

## **DRAFT RULES UNDER THE COMPANIES ACT, 2013**

### **Draft National Financial Reporting Authority Rules, 2013**

In exercise of the powers conferred by clause (b) to (d) of sub section (2) of section 132, clause, sub section (3) of section 132, clause (a) of sub section (4) of section 132 and sub section (5) of section 132, of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:

#### **1. Short title and commencement -**

(1) These rules may be called the National Financial Reporting Authority Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

#### **2. Definitions**

(1) In these rules, unless the context otherwise requires:

(a) 'Act' means the Companies Act 2013 (18 of 2013);

(b) 'Authority' means the National Financial Reporting Authority constituted under sub section (1) of section 132 of the Act;

(c) Chairperson' means the Chairperson of the Authority;

(d) "Full-time Members" means the Chairperson, "Member – Accounting", "Member – Auditing" and "Member-Enforcement";

(e) "Firm" means a firm or a limited liability partnership registered with the Institute of Chartered Accountants of India (ICAI) under Chartered Accountants Act or Regulations made thereunder, and shall include such entities which were registered with the Institute of Chartered Accountants of India at the time of the misconduct;

(f) “Member – Accounting” means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;

(g) “Member – Auditing” means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;

(h) “Member -Enforcement” means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;

(i) “Part-time Members” means members of the Authority other than Full-time members and includes Members representing Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Institute of Chartered Accountants of India (ICAI) and others who are appointed as Members of the Authority;

(j) “Professional” means a Chartered Accountant registered under Chartered Accountant Act, 1949 or regulations made thereunder;

(k) “Professional Address” means -

(i) the last registered address where a chartered accountant is carrying on his profession (or when he is carrying on his profession at more than one place, the principal place); or

(ii) the last registered place of employment or at his option, the place of his residence (if the chartered accountant is employed); or

(iii) the last registered place of residence (if the chartered accountant neither carried on the profession nor is employed); or

(iv) the last registered overseas address or at his option, the place of residence in India which shall be deemed to be the professional address for the purposes of these rules.

(2) Words and expressions used but not defined in these rules and defined in the Companies Act, 2013 (18 of 2013) or Chartered Accountant Act, 1949, shall have the same meaning assigned to them in that Act.

**3. Composition of the Authority:-** (1) For the purposes of sub-section (1) and sub-section (3) of section 132, the Central Government may, by notification, constitute the Authority consisting of following, namely:-

(i) Chairperson being a Chartered Accountant who is a person of eminence having expertise in accountancy, auditing, finance or law;

(ii) Member – Accounting;

(iii) Member – Auditing;

(iv) Member - Enforcement;

(v) One representative of the MCA not below the rank of Joint Secretary or equivalent (ex-officio);

(vi) One representative of RBI, being a Member of the RBI Board, to be nominated by RBI;

(vii) One representative of SEBI, being the Chairman of SEBI or whole-time Member of SEBI, to be nominated by SEBI;

(viii) A retired Chief Justice of a High Court or a person who has been the Judge of a High Court for 5 years or more, to be nominated by the Central Government;

(ix) President of the Institute of Chartered Accountants of India (ex-officio)

(2) The Chairperson may invite any other person to the meeting of the Authority as and when required to give expert opinion.

### **Structure of the Authority**

4. The Authority shall have three Committees namely:-

(i) Committee on Accounting Standards,

(ii) Committee on Auditing Standards,

(iii) Committee on Enforcement,

### **5. Functions of the Authority**

(1) Standard Setting: The Authority shall -

(a) receive recommendations from the Committee on Accounting Standards and Committee on Auditing Standards;

(b) consider and review the recommendations;

(c) give an opportunity of being heard to the Committee on any clarification that may be sought;

(d) make amendments as may be required;

(e) recommend the standards to the Central Government for being considered and notified.

(2) Monitoring, compliance review and overseeing quality of service: The Authority shall

(a) receive reports from the Committee on Accounting Standards and Committee on Auditing Standards;

(b) approve the report to be issued on the investigated companies or their branches;

(c) forward reports to the Committee on Enforcement for further action, if required, along with its recommendations.

