UNIT 1: ACCOUNTS OF COMPANIES

1. Introduction
There is a need for disclosing the Annual information to the shareholders by the directors about the working and financial position of the company, so that the shareholders are aware of the affairs of the company. So, the Companies Act, 2013, lays down the various provisions related to maintenance of proper books of account etc. of the companies through required compliances.

2. Books of Account, etc., to be kept by Company [Section 128]
General requirement

Every company shall prepare “books of account” and other relevant books and papers and financial statement for every financial year.

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Accrual basis and Double-entry system of accounting

Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial statements. Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid.

Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt and credit and therefore, needs to be recorded in at least two accounts. Double aspect enables effective control of business because all the books of accounts must balance.

“books of account” as defined in Section 2(13) includes records maintained in respect of—

- all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- all sales and purchases of goods and services by the company;
- the assets and liabilities of the company; and
- the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

“book and paper” and “book or paper” as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

Place of Keeping Books of Account

Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

Provided all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within seven days thereof file with the registrar a notice in writing giving full address of that other place.

Maintenance of Books of account in electronic form

Company have the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. Rule 3 lays down
2.3 Corporate and Allied Laws

the manner of Books of accounts to be kept in electronic mode.

(1) Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent.

(2) The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

(3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

(4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

(5) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

(6) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement following relevant information related to service provider—

(a) the name of the service provider;
(b) the internet protocol address of service provider;
(c) the location of the service provider (wherever applicable);
(d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Books of Account - Branch Office

Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office and are kept open for inspection at the registered office of the company or at such other place in India by any director during business hours.

Inspection by directors

As per Section 128 (3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression “Books and Papers” has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. Such inspection may be done by any type of director-nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a person can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors. The director can seek the information only individually and not by or through his attorney holder or agent or
representative with respect to financial information maintained outside the country and to produce such financial information [Rule 4(4)of the *Companies (Accounts) Rules, 2014*].

**Period for preservation of books [Section 128(5)]**

The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. The provisions of Income Tax Act shall also be complied with in this regard.

Where an investigation has been ordered in respect of a company, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

**Persons responsible to maintain books**

As per Section 128 (6) the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

(i) Managing Director,
(ii) Whole-Time Director, in charge of finance
(iii) Chief Financial Officer
(iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

**Penalty provisions**

In case the aforementioned persons referred to in sub-section (6) fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

**Example:** XYZ Ltd. wants to maintain its books of account on cash basis. Is this a valid act of XYZ?

**Answer:** The Companies Act, 2013 vide section 128(1) now requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year shall be kept on accrual basis and according to the double entry system of accounting. Further, section clearly states that the books of accounts must be maintained on accrual basis and according to the double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence, it is clear that XYZ Ltd. cannot maintain its books of accounts on cash basis.
3. **Financial Statement [Section 129]**

**Financial Statements—Definition**

Financial Statement is defined under Section 2 (40), to include—

- Profit and Loss account or Income and Expenditure account
- Cash flow Statement
- Statement of change in equity, if applicable
- any explanatory notes annexed to or forming part of financial statements

However, the financial statement with respect to one Person Company, small company and dormant company, may not include the cash flow statement.

Financial statements should be prepared for financial year and shall be in form as per Schedule III.

“Financial year” [Section 2(41)], in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

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1 Section 129 shall not apply to the Government Companies to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production. [Inserted vide Notification dated 5th June 2015]
Schedule III has been amended vide Notification No. G.S.R. 404(E) dated 6th April, 2016 according to which Schedule III has been divided into two divisions. Division I deals with Financial Statements for a company whose financial statements are required to comply with the Companies (Accounting Standards) Rules, 2006. Division II deals with Financial Statements for a company whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015.

**True and Fair view**

As per section 129(1) the financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

**Non Applicability**

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

<table>
<thead>
<tr>
<th>Type of Company</th>
<th>Matters</th>
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<tbody>
<tr>
<td>Insurance Company</td>
<td>Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999</td>
</tr>
<tr>
<td>Banking company</td>
<td>Matters which are not required to be disclosed by the Banking Regulation Act, 1949</td>
</tr>
<tr>
<td>Company engaged in the generation or supply of electricity</td>
<td>Matters which are not required to be disclosed by the Electricity Act, 2003</td>
</tr>
<tr>
<td>Company governed by any other law</td>
<td>Matters which are not required to be disclosed by that law</td>
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**Laying of financial Statements [Section 129(2)]**

At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

**Consolidation of financial statements [Section 129(3)]**

(1) Where a company has one or more subsidiaries, it shall, in addition to its financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.
The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

**Manner of consolidation of Accounts:** The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

**In case where company not require to prepare CFS:** However, that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

**Exemptions from preparation of CFS:** “Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:

(i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

“Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014.”

**Explanation**—For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

(2) The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements. [Section 129(4)]

(3) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation. [Section 129(5)]

(4) The Central Government may, on its own or on an application by a class or classes of
companies, by notification,² exempt any class or classes of companies from complying with any of the requirements of this section or the rules made there under, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. [Section 129(6)]

Penal provisions [Section 129(7)]

If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Company Contravenes the provisions of section 129

<table>
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<tr>
<th>Whether mentioned officers are present</th>
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<td>MD</td>
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- Yes
  - Mentioned Officers
    - Imprisonment (upto 1yr)
    - Fine (50,000 to 5 lacs)
    - Or Both

- No (Absence)
  - All directors

² For exemptions granted to government companies engaged in production of Defence Equipments Vide notification dated 4-9-2015.
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Explanation: Here, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

Example: Suppose if A Ltd. is wholly owned subsidiary of B Ltd. Here in this case B Ltd. will consolidate financials of A Ltd.

Now suppose, if A Ltd. has one subsidiary i.e. B Ltd. & one associate company i.e. C Ltd. B Ltd. is the entity incorporated outside India and C Ltd. is the entity incorporated in India. Here in the given case A Ltd. will consolidate financial statement of both B and C Ltd. A Ltd. shall also attach the financial statement of B Ltd. along with filing of consolidated financials of A Ltd. Also a statement containing the salient features of the financial statement of a companys’ subsidiary, associate or joint venture shall be filed as an annexure to the board’s report. The word ‘Subsidiary’ includes Associate Company and joint venture.

Example: The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer: Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:

(a) any notes annexed to or forming part of such financial statement;
(b) the auditor’s report; and
(c) the Board’s report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So such an act of ABC Ltd, is not tenable.

4. Re-opening of Accounts on court’s or Tribunal Orders [Section 130]

This section seeks to provide for the opening of books of accounts and recasting its financial statements.
(1) **Apply to court for re-opening of accounts**—A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by-

(a) the Central Government,
(b) the Income-tax authorities,
(c) the Securities and Exchange Board,
(d) any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Serving of notice: Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

(2) Revised accounts shall be final: The accounts so revised or re-cast, shall be final.

5. Voluntary Revision of Financial Statements or Board’s Report [Section 131]

(1) Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the directors of a company that—
(a) the financial statement of the company; or
(b) the report of the Board,
do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form
and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

**Tribunal to serve the notice:** Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

**Number of times of revision and recast:** Financial statement provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

**Reason for revision to be disclosed:** Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board’s report in the relevant financial year in which such revision is being made.

**(2) Limits of revisions:** Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

(a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

(b) the making of any necessary consequential alternation.

**(3) Framing of rules by the Central Government in relation to revised financial statement or director’s report:** The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director’s report and such rules may, in particular—

(a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provisions with respect to the functions of the company’s auditor in relation to the revised financial statement or report;

(c) require the directors to take such steps as may be prescribed

**6. Constitution of National Financial Reporting Authority [Section 132] (Yet to be notified)**

Section 132 of the Companies Act, 2013 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). It shall have the powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

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3 This section is not notified till 30.4.2017
2.13 Corporate and Allied Laws

(1) The Central Government may, by notification, constitute a NFRA to provide for matters relating to accounting and auditing standards under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(3) The NFRA shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed.

