

भारत सरकार / Government of India
राष्ट्रीय वित्तीय रिपोर्टिंग प्राधिकरण / National Financial Reporting Authority

Guidelines on procedure for complaint handling in NFRA

1.0 Introduction:

1.1 National Financial Reporting Authority (NFRA) has been constituted on 1.10.18 under Section 132 of the Companies Act, 2013 vide MCA Gazette Notification No. 5099(E) dated 1st October, 2018. Thereafter, MCA has notified National Financial Reporting Authority Rules, 2018, vide Gazette Notification No. G.S.R. 1111(E). dated 13.11.18.

2.0 NFRA'S ROLE IN NON-COMPLIANCE WITH THE COMPANIES ACT

2.1 Non-compliance with Accounting and Auditing Standards: Section 132(2)(b) of the Companies Act, 2013, lays down that NFRA shall monitor and enforce the compliance with Accounting Standards and Auditing Standards in such manner as may be prescribed. Accounting standards and Auditing Standards are laid down by the Central Government under sections 133 and 143(10) respectively of the Companies Act, 2013.

2.1.1 Accounting Standards:

- Rule 7 of NFRA Rules, 2018, covers, inter-alia, compliance with Accounting Standards. This states that the NFRA shall publish its findings relating to non-compliances on its website (Sub rule 3). Further, where the NFRA finds any Accounting Standard to have been violated, it may decide on further course of investigation or enforcement action through its concerned Division.
- Where such investigation discloses offences by Companies, NFRA may refer the matter to the Ministry of Corporate Affairs for further necessary action.

2.1.2 Auditing Standards:

- As far as compliance with Auditing Standards is concerned, the NFRA Rules, 2018, provide that where any law or professional or other standard has been violated by an Auditor, NFRA may decide on further course of investigation or enforcement through its concerned Division [Rule 8(8)].
- Where such violation of law or professional or other standards by an Auditor, does not fall within the powers of the NFRA as per Section 132(4), the matter will have to be referred to Ministry of Corporate Affairs (MoCA) for appropriate action.

2.2. Professional or other Misconduct by CAs/Firms:

2.2.1 NFRA's role under Section 132(4) relates to investigation in respect of professional or other misconduct committed by any member or firm of CAs. Imposition of penalty and prohibition from practice also is with reference to a firm or a CA. Professional or other misconduct has the same meaning as under Section 22 of the CA Act, 1949.

2.2.2 The definition of professional or other misconduct under Section 22 of the CA Act, 1949, refers to the lists provided in the two Schedules to the Act, which are as follows:

First Schedule:

- Part I :** Professional misconduct in relation to CAs in practice : 12 entries
Part II : Professional misconduct in relation to Members in service : 2 entries.
Part III : Professional misconduct in relation to all Members : 3 entries
Part IV : Other misconduct (all members) : 2 entries

Second Schedule:

- Part I :** Professional misconduct of CAs in practice : 10 entries
Part II : Professional misconduct (all CAs) : 4 entries
Part III : Other misconduct (all CAs) : 1 entry

2.2.3 A detailed analysis of all the entries in the two Schedules shows that almost all the entries relate to misconduct that does not include or relate to any criminal acts except: (a) where the CA is held guilty by court for an offence punishable with imprisonment; or (b) defalcates or embezzles money received in his professional capacity (entry 4 of the Part II of the Second Schedule).

