

RULES UNDER COMPANIES ACT 2013

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For Pune Branch of WIRC
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Background

- 1956 Act - Outlived utility
- Entire old Act replaced by new Act
- Global changes – move towards IFRS
- Need for greater accountability and responsibility
 - By management
 - By auditors
- Investor Protection
- Rule based
- Stress on avoidance of Corporate Fraud rather than detection
- Green Initiative – Books can be maintained in electronic form
- Encouragement to contribute for social cause

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Steps towards IFRS

- Already introduced Revised Schedule VI (IAS 1) – renamed as Schedule III
- Consolidated Financial Statements made mandatory
- Schedule II for Depreciation prescribes estimated useful life and Component Accounting
- Financial Statements includes Statement of Changes in Equity
- Free reserves excludes profits on account of fair value concept

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Guiding Principles

- Compact statute
- Enforcement powers and prescribing stringent penalties strengthened
- Deleting the redundant provisions
- Best Global practices
- Simple language
- Segregation of procedural aspects from substantive law.

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Self Regulation

- The control of the Central Government over internal corporate processes largely substituted by shareholder control.
- Shareholders democracy recognised.
- Reducing excessive intervention of the Central Government.
- More mandatory disclosures.
- Greater emphasis on protection of shareholder rights.

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Various Rules notified

- Specification of Definition Details
- Incorporation
- Prospectus and Allotment of Securities
- Issue of Global Depository Receipts
- Share Capital and Debentures
- Acceptance of Deposits
- Registration of Charges
- Management and Administration
- Declaration and Payment of Dividend
- Accounts
- Audit and Auditors
- Corporate Social Responsibility Policy
- Appointment and Qualification of Directors

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Various Rules notified

- Meeting of Board and its powers
- Appointment and Remuneration of Managerial Personnel
- Inspection, Investigation and Inquiry
- Authorised to Register
- Registration of Foreign Companies
- Registration of Offices and Fees
- Adjudication and Penalties
- Miscellaneous
- Cost Records and Audit

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SPECIFICATIONS AND DEFINITIONS DETAIL - Rules

- Defines various terms used under the Act
- DSC, DIN, EForm, Electronic Mail
- Electronic Mode - means carrying out electronically based – whether main server is located in India or not – Including :
 - a) B2B, B2C transactions. Data interchange and other digital supply transactions
 - b) Offering to accept deposits, subscriptions
 - c) Financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management
 - d) Online services – telemarketing, telecommunications, telemedicine, education and information research
 - e) All related data communication services
- Conducted by email, mobile devices, social medial, cloud computing, document management, voice or data transmission.

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List of Relatives - Section 2(77)

- a) Father including step son
- b) Mother including step mother
- c) Son including step son
- d) Sons wife
- e) Daughter
- f) Daughters husband
- g) Brother including step brother
- h) Sister including step sister

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INCORPORATION - Rules

One Person Company

- Only a natural person, Citizen of India, Resident in India shall be able to promote OPC and can be nominee.
- Only one OPC per person
- No minor can hold beneficial interest in OPC
- Cannot carry out NBFC business
- Cannot be converted into Section 8 Company
- Cannot be converted into any other type of Company within 2 years of incorporation.
- However, if turnover (2 crore) and Paid Up Capital (50 lacs) exceeds the threshold limit

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OPC

- Nomination to be made of a person (after obtaining his prior consent) who will succeed.
- File Form INC 2 (Consent INC 3)
- In case nominee withdraws his consent- appoint another nominee INC 4
- Promoter can change nominee at any time.
- When nominee succeeds, he will nominate his successor within 15 days (INC 4)
- If threshold limit increase – convert to normal company within 6 months.

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OPC

- Conversion of Private Company to OPC
- If Private Company has share capital and turnover below the threshold limit - it can convert to OPC.
- Obtain NOC from members and creditors
- Pass Special Resolution
- File Special Resolution with ROC in MGT14 within 30 days
- File an application in INC 6 for conversion

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- Name approval – Undesirable Names
- For distinguishing names identical with others following shall be considered :
- Plural or singular
- Type and case of letters, spacing between letters, punctuation marks
- Joining words together or separating them
- Different tense
- Use of different phonetic spelling – P and Q --- Pee Que Industries
- Misspelled words
- Internet related designations like .com etc
- Different combinations – Builders and Contractors ---- Contractors and Builders
- Hindi or English translation of the word

