National CMA Practitioners Convention - 2016

Role of CMA – COMPANIES ACT, 2013

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COMPANIES ACT, 2013: STRUCTURE

Chapter IX deals with Accounts of Companies

- Section 128 Books of account, etc. to be kept by company
- Section 129 Financial statement
- Section 130 Re-opening of accounts on Court's or Tribunal's orders
- Section 131 Voluntary revision of financial statements or Board's report
- Section 132 Constitution of National Financial Reporting Authority
- Section 133 Central Government to prescribe accounting standards
- Section 134 Financial statement, Board's report, etc.
- Section 135 Corporate Social Responsibility
- Section 136 Right of member to copies of audited financial statement
- Section 137 Copy of financial statement to be filed with Registrar
- Section 138 Internal audit

COMPANIES ACT, 2013: STRUCTURE

Chapter X deals with Audit and Auditors

- Section 139 Appointment of auditors
- Section 140 Removal, resignation of auditor and giving of special notice
- Section 141 Eligibility, Qualifications and disqualifications of auditors
- Section 142 Remuneration of auditors
- Section 143 Powers and duties of auditors and auditing standards
- Section 144 Auditor not to render certain services
- Section 145 Auditor to sign audit reports, etc.
- Section 146 Auditors to attend general meeting
- Section 147 Punishment for contravention
- Section 148 Central Government to specify audit of items of cost in respect of certain companies

COMPANIES ACT, 2013: STRATEGIC POSITIONS

Cost Accountant as a Key Managerial Person

- <u>Section 203</u> provides for the appointment of Key Managerial Person
 - Managing Director or Chief Executive Officer or manager and in their absence, a whole time director;
 - Company Secretary; and
 - Chief Financial Officer.

By virtue of qualification and experience, a Cost Accountant can become Key Managerial Person in the company.

Cost Accountant as an Independent Director

- <u>Section 149 (4)</u> provides that every listed public company shall have at least one third of total number of directors as independent directors.
- Rule 5 of the Companies (Appointment and Qualification of Directors)
 Rules, 2014 prescribes the qualification of an independent director who
 shall possess appropriate skills, experience and knowledge in one or
 more field of finance, law, management, sales, marketing,
 administration, research, Corporate Governance, technical operations or
 other disciplines related to the companies business.

The Cost Accountant having expertise in most of the above fields can become independent director as stipulated in the Companies Act, 2013.

COMPANIES ACT, 2013: STRATEGIC POSITIONS

- Technical Member of the Tribunal As per <u>Section 409 (3)</u>, a Cost Accountant in Practice having at least fifteen years service is eligible to be appointed as a Technical Member of the National Company Law Tribunal.
- Technical Member of the Appellate Tribunal As per Section 411(3), a Cost Accountant, either in employment or in practice, who is having experience of more than 25 years in the prescribed areas is eligible to be appointed as Technical Member of the National Company Law Appellate Tribunal.
- Company Liquidator Section 275 (2) provides that the provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting the names of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants or firms or bodies corporate having at least 10 years experience in company affairs.
- Administrator Section 259 (Chapter XIX dealing with revival of sick companies) of the Companies Act provides for the appointment of administrator. The said section provides that the interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a data bank maintained by the Central Government or any institute or agency authorized by the Central Government in a manner as may be prescribed consisting of the names of Company Secretaries, Chartered Accountants, Cost Accountants and such other professionals as may, by notification, be specified by the Central Government.

COMPANIES ACT, 2013: AUDIT AREAS

Cost Audit

- <u>Section 148</u> of Companies Act, 2013 empowers the Central Government to specify audit of items of cost in respect of certain companies.
- MCA has notified <u>Companies</u> (<u>Cost Records</u> and <u>Audit</u>) <u>Rules</u>, <u>2014</u>.
- For appointment of cost auditor, please also read <u>Rule 14</u> of the <u>Companies (Audit and Auditor) Rules, 2014</u>

COMPANIES ACT, 2013: AUDIT AREAS

- Internal Audit <u>Section 138</u> provides that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a Chartered Accountant or Cost Accountant or such other professional as may be decided by the Board.
- <u>Rule 13</u> of the <u>Companies (Accounts) Rules, 2014</u> provides that the following class of companies shall be required to appoint an internal audit or a firm of internal auditors, namely:-
 - Every listed company;
 - Every unlisted public company having-
 - Paid up share capital of Rs.50 crore or more during the preceding financial year; or
 - Turnover of Rs.200 crore or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or Public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year;;or
 - Outstanding deposits of Rs.25 crore or more at any point of time during the preceding financial year; and
 - Every private company having-
 - Turnover of Rs.200 crore or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or Public financial institutions exceeding Rs.100 crore at any point of time during the preceding financial year.

