

The Companies Act, 2013

Important Provisions - Accounts, Audit & Auditors

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Definitions

“**Book and paper**” and “**Book or paper**” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in **electronic form**;

“**Books of account**” includes records maintained in respect of:

- (i) all sums of money received and expended and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services;
- (iii) the assets and liabilities; and
- (iv) the items of cost as may be prescribed under section 148.

“**Financial statement**” includes:

- (i) a balance sheet;
- (ii) a profit and loss account / income and expenditure account;
- (iii) **cash flow statement**;
- (iv) **a statement of changes in equity**, if applicable; and
- (v) any explanatory note annexed to any of the above.

“**Financial year**”, means the period ending on the **31st day of March** every year, and where date of incorporation is on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year.

“subsidiary company” means a company in which the holding company:

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either

◦ at its own or together with one or more of its subsidiary companies:

“Associate company”, means a company in which other company has a significant influence, but which is not a subsidiary company and **includes a joint venture company**.

“significant influence” means control of at least 20% of total share capital or of business decisions under an agreement;

“One Person Company” means a company which has only one person as a member.

“small company” means a company, other than a public company,:

(i) paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

Accounts of Companies

Chapter IX - Section 128 to 138



Section 128 - Books of Accounts etc. to be kept by company

- The Act recognizes the fact that books of accounts and other records may be kept in **electronic form** also in such manner as may be prescribed.
- To keep books of accounts and other relevant documents for every financial year at the **registered office**. May be kept at such other place in India as the Board may decide.
- Open for inspection **by any Director** at registered office or such other place during business hours.
- **A director can inspect the book of accounts of the subsidiary, only with the authority of the Board of Directors.**
- Preservation of books of accounts for at least **8 years** except in case of Investigation through Court Order.
- In case of non compliance of this section MD / WTD in charge of finance / CFO / Any other Person in charge is punishable with imprisonment up to 1 year or with fine of min 50,000/- and max 5,00,000/- or with both.

Section 129 - Financial Statements

- The term Balance sheet & Profit and Loss Account, has been defined collectively as “financial statement” under the Act. **Cash flow statement** and **Statement showing changes in equity**, if any, of the Company also included.
- Financial statement, with respect to **One Person Company, small company and dormant company**, may not include the cash flow statement.
- The financial statement shall be in the form or forms as may be provided for different class or classes of Companies in **Schedule III**.
- If one or more subsidiaries / associates / JVs than Consolidated Financial Statements (**CFS**) mandatory.
- CFS of all subsidiaries and the company shall be prepared and laid before the **AGM**.
- **For the purpose of “financial statements”, “Subsidiary” shall include “Associate Company” and “Joint venture”.**

- In case of **non compliance** of this section MD / WTD in charge of finance / CFO / Any other Person in charge is punishable with imprisonment up to 1 year **or** with fine of minimum 50,000/- and maximum 5,00,000/- **or** with both.
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- Company to attach a separate statement containing **the salient features of the financial statements of its Subsidiaries** in Form AOC-1.
- The requirement of attaching the Financial Statements and other reports as was required by **section 212** of the Companies Act 1956 has been dispensed with.
- In case of Companies covered under **section 135**, amount of expenditure incurred on corporate social responsibility activities needs to be disclosed in notes to accounts.
- **Exclusion** for insurance, banking and electricity companies which are governed by different statutes.

Rules:

Class or classes of companies as may be notified by the Central Government (**CG**) from time to time shall file their financial statements in **XBRL form**.

