

**“Relevant provisions under the Companies Act, 2013 related to Accounts & Audit including NFRA, CARO, Fraud Reporting, CSR and Computation of Profit under Section 198”**

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# Sequence of Presentation

- Relevant Sections of Chapter IX – on Accounts of Companies
  - Computation of Profit as per Section 198 in the context of Section 135
- Relevant Sections of Chapter X – Audit & Auditors
  - National Financial Reporting Authority (NFRA) – Section 132
  - Fraud Reporting - Section 143(12)
- Relevant Provisions of the Companies Auditors Report Order (CARO), 2016

Background to provisions like that given  
in Chapter IX and X.

Ownership/ Management separation of  
the business.

# Chapter IX – Accounts of Companies

- Section 128 - Books of Account, etc., to be kept by Company
- Section 129 – Financial Statements
- Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders
- Section 131 - Voluntary Revision of Financial Statements or Board's Report
- Section 132 - Constitution of National Financial Reporting Authority.
- Section 133 - Central Government to Prescribe Accounting Standards.
- Section 134 - Financial Statement, Board's Report, etc.
- Section 135 - Corporate Social Responsibility
- Section 136 - Right of Member to Copies of Audited Financial Statement
- Section 137 - Copy of Financial Statement to be Filed with Registrar
- Section 138 - Internal Audit

# Section 128 - Books of Account etc., to be kept by Company

- At the **registered office** including for the branches.
- On **accrual basis** and according to the **double entry** system of accounting
- Can be **kept at any other place** with Board's decision and filing with ROC within 7 days.
- **Electronic mode** is fine, as may be prescribed.
- In case the **company has a branch office** in India or outside India, its fine if proper summarised returns periodically are sent by the branch office.
- Open to **Inspection** by any of the directors
- **Inspection of subsidiary** can be done only by the person authorised in this behalf by a resolution of the Board of Directors
- The books of account of every company relating to a period of **not less than eight financial years** immediately preceding a financial year.
- Where an investigation has been ordered in respect of the company under Chapter **XIV-Inspection, Inquiry and Investigation**, CG can direct for the books to be kept for a longer period.

# Section 129 – Financial Statements

- **True and fair view** of the state of affairs of the company or companies,
- Comply with the **accounting standards** notified under [Section 133](#)
- Shall be in the form or forms as may be provided for different class or classes of companies in [Schedule III](#)
- Financial statements to be **laid before every AGM**
- Where a company has **one or more subsidiaries or associate companies**, to also prepare a **consolidated** financial statement of the company.
- Also attach along with its financial statement, a separate statement containing the **salient features of the financial statement** of its subsidiary or subsidiaries and associates.
- Where the financial statements of a company **do not comply with the accounting standards**....
- In case of **Government company** - Section 129 shall not apply to the extent of application of **Accounting Standard 17 (Segment Reporting)** to the companies engaged in defense production. - [Notification dated 5th June, 2015](#).

## Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders

- What is re-opening of Accounts?
- Can the books of accounts reopened or financial statements of a company recasted?
- Opened at whose behest?
- Why should this be necessary?
- How will this be carried out?
- What role will the Auditor have in such an eventuality?
- Of how many years of Accounts can be reopened?
- Can this period be longer than 8 years?
- Will the revised / recasted accounts be final?
- What can be incidental consequences such revision/recast?
- Will these accounts again be placed before the Shareholders' meeting?
- **What disclosures to be made in this respect in the Board's Report?**

## Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders

- **130.** (1) 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 **the Central Government, the Income-tax authorities, the Securities and Exchange Board, 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:
    - 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 <sup>1</sup>[or any other person 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 <sup>1</sup>[or the other person <sup>1</sup>concerned] before passing any order under this section.



## Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders

- (2) Without prejudice to the provisions contained in this Act the **accounts so revised** or re-cast under sub-section (1) **shall be final**.
- <sup>1</sup>[(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 longer period.]

## Section 131 - Voluntary Revision of Financial Statements or Board's Report

- What is Voluntary Revision of Financial Statements or Board's Report?
- Who can go for Voluntary Revision of Financial Statements or Board's Report?
- And why should this be necessary?
- With whose approval?
- How will this be carried out?
- What role will the Auditor have in such an eventuality?
- Of how many years of Accounts can be reopened?
- Will the revised / recasted accounts be final?
- Will these accounts again be placed before the Shareholders' meeting?
- How many times in a year can this be done?
- What disclosures to be made in this respect in the Board's Report?
- **What can be incidental consequences such revision/recast?**

## Section 131 - Voluntary Revision of Financial Statements or Board's Report

**131.** (1) 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:

- 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:
- Provided further that **such revised financial statement or report** shall not be prepared or filed more than once in a financial year:
- 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.

## Section 131 - Voluntary Revision of Financial Statements or Board's Report

- (2) 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) 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

## Section 132 - Constitution of National Financial Reporting Authority (NFRA)

- What is NFRA?
- Why has this been brought into existence?
- What is the role it is expected to play for the accountancy and audit profession?
- Who does it cover?
- Is there any overlap between ICAI and NFRA?
- What role will ICAI have post NFRA with regard to regulation of the profession?
- What will be the jurisdiction of NFRA?
  - NFRA – Listed and large unlisted Public companies. **Also entities referred by the CG.**
  - ICAI – Private & small unlisted Public companies and advisory role to NFRA.
- Can NFRA debar the Auditors & impose fines on erroring auditors?
- Are cost accountants and company secretaries, lawyers, actuaries, system auditors engaged with listed companies also covered under NFRA?
- How do you see the impact of NFRA on the accounting and auditing profession, going forward.
- What is the global scenario regarding independent regulators?
- **The International Forum of Independent Audit Regulators (IFIAR) was set up in 2006, and now it has more than 52 worldwide members.**