COMPANIES ACT, 2013 : OTHER PRACTICE AREAS

Cost Accountant as an Expert

- <u>Section 2(38)</u> defines the term 'expert' which includes an engineer, a valuer, a
 Chartered Accountant, a Company Secretary, a Cost Accountant and any
 other person who has the power or authority to issue a certificate in
 pursuance of any law for the time being in force.
- Section 211 (2) provides that the Serious Fraud Investigation Officer shall be headed by a Director and consists of such number of experts from the following fields to be appointed by the Central G overnment from amongst persons of ability, integrity and experience in
 - banking;
 - corporate affairs;
 - taxation;
 - forensic audit;
 - capital market;
 - information technology;
 - law; or
 - such other fields as may be prescribed.
- Cost Accountant by virtue of definition in <u>Section 2(38)</u> and having much experience in the above said field may be appointed as an expert.

COMPANIES ACT, 2013 : OTHER PRACTICE AREAS

Registered Valuers

- <u>Section 247</u> deals with registered valuers.
- Section 247(1) provides that where a valuation is required to be made 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 this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.
- Rules for this purpose are yet to be notified.
- Cost Accountant, by virtue of its qualification and experience, is likely to be included in the list of qualified professional for acting as a valuer.

COMPANIES ACT, 2013: OTHER PRACTICE AREAS

- Appearance before Tribunals The new Act replaces the Company
 Law Board and to establish National Company Law Tribunal and
 National Company Law Appellate Tribunal. Section 432 of
 the Act enables the Practicing Cost Accountant to appear before
 the Tribunal as well as before the Appellate Tribunal. The Tribunal
 to be established will take over the functions of the High Court in
 the matter of merger, amalgamations, winding up, revival of sick
 companies, etc. By this, the practicing area is going to be wide
 enough for the Cost Accountant in practice.
- Mediation and Conciliation Section 442 provides that the Central Government shall maintain a panel of experts to be called as Mediation and Conciliation panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act. Rules for this purpose are yet to be notified. However we may have hope that the role of Cost Accountants will be there.

- Section 7(1)(b): Declaration in the prescribed form no. INC.8. form no. & INC 14 that the memorandum and articles have been drawn as per the provisions and in conformity.
- Sections 7(1)(c), 168 & 170(2) and Rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014 Particulars of appointment of Directors and the Key Managerial Personnel and the changes among them in form no. DIR 12.
- Section 8: Declaration that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 in form No. INC.14.
- Section 11(1)(a) read with Rule 24 of the Companies (Incorporation) Rules, 2014- Declaration prior to commencement of business or exercising borrowing powers in form No. INC 21.
- Section 12(2) & (4) and Rule 25 and 27 of The Companies (Incorporation) Rules 2014- Notice of situation or change of situation of registered office in form no. INC 22.

- Section 39(4) and 42 (9) and Rule 12 and 14 Companies (Prospectus and Allotment of Securities) Rules, 2014- Return of Allotment in form no. PAS 3.
- Section 64(1) and pursuant to Rule 15 of the Companies (Share Capital & Debentures) Rules, 2014 - Notice to Registrar of any alteration of share capital in form no. SH 7.
- Sections 71(3), 77, 78 & 79 and pursuant to Section 384 read with the Companies (Registration of charges) Rules 2014
 - Rule 3 Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures in form no. CHG 9.
 - Rule 3(1) Registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Finance Assets and Enforcement of Securities Act, 2002 (SARFAESI) in form no. CHG 1.

- Section 82(1) and Rule 8(1) of the Companies (Registration of charges) Rules 2014- Particulars of satisfaction of charges thereof in form no. CHG 4.
- Section 94(1), 117(1) and section 192- The Companies Act, 1956-Filing of resolutions and agreements to the Registrar in form no. MGT 14.
- Section 137: Under form no. AOC-4 disclosure of related party transactions.
- Rule 8(8) of Companies (Registration Offices and Fees) Rules, 2014: Documents or form or application filed may contain a power of attorney issued to Cost Accountant.
- Nidhi Rules, 2014
 - Rule 5(2) Return of statutory compliances in form no. NDH 1.
 - Rule 5(3) Application for extension of time in form no. NDH 2.
 - Rule 21 Half yearly return in form no. NDH 3.

