KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

Since 1957

31st KSCAA Annual Conference 2019

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15th & 16th March 2019
Friday & Saturday

Bunts Sangha Auditorium
Attiguppe Metro Station, Chord Road,
Vijayanagar, Bengaluru - 560 040

Recent Changes in Reporting Requirements under Audit, Accounting and the Companies Act

CA. K. G. ACHARYA

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UPGRADED AS - to bring them closer to Ind AS

ED ISSUED – ICAI COUNCIL CLEARED - *12 STANDARDS*

AS	U-AS	Standard	Issued on	Last Date
1	1	**Presentation of Financial Statements**	29-12-2018	31-01-2019
7	11	**Construction Contracts**	07-01-2019	04-02-2019
9	18	**Revenue**	07-01-2019	04-02-2019
10	16	**Property, Plant and Equipment**	24-01-2018	24-02-2018
15	19	**Employee Benefits –** actuarial gains & losses for post-emp. benefits obligations will be recognised in OCI instead of in P&L as per AS 15. **Cleared by ICAI Council.**		
16	23	**Borrowing Costs**	05-10-2017	31-10-2017
18	24	**Related Party Disclosures**	05-10-2017	31-10-2017
26	38	**Intangible Assets** - does not allow revaluation model under subsequent recognition. **Cleared by ICAI Council.**		
29	37	**Provisions, Cont. Liab. & Cont. Assets**	29-12-2018	28-01-2019
30	109	**Financial Instruments**	16-05-2018	30-06-2018
-	40	**Investment Property** Apart from not allowing use of FV model, does not require disclosure of FVs of investment prop. unlike Ind AS 40. **Cleared by ICAI Council.**		
-	41	**Agriculture**	1-2-2019	3-03-2019

UPGRADED AS - under formulation – 9 standards

AS	U-AS	Standard
-	27	Separate Financial Statements
25	34	Interim Financial Reporting
11	21	The Effects of Changes in Foreign Exchange Rates
9	18	Revenue
29	37	Provisions, Contingent Liabilities and Contingent Assets
24	105	Non-current Assets Held for Sale & Discontinued Operations
22	12	Income Taxes
14	103	Business Combinations
21	110	Consolidated Financial Statements

SCH. III OF CO'S ACT 2013 REVISED

*(*Notification dated 06.04.2016)*

FORMAT OF BS & P&L

Applicable to Co's following

i. **Division I** * – Accounting Standards specified in **CASR 2006.** **[I-GAAP]**

ii. **Division II** * – IND-AS specified in **Co's (Ind-AS) Rules, 2015.**

iii. **Division III** - IND-AS for **NBFCs.** *[Notification dated 11/10/2018]*

IGAAP Vs. Ind AS

Please DO NOT copy notes of listed Co. as they would be following IND AS !!

Applies to Audit Reports also !!!

Reporting Standards wrt Audit Reports – Revised

	Applicable for Audits for FS beginning from
SA 700	1st April 2003
SA 700 Rev - 705 - 706	1st April 2012
Rev SA 700 - Rev 705 - Rev 706 - 701- Rev 720	1st April 2018

- **Implementation Guide from ICAI in Q&A format.**
- **Audit reports signed after April 1, 2018 - pertaining to FS for periods beginning before April 1, 2018 - will not be governed by Rev. SA 700.**