2.3 Conclusions and Guidance for NFRA:

2.3.1 A Combined reading of all the above provisions would lead to the following conclusions:

- (a) NFRA's jurisdiction covers auditors of the said classes of Companies and Bodies Corporate, as are specified in Rule 3 of the NFRA Rules, 2018.
- (b) NFRA's role regarding violations of Companies Act, 2013, (i.e. violation of Accounting and Auditing Standards) arises in relation to non-compliance with Accounting and Auditing Standards.
- (c) In such cases, the matter would have to be either (i) taken up under Section 132(4) if professional misconduct by a firm or a CA is detected, or (ii) referred to Ministry of Corporate Affairs for further action.
- (d) Complaints against CAs of alleged crimes per se will not fall within the NFRA purview
- (e) Professional misconduct as defined in Section 132(4) read with Section 22 of CAs Act relates largely to audit related matters such as negligence, suppression of information, non-disclosure etc. in connection with audit.
- (f) As far as evidence is concerned, violations of the Companies Act and/or professional misconduct will have to be proved only by documentary evidence. Where there is any complaint received from a non-MoCA source, the NFRA should proceed as follows:
 - (i) If the complaint is from a Government department, or Government agency, or any statutory body, the NFRA may examine the complaint and ask the complainant for such further information, clarifications, documentary evidence etc. as may be felt necessary. If after such examination, a prima facie case is made out, the NFRA may, if in its opinion it is so desirable, either (a) initiate an investigation under Section 132(4); or (b) send an appropriate report to the MoCA for necessary action.
 - (ii) If the complaint is from any other source, the complaint can be examined only if all the documentary evidence necessary to establish a prima facie case is provided. In the absence of documentary evidence, the complaint must be filed as lacking any prima facie value for undertaking an investigation. Where documentary evidence is provided, the complainant must be required to swear on affidavit about the source of and method

of procurement of such documents where he is not the custodian thereof, under the clear knowledge that any false statement under oath could lead to action for perjury. In the absence of such affidavit also, the complaint must be filed as lacking any prima facie value for undertaking an investigation.

3.0 Complaint handling procedure in NFRA

3.1 In view of the analysis of the various provisions in Companies Act and NFRA Rules 2018, in para 2 above, the complaint handling procedure in NFRA has been decided to be as per the flow chart at **Annexure III**:

3.2 List of documents required to be filed online along with the complaint are stated in **Annexure – I**.

3.3 No action will be taken on anonymous (name and address of complainant are unknown) or pseudonymous complaints (where name and address is given but the complaint does not get owned up / verified by the complainant).

3.4 Complaints having incomplete / vague / generic observations are difficult to inquire into or investigate and would normally be filed (no action taken).

3.5 All complaints will be verified by NFRA so as to ensure that they are not pseudonymous.

4.0 Procedure for dealing with whistle blower complaints:

4.1 In cases where the complainant requests to keep his name and contact details confidential, he will follow the following procedure:

4.1.1 The complaint should be in a closed / secured envelope.

4.1.2 The envelope should be addressed to Secretary, NFRA and should be super-scribed “Complaint under The Public Interest Disclosure”. If the envelope is not super-scribed and closed, it will not be possible for the Authority to protect the complainant under the above Resolution and the complaint will be dealt with as per the normal complaint handling policy of the Authority.

4.1.3 The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter. The text of the complaint should be carefully drafted so as not to give any details or clue as to the complainant’s identity. However, the details of the complaint should be specific and verifiable. Authority will not entertain anonymous / pseudonymous complaints.

4.1.4 The complaint will be verified from the complainant through postal communication.

4.1.5 The whistle-blowers are advised not to enter into any correspondence with the Authority in their own interest, unless specifically asked for by the Authority so as to enable the Authority to keep their identity confidential.

4.1.6 In such cases, the complainant will provide hard copy of the documents stated in part B of Annexure I except for the following:

- (i) Affidavit as stated in para B (ii) (c) of Annexure – I. He will sign the affidavit in presence of the nodal officer in NFRA with nodal officer as witness.

List of Stipulated documents to be enclosed with the complaint for filing a complaint in NFRA

A. Complainant being a Government Entity (Entity “A”)

A Government entity wishing to file a complaint with NFRA is required to enclose following documents with the complaint:

- (i) Communication of approval of the Competent Authority in Entity “A” (along with his phone number, address, and email id) for the following:
 - (a) Approval for filing complaint with NFRA
 - (b) Nomination of nodal person in the complainant organization for communicating with NFRA with a certificate that the said person is well versed with all aspects of the case and attestation of signature of the said nodal officer.
- (ii) Name, designation, address, phone number, mobile number, email ID and other contact details of the said nodal person as in (i) (b) above along with his Identity card issued by Entity “A”.
- (iii) Justification along with supporting documents stating that the complaint is under NFRA domain in terms of Section 132 of the Companies Act, 2013 and National Financial Reporting Authority Rules, 2018.
- (iv) Complaint along with supporting documents and evidence on the basis of which the complaint is being made and allegations are being levied against i.e. Entity “B”.
- (v) List of specific allegations against Entity “B” along with evidence and supporting documents in respect of each allegation. Each document / evidence referred to should be duly indexed and numbered. The allegation should specifically quote the reference number of each document / evidence so as to easily identify the same.
- (vi) Relationship between Entity “A” and Entity “B” along with supporting documents.
- (vii) Name, designation, address, phone number, mobile number, email ID and other contact details of the relevant person in Entity “B”.
- (viii) Chronology of events w.r.t relations between Entity “A” and Entity “B”.
- (ix) Chronology of events along with supporting documents w.r.t. allegations levied against Entity “B”.
- (x) Copy of communication from NFRA, if any, regarding filing of complaint online.
- (xi) Any other information / document which Entity “A” would like to give.

