2
APPLICABILITY OF CARO, 2020

PARAS 1 AND 2 OF CARO, 2020

In exercise of the powers conferred by sub-section (11) of section 143 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Auditor's Report) Order, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (*ii*), *vide* number S.O. 1228(E), dated the 29th March, 2016, except as respects things done or omitted to be done before such supersession, the Central Government, after consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013, hereby makes the following Order, namely:—

Short title, application and commencement

1. (1) This Order may be called the Companies (Auditor's Report) Order, 2020.

(2) It shall apply to every company including a foreign company as defined in clause (*42*) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except—

- **(*i*) a banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);**
- **(*ii*) an insurance company as defined under the Insurance Act,1938 (4 of 1938);**
- **(*iii*) a company licensed to operate under section 8 of the Companies Act;**
- **(*iv*) a One Person Company as defined in clause (*62*) of section 2 of the Companies Act and a small company as defined in clause (*85*) of section 2 of the Companies Act; and**
- **(*v*) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than one crore**

rupees as on the balance sheet date and which does not have total borrowings exceeding one crore rupees from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act (including revenue from discontinuing operations) exceeding ten crore rupees during the financial year as per the financial statements.

(3) It shall come into force on the date of its publication in the Official Gazette.

2.1 Effective date of CARO, 2020

Every auditor's report on the account of every company audited by him to which this Order applies, **for financial years commencing on or after 1-4-2019**, shall, in addition contain the matters specified in paragraphs 3 and 4 of this order, as may be applicable.

The Order shall not apply to auditor's report on consolidated financial statements except clause (*xxi*) of Para 3. [*See* **para 1.7** and **para 1.8**]

Based on clarifications contained in ICAI's Guidance Note on CARO, 2020, the following position emerges :

- The reporting requirements of CARO, 2020 shall be applicable for the financial year 2019-20 and onwards.
- If auditor is required to report on the financial statements for any financial year prior to 2019-20, the auditor has to comply with the relevant earlier order - (for example - CARO, 2016 for audit reports on financial statements for 2015-16 to 2018-19; CARO, 2015 for 2014-15; CARO, 2003 for financial years prior to 2014-15).

2.2 Companies to which CARO, 2020 applies

CARO, 2020 shall apply to every company including a foreign company as defined in clause (*42*) of section 2 of the Act except those categories of Companies specifically exempted by clauses (*i*) to (*v*) of para 1(2) [Para 1(2) of CARO, 2020]. For companies specifically exempted from CARO, 2020, *see* **para 2.3**.

2.2-1 Applies to foreign company

The order shall apply to a foreign company as defined in clause (*42*) of section 2 of the Act. [Para 1(2) of the Order]

The following are the ingredients of definition of 'foreign company' in section 2(*42*) of the Act—

- It must be a company or body corporate;
- It must be incorporated outside India;
- It must have a place of business in India whether by itself or through an agent physically or through electronic mode ;
- It conducts any business activity in India in any other manner.

The differences between the definition in section 2(*42*) of the Act and the definition in section 591 of the Companies Act, 1956 ("the 1956 Act") are as under:

- Unlike the 1956 Act, under the Act, bodies corporate (other than companies) incorporated outside India, *e.g.*, Limited Liability Partnerships incorporated outside India (*i.e.* foreign LLPs) are also foreign companies.
- Under the Act, it is not sufficient that the foreign company has a place of business in India. Unlike the 1956 Act, the Act requires that the foreign company should also conduct any business activity in India in any other manner.
- Unlike the 1956 Act, the Act envisages that the foreign company may have a place of business either by itself or through an agent, physically or ***through electronic mode***. The 1956 Act did not envisage presence in India through electronic mode.

Thus, bodies corporate (other than companies) incorporated outside India, *e.g.*, Limited Liability Partnerships incorporated outside India (*i.e.* foreign LLPs) are also foreign companies. The Order would apply to such bodies corporate incorporated outside India unless exempt as in **Para 2.3**.

CARO, 2020 would apply to a foreign company wherever under any provision of the Act an audit under Chapter X of the Act is required to be carried out. This opinion is based on ICAI's views expressed in the context of similar requirement in Para 1(2) of CARO, 2016.