## The National Financial Reporting Authority 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.

# Why has this been brought into existence?

- The need for establishing NFRA has arisen on account of the need felt across various jurisdictions in the world, **in the wake of accounting scams, to establish independent regulators, independent from those it regulates**, for enforcement of auditing standards and ensuring the quality of audits to strengthen the independence of audit firms, quality of audits and, therefore, enhance investor and public confidence in financial disclosures of companies.
- A regulator like NFRA was conceived by the Govt in 2009, post Satyam scam
- While **many provisions of the Companies Act, 2013 came into force on April 1, 2014**, the setting up of the NFRA, a key recommendation, was delayed.
- The decision appears to have been **prompted by the latest bank scam to have hit the headlines** — the ₹12,636 crore Punjab National Bank fraud that went undetected by auditors. The **Union Cabinet on March 1, 2018** approved the creation of a National Financial Reporting Authority (NFRA),
- The decision aims at establishment of NFRA as **an independent regulator for the auditing profession** which is one of the key changes brought in by the Companies Act, 2013.
- The inclusion of the provision in the Act was on the specific recommendations of the Standing Committee on Finance (in its 21<sup>st</sup> report).
- **Most of the major economies of the world have independent audit regulators**, and over the last decade or so, umbrella bodies have come up that have provided an element of cohesion to these regulators. **The International Forum of Independent Audit Regulators (IFIAR) was set up in 2006, and now it has more than 52** independent audit regulators worldwide as members.

# Impact of NFRA as perceived by the Govt.

- The decision is expected to result in:
- Improved foreign/domestic investments,
- Enhancement of economic growth,
- Supporting the globalisation of business by meeting international practices, and
- Assist in further development of audit profession.



# Jurisdiction of NFRA

- The jurisdiction of NFRA for **investigation of Chartered Accountants and their firms** under section 132 of the Act would extend to **listed companies and large unlisted public companies**, the thresholds for which shall be prescribed in the Rules.
- The Central Government **can also refer such other entities for investigation** where public interest would be involved.
- The inherent regulatory role of ICAI as provided for in the Chartered Accountants Act, 1949 shall continue **in respect of its members in general and specifically with respect to audits pertaining to private limited companies, and public unlisted companies below the threshold limit** to be notified in the rules.
- The **Quality Review Board (QRB) will also continue** quality audit in respect of private limited companies, public unlisted companies **below prescribed threshold** and also with respect to audit of those companies that may be delegated to QRB by NFRA.
- Further, **ICAI shall continue to play its advisory role** with respect to **accounting and auditing standards and policies** by making its recommendations to NFRA.

# Jurisdiction of NFRA

- Apart from setting the rules and regulations governing the audit sector, the NFRA will have the **power to debar erring auditors or audit firm for up to 10 years** and impose significant fines on them.
- According to Section 132 of the Companies Act, 2013, the NFRA will have powers to impose a fine of **not less than ₹1 lakh**, but the amount can **extend up to five times of the fees** received in case of individuals. **ten times the fees received** in case of firms. It can also debar an auditor for up to ten years.
- The government has to set the rules that will stipulate the jurisdiction of the NFRA. Specifically, it has to set a limit on the size of an unlisted company that comes under the purview of the NFRA.
- NFRA will have **powers to investigate chartered accountants and their firms of all listed companies and large unlisted public companies**. Further, NFRA will also investigate instances referred to it by the central government,
- “India remains the only major economy where the audit profession is still considered self-regulated. NFRA will help build reinstate trust in the Indian audit profession, which has undoubtedly been tarnished by recent events,”

# Role of ICAI post NFRA

- The government said the ICAI would continue to play its advisory role with respect to accounting and auditing standards and policies by making its recommendations to the NFRA.

## Section 132 - Constitution of National Financial Reporting Authority.

**132.** (1) The Central Government may, **by notification, constitute a National Financial Reporting Authority** 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 National Financial Reporting Authority 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.

## Section 132 - Constitution of National Financial Reporting Authority.

\*(3) The National Financial Reporting Authority 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:

Provided that 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 National Financial Reporting Authority 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.**

## Section 132 - Constitution of National Financial Reporting Authority.

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority 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 National Financial Reporting Authority 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 National Financial Reporting Authority;

(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;

## Section 132 - Constitution of National Financial Reporting Authority.

(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 <sup>1</sup>**[five 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 National Financial Reporting Authority.

Explanation.—For the purposes of this 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 National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before <sup>2</sup>[the Appellate Tribunal in such manner and on payment of such fee as may be prescribed].

(10) The National Financial Reporting Authority 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.

## Section 132 - Constitution of National Financial Reporting Authority.

\*(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 National Financial Reporting Authority 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 National Financial Reporting Authority shall be at **New Delhi** and the National Financial Reporting Authority may, **meet at such other places in India as it deems fit**.

(13) The National Financial Reporting Authority 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 National Financial Reporting Authority 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 National Financial Reporting Authority.

(15) The National Financial Reporting Authority 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**.



## Section 133 - Central Government to Prescribe Accounting Standards.

- Already prescribed and being implemented in phases
  1. Phase-1 from 1<sup>st</sup> April, 2016
  2. Phase -2 from 1<sup>st</sup> April, 2017
- Ind AS 101 series corresponding to IFRSs (14 against 17)
- Ind AS 1 series corresponding to IASs (26 out of 41)

# IndAS implementation Roadmap for India

- The International Financial Reporting Standards (IFRS) are fast emerging as the globally accepted accounting framework with more than 100 countries having adopted or permitting use of IFRS and several other countries having announced adoption of IFRS.
- In India also, on the heels of Finance Minister's announcement to introduce Indian Accounting Standards (IndAS), the new set of accounting standards converged with IFRS, **Ministry of Corporate Affairs (MCA) on 2<sup>nd</sup> January, 2015** has issued a press release announcing a **revised roadmap for implementation** of the same.
- As per the announcement, applicability would be in **two phases viz. for companies covered in Phase I: From F.Y. 2016-17 and for companies covered in Phase II: From F.Y.2017-18.**
- With the enactment of Companies Act, 2013, there are certain sections affecting financial statements which also require study and analysis.
- Further, with the activities in capital markets and investments in global markets gaining momentum, the converged accounting standards would certainly increase acceptability of financial statements prepared by the Indian companies. This would also have effect on **lowering the cost of borrowings and increase in the valuations** of the Indian companies.