- Section 153 and & Rule 9(1) of The Companies (Appointment and Qualification of Directors) Rules, 2014 & Rule 10 of Limited Liability Partnership Rules, 2009: Digital verification of the Form DIR-3: Application for allotment of Director Identification Number
- Section 196 read with Section 197 and Schedule V of the Companies Act, 2013 and pursuant to Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 - Return of appointment of key managerial personnel in form no. MR-1.
- Section 196, 197, 200, 201(1), 203(1) and Schedule V & Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014- Form of application to the Central Government for approval of appointment and remuneration or increase in remuneration or waiver for excess or over payment to Managing Director or Whole Time Director or Manager and commission or remuneration to Directors in form no. MR-2.
- Section 232(7): Declaration of compliance alongwith Statement to be filed with Registrar of Companies.

- Section 455(1) read with Rule 3 of The Companies (Miscellaneous) Rules, 2014— Application to Registrar for obtaining the status of dormant company in form no. MSC 1.
- Section 455(5) and Rule 7 and 8 of the Companies (Miscellaneous) Rules, 2014- Return of dormant companies in form no. MSC 3.
- Rule 12 (1) of the Companies (Appointment and Qualification of Directors)
 Rules, 2014- Intimation of change in particulars of Director to be given to the
 Central Government in form no. DIR 6.
- Rule 12(2) of the companies (Registration offices and Fees) Rules, 2014-Form for filing an application with Registrar of Companies in form no. GNL 1.
- Rule 12(3) of the Companies (Registration offices and Fees) Rules, 2014-Particulars of person(s) or key managerial personnel charged or specified for the purpose of sub-clause (iii) or (iv) of clause 60 of Section 2 in form no. GNL 3.
- Rule 20(3)(ix) of the Companies (Management and Administration) Rules, 2014: Scrutinizer for supervising the Voting through electronic means (e-voting) process.
- Rule 31 of Companies (Incorporation) Rules, 2014- Notice of the order of the Court or any other competent authority in form no. INC 28.

- Cost Audit If any default is made in complying with the provisions of Section 148 -
- The company shall be punishable with fine which shall not be less than Rs.25,000 but which may extend to Rs.5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs.10,000 but which may extend to Rs.1 lakh or with both.
- The Cost auditor of the company who is in default shall be punishable with fine which shall not be less than Rs.25,000 but which may extend Rs.5 lakhs.

- If the Cost Auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than Rs.1 lakh which may extend up to Rs.25 lakhs.
- Further the Cost Auditor shall be liable to refund the remuneration received by him to the company and pay damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

• Auditing - Section 143 deals with the powers and duties of auditors and auditing standards. Section 143 (15) provides that if any auditor, cost accountant or company secretary in practice do not comply with the provisions of subsection(12), he shall be punishable with fine which shall not be less than Rs.1,00,000/- but which may extend to Rs.25,00,000/-

Nidhi Companies - Section 448 provides that if the Cost Accountant in practice for the purposes of certification in NDH-3 under Nidhi Rules, 2014 makes a statement which is false in any material particulars, knowing it to be false or which omits any material fact, knowing it to be material shall be liable under Section 447 which deals with punishment for fraud. According this section the Cost Accountant in practice shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud but which may extend to 3 times the amount involved in the fraud.

Company Liquidator - Since the Cost Accountant may act as a liquidator, it is necessary to know the penal provisions relating to Company liquidator.

- <u>Section 302</u> deals with dissolution of company by Tribunal. <u>Section 302 (4)</u> provides that the Company Liquidator makes a default in forwarding a copy of the order within the period specified the Company Liquidator shall be punishable with fine which may extend to Rs.5,000/- for every day during which the default continues.
- <u>Section 314</u> deals with the powers and duties of Company Liquidator in voluntary winding up. <u>Section 314 (8)</u> provides that if the Company Liquidator fails to comply with the provisions of this section, except sub-section (5) he shall be punishable with fine which may extend to Rs. 10,00,000/-.