(3) Enforcement: The Authority may -

(a) receive any reference from the Central Government for investigation;

(b) receive, consider and decide upon any recommendation from the Member – Accounting and Member – Auditing for any investigation to be carried out based on the monitoring and compliance review or investigation of auditor or audit firm undertaken by them;

(c) *suo motu* determine any investigation to be undertaken by the Authority;

(d) forward such requirements to the Committee on Enforcement;

(e) receive the final investigation report from the Committee on Enforcement on matters referred to them whether arising out of the Quality Review process or based on investigation requests made to the Committee on Enforcement;

(f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken;

(g) provide the opportunity of being heard to the company or its branch

investigated or the professional concerned;

(h) accept or overrule, in writing, clarifications received and objections raised;

(i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.

(4) The Authority shall undertake investigation or conduct quality review of audit of following class of companies-

a) Listed Companies;

b) Unlisted companies with net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31<sup>st</sup> March of immediately preceding financial year; or

c) Companies having securities listed outside India

(5) The Authority shall undertake investigation in accordance with the provisions of sub-section (4) of section 132 of the Act and rules made thereunder against the auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network or brand to which it belongs), whether “directly or indirectly”, as defined in Explanation to Section 144 of the Act -

a) audit of 200 companies or more in a year;

b) audit of 20 or more listed companies;

c) company or companies (including listed company or companies), having net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31<sup>st</sup> March of immediately preceding financial year ; or

d) company or companies having securities listed outside India

Provided further that the provisions in respect of class or classes of companies provided under sub-rule (4) and sub-rule (5) shall not be applicable where a reference is made by the Central Government or any Regulator or where the Authority, in public interest, suo motu decides to exercise powers under sub-rule (4) or (5), as the case may be.

(6) In cases where the Authority comes to the conclusion that any company has not complied with the requirements under this Act or rules, it shall refer the matter to the Central Government.

(7) Where any officer of the Central Government or the Regional Director or the Registrar of Companies has any information in respect of any auditor or audit firm who or which is not complying with the provisions of section 132 or rules made thereunder, he shall refer the matter to the Authority.

## **6. Committee on Accounting Standards and its functions**

(1) The Committee on Accounting Standards shall comprise of 8 members, namely:

1. Chairperson – Being the “Member – Accounting”;
2. One representative of MCA not below the rank of Director (I&I) or Regional Director;
3. One Member representing RBI not below the rank of Chief General Manager to be nominated by RBI;
4. One Member representing SEBI not below the rank of Executive Director to be nominated by SEBI;

5. Chairman of Accounting Standard Board of ICAI (Ex Officio);
6. An eminent academician with specialization in the field of accountancy to be nominated by Central Government on the recommendation of Authority;
7. One Chartered Accountant, being a Chief Financial Officer of a listed company to be nominated by Central Government on the recommendation of Authority;
8. One eminent Chartered Accountant with at least 20 years' experience in accounting to be nominated by Central Government on the recommendation of Authority;

(2) The Committee on Accounting Standards shall examine the matters relating to formulation and laying down accounting standards or any amendments thereto and shall submit the same for consideration by the Authority.

(3) For the purpose of formulation of accounting standards under the Act, the Committee on Accounting Standards shall follow the process as under:

- (a) Make recommendations for any new standard or amendments which the Committee on Accounting Standards may want to be examined, to the Institute of Chartered Accountants of India;
- (b) Receive New Standards or amendments to standards to be recommended by the Institute of Chartered Accountants of India within a reasonable time;
- (c) Examine the recommendations made by the ICAI;
- (d) Where, the Committee on Accounting Standards is not in agreement with the recommendation, send the recommendations of the ICAI back to them for a final view from the ICAI on the matters on which the Committee is not in agreement,

within a reasonable period;

(e) Consider the final view from the ICAI, if any, received within a reasonable time;

(f) Make recommendations to the Authority on the new standards or amendment to standards for approval by the Authority to be forwarded to the Central Government for their consideration for being notified as part of the prescribed standards.

(4) For the purpose of monitoring compliance of accounting standards under the Act, the Committee on Accounting Standards shall follow the process as under:

(a) conduct scrutiny of financial statements of such class of companies and in such manner as may be decided by the Committee or the Authority:

Provided that for a period of two years from the commencement of these rules, the Committee may conduct scrutiny under this rule through the Registrars of Companies or in cooperation with Financial Reporting Review Board set up by the ICAI;

(b) seek clarifications on observations arising from such scrutiny from the Company as well as its auditors as may be required;

(c) discuss the draft findings with the company concerned and obtain its response before the reports are finalized by the Committee;

(d) issue such reports (having a public and non public portion separately) arising from such scrutiny to the Authority for it to consider for further necessary action

(e) Refer matters to the Authority for the Authority to decide on further course of

action, through the Committee on Enforcement.