## Phase-1: Accounting periods commencing on or after 1<sup>st</sup> April, 2016

- Companies whose equity and / or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having a **Net Worth of Rs. 500 crores or more.**
- Companies other than those covered above and having a Net Worth of Rs. 500 crores or more.
- Holding, subsidiary, joint venture and associate companies of the companies indicated above

## Phase-2: Accounting periods commencing on or after 1<sup>st</sup> April, 2017

- Companies whose equity and / or debt securities are listed or are in the process of being listed on any stock exchange in India which are not covered in Phase 1.
- All Companies having a Net Worth of Rs. 250 crores or more and not covered in the earlier phase.
- Holding, subsidiary, joint venture and associate companies of the companies indicated above

## Section 133 - Central Government to Prescribe Accounting Standards.

- **133.** The Central Government may prescribe the standards of accounting 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.
- 1[Provided that until the National Financial Reporting Authority is constituted under [section 132](#) of the Companies Act, 2013 (18 of 2013), the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the recommendations made by National Advisory Committee on Accounting Standards (NACAS) Constituted under [section 210A of the Companies Act, 1956](#)".]

# Section 134 - Financial Statement, Board's Report, etc.

## Contents of Directors' Report

- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement;
- (ca) details in respect of frauds reported by auditors under sub-section (12) of [section 143](#) 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](#)-(Company to have Board of Directors);
- (e) in case of a company covered under sub-section (1) of [section 178](#), (Nomination & Remuneration Committee and Stakeholders Relationship Committee) **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 the [prescribed form](#);
- (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**;

# Section 134 - Financial Statement, Board's Report, etc.

- (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 may be prescribed;
- (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) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal <sup>8</sup>**[annual evaluation of the performance** of the Board, its Committees and of individual directors has been made;]
- (q) such other matters as may be prescribed.

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.

**Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—**

- (a) In the preparation of the annual accounts, the **applicable accounting standards had been followed** along with proper explanation relating to material departures;
- (b) 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;
- (c) 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;
- (d) The directors had prepared the annual accounts on **a going concern basis**; and
- e) 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**.
- f) 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.



## A Case Study from Section 134 on Financial Statement, Board's Report, etc.

134(8), If a company contravenes the provisions of this section, the company 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.

- In case an officer of a company who is in default, is levied penalty of Rs. 50000/- then who should bear this penalty, the officer or the Company?
- What if the amount of penalty is Rs. 500000/-?
- And if the penalty be borne by the company, then what about punishment of imprisonment?. Should that also be borne by the company and how?
- Why should the company be levied with penalty in case of any contravention of provisions of this Section?.
- What will be the impact of such a penalty on the shareholders?
- Are the shareholders at fault?
- If the impact is really adverse, then should the company at all be levied the penalty in case of any contravention.
- Or only Officer in default should be liable for any punitive action and suffer it personally, in case of any non-compliance?
- Can a company really contravene any of the provisions, or it is the people responsible for the compliance of those provisions?

## Section 134 - Financial Statement, Board's Report, etc.

<sup>6</sup>[134(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of 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.]

(2) The auditors' report shall be attached to every financial statement.

## Section 134 - Financial Statement, Board's Report, etc.

<sup>4&5</sup>[(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

<sup>7</sup>[(a)the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed]

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement;

<sup>1</sup>[(ca) details in respect of frauds reported by auditors under sub-section (12) of [section 143](#) 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](#);

<sup>2</sup>[(e) 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](#);

## Section 134 - Financial Statement, Board's Report, etc.

- (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 the [prescribed form](#);
- (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;

## Section 134 - Financial Statement, Board's Report, etc.

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner [as may be prescribed](#);

(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;

<sup>3</sup>(p) in case of a listed company and every other public company having such paid-up share capital [as may be prescribed](#), a statement indicating the manner in which formal <sup>8</sup>[annual evaluation of the performance of the Board, its Committees and of individual directors has been made;]

(q) such other matters [as may be prescribed](#).

<sup>9</sup>[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]

# Section 134 - Financial Statement, Board's Report, etc.

<sup>9</sup>(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**

(4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, 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.

(5) The **Directors' Responsibility Statement** referred to in clause (c) of sub-section (3) shall state that—

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

(b) 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;

(c) 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;

(d) the directors had prepared the annual accounts on **a going concern basis**; and

## Section 134 - Financial Statement, Board's Report, etc.

(e) 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.

Explanation.—For the purposes of this clause, 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;

(f) 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.

(6) The Board’s report and any annexures thereto under sub-section (3) **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.

## Section 134 - Financial Statement, Board's Report, etc.

(7) 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—

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3).

(8) If a company contravenes the provisions of this section, the company 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.



# Section 135 - Corporate Social Responsibility

- How to define, “Corporate Social Responsibility”?
- Which company is required to comply with the provisions of Section 135?
- How many members should be there in a CSR Committee?
- Capacity expansion project undertaken by a company, is it not contributing to the social well being?
- If yes, should it also have been included in Schedule VII.
- How much of the profits are to be spent every year on CSR activities?
- Every year 2% of the average profit of immediately preceding 3 FYs.
- Which of the profits is to be considered to compute 2% of it?
- What is the starting point for arriving at the amount of net profit as per Section 198?
- What is the logic and purpose behind Section 198?
- What if the company does not have enough cash to spend on CSR?
- **What if the company has cash and still does not spend on CSR in any year?**

# Section 135 - Corporate Social Responsibility

- (1) **Applicability:** Every company having:
  - **net worth** of rupees **five hundred crore or more**,
  - or **turnover** of rupees **one thousand crore or more** or
  - a **net profit** of rupees **five crore or more** during the immediately preceding financial yearshall constitute a Corporate Social Responsibility Committee of the Board consisting of **three or more directors**, out of which at least one director shall be **an independent director**.