Depreciation (Schedule II)

- **“Depreciation”** is the systematic allocation of the depreciable amount of an asset over its useful life.
- The **depreciable amount** of an asset is the cost of an asset or other amount substituted for cost, less its residual value (**not more than 5% of original cost**).
- **“Useful life”** is the period over which as an asset is available for use by an entity.
- **Prescribed class of companies** can adopt different useful lives and residual values along with justification disclosure.
- In case of **double shift and triple shift**, depreciation amount shall be increased by 50% and 100% respectively.
- For Intangibles AS provisions to be followed i.e. **AS-26**.
- **Carrying amount of the asset on that date:**
 - a) To be depreciated over the remaining useful life.
 - b) If remaining useful life is NIL, after retaining the residual value, the remaining carrying amount to be recognized in opening balance of retained earnings.
- **No specific provision for 100 % rate on assets below Rs. 5,000.**

Section 130 – Reopening of accounts on Court’s or Tribunal’s order (New Provision)

- Company shall neither reopen nor recast its accounts unless application made by CG / Income Tax / SEBI / Any other Regulatory Body; **and**
- An Order is passed by Court / Tribunal to the effect that accounts were prepared in fraudulent manner or affairs of the company were mismanaged.
- The accounts so revised or re-cast shall be final.

Section 131 – Voluntary revision of financial statements or Board’s report (New Provision)

- If financial statements or Board’s report do not comply with provisions of the Act, the Board may prepare revised set for any of 3 preceding financial years after obtaining approval from Tribunal.
- **Revision not permitted more than once in a financial year.**
- Detailed reasons for such revision to be disclosed in Board’s report.
- Copy of Tribunal’s order shall be filed with ROC.

Section 132 – Constitution of National Financial Reporting Authority (NFRA)

- CG by notification to constitute NFRA. Previously known as National Advisory Committee on Accounting Standards
- **Role & Powers :**
 - a) To make recommendation to CG on the formulation of Accounting Standards and **Auditing Standards.**
 - b) To monitor and enforce compliance with accounting and **auditing standards.**
 - c) **To oversee the quality of services of the professionals.**
 - d) To perform matters as may be prescribed.
 - e) Have the same powers as are vested in Civil Court.
 - f) **In case of professional or other misconduct NFRA has powers to impose penalty.**
 - g) Any person aggrieved by order passed by NFRA can appeal before Appellate Authority constituted by CG.
 - h) No nomination of members from MCA, ICSI, ICAI, ICWAI in respect of constitution. It will be decided by CG.

Section 133 – Central Government to prescribe Accounting Standards

- CG may prescribe Accounting Standards in consultation with NFRA as recommended by ICAI.


Rules:

Transitional Provision:

- The standards of accounting as prescribed under the Companies Act, 1956 shall be deemed to be the accounting standards until prescribed by the CG.
- Till the NFRA is constituted under section 132 of the Act, the CG may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI 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.

Section 134 – Financial Statement, Board’s Report etc.

- To be **signed by** either Chairperson or by 2 Directors (1 should be MD) **and** CEO, CFO and Company Secretary.
- Option available under the Companies Act, 1956 of signing by only one Director with explanations and reasons is dispensed with.
- In case of **One Person Company (OPC)**, Director Report should be signed by One Director only.
- **Additional Information to be included in Directors Report:**
 - a) The extract of **Annual Return** as prescribed under section 92.
 - b) In case of a company which are required to constitute **Nomination and Remuneration Committee**, Company’s policy on Directors appointment and remuneration including criteria for determining qualification, positive attributes, independence of a Director etc.

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- c) Explanations or Comments by the Board on every qualification, reservation or adverse remark or disclaimer made by Practicing Company Secretary (PCS) in his **Secretarial Audit Report**.
 - d) Particulars of **Loans, guarantees or Investments** under section 186.
 - e) Particulars of contracts or arrangements with **related parties**.
 - f) **Material changes and commitments post balance sheet date**, if any, affecting the financial position of the company.
 - g) **A statement indicating development and implementation of a risk management policy for the company.**
 - h) The details about policy developed and implemented on **CSR** initiatives taken during the year.
 - i) Listed company and every other public company having a paid up share capital of 25 crore rupees or more to include **statement on formal annual evaluation** of the performance of Board, its committees and individual directors.

