A person is working at a desk with a laptop, papers, and a calculator. The person is wearing a striped shirt and is holding a pen over a document. The desk is cluttered with various papers, including one with a bar chart and another with a table. A laptop is open in the background, and a wooden cup is visible on the right side of the desk. The overall scene is a professional office environment.

# Compliances Under Companies Act – An Overview

By: CA. Madhukuttan Pillai K. B

## **Areas of discussion**

- **Compliance-a bane or boon?**
- **Latest updates on CA13**
- **Important compliances-macro & micro**
- **Exemptions to private companies**
- **Formats**
- **Important definitions**
- **Pertinent issues**
- **Deposits**
- **Charges**
- **Audit report-new perspectives**
- **CSR**
- **Miscellaneous topics**

## COMPLIANCE-A BANE OR BOON?



- **Compliances & More Compliances**
- **Regulatory overload**
- **Regulators in the Financial services domain-RBI,SEBI,MCA,NFRA,IRDA Etc**
- **CAPEX & OPEX Of Compliance**
- **Need to have a robust Internal Compliance system**
- **Customized Compliance tools but manual intervention must**
- **Income Tax & GST compliances**
- **Factories & Labour Laws Compliance extra**
- **Technical Part & Procedural Part**
- **Need to have fine balance between doing business & dealing with compliance**
- **CCO may be more powerful than CEO**

## RECENT AMENDMENTS

- **Decriminalization**-fraud, public Interest Criteria-23/66,7 CO Omitted
- **Rectification Of Name-Trade Mark Identical-3m Instead Of 6m.If no name change as per order , RoC shall change name.**
- **Right Share Issue-even Less Than 15 Days**
- **BEN Provisions Relaxed**
- **Periodical Financial Results** By Unlisted Cos-Sec 129A-Audit or limited review-within **30 days** of completion of relevant period( in tune with SEBI(LODR) guidelines( w.e.f 22-1-2021)
- **Higher Additional Fee For Repeated Defaults(w.e.f 1.7.2022)**
- **Lesser Penalty** For Small/OPC (w.e.f 22.1.21)-shall Not Be More Than Half Of The Penalty Specified In The Section Subject To Limit Of 2lacs For Co/1 Lac For OID
- **No Penalty If AR/FS Filed Within 30 Days From Notice Of Adj.Authority**



## EXEMPTIONS TO PRIVATE COS

- **Sec 2(40):FS w.r.t opc,sc,dc,start up-cfs excluded**
- **Sec 73(2)(a-e):NA to pvt co if pvt co accepts from members not exceeding 100%(puc+fr+sp)OR**
- **Start up, for 5 years from the date of inc.**
- **Which fulfills all of the following**
  - **Not an associate or subsidiary of any other co**
  - **Borrowings from banks/FI is less than twice of paid up SC or 50cr whichever is lower**
  - **No default in repayment of borrowing subsisting at the time of acceptance**



- Resolutions passed subject to **Sec 179**, need not be filed with RoC
- **Sec 141(3)(g)**: the limit of 20 company audits-NA to sc/opc/dc & pvt cos having pusc less than 100 cr
- **IFC u/s sec 143(3)(i)**-NA to pvt co which is opc/sc,pvt co or which has turn over less than 50 cr as per latest audited b/s, which has aggregate borrowing from banks/fi, boc at any time during the f.y less than Rs.25 cr
- **Sec 173(5)**:Board meeting-opc/sc/start up pvt co—one BM in each half sufficient, gap between two meetings not less than 90 days-nothing apply to opc in which only one director in its board
- **Sec 174**-interested director counted for quorum
- **Sec 185**:shall not apply to pvt co in whose sc, no other BoC invested, Borrowings from banks/FI is less than twice of Paid Up sc or 50cr whichever is lower, no default in repayment of borrowing subsisting at the time of acceptance



## COMPLIANCES-MACRO LEVEL

- MAINTENANCE OF BOA
  - ACCRUAL & DOUBLE ENTRY
- SCHEDULE III
- AS
- AUDIT TRAIL
- SMALL CO-relaxation
- CARO
- OPC- relaxation