However, the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

Provided also that the chairperson and members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

(4) Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the 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 NFRA has initiated an investigation under this section;

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the NFRA;

(ii) summoning and enforcing the attendance of persons and examining them on oath;
(iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;

(iv) issuing commissions for examination of witnesses or documents;

(c) where professional or other misconduct is proved, have the power to make order for—

(A) imposing penalty of—

(I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the NFRA.

Explanation.—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

(5) Any person aggrieved by any order of the NFRA issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed.

(6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the NFRA.

(7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.

(8) The fee for filing the appeal shall be such as may be prescribed.

(9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.

(10) The NFRA shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

(11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the NFRA under this Act and
the terms and conditions of service of the secretary and employees shall be such as may be
prescribed.

(12) The head office of the NFRA shall be at New Delhi and the NFRA may, meet at such other
places in India as it deems fit.

(13) The NFRA shall cause to be maintained such books of account and other books in relation
to its accounts in such form and in such manner as the Central Government may, in consultation
with the Comptroller and Auditor-General of India prescribe.

(14) The accounts of the NFRA shall be audited by the Comptroller and Auditor-General of India
at such intervals as may be specified by him and such accounts as certified by the Comptroller
and Auditor-General of India together with the audit report thereon shall be forwarded annually
to the Central Government by the NFRA.

(15) The NFRA shall prepare in such form and at such time for each financial year as may be
prescribed its annual report giving a full account of its activities during the financial year and
forward a copy thereof to the Central Government and the Central Government shall cause the
annual report and the audit report given by the Comptroller and Auditor-General of India to be
laid before each House of Parliament.

7. Central Government to prescribe accounting standards [Section 133]

Section 133 of the Companies Act, 2013 deals with the power of the Central Government to
 prescribe the accounting standards.

Section 133 provides that Central Government shall prescribe the Standards of Accounting as
 recommended by ICAI in consultation with and after examination of the recommendations made
 by NFRA constituted under section 132 of the Act. Till date section 132 is not notified fully. So
 the following transitional Provisions with respect to Accounting Standards has been made.

(1) The standards of accounting as specified under the Companies Act, 1956 (1 of 1956) shall
 be deemed to be the accounting standards until accounting standards are specified by the
 Central Government under section 133.

(2) Till the National Financial Reporting Authority is constituted under section 132 of the Act, the
 Central Government may prescribe the standards of accounting or any addendum thereto, as
 recommended by the Institute of Chartered Accountants of India in consultation with and after
 examination of the recommendations made by the National Advisory Committee on Accounting
 Standards constituted under section 210A of the Companies Act, 1956.

Relevant Accounting Standards

The Companies (Accounting Standards) Rules, 2006

364(E) dated 30th March, 2016

The Companies (Indian Accounting Standards) Rules, 2015

The Companies (Indian Accounting Standards) (Amendment) Rules, 2016
8. Financial Statement, Board’s Report, etc. [Section 134]

Section 134 deals with financial statements as well as board’s report. The auditor’s report is to be attached to every financial statement. A report by the Board of directors containing details on the matters specified, including director’s responsibility statement, shall be attached to every financial statement laid before company. The Board’s report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor’s report and Board’s report.

(i) Authentication of Financial statements [Section 134(1), (2) & (7)]:

(a) The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the following:

(1) The chairperson of the company where he is authorised by the Board; or
(2) By two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
(3) The Chief Financial Officer, wherever he is appointed; and
(4) The company secretary of the company, wherever he is appointed.

(b) In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.

(c) The auditors’ report shall be attached to every financial statement.

(d) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(1) Any notes annexed to or forming part of such financial statement;
(2) The auditor’s report; and
(3) The Board’s report.
(ii) **Board’s report [Section 134(3) & (4)]:**

1. According to Rule 8 of the *Companies (Accounts) Rules, 2014*, the Board’s Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

2. There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

<table>
<thead>
<tr>
<th>Board of Directors Report</th>
<th>Following informations</th>
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</thead>
<tbody>
<tr>
<td>Extract of Annual return</td>
<td>No. of meetings of Board</td>
</tr>
<tr>
<td>Directors’ responsibility Report</td>
<td>Details of fraud reported by auditors</td>
</tr>
<tr>
<td>Declaration by ID’s</td>
<td>Companies policy on directors appointment and remuneration</td>
</tr>
<tr>
<td>Comments by board on remarks made by auditor and CS</td>
<td>Particulars of loans, guarantees or investments</td>
</tr>
<tr>
<td>Particulars of contracts or arrangements</td>
<td>State of Company affairs</td>
</tr>
<tr>
<td>Amounts carrying reserves or paid by way of dividend</td>
<td>Material change affecting on financial position</td>
</tr>
<tr>
<td>Conservation of energy, technology absorption, foreign exchange</td>
<td>Development and implementation of Risk management</td>
</tr>
<tr>
<td>CSR policy and initiatives</td>
<td>Other matters as prescribed</td>
</tr>
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</table>

Listed /other public companies (paid up share capital of 25 cr or more) shall contain statement of annual evaluation of performances of Board, committees and individual directors.

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4 In case of specified IFSC public & IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.
(a) The extract of the annual return as provided under sub-section (3) of section 92;
(b) Number of meetings of the Board;
(c) Directors’ Responsibility Statement;
(ca) By the Companies (Amendment) Act, 2015, this is a new clause added under the Section 134(3), whereby details in respect of frauds reported by auditors under section 143(12) other than those which are reportable to the Central Government.
(d) a statement on declaration given by independent directors under sub-section (6) of section 149;
(e) 5 in case of a company covered under sub-section (1) of section 178, company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
   (i) by the auditor in his report; and
   (ii) by the company secretary in practice in his secretarial audit report;
(g) particulars of loans, guarantees or investments under section 186;
(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in Form AOC-2;
(i) the state of the company’s affairs;
(j) the amounts, if any, which it proposes to carry to any reserves;
(k) the amount, if any, which it recommends should be paid by way of dividend;
(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as prescribed under the Rule 8(3) of the Companies (Accounts) Rules, 2014 which provides for:
   (A) Conservation of energy—
      (i) the steps taken or impact on conservation of energy;
      (ii) the steps taken by the company for utilising alternate sources of energy;
      (iii) the capital investment on energy conservation equipments;

5 This clause is not applicable to the Government Company as per the Notification dated 5th of June 2015.
(B) Technology absorption—
(i) the efforts made towards technology absorption;
(ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
(iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)—
(a) the details of technology imported;
(b) the year of import;
(c) whether the technology been fully absorbed;
(d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
(iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo-
The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

By the Companies (Accounts) Second Amendments Rules, 2015, vide Notification dated 4th September 2015, a proviso has been inserted saying that the requirement of furnishing information and details under this sub-rule shall not apply to a Government Company engaged in producing defence equipment.

