Introduction

Recently various Circulars, Notifications were issued by the Ministry of Corporate Affairs (MCA) including the Companies Amendment Act, 2020. This article highlights and analyses the various changes which will impact the responsibilities of Auditors, preparation of new set of financial results, maintenance of accounts, and various other new reporting requirements introduced through the Circular. The Companies Amendment Act, 2020 got the assent of the Hon'ble President on 28th September, 2020 and is thus operative since that date. It was passed by the Lok Sabha on 19th September, 2020 and by the Rajya Sabha on 22nd September, 2020.

Impact of Companies Amendment Act, 2020

The following are the gist of the various amendments introduced which will have a impact on the Auditors and the preparation of financial results.

New Section 129A of the Companies Act -introduced

Section 129 A deals with specified unlisted entities to prepare and file periodical financial statements. This Section prescribes specified classes of unlisted companies to prepare and file their periodical financial results at a frequency that will be notified later.

Impact: This provision is aimed at improving corporate governance.

Section 140- Removal, Resignation of Auditor and Giving of Special Notice

As per Section 140 (3), If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees

Amendment Introduced

In section 140 of the principal Act, in sub-section (3), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted. Maximum liability for an auditor has been reduced from 5 lakh to 2 lakh.

Section 143- Powers and Duties of Auditors and Auditing Standards

Section 143(12)

Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

Section 143 (15)

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Amendment Introduced

In Section 143 of the principal Act, for sub-section (15), the following sub-section shall be substituted, namely:—

"(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12),

he shall— (a) in case of a listed company, be liable to a penalty of five lakh rupees; and (b) in case of any other company, be liable to a penalty of one lakh rupees."

Maximum liability for an auditor has been reduced from a) For listed company- from 25 lakh to 5 lakh. b) For any other company- from 25 lakh to 1 lakh.

Section 147— Punishment for Contravention

Section 147(2)-- If an auditor of a company contravenes any of the provisions of Section 139, Section 143, Section 144 or Section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees [or four times the remuneration of the auditor, whichever is less].

Amendment Introduced in Section 147 of the principal Act & Impact

(a) in sub-section (2), the words "Section 143" shall be omitted. Punishment of Section 143 has been provided in Section 143 itself, therefore, it has been omitted in Section 147. Therefore, the contravention of Section 143 does not fall under Section 147.

Section 129A – New Section Introduced-Periodical Financial Result by unlisted companies:

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,— (a) To prepare the financial results of the company on such periodical basis and in such form as may be prescribed; (b) To obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and (c) File a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Impact: Purpose of insertion of this section is to empower Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules. This will increase the work burden of these companies and will also have cost implications.

The Companies (Accounts) Amendment Rules, 2021 and Companies (Accounts) Second Amendment Rules, 2021

The Ministry of Corporate Affairs (MCA) vide its notification dated 24th March, 2021 and 1st April 2021 amended the Companies (Accounts) Rules, 2014. Under Rule 3(1) related to "Manner of books of account to be kept in electronic mode", following proviso shall be inserted and made applicable from 01.04.2022

> "Provided that for the financial year commencing on or after the 1st day of 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 trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled."

Matters to be included in the Board's Report

Two new clauses have been added viz., Rule 8(5)(xi) and Rule 8(5)(xii) with effect from 01.04.2021, namely:

> (xi) 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.
>
> (xii) 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.

Impact: The aforesaid disclosure in the Board's Report will enable the Investors and stakeholders to know about whether any application made or any proceeding pending under the IBC and also the difference in valuation of the company after the one time settlement, if done.

Broad scope of Auditors' reporting in Audit Report

The MCA has notified the Companies (Audit and Auditors) Amendment Rules, 2021 to include new scope of reporting by the Auditors in the Audit Report. Further, in Rule 11 of the Companies (Audit and Auditors) Rules, 2014, the following clauses are inserted after clause (d) w.e.f. 1.4.2021 except the last clause which is applicable from 1.4.2022.

(*a*) Whether the management has represented that, to the best of its 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.

(*b*) Whether the management has represented, that, to the best of its 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 Ultimate Beneficiaries.

(*c*) 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.

Impact: From the above, it can be concluded that auditors need to focus their attention on the funds advanced or loaned including foreign entities(Intermediaries) as well as funds received from any entity including foreign entities (Funding Parties) with reference to the entity and how auditors have considered reasonable or appropriate and how it should be documented to state if it contains any material mis-statement. For this purpose, auditors have to maintain and produce documentary evidence that they have followed all auditing procedures that are reasonable and also should hold or produce persuasive other evidence, other than one assertions and explanations.

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

(*e*) 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. (Applicable from 01.04.2022).

