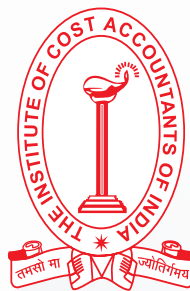




# CORPORATE LAW CONNECT



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

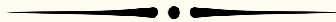


## About the Institute

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA (erstwhile The Institute of Cost and Works Accountants of India) was first established in 1944 as a registered company under the Companies Act with the objects of promoting, regulating and developing the profession of Cost Accountancy.

On 28 May 1959, the Institute was established by a special Act of Parliament, namely the Cost and Works Accountants Act 1959 as a statutory professional body for regulation of the profession of cost and management accountancy. It has since been continuously contributing to the growth of the industrial and economic climate of the country.

The Institute of Cost Accountants of India is the only recognised statutory professional organization and licensing body in India specialising exclusively in Cost and Management Accountancy.



## MISSION STATEMENT

The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.



## VISION STATEMENT

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.





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## PRESIDENT'S MESSAGE

I congratulate the Chairman and the members of the Corporate Laws Committee for their continuous initiatives for the benefit of the members. Moving ahead, another important initiative is the release of a series of Bulletins on the Companies Act, 2013 and Rules thereunder in the name of CORPORATE LAW CONNECT. This series of such Bulletins would be immensely beneficial for the members.

Our Institute has played a key role in imparting knowledge to the stakeholders through its digital formats and E-bulletins on various subjects. Through this bulletin, committee shall abreast the professionals with all the updates in the related laws. I am delighted to share that the Corporate Laws Committee has come up with fortnightly bulletin on CORPORATE LAWS.

I extend my sincere thanks to the contributors for writing the articles for this volume e-bulletin.

I congratulate CMA Niranjan Mishra, Chairman Corporate Laws Committee for visualizing the e-Bulletin, other members of the Committee for supporting this initiative. I wish the Corporate Laws Committee grand success in its endeavours.

Warm regards,

CMA Vijender Sharma

February 14th, 2023



## VICE PRESIDENT'S MESSAGE

I am pleased to know that, the Corporate Laws Committee of the Institute is bringing out 'CORPORATE LAW CONNECT', a fortnightly e-bulletin on updates and relevant articles in the area of corporate and its related laws. As the emphasis of this bulletin is on corporate laws, which is a very crucial aspect in today's competitive world, I am sure that it will connect our members with the vast professional opportunity in areas of such laws. It is very significant as being aware about the latest developments in the field of corporate laws is essential. This e-Bulletin will be a knowledge edition to the members, students and stakeholders.

I congratulate CMA Niranjana Mishra, Chairman Corporate Laws Committee for bringing out the e-Bulletin. I wish the Corporate Laws Committee grand success in all its initiatives.

Warm regards,

A handwritten signature in blue ink, appearing to read 'Rakesh Bhalla', with a stylized flourish at the end.

CMA Rakesh Bhalla

February 14th, 2023



## FROM THE DESK OF CHAIRMAN

**Dear Friends and Professional Colleagues,**

I along with my Committee colleagues hope that you and your dear and near ones are safe and healthy and further pray to almighty well-being of all the professionals, members and students of CMA fraternity and their families.

I am very happy to announce that the Corporate Laws Committee of the Institute is coming out with a fortnightly series of bulletins called “Corporate Law Connect” on the new Companies Act, 2013, SEBI, NCLT case and Rules and Regulations thereunder. The series would cover summary of Circulars, Notifications, Amendment in the Rules, Removal of Difficulty Orders and other important developments that members of the profession should know in their day to day workings. No doubt this will help the members in keeping them aware of the current developments that are taking place in the corporate laws.

I am very happy to place this First edition of CORPORATE LAW CONNECT (CLC) in your hands in the form of E-bulletin which covers latest notifications, case laws, articles etc. on relevant topics. We shall look forward to your support and encouragement, as always.

Yours truly

CMA (Niranjana Mishra)

February 14th, 2023





## **Corporate Laws Committee 2022-23**

### **Chairman**

1. CMA Niranjan Mishra

### **Members**

2. CMA (Dr.) Ashish P. Thatte
3. CMA Papa Rao Sunkara
4. CMA (Dr.) K Ch A V S N Murthy
5. CMA Chittaranjan Chattopadhyay
6. CS Makarand Lele, Government Nominee
7. CMA Divya Abhishek (Co-opted)
8. CMA Shailendra Paliwal (Co-opted)
9. CMA Hemendra Soni (Co-opted)

### **Permanent Invitee**

1. CMA Vijender Sharma, President
2. CMA Rakesh Bhalla, Vice President

### **Secretary**

CS Vibhu Agarwal

### **Editorial Board**

1. CMA (Dr.) Ashish P. Thatte
2. CMA Dibya Abhishek
3. CMA Sailendra Paliwal
4. CMA Mukesh Chaubey

### **Contact Details**

Ph- 011-24666132/ email [clc@icmai.in](mailto:clc@icmai.in)





# Environment Social Governance (ESG) Framework for Coal Industry

**Compiled by:**

**Rambabu Pathak**

B. Com (H), St. Xavier's College, Kolkata  
ACAM, ACS, PGDM (HR)  
Manager (F)/Company Secretary  
Eastern Coalfields Limited

Since the start of the Industrial Revolution, humanity has accelerated certain natural processes that have changed the balance of our planet. If this rate of change is not arrested, our overdraft will impact the future generations in ways that will be hard to mitigate.