## COMPLIANCES-MICRO LEVEL

- AUDIT
- DIRECTORS
- DEPOSIT
- CHARGE
- ANNUAL RETURN
- REGISTERED OFFICE

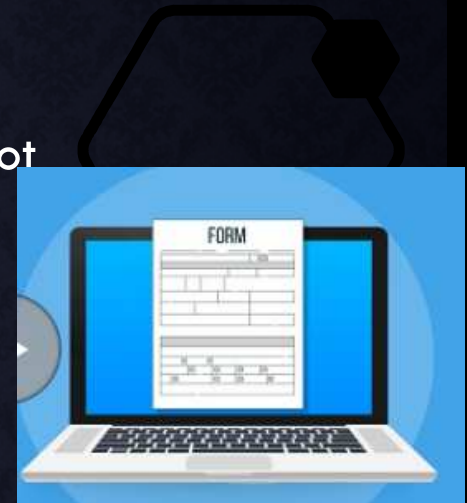
## IMPORTANT COMPLIANCES UNDER CA13

- ADT-1-15 days
- ADT-3- 30 days
- KYC-on or before 30.09-5,000
- DPT-3-30.06-varying fine
- INC-20A-180 days
- DIR-11 - 30 days
- DIR-12 - 30 days
- MGT-7/7A & AoC-4 -60 days & 30 days respectively -varying fine
- CHG-1-30 days
- CHG-4-30 days



## FORM ADT-1

- The responsibility of filing Form ADT-1 lies with the company and not the auditor.
- If an auditor is appointed as a casual vacancy in a company, Form ADT-1 must also be filed.
- Although it is not mandatory to file Form ADT-1 for the first auditor appointment, it is recommended to do so. - Section 139(1)



### Certain Important Documents to be kept in hand at the time of filing

- ✓ Auditor's written approval for the appointment.
- ✓ Copy of the company's board resolution or a resolution passed in the AGM.
- ✓ Certificate from the auditor confirming their eligibility and not being disqualified under Section 141.
- ✓ Copy of the company's disclosure to the auditor.

## FORM ADT-3

**The auditor has to state the following in the E-form ADT-3:**

- The date of resignation will be the date written in the resignation letter.
- The auditor has to state the exact reasons for resigning.
- These are written in the resignation letter as well as the form ADT-3.
- Other facts relevant to resignation can be anything which is necessary for the company as well as the ROC to know with regard to the resignation.
- Para 3 clause (xviii) reporting under CARO 2020 - Resignation Of Statutory Auditors





## FORM DPT-3

- According to **Rule 16A**, all companies that have received money and have pending loans are obligated to file Form DPT-3.
- This requirement applies to **all companies**, including small, private, non-small, OPC, and others.
- Both **secured and unsecured loans**, along with advances for goods and services, must be reported in Form DPT-3.
- Even if a Holding Company, Subsidiary Company, or Associate Company obtains a loan, they are also required to file Form DPT-3.
- Under Section 73, the company may face a penalty of a minimum of 1 crore or twice the amount of deposits, whichever is lower, with a maximum penalty of Rs. 10 crore.
- Para 3 clause (v) reporting under CARO 2020: Acceptance of Deposit





## FORM DIR-11&12

**e-Form DIR-11** is required to be filled for giving notice of **resignation of director** to the registrar **by the Director** itself pursuant to Section 168 (1) of the Companies Act, 2013 and Rule 16 of Companies (Appointment and Qualification of Directors) Rules, 2014.



**e-Form DIR-12** is needed to be furnished by **the company** for **Appointment/Resignation** or towards the case of revision in Designation of Directors of the Company through the Company following to Sections 7(1) (c), 168 & 170 (2) of the Companies Act, 2013 and Rule 17 of Companies (Incorporation) Rules 8, 15 & 18 of Companies (Appointment and Qualification of Directors) Rules, 2014.