2.2-1a *Electronic mode* - Rule 2(1)(*h*) of the *Companies (Specification of Definitions Details) Rules, 2014* provides that "electronic mode", for the purposes of clause (*42*) of section 2 of the Act, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to—

(*i*) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(*ii*) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(*iii*) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(*iv*) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(*v*) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

2.2-1b *Carrying out business activity in India* - Rule 3 of the *Companies (Registration Offices and Fees) Rules, 2014* provides that every company including foreign company which carries out its business through electronic mode, whether its main server is installed in India or outside India, which—

(*i*) undertakes business to business and business to consumer transactions, data interchange or other digital supply transactions;

(*ii*) offers to accept deposits or invites deposits or accepts deposits or subscriptions in securities, in India or from citizens of India;

(*iii*) undertakes financial settlements, web based marketing, advisory and transactional services, database services or products, supply chain management;

(*iv*) offers online services such as telemarketing, telecommuting, telemedicine, education and information research; or

(*v*) undertakes any other related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise, shall be deemed to have carried out business in India.

2.2-1c *Liaison Office of a foreign body corporate* - is a foreign company. Hence, the Order would apply to it. [ICAI's views given under CARO, 2003]

2.2-2 Applicability of CARO, 2020 to audit of branches of a company

It may be noted that according to section 2(*14*), the term "branch office" means any establishment described as such by the company. Thus, the 2013 Act leaves it to the company to designate or undesignate any establishment of the company as branch office. *MCA's Letter: No. 8/16(1)/61-PR, dated 9-5-1961,* issued under the 1956 Act provides that if an establishment is not the branch office of a company, it will form part of the head office and will be dealt with as such for audit and other purposes.

Section 143(8) of the Act provides that the duties and powers of the branch auditor, if any, shall be such as may be prescribed. Rule 12 of the *Companies (Audit and Auditors) Rules, 2014* provides as under:

(1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143. [rule 12(1)]

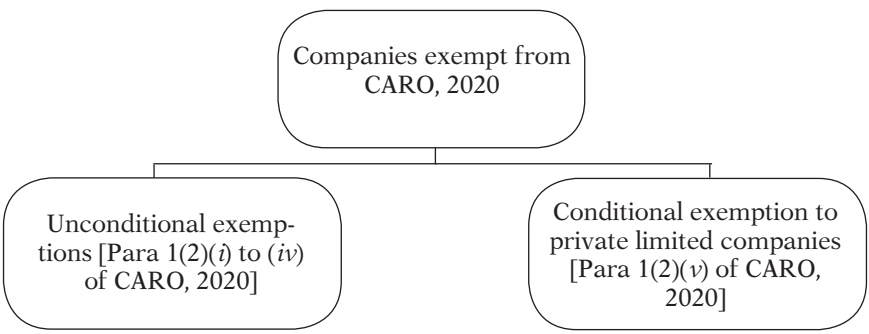
(2) The branch auditor shall submit his report to the company's auditor. [rule 12(2)]

(3) The provisions of sub-section (12) of section 143 read with rule 12 (*sic :* Rule 13) hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch. [rule 12(3)]

It can be seen from Rule 12 that sub-sections (1) to (4) and sub-section (12) of section 143 have been expressly made applicable to branch auditors. Sub-section (11) has not been made so applicable .Therefore, it appears that CARO, 2020 which has been issued by the Central Govt. under section 143(11) shall not apply to audit of branches of a company.

Para 10 ICAI's of the Guidance Note on CARO, 2016 however opines that the Order shall also apply to the audits of branch(es) of a company "since sub-section (8) of section 143 of the Act read with Rule 12 of the *Companies (Audit and Auditors) Rules, 2014* ***clearly specifies that a branch auditor has the same duties in respect of audit as the company's auditor***". Therefore, the report submitted by the branch auditor should contain a statement on all the matters specified in the Order, as applicable to the company, except where the company is exempt from the applicability of the Order, to enable the company's auditor to consider the same while complying with the provisions of the Order. It is submitted with great respect that the above view in the Guidance Note needs reconsideration. The "branch auditor has the same duties … as the company's auditor" is the legal position enunciated by the Companies Act, 1956 in section 228(3)(*b*) and is not contained in any provision in the Companies Act, 2013 or the rules thereunder.