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- Name will be Undesirable if it contains the following
- Registered Trade Mark of some other person (even if applied for) – unless consent is obtained
- Offensive to any section of person
- Identical or resembles LLP name
- Not in consonance with the object of the Company
- Connection with Embassy Consulate
- Vague Names – ABCD Ltd however ABCD Paper Mills Ltd can be allowed

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- Identical with dissolved company – for two years
- Identical with a company which is struck off – for twenty years
- Identical with a LLP under liquidation – five years
- Names like Insurance, Bank, Stock Exchange etc
- Cannot include word – State unless it is a Government Company
- Cannot contain name of Country continent – Asia Limited, Haryana Limited
- Cannot be a general name – Cotton Textile Mills Ltd Silk Manufacturing Ltd
- It should not give misleading impression about scope and size of the Company – Taj International Ltd
- If the company has changed its activities and its name is not reflecting its activities – change name within six months
- Without approval of Central Government certain words cannot be used like
• *Board, Commission, Authority, Undertaking, Nation, Union, Central, Federal, Republic etc.*

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Application for Reservation of Name - INC 1

- Application for incorporation of companies
- INC 2 – OPC
- INC 7 – Other companies
- Declaration by professional – INC 8
- Affidavit from subscribers and first directors – INC 9
- Specimen signature and latest photograph duly verified by bankers, notary – INC 10
- Particulars of the first directors and their consents – Form DIR 12
- For any objects – approval is required from RBI or any body, first obtain approval before applying.

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Conversion of a Company registered under Section 8 into a Company of any other kind

- Pass Special Resolution
- Give reasons for conversion in explanatory statement
- File Special Resolution MGT 14
- Publish notice in newspaper – vernacular and English
- Publish on website of the company

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- Registered Office
- Verification of Registered Office – Form INC 22
- Attach following documents
 - a) Registered document for title of the property
 - b) Notarised copy of the rent agreement and copy of rent receipt not more than one month old
 - c) Authorisation from owner and proof of his ownership
 - d) Proof of evidence of any utility services like telephone, gas electricity etc – not older than 2 months

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- Shifting of Registered office within the state but from one ROC office to another ROC - INC 23 with RD
 - a) Publish a notice in English and local language
 - b) Serve individual notice on all creditors of the Company
- Shifting of Registered Office from one State to another State :
 - a) INC 23 with Central Government
 - b) Special Resolution
 - c) Confirmation that no employees will be retrenched
 - d) Advertisement in English and Local newspaper where the Registered Office is situated
 - e) Service by RPAD notices to creditors

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- Integrated Application INC 29
- One application for following activities
 - DIN upto 3 directors
 - Reservation of Name
 - Incorporation
 - Appointment of Directors
 - PAN/TAN

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PROSPECTUS AND ALLOTMENT OF SECURITIES - Rules

- Significant Information to be stated in prospectus
 - a) Date of opening and closing of Issue
 - b) Objects of the Issue
 - c) Summary of project appraisal report
 - d) Schedule of implementation of the project
 - e) Interim use of funds
 - f) Details of any litigations
 - g) Defaults and non payment of statutory dues
 - h) Directors remuneration
 - i) Promoters contribution
 - j) Report by auditors in respect of profit and loss and assets and liabilities
 - k) Restated profit loss statement of affairs of last five years
 - l) Purchase of any business
 - m) Purchase of any immovable property

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PROSPECTUS AND ALLOTMENT OF SECURITIES

- Variation in terms of contracts and objects to the issue
- Pass Special Resolution
- Issue advertisement
- Publish on Website

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SHARE CAPITAL AND DEBENTURES - Rules

- Equity Shares with Differential Rights
- Differential Rights in respect of Voting, dividend or others
- Procedure
 - a) Articles should authorise
 - b) Ordinary resolution for issue of shares
 - c) Shares with differential rights cannot exceed 26% of total post equity paid up
 - d) Track record of distributable profits for last three years
 - e) No default in last three years in filing of FS and AR
 - f) No default in repayment of loans to bank/financial institution, dividend and preference capital
 - g) Not penalised by court
 - h) Cannot convert existing shares

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- Certificate of Shares – Physical form
- Certificate to be issued only :
 - a) Resolution passed by the Board
 - b) Surrender of the letter of allotment
 - c) Form SH1 – Share Certificate
 - d) Two directors to sign duly authorised by the Board
 - e) Secretary or person authorised by the Board
 - a) If Whole Time Secretary has been appointed that WTS will sign