Section 135 – Corporate Social Responsibility (New Provision)

- CSR **mandatory** for every company having during any financial year:
 - a) Net worth of more than Rs.500 Crores, **or**
 - b) Turnover of more than Rs. 100 Crores **or**
 - c) Net Profit of more than Rs. 5 Crores
- CSR Committee to **monitor & recommend** company's activities & spending.
- Company to spend in every financial year, at least **2% of the average net profits of last 3 FYs.**
- To display CSR **policy** on company's website.
- CSR activities specified in **Schedule VII.**
- Preference on **spending** for local & surrounding areas.
- In case of default , Board to disclose reasons in its report.
- If company **ceases** to be covered under section 135 for 3 consecutive financial years, it is neither required to constitute CSR committee nor it shall comply with provisions till it meets the criteria defined in the section again.
- CSR activities to be undertaken through **registered trust or a registered society or a company established** by the company or its holding or subsidiary or associate company under section 8.

Section 136 – Right of member to copies of audited financial statements

- Financial Statements to be sent to members before 21 days of AGM. **Exemption to send in less than 21 days with approval of members is no more available.**
- Listed company can keep financial statements available at registered office during working hours for a period of 21 days and **document containing salient features** of financial statements is sent to every member.
- Listed companies and **its subsidiaries** to place FS on the website.
- **Every company having a subsidiary company shall place separate audited accounts of each of its subsidiary on the website.**
- CG may prescribe manner of circulation of FS having such net worth and turnover **as may be prescribed.**

Rules:

- In case of **all listed companies** and such public companies which have a **net worth of more than 1 crore rupees** and **turnover of more than 10 crore rupees**, the financial statements may be sent:
 - a) By **electronic mode** to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes.
 - b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode
 - c) by despatch of physical copies by any other recognised mode of delivery as specified under section 20 of the Act, in all other cases.

Section 137 – Copy of financial statements to be filed with Registrar

- FS duly adopted in AGM to be filed with ROC **within 30 days** of AGM.
- If FS not adopted in AGM, **provisional FS** can be filed within 30 days till the time FS are approved and filed with ROC.
- To attach FS of **foreign subsidiaries** which have not established place of business in India.
- **One Person Company** to file FS duly adopted by its members within 180 days from close of FY.

Section 138 – Internal Audit (New Provision)

- Internal Audit of the **functions and activities** of the company.
- ➤ Can be done by CA / CWA / Other professional decided by the Board.
- **Applicability:**
 - a) Every listed company
 - b) Every **unlisted public company** having:
 - ✓ Paid up share capital of 50 Crores or more; or
 - ✓ Turnover of 200 Crores or more; or
 - ✓ O/s. Loans and Borrowings from banks / public financial institutions of 100 crores or more; or
 - ✓ O/s. Deposits of 25 crores or more
 - c) Every **Private company** having:
 - ✓ Turnover of 200 Crores or more; or
 - ✓ O/s. Loans and Borrowings from banks / public financial institutions of 100 crores or more
- **Transitional period of 6 months** for existing companies.
- 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.

Audit and Auditors

Chapter X - Section 139 to 148



Section 139 – Appointment of Auditors

- **First auditor** to be appointed by Board within 30 days from incorporation. Upon failure members to appoint in EGM within 90 days.
- **Subsequent appointment** at first AGM.
- Auditor to hold **office till** conclusion of 6th AGM.
- Ratification by members at every AGM.
- The company has to **intimate** both Auditor and Registrar within 15 days of the appointment.
- The Auditors is also required to give a **certificate** that he is duly qualifies to be appointed as the Auditor of the Company.

- The provision for **rotation** of Auditors in the listed Company & Certain other class of Companies, **as may be prescribed**, have been provided for.
- **Maximum 5 years for individual CA and 10 years for CA firm.**
- **Cooling period of continuous duration of 5 years.**
- **Transition period of 3 years** for the existing companies to comply with the provision of the rotation of Auditor.
- No firm to be appointed having common partner / partners.
- Members can resolve to change audit partner and audit team.
- In case the Company has an audit committee, then all appointment of Auditors including filling of casual vacancy, shall be made after taking into account the recommendation of the committee.