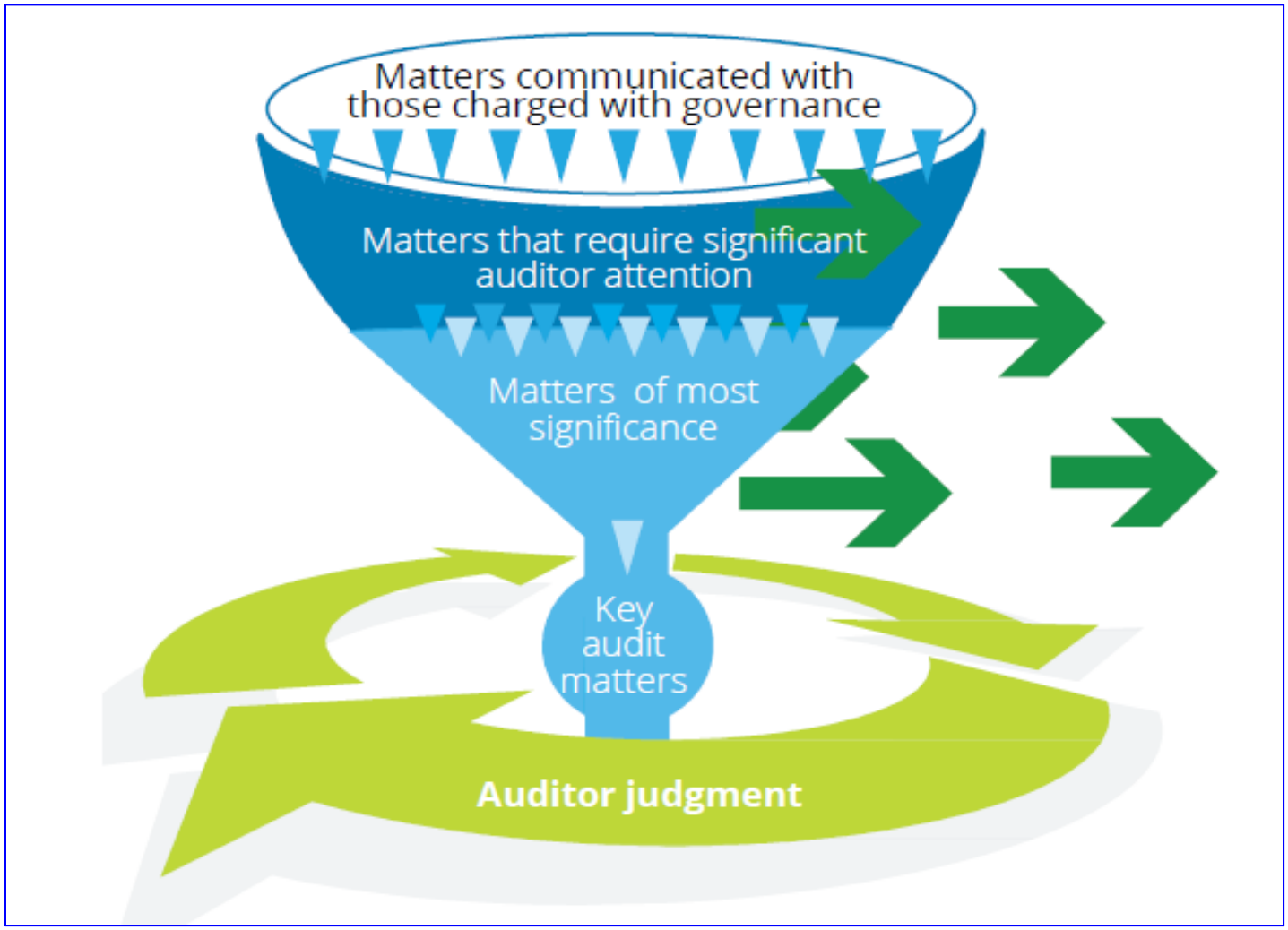
Audit Report - Types

Audits for FS beginning from 1-4-2018

SA 700, 701, 705, 706

SA	Title	Opinion	Which means
R. 700	Forming an Opinion & Reporting on FS	Unmodified *(Unqualified)*	All is well
701	Key Audit Matters • **Mandatory** for **Listed Entities** • **For others if A'tor decides to communicate**	***Most significant matters in audit of FS - in auditor's professional judgment - selected from matters communicated with TCWG.*** →	
R. 705	Modifications to Opinion in the Independent Auditors Report	**Modified**	
		Qualified	Gen. everything is well, Except for _____
		Adverse	Nothing is well
		Disclaimer	Unable to comment due to scope limitation – **Could lead to Resignation**
R. 706	Emphasis of Matter Para. & Other Matter Para. in the Independent Auditor's Report	EoM	All is well but please refer Note No_ in FS.
		OM	All is well - Please be informed about an audit point in Audit report.

SA 701 – Key Audit Matters – Funnel Approach



Auditor to communicate with TCWG matters that he intends to communicate as KAM providing them an opportunity to obtain further clarification when necessary - also enable them to consider whether such disclosures are useful when communicated in auditor's report.

Criteria & Nature of Modification – SA 705

Nature of matter giving rise to modification	Auditor's judgment about Materiality & Pervasiveness of Effects or Possible Effects on FS	
	Material but Not Pervasive	**Material & Pervasive**
FS are materially misstated	Qualified opinion	Adverse opinion
Inability to obtain sufficient appropriate audit evidence	Qualified opinion	Disclaimer of opinion

SA 706 – Emphasis of Matter Paragraphs & Other Matter Paragraphs in the Independent Auditor's Report

Additional communication in Auditor's Report when Auditor's considers it is

a) **Fundamental** to users' understanding of FS	Highlighting a matter already in FS – refer to note in FS	EOM [Not being material misstatement]
b) **Relevant** to user's understanding of **Audit, Auditor's responsibility or Auditor's report** **[Not to include matters related to FS]**	Matter NOT in FS – Limited to matters related to audit	OM

Also in para indicate that Auditor's Opinion is NOT Modified in respect of matter emphasized.

Revised Audit Report For audit of FS WEF 1.4.2018 Changes at a glance

1. **Opinion at the beginning**

2. **Basis of opinion para to be given even for Clean Report stating -**
   a) Audited as per SA
   b) Refer to Auditor's Responsibility para
   c) Refer Auditor's independent- Ethical- COE
   d) SAAE obtained

3. "EOM – KAM (For listed entities only)" para to be given immediately after "Opinion" & "Basis of Opinion" para.

4. **Concern w.r.t Going Concern**
   "Going concern" assertion para to be given under **Management Responsibility** and by Auditor in **A'rs Responsibility** para &
   If material uncertainty exists wrt GC disclose under separate section instead of under EOM

5. Under **Auditor's Responsibility, wordings rationalised**, bringing the
   - **Main objective of Audit** in the main report
   - **Other responsibility -** Elaborate assertion 1+7+1 **points -** can be in separate annexure

Assertions are very broad & onerous for an auditor. If in subsequent review of audit process, it is found that some audit procedures detailed in SAs were not in fact complied with, it may tantamount to auditor making a deliberately false declaration in his report & consequences for auditor could be serious.