Globally, ESG is taking the driving seat. In the recent past it has become important that companies endeavor to accomplish positive climate action, build a more sustainable, and resilient future. Proactive and future focused companies have adopted ESG criteria in their business strategy and action plans.

The aim will be to achieve the United Nation's Sustainable Development Goals (SDGs), as we understand our contribution is indispensable to the success of SDGs' and are the biggest contributors for a sustainable world. The 17 SDG are as under which forms the very basis of any ESG Strategy:

Goal 1: No poverty	Goal 7: Affordable and clean energy	Goal 13: Climate action
Goal 2: Zero hunger (No hunger)	Goal 8: Decent work and economic growth	Goal 14: Life below water
Goal 3: Good health and well-being	Goal 9: Industry, Innovation and Infrastructure	Goal 15: Life on land
Goal 4: Quality education	Goal 10: Reduced inequality	Goal 16: Peace, justice and strong institutions
Goal 5: Gender equality	Goal 11: Sustainable cities and communities	Goal 17: Partnership for the goals
Goal 6: Clean water and sanitation	Goal 12: Responsible consumption and production	



### **ESG in Coal Industry Perspective:**

- The problem statement.
- Steps / Initiatives being undertaken.
- Way forward making the coal industry ESG Compliant and Sustainable

### **Major Environmental Challenges :**

- **Carbon Emission**

Coal is an important source of energy, and the Nation's reliance on this fossil fuel for electricity generation is still growing. The combustion of coal, however, adds a significant amount of carbon dioxide to the atmosphere per unit of heat energy, more than does the combustion of other fossil fuels. Because of a growing concern over the consequences of global warming, which may be caused in part by increases in atmospheric carbon dioxide (a major greenhouse gas), and also because of the need for accurate estimates of carbon dioxide emissions, addressing this issue is very important.

- **SDG Failure :**

Achieving the SDGs by 2030 is a monumental task in its own right, but when you consider the long shadow that climate change is casting over all of humanity, and the continued expansion of fossil fuel production, it may become an impossible endeavor. Progress towards the SDGs will be extremely difficult in our warming world. But this is not to say that we should not try - and this must start with an acknowledgement that sustainable development and tackling climate change are inextricably linked. We cannot achieve one without the other, and failure in addressing one undermines the other.

- **Non-Renewable Source of energy :**

Coal is classified as a nonrenewable energy source because it takes millions of years to form. Coal contains the energy stored by plants that lived hundreds of millions of years ago in swampy forests. Unfortunately, human society is—for the time being—dependent on nonrenewable resources as its primary source of energy. Approximately 80 percent of the total amount of energy used globally each year comes from fossil fuels. We depend on fossil fuels because they are energy-rich and relatively cheap to process. But a major problem with fossil fuels, aside from their being in limited supply, is that burning them releases carbon dioxide into the atmosphere. Rising levels of heat-trapping carbon dioxide in the atmosphere is the main cause of global warming.



- **Ecological Imbalance and Pollution :**

The environmental factors of the coal industry are not only impacting air pollution, water management and land use but also is causing severe health effects by the burning of the coal. Air pollution is increasing in numbers of toxins such as mercury, lead, sulfur dioxide, nitrogen oxides and other heavy metals. This is causing health issues involving breathing difficulties and is impacting the wildlife around the surrounding areas that needs clean air to survive. The future of air pollution remains unclear as the Environmental Protection Agency have tried to prevent some emissions but don't have control measures in place for all plants producing mining of coal. Water pollution is another factor that is being damaged throughout this process of mining coals, the ashes from coal is usually carried away in rainwater which streams into larger water sites. It can take up to 10 years to clean water sites that have coal waste and the potential of damaging clean water can only make the filtration much more difficult.

### **Possible Strategies for encountering Environmental Challenges:**

- First mile connectivity, coal evacuation by conveyor belts and transportation through railways to minimize particulate matter and exhaust gases, reducing carbon footprint and water usage.
- Adopting clean coal technologies such as: coal gasification; coal-to liquid; coal mine methane; coal bed methane; and coal washeries.
- Invest in procuring machines which are more efficient and productive, having lower carbon footprint.
- Enhancing green cover at all locations to counter negative impact on Environment.
- Fly ash stowing in UG mines and conversion of OB to sand.
- Energy efficient buildings, offices, colonies.
- Blast free technology for extraction of coal is adopted in big opencast mines.
- Gainful use of abandoned OC Mines such as for pisciculture, eco park, bird sanctuary, animal corridor.
- Green corridor.
- Increasing the share of renewable energy is our focus area that will enable us to manage our energy needs sustainably and improve energy efficiency. Tie up with Energy Efficiency Service Limited (EESL) for building energy efficiency programs, hiring of e-vehicle & installation of distributed solar projects will be the task ahead.



## Major Societal Challenges:

- **Community Engagement :**

Mining companies must have to recognize the value of local knowledge and that by encouraging empowerment and building relationships there can be long-term sustainable outcomes for all parties, as well as improved capacity to manage significant events such as expansion, closure and rehabilitation.

- **IR Problems :**

Coal mining, major industrial disputes, and the coal miner himself, are iconic representations of the industrial age. Demand for coal came from expanding urban centres as a result of the Industrial Revolution, and new coal-fired factories, mills and furnaces. Miners were among the first workers to organise into trade unions from the middle of the 1700s, battling a lack of legal recognition and resistance from the mine owners. Hence IR issues needs to be addressed for keeping the social harmony in the coalfields.

- **Employee Management :**

Coal industry by its very nature deploys high level of manpower both at executive and non-executive level. HR Management plays a vital role in growth of the company. Employees are one of the major stakeholders who needs to be kept along with the growth of the company.