COMPANIES ACT, 2013 : PENAL PROVISIONS Company Liquidator -

- <u>Section 316</u> deals with the Company Liquidator to submit report on progress of winding up. <u>Section 316</u> (2) provides that if the Company Liquidator fails to comply with the provisions of sub-section (1), he shall be punishable in respect of each such failure, with fine which may extend to Rs. 10,00,000/-;
- <u>Section 318</u> deals with final meeting and dissolution of company. <u>Section 318 (8)</u> provides that if the Company Liquidator fails to comply with the provisions of this section he shall be punishable with fine which may extend to Rs. 1,00,000/-;

Company Liquidator -

- <u>Section 344</u> deals with the statement that company is in liquidation. <u>Section 344 (2)</u> provides that if a company contravenes the provisions of this section, every officer of the company, the Company Liquidator and any receiver or Manager, who willfully authorizes or permits the non-compliance, shall be punishable with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 3,00,000/-.
- <u>Section 348</u> deals with the information as to pending liquidations. <u>Section 348(7)</u> provides that if a Company Liquidator makes willful default in causing the statement audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 1,00,000/-, or with both.

COMPANIES (COST RECORDS AND AUDIT) RULES, 2014

Salient Features of the New Rules

- The principles of maintenance of cost accounting records have been notified in the Rules in CRA-1
- The principles are in sync with the cost accounting standards
- The cost audit report is required to be in conformity with the "cost auditing standards" as referred to in Section 148 of the Act
- Compliance with Cost Auditing Standards requires compliance with cost accounting standards among others
- The Rules are principle based and no formats have been prescribed for maintenance of cost accounting records like pre-2011 industry specific rules or formats for the Regulated Industry

Salient Features of the New Rules

- Every sector where maintenance of cost accounting records have been prescribed are also covered under cost audit, subject to the prescribed threshold limits.
- Applicable to prescribed class of companies, including foreign companies, engaged in the production of the goods or providing services:
 - overall turnover from all its products and services of rupees thirty five crore or more during the immediately preceding financial year
 - In respect of medical devices not applicable to foreign companies having only liaison office
 - Not applicable to companies classified as a micro enterprise or a small enterprise including as per the turnover criteria under subsection (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

Salient Features of the New Rules

Applicability of Cost Audit – Regulated Sectors

- Overall turnover of the company for all products and services is Rs.50 crore or above
- If all sectors not under the coverage of the Rules overall turnover of the company for all products and services is Rs.50 crore or above and aggregate turnover of the products and/or services covered under the Rules is at least Rs. 25 crore.

Applicability of Cost Audit – Other than Regulated Sectors

- Overall turnover of the company for all products and services is Rs.100 crore or above
- If all sectors not under the coverage of the Rules overall turnover of the company for all products and services is Rs.100 crore or above and aggregate turnover of the products and/or services covered under the Rules is at least Rs. 35 crore.

Applicability of Cost Audit

Examples under difference scenarios

	Table A Products	Table B Products	Other Products	Total Turnover	Cost Records	Cost Audit
Case 1	5	10	19	34	No	No
Case 2	5	10	25	40	Yes	No
Case 3	10	15	26	51	Yes	Only A
Case 4	20	14	75	109	Yes	Only A
Case 5	20	20	61	101	Yes	Both A & B

APPICABLE FROM APRIL 1, 2014			
SI.	Industry /Sector/ Product/Service	CETA Heading	
1.	Telecommunication services	Not applicable	
2.	Electricity other than for captive generation	••••••	
3.	Petroleum Products	2709 to 2715;	
4.	Drugs and pharmaceuticals	2901 to 2942; 3001 to 3006.	
5.	Fertilisers	3102 to 3105.	
6.	Sugar and industrial alcohol	1701; 1703; 2207	

APPICABLE FROM APRIL 1, 2014

SI.	Industry /Sector/ Product/Service	CETA Heading
1.	Machinery and mechanical appliances used in defence, space and atomic energy sectors;	8401 to 8402; 8801 to 8805; 8901 to 8908
2.	Turbo jets and turbo propellers;	8411
3.	Arms and ammunitions;	3601 to 3603; 9301 to 9306.
4.	Propellant powders; prepared explosives; safety fuses; detonating fuses; percussion or detonating caps;	3601 to 3603
5.	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus;	8526
6.	Tanks and other armoured fighting vehicles funded to the extent of 90% or more by the Government or Government agencies;	8710

	APPICABLE FROM APRIL 1, 2014			
SI.	Industry /Sector/ Product/Service	CETA Heading		
7.	Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading and unloading services rendered by a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports under section 111 of the Major Port Trusts Act, 1963 (38 of 1963);	Not applicable.		
8.	Aeronautical services of air traffic management, aircraft operations, ground safety services, ground handling, cargo facilities and supplying fuel rendered by airports and regulated by the Airports Economic Regulatory Authority under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008);	Not applicable.		