Snapshot of Audit Report Format as per SA 700-705-706 (R) For audit of FS WEF 1.4.2018

I. Report on FS

1. **Opinion** (Qualified opinion / Adverse opinion / Disclaimer of opinion)
2. **Basis of opinion** (Basis for Qualified opinion /Adverse opinion / Disclaimer of opinion)
3. **Material uncertainty related to Going Concern.**
4. EOM (To differentiate from KAM – 'EOM – Subsequent event' type heading can be used)
5. **KAM** (May be placed before EOM, if KAM is very important)
6. **Other information** (Info other than the FS & A'rs report thereon)
7. Management responsibility
8. Auditor's responsibility + **Annexure 'A' description of assertions.**
9. **Other Matter – OM** (could be placed after report on other legal and regulatory requirement para)

II. Report on other legal & Regulatory Requirements

4 in 1 Report

1. CARO Report - if applicable
2. S. 143(3) Auditor's Report incl. IFC Report

COMPANIES AUDIT REPORT – MASTER TEMPLATE

Note:

1. *The underlined text in the master template below refers to the changes made vide Revised SA 700 issued by ICAI* ***effective for audit of FS commencing from 1.4.2018****. The struck off portion represents the earlier version not any more required. For illustrative purposes, multiple Reporting Possibilities have been provided for benefit of the readers and suitable option has to be chosen based on Auditor's judgment considering the facts of the case.*
2. *Under the New Companies Act 2013, reporting in "Bold & Italics" by Auditor has been done away with. Phrases in* **Bold Type and inside circles** *are for emphasis only and are not to be considered for reporting.*

INDEPENDENT AUDITORS REPORT

Title

TO THE MEMBERS OF *ABC COMPANY PVT. LTD.*,

Addressee

Report on the Audit of the Standalone(*) Financial Statements

Opinion:

We have audited the ~~accompanying~~ standalone(*) financial statements of **ABC Company Private Limited.,** ("the Company"), which comprise the Balance Sheet as at 31 March, 20XX, the Statement of Profit and Loss, *(statement of changes in equity)* the Cash Flow Statement for the year then ended, and notes to the financial statement including a summary of significant accounting policies and other explanatory information, [in which are included ~~incorporated~~ the Returns for the year ended on that date audited by the branch auditors of the company's branches located at (location of the branches)].

In our opinion and to the best of our information and according to the explanations given to us, {$} the aforesaid standalone(*) financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India of state of affairs of the Company as at March 20XX and Profit / loss, *(Changes in equity)* and its cashflows for the year ended on that date.

Basis for Opinion

[Fill in details of qualification, if any here as per SA 705 – in that case the heading would read as **"Basis of Qualified Opinion"** – Also the last para under the "Opinion" para above would undergo a change with the insertion of the wordings "**except for the effects of the matter described in the *Basis for Qualified Opinion* section of our report"** in {$}.]

We conducted our audit in accordance with the **Standards on Auditing** (SAs) specified U/s. 143(10) of the Companies Act, 2013 ('The Act"). / Our responsibilities under those Standards are further described in the **Auditor's Responsibilities** for the Audit of the Financial Statements section of our report. / We are independent of the Company in accordance with the Code of Ethics issued by the Institute of Chartered Accountants of India together with the **ethical requirements** that are relevant to our audit of the financial statements under the provisions of the Act and the Rules thereunder, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the Code of Ethics. / We believe that the **audit evidence** we have obtained is **sufficient and appropriate** to provide a basis for our *opinion*. *(Qualified audit opinion/adverse audit opinion)*

[Drop last sentence in case of disclaimer of opinion]

- **Material uncertainty related to Going Concern.**
- ***Emphasis of Matter para [SA 706]-*** *To differentiate from KAM – 'EOM – Subsequent event' type heading can be used*
- ***Key Audit Matters (SA 701)*** – *Mandatory for listed entities [If EOM is not very important KAM may be placed before EOM]*

  [Key audit matters— Most significant matters in audit of FS - in auditor's professional judgment - selected from matters communicated with TCWG.]
- **Other information** - *Info other than the FS & A'rs report thereon.*

Responsibilities of Management's and Those Charged with Governance# for the standalone(*) Financial Statements. ~~***Management Responsibility for the Standalone(*) Financial Statements***~~

[# Normally Management refers to BOD and TGWC refers to ACB -Identify those responsible for the oversight of financial reporting process, when those responsible for such oversight are different from those who fulfill the responsibilities for preparing FS (ACB). In this case, heading of this section shall also refer to "TCWG" or such term that is appropriate in context of legal framework applicable to the entity]

The Company's Board of Directors is responsible for the matters stated in Section 134(5) of the Act with respect to the preparation of these standalone(*) financial statements that give a true and fair view of the financial position, financial performance, *(changes in equity)* and cash flows of the company in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified u/s 133 of the Act. ~~read with Rule 7 of the Companies (Accounts) Rule, 2014.~~ This responsibility also includes maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding of the assets of the Company and for preventing and detecting frauds and other irregularities; selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and design, implementation and maintenance of adequate internal financial controls, that were operating effectively for ensuring the accuracy and completeness of the accounting records, relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Company's ability to **continue as a going concern**, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Going Concern assertion

Those Board of Directors are also responsible for overseeing the company's financial reporting process.