- **Rehabilitation of PAFs:**

Coal mining involves a very wide range of displacement of project affected persons. The process of opencast mining requires huge surface land with may be forest land also. This leads to displacement of villagers, tribals, locals etc. which at time creates resistance from the displaced families. ESG framework must encompass and frame strategies to counter this challenge.

- **Land Acquisition :**

Land is the primary requirement for coal mining. Land acquisition now a days have become more complex due to political as well as non-political reasons. Parting with land is also a very emotional aspect for the land givers which invokes resistance. Further, land acquisition involves employment which is being provided as per the policy of various corporates. Hence, framing strategies for land acquisition is an integral part of ESG action plan.



## Strategies for encountering Societal Challenges:

- Theme based CSR works with proper need assessment, impact assessment and strict implementation. Special focus on Community health and hygiene (SDG-3), sustainable livelihood and women empowerment (SDG-1,5,8,10), Education and Skill development (SDG-4).
- Motivated workforce with no gender discrimination, equal work opportunity, talent attraction, retention.
- Employee welfare and wellbeing, Occupational Health and safety, Learning and development. Exceptional Medical, Transport & Education Facilities for posting at remote Areas.
- Planned land acquisition keeping in view the regulatory requirements, close liaisoning with Central and State Government.
- Tailor made rehabilitation packages with compliance of regulatory requirements, timely delivery of commitments, making lives of PAFs self sustainable.
- Regular and structured mode of communication with stakeholders such as Trade Unions, Public representatives, Customers, NGOs etc.

## Major Governance Challenges :

- **Ethics and Integrity :**


In changing situations and diverse settings, questioning morals is an everlasting practice. Whilst following rules or policies that have already been established forces us to make mindful decisions, ethics is what guides us to think and behave based on our character, values, and principles. ESG framework must address this challenge for the corporates to succeed.

- **Compliance Concerns :**

Compliance risk are one of the major risks now being faced by the corporates. The cost of non-compliance has increased manifolds. Further the regulatory regime in the country has laid down various rules and regulation for managing and governing the businesses. The ESG strategy must be agile enough to counter these challenges.

- **Digital Transformation :**

While there are more technological capabilities at our fingertips than ever before, the path forward isn't always easy. From securing funding to transitioning from legacy systems, there are many obstacles that can hinder



even the most ambitious initiatives. Today, we're sharing seven of the most common digital transformation challenges. We'll also detail how to move past these challenges and usher in the benefits your organization seeks to realize. Digital transformation is based on the notion that digital tools, such as ERP solutions, can benefit every area of a business. In other words, these tools can help companies improve their processes and culture so they can remain competitive and relevant.

- **Risk Management Framework :**

The Risk Management Framework provides a process that integrates security, privacy, and cyber supply chain risk management activities into the system development life cycle. The risk-based approach to control selection and specification considers effectiveness, efficiency, and constraints due to applicable laws, directives, Executive Orders, policies, standards, or regulations. Managing organizational risk is paramount to effective information security and privacy programs; the RMF approach can be applied to new and legacy systems, any type of system or technology (e.g., IoT, control systems), and within any type of organization regardless of size or sector.

### **Strategies for encountering Governance Challenges:**

- Self imposed governance model. Putting in place an effective Audit Committee, Stakeholders Relationship Committee and Risk Management Committee. Implementation of Whistle Blower Policy, Insider Trading policy and Code of Conduct. Succession Planning, Knowledge & experience sharing.
- Implementation of SAP/ERP for practical and user-friendly digital transformation.
- Making the achievements of targets and efforts put in by the employees known to the public at a large. Showcasing CSR activities which is touching the lives of people.
- Devising proper Risk Management Framework keeping in view the concept of HIRA (Hazard Identification and Risk Assessment) and ATMA (Avoid, Transfer, Mitigate). Identifying the RTMs (Risk that Matters) will play a vital role in Governance improvement.
- Putting in place effective Compliance Mechanism by introducing Artificial Intelligence and robust reporting framework. Identifying the cost of Non-Compliance.
- Fetching the benefits of economies of scale. Instead of piecemeal proposals, build a centralised procurement cell.
- Uniform policy and procedure implementation across group (SOP).
- Preventive vigilance so that it is not hazard for smooth working.





# COMPANIES (Auditor Report) ORDER 2020-CARO

**Compiled by:**

**DM Bala Chander**

CA, ACMA, CS, DISA

## Abstract :

- **CARO - Companies (Auditor Report) Order, 2020** report is an annexure containing additional matters (21 clauses) besides the audit opinion in the Auditors Report on Annual Audited Financial Statements of the Company.
- Auditor has to compulsorily comment/report on CARO clauses applicable to the company explicitly in CARO report. Also, If the comment is qualified / unfavourable / unable to express opinion, he must specify the reasons.
- Upon considering the materiality the auditor may furnish the comment in CARO without qualified remarks and such matters must be supported in audit work papers with reasons and communication to the management.
- Auditor has to align the comments in CARO to his report on Internal Financial Controls under section 143 (3) (i) of Companies Act issued and the data disclosed in Schedule III Financial Statements & Notes.

## Background :

Universally, An Audited Financial Statement of the entity together with the Board of Directors Report and Auditors Report is expected to reflect the financial performance and overall Governance of the entity to its stakeholders viz., Shareholders, Lenders, Employees, Tax & other authorities, Investors and other readers.

