

Corporate and Allied Laws – Major Amendments for CA Final November 2015 Examination

(1). All or any of the books may be kept at any place in India:

The books of account and other relevant papers shall be kept at the registered office of the Company. However, all or any of the books of account and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within 7 days thereof, file with the Registrar a notice in writing giving the full address of that other place [First proviso to Section 128(1)].

For the purposes of the first proviso to section 128(1), the notice regarding address at which books of account may be kept shall be in Form AOC-5 [Rule 2A of the Companies (Accounts) Amendment Rules, 2015].

(2). Exemption from preparation of Consolidated Financial Statement by an Intermediate wholly owned subsidiary, other than a wholly owned subsidiary whose immediate parent is incorporated outside India and also to companies having only associates and joint ventures for one year¹: It is provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India:

Provided also that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be

Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014 [inserted by the Companies (Accounts) Amendment Rules, 2015 w.e.f. 16.1.2015].

(3). Approved CSR activities can be undertaken through a registered trust/ society/ section 8 companies if they have established track record: The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established under section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise²:

Provided that—

- (i) if such trust, society or company is not established by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company³, it shall have an established track record of three years in undertaking similar programs or projects;
- (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

(4). Companies (cost records and audit) Rules, 2014 [w.e.f 31.12.2014]

(4.1.) Application of cost records

Rule 3.

For the purposes of sub-section (1) of section 148 of the Act, the class of companies, including foreign companies defined in clause (42) of section 2 of the Act. engaged in the production of the goods or providing services, specified in the Table below, having an overall turnover from all its products and services of rupees thirty five crore or more during the immediately preceding financial year, shall include cost records for such products or services in their books of account, namely:—

¹ Provisos inserted by the Companies (Accounts) Amendment Rules, 2014, w.e.f. 14-10-2014.

² Substituted for the words "established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise" w.e.f 19.1.2015

³ Substituted for the words "not established by the company or its holding or subsidiary or associate company" w.e.f. 19.1.2015

Table

(A) Regulated Sectors

Sl. No.	Industry/ Sector/ Product/ Service	CETA Heading (wherever applicable)
1.	Telecommunication services made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature (other than broadcasting services) and regulated by the Telecom Regulatory Authority of India under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997)	Not applicable.
2.	Generation, transmission, distribution and supply of electricity regulated by the relevant regulatory body or authority under the Electricity Act, 2003 (36 of 2003), other than for captive generation (referred to in the Electricity Rules, 2005);	-----
3.	Petroleum products regulated by the Petroleum and Natural Gas Regulatory Board under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006)	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.

(B) Non-regulated Sectors

Sl. No.	Industry/ Sector/ Product/ Service	CETA Heading (wherever applicable)
1.	Machinery and mechanical appliances used in defence, space and atomic energy sectors excluding any ancillary item or items; Explanation—For the purposes of this sub-clause, any company which is engaged in any item or items supplied exclusively for use under this clause, shall be deemed to be covered under these rules.	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 (other than propellant powders); safety fuses detonating fuses; percussion or detonating caps; igniters; electric detonators;	3601 to 3603
5.	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus;	8526
6	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons and parts of such vehicles, that are funded (investment made in the company) to the extent of ninety per cent, or more by the Government or Government agencies;	8710

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.
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 constituted under the Rubber Act, 1947 (XXIV of 1947).	4001 to 4017
12.	Coffee and tea;	0901 to 0902
13.	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.
14.	Cement;	2523; 6811 to 6812
15.	Ores and Mineral products;	2502 to 2522; 2524 to 2526; 2528 to 2530; 2601 to 2617
16.	Mineral fuels (other than Petroleum), mineral oils etc.;	2701 to 2708
17.	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.
18.	Inorganic chemicals, organic or inorganic compounds of precious metals, rare-earth metals of radioactive elements or isotopes, and Organic Chemicals;	2801 to 2853; 2901 to 2942; 3801 to 3807; 3402 to 3403; 3809 to 3824.
19.	Jute and Jute Products;	5303, 5310
20.	Edible Oil;	1507 to 1518
21.	Construction Industry as per para No. (5)(a) as specified in Schedule VI of the Companies Act, 2013 (18 of 2013)	Not applicable.
22.	Health services, namely functioning as or running hospitals, diagnostic centres, clinical centres or test laboratories;	Not applicable.
23.	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.
24.	Milk powder,	0402