2.3 Exemption of companies from CARO, 2020



CARO, 2020 does not apply to—

(*i*) a banking company; [Para 1(2)(*i*) of CARO, 2020]

(*ii*) an insurance company; [Para 1(2)(*ii*) of CARO, 2020]

(*iii*) a company licensed to operate under section 8 of the Companies Act; [Para 1(2)(*iii*) of CARO, 2020] [**Para 2.3-1**]

(*iv*) a One Person Company as defined under clause (62) of section 2 of the Companies Act [Para 1(2)(*iv*) of CARO, 2020] [**Para 2.3-2**]

(*v*) a small company as defined under clause (85) of section 2 of the Companies Act [Para 1(2)(*iv*) of CARO, 2020]; [**Para 2.3-3**] and

(*vi*) a private limited company which is neither a holding company nor a subsidiary of a public company which satisfies specified conditions [Para 1(2)(*v*) of CARO, 2020] [**Paras 2.3-4** to **2.3-8**]

ICAI had clarified that CARO, 2003 is not applicable to an NBFC (Non-Banking Financial Company) which converts itself into a banking company and is a banking company as at the balance sheet date. It is opined that this clarification would hold good under CARO, 2020 also. Para 12 of ICAI's Guidance Note on CARO, 2016 clarifies that the applicability of CARO, 2016 would depend on the status of the company as at the balance sheet date. This clarification in the context of CARO, 2016 would hold good under CARO, 2020 also as provisions of para 1(2) of CARO, 2020 are similar to Para 1(2) of CARO, 2016.

By way of analogy, it is opined that CARO, 2020 would not apply to a private limited company which converts itself to a Limited Liability Partnership (LLP) and is a LLP as at the balance sheet date. This would hold equally good for an unlisted public company which converts itself into a LLP and is an LLP as at the balance sheet date.

The Companies mentioned in (i) to (v) above are absolutely and unconditionally exempt from CARO, 2020. It does not matter whether a company falling under (i) to (v) above is a public company or a private company. By definition, an OPC or a small company cannot be a public company. Thus, a public company which falls under categories (*i*) to (*iii*) above would be exempt from CARO, 2020 unconditionally.

Further, a private limited company which falls in any of the categories (*i*) to (*v*) above will be exempt regardless of whether it satisfies the conditions specified for exemption in Para 1(2)(*v*) of CARO, 2020 [*See* **Para 2.3-4**] For instance if a private limited company is an OPC or a small company or a section 8 company, it would be exempt from CARO, 2020 irrespective of whether the conditions specified for exemption in Para 1(2)(*v*) of CARO, 2020 are satisfied or not. The Guidance Note on CARO, 2016 clarifies that a small company is exempt from the applicability of the Order even if it falls under any of the criteria (*i.e.* exceeding any of the threshold limits specified in Para 1(2)(*v*) of the Order) specified for private company. Further, a private unlimited company shall be exempted from

CARO, 2020 only if it falls in any of the categories in (*i*) to (*v*) above. For instance, a private unlimited company which is a 'small company' shall be exempt from CARO, 2020.

In the case of companies which are exempt from the Order unconditionally *i.e.*, banking companies, insurance companies, companies licensed to operate under section 8 of the Companies Act, 2013, OPCs and small companies, there is no need to mention anything about the exemption in the audit report. However, in the case of a private limited company which is treated as exempt by virtue of compliance with conditions in para 1(2)(*v*) of the Order, it would be advisable to mention in the audit report that the company is exempted from the applicability of the Order.

2.3-1 Company licensed to operate under section 8 of the Act

Para 1(2)(*iii*) of CARO, 2020 exempts companies licensed under section 8 of the Act from the applicability of the Order. A question arises whether companies licensed under the corresponding provisions of the Companies Act, 1956 (section 25 companies) would also be exempt in terms of Para 1(2)(*iii*)? Section 465(2)(*g*) of the Act provides that notwithstanding the repeal of the Companies Act, 1956, the incorporation of companies registered under that Act "shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act". In view of the provisions of section 465 of the Act, it appears that the exemption in Para 1(2)(*iii*) would also apply to section 25 companies. [*See* Para 13 of the Guidance Note]

A question arises what if company is into charitable activities but was not licensed under section 8 of the Act but obtains such license before the balance sheet date? Would such company be exempt from CARO, 2020 since it is a section 8 company as at the balance sheet date? Para 12 of the Guidance Note clarifies that applicability of CARO, 2020 would depend on the status of the company as the balance sheet date. In view of this, the company would be exempt from CARO, 2020 in terms of Para 1(2)(*iii*) of the Order.