Auditor's Responsibility for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, **and** to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

[Or could provide a definition / description of materiality]

~~Our responsibility is to express an opinion on these Standalone(*) financial statements based on our audit.~~

~~We have taken into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder.~~

~~We conducted our audit in accordance with the Standards on Auditing specified u/s 143(10) of the Act. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.~~

~~An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal financial control relevant to the Company's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on whether the Company has in place an adequate internal financial controls system over financial reporting and the operating effectiveness of such controls. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of the accounting estimates made by Company's Directors, as well as evaluating the overall presentation of the financial statements.~~

~~We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our Audit Opinion on the standalone(*) financial statements.~~

A further description of our responsibilities for the audit of the financial statements is included in **Annexure A** of this auditor's report. This description, which is located at [page number **5** or other specific reference to the location of the description], forms part of our auditor's report.

- ***Other Matters*** – *Reg Audit – opinion not modified [SA 706]* - *could be placed after report on other legal and regulatory requirement para ["OM - Scope of the Audit", word to be used only if KAM is given to differentiate Other Matter paragraph from the individual matters described in KAM section.]*

Report on Other Legal and Regulatory Requirements

1. As required by the Companies (Auditor's Report) Order, 2016 ("the Order"), issued by the Central Government of India in terms of S.143(11) of the Act, we give in the **"Annexure – B"** a statement on the matters specified in paragraphs 3 and 4 of the Order, to the extent applicable.

   This report does not include a statement on the matters specified in paragraph 3 of the Companies (Auditor's Report) Order, 2016, issued by the Ministry of Corporate Affairs, in terms of Sec.143(11) of the Act, since in our opinion and according to the information and explanations given to us, the said Order is not applicable to the company.

~~2. Further to our comments in the annexure,~~ *As required by Sec. 143(3) of the Act, we report that:*

   a. We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit.

   b. In our opinion, proper books of account as required by law have been kept by the Company so far as it appears from our examination of those books *[and proper returns adequate for the purposes of our audit have been received from the branches not visited by us]*

   c. [The reports on the accounts of the branch offices of the company audited u/s 143(8) of the Act by branch auditors have been sent to us and have been properly dealt with by us in preparing this report.]

   d. The Balance Sheet, the Statement of Profit and Loss, and the Cash Flow Statement dealt with by this Report are in agreement with the books of account *[and with the returns received from the branches not visited by us.]*

   e. In our opinion, the aforesaid standalone(*) financial statements comply with the Accounting Standards specified u/s. 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014.

   f. On the basis of the written representations received from the directors as on 31st March, 2019 taken on record by the Board of Directors, none of the directors is disqualified as on 31st March, 2019 from being appointed as a director in terms of Sec. 164(2) of the Act.

g. With respect to the adequacy of the internal financial controls over financial reporting of the Company and the operating effectiveness of such controls, refer to our separate Report in **'Annexure - C'.**

h. With respect to the other matters to be included in the Auditor's Report in accordance with Rule 11 of the Companies (Audit and Auditors) Rules, 2014, in our opinion and to the best of our information and according to the explanations given to us:

I. The Company has disclosed the impact of pending litigations on its financial position in its financial statements – Refer to Note XX to the financial statements; *[or the Company does not have any pending litigations which would impact its financial position]*

II. The Company has made provision, as required under the applicable law or accounting standards, for material foreseeable losses, if any, on long-term contracts including derivative contracts–Refer to Note X to the financial statements; *[or the Company did not have any long-term contracts including derivative contracts for which there were any material foreseeable losses.]*

III. There has been no delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the Company {or, following are the instances of delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company or there were no amounts which were required to be transferred to the Investor Education and Protection Fund by the Company}

For M/s. K.G. Acharya & Co.,
Chartered Accountants
FRN _____

Date
Bangalore

_____
Partner / Proprietor
M. No. _____

(*) 'Standalone' to be deleted when Company does not have to prepare Consolidated Financial Statement

 # Apart from considering modification to the opinion as per Revised SA 705, the auditor will also have to consider his opinion as in the IFCOFR report at the time of giving his opinion in the Main audit report.

Annexure A to the Auditor's Report

[Key assertion as per the parent SA-200: Overall objectives of the independent Auditor & the conduct of an audit in accordance with SA – These assertions could also be given in the body of the report itself]

As part of an audit in accordance with SAs, we exercise **professional judgment** and maintain **professional skepticism** throughout the audit. We also:

- Identify and assess the **risks of material misstatement** of the financial statements, **whether due to fraud or error**, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

  1. ROMM – Fraud v Error

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances. ***U/s.143(3)(i) of the 2013, we are also responsible for expressing our opinion on whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.*** *[IF IFC Report not given instead of 2nd sentence state-* "but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control."]