(n) A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which, in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) Every listed company and every other public company having a paid up share capital of 25 crore rupees or more calculated at the end of the preceding financial year shall include (as prescribed under the Companies (Accounts) Rules, 2014), in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

This clause shall not apply to the Government Company in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology [Inserted vide Notification dated 5th June 2015]

(q) Such other matters as contain as prescribed under the Companies (Accounts) Rules, 2014. According to which the report of the Board shall also contain—
(i) the financial summary or highlights;
(ii) the change in the nature of business, if any;

(iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;

(iv) the names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;

(v) the details relating to deposits like-
   (a) accepted during the year;
   (b) remained unpaid or unclaimed as at the end of the year;
   (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
      (1) at the beginning of the year;
      (2) maximum during the year;
      (3) at the end of the year;

(vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

(vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future;

(viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

(3) **Board’s Report in case of OPC [Section 134(4)]**: In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

(iii) **Directors’ Responsibility Statement [Section 134(5)]**: The Directors’ Responsibility Statement referred to in 134(3) (c) shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(4) the directors had prepared the annual accounts on a going concern basis; and
(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(iv) Signing of Board’s Report [Section 134(6)]:

The Board’s report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(v) Contravention [Section 134(8)]:

<table>
<thead>
<tr>
<th>Persons liable</th>
<th>Punishment for contravention of any provision of this section</th>
</tr>
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<tbody>
<tr>
<td>Company</td>
<td>fine which shall not be less than <code>50,000 but which may extend to </code>25 Lacs</td>
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</table>
| Every officer of the company who is in default | (1) Imprisonment for a term which may extend to 3 years; or  
(2) fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lacs; or  
(3) Both with imprisonment and fine |

Example : XYZ is the company who has not prepared and filed statements for the last 5 years, whether the current directors can sign all the financial statements for the past 5 years?

Answer : As per section 134 (1), the financial statements of the company shall be signed by the chairperson of the company where he is authorised by the Board; or two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer; and the company secretary of the company, wherever they are appointed. Therefore, if the financial statements are being prepared for the last 5 years in the current year, the current directors can sign the financial statements for the last 5 years. However, company can approach the Tribunal for compounding of offences for not holding the AGM’s for the past 5 years and for non-filing of the financial statement for such periods.

Example : ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board’s report?
Answer: In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.

9. Corporate Social Responsibility [Section 135]

The Companies Act, 2013 lays down the provisions requiring corporate to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, CSR implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.

Corporate Social Responsibility: The Companies (CSR Policy) Rules, 2014 provides the exhaustive definition of CSR which provides that the CSR means and includes but is not limited to:

(i) Projects or programs relating to activities specified in Schedule VII to the Act; or
(ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

According to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014:

(i) Which Company is required to constitute CSR committee:

(a) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having
   (1) net worth* of rupees 500 crore or more, or
   (2) turnover of rupees 1000 crore or more or
   (3) a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

(b) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

(c) However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as

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6 In case of specified IFSC public & IFSC private company, section 135 shall not apply for period of 5 years from the commencement of business of a specified IFSC public company
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prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

(iii) Exclusion of Companies

Every company which ceases to be a company covered under sub-sec (1) of section 135 of the Act for three consecutive financial years shall not be required to constitute a CSR Committee, and is not required to comply with the provisions as per section 135

(iii) Composition of CSR Committee:

(a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.

(b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.

(c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.

(e) The Board’s report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee.

(iv) Duties of CSR Committee:

The CSR Committee shall,—

(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the CSR Policy of the company from time to time.
(v) Contents of the CSR Policy:

(a) List of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(b) monitoring process of such projects or programs:

(c) However, the CSR activities do not include the activities undertaken in pursuance of normal course of business of a company.

(d) The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the activities included in Schedule VII of the Act.

(e) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

(vi) Duties of the Board in relation to CSR:

The Board of every company referred to in sub-section (1) shall,—

(1) after taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company’s website, if any, in such manner as may be prescribed; and

(2) ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

(vii) Amount of contribution towards CSR:

(a) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

(b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(c) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.

(d) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years. However, such expenditure including expenditure on administrative overheads, [inserted by the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014] shall not exceed five percent of total CSR expenditure of the company in one financial year.

(viii) CSR Activities:

Rule 4 of the Companies (CSR Policy) Rules, 2014 states the various CSR activities that shall be undertaken by the companies. Following are the CSR activities:

(1) The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities excluding activities undertaken in pursuance of its normal
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course of business.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through
(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or
(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature:

Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism”.

(3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.

(4) Subject to provisions contained in section 135(5), the CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

(5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

(6) Companies may build CSR capacities of their own personnel as well as those of implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed 5% of total CSR expenditure of the company in one financial year.

(7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

(ix) Exceptions to CSR Activities:

The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

(1) The CSR projects or programs or activities undertaken outside India.

(2) The CSR projects or programs or activities that benefit only the employees of the company and their families.

(3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
(x) Calculation of Average Net profit :
(a) Here, “average net profit” shall be calculated in accordance with the provisions of section 198.
(b) “Net profit” shall not include the following:
   (1) Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
   (2) Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.
(c) However, net profits in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act:
(d) It is further provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

(xi) CSR Reporting :
(a) The Board’s Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR.
(b) In case of a foreign company, the balance sheet filed under section 381(1)(b) shall contain an Annexure regarding report on CSR.

(xii) Activities specified under Schedule VII:
Activities which may be included by companies in their CSR Policies Activities as specified under Schedule VII are as follows:
(1) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
(2) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
(3) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
(4) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga
Fund set up by the Central Government for rejuvenation of river Ganga;

(5) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(6) measures for the benefit of armed forces veterans, war widows and their dependents;

(7) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;

(8) contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

(9) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(10) rural development projects;

(11) slum area development. [For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

The MCA vide General Circular No. 21/2014 dated 18th June, 2014 has provided many clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013 which are as under:

(i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.

(ii) It is further clarified that CSR activities should be undertaken by the companies in project/programme mode. One-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

(iii) Expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

(iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company’s time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

(v) “Any financial year” referred under Sub-Section (1) of Section 135 of the Act read with Companies CSR Rule, 2014, implies ‘any of the three preceding financial years’.

(vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed
through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

(vii) ‘Registered Trust’ would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Penal Provisions

The Companies Act requires that—

(i) The Board’s report shall disclose the composition of the Corporate Social Responsibility Committee as per subsection (3) of section 134;

(ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it shall be punishable with fine, which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Example : ABC, a company with a turnover of ` 1000 Crores or more and having incurred a loss in any of the preceding three financial years, will be required to comply with CSR?

Answer : As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover, or net profit) gets satisfied than the company is mandatorily required to comply with the CSR provisions.

Example : XYZ Ltd is a listed company having turnover of ` 1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise.

Answer : In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are ‘at least’. Therefore, any expenditure over 2% would be considered as voluntary higher spending.
10. Right to members to copies of audited financial statement [Section 136]

This section seeks to provide that a copy of financial statements including consolidated financial statement and auditor’s report to be sent to every member, every trustee for the debenture holder and all other persons who are so entitled, twenty one days before the date of general meeting.

(i) Who are entitled for audited financial statement?

(a) A copy of the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following:

(1) every member of the company,
(2) to every trustee for the debenture-holder of any debentures issued by the company, and
(3) to all persons other than such member or trustee, being the person so entitled.

(b) Consolidated financial statements, if any, auditor’s report and every other document required by law to be annexed or attached to the financial statements shall be annexed with financial statements.

(c) These financial statements shall be sent in not less than 21 days before the date of the meeting.

(d) In the case of a listed company:
(1) The above provisions shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting.

(2) Along with it a statement containing the salient features of such documents in the Form AOC-3 or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company.

(3) The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.

(e) A company shall also allow every member or trustee of the debenture holder to inspect the audited Financial Statement at its registered office during business hours.