## **7. Committee on Auditing Standards and its functions**

(1) The Committee on Auditing Standards shall comprise of 7 members, namely:

1. Chairperson – Being the “Member – Auditing”;
2. One representative of MCA not below the rank of Director (I&I) or Regional Director;
3. One Member representing RBI not below the rank of Chief General Manager to be nominated by RBI;
4. One Member representing SEBI not below the rank of Executive Director to be nominated by SEBI;
5. One Member representing Comptroller and Auditor General of India (CAG) to be nominated by CAG;
6. Chairman of Auditing and Assurance Standard Board of ICAI (Ex Officio); and
7. One eminent Chartered Accountant with at least 20 years’ experience in audit of companies to be nominated by Central Government on the recommendation of the Authority.

(2) The Committee on Auditing Standards shall examine the matters relating to formulation and laying down auditing standards and shall submit the same for

consideration by the Authority.

(3) For the purpose of formulation of auditing standards under the Act, the Committee on Auditing Standards shall follow the process as under:

(a) make recommendations for any new standard or amendments which the Committee on Auditing Standards may want to be examined to the Institute of Chartered Accountants of India;

(b) receive new standards or amendments to standards as recommended by the Institute of Chartered Accountants of India within a reasonable period;

(c) examine the recommendations made by the ICAI;

(d) where the Committee is not in agreement with the recommendation, send the recommendations of the ICAI back to them for a final view from the ICAI, with the suggestions or views of the Committee;

(e) consider the final view from the ICAI, if any, received within a reasonable period;

(f) make recommendations to the Authority on the new standards or amendment to standards for approval by the Authority to be forwarded to the Central Government for their consideration for being notified as part of the prescribed standards.

(4) For the purpose of monitoring compliance, Committee on Auditing Standards shall monitor the compliance of auditors including individual auditors, audit firms and audit LLPs, with the notified accounting standards and auditing standards and submit such periodical report(s) to the Authority as the Authority may specify.

Provided that for the above purpose it shall-

- a. investigate or review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;
  - b. evaluate the sufficiency of the quality control system of the auditor, and the manner of the documentation and communication of that system by the auditor;
  - c. perform such other testing of the audit, supervisory, and quality control procedures of the auditor as are considered necessary or appropriate;
  - d. carry out investigations through dedicated, qualified and whole time investigation teams. Minimum qualification for such inspectors shall be at least 10 years auditing experience and exposure to audit of the relevant industry. The Board may also seek assistance of ICAI in conducting such investigation or in any other manner as may be approved by the Authority. The Board may, subject to prior approval of the Authority, also outsource, upto a period of two years from the commencement of these rules, such resource as may be required for this purpose;
  - e. subject to the approval of the Authority, issue a non-public portion of the report of the company or the professional, whose books and other records have been investigated in accordance with these rules;
  - f. refer matters to the Authority to decide on further course of action, through Committee on Enforcement, where violations of laws, rules or professional standards have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies. There will be no direct referrals to Committee on Enforcement before referring to Authority.
- (5) The Committee on Auditing Standards may take the help of resources available

with Quality Review Board established under Chartered Accountants Act, 1949 until it is provided with its own resources.

## **8. Committee on Enforcement and its functions**

(1) The Committee on Enforcement shall comprise of 7 members, namely:

1. Chairman being the Member – Enforcement
2. Member- Accounting
3. Member - Auditing
4. One representative of MCA, not below the rank of Director (I&I) or Regional Director
5. Director, Serious Fraud Investigation Office;
6. Chairman of Disciplinary Committee of ICAI (Ex Officio)
7. One eminent Chartered Accountant having at least 20 years' experience in audit or accounting to be nominated by Central Government on the recommendation of Authority.

(2) Subject to the provisions of subsection (4) of section 132, the Committee on Enforcement shall examine the matters referred to it for investigation and shall submit its recommendations for consideration by the Authority.

(3) The functions of the Committee on Enforcement shall be:-

- (i) to examine the matters referred to it by the Authority (whether emanating from the Committee on Accounting, Committee on Auditing, or otherwise) requiring further enquiry or investigation

(ii) to investigate, on a reference made by the Authority, matters relating to professional and other misconduct committed by the professional or auditor (individual or firm or LLP) and recommend to the Authority appropriate action under sub-section (4) of section 132

Provided that all the actions of the Committee on Enforcement shall be effective only on the recommendation of the Authority.