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.
- (5) The Board of every company referred to in sub-section (1), 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 Corporate Social Responsibility Policy.
- **Explanation.**—For the purposes of this section **"net profit"** shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of [section 198](#).

# Section 135 - Corporate Social Responsibility

- **[135. (1)** Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during <sup>3</sup>[the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- <sup>4</sup>[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.]
- (2) The Board's report under sub-section (3) of [section 134](#) shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,—
  - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company <sup>5</sup>[in areas or subject, 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 Corporate Social Responsibility Policy of the company from time to time.

# Section 135 - Corporate Social Responsibility

- (4) The Board of every company referred to in sub-section (1) shall,—
  - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility 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
  - (b) ensure that the [activities](#) as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred to in sub-section (1), 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 Corporate Social Responsibility Policy:
- Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:
- Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of [section 134](#), specify the reasons for not spending the amount.
- <sup>6</sup>[Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of [section 198](#).]

# Section 198 – Calculation of Profit

- **198.** (1) In computing the net profits of a company in any financial year for the purpose of [section 197 and also 135](#),—
  - (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
  - (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- (2) In making the computation aforesaid, **credit shall be given for the bounties and subsidies received from any Government**, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.
- (3) **In making the computation aforesaid, credit shall not be given for the following sums, namely:—**
  - (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company,<sup>1</sup>[unless the company is an investment company as referred to in clause (a) of the Explanation to section 186]
  - (b) profits on sales by the company of forfeited shares;
  - (c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
  - (d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:
    - Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value;
  - (e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
  - (f) any amount representing unrealized gains, notional gains or revaluation of assets

# Section 198 – Calculation of Profit

**(4) In making the computation aforesaid, the following sums shall be deducted, namely:—**

- (a) all the usual working charges;**
- (b) directors' remuneration;**
- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;**
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;**
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;**
- (f) interest on debentures issued by the company;**
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;**
- (h) interest on unsecured loans and advances;**
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;**
- (j) outgoings inclusive of contributions made [under section 181](#); (Company to contribute to Bonafide and charitable funds etc.)**
- (k) depreciation to the extent specified in [section 123](#); (Declaration of Dividend)**
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year <sup>2</sup>[Omitted], in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;**
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;**
- (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);**
- (o) debts considered bad and written off or adjusted during the year of account.**

# Section 198 – Calculation of Profit

**(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—**

- (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
- (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
- (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
- (d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

**What is the problem with Section 198? Starting point is not given.  
So what should be the starting point here?**

## Section 136 - Right of Member to Copies of Audited Financial Statement

**136.** <sup>2</sup>(1) a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, **not less than twenty-one days** before the date of the meeting:

<sup>4</sup>[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:



## Section 136 - Right of Member to Copies of Audited Financial Statement

**136.** <sup>2</sup>[(1) <sup>3</sup>[Omitted], a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than <sup>1</sup>[twenty-one days] before the date of the meeting:

<sup>4</sup>[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] in the case of a listed company, the provisions of this sub-section 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 twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the [prescribed form](#) 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 not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

<sup>5</sup>[**Provided also**] the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover [as may be prescribed](#):

**Provided also** that 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:

## Section 136 - Right of Member to Copies of Audited Financial Statement

<sup>6</sup>[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.]

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

<sup>7</sup>[**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.]

(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

## Section 137 - Copy of Financial Statement to be Filed with Registrar

- **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 thirty days** of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed:
- Provided that where the **financial statements under sub-section (1) are not adopted at annual general meeting** or adjourned annual general meeting, **such unadopted financial statements** along with the required documents under sub-section (1) 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 their adoption in the adjourned annual general meeting for that purpose:
- Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed <sup>2</sup>[Omitted].
- Provided also that 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 one hundred eighty days** from the closure of the financial year:
- Provided also that 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.

## Section 137 - Copy of Financial Statement to be filed with Registrar

- <sup>3</sup>[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.]
- (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 under sub-section (1), 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](#) <sup>4</sup>[Omitted].
- (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and 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 imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

## Section 138 - Internal Audit

- **138.** (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, **who 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.
- (2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board

# Chapter X – Audit & Auditors

- Section 139 - Appointment of Auditors
- Section 140 - Removal, Resignation of Auditor and Giving of Special Notice
- Section 141 - Eligibility, Qualifications and Disqualifications of Auditors
- Section 142 - Remuneration of Auditors
- Section 143 - Powers and Duties of Auditors and Auditing Standards
- Section 144 - Auditor not to Render Certain Services
- Section 145 - Auditor to Sign Audit Reports, etc.
- Section 146 - Auditors to Attend General Meeting
- Section 147 - Punishment for Contravention
- Section 148 - Central Government to Specify Audit of items of Cost in Respect of Certain Companies

## Section 139 - Appointment of Auditors

- How the first auditors are to be appointed and for what duration?
- How the subsequent auditors are appointed and for what duration?
- Written consent and certificate as regards to eligibility (Section 141) to be obtained.
- company to inform the auditor concerned of his or its appointment, and also file a notice with the Registrar within fifteen days
- No listed company or a company belonging to such class or classes of companies as may be prescribed, to re-appoint—
  - (a) an individual as auditor for more than one term of five consecutive years; and
  - (b) an audit firm as auditor for more than two terms of five consecutive years
- However, this will not prejudice the right of the company to remove an auditor or the right of the auditor to resign
- Members can provide for rotation of the auditing partner and his team shall be rotated at such intervals with the term of five consecutive years
- How to fill a normal casual vacancy and one caused by resignation?
- What if, no auditor is appointed or reappointed at the AGM?
- Recommendations of Audit Committee appointed under **Section 177** to be taken into account in all such matters.