2.3-2 Definition of 'One Person Company' (OPC)

Section 2(*62*) of the Act defines 'One Person Company' to mean a company with only one person as its member. 'One Person Company' (OPC) is not to be confused with 'One Man Companies'. In OPC, the solitary member holds 100% of the share capital.

Rules 3 to 6 of the *Companies (Incorporation) Rules, 2014*, deal with the procedural matters. One person company is categorized as a private

company by section 3(1)(*c*) of the Act which uses the words "one person, where the company to be formed is a ***One Person Company that is to say, a private company***". Section 2(*68*) of the Act which defines a private company requires that the private company should *inter alia* by its articles "except in the case of a One Person Company" limit its number of members to 200. If OPC was not covered by definition of private company, there was no need to use the words "except in the case of a One Person Company" in section 2(*68*) of the Act. Thus, in view of sections 3(1)(*c*) and 2(*68*) of the Act, "private company" is the *genus* and "OPC" is a *'species'* of private company. Therefore, it appears that OPC will have to satisfy the requirements of section 2(*68*) which applies to private companies except the requirements regarding number of members not exceeding 200. The reason why OPC need not limit the maximum number of members to 200 by its articles is that it will not have more than one member.

Rule 6 of the *Companies (Incorporation) Rules, 2014* provides as under :

1. Where the paid up share capital of an One Person Company exceeds fifty lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
2. Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
3. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
4. The One Person Company shall within period of sixty days from the date of applicability of (1) above, give a notice to the Registrar in Form No. INC. 5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in (1) above.

   Note : "Relevant period" means the period of immediately preceding three consecutive financial years.

5. If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

2.3-3 Small Company

Section 2(*85*) of the Act defines "small company" as under:

"small company" means a company, other than a public company,—

(*i*) paid-up share capital [*See* **para 2.3-5**] of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(*ii*) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

(*A*) a holding company or a subsidiary company;

(*B*) a company registered under section 8; or

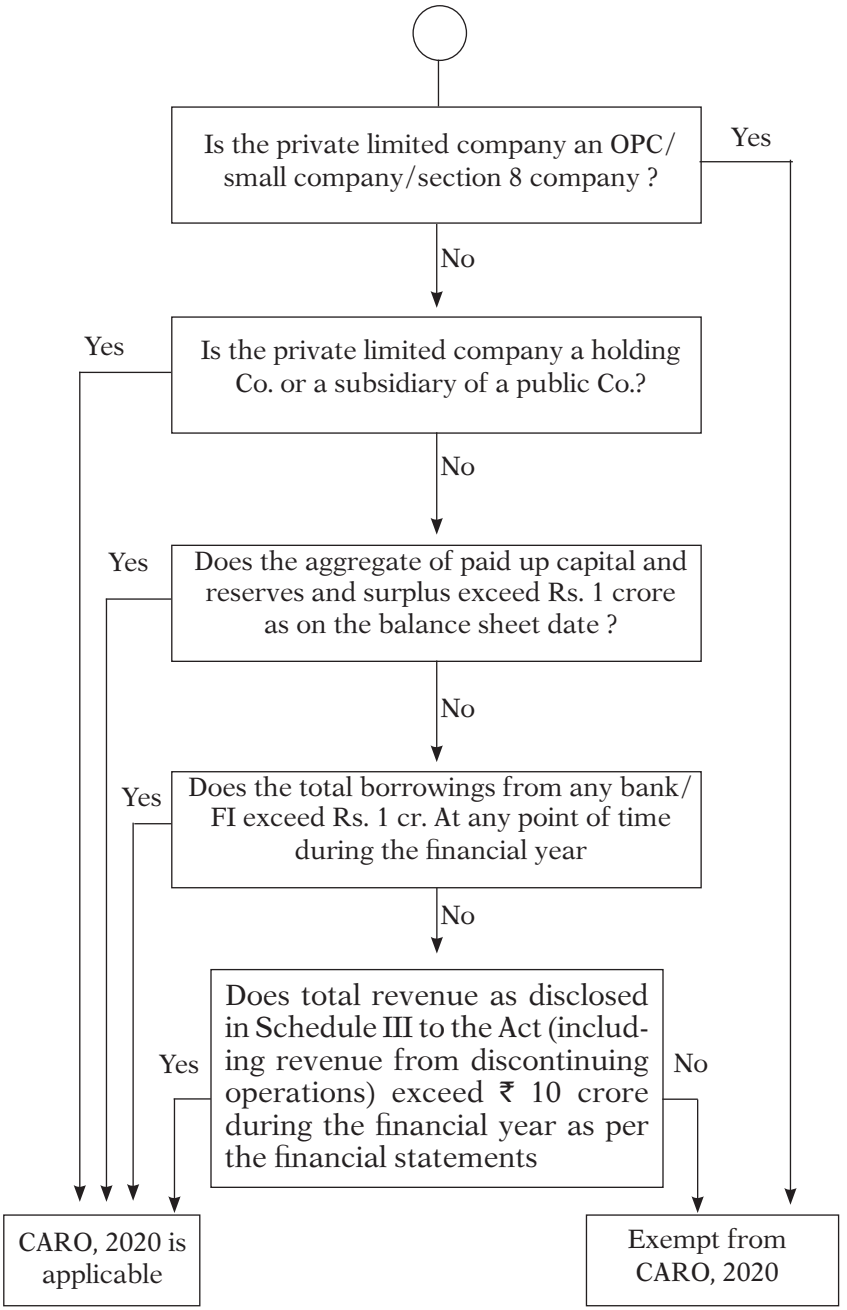
(*C*) a company or body corporate governed by any special Act;"