  2. IFC – Study & Report, if applicable

- Evaluate the **appropriateness of accounting policies** used and the **reasonableness of accounting estimates** and **related disclosures** made by management

  3. AP, AE & Disclosures OK

Reporting on IFC – NOT APPLICABLE to Private Co's iff - [VIDE NOTIFICATION DTD 13-06-2017]

- Turnover < Rs. 50 Cr or Aggregate Borrowings < Rs. 25 Cr AND
- it has not committed default in filing its FS u/s 137 or AR u/s 92 with ROC.

- Conclude on the appropriateness of management's use of the **going concern** basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.

4. 'Going Concern' assertion

- Evaluate the overall **presentation, structure and content** of the financial statements, including the **disclosures**, and whether the financial statements represent the underlying transactions and events in a manner that achieves **fair presentation.**

5. Presentation & Disclosure is fair

We communicate with those charged with governance regarding, **among other matters, the planned scope and timing of the audit and significant audit findings**, including any significant deficiencies in internal control that we identify during our audit.

6. Communication to TCWG

We also **provide those charged with governance with a statement** that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

7. Ethics Complied

We also, from the matters communicated with those charged with governance, **determine those matters that were of most significance in the audit** of the financial statements of the current period **and are therefore the key audit matters**. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication. ***(Note: This point is to be given for audit of entities to which* key audit matters *are communicated as per SA 701)***

8. Determination of KAM – if applicable

Concern wrt Going Concern vis-à-vis Audit Report

Disclose	Earlier	Now #	
		If KAM applicable	If KAM Not applicable
Iff a material uncertainty related to going concern exists And disclosure in FS adequate.	EOM as per SA 570	Separate section Material uncertainty related to GC **(If disclosure not adequate - Modify** as per SA 705)	
If No material uncertainty reg. GC, but is fundamental to users understanding	May disclose under **EOM** as per SA 706	May disclose under **KAM** as per SA 701	May disclose under **EOM** as per SA 706

New descriptions of responsibilities relating to GC to be included in respective sections for management's & auditor's responsibilities.

ICAI findings

Auditors of IFIN miserably failed to report data of excessive reliance on short-term borrowings for financing long-term assets, adverse key financial ratios & significant deterioration in value of assets used to generate cash flow.

In fact, to the contrary, statutory auditors mentioned that in view of its positive net worth, positive cash flow, credit ratings & Boards' proposals, there was no doubt on the ability of the entity to continue.

This is a clear misrepresentation of facts.

Description of each KAM to cover 3 aspects

1. **Reference** to related disclosures (if any) in FS.

2. **Why** matter considered most significant in audit & **determined as KAM**.

   i. **Areas of higher assessed ROMM or significant risks identified as per SA 315**

   ii. **Significant auditor judgments relating to areas in FS involving significant management judgment, having high estimation uncertainty.**

   iii. **Effect on audit of significant events / unusual transaction that occurred during period.** EX: Related party transaction.

→ Use Funnel Approach

3. How matter was **addressed in audit - May cover –**

   i. **Auditor's response or approach to address the matter**

   ii. **A brief overview of procedures performed**

   iii. **An indication of the outcome of the auditor's procedures**

   iv. **Auditor's Key observations with respect to the matter**

[Conclusion on each KAM not a must as ultimate audit conclusions are provided in auditor's opinion on FS]

Adequacy of description of a KAM is matter of PJ.

KAM - Examples

- Certain complex areas relating to **revenue recognition.**
- **Provisions & contingencies.**
- **Taxation matters** (multiple tax jurisdictions, uncertain tax positions, DTA).
- Assessment of **impairment.**
- **IT systems & controls.**
- **Going concern assessment** - Effect of volatility in precious metal prices

KAM vs Modified Opinion

1. **KAM Not a Substitute for Expressing a Modified Opinion.**
   - Matters giving rise to modified opinion are by nature KAM. But should be reported as per SA 705 & not under KAM.

2. KAM section – **Not to be given in case of <u>Complete disclaimer</u>** of opinion unless required by law or regulation.

   If A'r determines one or more KAM in addition to matter which gives rise to qualified or adverse opinion, A'r can communicate those matter(s) as KAM.

KAM vs EOM / OM Para.

1. **EOM/OM para cannot be used as a substitute for KAM**
   - when auditor is required or otherwise decides to communicate KAM

2. **Matter reported under KAM must not be again reported under EOM.**
   - If matter determined both as KAM & EOM – Report matter more prominently than other matters in KAM section (e.g., as first matter) or by including additional info. in description of KAM to indicate importance of matter to users' understanding of FS.