## Section 139 - Appointment of Auditors

**139.** (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting 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 such meeting shall be such [as may be prescribed](#):

Provided further that before such 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:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in [section 141](#):

[1&3](#)[Provided also that the company shall inform the auditor concerned of his or its appointment, and also [file a notice](#) of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.]

Explanation.—For the purposes of this Chapter, “appointment” includes reappointment.

(2) No listed company or a company belonging to such class or classes of companies [as may be prescribed](#), shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years:

[2&4](#)[Provided that—

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:



## Section 139 - Appointment of Auditors

Provided further that 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:

<sup>5</sup>[Provided also that 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.]

Provided also 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.]

- (3) Subject to the provisions of this Act, members of a company may resolve to provide that—
- (a) 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
  - (b) the audit shall be conducted by more than one auditor.

# Section 139 - Appointment of Auditors

(4) The Central Government may, by rules, **prescribe the manner in which the companies shall rotate their auditors in** pursuance of sub-section (2).

Explanation.—For the purposes of this Chapter, the word **“firm” shall include a limited liability partnership** incorporated under the Limited Liability Partnership Act, 2008.

(5) Notwithstanding anything contained in sub-section (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 **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, within a period of one hundred and eighty days** from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) 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 thirty days from the date of registration of the company** and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall **within ninety days** at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), **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 sixty days** from the date of registration of the company and in case the Comptroller and Auditor-General of India **does not appoint such auditor within the said period, the Board of Directors of the company shall appoint** such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it **shall inform the members of the company who shall appoint such auditor within the sixty days** at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

## Section 139 - Appointment of Auditors

(8) Any casual vacancy in the office of an auditor shall—

- (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of 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 and he shall hold the office till the conclusion of the next annual general meeting;
- (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, **a retiring auditor may be re-appointed at an annual general meeting**, if—

- (a) he is **not disqualified** for re-appointment;
- (b) he has not given the company a **notice in writing of his unwillingness** to be re-appointed; and
- (c) **a special resolution has not been passed at that meeting appointing some other** auditor or providing expressly that he shall not be re-appointed.

(10) 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.

(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.

## Section 140 - Removal, Resignation of Auditor and Giving of Special Notice

- **140.** <sup>1&2</sup> [(1) 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, after obtaining the previous approval of the [#Central Government](#) in that behalf [in the prescribed manner](#):
- Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.]
- (2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of [section 139](#), the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.
- (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than <sup>1</sup>[fifty thousand rupees or the remuneration of the auditor, whichever is less,] but which may extend to five lakh rupees.
- (4) (i) 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, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of [section 139](#).
- (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- (iii) 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,—
  - (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - (b) 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,
- and 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:

## Section 140 - Removal, Resignation of Auditor and Giving of Special Notice

- Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:
- \*Provided further that 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.
- \*(5) 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 moto 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:**
- Provided that 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:
- Provided further that 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](#) - (Punishment for Fraud).
- 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.
- Explanation II.—**For the purposes of this Chapter the word “auditor” includes a firm of auditors.**

## Section 141 - Eligibility, Qualifications and Disqualifications of Auditors

**141.** (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) 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.

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

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

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

(i) 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 one thousand rupees or such sum [as may be prescribed](#);

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount [as may be prescribed](#); or

(iii) 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, for such amount [as may be prescribed](#);



## Section 141 - Eligibility, Qualifications and Disqualifications of Auditors

(e) 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 of such nature [as may be prescribed](#);

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

(g) 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 twenty companies**

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

(i) <sup>2</sup>[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.]

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

# Section 142 - Remuneration of Auditors

- **142.** (1) The remuneration of the auditor of a company shall be **fixed in its general meeting** or in such manner as may be determined therein:
  - Provided that the Board may fix remuneration of the first auditor appointed by it.
- (2) The remuneration under sub-section (1) 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 **does not include any remuneration paid to him for any other service** rendered by him at the request of the company.



## Section 143 - Powers and Duties of Auditors and Auditing Standards

- Right of access at all times to the books of account and vouchers of the company,
- **Shall make a report to the members of the company on the accounts examined by him**
- Every auditor shall comply with the auditing standards.
- (12) 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 such amount or amounts** as may be prescribed, 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 as may be prescribed:

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- **143.** (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—
  - (a) 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;
  - (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
  - (c) 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;
  - (d) whether loans and advances made by the company have been shown as deposits;
  - (e) whether personal expenses have been charged to revenue account;
  - (f) 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:
- Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all <sup>8</sup>[its subsidiaries and associate companies] in so far as it relates to the consolidation of its financial statements with that of <sup>8</sup>[its subsidiaries and associate companies]

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- (2) The auditor **shall make a report to the members of the company on the accounts examined by him** and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) 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](#).
- (3) The auditor's report shall also state—
  - (a) 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;
  - (b) 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;
  - (c) 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;
  - (d) 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;
  - (e) whether, in his opinion, the financial statements comply with the accounting standards;
  - (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
  - (g) whether any director is disqualified from being appointed as a director under sub-section (2) of [section 164](#);
  - (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- <sup>\*\* 4</sup>[(i) whether the company has adequate <sup>6</sup>[internal financial controls with reference to financial statements] in place and the operating effectiveness of such controls;]
- (j) such other matters [as may be prescribed](#).

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- (4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.
- (5) <sup>1</sup>["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 Government, or partly by the Central Government and partly by one or more State Government, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of [section 139](#) and direct such auditor the manner in which the accounts of the 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 which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.
- (6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—
  - (a) 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; and
  - (b) comment upon or supplement such audit report:
- Provided that 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 sub section (1) of [section 136](#) 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.