25.	Insecticides;	3808
26.	Plastics and polymers;	3901 to 3914; 3916 to 3921; 3925
27	Tyers and tubes;	4011 to 4013
28	Paper;	4801 to 4802
29.	Textiles;	5004 to 5007; 5106 to 5113; 5205 to 5212; 5303; 5310; 5401 to 5408; 5501 to 5516
30.	Glass;	7003 to 7008; 7011;7016
31.	Other machinery;	8403 to 8487
32.	Electricals or electronic machinery;	8501 to 8507; 8511 to 8512; 8514 to 8515; 8517; 8525 to 8536; 8538 to 8547
33.	Production, import and supply or trading of following medical devices, namely:— (i) Cardiac stents; (ii) Drug eluting stents; (iii) Catheters; (iv) Intra ocular lenses; (v) Bone cements; (vi) Heart valves; (vii) Orthopaedic implants; (viii) Internal prosthetic replacements; (ix) Scalp vein set; (x) Deep brain stimulator; (xi) Ventricular peripheral shud; (xii) Spinal implants; (xiii) Automatic impalpable cardiac deflobillator, (xiv) Pacemaker (temporary and permanent); (xv) Patent ductus arteriosus, atrial septal defect and ventricular septal defect closure device; (xvi) Cardiac re-synchronize therapy ; (xvii) Urethra spinicture devices; (xviii) Sling male or female; (xix) Prostate occlusion device; and (xx) Urethral stents:	9018 to 9022

Foreign companies having only liaison offices: Provided that nothing contained in serial number 33 shall apply to foreign companies having only liaison offices.

Micro and small enterprises under MD MED Act, 2006: Provided further that nothing contained in this rule shall apply to a company

which is classified as a micro enterprise or a small enterprise including as per the turnover criteria under sub-section (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006

(4.2.) Applicability for cost audit: Rule 4.

(1) Every company specified in item (A) of rule 3 shall get its cost records audited in accordance with these rules if:

- the overall annual turnover of the company from **all its products and services** during the immediately preceding financial year is rupees fifty crore or more; **and**
- the aggregate turnover of the **individual product or products or service or services** for which cost records are required to be maintained under rule 3 is rupees twenty five crore or more.

(2) Every company specified in item (B) of rule 3 shall get its cost records audited in accordance with these rules if:

- the overall annual turnover of the company from **all its products and services** during the immediately preceding financial year is rupees one hundred crore or more; **and**
- the aggregate turnover of the **individual product or products or service or services** for which cost records are required to be maintained under rule 3 is rupees thirty five crore or more.

(3) The requirement for cost audit under these rules shall not apply to a company which is covered in rule 3. **and—**

- (i) whose revenue from exports, in foreign exchange, exceed, seventy five per cent of its total revenue; or
- (ii) which is operating from a special economic zone.

(5). Casual vacancy in the office of a Cost Auditor

As per Rule 6(3A) any casual vacancy in the office of a cost auditor, whether due to resignation death or removal, shall be filled by the Board of Director, within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment of cost auditor.

(6). Independent Directors

(6.1.) Pecuniary Interest of Independent Director – clarification thereof [MCA General Circular 14/ 2014, Dated 9.6.2014]:

Section 149(6)(c) inter alia requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/subsidiary/associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c).

The matter has been examined and it is hereby clarified that:

- in view of the provisions of section 188 which takes away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases;
- 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include:
 1. receipt of remuneration, from one or more companies, by way of sitting fee provided u/s 197(5);
 2. reimbursement of expenses for participation in the Board and other meetings; and
 3. profit related commission approved by the members, in accordance with the provisions of the Act.

(6.2.) Clarification has been sought if 'IDs' appointed prior to April 1, 2014 [MCA General Circular 14/ 2014, Dated 9.6.2014]:

Clarification has been sought if 'IDs' appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the new Act.

The matter has been examined in the light of the relevant provisions of the Act, particularly section 149(5) and 149(10) & (11). Explanation to section 149(11) clearly provides that any tenure of an 'ID' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act. In view of the transitional period of one year provided under section 149(5), it is hereby clarified that it would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.