To be a small company, company would have to satisfy the criteria in sub-clause (*i*) as well as the criteria in sub-clause (*ii*) of clause (*85*) of section 2. In other words, both the paid-up share capital threshold as well as the turnover threshold should not be exceeded.

Thus, according to section 2(*85*), a company is a 'small company' if it satisfies all the following conditions:

1. It is not a public company, *i.e.*, it is a private company or a One Person Company.
2. Its paid-up share capital does not exceed Rs. 50,00,000 or such higher amount as may be prescribed which shall not be more than ten crore rupees.
3. Its turnover as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
4. It is not a holding company or a subsidiary company.
5. It is not a company registered under section 8 of the 2013 Act.
6. It is not a company or body corporate governed by any special Act.

2.3-4 Exemption to private limited companies from CARO, 2020



- Exemption is available to private limited companies under para 1(2)(*v*) only if *all* the following conditions stated below are satisfied—
  a. the company is neither a holding company nor a subsidiary of a public company [*see* **para 2.3-5**];
  b. the aggregate of paid-up capital and reserves and surplus do not exceed Rs. 1 crore as on the balance sheet date [*see* **para 2.3-6**];
  c. the company does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year [*see* **para 2.3-7**];
  d. the company's total revenue as disclosed in Schedule III to the Act (including revenue from discontinuing operations) do not exceed Rs. 10 crore during the financial year as per the financial statements [*see* **para 2.3-8**].

  [*See* also the Table in **Para 2.3-5** below]
- The compliance with conditions for exemption will have to be judged on a financial year to financial year basis. It is possible that those are fulfilled in one financial year and so the company is exempt from CARO, 2020. But if they are not fulfilled in another financial year, then the exemption will not be available for that year. That is to say, the availability of exemptions for private limited company will have to be considered afresh every year.

2.3-5 Not a holding Co. or a subsidiary of a public company

A private limited company is exempt from CARO, 2020 if and only if :

(*i*) It is not a holding company or a subsidiary of a public company; and

(*ii*) Its paid-up capital and reserves and surplus, total borrowings and total revenue do not exceed the monetary thresholds stipulated in Para 1(2)(*v*).