## MGT 7A – SMALL COS & OPC

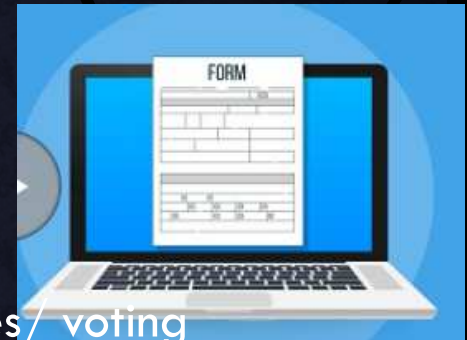
- **Simplified Format:** MGT 7A offers a simplified format compared to MGT 7, making it easier for small companies to comply with statutory requirements without overwhelming administrative burdens.
- **Exempted Disclosures:** MGT 7A exempts small companies from providing detailed financial statements, shareholding patterns, and other extensive information required in MGT 7. This ensures that compliance remains feasible and proportionate to the scale of operations.
- **Emphasis on Key Information:** MGT 7A focuses on capturing key information, including basic company details, details of directors, and the number and dates of board meetings held during the financial year.
- **Cost and Time Efficiency:** By reducing the information required, MGT 7A saves small companies valuable time and resources that can be better utilized in their core business operations.



## BEN & SBO

“**Significant beneficial owner**” means an individual who acting alone or through more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- (i) Holds indirectly or directly **not less than ten percent**, of the shares/ voting rights;
- (ii) Has direct or **indirect right to receive or participate in not less than ten percent**, of the total distributable dividend, or any other distribution, in a financial year
- (iii) (iv) has right to exercise, or actually exercises, **significant influence or control**, in any manner other than through direct-holdings alone





Form	Purpose	Timeline
BEN-1	Declaration by the Significant Beneficial Owner	Within 90 days from the date of Amendment Rules, 2019
BEN-2	Return by the Reporting Company	Within 30 days of receiving the BEN-1 declaration
BEN-3	Register of Significant Beneficial Owners	Ongoing maintenance by the Reporting Company
BEN-4	Notice to Members	As required by the Reporting Company

- In light of the transition from MCA 21 version 2 to version 3, MCA vide circular dated May 7, 2024 has **further extended the deadline for filing Form LLP BEN-2 and LLP Form 4D without incurring additional fees until July 1, 2024**

## LLP – BEN/SBO

- The Ministry of Corporate Affairs, through Notification No. G.S.R...(E), dated **09.11.2023**, has introduced the **Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023**.
- To enhance transparency and regulatory compliance, every LLP must proactively identify any individual qualifying as a Significant Beneficial Owner within its structure.
- **LLP BEN-1&2 to Registrar of Companies**

This submission should occur within 30 days from the receipt of the declaration



## SECTION 2(40) FINANCIAL STATEMENT

Financial Statement” in relation to a company, includes—

- BS at the end of the F.Y;
- a Statement of profit and loss, or in the case of a company carrying on any activity not for profit, an I&E A/c for the F.Y;
- Cash Flow Statement for the F.Y;
- Statement of Changes in *Equity, if applicable*; and
- Any explanatory note annexed to, or forming part of, any document referred to above.

Provided that the FS, with respect to **OPC, small company, dormant company and private company (if such private company is a start-up)** may not include the cash flow statement;



## DEPOSITS - SEC 2(31) R.W SEC 73-76A(CHAPTER V) COMPANIES( ACCEPTANCE OF DEPOSIT) RULES 2014

- **Sec 2(31):** Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with RBI
- Private co can also accept deposit from members subject to the limit & conditions
- If a private co received advance for goods/services but such advance is not appropriated for such g/s within **365 days**, it has to be refunded within 15 days. If not done, it will attract **disqualification** of Directors u/s 164(2).The above needs to be reported in AR( Sec 164(2) r.w Sec 143(3)(g) r.w Rule 2 of Deposit Rules)

## LOANS VS DEPOSITS

- In the case of deposit, it is the depositor who is the **prime mover** whereas in the case of loan, it is the borrower who is the prime mover(Pennwalt India Ltd Vs RoC ,Maharashtra(1987))
- As per sec 143(1)(d), Ar shall inquire whether loans and advances made by co have been shown as deposits.
- These indicate that those terms are not interchangeable unless there is an express provision to that effect or the context makes it clear that the terms are interchangeable.