Impact: It is to be noted that the importance of reviewing and retaining evidence that has been gathered during an audit can never be overemphasised. Further, the series of Auditing Standards on audit evidence describes what is audit evidence and provides specific considerations for specific items. External confirmations such as bank balances and balances of trade receivables would have to be obtained. As there would be a lot of audit evidence available regarding the entity being audited, the auditor has to use various techniques, analytical procedures and sampling techniques to ascertain the quantum of evidence. The audit trail which is to be preserved by way of accounting software will help the auditor to quickly retrieve various findings etc. which is a welcome measure.

Amendments to Schedule III of the Companies Act, 2013

The Ministry of Corporate Affairs (MCA) has amended the Schedule III of the Companies Act, 2013 *With effect from 1st April, 2021* through notification dated 24th March, 2021.Schedule III of the

Companies Act 2013 contains the general instructions for preparation of Balance Sheet and Statement of Profit and Loss of a Company. The following are the key changes made by MCA:-

(*a*) Now companies have to round off the figures appearing in the financial statements, thereto it was optional. Further, the criteria for rounding off shall be based on "total income" in place of "turnover".

(*b*) Company shall disclose Shareholding of Promoters.

(*c*) Current maturities of Long term borrowings shall be disclosed separately.

(*d*) Trade Payables ageing schedule to be given.

(*e*) Trade Receivables ageing schedule to be given.

(*f*) Security deposits shall not be disclosed under 'Long term loans and advances' but disclosed under 'Other non-current assets'.

(*g*) The company shall disclose the reason of utilization of funds for the purposes other than for which they were borrowed and shall also disclose the purposes for which the funds were utilized.

(*h*) Company needs to disclose if the books of accounts are tallied with the quarterly or monthly returns filed with banker in cases where company has borrowed funds from banks on the basis securities of current assets, or else a separate reconciliation statement needs to be provided.

(*i*) The company shall provide the details of all the immovable property (other than properties where the Company is the lessee and the lease agreements are duly executed in favour of the lessee) whose title deeds are not held and where such immovable property is jointly held with others, details are required to be given to the extent of the company's share.

(*j*) In cases where revaluation has been done in case of Property Plant and Equipment, the company shall disclose if the valuation was done by registered valuer.

(*e*) Disclosures to be made where Loans or Advances in the nature of loans are granted to promoters, directors, Key Managerial Persons and related parties (loans given to promoters as a % of total loans)

(*k*) For Capital-work-in progress, ageing schedule shall be given

(*l*) For Intangible assets under development, aging schedule to be given.

(*m*) Disclosure of any proceedings initiated or pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 to be made.

(*n*) Where a company is a declared wilful defaulter by any bank or financial Institution or other lender, details to be given.

(*o*) Disclosure of any transactions with companies struck off

(*p*) Where any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.

(*q*) Following Ratios to be disclosed:
(a) Current Ratio (b) Debt-Equity Ratio (c) Debt Service Coverage Ratio (d) Return on Equity Ratio (e) Inventory Turnover Ratio (f) Trade Receivables Turnover Ratio (g) Trade Payables Turnover Ratio (h) Net Capital Turnover Ratio (i) Net Profit Ratio (j) Return on Capital Employed (k) Return on investment.

(*s*) Disclosure of Utilization of Borrowed funds and share premium to be given. Explanation is required if there's change of more than 25% as compare to preceding financial year.

(*t*) Further disclosures shall be made where the company has received funds from any persons or entities including foreign entities to further lend or invest or provide any guarantee, security to third parties.

(*u*) Where a scheme of arrangement has been approved, disclosure shall be made of the effect of the same on the books of accounts and any deviation from the accounting standards for the same.

Conclusion

The role of the Auditor has been enhanced and mandatory disclosure of various new clauses added to Schedule III of the Companies Act, 2013 will increase the transparency and will add value to the corporate governance regime. Various amendments and notifications cover an eclectic variety of areas and are comprehensive in their coverage to enable the Auditors of any company/entity to discharge their function with confidence. The disclosure on whether a company has defaulted any bank or financial institution and the details of the loan will enable the stakeholders to know upfront about the financial health of the company. Also, for investors and stakeholders, the disclosures of various ratios will go a long way in educating and will enable theinvestors to take an informed decision on various investment options, either to invest or exit, to contribute further capital through rights issue and also to know instantly about various key data like profitability, return on equity and return on investment. It is concluded that, MCA is doing its best to bring about various amendments through circulars and notifications in order to enhance the disclosure on various areas in preparing the Balance Sheet and Profit and Loss account and also relating to other general amendments and clarifications.

(Source: Taxmann.com)