trade Receivables considered doubtful						

d) **Title deeds of Immovable Property not held in name of the Company to be given as in the below format**

Relevant line item in the Balance sheet	Description of item of property	Gross carrying value	Title deeds held in the name of	Whether title deed holder is a promoter, director or relative or promoter or employee of promoter / director	Property held since which date	Reason for not being held in the name of the company**
PPE -	Land Building					**also indicate if in dispute
Investment property -	Land Building					
PPE retired from active use and held for disposal	Land Building					
Others						

e) Capital Work in Progress ageing schedule to be given as per the below format.

CWIP	Amount in CWIP for a period of				Total*
	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Projects in progress					
Projects temporarily suspended					

f) For capital-work-in progress, whose completion is overdue or has exceeded its cost compared to its original plan, following **CWIP completion schedule** shall be given**:

CWIP	To be completed in			
	Less than 1 year	1-2 years	2-3 years	More than 3 years
Project 1 Project 2ö				

**Details of projects where activity has been suspended shall be given separately.

g) **Intangible assets under development aging schedule shall be given in the format**

Intangible assets under development	Amount in CWIP for a period of				Total*
	Less than 1 year	1-2 years	2-3 years	More than 3 years	
Projects in progress					
Projects temporarily suspended					

h) **Intangible assets under development completion schedule** shall be given

Intangible assets under development	To be completed in			
	Less than 1 year	1-2 years	2-3 years	More than 3 years
Project 1 Project 2				

Details of projects where activity has been suspended shall be given separately.

- i) The following disclosures to be also given
 - a. Details of Benami Property held
 - b. Wilful Defaulter details if any
 - c. Relationship with Struck off Companies if any,

Name of struck off Company	Nature of transactions with struck-off Company	Balance outstanding	Relationship with the Struck off company, if any, to be disclosed
	Investments in securities		
	Receivables		
	Payables		
	Shares held by stuck off company		
	Other outstanding balances (to be specified)		

- d. Registration of charges or satisfaction with Registrar of Companies
- e. Compliance with number of layers of companies
- f. Following ratios to be given
 - i. Current Ratio
 - ii. Debt Equity Ratio
 - iii. Debt Service Coverage Ratio
 - iv. Return on Equity Ratio
 - v. Inventory Turnover Ratio
 - vi. Trade Receivable Turnover Ratio
 - vii. Trade Payable Turnover Ratio
 - viii. Net Capital Turnover Ratio
 - ix. Net Profit Ratio
 - x. Return on Capital Employed
 - xi. Return on Investment

The company shall explain the items included in numerator and denominator for computing the above ratios. Further explanation shall be provided for any change in the ratio by more than 25% as compared to the preceding year.

- g. Utilisation of Borrowed funds and share premium:
- h. Details of Crypto Currency or Virtual Currency
- i. Details of undisclosed income disclosed to the department during assessment

For companies preparing financials as per INDAS as well as NBFC companies in addition to the above, there are changes in the "Statement of Changes in Equity."

This amendment shall come into force from 1st April 2021.

VII. Companies (Accounts) Amendment Rules, 2021

G.S.R. (E).—In exercise of the powers conferred by section 134 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 (Accounts) Rules, 2014, namely:ô

Rule 3 (1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

Proviso is added to this rule as ô Provided for the financial year **commencing from 1st April 2021** every company which uses accounting software for maintaining its books of account, **shall use only such accounting software** which has a feature of recording audit trial of each and every transaction, creating an edit log of each change made in the books of account along with the date when such changes were made ensuring that the audit trial cannot be disabled.

Rule 8 - The board report to contain the following also

xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code 2016, during the year and status as at the end of the financial year.

xii) the details of difference in valuation at the time of one time settlement and the valuation done at the time of taking the loan from banks / financial institutions with the reason thereof.

This amendment shall come into force from the *financial year commencing from 1st April 2021.*

VIII. Companies (Audit & Auditors) Amendment Rules, 2021

G.S.R. (E).—In exercise of the powers conferred by section 139, 143, 147 and 148 read with sub sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely:ô

The key changes is

- 1) Omitted the comment with regard to the Specified Bank Note.
- 2) New provisions as to comment on the management representation with reference to the loan extended / received by the company and investments.
- 3) Confirm as to the compliance of dividend declared during the year.
- 4) Confirm as to the usage of accounting software with audit trial.

This amendment shall come into force from 1st April 2021.

IX. Commencement Notification with regard to the Sec 124 (7) & 247 (3)

S.O. ---(E).ô In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the 24th March, 2021 as the date on which the provisions of section 23 and section 45 of the said Act shall come into force. i.e.

Sec 124 – Unpaid Dividend Account ó The penalty has been revised as per this new provision 7 of section 124

If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

Sec 247– Valuation by Registered Valuers - The penalty has been revised as per this new provision 3 of section 247

If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees.

This amended provisions shall come into force from 24th March 2021.

CA. M. ASIR RAJA SELVAN

asir.cs@gmail.com

9500003636

