



# N. A. SHAH BULLETIN

November 2018

N. A. SHAH ASSOCIATES LLP  
Chartered Accountants

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**EXECUTIVE SUMMARY:**

- **Accounting and auditing**

- **Accounting of leave benefits in respect of non-encashable accumulating half pay leaves**

As per the opinion issued by ICAI, provision for such leaves should be made as per the requirements of AS 15/ Ind AS 19, and reviewed at each date to recognize the effects of changes in estimates in this regard.

- **Others**

Implementation Guide issued by the ICAI on Resignation/ Withdrawal from an Engagement to Perform Audit of Financial Statements.

- **Company Law**

- **Amendment in Companies (Registered Valuers and Valuation) Rules, 2017**

It is clarified that the above rules would apply for valuations 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 the Company's Act, 2013.

- **National Financial Reporting Authority Rules' 2018**

NFRA Rules are notified on 13<sup>th</sup> November 2018 and it deals with various aspects like applicability, entities / class of entities covered, annual returns to be filled, roles and responsibilities of the authority etc.

- **Registration by certain companies on trade receivables discounting schemes platform**

All companies registered with the Companies Act, 2013 with a turnover of more than Rs. 500 crore and all Central Public Sector Enterprises shall be required to get themselves registered on the trade receivables discounting system platform.

- **Issuance of Companies (Amendment) Ordinance, 2018**

Government has made various changes in the Companies Act 2013 with an objective to facilitate ease of doing business like application for change in financial year, declaration to be submitted for commencing the business, alteration of articles for conversion of public into private company, etc. Further for many procedural non-compliances, fines have now been converted into penalties.

## **1 Accounting and auditing**

### **1.1 Expert Advisory Opinion**

#### **Provision for un-encashable portion of Half Pay Leave (HPL) as per AS 15 / Ind AS 19**

##### **a) Facts of the case**

A company has the policy towards provision for encashment of Privilege Leaves (PL) and Half Pay Leaves (HPL) as per Accounting Standard (AS) 15 'Employee Benefits' /Indian Accounting Standard (Ind AS) 19, 'Employee Benefits'

As per the rules of the corporation, an employee is eligible for 30 days privilege leaves (PL) in a year and 20 days half pay leaves (HPL) in a year.

Half pay leaves (HPL) are un-encashable during the service period. However, the HPL are encashable on superannuation only to the extent of the privilege leaves to the credit of executive employees falling short of maximum limit of 300 days. The benefit of HPL encashment on superannuation has not been extended to the non-executives employees.

##### **b) Query**

In view of the above, the querist has sought the opinion of the Expert Advisory Committee as to whether the provision for the un-encashable half pay leaves (whether executives or nonexecutives employees) should be created similar to the encashable portion as part of cost of services rendered during the period in which the service was rendered which resulted the entitlement.

##### **c) Point considered by Committee**

The Committee took reference of para's 8,11,13,16 of Accounting Standard (AS) 15 on 'Employee Benefits' and Para 9,11,13,15,18 Indian Accounting Standard (Ind AS) 19, 'Employee Benefits', to state that obligation exists in respect of short term accumulated compensated absences, irrespective of whether these are vesting or non-vesting and is required to be recognized. Similarly, paragraph 127 of AS 15 and paragraph 153 of Ind AS 19 require to provide for a liability in respect of other long-term compensated absences.

The committee has not examined any other issue, that may arise from the facts of the Case, such as, accounting treatment for privilege leave benefits, classification of half pay leaves as 'short-term' or 'other long-term' employee benefits and their measurement etc.



Further, the Committee presumes from the Facts of the Case that the half pay leaves in the extant case can be carried forward and availed up to the retirement/superannuation of the employees (both executives and non-executives employees).

#### **d) Opinion**

On the basis of the above, the Committee is of the opinion that irrespective of whether un-encashable accumulating half-pay leaves in the extant case can be classified as 'short-term employee benefits' or as 'other long-term employee benefits', a liability on account of these should be provided as per the requirements of AS 15/ Ind AS 19, which should be reviewed at each reporting date to recognize the effects of changes in estimates in this regard.

### **1.2 Implementation Guide on Auditor's Resignation**

The Institute of Chartered Accountants of India had issued implementation guide on resignation/ withdrawal from an engagement to perform audit of financial statements which includes applicability, documentation, professional obligations, auditor's responsibilities and circumstances leading to withdrawal/resignation. Detailed note as regards the same is attached as an annexure to the newsletter.