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- Issue of duplicate share certificate
- Certificate issued in lieu of defaced, mutilated, torn, old, decrepit, worn out – in exchange of the old certificate only.
- On the duplicate certificate – it should be stated on the face of it that the same is issued in lieu of earlier share certificate
- In case of lost or destroyed :
 - a) With prior consent of the Board of Directors
 - b) Payment of fees not exceeding Rs.50/- per certificate
 - c) Indemnity
 - d) Public Notice

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- Issue of Preference Shares
 - a) Special Resolution
 - b) No default on redemption of preference shares or payment of dividend
 - c) Redemption not later than 20 years
 - d) In case of Infrastructure Companies – not later than 30 years – 10% from 21st year onwards

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- Secured Debentures
 - a) Date of redemption cannot exceed 10 years
 - b) In case of infrastructure projects, Infrastructure finance companies, Infrastructure Debt fund, Companies permitted by CG RBI NHB or any statutory authorities– can issue debentures redemption upto 30 years
 - c) Appoint Debenture Trustee before the issue of the prospectus or letter of offer for subscription
 - d) Within 60 days from allotment execute a debenture trust deed

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Buy back of Shares

- Procedure
 - a) Board Resolution
 - b) Method to be adopted for buy back
 - c) No defaults in repayment of deposits/bank loan/interest, interest, redemption of debentures, preference shares and dividend
 - d) Confirmation from Board – that enquiry into the affairs of the Company and no grounds that it will not be able to pay its debts
 - e) Report by Auditors
 - a) Inquired into the affairs of the Company
 - b) Amount of permissible capital payment is properly determined
 - c) Audited accounts which is the basis is not six months old
 - d) Opinion that the Company will not render insolvent within one year from that date
 - f) Special Resolution
 - g) Open a separate bank account
 - h) Make payment within 7 days from the time specified in the offer
 - i) Cannot utilise moneys borrowed from bank/financial institution
 - j) Cannot utilise the amount from earlier proceeds of same kind of shares

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Share Capital & Debentures - Rules

- Only sweat equity shares can be issued at discount. (S. 53 & 54)
- For infrastructure projects specified in Sch. VI, a company may issue preference shares for a period exceeding 20 years. (Proviso to S 55(2))
- Any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract. – Terms of Joint Venture Agreement are now recognized. (Proviso to S 58(2))

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ACCEPTANCE OF DEPOSIT -- Rules

- Maintenance of Liquid Assets
- Creation of Deposit Repayment Reserve Account
- Register of Deposits
- Meeting of Depositors
- Return of Deposits to be filed with ROC – DPT 3
- Interest at 18% for over due deposits matured and claimed but remaining unpaid
- Penalty – Rs.5000 and Rs.500 for every day of continuing default

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Deposits & Loans

- Invitation and Acceptance of deposits from public is allowed only to NBFC Companies, notified companies and public companies having specified net worth after following the invitation process. (S 73)
- Credit rating is mandatory for inviting public deposits. (S 76)
- Draft rules provides for eligibility conditions for company to accept public deposits
- Mandatory provision for deposit insurance before public acceptance. Each depositor to get protection upto Rs 20,000/- for principal & interest
- Companies other than covered above shall invite, accept or renew deposit from its members only by passing special resolution in the general meeting and fulfilling the specified conditions like issuance of circular, maintenance of liquid assets upto 15%, repayment as per scheme.
- Deposit can be secured or unsecured. If secured then charge is to be created on assets of the company
- After commencement of the Act details of all existing deposits to be informed to Registrar within 3 months and to be repaid within 1 year

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Deposits & Loans

- Draft Acceptance of Deposit Rules provides definition of Deposit which excludes acceptance of money from by private company from directors.
- All monies received will be considered as Deposit unless specifically exempted.
- Stringent penalties for violation of this Section.
- Eligible Company to accept deposits – 76(1)
 - Public Company
 - Net worth of Rs.100 crore or more
 - Turnover of Rs.500 crore or more
 - Special Resolution of General Body – Prior Consent

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Deposits & Loans - Certain exemptions