Section 140 – Removal, resignation of auditor and giving of special notice

- When the Auditor of a Company **other than Government Company, resigns** from the Company, then is required to file a statement stating reasons and other facts in prescribed form within 30 days with the Company and the Registrar.
- Penalty has also been prescribed where Auditor fails to file such statement.
- Removal of Auditor by **special resolution** and CG approval.
- Tribunal suo moto or on an application from CG, can direct the company to **change the Auditor** if it is satisfied that the Auditor 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.
- **Special notice** required for appointing auditor other than retiring auditor.
- **In case of a firm, liability will be of firm and partner(s) who acted in fraudulent manner.**

Section 141 – Eligibility, Qualifications and Disqualifications of Auditors

- A firm in which majority of partners are practicing CA's can also be appointed; i.e. the **multi-disciplinary firms** having professionals from variety of fields like CA, CWA, PCS or Lawyers etc.)

- **New disqualifications introduced for appointment:**
 - a) If a person by himself / **his relative** / **partner** is **holding security** of the company / subsidiary / holding / associate company / fellow subsidiary.

 - b) If he is **indebted** to the company / subsidiary / holding / associate company / fellow subsidiary in excess of such amount as may be prescribed.

 - c) Has given a **guarantee** or provided any security in connection with indebtedness of any third person to the company / subsidiary / holding / associate company / fellow subsidiary for such amount as may be prescribed.

- d) If a person or a firm directly or indirectly has **business relationship** with the company / subsidiary / holding / associate company / fellow subsidiary.
- e) A person whose **relative** is a Director or is in **employment** of the company as a Director or KMP.
- f) A person who has been **convicted by a Court** of an offence involving fraud and a period of 10 years has not elapsed from date of such conviction.
- g) If any person whose subsidiary / associate company / any other form of entity is engaged **in any of the consulting and specialized services** as provided under section 144 shall not be eligible for appointment.
- h) **Maximum number of audits 20 for each individual / partner.**

Section 142 – Remuneration of Auditors

- Board to fix remuneration of first auditors.
- For subsequent auditors it shall be decided in general meeting or as may be determined in GM.
- Remuneration to Auditor shall also include any facility provided to him.

Section 143 – Powers and duties of auditors and auditing standards

- Every auditor to **comply with** auditing standards.
- The Auditors Report shall now also be required to provide for the following:
 - 1) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
 - 2) Whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls;
- Auditor to provide the **reasons**, where any of the matters required to be included in the Audit Report is answered in **negative or with a qualification**, which was not required under the old law.
- The Auditor to also inquire in case of Company other than an Investment Company or a Banking Company, whether the assets of the Company consisting of **shares, debentures and other securities** have been sold at a price less than at which they are purchased by the Company.

- The section doesn't provide that adverse remarks & qualifications shall be provided in **bold and italics**.
- The duties which have been casted on an Auditor under section 143, shall also apply to both **Cost Accountant for Cost Audit** and PCS for Secretarial Audit.
- During audit if auditor / Cost Auditor / PCS comes across **material fraud** he shall immediately report to CG.

“materiality” in respect of fraud shall mean:

a) fraud happening frequently; or

b) fraud where the amount involved or likely to be involved is not less than 5% of net profit or 2% of turnover of the company for the preceding FY.

- Non compliance of provisions of this section attracts penalty of minimum Rs. 1 lakh and maximum Rs. 25 lakhs.

Section 144 – Auditor not to render certain services (New Provision)

- Auditor not to render **directly or indirectly** following services to company / holding company / subsidiary company:
 - a. Accounting & 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.

- “**Directly or indirectly**” shall include:
 - **Individual Auditor:** Rendering of services either by himself / through his relative / any other person connected or associated with such individual / through any other entity, in which such individual has significant influence or control, or whose name / trademark / brand is used by such individual.
 - **Audit Firm:** Rendering of services either by itself / through any of its partners or through its parent / subsidiary / associate entity or through any other entity, in which the firm or any partner of the firm has significant influence or control or whose name / trademark / brand is used by the firm or any of its partners.