## Transactions Not Considered Deposits:

- any amount received by a company from any other company
- any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company;

However, the director of the company or relative of the director of the private company, is required to furnish to the company at the time of giving the money, a **declaration** in writing to the effect that the amount is **not being given out of funds acquired by him by borrowing capital.**



- any amount received from **an employee** of the company not **exceeding** his annual **salary** under a contract of employment with the company in the nature of non-interest **bearing security deposit**;
- any amount brought in by the **promoters** of the company by way of **unsecured loan** in pursuance of the stipulation of any lending financial institution or a bank
- an amount of **twenty-five lakh rupees** or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding **ten years** from the date of issue) in **a single tranche**, from a person;

By way of Explanation it is clarified that:

- I. “Start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956.

- any amount raised by the **issue of bonds or debentures secured by a first charge** or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act **excluding intangible assets** of the company or bonds or debentures compulsorily convertible into shares of the company within 10 years;
- any amount received and held pursuant to an offer made in accordance with the provisions of the **Act towards subscription to any securities** so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

Explanation: It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received **cannot be allotted within 60 days** from the date of receipt of the application money, or advance for such securities and such application money or advance is not **refunded** to the subscribers **within 15 days** from the date of completion of 60 days, such amount shall be treated as a deposit under these rules



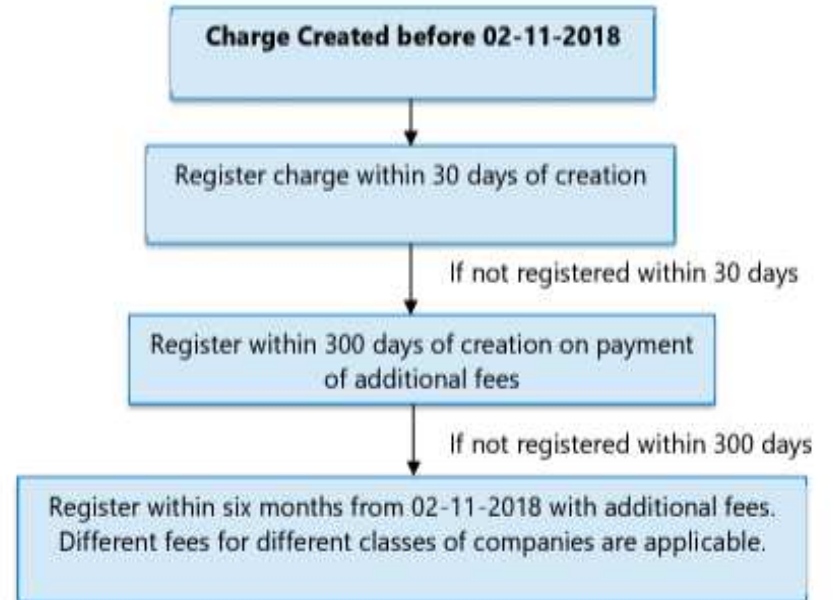
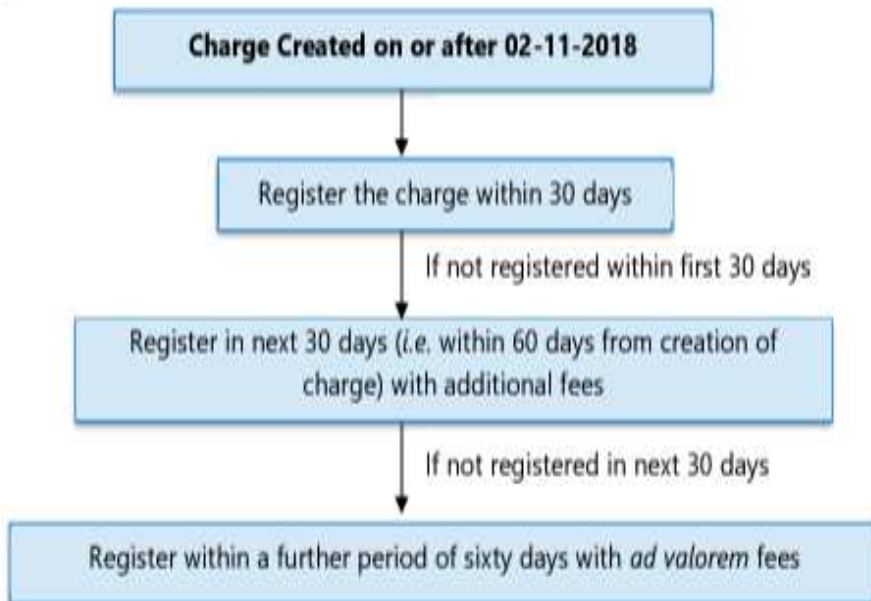
- any amount received in the course of, or for the purposes of, the business of the company
  - (a) as an **advance for the supply of goods or provision of services** accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of 365 days from the date of acceptance of such advance;
  - (b) as advance, accounted for in any manner whatsoever, received in connection with **consideration for an immovable property**
  - (c) as **security deposit** for the performance of the contract for supply of goods or provision of services;
  - (d) as advance received under **long term projects for supply of capital goods** except those covered under item (b) above;
  - (e) as an advance towards consideration for providing **future services in the form of a warranty** or maintenance contract as per written agreement or arrangement
  - (f) as an advance for subscription towards publication,
- **any amount accepted by a Nidhi company** in accordance with the rules made under Section 406 of the Act;