In pursuit of quality and consistency in reporting of financial statements, accounting standards, financial statements format, statutory disclosures relating to policies, notes on key components in financial statements, Board report, Auditors report formats were mandated through various regulations besides sebi regulations to a listed entity.

**Companies Auditor Report Order(CARO)** is an order notified by Ministry of Corporate Affairs pursuant to section 143(11) of the Companies Act 2013 mandating Auditors to report certain specified matters (about 21 clauses) in addition to audit opinion in the report on annual financial statements of certain companies.

It may be noted that, across the world, not many countries have prescribed format of auditors report with so many additional clauses and even in most advanced countries' audit report format specifies only audit opinion contents. To mitigate audit risks, the Indian companies act thro CARO mandated auditors to comment on major components of financial statements, statutory dues, borrowings, related party transactions & other matters explicitly.

>> Thus, **CARO report is an annexure containing additional matters besides the audit opinion in the Auditors Report on Annual Audited Financial Statements of the Company prepared pursuant to the provisions of Companies Act 2013.**

>> Para 3 of **CARO 2020 specifies 21 clauses** - clause ito xxi, as matters to be reported in the Auditors Report on accounts for financial years commencing on or after 1 April 2021.

**CARO 2020 evolved over the years from MAOCARO 1975 (Manufacturing & Other Companies Audit Report Order) :**

MAOCARO : 1975 : 22 clauses  
MAOCARO 1988 : 27 clauses  
CARO 2003 : 21 clauses  
CARO 2015 / 2016 : 16 clauses



>>It may be noted that, in regard to certain audit matters for reporting mentioned u/s143(1) of Companies Act 2013-foreg.,u/s 143(1a), auditor is required to check the security of loans and advances and if he is satisfied about it then he is not required to explicitly report this matter in the Audit report.

However, the Auditor has to compulsorily comment/report on CARO clauses applicable to the company explicitly in CARO report even if he is satisfied. Also, If the comment is qualified / unfavourable / unable to express opinion he must specify the reasons.

Traditionally the thrust in CARO report was to comment on existence of asset, its value, statutory dues, loans & borrowings, public deposits, related party transactions, internal audit adequacy & Internal controls on purchases etc. CARO 2020 added more rigor-see CARO clauses (iib),(iii),(iv),(ix),(x)(xiii), (xix) due to the sore points in functioning of the companies in usage of funds raised from Banks/FI/capital market and the information asymmetry on these matters.

## CARO Report Applicability

CARO Applicable for below entities	CARO Not Applicable for below entities
(a)	(b)
<p>i) CARO Reporting is applicable for audit of annual accounts of Companies which may be a</p> <ul style="list-style-type: none"> <li>✓ Private company or</li> <li>✓ Public Company or</li> <li>✓ Government Company or</li> <li>✓ Listed Company</li> </ul> <p>but EXCLUDING companies mentioned in column (b) in this table</p>	<p>1) CARO Report is Not Applicable (as per para 2 of CARO Order) to a Small Company as defined in section 2(85) of Companies Act. 2013</p> <p>-small company- refers to a public or private company which has paid up capital of Rs.2 crores or less and Turnover of Rs.20 crores or less as at the Balance sheet date</p> <p>- then CARO report is not applicable</p> <p>2) Also CARO Report is not applicable (as per para 2 of CARO Order) to a Private Company which has a Paid-up equity &amp; pref capital &amp; Reserves not more than ₹1 Cr. as on the balance sheet date AND which does not have total fund based borrowings from bank or financial institution or NBFC exceeding ₹1 Cr. at anytime during the financial year AND which does not have a total revenue exceeding ₹10 Cr. during the FY as per the financial statements.</p> <p>ie Even if one of the condition is not satisfied, then CARO Report would become applicable to that private company</p>
<p>ii) CARO Report is applicable in the case of a foreign company, wherever an audit under the Indian Companies Act is required to be carried out</p>	<p>3) CARO Report is Not Applicable (as per para 2 of CARO Order) for a Banking Company as defined in Banking Regulations Act, 1949 (since banking companies have to comply with additional disclosure requirements in the financial statements and audit reports mentioned in Banking Regulations)</p>
<p>iv) In regard to auditors report on</p>	<p>4) CARO Report is Not Applicable to insurance</p>





<b>Consolidated Financial Statements - CARO Report</b> -clause xxi alone to be reported - ieevery qualification/adverse remark made in CARO report of every individual subsidiary or component including the parent should be included while reporting under clause xxi.	<b>Company</b> as defined in Insurance Act, 1938 (since insurance companies have to comply with additional disclosure requirements in the financial statements and audit reports mentioned in insurance regulations)
iii) CARO Report is applicable to the Branch Auditor when he issues <b>Branch audit report</b> to the Company auditor for the India entity to whom CARO is applicable	<b>5)CARO Report is Not Applicable to a Company</b> defined in section 8 of Companies Act, 2013 - a <b>Not for Profit Company</b> <b>6)CARO Report is Not Applicable to a One Person Company</b> as defined in 2(62) of Companies Act, 2013 as at the Balance sheet date
	<b>7)CARO Report is not applicable for audit report of other legal entitieseg., audit reportof Trust, LLP's, partnership firms, proprietorship</b>

**Section 143(3) (i) requires auditors to report on the operating effectiveness of Internal Financial Controls (IFC) on certain companies, hence auditors comments in CARO report must be aligned to IFC report. Further the auditor must check the data furnished in CARO with data in Schedule III Financial Statements & Notes, BRSR Report.**