(6.3.) Appointment of 'IDs' for less than 5 years [MCA General Circular 14/ 2014, Dated 9.6.2014]: It is clarified that section 149(10) of the Act provides for a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

(7). Foreign director can authorize practicing CA, CS and CWA to intimate his resignation to ROC: In case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation [Proviso to Rule 16 inserted by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015, w.e.f. 19.1.2015]

Resigned Director allowed to file DIR 12 [General Circular No. 3/2015, Dated 3-3-2015]

This Ministry has received several representations about the difficulties faced by stakeholders due to deactivation of Digital Signature Certificate (DSC) following en masse resignation of all the directors of a company before appointment of new directors in their places. The difficulty arises because of automatic deactivation of DSC on filing of DIR-11 (Notice of resignation of a director to the Registrar) by the resigned/resigning Director (s), and none of the new Director's details having been filed. As a result, form DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) cannot be filed by a company due to lack of an authorized signatory Director.

In order to enable the filing of such e-forms and till an alternative mechanism is put in place in MCA21 system, it is clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

(8). Powers of the Board:

No MGT 14 filing is required for the following resolutions [vide Companies (Meetings of Board and its Powers) Amendment Rules, 2015, MCA Notification Dated 18-3-2015]:

- to take note of appointment(s) or removal(s) of one level below the Key Management Personnel
- to take note of the disclosure of director's interest and shareholding;
- to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid – up share capital and free reserves of the investee company;
- to accept or accept or renew public deposits and related matters;
- to review or change the terms and conditions of public deposit;
- to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

(9). Loans and advances by Companies to their employees – whether covered u/s 186 [MCA Circular No.4/2015, Dated 10-3-2015]:

The Ministry has received a number of references seeking clarification on the applicability of provisions of section 186 of the Companies Act, 2013 relating to grant of loans and advances by Companies to their employees.

The issue has been examined and it is hereby clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013.

This clarification will, however, be applicable if such loans/advances to employees:

- are in accordance with the conditions of service applicable to employees; and
- are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

(10). Investment in tax-free bonds yielding higher return than Govt. security isn't violation of loan & Investment norms [MCA General Circular 6/2015, Dated 9-4-2015]: MCA has clarified that where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.

(11). Exemption for the applicability of section 186(1)

Section 186(11)(b)(iv) provides that nothing contained in this section, except sub-section (1), shall apply made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business [inserted by the Companies (Removal of Difficulties) Order, 2015, w.e.f 13.2.2015]

(12). MCA allowed listed companies to follow Schedule XIII of Companies Act, 1956 even for remuneration tenure beyond April 1, 2014 [MCA General Circular 07/2015, Dated 10.4.2015]: Stakeholders have drawn attention to the provisions of Schedule XIII (sixth proviso to Para (C) of Section II of Part II) of the Companies Act, 1956 (Earlier Act) and as clarified vide Circular number 14/11/2012-CL-VII dated 16th August, 2012, which allowed listed companies and their subsidiaries to pay remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of such Schedule if the managerial person met the conditions specified therein. Stakeholders have expressed that since similar provisions are not available in the Schedule V of the Companies Act, 2013, there is a need for a clarification that a managerial person appointed in accordance with such provision of Schedule XIII of Earlier Act may receive relevant remuneration for the period as approved by the company in accordance with such provisions of Earlier Act. The matter has been examined in the light of earlier clarifications on transitional matters issued by the Ministry. It is clarified that a managerial person referred to in para above may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.

(13). Definition of Small Company

"small company"	2(85)	means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and ⁴ (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to— (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act;
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(14). SEBI (ICDR) Regulations, 2009

- Regulation 4 states that warrants may be issued along with public issue or rights issue of specified securities subject to the following:
 - (a) the tenure of such warrants shall not exceed eighteen [twelve upto 23.3.2015] months from their date of allotment in the public/rights issue;
 - (b) not more than one warrant shall be attached to one specified security.
- (c) the price or conversion formula of the warrants shall be determined upfront and at least 25% of the consideration amount shall also be received upfront;
- (d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the issuer.
- Regulation 54(7) states that the issuer shall give only one payment option out of the following to all the investors—
 - (a) part payment on application with balance money to be paid in calls; or
 - (b) full payment on application:

Provided that where the issuer has given the part payment option to investors, the part payment on application shall not be less than 25% of the issue price and such issuer shall obtain the necessary regulatory approvals to facilitate the same.

⁴ Substituted for "or" by the Companies (Removal of Difficulties) Order, 2015, w.e.f. 13-2-2015.