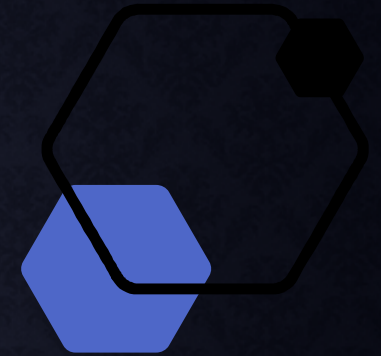
# CHARGE

- **Sec 2(16)**: Means an interest or lien **created** on the **property** or **assets** of the company or any of its **undertakings** or both as **security** and includes a **mortgage**
- Registration of charge under Companies act and registration of instrument creating the charge are **two** different things
- Loan taken against fixed deposits as well as car loan availed on hypothecation finance also require regn.
- If not done, appropriate reporting required irrespective of CARO applicability. A combined reading of Sec 2(16) r.w Sec 77 envisages the same.
- Modification of charge to be registered with RoC as per Sec 79(b)r.w Sec 77.
- **Restructuring** of Credit facilities **not** tantamount to modification and hence no need to file-NCLT.

# Registration of Charge



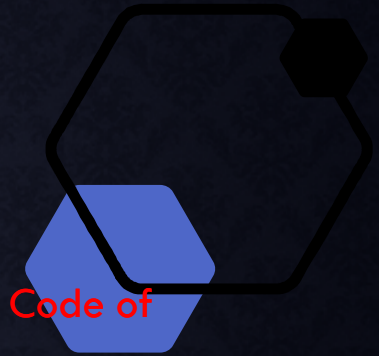
# MATERIAL ACCOUNTING POLICIES



- Ind AS -1 Amdt for 23-24
- “Material accounting Policy Information” should replace “Significant Accounting Policy”
- Material policies indicate ability to influence decisions of FS users such as shareholders, investors & lenders
- Mgmts have to **revisit** their approach of disclosing “boiler plate” accounting policies to make disclosure more relevant