Para 1(2)(v) of CARO, 2020 clearly stipulates as of what date the monetary thresholds should be reckoned as under:

Monetary threshold	*As of what date to be reckoned*
Paid-up capital and reserves and surplus not to exceed Rs.1 Crore	As on the balance sheet date
Total borrowings from any bank or financial institution not to exceed Rs 1 Crore	At any point of time during the financial year
Total revenue as disclosed in Schedule III to the Act (including revenue from discontinuing operations) not to exceed Rs.10 crores	During the financial year (i.e. for entire financial year)

However, Para 1(2)(v) of CARO, 2020 does not clarify as of what date the condition of not being a holding company or subsidiary of a public company should be satisfied. Whether it should be as of the balance sheet date or at any point of time during the financial year is not at all clear. The words used in Para 1(2)(v) are "***not being*** a subsidiary or holding company of a public company".

P.R. Aiyar's Advanced Law Lexicon defines "being" as:

> "…it properly denotes a state or condition existent at the time when the conclusion of law or fact has to be ascertained"

Stroud's Judicial Dictionary defines "being" as under:

> '"Being", as used in a sense similar to that of the ablative absolute, has sometimes been translated as, "having been"; **but it properly denotes a state or condition existent at the time when the conclusion of law or fact has to be ascertained.**'

The above definitions of "being" would mean that the status of whether the private limited company is a subsidiary or a holding Co. of a public company will have to be ascertained as of the balance sheet date. This view is reinforced by Para 12 of the ICAI's Guidance Note on CARO, 2016 wherein it is clarified that the applicability of CARO, would depend on the status of the company as at the balance sheet date.

2.3-6 Paid up capital plus reserves and surplus should not exceed ₹ 1 crore

Clause (*64*) of section 2 of the Act defines the term "paid-up capital" as such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

COMPUTATION OF PAID-UP CAPITAL

As per the Guidance Note, the paid up capital should be calculated as under:

	Rs.
Called up equity share capital	xx
Add: Called up preference share capital	xx
	xxx
Less: Calls in arrears	xx
Add: Shares forfeited account	xx
Paid up capital for the purposes of para 1(2)(*v*)	xxx

Notes :

1. Share application money received pending allotment is not to be included in computation of paid up capital.

2. Since section 2(*64*) of the Act defines "paid up capital" as including capital credited as paid up, bonus shares shall be included in computing the paid up capital.

3. Calls in advance should not be included in computing paid up capital.

COMPUTATION OF RESERVES AND SURPLUS

'Reserves and surplus' is defined by Schedule III to the Act as under :

B. Reserves and Surplus

(*i*) Reserves and Surplus shall be classified as :

(*a*) Capital Reserves;

(*b*) Capital Redemption Reserve;

(*c*) Securities Premium;

(*d*) Debenture Redemption Reserve;

(*e*) Revaluation Reserve;

(*f*) Share Options Outstanding Account;

(*g*) Other Reserves (specify the nature and purpose of each reserve and the amount in respect thereof);

(*h*) Surplus, *i.e.*, balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/from reserves, etc.;

(Additions and deductions since last balance sheet to be shown under each of the specified heads);

(*ii*) A reserve specifically represented by earmarked investments shall be termed as a "fund".

(*iii*) Debit balance of statement of profit and loss shall be shown as a negative figure under the head "Surplus". Similarly, the balance of "Reserves and Surplus", after adjusting negative balance of surplus, if any, shall be shown under the head "Reserves and Surplus" even if the resulting figure is in the negative.

From the above, it is clear that, reserves and surplus should be calculated as follows :

	₹
All reserves like general reserves, dividend equalization reserves, debenture redemption reserve, securities premium, capital reserve, capital redemption reserve, revaluation reserve (*i.e.*, all reserves, whether free reserves or not and whether capital reserve or revenue reserve)	xxx
Add: Credit balance of P&L a/c, if any	xx
Less: Debit balance of P&L a/c, if any	xx
Reserves for the purposes of para 1(*2*)(*v*)	xxxx

The figure of reserves and surplus can be negative as per Schedule III if negative balance of 'surplus' exceeds the 'reserves'.

Reserves and surplus figure as per balance sheet would have to be reckoned for calculating 'paid up capital and reserves and surplus' even if the figure is a negative figure.

For instance, if the paid up capital is ₹ 1.20 crores and reserves and surplus is negative figure of say ₹ 40 lakhs. In this case, the aggregate figure of paid up capital and reserves and surplus would be ₹ 80 lakhs which is less than ₹ 1 crore. Hence, CARO, 2020 would not apply.