Clause	Description in CARO 2020	Remarks
(i)	<b>a)Property Plant &amp; Equipment</b> -whether PPE Register with quantity & location details maintained by the company	
	<b>b)Intangible Assets</b> -whether Register maintained with Full particulars of Intangible Assets	
	<b>c) Physical verification of PPE &amp;whether discrepancies if any properly dealt with in books.</b>	This task would be onerous in large multi locational entities when the company do not have updated record on asset location with identity tag ref &individual asset purchase values. Inadequate records may impact IFC report too
	<b>Title deeds of all the immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) are held in the name of the company, if not, provide the details thereof</b>	
	<b>d)Revaluation of PPE / Intangible asset during the year by Regdvaluer&amp; specify if change is more than 10% of net carrying value in respective class of asset</b>	The revaluation can be based only on the Regdvaluerreport
	<b>e)disclosure about proceedings if any under Benami transaction Act</b>	



(ii)	<p><b>Inventory : a)Physical of verification of of all items atleast once in a year and discrepancies if any dealt with in books. To report net excess/shortage between physical and book if it exceeds 10% of inventory value of that class of inventory</b></p>	<p>The 10% threshold for reporting must be applied on a net basis after adjusting excesses and shortages within the class of an inventory. This reporting threshold is with reference to each class of inventory and must be mentioned in CARO Report irrespective of higher materiality limit decided for the company. Also the calculation of the discrepancy should be made at the time when physical verification of inventory was made and in case of perpetual inventory system it will require aggregation of book stock, physical stock and discrepancies for computing the threshold of 10%</p>
	<p><b>b) Difference in Inventory / Current Assets as per Qtrly Returns to Banks/FI with Books : In respect of company having sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details in CARO</b></p>	<p>&gt;&gt;difference if any in inventory value mentioned in quarterly stock returns, current asset returns to banks/FI with financial statements must be reported in CARO when sanctioned working capital limits (both fund based &amp; non fund based) exceed Rs.5 crs against current assets of the company at any time during the financial year.</p> <p>&gt;&gt;It must be noted that No such reporting is required in CARO if borrowings are unsecured or secured against any other asset instead of inventory/current asset. Also No such reporting is required if sanctioned limit is less than Rs.5 crs even though amount</p>



		<p>outstanding exceed Rs.5 crs due to excess drawings / interest levied.</p> <p>&gt;&gt;Sch III mandate the management to disclose the summary of reconciliation &amp; reason for difference between quarterly returns filed to banks/FI &amp; financial statements irrespective of any borrowings or threshold limits. The auditor should review such disclosures before making comment under this clause which has different parameters of sanctioned limit and threshold amount</p> <p>&gt;&gt;The auditor is required to evaluate the difference in value of stock, amount of debtors/creditors, ageing analysis of debtors, etc., between the books of account and the returns/statements submitted to banks/financial institutions as to any fraudulent misstatement intent, tax implications, internal control weakness if anywhere reporting under this clause.</p>
(iii)	a)Disclosure on Investment, Guarantee, Security, Loans, advances made during the year & outstanding at year end to subsidiaries, Joint Ventures, Associates separately and to parties other than above separately	This clause includes Advances which might be based on both financial and non financial advance entries
	b)Report whether the schedule of repayment of principal and payment of interest has been as stipulated and regular	
	c)Report the total amount overdue for more than	



	<b>90 days, and whether reasonable steps have been taken by the company for recovery of the principal and interest</b>	
	<b>d)Report the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year</b>	
	<b>e)any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties</b>	
<b>(iv)</b>	<b>Compliance to Sec.185 of companies act in regard to loans / advance/investments/guarantee/security to directors &amp; persons to whom director is interested &amp;Compliance under section186 to on loans/guarantees / security to other persons</b>	
<b>(v)</b>	<b>Deposits / Deemed Deposits - statutory compliance</b>	
<b>(vi)</b>	<b>Cost Records - whether prescribed by CG and if yes whether such records are maintained by the company</b>	
<b>(vii)</b>	<b>a)Statutory Dues-whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated</b>	
	<b>b)if statutory dues referred to in sub-clause (a) have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute)</b>	
<b>(viii)</b>	<b>Unrecorded Income- when the transactions not recorded in the books of account have been surrendered or disclosed as income during the year in the income tax assessments. If yes, then the auditor shall report on proper recording of the same in the books of account during the year.</b>	<b>In this background, the auditor may have to review whether it is to be disclosed as Exceptional item. Also to evaluate appropriateness of internal controls environment and fraud risk profile and in IFC</b>



		report
(ix)	a) <b>Repayments of Dues to Lenders</b> -Whether the company has defaulted in repayment of loans or other borrowings or interest <b>to any lender</b> , if yes, the period and amount of default to be reported if it exist at the balance sheet date-(also lender wise details to be provided in case of defaults to banks, financial institutions and Government)	
	b) Whether the company is a declared wilful defaulter by any bank or financial institution or other lender;	
	c) Whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported	
	d) Whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated	
	e) Whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case	
	f) Whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof. State yes or No if the company has defaulted in repayment of such loans raised	
(x)	<b>Usage of IPO/FPO funds :</b> a) Whether moneys raised by way of Initial public offer or Further public offer (including debt instruments) during the year were applied for the purposes for which those are raised, if not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;	
	b) Whether the company has made any preferential allotment or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year and if so, whether the requirements of section 42 and section 62 of the Companies Act, 2013 have been complied with and the funds raised have been used for the purposes for which the funds were raised, if not, provide details in respect of amount involved and nature of non-compliance	
(xi)	<b>Fraud :</b> a) whether any fraud by the company or any fraud on the company has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated	
	b) Whether any report under section 143(12) of the	Reporting requirement