# AUDIT REPORT-NEW PERSPECTIVES



- Opinion-t & f view etc.
- Basis for opinion-compliance with SA,independent of the co in accordance with **Code of Ethics**,SAAE etc
- Key Audit Matters(**KAM**)
- Other Information-BoD is responsible for the preparation and presentation of BR which does not include the FS and AR. Our opinion on the FS does not cover BR and we do not express any form of assurance. **Material inconsistency with FS,mis- statement in BR-report**
- Responsibilities of Mgmt & those charged with Governance-mgmt. resp for 134(5) matters,going concern,software & **audit trail**
- Auditor's responsibilities-material misstatement,ifc,appropriateness of acc.policies,going concern,materiality-quantitative materiality & qualitative factors
- Other Legal & Regulatory requirements

## NFRA'S ORDER NF-23/14/2022, DATED 12.04.2023

- As per Section 134(1), **approval of the FS by the Board and its signing** by the persons authorized by the Board are prerequisites before an auditor makes a report on such approved & signed FS.
- **The Auditors shall have to obtain a certified copy of the Board resolution** approving the FS and authorizing the Directors to sign the FS and should have kept the same in the Audit File before its assembly

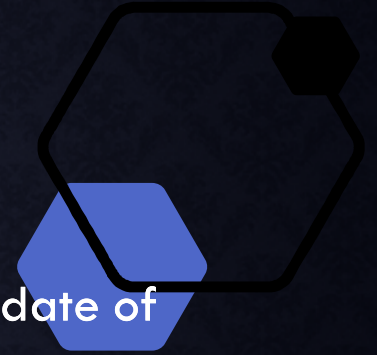


# SUBSCRIPTION

- In case of company having share capital, after obtaining certificate of incorporation but before commencement of business, company is required to **submit declaration in Form INC-20A 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-section 10A of Companies Act, 2013 inserted vide the Companies (Amendment) Act, 2019 w.r.e.f. 2-11-2018;
- **Sec 2(64) “Paid up Share Capital”** or “share Capital Paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and **also includes any amount credited as paid-up in respect of shares of the company**, but does not include any other amount received in respect of such shares, by whatever name called—Section 2(64)
- Situation may occur when **subscribers to the MOA fail to pay subscription money** as agreed by the min MOA



# SUBSCRIPTION



- If the Company fails to file Form INC 20A within **180days** from the date of Incorporation, the **RoC may initiate action for removal of the name of the Company-Section 10A(3)&248(1) (d)~Going Concern Matter(SA570)**
- **•Calls can be made only by a resolution by Board of Directors at meeting-section 179(3)(a).Subject to AOA the company can collect interest if call money is paid late**
- **•In case of where subscription money not received has been credited as paid-up then as per Schedule III the amount due from the subscriber should be appropriately disclosed in the balance sheet**

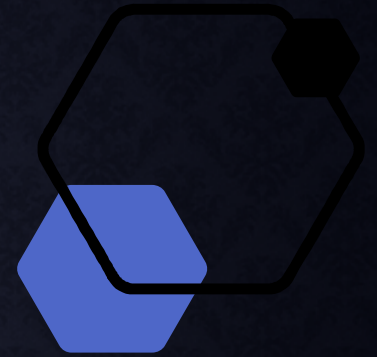
## CARO APPLICABILITY



- Merely because CARO is applicable to HC, that does not mean that it will by default become applicable on SC
- In respect of small co, CARO NA(notification dated 15/09/22) **even if** borrowings from banks/FI exceed 1cr
- No reporting of IEPF dues in CARO, but as per Rule 11 of Audit & Auditors Rule

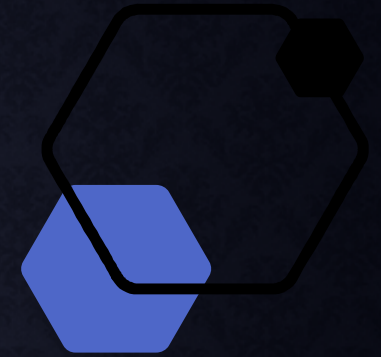


# CARO



- **Applicability**
- **Not Applicable to Private Company, if:**
- Its not a subsidiary or holding of a Public Co.; **AND**
- (Paid up Capital + Reserves & Surplus)  $\leq$  Rs. 1 crore as on Balance Sheet Date; **AND**
- Total Borrowings from Banks/ F.I.  $\leq$  Rs. 1 crore at any point of time during the financial year; **AND**
- Total Revenue (including revenue from discontinuing operations) under Schedule III  $\leq$ Rs.10crores during the financial year as per the financial statements