B. Complainant being a Non Government Entity (Entity “C”)

A Non Government entity wishing to file a complaint with NFRA is required to enclose following documents with the complaint:

- (i) Copy of approval of head of the Entity “C” (along with his phone number, address, and email id) for the following:
 - (a) Approval for filing complaint with NFRA
 - (b) Nomination of nodal person in the complainant organization for communicating with NFRA with a certificate that the said person is well versed with all aspects of the case and attestation of signature of the said nodal officer.
 - (c) Affidavit (format enclosed as **Annexure – II**). Copy to be filed online and original to be sent by Registered / Speed post.

(in case of an individual, the individual himself will file the complaint, in which case he himself will be the nodal person and accordingly para (i) (a) above, will not be applicable)
- (ii) Name, designation, address, phone number, mobile number, email ID and other contact details of the said nodal person as in (i) (b) above along with his Identity card issued by a Government Agency like PAN / Aadhar / Passport/ Voter ID, etc.
- (iii) Justification along with supporting documents stating that the complaint is under NFRA domain in terms of Section 132 of the Companies Act, 2013 and National Financial Reporting Authority Rules, 2018.
- (iv) Complaint along with supporting documents and evidence on the basis of which the complaint is being made and allegations are being levied against i.e. **Entity “D”**.
- (v) List of specific allegations against Entity “D” along with evidence and supporting documents in respect of each allegation. Each document / evidence referred to should be duly indexed and numbered. The allegation should specifically quote the reference number of each document / evidence so as to easily identify the same. All the documents available with the complainant in support of his complaint, need to be filed.
- (vi) Relationship between Entity “C” and Entity “D” along with supporting documents. In case of 3rd party complaints, reason for filing such complaint will be given.
- (vii) Name, designation, address, phone number, mobile number, email ID and other contact details of the relevant person in Entity “D”.
- (viii) Chronology of events w.r.t relations between Entity “C” and Entity “D”.
- (ix) Chronology of events along with supporting documents w.r.t. allegations levied against Entity “D”.
- (x) Copy of communication from NFRA, if any, regarding filing of complaint online.
- (xi) Any other information / document which Entity “C” would like to give.

Notes in respect of both Part A and Part B of Annexure I :

1. All complaints are required to be filed online.
2. In case Entity “A” or Entity “C” has filed a complaint to MCA (Ministry of Corporate Affairs) and MCA has directed NFRA for examining the same (not for taking necessary action), then

the said Entity will be asked to submit above documents online in respect of their complaint except for the following documents:

- (i) Document listed at S.N. A (i) (a) / B (i) (a) above.
3. The entire complaint along with supporting documents / evidences should be in searchable format – word, pdf, or Excel. The index will be hyperlinked so as to open any of the document from the index. Each page of the complaint should be duly numbered and indexed. Each page of the complaint (comprising of documents listed above) should be duly signed by the nodal officer of complaining Entity so as to attest each page of the complaint.

Format of Affidavit (on Rs. 100/- non Judicial stamp paper)

I S/o / D/o

Aged years, resident of

.....

do hereby swear the following:

(i) I am personally fully aware of each aspect of this complaint being lodged by me.

(ii) I am the custodian of each of the documents and evidences submitted as a part of this complaint

Or

(in case the complainant is not the custodian of the documents and evidences thereof)

(iii) The source of the documents and evidences submitted as a part of this complaint have been procured by me from

(iv) The method of procurement of such documents from is as follows:

.....
.....
.....
.....

2. I fully understand that any false statement under this oath could lead to action for perjury.

(Signature of the nodal officer of the complainant)

Name
Designation
Organization
Seal

Date :

Place:

Witness 1.....

Witness 2.....

(Full name, address, mobile number and email id of witness to be given)

Attestation by Notary

PROCEDURE FOR HANDLING COMPLAINTS IN NFRA