	Companies Act has been filed by the auditors in Form ADT-4 as prescribed under rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government	under section 143(12) of the Act on frauds is equally applicable to the cost accountant in practice, conducting cost audit under section 148 of the Act; and to the company secretary in practice, conducting secretarial audit under section 204 of the Act. The auditor reporting under this clause, should consider whether cost auditor or secretarial auditor has filed any report under section 143(12) of the Act in Form ADT-4 and accordingly the fact shall be reported.
	c) Whether the auditor has considered whistle-blower complaints, if any, received during the year by the company	The base to be used for assessing this impact may be onerous since such complaints may be unreliable / fake until investigation is complete.
(xii)	<b>Nidhi Company :</b> (a) Whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1:20 to meet out the liability; (b) Whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability; (c) Whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof	
(xiii)	<b>Related Parties</b> - Whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, where applicable and the details have been disclosed in the financial statements etc., as required by the applicable accounting standards	
(xiv)	<b>Internal Audit</b> - a) Whether the company has an internal audit system commensurate with the size and nature of its business	
	b) Whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor	The IA report pending remediation items will impact compliance to IFC report especially on key controls activity
(xv)	<b>Non Cash Transaction :</b> Whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the	





	provisions of section 192 of Companies Act have been complied with	
(xvi)	<p><b>Registration with RBI -a)</b> Whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) and if so, whether the registration has been obtained</p> <p><b>b)</b> Whether the company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration (CoR) from the Reserve Bank of India as per the Reserve Bank of India Act, 1934;</p> <p><b>c)</b> Whether the company is a Core Investment Company (CIC) as defined in the regulations made by the Reserve Bank of India, if so, whether it continues to fulfil the criteria of a CIC, and in case the company is an exempted or unregistered CIC, whether it continues to fulfil such criteria;</p> <p><b>d)</b> Whether the Group has more than one CIC as part of the Group, if yes, indicate the number of CICs which are part of the Group;</p>	
(xvii)	<b>Cash Losses :</b> Whether the Company has incurred cash losses in the financial year and in the immediately preceding financial year, if so, state the amount of cash losses	
(xviii)	<b>Resignation of statutory auditor :</b> Whether there has been any resignation of the statutory auditors during the year, if so, <b>whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors</b>	
(xix)	<p><b>Capability of company of meeting its liabilities existing at the date of balance sheet :</b> On the basis of the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements, the auditor's knowledge of the Board of Directors and management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date</p>	<p>Generally, the responsibility of the auditor is restricted to obtaining sufficient appropriate audit evidence as to the management's assumption on going concern. But now, together with CARO para ix &amp; xvii this para seeks auditors' direct comment on solvency of company.</p> <p>The auditor's opinion on financial statements provides users with a high, level of assurance but not absolute. Absolute assurance in auditing is not attainable due to inherent</p>

		<p>limitations viz: 1- use of judgements and estimate, approximations, not exact amounts with respect to many items depreciation, provision for bad and doubtful assets, etc.; 2. inherent limitations of any internal control system in an entity; 3- the use of sample testing by auditor; and 4- most of the evidence available to the auditor is persuasive, rather than conclusive in nature. For example, the external confirmations from a debtor as to the amount owed by him to the auditee is only a persuasive evidence of the existence and likely realisability of the debtor but is not a certainty. A future turn of events may make that debt as unrecoverable for the auditee. Hence an Auditor can express opinion on the company's financial statement as a whole after evaluating the risk of material mis-statement in the financial statements reporting with information available on Balance sheet date relying upon on management's estimates and hence appropriate basis relied / caveats in comments must be used by the auditor.</p>
(xx)	<p><b>CSR : a)</b> Whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act</p>	
	<p><b>b)</b> Whether any amount remaining unspent under subsection (5) of section 135 of the Companies Act, pursuant to any ongoing project, has been transferred to special account in compliance with provision of sub</p>	



	section (6) of section 135 of the said Ac	
(xxi)	<b>Qualifications in CARO by auditors in companies included in Consolidated Financial statements</b> - Whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks	

### Disclosures in the Financial Statements Vs CARO Auditor comments

Division 1, II, & III to Schedule III of the Companies Act, 2013 mandates the management with various disclosures in the financial statements which includes disclosures pertaining to clauses in CARO 2020

e.g. title deeds of immovable properties, revaluation of property, plant and equipment and intangible assets, proceedings for holding benami property, borrowings from banks or financial institutions on the basis of security of current assets, granting loans/advances which are either repayable on demand or without specifying any terms or period of repayment, undisclosed income, company declared as wilful defaulter, borrowings not used for the specific purpose for which borrowings were obtained, ratios, details of CSR activities.

The responsibilities for providing aforesaid disclosures in financial statements is that of the management, however there may be situations such disclosures have not been made or the disclosures made by management are not adequate or appropriate.

>>The auditor's obligation to report on CARO 2020 remain, irrespective of the fact whatever disclosures are not made or disclosures made are improper or inadequate in Schedule III.

>>In regard to such non-disclosure/ improper/ inadequate disclosure in Schedule III, the auditor need to consider its impact in the overall audit opinion report.

**Conclusion :** CARO casts more responsibility and liability on the audit output. Considering the voluminous disclosure requirements in Schedule III and in case of large listed companies in Business Responsibility Sustainability Reports the audit team must be tactful in submitting the opinion with adequate audit working paper documentation timely.