As regards computation of "reserves and surplus" for the purposes of Para 1(2)(*v*), the Guidance Note clarifies as under:

- Both capital as well as revenue reserves should be considered for computation of "reserves and surplus" figure.
- Revaluation reserve, if any, should also be considered while determining the figure of reserves for the limited purpose of determining the applicability of the Order.
- Debit balance of profit and loss shall be netted for computing reserves & surplus.
- In a nutshell, the total of reserves and surplus as disclosed in the balance sheet should be considered in evaluating the threshold.

A Private Limited Company reports the following position as on 31st March, 2020:

Paid up capital	**₹ 60 lacs**
Revaluation reserve	**₹ 30 lacs**
Capital reserve	**₹ 20 lacs**
P&L A/c [Dr. Balance]	**₹ 15 lacs**

Is CARO 2020 applicable to the company ?

According to para 1(2)(*v*) of CARO, 2020, if the paid up capital *plus* reserves and surplus of a private limited company exceeds ₹ 1.00 crore as at the balance sheet date, CARO, 2020 will apply to it.

CARO, 2020 requires the aggregate of 'paid up capital and reserves and surplus' to be computed. As per Schedule III, 'reserves and surplus' figure in the balance sheet has to be shown after deducting debit balance in P&L from total of reserves and the resulting figure can be a negative figure if the debit balance in P&L exceeds the figure of reserves. Therefore, the aggregate of paid up capital and reserves and surplus would be reckoned as 60 lacs + 30 lacs + 20 lacs – 15 lacs i.e. ₹ 95 lacs. As the same is less than one crore, CARO, 2020 would not apply in terms of 'paid up capital and reserves and surplus more than ₹ 1 crore criteria'.

2.3-7 Total borrowings not exceeding ₹ 1 crore from any bank or Financial Institution [para 1(2)(iv)]

'Total borrowings' means 'outstanding balances of borrowings'. [Para 18 of the ICAI's Guidance Note on CARO, 2016].

According to the Guidance Note, the following points should be kept in mind for computing the limit of total borrowings of ₹ 1 crore for the purposes of Para 1(2)(*v*) :

- "Total borrowings" does not mean sanctioned limits. It means "outstanding balances of borrowings".
- Borrowings from banks and financial institutions may be short-term or long-term. They may be secured or unsecured.
- Normally, borrowings from banks and financial institutions are in the form of term loans, demand loans, export credits, cash credits, overdraft facilities, bills purchased or discounted.
- Outstanding balances of such borrowings should be considered for computing the limit.
- The Order does not stipulate that the borrowing should be a short-term borrowing or a long-term borrowing. Nor does it stipulate whether borrowing should be a secured borrowing or unsecured borrowing. Thus, outstanding balances of all borrowings, whether long-term or short-term and whether secured or unsecured, have to be considered.
- Current maturity of long term borrowings will form part of "borrowings".
- ***The term 'borrowings' includes all fund-based facilities*** - All fund based facilities (term loans, demand loans, export credit, cash credits, overdrafts, bills purchased or discounted) should be considered in 'total borrowings'. *Bills purchased or discounted are shown as a contingent liability but even then it should be considered loan outstanding for the purpose of para 1(2)(v).*
- ***The term 'borrowings' includes devolved non-fund based facilities*** - Non-fund based facilities will be considered as 'borrowings' only to the extent such facilities have devolved and have been converted into fund-based facilities. For example, bank guarantees invoked and encashed would have to be considered. A letter of credit devolved on the company has to be considered
- Interest accrued and due on term loan is "borrowing". Interest accrued but not due should not be regarded as "borrowing"
- Where company enjoys a cash credit facility whose balance is fluctuating in nature, the Order would apply to the company if the amount outstanding in the cash credit facility along with other borrowings exceeds Rupees One crore on any day during the financial year concerned. The outstanding balance in the CC facility as per books of account should be taken and not the balance as per bank statement.