[Note : Vide Notification dated 5th June 2015 for the companies under section 8 the word “twenty one days”, the words “Fourteen days” shall be substituted]

(ii) Manner of circulation of financial statements in certain cases:

(a) In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

(1) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes;

(2) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and

(3) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

(b) A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

[Rule 11 of the Companies (Accounts) Rules, 2014]
(iii) **Subsidiary Companies**:

Every company having a subsidiary or subsidiaries shall,—

1. place separate audited accounts in respect of each of its subsidiary on its website, if any;

2. provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

This sub-section (1) of the Section 136 shall apply to the Nidhis company in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than 1% of the total paid up share capital whichever is less. It shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the registered office of the Nidhi is situated stating the date, time and venue of the annual general meeting and the Financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy. [As per the notification dated 5th June 2015]

(iv) Every company shall be under an obligation to allow every member or trustee of the holder of any debentures issued by the company to inspect the financial statements and documents to be attached thereto stated under sub-section (1) at its registered office during business hours.

In case of listed companies, copies of documents shall be available for inspection at its registered office during working hours for a period of 21 days before the date of meeting and company may send the salient features of financial statements to members and debenture trustees in prescribed form.

(v) **Contravention**:

(a) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of ₹ 25,000.

(b) Every officer of the company who is in default shall be liable to a penalty of ₹ 5,000.

*Vide General Circular No. 11/2015, dated 21st July 2015*, clarification was issued by Ministry of Corporate Affairs with regards to circulation and filing of financial statement.

It has been clarified that a company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

It has also been clarified that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is
not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

11. Copy of Financial statement to be filed with Registrar [Section 137]

This section provides that copies of financial statement including consolidated financial statement, if any, along with all the documents annexed to financial statement and adopted at AGM shall be filed with Registrar.
(i) **Filing of financial statements [Section 137(1)]:**

A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within 30 days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

As per Rule 3 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015* vide Notification dated 9th September, 2015, following class of companies shall file their financial statement and other documents under this section with the registrar in e-form AOC-4 XBRL given in Annexure I for the financial years commencing on or after 1st April, 2014 using the XBRL taxonomy, namely—

1. All companies listed with any stock exchange(s) in India and their Indian subsidiaries, or
2. All companies having paid up capital of rupees five crore or above, or
3. All companies having turnover of rupees hundred crore or above, or
4. All companies which were hitherto covered under the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011*:

Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.

(ii) **If Financial Statements are not adopted [Section 137(1)]:**

(a) Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting.

(b) The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

(c) If the financial statements are adopted in the adjourned annual general meeting, then they shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

(iii) **Filing by One Person Company [Section 137(1)]:**

A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

(iv) **Company having subsidiaries [Section 137(1)]:**

A company shall, along with its financial statements to be filed with the Registrar, attach
the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

It has also been clarified vide General Circular no. 11/2015 dated 21st July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

(v) Annual General meeting not held [Section 137(2)] :

Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

(vi) Penalty [Section 137(3)] : If any of the provisions of this section are contravened,

(a) The company shall be punishable with fine of `1,000 for every day during which the failure continues but which shall not be more than `10 Lacs, and

(b) The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with:

(1) Imprisonment for a term which may extend to 6 months or

(2) Fine which shall not be less than `1 lac but which may extend to `5 Lacs, or

(3) Both with imprisonment and fine.

<table>
<thead>
<tr>
<th>Person Liable</th>
<th>Punishment for contravention of section 137</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>with fine of <code>1,000 for every day during which the failure continues but which shall not be more than </code>10 Lacs,</td>
</tr>
</tbody>
</table>
| Officers— managing director and the Chief Financial Officer of the company, if any | (1) Imprisonment for a term which may extend to 6 months or  
(2) Fine which shall not be less than `1 lac but which may extend to `5 Lacs, or  
(3) Both with imprisonment and fine. |
2.35 Corporate and Allied Laws

In their absence, any other director who is charged by the Board with the responsibility
In its absence, all the directors of the company.

Example : The Annual General Meeting of R Ltd., for laying the Annual Accounts thereat for
the year ended 31st March, 2016 was not held. What remedies is available with the company
regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of
copies of financial statements with the Registrar of Companies?

Answer : In the present case though Annual General Meeting was not held, it ought to be held
by 30th September, 2016 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2) the financial statements along with the
documents required to be attached under this Act, duly signed along with the statement of facts
and reasons for not holding the annual general meeting shall be filed with the Registrar within
thirty days of the last date before which the annual general meeting should have been held i.e.
by 30th October 2016 along with such fees or additional fees as may be prescribed.

Example : Will it make any difference in case the Annual Accounts were duly laid before the
Annual General Meeting held on 27th September, 2016 but the same were not adopted by the
shareholders?

Answer : Since the Annual General Meeting has been held in time on 27th September 2016, the
unadopted financial statements along with the required documents under sub-section (1) of
section 137 shall be filed with the Registrar within thirty days of the date of annual general
meeting and the Registrar shall take them in his records as provisional till the financial
statements are filed with him after its adoption in the adjourned annual general meeting for that
purpose.

Example :

ABC Ltd is an unlisted public company engaged in pharma sector and has paid up capital of
rupees 10 crores and achieved turnover of rupees 200 crores during financial year 2015-16. Is
it necessary for ABC Ltd to file its financial statement in XBRL mode?

Answer : The following class of companies shall file their financial statement in XBRL
(extensible Business Reporting Language) mode and by using the XBRL taxonomy:
(i) all companies listed with any stock exchange(s) in India and their Indian subsidiaries; or
(ii) all companies having paid up capital of rupees 5 crores or above;
(iii) all companies having turnover of rupees 100 crores or above; or
(iv) all companies which were covered under the Companies (Filing of Documents and Forms

However, Banking Companies, Insurance Companies, Power Companies and Non-Banking
Financial Companies (NBFCs) and housing finance companies need not file financial
statements under this rule. ABC Ltd is required to file its financial statement in XBRL mode.
12. Internal Audit [Section 138]

Section 138 is to read with Rule 13 of the Companies (Accounts) Rules, 2014 for the law related to internal audit in a company.

(i) Companies required to appoint Internal Auditor:

(a) The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

1. every listed company;

2. every unlisted public company having-
   (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
   (B) turnover of 200 crore rupees or more during the preceding financial year; or
   (C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
   (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

3. every private company having—
   (A) turnover of 200 crore rupees or more during the preceding financial year; or
   (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

(b) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

7 In case of a specified IFSC public company & IFSC private company, section 138 shall apply if the articles of the company provides for the same.
(ii) **Transitional period:**

An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within 6 months of commencement of such section.

(iii) **Who is Internal Auditor**

(a) Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

<table>
<thead>
<tr>
<th>Internal auditor</th>
<th>Chartered Accountants</th>
<th>Cost accountants</th>
<th>Other professional</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>May/ may not be an employee</td>
<td>Give consultation</td>
<td>To formulate scope, functioning etc.</td>
</tr>
<tr>
<td></td>
<td>Audit committee and Board</td>
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</tbody>
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UNIT 2: AUDIT AND AUDITORS

13. Introduction

Large business corporations are managed by the directors who represent the members who are the real owners of the company. In the absence of any check the directors may mismanage the finances of the organisation. Thus, members appoint auditor to look into the true and fair view of the financial affairs of the company. These auditors are independent from the management of the company and hence can express an un-biased opinion.

14. Appointment of Auditors [Section 139]

Section 139 of the Companies Act, 2013 provides for appointment of auditors. According to this section :

(i) Appointment of auditor [Section 139(1)] :

(a) Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor of the company.