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- (7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor General of India may, in case of any company covered under sub-section (5) or sub-section (7) of [section 139](#), if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and 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.
- (8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under [section 139](#), or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or 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 and 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 such [as may be prescribed](#):
- Provided that 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.

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- (9) Every auditor shall comply with the auditing standards.
- (10) 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:
  - 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.
- (11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special [order](#), direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.
- [3](#)["Provided that 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".]

## Section 143 - Powers and Duties of Auditors and Auditing Standards

- (12) 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 such amount or amounts [as may be prescribed](#), 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 [as may be prescribed](#):
- Provided that 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 [as may be prescribed](#):
- Provided further that 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 [as may be prescribed](#).]
- (13) 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 to in sub-section (12) if it is done in good faith.
- (14) The provisions of this section shall mutatis mutandis apply to—
  - (a) <sup>7</sup>[the cost accountant] conducting cost audit under [section 148](#); or
  - (b) the company secretary in practice conducting secretarial audit under [section 204](#).
- (15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.



# Fraud Reporting

## Section 143(12)

- Quantum of frauds requiring to be reported?
- When should a fraud be reported?
- Whom should it be reported to?
- What points the Auditor's should specify in this report to the Audit Committee or the Board ?
- Within how many days reply should be received from the Audit Committee or the Board?
- Within how many days Auditors should send the report to the CG?
- What if no response is received from the Audit Committee or the Board?
- Auditor's report to the CG shall be in the form of a statement as specified in **Form ADT-4**.
- Should these Frauds be reported in the Directors' Report?
- Which types of frauds should be disclosed in the Directors' Report?
- What details should be disclosed about the frauds in the Directors' Report?
- **Should the frauds reported by the Auditors to the CG, be also included in the Directors' Report?**



# Fraud Reporting questions??

- What about frauds committed by the outsiders?
- How to define frauds in the context of Section 143(2)
- Why should the Audit Committee / Board, take a time of 45 days to respond to the report of fraud to them, by the Auditor.
- What step MCA will take on receipt of report from the Auditor, is not specified.
- What precaution should the Auditor take before reporting a fraud to the Audit Committee or the Board?.
- Why the frauds reported to the CG, not be included in the Board's Report?
- Guidance Note on Fraud Reporting by ICAI available on the website.

## Reporting requirement for frauds involving an amount of Rs. 10 million or above.

- 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 or is expected to involve** individually an **amount of INR 10 million or above**, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

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

- The auditor shall **report the matter to the Board or the Audit Committee**, as the case may be, **immediately but not later than 2 (two) days** of his knowledge of the fraud, seeking their **reply or observations within forty-five days**;
- 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 (fifteen) days** from the date of receipt of such reply or observations;
- In case the **auditor fails to get any reply or observations from the Board or the Audit Committee** within the stipulated period of 45 (forty-five) 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;
- The **report shall be sent to the Secretary, Ministry of Corporate Affairs** in a sealed cover by Registered Post with Acknowledgment Due or by Speed Post followed by an e-mail in confirmation of the same;
- 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
- The report shall be in the form of a statement as specified in **Form ADT-4**.

## Reporting requirement for frauds involving an amount less than Rs. 10 million.

- The auditor shall report the matter to **Audit Committee or to the Board immediately but not later than 2 (two) days** of his knowledge of the fraud and he shall report the matter specifying the following:
  - a) Nature of Fraud with description;
  - b) Approximate amount involved; and
  - c) Parties involved.

# Disclosures of frauds in the Board's Report

- The following details of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the **Board's Report**:
  - (a) Nature of Fraud with description,
  - (b) Approximate Amount involved,
  - (c) Parties involved,
  - (d) If remedial action not taken and
  - (e) If remedial actions taken.
- **The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor.**

# Section 144 - Auditor not to Render Certain Services

- (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:

**Violation will lead to disqualification  
causing casual vacancy**

# Section 144 - Auditor not to Render Certain Services

- **144.** 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 which 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:
- Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.
- Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—
  - (i) 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, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;
  - (ii) 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.

## Section 145 - Auditor to Sign Audit Reports, etc.

- **145.** 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](#), and 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.



# Section 146 - Auditors to Attend General Meeting

- **146.** All notices of, and other communications relating to, **any general meeting** shall be forwarded to the auditor of the company, and 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 and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Why should a company exempt its auditors from attending the general meetings?

# Section 147 - Punishment for Contravention

- **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 twenty-five thousand rupees but which may extend to 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 one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.  
(2) 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 twenty-five thousand rupees but which may extend to five lakh rupees <sup>1</sup>[or four times the remuneration of the auditor, whichever is less]
- Provided that 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 imprisonment for a term which may extend to one year and <sup>2</sup>[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]
- (3) Where an auditor has been convicted under sub-section (2), he shall be liable to—
  - (i) refund the remuneration received by him to the company; and
  - (ii) pay for damages to the company, statutory bodies or authorities <sup>3</sup>[or to members or creditors of the company] for loss arising out of incorrect or misleading statements of particulars made in his audit report.

# Section 147 - Punishment for Contravention

- (4) 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 under clause (ii) of sub-section (3) and 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.
- (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 this Act 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
- \*4["**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."]

## Section 148 - Central Government to Specify Audit of Items of Cost in Respect of Certain Companies

- **148.** (1) Notwithstanding anything contained in this Chapter, 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 by that class of companies:
- Provided that 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.  
(2) 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 under sub-section (1) 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.
- (3) The audit under sub-section (2) shall be conducted by a <sup>1</sup>[Cost Accountant] who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:
- Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:
- Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.
- Explanation.—For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the <sup>2</sup>[Institute of Cost Accountants of India], constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

## Section 148 - Central Government to Specify Audit of Items of Cost in Respect of Certain Companies

- (4) An audit conducted under this section shall be in addition to the audit conducted under [section 143](#).
- (5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section 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:
- Provided that the report on the audit of cost records shall be submitted by the <sup>3</sup>[cost accountant] to the Board of Directors of the company.
- (6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.
- (7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), 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.
- (8) If any default is made in complying with the provisions of this section,—
  - (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of [section 147](#);
  - (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](#).