(4) Committee on Enforcement shall complete the examination or investigation on any matter referred to it within a period of 6 months and in case there is any delay in completion of the examination or investigation, specific time extension must be sought from the Authority, after placing justifications and reasons for the extension of time being sought. Examinations or investigations for which time extension is not sought or approved by the Authority shall be concluded based on the available information within a period of 30 days from the expiry of the 6 months or such extended time frame as approved by the Authority.

#### **9. Meetings for transaction of business and their procedure. –**

(1) The Authority and its Committees may hold as many meetings and at such places as may be required for the purpose of discharging its functions under the Act.

(2) The meetings of the Authority and of each of its committee shall ordinarily be held at its head office situated in New Delhi:

Provided that the Authority or each of its Committees may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Authority or the Committee, it is expedient to do so.

(3) The Chairperson shall decide in advance, the date, time and place and the agenda for each meeting of the Authority:

Provided that an item not included in the agenda of an ordinary meeting may be taken up for consideration, on grounds of urgency shown by an applicant in writing, with the approval of the Chairperson.

(4) Procedure for meetings, –

(a) The Secretary, Members and such other officers and persons as invited by the Chairperson in relation to discussion regarding a specific item shall attend meeting;

(b) the Authority or Chairperson may, for reasons to be recorded in writing, adjourn the meeting;

(c) any Member unable to be present in a meeting for any reason, may if feasible, choose to participate in the said meeting, through video conferencing and this shall be considered as attendance by the Member for the purpose of casting vote during the meeting;

(d) the proceedings of each meeting of the Commission shall be recorded under the superintendence and guidance of the Secretary or by any other officer authorized by the Chairperson. The minutes of each matter taken up during meeting shall be given continuous serial number for a particular financial year.

(e) the quorum for the meeting of the Board of the Authority shall be 5 members. In respect of the committees the quorum shall be 3 members being present.

(5) In a situation not provided for in these rules, the Authority may, for reasons to be recorded in writing, determine the procedure in a particular case.

(6) No act or proceedings of the Authority or its Committees shall be invalid merely by reason of any irregularity in the procedure of the Authority or its Committees not affecting the merits of the case.

### **Procedures of Investigation related to Complaints and Information**

10. **Procedure for filing complaint.**- (1) A complaint under section 132(4) of the Act against a professional or an auditor (including audit firm or LLP) shall be filed in Form I, in triplicate before the Member-Enforcement in person or by post or courier :

Provided that the complaint sent by post or courier under this sub-rule shall be deemed to have been presented to the Member-Enforcement on the day on which it is received in the Office of Committee on Enforcement.

(2) A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.

(3) A complaint filed by or on behalf of any statutory authority, such as Reserve Bank of India or Securities and Exchange Board of India or any other Regulator, shall be authorised by an officer holding a post equivalent to the post of Joint Secretary in the Government of India and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.

(4) A complaint filed by or on behalf of a company or bank or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or bank or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the bank or the firm.

*Explanation* - In the case of a bank or financial institution, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institution, shall be deemed to be the specific resolution passed by the bank or financial institution concerned, for the purposes of these rules.

(5) In case of complaints filed by any Government, statutory authority, bank or financial institution, a change in the name of complainant at any later stage, shall be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant.

(6) Every complaint received by the Office of Committee on Enforcement shall be acknowledged by ordinary post together with an acknowledgement number.

11. **Fee for filing complaint.**- (1) Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee as prescribed by the Authority through regulations.

(2) The fee shall be paid in the form of a demand draft drawn on any bank in India in favour of the National Financial Reporting Authority payable at the place where the Office of Committee on Enforcement is situated.

(3) The fee once paid shall not be refunded :

Provided that no additional fee shall be payable if the complaint is resubmitted after rectification of defect under sub-rule (5) of rule 12.

12. **Registration of complaint.**- (1) The Member-Enforcement or an officer or officers authorized by the Member-Enforcement, shall endorse on every complaint the date on which it is received or presented and the Member-Enforcement or the officer or officers so authorized, shall sign on each such endorsement.

(2) The Member-Enforcement or an officer or officers authorized by him shall scrutinize the complaints so received.

(3) If, on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in these rules, after obtaining approval of the Authority to proceed with the matter.