(b) The auditor shall hold office from the conclusion of 1st annual general meeting (AGM) till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at AGM has been prescribed under the Companies (Audit and Auditors) Rules, 2014. According to the Rules:

(c) Manner and procedure of selection and appointment of auditors :

(1) | Categories of Companies | Competent authority | Responsibility of the competent authority |
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<tr>
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<tbody>
<tr>
<td>A company which is required to constitute an Audit Committee under section 177(^8)</td>
<td>Audit Committee</td>
<td>(i) The competent authority shall take into consideration the qualifications and</td>
</tr>
</tbody>
</table>

\(^8\) Companies that require to constitute an audit committee

For the purpose of constitution of Audit Committee section 177 of the Act read with Companies (Meetings of Board and its Powers) Rules, 2014 provides that:

The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee of the Board:

(i) all public companies with a paid up capital of ten crore rupees or more;
2.39 Corporate and Allied Laws

| A Company which is not required to constitute an Audit Committee under section 177 | Board | experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company. |
| categories of companies | competent authority | responsibility of the competent authority |
| A company which is required to constitute an Audit Committee under section 177 | Audit Committee | the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration |
| A Company which is not required to constitute an Audit Committee | Board | the Board shall consider and recommend an |

(ii) all public companies having turnover of one hundred crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explaination: The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purposes of this rule.
<table>
<thead>
<tr>
<th>Audit Committee under section 177</th>
<th>individual or a firm as auditor to the members in the annual general meeting for appointment</th>
</tr>
</thead>
</table>

(3) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the AGM.

(4) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(5) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the AGM.

(d) The company shall place the matter relating to such appointment for ratification by members at every AGM. According to the Companies (Audit and Auditors) Rules, 2014, the appointment shall be subject to ratification in every annual general meeting till the 6th meeting by way of passing of an ordinary resolution.

If the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

(e) Before the appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

**Certificate by Auditor:** The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that--

(A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(B) the proposed appointment is as per the term provided under the Act;

(C) the proposed appointment is within the limits laid down by or under the authority of the Act;

(D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
(f) The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 [Section 141 provides provisions on eligibility, qualification and disqualification of Auditor which will be discussed later]

(g) **Communication to Auditor**: Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice (in the Form ADT-1) of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed

Here, “appointment” includes reappointment.

(ii) **Term of Auditor [Section 139(2)]**:

(a) Section 139(2) provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint—

   (1) an individual as auditor for more than one term of five consecutive years; and

   (2) an audit firm as auditor for more than two terms of five consecutive years.

(b) Rule 5 of the Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of section 139(2):

   (1) all unlisted public companies having paid up share capital of rupees 10 crore or more;

   (2) all private limited companies having paid up share capital of rupees 20 crore or more;

   (3) all companies having paid up share capital of below threshold limit mentioned in (2) and (3) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

(c) **Cooling off Period**:

   (1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

   (2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

**Example**: XYZ Ltd. which is a listed company appoints Mr. Raghav as an auditor in its AGM dated 29th September, 2016. Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2021. Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor upto year 2026.

**Example**: XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016. M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021. Now as per sub-section (2), M/s Raghav & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year
2026. It shall not be re-appointed as Audit firm in XYZ Ltd. for further term of five years i.e. upto year 2031.

(d) Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Example: M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it can not do so because Mr. Shyam was the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After 5 years Golden Smith Ltd. may appoint M/s Kukreja & Associates as its auditors.

(e) Transitional period: Every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act.

(f) It is also provided that nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(iii) Rotation of auditor [section 139(3) and (4)]:

(a) Members of a company may resolve to provide that—

(1) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

(2) the audit shall be conducted by more than one auditor.

(b) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors.

(c) Manner of rotation of auditors by the companies on expiry of their term as provided under the Companies (Audit and Auditors) Rules, 2014:

(1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.

(2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.
(3) For the purpose of the rotation of auditors—

(i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;

(ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

The term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

(iii) For the purpose of rotation of auditors,

(A) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;

(B) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Illustration explaining rotation in case of individual auditor:

<table>
<thead>
<tr>
<th>Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]</th>
<th>Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)</th>
<th>Aggregate period which the auditor would complete in the same company in view of column I and II</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>II</td>
<td>III</td>
</tr>
<tr>
<td>5 years (or more than 5 years)</td>
<td>3 years</td>
<td>8 years or more</td>
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<tr>
<td>4 years</td>
<td>3 years</td>
<td>7 years</td>
</tr>
<tr>
<td>3 years</td>
<td>3 years</td>
<td>6 years</td>
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<tr>
<td>2 years</td>
<td>3 years</td>
<td>5 years</td>
</tr>
<tr>
<td>1 year</td>
<td>4 years</td>
<td>5 years</td>
</tr>
</tbody>
</table>

Here,

(a) Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
Illustration explaining rotation in case of audit firm

<table>
<thead>
<tr>
<th>Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]</th>
<th>Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)</th>
<th>Aggregate period which the firm would complete in the same company in view of column I and II</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 years (or more than 10 years)</td>
<td>3 years</td>
<td>13 years or more</td>
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<tr>
<td>9 years</td>
<td>3 years</td>
<td>12 years</td>
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<td>8 years</td>
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<td>10 years</td>
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<tr>
<td>1 year</td>
<td>9 years</td>
<td>10 years</td>
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</tbody>
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Here,

(a) Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.

(b) Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.

(4) Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

(d) Here, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.
(iv) First auditors [Section 139(6)] :

(a) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government Company, shall be appointed by the Board of directors within 30 days of the date of registration of the company; and the auditor so appointed shall hold office until the conclusion of the first annual general meeting.

(b) If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extra ordinary general meeting and such auditor shall hold office till the conclusion of the first annual general meeting.

Example : Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

Answer : Provisions and Explanation : Section 139(6) of the Companies Act, 2013 lays down that “the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company”. In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company.

Conclusion : In view of the above, the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company.

(v) Filling up casual vacancy [Section 139(8)] :

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.
Example: Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2016. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2016 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor.

In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

(vi) Appointment of auditors in case of Government Company or any other company having controlled by State Government or Central Government [Section 139(5), 139(7) and 139(8)]

(a) As per section 139(5), the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act in the case of:

(1) a Government company; or

(2) any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments,

(b) The auditor shall be appointed within a period of 180 days from the commencement of the financial year. The auditor appointed shall hold office till the conclusion of the annual general meeting.
(c) **First auditor [section 139(7)]:**

1. In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company.

2. In case the Comptroller and Auditor-General of India does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

3. Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(d) **Casual vacancy [section 139(8)]:**

1. In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, casual vacancy of an auditor be filled by the Comptroller and Auditor-General of India within 30 days.

2. In case the Comptroller and Auditor-General of India do not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.
(vii) Re-appointment of retiring auditor [section 139(9), (10) and (11)] :

(a) At any annual general meeting, a retiring auditor may be re-appointed at an AGM, if—
   (1) he is not disqualified for re-appointment;
   (2) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
   (3) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(b) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(viii) Audit committee’s recommendation [Section 139(11)] :

Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

15. Removal, resignation of auditor and giving of special notice [Section 140]

Section 140 of the Companies Act, 2013 provides for removal, resignation of auditor and giving of special notice. According to this section:

(i) Removal of auditor before the expiry of his term [Section 140(1)] :

(a) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company and after obtaining the previous approval of the Central Government by making an application in Form ADT-2 and shall be accompanied with the prescribed fees.

(b) The application shall be made to the Central Government within 30 days of the resolution passed by the Board.

(c) The Company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

(d) Giving opportunity of being heard (Audi Alteram Partem) : Before taking any action for removal of auditor before the expiry of his term, the auditor concerned shall be given a reasonable opportunity of being heard.

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9 Powers are delegated to Regional Director
Example: Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place. In this case, the first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

(ii) Resignation by Auditor [Section 140(2) & (3)]

(a) If the Auditor has resigned from the company, he shall file within a period of 30 days from the date of resignation, a statement in the form ADT-3 with the company and the Registrar.