## **2 Company Law**

### **2.1. Amendment to the Companies (Registered Valuers and Valuation) Rules, 2017**

It is clarified that these Rules would apply for valuation 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 the Act. These rules shall not apply to valuation conducted under any other law. Further, amendments have been made as regard to the eligibility, qualifications and experience requirements for registration as a valuer.

### **2.2. National Financial Reporting Authority Rules, 2018 notified**

The Ministry of Corporate Affairs has notified the NFRA Rules on 13<sup>th</sup> November 2018. The Rules covers the following key aspects:

- a. Classes of companies and bodies corporate governed by the Authority
- b. Functions and duties of the Authority
- b. Annual return to be filed by the auditor with the Authority
- c. Recommending accounting standards and auditing standards
- d. Monitoring and enforcing compliance with accounting standards
- e. Monitoring and enforcing compliance with auditing standards
- f. Overseeing the quality of service and suggesting measures for improvement
- g. Power of the authority to investigate
- h. Disciplinary proceedings
- i. Manner of enforcement of orders passed in disciplinary proceedings
- j. Punishment in case of non-compliance

### **2.3. Registration by certain companies on Trade Receivables Discounting Platform**

Instructions are issued by the Central Government that all companies registered with the Companies Act, 2013 with a turnover of more than Rs. 500 crore and all Central Public Sector Enterprises shall be required to get themselves on boarded on the Trade Receivables Discounting System platform, set up as per the notification of the Reserve Bank of India.

### **2.4. Issuance of Companies (Amendment) Ordinance, 2018**

- 1. Application for alteration in the Financial Year [Section 2(41)]**- The application for adopting a different year as "financial year" shall now be made to "Central Government". Earlier, the applications were filed with National Company Law Tribunal ('Tribunal'). Existing applications pending before the Tribunal before 2nd November, 2018 shall be disposed of by the Tribunal as per the erstwhile provisions.
- 2. Re-introduction of declaration of Commencement of Business [Section 10A]**: As per the newly inserted section 10A, a company having share capital incorporated after the commencement of the Ordinance, has to ensure the following before commencing its business or exercising borrowing powers-
  - I. a declaration in prescribed form is filed by a director of the company within a 180 days of the date of incorporation of the with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.
  - II. the company has verified its registered office in e-Form INC-22

Failure to file the declaration shall give reasonable cause to the ROC to remove the name of the company from the register of companies.
- 3. Physical verification of the registered office [Section 12(9)]**: The Registrar of Companies may carry out physical verification of the registered office of the Company on reasonable cause to believe that no business or operations are being carried out by the company. In case any default is found, the ROC may remove the name of the company from the register of companies.
- 4. Alteration of Articles for conversion of Public Company into Private [Section 14]**: Authority to approve application for conversion of a public company to private has been shifted from NCLT to Central Government. Applications pending with NCLT shall be disposed of by in accordance with erstwhile provisions.
- 5. Reduction in time-limit for filing application for condonation of delay for registration of charge Section 77]**: As per the erstwhile provisions, if a company could not register a charge within 30 days, the ROC had the power to condone the delay and allow registration of charges within 300 days of such creation on payment of additional fees. However, after

commencement of the Ordinance, the ROC shall condone the delay only up to 60 days from the date of creation of such charge. In case the charge is not registered within this time, then ROC may on application, allow the registration of the charge within a period of further 60 days on payment of ad valorem fees.

- 6. Punishment of contravention of any provision under Chapter VI relating to Registration of Charges [Section 86]:** A new provision has been inserted under Section 86 which states that any person who willfully furnishes false or incorrect information or knowingly suppresses any material information pertaining to registration of charges shall be liable to fraud and attract action under Section 447.
- 7. Order of NCLT in respect of Significant Beneficial Ownership [Section 90]:** Once a company or any person obtains restrictions under section 90(7) relating to significant beneficial ownership, in respect of shares whose ownership remains undetermined, such shares shall be transferred to the Investor Education and Protection Fund if rightful owner does not claim ownership within 1 year of such restrictions. Further, persons failing to make declaration under Section 90, shall be punishable with fine or imprisonment or both.
- 8. Disqualification of Director [Section 164]:** In Section 164(1) which lays down the grounds for disqualification of a Director, a new sub-clause (i) has been inserted which states that if a director does not comply with provisions of Section 165 relating to maximum number of directorships a person may hold (i.e. maximum ten public companies and maximum twenty in other companies), he/she shall be disqualified under section 164 of the Act.
- 9. Power of the Registrar to remove the name of the company [Section 248]:** The erstwhile provisions of the Act provided the following situations in which the Registrar can remove the name of the Company from the register of companies:
  - a) It has failed to commence its business within one year of incorporation.
  - b) Is not carrying out any business or operations for a period of two years
  - c) Is a dormant company under section 455However, the Ordinance has introduced two new clauses for removal of name of the Company namely-
  - (i) if the subscribers of MOA of the Company have not paid the subscription amount and have not furnished a declaration in this regard within 180 days
  - (ii) if the Company is revealed to not having any registered office after physical verification of registered office.
- 10. Compounding of offences [Section 441]:** Scope of compounding order which can be passed by Regional Director increased from the existing thresh hold limits [maximum amount of fine] of Rs. 5 lakh to Rs. 25 lakhs.