APPICABLE FROM APRIL 1, 2014

SI.	Industry /Sector/ Product/Service	CETA Heading		
9.	Steel;	7201 to 7229; 7301 to 7326		
10.	Roads and other infrastructure projects corresponding to para No.(1) (a) as specified in Schedule VI of the Companies Act, 2013;	Not applicable.		
11.	Rubber and allied products being regulated by the Rubber Board	4001 to 4017		
12.	Railway or tramway locomotives, rolling stock, railway or tramway fixtures and fittings, mechanical (including electro mechanical) traffic signalling equipment's of all kind;	8601 to 8608.		
13.	Cement;	2523; 6811 to 6812		

APPICABLE FROM APRIL 1, 2014

SI.	Industry /Sector/ Product/Service	CETA Heading			
14.	Ores and Mineral Products;	2502 to 2522; 2524 to 2526; 2528 to 2530; 2601 to 2617			
15.	Mineral fuels (other than Petroleum), mineral oils etc.;	2701 to 2708			
16.	Base metals;	7401 to 7403; 7405 to 7413; 7419; 7501 to 7508; 7601 to 7614; 7801 to 7802; 7804; 7806; 7901 to 7905; 7907; 8001; 8003; 8007; 8101 to 8113.			
17.	Inorganic chemicals, organic or inorganic compounds of precious metals, rare-earth metals of radioactive elements or isotopes, and Organic Chemicals;	2801 to 2853; 2901; 2942; 3801 to 3807; 3402 to 3403; 3809 to 3824.			

	APPICABLE FROM APRIL 1, 2014			
SI.	Industry /Sector/ Product/Service	CETA Heading		
18.	Jute and Jute Products;	5303, 5310		
19.	Edible Oil;	1507 to 1518		
20.	Construction Industry as per para No.(5) (a) as specified in Schedule VI of the Companies Act, 2013 (18 of 2013)	Not applicable.		
21.	Health services, namely functioning as or running hospitals, diagnostic centres, clinical centres or test laboratories;	Not applicable.		
22.	Education services, other than such similar services falling under philanthropy or as part of social spend which do not form part of any business.	Not applicable.		

	APPICABLE FROM APRIL 1, 2014				
SI.	Industry /Sector/ Product/Service	CETA Heading			
23.	Production, import and supply or trading of following medical devices, namely:				
	Cardiac Stents, Drug Eluting Stents, Catheters, Intra	9018 to 9022			
	Ocular Lenses, Bone Cements, Heart Valves,				
	Orthopaedic Implants, Internal Prosthetic				
	Replacements, Scalp Vein Set, Deep Brain Stimulator,				
	Ventricular peripheral Shud, Spinal Implants, Automatic				
	Impalpable Cardiac Deflobillator, Pacemaker (temporary				
	and permanent), patent ductus arteriosus, atrial septal				
	defect and ventricular septal defect closure device,				
	Cardiac Re-synchronize Therapy, Urethra Spinicture				
	Devices, Sling male or female, Prostate occlusion				
	device, Urethral Stents				

SI. Industry /Sector/ Product/Service **CETA Heading** 24. Coffee and tea; 0901 to 0902 25. Milk powder; 0402 26. Insecticides; 3808 Plastics and Polymers; 3901 to 3914; 3916 to 3921; 3925 28. 4011 to 4013 Tyres and Tubes; 29. Paper; 4801 to 4802 30. Textiles; 5004 to 5007; 5106 to 5113; 5205 to 5212; 5303; 5310; 5401 to 5408; 5501 to 5516 Glass; 31. 7003 to 7008, 7011, 7016

APPICABLE FROM APRIL 1, 2015			
SI.	Industry /Sector/ Product/Service	CETA Heading	
32.	Other machinery;	8403 to 8487	
33.	Electricals or electronic machinery;	8501 to 8507; 8511 to 8512; 8514 to	
		8515; 8517; 8525 to 8536; 8538 to	
		8547.	

National CMA Practitioners Convention - 2016

THANKS & NOW YOUR TURN FOR QUESTIONS