

Update



Chapter IX of Companies Act, 2013-Draft National Financial Reporting Authority Rules issued by MCA

Munmi Phukon

munmi@vinodkothari.com

Vinod Kothari & Company

corplaw@vinodkothari.com

October 28, 2013

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



Note

The Ministry of Corporate Affairs (“MCA”) had come up with draft rules on a number of chapters on September 9, 2013. With 416 occurrences of the word “prescribed” in the Act, it was obvious that the Ministry would have to come up with rules well in advance before the commencement of the Act to make it complete.

We present below a highlights discussion on the draft rules of Chapter IX on **National Financial Reporting Authority** issued in the third tranche. The last date for submission of suggestions for third tranche of rules in 05.11.2013.

Various Definitions- Rule 2

This para defines various terms such as Chairperson, Members etc. “Authority” for the purposes of this draft rule shall mean NFRA.

Composition of the Authority- Rule 3

Section 132(3) of the Companies Act, 2013, talks about composition of the Authority. This rule related to the said section specifically mentions that the Chairperson of the Authority shall be a Chartered Accountant as notified by the Central Government and shall be consisting of Members- Accounting, Auditing, Enforcement and representatives of MCA, RBI, SEBI, retired Chief Justice of a High Court or A person who was a Judge of a High Court for 5 years or more, President of ICAI.

Structure of the Authority- Rule 4

This rule states that the Authority shall have 3 committees on Accounting Standards, Auditing Standards and Enforcement.

Functions of the Authority- Rule 5

This rule talks about various functions of the Authority, some important ones are receiving recommendations and reports from Committees, make amendments as required, recommend the standards to the Central Government, approve and forward the report, *suo motu* determine any investigation to be undertaken, issue notice to the company, take suitable action or pass orders.

The rule specifies the companies, on whom the Authority shall undertake investigation or conduct quality review of Audit as follows -

- Listed companies;
- Unlisted companies with
 - Net worth not less than Rs 500 crores; or



Note

- Paid up capital of not less than Rs 500 crores; or
- Annual turnover of Rs 1000 Crores
as on 31st March of immediately preceding year.
- Companies having securities listed outside India

In reference to the section 132(4) & (5) of the Act, this rule also prescribes that the Authority shall undertake investigation against the auditors or audit firms conducting audit of the above mentioned companies or their branches and audit of 200 companies or more in a year or 20 listed companies or more.

The rule also states that where reference is made by Central Government or any Regulator or by the Authority, in public interest *suo motu*, the classes of companies specified in rule sub-rules 4 and 5, shall not apply.

Constitution of Committee on Accounting Standards and Their Functions- Rule 6

The rule states that the committee shall comprise of 8 members from various authorities like MCA, SEBI, RBI, Accounting Standard Board of ICAI and other experts nominated by Central Government and Chairman being member - Accounting.

The committee shall examine the matters related to formulation and laying down the standards. The rule also lays down the process for formulation or monitoring compliances of accounting standards under the act.

Constitution of Committee on Auditing Standards and their functions- Rule 7

The rule states that the committee shall comprise of 7 members from various authorities like MCA, SEBI, RBI, CAG, Auditing and Assurance Standard Board of ICAI and other experts nominated by Central Government and Chairman being member- Auditing.

The rule lays down the process for formulation of auditing standards under the act and for monitoring compliances committee shall monitor compliance of individual auditors , Audit firms, Audit LLP's.

Constitution of Committee on Enforcement and Their Functions – Rule 8

The rule states that the committee shall comprise of 7 members, Chairman being member- Enforcement and other members- accounting and auditing, and representative of MCA, Director SFIO, chairman of Disciplinary Committee of ICAI and other expert as notified by CG.

The rule also states that subject to section 132(4), this committee shall examine the matter of investigation and submit recommendations to the authority.



Note

The rule specifically lays down the functions of the committee and completion of examination or investigation of any matter shall be within 6 months unless specific time extension sought.

Meetings for transaction of business and their procedure- Rule 9

The Rule lays down the procedures and manners of conducting meetings of the authority or its committee including Quorum, place of meeting etc.

Procedure for filing complaints- Rule 10

This rule related to the complaints made under section 132(4) of the Act. The rule requires Form I in triplicate to file the complaints with member- enforcement.

The rule states that complaint filed by or on behalf of Central Government or State Government or any statutory authority shall be authorised and signed by such persons and in case of company, bank, firm shall be authorised by a resolution passed by Board or partners.

Fees for filing complaint- Rule 11

The rule states that every complaint shall be accompanied by a fee paid in form of a Demand Draft. No fee for complaint by Central Government, State Government, or any other statutory authority.