- 11. Adjudication of penalties [Section 454]:** The Adjudicating officer can now-
- (a) Impose penalty on company, officer in default, or any other person. The insertion of the words 'any other person' shall widen the power of the adjudicating officer.
  - (b) Can provide any direction to the company or officer in default or any other person to rectify the default wherever considers fit.
  - (c) Penalty is prescribed for repeated default

**12. List of offences which are re-categorised as defaults carrying civil liabilities by substituting 'fine' with 'penalty':**

Section Reference	Nature of default
53 (3)	Issue of shares at discount
64 (2)	Failure/delay in filing notice for alteration of share capital
92 (5)	Failure / delay in filing of annual return
102 (5)	Explanatory statement [for special business] not attached with notice of general meeting
105 (3)	Non-disclosure in the notice of general meeting with regard to appointment of proxies
117 (2)	Failure / delay in filing certain resolutions
121 (3)	Failure / delay in filing report on AGM by public listed companies
137(3)	Failure / delay in filing financial statement with the Registrar
140 (3)	Failure / delay in filing e-Form ADT-3 [resignation by the auditor]
157 (2)	Failure to furnish DIN to the Registrar
152 / 155 / 156 / 159	Contraventions related to DIN
165 (6)	Accepting directorships beyond specified limits
191 (5)	Payment to director for loss of office
197 (15)	Managerial remuneration
203 (5)	Appointment of KMP
238 (3)	Failure to register offer of schemes involving transfer of shares
446B	Lesser penalties for one person companies and small companies



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## **Brief note on Implementation Guide on Resignation/Withdrawal from an Engagement to Perform Audit of Financial Statements**

1. The Institute of Chartered Accountants of India (ICAI) has issued 'Implementation Guide on Resignation/Withdrawal from an Engagement to Perform Audit of Financial Statements' on 30<sup>th</sup> November 2018. <https://resource.cdn.icai.org/52929aasbicai-igr.pdf>
2. The Companies Act, 2013 already contains the provisions in respect of the procedure to be followed by the auditor in case of resignation and the Code of Ethics issued by ICAI requires auditor to resign from an engagement when requirements established by the Code of Ethics cannot be met. This Implementation Guide contains provides overall guidance about circumstances leading to withdrawal/resignation from an existing engagement, auditor's responsibilities and professional obligations to be complied with by an auditor in resigning or withdrawing from an engagement to audit financial statements.
3. It is applicable in case of audits of all listed entities. In case of audits of banks, insurance companies and other corporate entities, the guidance given in this Implementation Guide be also followed, as applicable.
4. Salient features of the Implementation guide are as under:
  - a. Appendix to the Implementation Guide gives the para references of SQC 1, SAs and the Code of Ethics wherein the circumstances in which auditor should consider the resignation.
  - b. Unless there are circumstances that are covered in the SAs, SQC 1 and the Code of Ethics where resignation is the only available alternative, the auditor should complete the engagement accepted.
  - c. If the auditor has substantially completed the audit, the auditor may decide to complete the audit to the extent possible, disclaim an opinion and explain the scope limitation within the Basis for Disclaimer of Opinion section prior to withdrawing. Therefore, auditor is advised that:
    - i. In case an auditor has signed all the quarters (either limited review or audit) of a financial year, except the last quarter, then the auditor has to finalize the audit report for the said financial year before resignation.
    - ii. In other cases, the auditor should resign after issuing limited review/audit report for the previous quarter with respect to the date of resignation.
    - iii. To the extent information is not provided to the auditor or the management imposes a scope limitation, the auditor should provide an appropriate disclaimer in the audit report.
  - d. The auditor has to give the circumstances while giving the reasons for resignation instead of mentioning ambiguous reasons such as other pre-occupation or personal reasons or administrative reasons or health reasons or mutual consent or unavoidable reasons
  - e. Implementation Guide also provides the matters to be included in the letter of resignation e.g. reason for the inability to obtain sufficient appropriate evidence, possible effects on the financial statements, the fact that circumstances which led to resignation were communicated to appropriate level and their response, last audit/limited review report issued prior to resignation etc.