

I have already made the below mentioned suggestions / comments which are in the required format. I request that you too should give suggestions before the deadline on these matters in most appropriate manner or on any other matter you wish to comment upon.

<i>S. No.</i>	<i>Issue</i>	<i>Details of Issue with Justification</i>	<i>Suggested Changes</i>	<i>Chapter Relevant to Issue</i>	<i>Relevant Section</i>
1	Audit	<p>An auditor is prohibited to provide services mentioned in s. 144 to the company, its holding or subsidiary company.</p> <p>One of the services [clause (h)] includes 'Management services'. An auditor had to comply with this provision till 31st March 2015. Non-compliance would make him disqualified to remain as an auditor and could result in levy of penalties too</p> <p>However, the meaning of the term 'Management Services' is yet not clarified and is subject to varied interpretations.</p>	<p>The term 'Management Services' should be defined / clarified.</p> <p>Compliance of provisions of section 144 should be extended by another year to 31st March 2016.</p>	X	14
2	Audit	<p>According to section 139(1) a company has to appoint an auditor for 5 years in AGM. However, first Proviso to said section says that the</p>	<p>Amend Rule 3(7) of Companies (Audit and Auditors) Rules, 2014 to provide that:</p>	X	13

company shall place the matter relating to such appointment for ratification by members in each AGM. What happens when a company fails to ratify the appointment?

The solution is given in Explanation to Rule 3(7) of Companies (Audit and Auditors) Rules, 2014 which states that if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor following the procedure laid in the Act.

Such non-ratification would result in vacancy in the office of the auditor which would be casual. Any casual vacancy in the office of the auditor can be filled by the Board.

The management may find out ways to not ratify the appointment of the auditors in AGM, in order to remove the auditors, without seeking prior approval of CG (which is required as per 140(1) of the Act) hampering the independence of auditors.

“...if the appointment is not ratified by the members of the company, the appointment shall be deemed to be ratified unless the auditor is disqualified u/s 141(3) of the Act.”

There is a similar provision in case company does not appoint or reappoint existing auditors in AGM under section 139(10), where, in such a case the existing auditor continues to be the auditor.

OR

Explanation to sub-rule (7) of Rule 3 of Companies (Audit and Auditors) Rules, 2014 should be deleted and substituted as under:

“Explanation.- For the purposes of this rule, it is hereby clarified that, if the appointment is not ratified by the members of the company, the auditor shall be deemed to be remain in office until

			<i>the expiry of his term of office or unless expressly removed as per the procedure laid down in this behalf under the Act”</i>		
3	Audit	<p>Section 143 (12) requires the auditor to report to the Central Government (CG) any fraud committed by employees or officers of the company on the company which comes to his knowledge in the course of his audit.</p> <p>But once any auditor reports such matters to CG, the company normally starts the process of removal of that auditor. As per the Act there is no protection available to the auditor.</p>	Removal procedure should not be allowed to such company by statute u/s 140(1) until the report of the auditor is taken to a logical conclusion by the authorities (CG).	X	14
4	Foreign Company	<p>Where a foreign company has a liaison office established in India which does not have any revenue or capital holding, it is mandatory to file Form FC-4.</p> <p>Although under Companies Act 1956 there was a specific clarification stating non requirement of such filing for a Liaison Office.</p>	Liaison Office should be exempted from filing Form FC 4 under Companies Act 2013 too.	XXII	38
5	Issues related to SMEs	Definition of small company excludes public companies.	The definition of small company should be amended to include	I	2

		There are various public companies where the capital / turnover are negligible. Such small Public companies should be included in the definition of a small company to enable them to avail the benefits of a small company.	public companies also, which are satisfying the capital and turnover limits.		
6	Raising of Capital, Fund Mobilization	<p>For issue of shares on preferential basis u/s 62(1)(c) compliance is to be made of Rule 13 of Companies (Share Capital and Debentures) Rules, 2014, which is quite exhaustive in itself.</p> <p>Further, sub-rule (1) of Rule 13 says that apart complying with this provision, compliance of section 42 (Private Placement) is also mandatory.</p> <p>This is resulting in unnecessary duplication of compliance and increase in compliance costs.</p>	<p>Rule 13(1) of Companies (Share Capital and Debentures) Rules, 2014 should be amended to DELETE the following:</p> <p><i>“...and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act”</i></p>	IV	6
7	Raising of Capital, Fund Mobilization	<p>In 1956 Act feeling the need for funds in a private company, amounts received from shareholders, directors and their relatives were not defined to be deposits.</p> <p>Under the 2013 Act a private company cannot arrange funds from relatives of</p>	<p>Amendment should be made in Companies (Acceptance of Deposit) Rules, 2014.</p> <p>Sub-Clause (viii) of Clause (c) sub-rule (1) of rule 2 should be deleted and substituted as</p>	V	7