## SMALL CO



- **[Sec. 2(85)]**: a Company having:
- a) Paid up share capital  $<4$  cr.; **and**
- b) Turnover as per preceding year P & L  $<40$  cr.
- **Following do not qualify as a Small Company:**
- Public company;
- Holding or a subsidiary company;
- Section 8 Company;
- Co. or body corporate governed by any special Act
- **Note:** Rule 2(1)(t) as amended by the Companies (Specification of Definitions Details) Amendment Rule, 2022, w.e.f. 15-9-2022:
- Paid up share capital  $<4$  cr.; **and**
- Turnover as per preceding year P & L  $<40$  cr

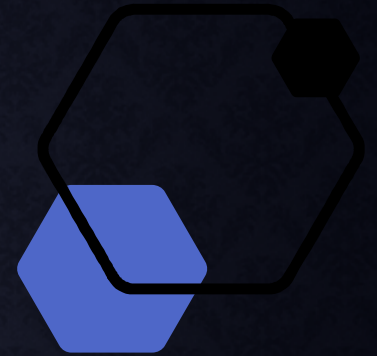


## SMALL CO –CONTD.

<b>Paid-up Capital</b>	<b>48 Lakhs</b>	<b>48 Lakhs</b>
<b>Reserves and Surplus</b>	<b>5 Lakhs</b>	<b>3 Lakhs</b>
<b>Total</b>	<b>53 Lakhs</b>	<b>51 Lakhs</b>
<b>Borrowings from Banks/ F.I.</b>	<b>3 Cr.</b>	<b>3 Cr.</b>
<b>Total Revenue/ Turnover</b>	<b>38 Cr.</b>	<b>44 Cr.</b>
<b>CARO Applicable</b>	<b>No</b>	<b>Yes</b>
<b>Reason</b>	<b>Small Co</b>	<b>-</b>

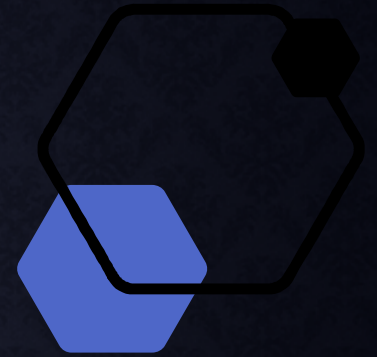
## SMALL CO. VS. SMC

- Even public company can be SMC but public company cannot be small company
- Small company and small & medium size company are two different types, the latter being relevant only for exemption from some requirements of AS.
- SMC needs to be evaluated only for AS; but small company needs to be evaluated for various provisions such as applicability of:
  - CARO
  - IFC
  - Board Meetings
  - Rotation of Auditors and so on.....






## CSR



- Cos spent excess-can set off
- No CSR Committee if the amt spent is not exceeding 50 lacs
- Permitted CSR Activities Under Schedule VII
- CSR provisions apply to a company registered for a charitable purpose under Section 8 of the Companies Act, 2013. Section 135(1) of the Act states that **every** company.
- The average **net profit** to determine the spending on CSR activities is to be computed as per the provisions of **Section 198** of the Act

- 
- Unspent **CSR Account could be current or savings** but if its savings account then interest earned will also be used for CSR purposes
  - The **unspent CSR account** needs to be separately opened for each financial year and **not for each project**
  - **CSR expenditure's calculations** is not based upon the profit as appearing in the statement of profit and loss rather the profit **as computed under Section 198** of the companies Act, 2013



## MISCELLANEOUS

- Board resolution is required to be passed for appointment of tax auditor
- The first auditor needs to be appointed by the Board within 30 days of inc. The BM need not be the first BM after inc. This could be any meeting within 30 days

*Thank  
you*