# Relevant provisions from the Companies Auditors Report Order (CARO)

# Companies Auditor Report Order (Caro) Rules, 2016

- The MCA has issued the Companies (Auditor's Report) Order, 2016 (CARO 2016), on **29th March 2016**.
- This order has been issued **in supersession of the Companies** (Auditor's Report) Order, 2015, and is **applicable for reporting** on financial statements of companies whose financial year commences on or **after 1st April 2015**.
- CARO 2016 **applicable to every company** including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013.
- Subsequently, MCA **relaxed the applicability of CARO 2016 to private companies** by increasing applicability thresholds.
- CARO 2016 will not apply to the auditor's report on consolidated financial statements.
- ICAI's Guidance Note on CARO 2016 by MCA [24 April, 2016]
- **CARO spells out the minimum things which should be addressed by the Auditor in his Report in respect of a company to whom CARO is applicable.**

# Companies Auditor Report Order (Caro) Rules, 2016

- CARO 2015 was issued by MCA in supersession of CARO 2003 which was issued earlier in pursuance with the provision of Section 227 (4A) of Companies Act 1956.
- CARO 2016 has enhanced the auditor's reporting requirements in certain areas, such as related party transaction and managerial remuneration.
- CARO 2015 was issued by MCA in supersession of CARO 2003 which was issued earlier in pursuance with the provision of Section 227 (4A) of Companies Act 1956.
- The total number of clauses in the new CARO is 16.



## Classes of companies outside the purview of the CARO 2016

- (a) **Banking company** as defined under Section 5 (c) of the Banking Regulation Act, 1949.
- (b) **Insurance company** as defined under the Insurance Act 1938.
- (c) **Company licensed to operate under Section 8** of the Companies Act 2013 (companies registered with charitable object).
- (d) **A one person company (OPC)** as defined under **clause (62) of Section 2** of Companies Act 2013 (OPC means a company which has only one person as a member).
- (e) A **small company under Section 2 (85)** of the Companies Act, 2013.

## Definition of a Small Company

1. As per sec 2(85) of Companies Act 2013 small company means a company, other than a public company:
  - a) Paid up share capital of which does not exceed ` 50 lacs or such higher amount as may be prescribed which shall not be more than ` 5 crore, and
  - b) Turnover of which as per its last profit and loss account does not exceed ` 2 crore or such higher amount as may be prescribed which shall not be more than ` 20 crore.
2. The following company shall not qualify as a small company:
  - a) A holding company or a subsidiary company.
  - b) A company registered under Section 8 of the Act.
  - c) A company or body corporate governed by any special act.

# Classes of companies outside the purview of the CARO 2016

(f) The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2016:

- (1) A private company which is **not holding or subsidiary company** of a public company, and
- (2) A private company having a **paid up capital and reserve and surplus not more than Rs. 1 crore** as on the balance sheet date, and
- (3) A private company which **does not have total borrowing exceeding Rs. 1 crore from any bank** and financial institution at any point of time during the financial year, and
- (4) A private company which **does not have total revenue exceeding Rs. 10 crore** during the financial year.

Note: Such revenue means revenue as disclosed in scheduled III to the Companies Act, 2013 and **includes revenue from discontinuing operation.**

# Matters included in CARO 2016

# Matters included in CARO 2016

1. Fixed Asset [clause 3 (i)]
2. Inventory [Clause 3 (ii)]
3. Loan given by Company [Clause 3 (iii)]
4. Loan to director and investment by the company [Clause 3 (iv)]
5. Deposits [Clause 3 (v)]
6. Cost Records [Clause 3 (vi)]
7. Statutory Dues [Clause 3 (vii)]
8. Repayment of Loan [Clause 3 (viii)]
9. Utilisation of IPO and further public offer [Clause 3 (ix)]
10. Reporting of Fraud [Clause 3 (x)]
11. Approval of managerial remuneration [Clause 3 (xi)]
12. Nidhi Company [Clause 3 (xii)]
13. Related Party Transaction [Clause 3 (xiii)]
14. Private Placement or Preferential Issues [Clause 3 (xiv)]
15. Non Cash Transaction [Clause 3 (xv)]
16. Register under RBI Act 1934 [Clause 3 (xvi)]

# Matters included in CARO 2016

## 1. Fixed Asset [clause 3 (i)]

- Whether the company is **maintaining proper records showing full particulars** including quantitative details and situation of fixed asset.
- Whether these fixed asset have been **physically verified by management** at reasonable interval.
- Whether any **material discrepancies were noticed** on such verification and if so, whether the same have been properly dealt with in the books of account.

## 2. Inventory [Clause 3 (ii)]

- Whether **physical verification of inventory** has been conducted at reasonable interval by the management.
- Whether any **material discrepancies has been noticed** on such verification and if so, whether the same has been properly dealt with in the books of account

# Matters included in CARO 2016

## 3. Loan given by Company [Clause 3 (iii)]

- Whether the company has granted any loans, secured or unsecured to **companies, firms, LLP or other parties covered in the register maintained under Section 189 (Register of Contracts or arrangements in which directors are interested)** of the Companies Act, 2013. If so,
  - (a) Whether **terms and conditions** of the grant of such loan are **not prejudicial** to the company's interest.
  - (b) Whether the **schedule of repayment** of principal and payment of interest has been stipulated and whether the **repayments and receipts are regular**.
  - (c) **If the amount is overdue**, state the total amount overdue, state the total amount overdue **for more than 90 days** and whether **reasonable steps** have been taken by the company for recovery of principal.

## 4. Loan to director and investment by the company [Clause 3 (iv)]

- In respect of loan, investment, guarantees and security whether **provisions of Sections 185 (Loan to directors, etc.) and 186 (Loan and Investment by company)** of the Companies Act, 2013 have been complied with. If not, provide the details thereof.

