Dipen D Shah & Associates

CHARTERED ACCOUNTANTS

PROPOSED AMENDMENTS RELATING TO THE NATIONAL FINANCIAL REPORTING AUTHORITY (“NFRA”) UNDER THE COMPANIES ACT, 2013

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604, Block B,Addore Aspire 2,Opp.Old Passport office, University Road, Nr.Jhanvi Restaurant, Gulbai Tekra, Ahmedabad 380009

1. Section 132(1A) — Legal status of the National Financial Reporting Authority

Existing:

- NFRA performs its functions through divisions as may be prescribed.

Proposed:

- "The National Financial Reporting Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued."

Effect:

- Confers body corporate status on NFRA and clarifies its independent statutory character and distinct legal personality.

2. Section 132(2)(a) — Expansion of scope

Existing:

- NFRA recommends standards for companies or classes of companies.

Proposed:

- In clause (a) of sub-section (2), after the words "companies", the words "or bodies corporate" shall be inserted.

3. Section 132(3A) — Omission

Existing:

- Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

Proposed:

- Sub-section (3A) shall be omitted.

4. Section 132 — Insertion of sub-sections (3C) and (3D)

- (3C) Save as otherwise provided, the Chairperson shall have powers of general superintendence and direction over the affairs of the National Financial Reporting Authority and may exercise such powers and do such acts as may be delegated by the executive body.

- (3D) The executive body may, by general or special order in writing, delegate to the Chairperson, any full-time Member or officer of the National Financial Reporting Authority, or to a Committee comprising one or more of the above, subject to such conditions as may be specified, such powers under this Act as may be deemed necessary.

5. Section 132(4) — Amendment of clause (a) and insertion of further sub-clauses

Existing (extract):

- (a) have the power to investigate, either suo motu or on a reference made by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed, into matters of professional or other misconduct committed by any member or firm of chartered accountants registered under the Chartered Accountants Act, 1949.

  Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section.

Proposed:

- In clause (a), for the words "in such manner as may be prescribed", the words "in such manner as may be prescribed and in such manner as may be specified by regulations made by the said Authority" shall be substituted;

  After sub-clause (B), insert: (C) advisory/censure/warning; (D) additional professional training; (E) reference to Central Government for action under the Act/rules.
- For the Explanation, the following Explanation shall be substituted, namely:—

  "Explanation.—For the purposes of this sub-section, "professional or other misconduct" includes the meaning assigned under section 22 of the Chartered Accountants Act, 1949 and further includes such acts or omissions as constitute a contravention of this Act, or the rules or regulations made thereunder, in so far as they relate to matters within the jurisdiction, functions or regulatory remit of the National Financial Reporting Authority."

Effect:

- Permits procedure to be specified by NFRA regulations and adds further measures and a widened misconduct definition.

6. Section 132 — Insertion of sub-section (4A)

(4A) Any person who fails to comply with any order of the National Financial Reporting Authority under sub-section (4), or who fails to pay the penalty imposed under clause (c) of the said sub-section, within a period of ninety days from the date of receipt of the order, or within such other period as stated in the order, shall,—

(a) where the person against whom penalty has been imposed, fails to pay the penalty, without prejudice to the penalty that such person is liable to pay, be punishable—

(i) with imprisonment which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, if such person is an individual
(ii) with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, if such person is a firm

(b) be liable for debarment under sub-clause (B) of clause (c) of sub-section

(4) for such further period as the National Financial Reporting Authority may consider appropriate.

7. Section 132(10) — Amendment

Existing:

- NFRA meeting times/places and procedure are prescribed.

Proposed:

- In sub-section (10), for “prescribed”, substitute “specified by regulations by the said Authority”.

8. Section 132(11) — Amendment

Existing:

- Central Government appoints secretary/employees; terms and conditions are prescribed.

Proposed:

(i) substitute “The Central Government” with “The National Financial Reporting Authority”;
(ii) substitute “of functions by the National Financial Reporting Authority under this Act and the” with “of its functions under this Act and the salary, allowances and other”;
(iii) substitute “prescribed” with “specified by regulations by the said Authority”.

9. Section 132 — Insertion of sub-sections (16) and (17)

(16) No act or proceeding of the National Financial Reporting Authority shall be invalid merely by reason of—

- any vacancy in, or defect in the constitution of, the Authority; or
- any defect in the appointment of a person acting as a member of the Authority; or
- any procedural irregularity not affecting the merits of the case.

(17) The National Financial Reporting Authority may, in such manner as may be specified by regulations, engage such number of experts and professionals with special knowledge of, and experience in, accounting standards, auditing standards, economics, law, business or other disciplines related to its functions, as it deems necessary to assist in the discharge of its functions under this Act.

CONCLUSION

In sum, the proposed amendments to section 132 of the Companies Act, 2013 (i) confer body corporate status on NFRA, (ii) extend scope to bodies corporate, (iii) provide for superintendence and delegation, (iv) enable specified matters to be governed by NFRA regulations, (v) strengthen the framework for addressing misconduct and non-compliance with orders, and (vi) insert saving and enabling provisions regarding validity of proceedings and engagement of experts.

THANK YOU...

079-40039647

dipen@ddsaca.com
info@ddsaca.com

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