(4) If the subject matter of a complaint is, in the opinion of the Member-Enforcement, substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take any of the following actions, as the case may be,-

(a) if such a previous complaint is still under the examination of the Member-Enforcement, then the new complaint may be clubbed with the previous complaint, after obtaining approval of the Authority and in such case the fact may be conveyed to the first complainant, new complainant and respondent respectively.

(b) if *prima facie* opinion has been formed by the Member-Enforcement in such a previous complaint and the case is pending before the Committee on Enforcement, then the Member-Enforcement shall bring the new complaint before the Committee on Enforcement, and the latter shall either club the complaint with the previous complaint or close it or ask the Member Enforcement to deal with it as a separate complaint, as it deems fit, after obtaining the approval of the Authority.

(c) if orders have already been passed by the Committee on Enforcement on such a previous complaint, then the Member-Enforcement shall present the new complaint before the Committee on Enforcement for its closure :

Provided that even in case where the new complaint is clubbed with a previous complaint under this sub-rule, only the first complainant would be the complainant for the purposes of investigation under these rules.

(5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Member-Enforcement may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine.

(6) If, the complainant fails to rectify the defect or defects within the time allowed under sub-rule (5), the Member-Enforcement shall form the opinion that there is no *prima facie* case and present the complaint before the Committee on Enforcement for its closure.

(7) The Committee on Enforcement may, after the presentation of the complaint by the Member-Enforcement under sub-rule (6), either -

(a) agree with the opinion of the Member-Enforcement and pass an order for the closure; or

(b) disagree with the opinion of the Member-Enforcement and advise him to further investigate the matter, after obtaining approval from the Authority.

13. **Withdrawal of a complaint.**- The Member-Enforcement, on receipt of a letter of withdrawal of a complaint by the complainant, shall place the same before the Committee on Enforcement and the Committee on Enforcement, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint:

Provided that in case the Member-Enforcement has formed his *prima facie* opinion on such a complaint, he shall place the same before the Committee on Enforcement, and

the Committee on Enforcement may, if it is of the view that the circumstances so warrant, permit the withdrawal, after obtaining approval of the Authority.

14. **Information.**- (1) Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Office of Committee on Enforcement, which is not in Form I under sub-rule (1) of rule 10, shall be treated as information and shall be dealt with in accordance with the provisions of these rules.

(2) On receipt of such an information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him or it of, the following information,-

(a) that relatively longer time is taken for disposal of any information than the complaint;

(b) that the person giving information will not have the right to be represented during the investigation or hearing of the case;

(c) that the Authority or Committee on Enforcement will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders :

Provided that where the sender of the information is the Central Government, any State Government or any statutory authority, a copy of final order shall be sent to such sender.

(3) An anonymous information received by the Office of Committee on Enforcement will not be entertained by the Office of Committee on Enforcement.

15. **Procedure of Investigation:-** (1) The Member Enforcement or an officer or officers authorized by the Member Enforcement, within sixty days of the receipt of a complaint under rule 10, shall,-

(a) if the complaint is against an individual Professional, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that Professional at his professional address;

(b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the ICAI, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members :

Provided that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Member Enforcement had been duly received by him, her or them.

*Explanation* - A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.

(2) A member whose name is disclosed by the firm shall be responsible for answering the complaint, provided such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct :

Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation or allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

(3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Member-Enforcement, forward to the Member-Enforcement, a written statement in his defence.

(4) On receipt of the written statement, if any, the Member-Enforcement may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Member-Enforcement, forward to the Member-Enforcement, his rejoinder on the written statement.

(5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Member-Enforcement may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate :

Provided that if no reply is sent by the respondent, within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Member-Enforcement shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under these rules.

16. **Examination of the Complaint.**- (1) The Member-Enforcement shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or

documents, if any, and form his *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct.

(2) (a) Where the Member-Enforcement is of the *prima facie* opinion that the member or the firm is guilty of professional or other misconduct he shall place his opinion along with the complaint and all other relevant papers before the Committee on Enforcement within 60 days of conclusion of investigation;

(b) If the Committee on Enforcement agrees with the *prima facie* opinion of the Member-Enforcement then the Committee on Enforcement may proceed further under these rules, after obtaining approval from the Authority.

(c) If the Committee on Enforcement disagrees with the *prima facie* opinion of the Member-Enforcement, it shall either close the matter or advise the Member-Enforcement to further investigate the matter.