Companies (Amendment) Act, 2017 – Major Changes

1. ***Ratification of Auditors appointment every year scrapped.***
2. *Rationalization of provisions related to **S.185 - loans to directors**;*
3. *Providing for maintenance of register of significant **beneficial owners by clearly defining beneficial interest**;*
4. ***Stringent penalties** in case of non-filing of FS & AR every year, which will act as deterrent to shell companies.*
5. *Making offence for **contravention of provisions relating to deposits as non-compoundable.***

6. **Board Report size reduced** – Some info can be given in Co's Website with suitable ref. in Board Report.
7. Replacing requirement of approval of C.Govt for **managerial remuneration** above prescribed limits by approval through SR of shareholders;
8. Aligning **disclosure requirements** in prospectus with **SEBI** regulations**;**
9. Simplification of the **private placement process**;
10. Rationalization of **provisions in the Act hitherto mentioned only in Rules.**

COMPANIES (AMENDMENT) ORDINANCE 2018 – MAJOR REFORMS

WEF 02.11.2018

a) In-house adjudication enabled - **Fines replaced with Penalty.**

b) Penalty @ 2 times if same default is repeated within 3 years.

c) De-clogging NCLT by empowering the RD to:

   i. Compound Fines upto Rs. 25 L [instead of Rs. 5L earlier] u/s. 441.

   ii. Approve *alteration in FY* of eligible cos. u/s.2(41).

   iii. Approve conversion of public cos. to private cos.

d) Other major reforms:

   i. Declaration of Capital infusion within 180 days from DOI & verification of its Regd. Office reqd. before commencing business or exercising borrowing power - in INC 20A - **Else ground for strike off.**

   ii. Reduction in max. time for registration & modification of charge with ROC from existing 300 days to 60 days + 60 days.

   iii. Non-maintenance of regd. office - Triggers **de-registration process;**

   iv. Directorships beyond permitted 20 Cos. - Triggers **disqualification** of such directors

Immediate Deadlines for Companies

1.	Form **MSME 1** - One time **Dues > 45 days** of Acceptance / Deemed Acceptance **to MSE on 22nd Jan 2019**	~~21st Feb 2019~~ **30 days from deployment of e-form**
2.	Form **DPT 3** - One time **Money received but not considered as deposits vide Rule 2(1)(c) – outstanding on 22nd Jan 2019**	22nd Apr 2019
3.	INC 22 A Active - One time **KYC of Co, Regd. Office, Management & Auditors wrt Cos incorporated prior to 31st Dec 2017**	25th April 2019
4.	NFRA -1 by Auditors **of listed & Class Cos.**	30th Apr 2019
5.	Form **DIR 3** – KYC	30th Apr 2019
6.	Form **MSME 1** Half Yearly return	30th Apr 2019 & 31st Oct 2019
7.	Form **BEN 2** wrt SBO received in BEN 1 **To Find out real owners**	7th Jun 2019
8.	**DPT 3** – Annual Return **Money received but not considered as deposits vide Rule 2(1)(c) and considered as Deposits U/s.72(3) & 76.**	30th Jun 2019

Annual Forms - FS in AOC-4 & AR in MGT-7

Chapter V – Acceptance of Deposits by Companies

S. 73	**Prohibition on Acceptance of Deposits from Public** - Acceptance from Members OK s.t certain conditions **U/s.73(2)** - Provisions NA to Banking Cos., NBFC, HFCs & CG specified Cos.
S. 74	**Repayment of Deposits, etc., Accepted before commencement of this Act** - No Grandfathering – Had to repay within 3 years – Else seek permission for extn. from NCLT - But had to file within 30th June 2014 DPT-4 giving details of deposits - Else Severe Penalty
S. 75	**Damages of Fraud** - In addition to S.74 Penalty – if intention to defraud could be proven - **Co. 1 Cr to 10 Cr + OID 25 L to 2 Cr AND 7 Years imprisonment**
S. 76	Acceptance of Deposits from Public by Certain Companies - Only by **Eligible** Public Companies **[NW > 100 Cr** OR **TO > 500 Cr.]** s.t. certain Conditions [
S. 76A	Punishment for Contravention of S. 73 or S. 76. - Originally not there but inserted Vide Amendment Act 2015

Rule 2(1)(c) Money collected but is NOT Deposit

Rule 2 (1)(c) "DEPOSITS" include any receipt of Money by way of deposit or loan or in any other form by a co., but does not include any amount received from –

1. CG / SG / Local - Stat. Authority
2. Foreign Persons s.t. FEMA
3. Loan / Facility from Banks
4. Loan / Facility from PFI's
5. Commercial Paper
6. **Any Other Co.**
7. Securities Application Money **(< 60 days)**
8. **Directors** (& **Relatives** for Pvt Co. wef 15.09.15) **(s.t declaration)**
9. Issue of Secured / CC Debn. *(s.t conditions)*

9A. Issue of Unsecured Listed NCD s.t SEBI regulation

10. Employee **(< Annual Salary)**
11. **Non-Interest** bearing Amt **AND ~~or~~ held in Trust**
13. USL from Promoters iff stipulated by Banks
14. Accepted by Nidhi Co

12. a. Adv. From Customers **(upto 365 days)**
    b. Adv. for Immovable Property
    c. Security Deposit under Contract
    d. Adv. for Long-Term Projects *(Cap Goods)*
    e. Adv for Future **Services** ***(towards warranty / maintenance contract as per written agreement or arrangements)*** *as per* ***normal business terms or upto 5 yrs WIL***
    f. Adv rec. & allow. By sectoral Regulator or with CG/SG directions
    g. Adv for Subscription towards publication, *to be adjusted against receipt of such publications*

15. **Chit** subscription as per Chit Fund Act, 1982
16. Collective Investment scheme s.t SEBI compliance
17. > Rs. 25 L in single tranche by **start-up co.** as **Optionally Convertible Debt**
18. Alternate Investment Funds etc. reg. with SEBI