- **Transition Period:**

Auditors or audit firms providing non-audit services presently shall have to comply with provisions of this section **before the closure of the first financial year** after the commencement of this Act.

Section 145 – Auditor to sign Audit Reports etc.

- Auditor to sign audit report and any other document of the company in accordance with Section 141.
- **Qualifications, Observations or comments** on financial transactions or matters which have any adverse effect on the functioning of the company mentioned in the Auditors Report shall be read before the company in General Meeting and shall also be open to inspection by any member of the company.

Section 146 – Auditors to attend General Meetings

- Auditor or his representative who shall be qualified to be Auditor shall get notices of all the General Meetings and shall mandatorily attend the same unless exempted by the company.
- **Unqualified Auditors report** need not be read out in the AGM.

Section 147 – Punishment for Contravention

- In case of contravention related to this Chapter the **company** shall be punishable with fine of minimum 25,000/- and maximum 5,00,000/- **AND** any officer who is in default shall be punishable with imprisonment up to 1 year or with fine of minimum 10,000/- and maximum of 1,00,000/- or with both.
- If **auditor** contravenes provisions of section 139 / 143 / 144 / 145, he shall be punishable with fine of minimum 25,000/- and maximum of 25,00,000/-.
- Where **auditor** has **wilfully or knowingly** contravened the provisions with the intention to deceive the company / shareholders / creditors / tax authorities then he shall be punishable with imprisonment up to 1 year or fine of minimum 1,00,000/- and maximum of 25,00,000/- or with both.

- If auditor contravenes the provisions related to his powers and duties (143), Services that he cannot render (144) and attendance of general meetings (146) he shall be further liable to:
 - a) **refund the remuneration** received by him to the company; and
 - b) **pay for damages** to the company, statutory bodies / authorities / to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

- If it is proved that partner or partners of audit firms acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, or by the company / Directors / officers, then **partner or concerned partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal** as provided in this Act or in any other law for the time being in force.

Section 148 – Central Government to specify audit of items of cost in respect of certain companies

- CG can direct particulars relating to utilization of material or labour or such other item of cost to be included in books of accounts by **such class of companies** engaged in the production of such goods or providing such services.
- Cost audit to be conducted by CWA in practice.
- No approval of CG is required for appointment of Cost Auditor.
- To comply with Cost Auditing standards issued by ICWAI.
- Cost Audit Report to be submitted to Board and Board will forward it to the CG.
- Qualifications, Disqualifications, rights, duties and obligations same as applicable in case of statutory auditors.
- Penalty provisions are similar to Section 147.

Audit Committee Requirement

- Applicable to every listed and **prescribed class of companies**.

Rules:

“Prescribed class of companies” means Public companies having:

- a) Paid up share capital of Rs.10 cr. or more; or
 - b) Turnover of Rs.100 cr. or more; or
 - c) O/s Loans / debentures / deposits exceeding Rs.200 cr. or more.
- Minimum **3 directors** with majority of independent directors.
 - Majority of members should possess financial background.
 - To act in accordance with terms of reference specified in writing by the Board.
 - **Transition period of 1 year for existing companies.**
 - Every listed company or such class or classes of companies, as may be prescribed, under the supervision of audit committee shall establish a **vigil mechanism** for directors and employees to report genuine concerns and grievances.

Concerns raised by ICAI

- **Cap on the number of audits** should exclude private companies and OPC.
- **Auditor cannot be made solely responsible** for detection and reporting of fraud when he is conducting audit as per mandatory auditing standards.
- If the auditor was not aware of a fraud, in spite of having conducted the audit in line with the auditing standards, **he should not be penalised**.
- Auditors cannot be made whistleblower and well settled principle that they are **watchdogs** should prevail.
- Rules should specifically exclude **management services** from Section 144.
- Before the notification for implementation of section 132 of the Companies Act on the constitution of **NFRA** under section 132, a lot of deliberations are required.



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