(3) Where the Member Enforcement is of the *prima facie* opinion that the member or the firm is not guilty of any professional or other misconduct, he shall place the matter before the Committee on Enforcement within 60 days of conclusion of the investigation, and the Committee, -

(a) if it agrees with such opinion of the Member-Enforcement, shall pass order, for closure.

(b) if it disagrees with such opinion of the Member Enforcement, then it may either proceed under these rules, after obtaining approval from the Authority or may advise him to further investigate the matter.

(4) The Member-Enforcement shall, after making further investigation as advised by the Committee on Enforcement under sub-rule (2) or (3) of this rule shall further proceed under this rule.

17. **Mode of Sending Notice.**- (1) Every notice or letter issued by the Member-Enforcement or Committee on Enforcement, under these rules shall be sent to the member or the firm or any other person, by registered post with acknowledgement due or speed post, except where specified otherwise in any rule.

(2) If any notice or letter is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice or letter, the notice or letter shall be deemed to have been served.

(3) If the notice or letter is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Member-Enforcement shall ask the complainant or any other person who may be in a position to provide another address of the member or firm or person whose address is found to be not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.

(4) Where the notice or letter is returned under sub-rule (3), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with the ICAI or in such other manner as the Committee on Enforcement may think fit and such service shall be deemed to be sufficient service for the purposes of these rules.

18. **Certain provisions relating to complaint also to be applicable for information relating to misconduct of members.**- The procedure laid down for dealing with complaints in sub-rule (6) of rule 10, sub-rules (1), (2), (3) and (4) of rule 12, sub-rules (1), (2), (3) and (5) of rule 15, rule 16 and rule 17 shall also apply to information received by the Member Enforcement relating to misconduct of members.

19. **Time limit on entertaining complaint or information.**- Where the Member-Enforcement is satisfied that there would be difficulty in securing proper evidence of the

alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Committee on Enforcement for taking decision on it under sub-section (4) of section 132 of the Act.

20. **Functioning of Committee on Enforcement.**- (1) All questions which come up before the Committee on Enforcement shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Member-Enforcement or in his absence, the person presiding, shall have a second or casting vote.

(2) In the event of the Member Enforcement not being able to attend a meeting of the Committee on Enforcement, the Member of the Committee on Enforcement who is Chairman of the Disciplinary Committee of ICAI shall preside in such meeting.

21. **Procedure to be followed by the Committee on Enforcement.**- (1) The Committee on Enforcement shall follow summary disposal procedure in dealing with all cases before it, as laid down in these rules.

(2) If the Committee on Enforcement decides to proceed further under clause (b) of sub-rule (2) of rule 16 or under clause (b) of sub-rule (3) of rule 16, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of the following:

(a) *prima facie* opinion formed by the Member Enforcement; and

(b) particulars or documents relied upon by the Member Enforcement, if any, during the course of formulation of *prima facie* opinion.

(3) The Committee on Enforcement shall inform the respondent to file a written statement, within such time as may be specified:

Provided that the Committee on Enforcement may give him additional time for submitting his written statement on application by the respondent on his adducing sufficient reasons to the satisfaction of the Committee on Enforcement for seeking additional time:

Provided further that such additional time shall not be given more than once and if the respondent still does not submit a written statement, the Committee on Enforcement shall presume that he has no further submissions to make and shall proceed to decide the case on merits.

(4) The respondent shall send a copy of his written statement, along with supporting documents, to the Committee of Enforcement and the complainant within the stipulated time.

(5) The complainant or the Member Enforcement may, after receipt of the written statement, submit a rejoinder to the Committee on Enforcement, with a copy to the respondent, along with supporting documents, if any.

(6) The Committee of Enforcement shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of *prima facie* opinion and the Committee on Enforcement shall cause a notice to be sent of such date, hour and place to the Member Enforcement, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

*Explanation.*— For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who shall be a Chartered Accountant.

(7) On the date of hearing, if the respondent, in spite of the service of notice, under sub-rule (6), does not appear either in person or through his authorized representative, the

Committee on Enforcement may proceed *ex parte* and pass such orders as it may think fit or direct fresh notice to be served.

(8) The Committee on Enforcement may, on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing:

Provided that such adjournment shall not be given more than once at any stage of the proceedings.

(9) The Committee on Enforcement shall consider the written representations, including the written statements, rejoinder and supporting documents, and the oral submission, if any made by the Member-Enforcement, the complainant and the respondent, and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.