Expl – Following to be treated as "Deposit" –

(a) ***Any amount received****, whether in installments or otherwise, from a person with promise or* ***offer to give returns****, in cash or in kind, on completion of the period specified in the promise or offer, or earlier,* ***accounted for in any manner whatsoever****, or*

(b) any additional contributions, over and above the amount under item (a) above, made by Co. as a part of such promise or offer

Acceptance of Deposits from Members [Shareholders]

Vide **S. 73(2)** r/w Deposits (Acceptance of Deposits) Rules 2014

Ceiling

Any Public Co. 35% of Networth

Private Ltd. Co. 100% of Networth

For Private Co. - Max. Limit Not Applicable IFF *[s.t no default in filing AR & FS]*

i. Start up Co. for first 5 years

ii. Other than above, iff all conditions below are fulfilled:

a) Co. is not a A/S of another Co.

b) Borrowings from Banks / FI /Body Corporate (BFB) is < 2 times PUC (i.e BCB / PUC < 2) or Rs. 50 Cr. WIL.

c) No default in repayment of Borrowing while accepting deposits

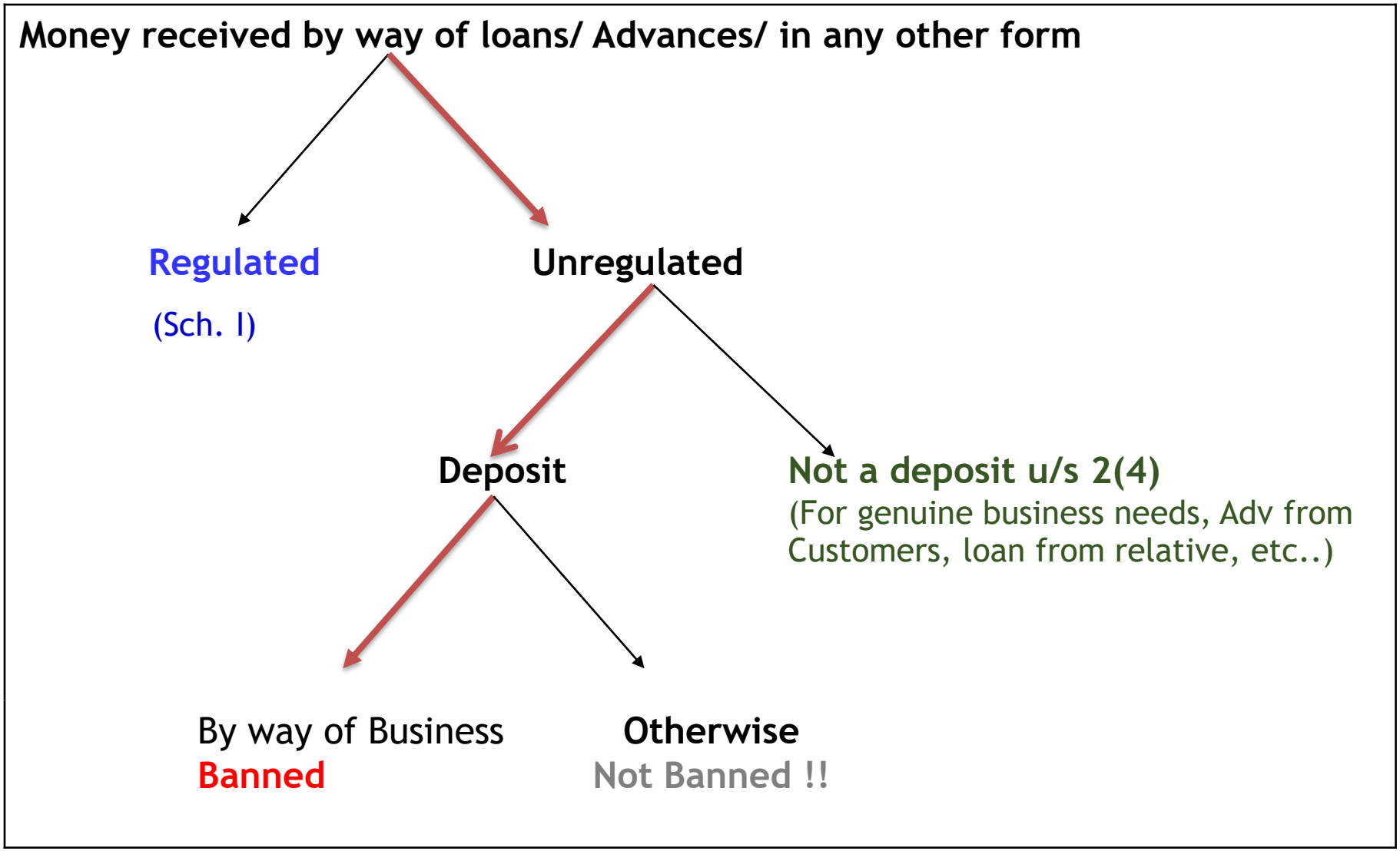
Action point

1. **Shall** issue Circular to All its Members in DPT-1 after approval in Board Meeting. #
2. **May** Publish above circular in newspaper. #
3. **Shall deliver to ROC copy of Circular 30 days before its issue.** #
4. "Auditor's Certificate" reg. No default in deposit repayment in past attached to DPT-1#
5. **Deposit in separate bank a/c before 30th April 20% of deposit maturing in following FY#**