Registration of complaint- Rule 12

Every complaint shall be duly registered and allotted a unique identification number after scrutiny. In case the subject matter is same with previous complaint the Member-Enforcement shall take such actions provided under this rule. Rectification of defect may be allowed by Member- enforcement.

Withdrawal of a complaint- Rule 13

A complaint may be withdrawn by Member- Enforcement on receipt of a letter. If *prima facie* opinion has already formed, the same shall be placed before the committee of enforcement.

Information- Rule 14

A written information other than in Form I alleging any member or firm received by the office of the committee of enforcement shall be treated as information only and the



Note

informant shall be informed the consequences of not making the complaint in the said form.

Procedure of Investigation- Rule 15

This rule provides the procedures of conducting investigation. The rule states that within 60 days of receipt of the complaint the alleged individual professional or firm (respondent) is informed by the member- enforcement or officers authorised by him and within 21 days or such extended time, written statement shall be made by the respondent. The complainant is also required to make his rejoinder within 21 days or such extended time.

Examination of complaint- Rule 16

The rule prescribes that the complaint/ written statement/ rejoinder shall be examined by the member- enforcement and after forming a *prima facie* opinion on whether guilty or not he shall place his opinion before the committee within 60 days of conclusion of investigation. The committee shall proceed further after getting approval from the Authority. The committee may pass the order or close the matter or advise to investigate further.

Mode of sending notice- Rule 17

Every letter and notice issued by the Member- Enforcement or Committee on Enforcement shall be served by Registered post or Speed post.

Certain provisions related to complaint also to be applicable for information relating to misconduct of members- Rule 18

Certain provisions related to complaint shall also apply to information received by the Member – enforcement relating to misconduct of the members.

Time limit on entertaining complaint or information- Rule 19

The Member-Enforcement may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit it to the Committee, after being satisfied of not having proper evidence or the alleged person cannot defend himself due to time lag etc.

Functioning of Committee on Enforcement- Rule 20

All questions shall be decided by majority of members present and voting and in equality of votes the Member enforcement shall have casting vote.



Note

Procedure to be followed by Committee on Enforcement- Rule 21

The Committee of Enforcement shall follow summary disposal procedure in dealing with all cases. In case of further proceeding, the Committee shall deliver to the respondent or complainant the *prima facie* opinion formed by the Member- Enforcement and other related documents, inform respondent to submit written statement. The Committee shall fix the date, time and place of hearing not later than 45 days from receipt of opinion and send notice to complainant, respondent to appear before it. The committee may adjourn the meeting on sufficient reason.

Orders of the Committee on Enforcement- Rule 22

If respondent is found guilty he shall be given an opportunity of being heard before recommending to the Authority. The order may be reprimands or severe reprimands being made, practice with some restrictions for a period of time, waiver or refund of fees, impose penalty or debar the member or member firm from practice. Order for debarring professionals shall become effective after 45 days if ICAI does not take any action after intimation made to it.

The Authority shall have powers to pass an interim order during investigation.

In case of vexatious claim made by the claimant against the respondent with intent to harass, the Authority can award cost upto Rs 10000/- to the respondent.

Attendance of hearings by the complainant, respondent and witness- Rule 23

The complainant, respondent shall have the right to attend the meeting of the committee.

Appellate Authority- Rule 24

Any aggrieved person and Central Government may prefer an appeal to the Appellate Authority within 90 days of receipt the order or such extended time as may be allowed.

The Appellate Authority may revise the order and take such decisions as prescribed by the rule or as it thinks fit.

Preparation and furnishing of the Annual Report of the Authority- Rule 25



Note

Annual Report of the Authority shall be prepared once in a year giving true and full account of its activities performed in the year in specified form. The Annual report shall be forwarded to the Central Government within 180 days immediately following the close of the year for which it is made.

Preparation and furnishing of the Annual Report of the Appellate Authority- Rule 26

Annual Report of the Appellate Authority shall be prepared once in a year giving true and full account of its activities performed in the year in specified form. The Annual report shall be forwarded to the Central Government within 180 days immediately following the close of the year for which it is made.

Residuary Provision- rule 27

Matters with respect to which no express provision has been made under these rules shall be referred to CG and decision taken by CG shall be binding.

Removal of Difficulty- Rule 28

In case of any doubt or difficulty, same shall be placed before CG and its decision shall be final.

Also see our other related write-ups:

Other articles on Companies Act, 2013 can be viewed at: <http://india-financing.com/component/content/article/281.html>