# NOTIFICATIONS AND CIRCULARS

## Ministry of Corporate Affairs

- For hassle free form filings in V3, all Signatories have to register themselves as Business User and associate their DSC in V3.
- The Ministry of Corporate Affairs (MCA) vide its notifications dated January 20, 2023 has notified below mentioned amended rules:
  - i) The Companies (Registration Offices and Fees) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=XLgc11xHIs9Sjmhyk6ogqg%253D%253D&type=open>)
  - ii) The Companies (Share Capital and Debentures) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=%252BMu3w53AFpZ0lGDqnPK8Kw%253D%253D&type=open>)
  - iii) The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=6XC9rgq54o9lS3oET1BtYg%253D%253D&type=open>)
  - iv) The Companies (Registration of Foreign Companies) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=%252B2chuXzJhqM06syQwotdiw%253D%253D&type=open>)
  - v) The Companies (Management and Administration) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=KzknWVtaIXfLUIGhXKWBjw%253D%253D&type=open>)
  - vi) The Companies (Incorporation) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=%252B2chuXzJhqM06syQwotdiw%253D%253D&type=open>)
  - vii) The Companies (Authorised to Register) Amendment Rules, 2023.  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=XkFRyiRleiGKtDK0myJS9w%253D%253D&type=open>)
  - viii) The Companies (Accounts) Amendment Rules, 2023.  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=URBkg0OQEvExHY9sWICZbQ%253D%253D&type=open>)
  - ix) The Companies (Miscellaneous) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=jLohNY%252F5Oyn3AHEbkASjzw%253D%253D&type=open>)
  - x) The Companies (Appointment and qualification of Directors) Amendment Rules, 2023  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=5gAUSA0m%252FLmgaQtCZdCS2Q%253D%253D&type=open>)
- Notice inviting Public Comments on Insolvency and Bankruptcy Code, 2016-  
(<https://www.mca.gov.in/bin/dms/getdocument?mds=%252F%252BvFPv8K3F2phOvVgShgDA%253D%253D&type=open>)  
Changes under consideration are: to strengthen the functioning of the IBC; changes to the Code are being considered in relation to the admission of corporate insolvency resolution process (“CIRP”) applications; streamlining the insolvency resolution process; recasting the liquidation process; and the role of service providers under the Code.  
Last date 7th February 2023 by 5:30 PM on  
[https://ibbi.gov.in/webfront/discussion\\_paper/invitation\\_public/](https://ibbi.gov.in/webfront/discussion_paper/invitation_public/)





## SEBI AND SECURITIES MARKET

- NSE co-location case: NSE to pay Rs 100 crore in penalties to SEBI for lapses

The National Stock Exchange (NSE) will have to pay Rs 100 crore in penalties to capital markets regulator SEBI (Securities and Exchange Board of India) for lapses in a case registered in May 2018 in relation to an alleged co-location trading scam at the bourse. The Securities Appellate Tribunal (SAT) on Monday slashed the disgorgement order of Rs 625 crore in the NSE co-location case. Instead, the NSE was asked to pay ₹100 crore towards SEBI's investor protection fund for its failure on the due diligence front.

Source:

<https://www.livemint.com/news/india/nse-co-location-case-nse-to-pay-rs-100-crore-in-penalties-to-sebi-for-lapses-11674464772632.html>

- Former Sebi-chief Damodaran launches midcap corporate governance index ATOM

Airawat Indices Pvt Ltd, a joint venture firm founded by former Sebi Chairman M Damodaran and Decimal Point Analytics, has launched a new index ATOM, comprising 30 midcap companies listed on stock exchanges. ATOM (Airawat Touchstone MidCap Index) is a thematic index designed to serve investors seeking to invest in "well-governed mid-cap companies", the company said in a release. The joint venture has selected these 30 midcap companies from the AMFI's (Association of Mutual Funds in India) list of midcap 150 stocks as the starting point of its scoring methodology.

Source: [https://www.business-standard.com/article/markets/former-sebi-chief-damodaran-launches-midcap-corporate-governance-index-atom-123012400867\\_1.html](https://www.business-standard.com/article/markets/former-sebi-chief-damodaran-launches-midcap-corporate-governance-index-atom-123012400867_1.html)

- SEBI to reward informants up to Rs. 5 lakh for tips on 'fine' defaulters

SEBI is in the process of introducing a reward system for informants providing tips that will help it recover fines from elusive offenders. The matter was deliberated upon and approved during the market regulator's board meeting on December 20, 2022 according to the board meeting minutes. SEBI has not yet formally announced the initiative. The minutes of the board meeting also revealed that the regulator plans to compensate informants under the programme till up to Rs. 20 lakh per case or 10 percent of the amount of debt that is recovered, whichever is less. Additionally, the informants will be qualified for an interim reward of up to Rs. 5 lakh. SEBI will also maintain the confidentiality of the informants' identities, said the report. Source: <https://www.moneycontrol.com/news/india/sebi-to-reward-informants-up-to-rs-5-lakh-for-tips-on-fine-defaulters-9879401.html>

### NCLT

Jaypee Infra insolvency: Consortium lenders, except ICICI Bank, assign their debt to NARCL

Debt-ridden JaypeeInfra Ltd, which is facing insolvency proceedings, on Tuesday said that all the consortium lenders -- excluding ICICI Bank -- have assigned their debt to National Asset Reconstruction Company Ltd (NARCL). JaypeeInfra Ltd (JIL) is currently undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code (IBC) following an order dated August 9, 2017, passed by the Allahabad Bench of National Company Law Tribunal (NCLT).