**22. Orders of the Committee on Enforcement.** - (1) On arriving at a finding under sub-rule (9) of rule 21 that the respondent is guilty of professional or other misconduct, the Committee on Enforcement shall give the respondent an opportunity to be heard before recommending to the Authority any order under sub-section (4) of section 132 of the Act. Such order may include reprimands or severe reprimands being made, order for practice to be continued with restrictions for a period of time, order waiver or refund of fees, impose penalty or debar the member or member firm from practice:

Provided that if the respondent does not appear before the Committee on Enforcement at the time directed to do so when given such an opportunity to be heard, the Committee on Enforcement shall presume that he has nothing more to represent before it and shall make recommendations to the Authority and the Authority shall pass orders under sub-section (4) of section 132 of the Act.

Provided also, that where the order includes any action to debar the professional, such order shall be communicated to the ICAI for necessary action within 45 days, failing

which at the end of 45 days, such order for debarring the professional shall become effective automatically.

(2) On arriving at a finding under sub-rule (9) of rule 21 that the respondent is not guilty of professional or other misconduct, the Committee on Enforcement shall make recommendations to the Authority and the Authority shall pass orders closing the case.

(3) The Committee on Enforcement shall send, free of charge, to the Member-Enforcement, respondent and the complainant, a certified copy of the final order.

(4) Notwithstanding anything contained in this rule, the Authority shall have the powers to pass such interim orders as it may deem fit during the process of the investigation, based on recommendations made by the Committee on Enforcement.

Provided, however, such interim orders shall be passed only after having given reasonable opportunity to the parties to be heard.

(5) On arriving at a finding under sub-rule (9) of rule 21 that the complainant has made a vexatious claim against the respondent with an intent to harass, the Authority shall have the powers to award costs not exceeding Rs.10,000 to the respondent.

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

(1) The complainant and the respondent shall have the right to attend the hearings of the Committee on Enforcement unless ordered otherwise by the Committee on Enforcement, for reasons to be recorded in writing.

(2) The complainant and the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing.

**APPELLATE AUTHORITY**

24 (1) Any person aggrieved by any order of the Authority may within ninety days from the date on which the order is communicated to it or him, prefer an appeal to the Appellate Authority:

Provided that the Central Government may also appeal against the decision of the Authority within ninety days:

Provided further that the Appellate Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Appellate Authority may, after calling for the records of any case, revise any order made by the Authority and may -

(a) confirm, modify or set aside the order;

(b) impose any penalty, order for restricting practice for a period, order for waiver or refund of fees or set aside, reduce, or enhance the penalty, restriction of practice for a period, waiver or refund of fees imposed by the order;

(c) debar the member or the firm or set aside, reduce, or enhance the period of debarment imposed by the order,

(d) remit the case to the Authority for such further enquiry as the Appellate Authority considers proper in the circumstances of the case; or

(e) pass such other order as the Appellate Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

## **25. Preparation and furnishing of the Annual Report of the Authority:-**

(1) The Authority shall prepare once in every year an Annual Report in the form specified in the schedule, giving a true and full account of its activities performed in the year.

(2) The Authority may also include in the Annual Report any other item, not included in the form specified in the schedule, with the prior permission of the Central Government.

(3) The Authority, shall forward the annual report to the Central Government within a period of one hundred eighty days immediately following the close of the year for which it has been prepared.

(4) The matters relating to form and time of preparation of Annual Report, with respect to which no express provision has been made in these rules, shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be final.

## **26. Preparation and furnishing of the Annual Report of the Appellate Authority:-**

(1) The Appellate Authority shall prepare once in every year an Annual Report in the form specified in the schedule, giving a true and full account of its activities performed in the year.

(2) The Appellate Authority may also include in the Annual Report any other item, not included in the form specified in the schedule, with the prior permission of the Central Government.

(3) The Appellate Authority, shall forward the annual report to the Central Government within a period of one hundred eighty days immediately following the close of the year for which it has been prepared.

(4) The matters relating to form and time of preparation of Annual Report, with respect to which no express provision has been made in these rules, shall be referred in each

case to the Central Government for its decision and the decision of the Central Government thereon shall be final.

**27. Residuary provision.-** Matters relating to the procedure of investigation, conduct of cases and allowances to nominated members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding.

**28. Removal of difficulty. –**

In the matter of implementation of these rules, if any doubt or difficulty arises, the same shall be placed before the Central Government and the decision of the Central Government thereon shall be final.

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