# Matters included in CARO 2016

## 5. Deposits [Clause 3 (v)]

In case, the company has accepted deposits, whether the following has been complied with:

- a) Directives issued by the reserve bank of India
- b) The provision of **Section 73 to 76 (Chapter V – Acceptance of deposits by companies)** or any other relevant provision of Companies Act, 2013 and the rules framed there under, and
- c) If the order has been passed by company law board (CLB) or National company law tribunal (NCLT) or RBI or any court or any other tribunal.

However, if any of the above not complied with, the **nature of contraventions** should be stated.

## 6. Cost Records [Clause 3 (vi)]

If Central Government has specified maintenance of **cost records under sec 148 (1)** of Companies Act, 2013 whether such accounts and records have been made and maintained.

**(Section 148 – Central Govt. to specify audit of items of cost in respect of certain companies).**



# Matters included in CARO 2016

## 7. Statutory Dues [Clause 3 (vii)]

- (a) Whether the company is regular in **depositing undisputed statutory dues** with the appropriate authorities including **Provident fund, Employees State Insurance fund, income tax, sales tax, service tax, duty of custom, duty of excise, value added tax, cess or any other statutory dues**.

If the company is not regular in depositing such statutory dues, the extent of arrears of outstanding statutory dues as at the last day of the financial year concerned **for a period of more than six months from the date they become payable, shall be indicated by the auditor**.

- (b) In case dues of income tax and sales tax or service tax or duty of custom or duty of excise or value added tax have **not been deposited on account of any dispute**, then the amount involved and the forum where dispute is pending shall be disclosed.

## 8. Repayment of Loan [Clause 3 (viii)]

Whether the company has defaulted in repayment of loans and borrowing to a financial institution, banks, government or dues to debenture holders.

If yes, the period and the amount of default to be reported.

# Matters included in CARO 2016

## 9. Utilisation of IPO and further public offer [Clause 3 (ix)]

Whether money raised by way of initial public offer or further public offer and the term loans were applied for the purpose for which those are raised.

If not, the **details together with delays and defaults and subsequent rectification**, if any, as may be applicable, be reported

## 10. Reporting of Fraud [Clause 3 (x)]

Whether any fraud by the company or any fraud on the company by its **officers and employees** has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated.

# Matters included in CARO 2016

## 11. Approval of managerial remuneration [Clause 3 (xi)]

Whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provision of **Section 197** (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits) read with **schedule 5** to the Companies Act, 2013.

If not, state the amount involved and step taken by the company for **securing refund** of the same.

## 12. Nidhi Company [Clause 3 (xii)]

Whether the Nidhi company has complied with the **net owned funds to deposit in the ratio of 1:20** to meet out the liability and whether the Nidhi company is maintaining **10% unencumbered term deposit** as specified in the Nidhi rules 2014 to meet out the liability.

# Matters included in CARO 2016

## 13. Related Party Transaction [Clause 3 (xiii)]

Whether all transaction with the related party is in compliance with **Section 177 (Audit Committee) and 188 (Related party transactions)** of the Companies Act, 2013 where applicable and the details have been disclosed in the financial statement etc., as required by the **applicable accounting standard**.

## 14. Private Placement or Preferential Issues [Clause 3 (xiv)]

Whether the company has made any **preferential allotment or private placement of shares or fully or partly convertible debentures** during the year under review and if so, as to whether the requirement of **Section 42** of Companies Act, 2013 have been complied with and the **amount raised has been used for the purpose** for which the funds were raised.

If not, provide the detail in respect of the amount involved and the nature of non-compliance.

# Matters included in CARO 2016

## 15. Non Cash Transaction [Clause 3 (xv)]

Whether the company has entered into any **non-cash transaction** with the director or person connected with him and if so, whether the provision of **Section 192 (Restrictions on non-cash transactions involving directors)** of Companies Act, 2013 has been complied with.

## 16. Register under RBI Act 1934 [Clause 3 (xvi)]

Whether the company is required to be **registered under Section 45-IA of Reserve Bank of India Act, 1934** and if so, whether the registration has been obtained.

# A comparative view between CARO 2015 and CARO 2016

CARO 2015	CARO 2016
Fixed assets	Retained with some changes
Inventory	Retained with some changes
Loans to related parties (Sec. 189)	Retained with some changes
Adequate internal control	<b>Deleted</b>
—	Loan Guarantee Security
Deposits	Retained
Cost records	Retained
Statutory dues	Retained with some changes
Accumulated losses	<b>Deleted</b>
Repayment of loan	Retained with some changes
Guarantees	<b>Deleted</b>
Term loans	Retained with inclusion of IPO & FPO
Fraud reporting	Retained with some changes
	Managerial Remuneration
	Nidhi company
	Related party transaction
	Private placement
	Non cash transaction
	<b>NBFC</b>

## ICAI's Guidance Note on CARO 2016 by MCA [24 April, 2016]

The MCA has issued the Companies (Auditor's Report) Order, 2016 (CARO, 2016) which is applicable for audits of financial statements **for periods beginning on or after April 1, 2015**. The CARO 2016 contains several new/modified reporting requirements vis-a-vis the CARO 2003/ CARO 2015.

The ICAI, with a view to provide appropriate guidance to its members, has brought out Guidance Note on the Companies (Auditor's Report) Order, 2016. It is divided into:

- (a) Relevant provision which contains Requirement of all clauses.
- (b) Audit procedures and Reporting which covers Procedure to be adopted by auditor.

This Guidance Note has been written in an easy to understand language and contains detailed guidance on various Clauses of CARO 2016 and the various issues and intricacies involved therein, so that the requirements and expectations of the Order can be fulfilled in letter and spirit by the auditors. It's a comprehensive and self contained reference document for the members.

# Thank you

**And wishing you grand success in all walks of Life**

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