Source:

<https://www.deccanherald.com/business/business-news/jaypee-infra-insolvency-consortium-lenders-except-icici-bank-assign-their-debt-to-narcl-1184288.html>

### Boosters for resolution

The government's proposal to bring in a raft of changes to the seven-year-old Insolvency and Bankruptcy Code (IBC) should help untangle some of the knotty problems that have slowed down resolution plans after some early successes. That the Code needed an overhaul is evident from the fact that 64% of the roughly 2,000 ongoing cases have exceeded the stipulated resolution time of 270 days. Reason: the entire process got mired by delays in litigation as well as cases of judicial overreach.

Source:

<https://www.financialexpress.com/opinion/boosters-for-resolution/2959182/>



#### ■ New IBC clippers for shorter haircuts

Changes proposed to the Insolvency and Bankruptcy Code (IBC) last week are an incremental attempt at speeding up the resolution and increasing realization for creditors. The new bankruptcy resolution process has not delivered significantly improved outcomes from older debt recovery mechanisms although it has increased overall institutional capacity. The fast track for freeing up capital locked in zombie companies is not fast enough, and it is getting slower as traffic increases. The number of cases entering legacy debt recovery channels is growing five times faster than in the IBC, but it is still the most efficient channel available, handling the biggest chunk of soured credit. The government is justified in seeking further efficiencies in the IBC framework by aligning better the incentives of stakeholders. Alongside the law, government attention needs to be directed at administrative and resource constraints affecting the process.

Source:

<https://economictimes.indiatimes.com/opinion/et-editorial/new-ibc-clippers-for-shorter-haircuts/articleshow/97289362.cms?from=mdr>

#### ■ Bank guarantees are outside the scope of the moratorium under section 14 of the ibc, nclat on bank guarantees and IBC

The National Company Law Appellate Tribunal ('NCLAT') Bench upheld the decision of NCLT, Principal Bench, New Delhi rejecting the Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC') filed by Punj Lloyd Limited (Corporate Debtor) against Indian Oil Corporation Limited ('IOCL') inter alia praying for a stay on the encashment of the Bank Guarantees on the ground of same being hit by moratorium under section 14 of the IBC. Though Corporate Debtor had not preferred any appeal, it was the IDBI Bank who had filed the appeal before the NCLAT challenging the order dated 31.05.2021.

Source:

<https://www.livewlaw.in/law-firms/bank-guarantees-ibc-nclat-bank-guarantees-ibc-219681>

#### ■ NCLAT Chairperson Calls For IBC Amendment To Ensure Due Share For Operational Creditors; Stresses On Need To Train IRPs

Former judge of the Supreme Court and current chairperson of the National Company Law Appellate Tribunal, Justice Ashok Bhushan, said the move to inaugurate an insolvency law regime was one of the two most important changes in Indian legislative policy; the other being the introduction of the goods and services tax which replaced multiple indirect taxes levied by the centre as well as the states. "The prime minister himself is very keen and he has been following all developments, said the NCLAT chairperson, "He also knows every aspect of the matter including shortfalls and modifications that need to be made."

Source: <https://www.livewlaw.in/top-stories/nclat-chairperson-calls-for-ibc-amendment-to-ensure-due-share-for-operational-creditors-stresses-on-need-to-train-irps-219654>

#### ■ Mergers & Acquisitions NCLT sanctions amalgamation of Equitas Holdings and Equitas SFB

The National Company Law Tribunal has sanctioned the scheme of amalgamation of Equitas Holdings Limited and Equitas Small Finance Bank, the small finance lender told exchanges on January 17, 2023. The appointed date for the amalgamation is January 01, 2023 and the scheme shall be effective upon the filing of the NCLT's order with Registrar of Companies, Chennai, the bank said. "Post the reverse merger, 231 shares of Equitas Small Finance Bank are to be issued to the Shareholders holding 100 shares in Equitas Holdings Limited (all Rs 10 fully paid-up)," it said. In July 2021, Equitas SFB had received the Reserve Bank of India's approval to apply for amalgamation of the promoter into itself. The intent of the amalgamation is to comply with the RBI norms on small finance banks, mandating the promoter to reduce the stake in the subsidiary to 40 per cent within five years of commencement of operations by the SFB. Equitas Holdings is a non-deposit taking, core investment company. Its operations and activities are limited to investing in and providing loans to group companies.

Source: [https://www.business-standard.com/article/companies/nclt-sanctions-amalgamation-of-equitas-holdings-and-equitas-sfb-123011700977\\_1.html](https://www.business-standard.com/article/companies/nclt-sanctions-amalgamation-of-equitas-holdings-and-equitas-sfb-123011700977_1.html)

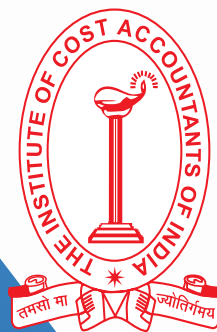


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The series of Bulletins is based on the Companies Act 2013, Rules, Circulars, Notifications as notified by the Ministry of Corporate Affairs and or SEBI from time to time. The Institute of Cost Accountants of India does not own the responsibility for any error or omission. The users are advised to cross check with the original Act, Rules, Circulars, Notifications, and Amendments before acting upon this series of Bulletins.

**Website:** [www.icmai.in](http://www.icmai.in) **E-mail:** [clc@icmai.in](mailto:clc@icmai.in) **Committee:** The Corporate Laws Committee





## THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

[www.icmai.in](http://www.icmai.in)

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100