- Outstanding dues in respect of overdraft against fixed deposits will also have to be considered. Even overdraft availed by a company against fixed deposits is "borrowing".
- Since corporate credit cards is a form of credit facility extended by the bank, outstanding dues in respect of such credit cards should be considered while calculating the limit of ₹ 1 crore.
- The limit of ₹ 1 crore applies in aggregate to all borrowings from all banks and financial institutions and not bank-wise or financial institution-wise.

2.3-7a *Bank* - 'Bank' will include all types of banks, public sector, private, co-operative, scheduled, unscheduled. The Guidance Note recommends that loans from private banks and foreign banks should also be considered for computing the aforesaid limit of ₹ 1 crore.

2.3-7b *Financial Institution* - 'Financial institution' is defined by section 2(*39*) of the Act in an inclusive manner. The term includes any scheduled bank and any other financial institution defined or notified under the RBI Act, 1934.

Clause (*c*) of Section 45-I of the RBI Act 1934 defines the term "financial institution" as under:—

"45-I(*c*) "*financial institution*" means any *non-banking institution* which carries on as its business or part of its business any of the following activities, namely:—

(*i*) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(*ii*) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;

(*iii*) letting or delivering of any goods to a hirer under a hire purchase agreement as defined in clause (*c*) of section 2 of the Hire-Purchase Act, 1972;

(*iv*) the carrying on of any class of insurance business;

(*v*) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(*vi*) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, [but does not include any institution, which carries on as its principal business];

(*a*) agricultural operations; or

(*aa*) industrial activity; or

(*b*) the purchase or sale of any goods (other than securities) or the providing of any services; or

(*c*) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

Explanation.—For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (*i*) to (*xviii*) of clause (*c*) of section 2 of the Industrial Development Bank of India Act, 1964;

Clause (*e*) of Section 45-I of RBI Act 1934 defines "non-banking institution" as under:-

45-I(*e*) "non-banking institution" means a company, corporation (cooperative society).

The definition of "non-banking financial company" in section 45-I(*f*) also refers to the term "financial institution"

Section 45-I(*f*) of the RBI Act,1934 defines "non-banking financial company" as under:—

"45-I(*f*) "non-banking financial company" means—

(*i*) a financial institution which is a company;

(*ii*) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(*iii*) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify;"

In view of the above definition in section 45(I)(*f*), the term "financial institution" shall also cover a non-banking financial company (NBFC). [*See* Para 19 of the ICAI's Guidance Note on CARO, 2016]

Sub-section (*72*) of section 2 of the Act, empowers the Central Government to notify in the Official Gazette such other institution as it may think fit to be a public financial institution. Such notified public Financial Institution shall also be a 'Financial Institution' for the purposes of CARO, 2020.

2.3-8 Total revenue not exceeding ₹ 10 crore

Para 1(2)(v) of CARO, 2020 provides that a private limited company shall be exempt from CARO, 2020 only its total revenue as disclosed in Schedule III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.

It can be seen from part II of Schedule III, 'total revenue' has to be disclosed in profit and loss account as under:

PART II

STATEMENT OF PROFIT AND LOSS

Name of the Company.....

Profit and loss statement for the year ended .....

(Rupees in.....)

Particulars	*Note No.*	*Figures as at the end of current reporting period*	*Figures as at the end of the previous reporting period*
1	*2*	*3*	*4*
I. Revenue from operations		xxx	xxx
II. Other income		xxx	xxx
III. Total Revenue (I + II)		xxx	xxx

The General instructions for preparation of statement of profit and loss in Schedule III provide as under :

1. ** ** **

2. (*A*) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from—

(*a*) Sale of products;

(*b*) Sale of services;

(*c*) Other operating revenues;

Less:

(*d*) Excise duty.[1]

(*B*) In respect of a finance company, revenue from operations shall include revenue from—

(*a*) Interest; and

(*b*) Other financial services.

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

3. ** ** **

4. *Other income*

Other income shall be classified as :

(*a*) Interest Income (in case of a company other than a finance company);

(*b*) Dividend Income;

(*c*) Net gain/loss on sale of investments;

1. Now Goods and Services Tax (GST) since July, 2017 as GST has replaced excise duty.

(*d*) Other non-operating income (net of expenses directly attributable to such income).

'Total revenue as disclosed in Schedule III' is not the same as 'turnover'. 'Turnover' does not include other income' while 'total revenue' in terms of Schedule III includes 'other income'.