		<p>directors. It would be impossible for a Private Limited Company to run business without repatriable funds being made available from their kith and kin. No public stake and public money is involved in such transactions.</p> <p>Definition of deposits should be amended to allow monies be received by a private company from the relatives of their directors</p>	<p>under:</p> <p><i>“(viii) Any amount received from a person who at the time of receipt of the amount, was a director of the company and in case of a private company was a director or relative of director or shareholder of the company.</i></p> <p><i>Provided that the director or his relative or shareholder from whom money is received furnishes to the company at the time of giving the money a declaration on writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.”</i></p>		
8	Others	<p>Conversion of LLP into a Company.</p> <p>The 2013 Act allows a LLP to be converted into a company. However when the related Form URC 1 is filed it requires that the converted company should have at least 7 shareholders.</p> <p>A LLP can be incorporated with minimum 2 partners and a company can also be incorporated with minimum 2 shareholders.</p> <p>Hence there should be no specific requirement to have at least 7 shareholders at the time of such conversion.</p>	<p>Form URC 1 should be amended to allow to convert a LLP or firm into company when it is having 2 partners</p>	XXI	36

9	Others	<p>Filing of Documents with Registrar</p> <p>Rule 7 of Companies (Registration Offices and Fees) Rules, 2014 mandatorily requires address of director etc. that is signed by him to be mentioned in every document that is filed with the Registrar</p> <p>Applicability of this rule is leading to overburdening the directors, etc. as mentioning of DIN / Membership No. is sufficient.</p> <p>This requirement should be done away with as many documents do not contain enough space and it just increases the documentation.</p>	<p>Rule 7 of Companies (Registration Offices and Fees) Rules, 2014 should be amended do away with the requirement of mentioning the address in such cases</p>	XXIV	39
10	Raising of Capital, Fund Mobilization	<p>In case a company offers to receive share monies through private placement a detailed compliance is required u/s 42 read with rules.</p> <p>Non-compliance thereof results in penalty to the extent of amount involved in offer or Rs. 2 Crores whichever is HIGHER.</p>	<p>The penalty should be:-</p> <p>Amount involved in offer or Rs. 2 Crores whichever is LESSER.</p>	III	4

		<p>This is an undue hardship when amounts offered could be as less as Rs. 1 Lac.</p> <p>This penalty should be reduced to logical extent.</p>			
11	Penalties & Decriminilization	<p>Penal provisions have increased drastically under the new Act and prosecution has been made mandatory under various provisions.</p> <p>Huge penalties have been provided even for delay in filing documents with Registrar beyond extended period.</p> <p>Small and medium companies are already overburdened by so many compliances under various laws. The Companies Act, 2013 has added to it and that too in a drastic way, minimum penalty of Rs. 5 Lacs to maximum Rs. 10 Crores is provided in various provisions.</p> <p>Imprisonment is provided for Officer in Default in most of non-compliance. Not only the cost of compliance has increased but huge penalties and prosecution is looming over the head and creating huge stress on stakeholders.</p>	<p>Penal Provisions should be reduced and soften with specific reference to OPC, Private Companies and their Auditors.</p> <p>For OPC, small and private companies having turnover below Rs. 100 Crores penalties / fines should be reduced to 1/10 of the current amounts.</p> <p>Also a reasonable cause provision should be inserted in the Act to avoid undue hardships in genuine cases of default in compliances which are not fraud u/s 447</p>	XXIX	45

21st July 2015 is the last date to make the suggestions / comments. Please register yourself at <http://feedapp.mca.gov.in/> and do the needful.