 # AP 1-5 above NA to private cos. Notn. 13th june, 2017.

6. **File Return of Deposits in DPT 3 with ROC every year before 30th June.**
7. **Application Form** for deposits as specified by a Co. is **to be submitted by intending depositor**
8. Declaration by depositor that money deposited is not borrowed by him from any other person

Banning of Unregulated Deposit Schemes WEF 21st Feb 2019



Unregulated Deposit Scheme S.2(17) - A scheme or an arrangement under which deposits are **accepted or solicited by any deposit taker** by way of business and which is **not a Regulated Deposit Scheme**, as specified col.3 of I Schedule.

DEPOSITS [S.2(4)] **Any Money received by way of any advance or loan or in any other form by a deposit taker with a promise to return after a specified period or otherwise, either in cash or kind or in form of a specified service, and with or without any benefit in form of interest, bonus, profit, or in any other form - but does not include any amount received from -**

1. Loan from **Banks** (Schedule /Co-op / any other)
2. Loan from **PFI's /NBFC /Regional FI / Insurance** co.
3. Appropriate **Govt.** / Statutory Authority
   Any source if repayment **guaranteed by Govt.**
4. Foreign Persons s.t. **FEMA**
5. **Capital** by partners in Firm / LLP.
6. - Individual: Loan from his **relatives***
   - Firm@: Loan from relatives* of its partners.

   * (Relatives as defined in Companies Act)
   @ Firms does not include LLP !!
7. Credit by Buyer from a Seller on sale of any property – moveable or immovable.
8. ARC regd. with RBI
9. Deposits U/s 34 or amount accepted by political party U/s. 29B of Representation of People Act, 1951
10. Periodic payments by members of SHG as per prescribed ceilings.
11. Collected for such purpose & within such ceiling as may be prescribed by State Govt.
12. **In course of, or for purpose of business and bearing genuine connection to such business including**

    a) Adv. From Customers
    b) Advance for sale of immovable prop. under agreement.
    c) Security or Dealership Deposit under Contract
    d) Adv. for Long-Term Projects *(Cap Goods)*

Note:

If amounts received under (a) to (d) becomes refundable, such amounts deemed to be deposits after 15 days from date on which they become refundable.

Also if said amounts become refundable, due to deposit taker not obtaining necessary permission under law, to deal in goods or properties or services for which money is taken, such amounts shall be deemed to be Deposits.

As per Preamble Act: "Deposit" is defined such that deposit takers are restricted from camouflaging public deposits as receipts - At same time not to curb or hinder acceptance of money by an establishment in ordinary course of its business.

Details to be furnished in MSME Form-1

1. Total amount of Payment due

Type of Return	Period	Due as on	Due Date
One Time Return	-	22nd Jan 2019	~~21st Feb 2019~~ 30 days from deploying e-form on MCA portal
Half Yearly Return **(Regular)**	April to September	-	31st October
	October to March	-	30th April

2. Particulars of the name of suppliers and amount of payments due

Financial Years / Particulars	Name of Suppliers	PAN of Suppliers	Amount Due	Specify the date from which amount is due

3. Reasons for Delay

Action points to comply with MSME Form 1 requirements

1. **Send notices to all existing Vendors (All categories, i.e Trade Creditors & Other Creditors) - Get confirmation reg. their MSME Registration status.**

2. **Capture MSME Registration during Master Creation of a particular party's ledger in a/c books along with other details (Like PAN, TAN & GST, etc).**

3. **Group Vendor Ledgers into "MSE payables" & "Non MSE Payables" in Books of A/cs for easy identification.**

4. **Pay MSE vendors on priority as per MSMED Act.**

5. **Ensure uniformity in disclosure in MSME Form 1 & Financial statements – Auditors & Tax Auditors ensure !!**

Trade Receivables Discounting System platform (TReDS)

Notn. dated Nov. 2, 2018 issued by MSME Ministry

- Cos. with turnover of > Rs. 500 crore and All CPSE –
- Mandatorily required to register on TReDS - an online electronic platform and an institutional mechanism
- **For financing / factoring of trade receivables of MSME Sellers**.

To address financing needs of MSMEs as well as delayed payments issue.

Tips to professionals

Up to date

a. **Require greater reading / training to self & entire office**
b. **Educate / forewarn clients**
c. **Holistic view – Tax & other laws.**

Revised Strategy

a. **Choose your partner wisely –** Firm also responsible for partner's negligence.
b. **Don't Read Books !!!**
c. **Convert existing cos. either to LLP or P'ship firms**
d. **Desist business entities to set up cos. unless warranted**
e. **Get professional indemnity insurance**
f. **Increase in fee charged - proportionate to cost, risk & time spent**

ELSE

May call for taking up retirement from profession !!!!

GOD cannot be present everywhere – Therefore he created 'MOTHERS'

STAKEHOLDER's cannot be present everywhere – Therefore he created 'AUDITORS'

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