(b) The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.

(c) In case of government companies or company controlled by Central Government or State Government, the auditor shall also file such statement with the Comptroller and Auditor-General of India also along with company and the Registrar.

(d) If the auditor does not comply with aforesaid provision, he or it shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lacs.
(iii) **Appointing Auditor other than the Retiring Auditor [Section 140(4)]**

(a) If the retiring auditor has not completed a consecutive tenure of 5 years or, as the case may be, 10 years, as provided under sub-section (2) of section 139, special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(b) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(c) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

   (1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

   (2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

(d) If a copy of the representation is not sent as aforesaid because it was received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.
(e) However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.

(f) If the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

(iv) Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5)]

(a) On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.: Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either—

| suo motu; or | on an application made to it by the Central Government; or by any person concerned, |

if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

(b) Requirement for change of auditor: If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

(c) Ineligibility of auditor to be appointed: An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

(d) Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

(e) Explanation II.—For the purposes of this Chapter the word “auditor” includes a firm of auditors.
16. Eligibility, qualifications and disqualifications of auditors [Section 141]

Section 141 of the Companies Act, 2013 provides for eligibility, qualifications and disqualifications of auditors. This section deals with:

(i) Qualifications of an auditor [Section 141(1) & (2)]:
   (a) A person shall be eligible to be appointed as auditor of a company only if he is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.
   (b) A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.
   (c) Where a firm including a Limited Liability Partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(ii) Disqualifications of auditors [Section 141(3)]:
   (a) The following persons shall not be qualified for appointment as auditor of a company—
(1) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(2) an officer or employee of the company;

(3) a person who is a partner, or who is in the employment, of an officer or employee of the company;

Example: Mr. A, a Chartered accountant has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September, 2016, in which he accepted the assignment. Subsequently, in January, 2017 he joined B, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., as partner.

Answer: Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, A, an auditor of M/s Laxman Ltd., joined as partner with B, who is Manager Finance of M/s Laxman Limited, has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

(4) a person who, or his relative or partner—

(A) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding `1,00,000 as prescribed under the Company (Audit and Auditors) Rules, 2014.

The Company (Audit and Auditors) Rules, 2014 provides that a relative of an auditor may hold securities in the company of face value not exceeding `1 Lac. Further, the above condition shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities. If the relative acquires any security or interest above the prescribed threshold i.e. `1 Lac, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest.

Example 1: “Mr. A”, a practicing Chartered Accountant, is holding securities of “XYZ Ltd.” having face value of `900/-. Whether Mr. A is qualified for appointment as an Auditor of “XYZ Ltd.”?

Answer: As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security
of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. A is holding security of ₹ 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of “XYZ Ltd”.

Example 2 : “Mr. P” is a practicing Chartered Accountant and “Mr. Q”, the relative of “Mr. P”, is holding securities of “ABC Ltd.” having face value of ₹ 90,000/-. Whether “Mr. P” is Qualified from being appointed as an Auditor of “ABC Ltd.”?

Answer : As per section 141 (3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face Value in the ABC Pvt. Ltd., which is as per requirement of proviso to section 141 (3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABCLtd.

Example 3 : “BC & Co.” is an Audit Firm having partners “Mr. B” and “Mr. C”, and “Mr. A” the relative of “Mr. C”, is holding securities of “MWF Ltd.” having face value of ₹ 1,01,000/-. Whether “BC & Co.” is qualified from being appointed as an Auditor of “MWF Ltd.”?

Answer : As per section 141 (3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

(B) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs; or

(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lac.
(5) A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. According to the Companies (Audit and Auditors) Rules, 2014, the term “business relationship” shall be construed as any transaction entered into for a commercial purpose, except—

(A) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(B) commercial transactions which are in the ordinary course of business of the company at arm's length price-like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

(6) A person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(7) A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, small companies and private companies having paid-up share capital less than one hundred crore rupees.

**Ceiling numbers of audits:** Before appointment is given to any auditor, the company must obtain a certificate from him to the effect that the appointment, if made, will not result in an excess holding of company audit by the auditor concerned over the limit laid down in section 141 (3)(g) of the Companies Act, 2013 which prescribes that a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

**Example:** “ABC & Co.” is an Audit Firm having partners “Mr. A”, “Mr. B” and “Mr. C”, Chartered Accountants. “Mr. A”, “Mr. B” and “Mr. C” are holding appointment as an Auditor in 4, 6 and 10 Companies respectively.

(i) Provide the maximum number of Audits remaining in the name of “ABC & Co.”

(ii) Provide the maximum number of Audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

**Fact of the Case:** In the instant case, Mr. A is holding appointment in 4 companies, whereas Mr. B is having appointment in 6 Companies and Mr. C is
having appointment in 10 Companies. In aggregate all three partners are having
20 audits.

Provisions and Explanations: As per section 141(3)(g) of the Companies Act,
2013, a person shall not be eligible for appointment as an auditor if he is in full
time employment elsewhere or a person or a partner of a firm holding
appointment as its auditor, if such person or partner is at the date of such
appointment or reappointment holding appointment as auditor of more than
twenty companies;

As per section 141 (3)(g), this limit of 20 company audits is per person. In the
case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60
company audits. Some-times, a chartered accountant is a partner in a number
of auditing firms. In such a case, all the firms in which he is partner or proprietor
will be together entitled to 20 company audits on his account.

Conclusion:

(i) Therefore, ABC & Co. can hold appointment as an auditor of 40 more
companies:

Total Number of Audits available to the Firm = 20*3 = 60

Number of Audits already taken by all the partners
In their individual capacity = 4+6+10 = 20

Remaining number of Audits available to the Firm = 40

(ii) With reference to above provisions an auditor can hold more appointment
as auditor = ceiling limit as per section 141(3)(g)- already holding
appointments as an auditor. Hence

(1) Mr. A can hold: 20 – 4 = 16 more audits.

(2) Mr. B can hold 20 - 6 = 14 more audits and

(3) Mr. C can hold 20-10 = 10 more audits.

(8) a person who has been convicted by a court of an offence involving fraud and a
period of 10 years has not elapsed from the date of such conviction;

(9) any person whose subsidiary or associate company or any other form of entity,
is engaged as on the date of appointment in consulting and specialised services
as provided in section 144 (section 144 deals with certain services not to be
tendered by auditor).

(iii) Vacation of office by an auditor [Section 141(4)]:

If a person appointed as an auditor of a company incurs any of the disqualifications
specified in Section 141(3), he shall be deemed to have vacated his office. Such vacation
shall be deemed to be a casual vacancy in the office of the auditor.
17. Remuneration of auditors [Section 142]

Section 142 of the Companies Act, 2013 provides for remuneration of auditors. According to this section:

(i) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(ii) In the case of first auditor, remuneration may be fixed by the Board.

(iii) The remuneration mentioned aforesaid shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him. But the remuneration does not include any remuneration paid to him for any other service rendered by him at the request of the company.

18. Powers and duties of auditors and auditing standards [Section 143]

(i) Powers of Auditors [Section 143(1)]:

(a) Access to books of accounts and vouchers: Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

(b) Entitled to have necessary information and explanation: He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

(c) Access to record of all its subsidiaries: The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

(ii) Duties of Auditors

(a) Matters of inquiry: The auditor shall inquire into the following matters, namely—

(1) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(2) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(3) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(4) Whether loans and advances made by the company have been shown as deposits;

(5) Whether personal expenses have been charged to revenue account;
(6) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

The Statement on reporting under section 227(1)(A)
- These are specific enquiries to be made during course of Audit
- It is not required to report unless has any special comments to make on any of the items if satisfied, no further duty to report.
- Only enquiries and not investigations

(b) The auditor shall make a report to the members of the company on the following:

(1) On the accounts examined by him; and

(2) On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

(c) The auditor while making the report shall take into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act any rules made thereunder or under any order made under section 143(11).

(d) The auditor shall express his opinion of the accounts and financial statements examined by him. He shall express the opinion which according to him and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company’s affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(e) The auditors’ report shall also state—

(1) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(2) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(3) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company’s auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(4) whether the company’s balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
(5) whether, in his opinion, the financial statements comply with the accounting standards;

(6) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(7) whether any director is disqualified from being appointed as a director under subsection (2) of section 164;

(8) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(9) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

As per the rule 10A inserted by the Companies (Audit and Auditors) Amendments Rules, 2014 vide Notification dated 14th October, 2014 that for purposes of this clause under section 143(3), for the financial years commencing on or after 1st April, 2015, the report of the Auditor shall state about existence of adequate internal financial controls system and its operating effectiveness.

(10) such other matters as may be prescribed.

(f) Rule 11 of the Companies (Audit and Auditors) Rules, 2014 provides that the auditor’s report shall also include their views and comments on the following matters, namely:

(1) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(2) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(3) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

(4) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

(g) Where any of the matters is answered in the negative or with a qualification, the auditor’s report shall state the reason for the answer.

(h) Compliance with auditing standards [Section 143(9) and 143(10)] :

(1) Every auditor shall comply with the auditing standards.

(2) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in
consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

(3) It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(i) **Additional matters to be reported in case of specified companies [Section 143(11)]**: In respect of such class or description of companies, as may be specified in the general or special order by the Central Government may, in consultation with the National Financial Reporting direct, the auditor’s report shall also include a statement on such matters as may be specified therein.

Accordingly, CARO, 2016 [Companies Auditor Report Order] is issued in pursuance of Section 143 (11) of Companies Act 2013 for inclusion of the matters specified therein in auditors’ report. CARO 2016 issued by MCA should be complied by the statutory auditor of every company on which it applies.

CARO 2016 applicable to every company including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013.

Until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub-section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of corporate Affairs and the committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor-General.

(iii) **Reporting of frauds by auditors [Section 143(12)]**: 

(1) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving amount of Rs. One crore or above (as prescribed under the Rule 13) is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner prescribed in Rule 13 of the Companies (Audit and Auditors) Rules, 2014 which is as under:

The auditor shall report the matter to the Central Government as under:

(a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;

(b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days from the date of receipt of such reply or observations;
(c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

(d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

(e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and

(f) The report shall be in the form of a statement as specified in Form ADT-4

(2) In case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner prescribed in Rule 13 of the Companies (Audit and Auditors) Rules, 2014.

(a) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:

(i) Nature of Fraud with description;

(ii) Approximate amount involved; and

(iii) Parties involved.

(b) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board’s Report:

(i) Nature of Fraud with description;

(ii) Approximate Amount involved;

(iii) Parties involved, if remedial action not taken; and

(iv) Remedial actions taken.

(3) The companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner prescribed in Rule 13 of the Companies (Audit and Auditors) Rules, 2014.

(4) The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.
(5) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred above if it is done in good faith.

(6) **Penalty for non compliance of section 143(12):** If any auditor, the cost accountant in practice conducting cost audit under section 148 or the company secretary in practice conducting secretarial audit under section 204 do not comply with the provisions of section 143(12) (reporting about the offence to the Central Government), he shall be punishable with fine which shall not be less than ₹ 1 Lacs but which may extend to ₹ 25 Lacs.

(iv) **Audit of Government Companies [Section 143(5), (6) & (7)]**:

(a) The auditor of a Government company is appointed by the Comptroller and Auditor-General of India under section 139(5) or section 139(7).

(b) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under section 139(5) or 139(7) and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India.

(c) The audit report among other things, include the following:

1. the directions, if any, issued by the Comptroller and Auditor-General of India,
2. the action taken thereon and
3. its impact on the accounts and financial statement of the company.

(d) The Comptroller and Auditor-General of India shall within 60 days from the date of receipt of the audit report have a right to,—

1. conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct;
2. comment upon or supplement such audit report.

(e) Any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under section 136(1) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
(f) **Test Audit**: For Government Company or Company controlled by State Government or Central Government, the Comptroller and Auditor-General of India may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors. The provisions of section 19A of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

(v) **Audit of accounts of branch office of company [Section 143(8)]**:

(a) **Branch office in India**:
Where a company has a branch office, the accounts of that office shall be audited either by:

(A) the company’s auditor appointed under section 139, or

(B) by any other person qualified for appointment as an auditor of the company under section 139.

(b) **Branch office outside India**:
If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:

(A) the company’s auditor or

(B) by an accountant or

(C) by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

(c) 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.

(d) The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(e) The provisions of regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

19. **Auditor not to render certain services [Section 144]**

Section 144 of the Companies Act, 2013 provides for Auditor not to render certain services. According to this section:

(i) An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely—

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed. [However no other kind of services
has been prescribed till date]

(ii) **Explanation**: The term “directly or indirectly” shall include rendering of services by the
auditor,—

(1) in case of auditor being an individual, either himself or through his relative or any
other person connected or associated with such individual or through any other entity,
whenever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(2) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

**RENDERING OF SERVICES ‘DIRECTLY OR INDIRECTLY’**

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<td>Self</td>
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<td>Relatives</td>
<td>Partners of firm</td>
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<td>Other person connected or associated with such individual</td>
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<td>Entity in which such individual has significant influence or control</td>
<td>Subsidiary of firm</td>
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**20. Auditors to sign audit reports, etc.[Section 145]**

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:
(i) The person appointed as an auditor of the company shall sign the auditor’s report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).

(ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

21. Auditors to attend general meeting [Section 146]

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section :

(i) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.

(ii) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting.

(iii) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

22. Punishment for contravention [Section 147]

Section 147 of the Companies Act, 2013 provides for punishment for contravention. According to this section :

(i) **Penalty on company [Section 147(1)]**: If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than ` 25,000 but which may extend to ` 5 Lacs.

(ii) **Penalty on officers [Section 147(1)]**: If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with
   
   (1) imprisonment for a term which may extend to 1 year or
   
   (2) With fine which shall not be less than ` 10,000 but which may extend to ` 1 Lac; or
   
   (3) Both with imprisonment and fine.

(iii) **Penalty on auditor [Section 147(2) & (3)]**: If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than ` 25,000 but which may extend to ` 5 Lacs.
(b) If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with

1. imprisonment for a term which may extend to 1 year and
2. fine which shall not be less than ₹ 1 Lac but which may extend to ₹ 25 Lacs.

(c) Further, where an auditor has been convicted as above, he shall be liable to—

1. refund the remuneration received by him to the company; and
2. pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(iv) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons. Such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification. [Section 147(4)]

(v) Liability of Audit firm [Section 147(5)]:

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

23. Central Government to specify audit of items of cost in respect of certain companies [Section 148]

Section 148 of the Companies Act, 2013 provides the provisions for Central Government to specify audit of items of cost in respect of certain companies. According to this section:

(i) Notwithstanding anything contained in the provisions related to audit and auditor (Chapter X), the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept under section 128 by that class of companies.

(ii) The Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(iii) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered aforesaid
and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(iv) The cost audit shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

(v) Rule 14 of the Companies (Audit and Auditors) Rules, 2014 provides that—

1. in the case of companies which are required to constitute an audit committee—
   
   A) the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
   
   B) the remuneration recommended by the Audit Committee under (A) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;

2. in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

<table>
<thead>
<tr>
<th>Companies required to constitute Audit Committee</th>
<th>Companies not required to constitute Audit Committee</th>
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<tbody>
<tr>
<td>(a) The Board shall appoint the cost auditor on the recommendation of the Audit Committee.</td>
<td>(a) The Board shall appoint the cost auditor.</td>
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<tr>
<td>(b) The Audit Committee shall recommend the remuneration for cost auditor.</td>
<td>(b) The remuneration of such cost auditor shall be ratified by shareholders subsequently.</td>
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<tr>
<td>(c) Such remuneration as recommended by the Audit Committee shall be considered and approved by the Board of Directors.</td>
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<tr>
<td>(d) Then this remuneration subsequently to be ratified by the shareholders.</td>
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</table>

(vi) No person appointed under section 139 as an auditor of the company (i.e. company auditor) shall be appointed for conducting the audit of cost records.

(vii) Cost auditor to comply with cost auditing standards: The auditor conducting the cost audit shall comply with the cost auditing standards.

Here, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.
(viii) An audit conducted under section 148 shall be in addition to the audit conducted under section 143.

(ix) The qualifications, disqualifications, rights, duties and obligations applicable to auditors (i.e. applicable to company auditor) shall, so far as may be applicable, apply to a cost auditor appointed under section 148 and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

(x) The report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors (BoD) of the company.

(xi) A company shall within 30 days from the date of receipt of a copy of the cost audit report furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

Vide Notification dated 9th September, 2015 under the rule 4 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, a company is required to furnish cost audit report and other documents to the Central Government under this above sub- section 6 of the section 148 of the Act and rules made thereunder, shall file such report and other documents using the XBRL taxonomy given in Annexure III for the financial year commencing on or after 1st April, 2014 in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

(xii) If, after considering the cost audit report and the information and explanation furnished by the company, the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(xiii) **Contravention** : If any default is made in complying with the provisions of section 148,—

(a) The company and every officer of the company who is in default shall be punishable in the manner as provided in section 147(1);

(b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

(xiv) The provisions of section 143 shall mutatis mutandis apply to the cost accountant in practice conducting cost audit under section 148.

**RELEVANT AMENDMENTS**

1. **Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017**

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

(1) Section 143(3)(i) , shall not apply to a private company: -

(i) which is a one person company or a small company; or
(ii) which has turnover less than rupees fifty crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore.”

   
   In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

   “2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”.

3. **Corrigendum vide Notification S.O. 2218(E) dated 13th July 2017 with respect to the Notification G.S.R. 583(E) Dated 13th June, 2017**
   
   Ministry of Corporate Affairs vide corrigendum stated that for the words “statement or” to read as “statement and” under section 143(3)(i).

4. **Enforcement of the Companies (Audit and Auditors) Second Amendment Rules, 2017 vide Notification G.S.R. 621(E) dated 22nd June 2017 in exercise of powers conferred by section 139.**
   
   The Central Government hereby amends the Companies (Audit and Auditors) Rules, 2014. Through this amendment rule, in Rule 5(b), for the word “twenty”, the word “fifty” shall be substituted.

5. **Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25th July 2017**
   
   Notification No. G.S.R. 583(E) dated 13th June, 2017 stated that requirements of reporting under section 143(3)(i) read Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Through issue of this circular, it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.

6. **Enforcement of sub-section (3) and (11) of Section 132 of the Companies Act, 2013 vide Notification No. S.O. 1316(E) dated 21st March, 2018**
   
   The Central Government appoints the 21st March, 2018 as the date on which the provisions of subsections (3) and (11) of section 132 of the said Act shall come into force.

7. **Amendment in the notification number G.S.R. 463(E) dated the 5th June, 2015 vide Notification no. S.O. 802(E) dated 23rd February, 2018**
   
   In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) and subsection (2) of section 462 of the Companies Act, 2013, the Central Government, in the
interest of public amends the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 463(E) dated the 5th June, 2015 namely:—

In the said notification, in the Table, for serial number 8 and entries relating thereto, the following serial number and entries shall be respectively substituted, namely:—

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<tr>
<th>(1)</th>
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<td>8.</td>
<td>Chapter IX, Section 129</td>
<td>Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting.</td>
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8. Amendments through the Companies (Amendment) Act, 2017

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<tr>
<th>Relevant sections</th>
<th>Amendment</th>
<th>Status</th>
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</table>
| Amendment of section 129 | In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.” | Not notified till 30th April, 2018 |
| Amendment of section 130 | In section 130 of the principal Act,—

(i) in sub-section (1), in the proviso,—

(a) after the words "regulatory body or authorities concerned", the words "or | Notified till 30th April, 2018 |
Amendment of section 132.

In section 132 of the principal Act,—

(i) in section 132, the following sub-section shall be inserted, namely: —

"(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such period."
Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

(b) in sub-section (3),—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"

(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;

(iii) after clause (q), the following provisos shall be inserted, namely:—

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board’s report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company’s website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any
change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available."

(c) after sub-section (3), the following sub-section shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".

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<tr>
<th>Amendment of section 135</th>
<th>In section 135 of the principal Act,—</th>
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<tr>
<td>(i) in sub-section (1),—</td>
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<tr>
<td>(a) for the words &quot;any financial year&quot;, the words &quot;the immediately preceding financial year&quot; shall be substituted;</td>
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<tr>
<td>(b) the following proviso shall be inserted, namely:—</td>
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<td>&quot;Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.&quot;;</td>
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<td>(ii) in sub-section (3), in clause (a), for the words and figures &quot;as specified in Schedule VII&quot;, the words and figures &quot;in areas or subject, specified in Schedule VII&quot; shall be substituted;</td>
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<td>(iii) in sub-section (5), for the Explanation, the following Explanation shall be substituted, namely:—</td>
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<td>'Explanation.—For the purposes of this section &quot;net profit&quot; shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'</td>
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<th>Amendment of section 136</th>
<th>In section 136 of the principal Act,—</th>
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<td>(i) in sub-section (1),—</td>
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(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;

(b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—

(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting:

Provided further that";

(c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted;

(d) for the fourth proviso, the following provisos shall be substituted, namely:—

Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any:

Provided also that a listed company which has a subsidiary
incorporated outside India (herein referred to as "foreign subsidiary")—

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

(ii) in sub-section (2), the following proviso shall be inserted, namely:

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."
| Amendment of section 137. | In section 137 of the principal Act,—
(i) in sub-section (1),—
   (a) the words and figures "within the time specified under section 403" shall be omitted;
   (b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted;
   (c) after the fourth proviso, the following proviso shall be inserted, namely:—
      'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'.
   (ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted;
   (iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted. | Not notified till 30th April, 2018 |
| Amendment of section 139. | In section 139 of the principal Act, in sub-section (1), the first proviso shall be omitted. | Not notified till 30th April, 2018 |
| Amendment of section 140. | In section 140 of the principal Act, in sub-section (3), for the words “fifty thousand rupees”, the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted. | Notified till 30th April, 2018 |
### Amendment of section 141.

In section 141 of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:

‘(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144.’.

Notified till 30th April, 2018

### Amendment of section 143.

In section 143 of the principal Act,—

(i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;

(ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;

(iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Notified till 30th April, 2018

### Amendment of section 147.

In section 147 of the principal Act,—

(i) in sub-section (2),—

(a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;

(b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;

Notified till 30th April, 2018
(ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;

(iii) in sub-section (5), the following proviso shall be inserted, namely:—

"Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.".

Amendment of section 148 of section 148 of the principal Act,—

(i) in sub-section (3),—

(a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;

(b) in the Explanation, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;

(ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Notified till 30th April, 2018