- ICD or Commercial Paper
- Loans from Bank, financial institution
- Amounts received from Government
- Amounts received from abroad as per FEMA provisions
- From Director or relative provided it is not from a borrowed source
- Security Deposit from any customer or supplier as business arrangement
- Share application money to be converted into shares within 60 days or to be refunded within next 15 days. Adjustment of advance within anything else will not be treated as refund. If allotment is pending as of 31.3.2015 and the amount was received prior to 1.4.2014, either the allotment or refund should be made latest by 1/6/15.
- Security Deposit from employee upto an amount of his annual salary.
- Business advance upto 365 days & for long term projects or for registered property agreement is exempted
- Advance against property against any contract or agreement
- Amount raised by Bond or debentures is exempted if it is secured by 1st charge on assets of the company upto market value of assets or compulsorily convertible into shares within 5 years
- Amount received with a promise to give returns in cash or kind. Return provided over and above the amount actually paid will be ~~exempted~~ **CA KUSAI GOAWALA**

REGISTRATION OF CHARGES - Rules

- Every charge except pledge and hypothecation of vehicle requires registration
- If Charge is not registered – the lender has no rights on liquidation
- Charge to be registered within 30 days – Form CHG 1 signed by borrower and lender both
- If above deadline is missed - can file within next 270 days with additional fees
- If Company fails to file within 30 days, the lender can file himself CHG 1 or CHG 9
- Condonation of delay by Registrar for charges filed after 30 days.
- Satisfaction of charge to be filed within 30 days only – no extension.
- In case if Original/Modification of Charge is not filed within 300 days and Satisfaction of Charge is not filed within 30 days – Can be registered only after approval of Central Government – CHG 8

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MANAGEMENT AND ADMINISTRATION- Rules

- Register of Members – MGT 1
- If a member is a Body Corporate then also provide CIN.
- Register of Debentures and other securities holders – MGT 2
- Foreign Register of members, debenture holders, other security holders or beneficial owners residing outside India
- The Company should file MGT 3 within 30 days from opening a Foreign Register giving address where such register is maintained.
- Declaration in respect of Beneficial Interest in any shares
 - a) The registered owner to file MGT 4 with the Company within 30 days from the date on which name is entered
 - b) The beneficial owners will file MGT 5 with Company within 30 days from the date of acquisition of beneficial interest
 - c) The Company to file MGT 6 with ROC within 30 days from receipt of the declaration.

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- Annual Return to be filed in MGT 7
- Annual Return of following companies
 - a) Listed Companies
 - b) Paid up Capital of Rs.10 crores
 - c) Turnover of Rs.50 crores
- To be certified by practising CS – MGT 8
- The extract of AR to be attached with Board Report in form MGT 9

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Proxies

- A member can appoint another person as a proxy who is also a member of the Company
- A proxy can act on behalf of not more than 50 members and holding 10% of shares
- In case of one person is holding more than 10% then his proxy cannot act as proxy for another person

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Voting through Electronic means

Applicable

- Listed Company
- Company having 1000 members or more

Requirements

- Secured System
- Reasonably secure from unauthorised access or misuse
- Provide reasonable level of reliability and correct operation
- Suited to perform intended operation
- Adhere to generally accepted security procedures
- No unauthorised access, use disclosures, disruptions, modifications or destructions

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- The Company has to inform the members of such electronic method of voting
- The procedure for such voting should be explained.
- The Company should give Login ID and facility to create password
- Advertisement to released five days in advance relating to electronic voting
- After voting period, the voting portal will be blocked
- A scrutiniser will be appointed – Independent CA, CS, CMA or advocate

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- Postal Ballot
- Send notice to all shareholders.
- The shareholders to respond within 30 days by writing on postal ballot.
- Advertisement to be published in vernacular and English Newspapers
- Notice of postal ballots to be placed on website of the Company
- Appoint Scrutiniser
- Postal ballot should be kept in safe custody of the scrutiniser and not to disclose the identity of the shareholder.
- Within seven days from the last date of receipt of postal ballot scrutiniser will provide report

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- The postal ballot to be handed over to the Company after the Chairman signs the minutes
- Section 110 (1)(a) : following matters can only be transacted through postal ballot
 - a) Alteration of objects
 - b) Alteration of articles
 - c) Change of registered office outside city limits
 - d) Change in objects of the issue
 - e) Issue of shares with differential voting rights
 - f) Variations in rights of shares
 - g) Buy back of shares
 - h) Election of director
 - i) Sale of whole or substantially the undertaking
 - j) Giving loan/guarantee in excess of limit specified u/s 186
- Not applicable to OPC and Companies with less than 200 members

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Maintenance of records in Electronic Form

- Applicable
 - a) Listed Companies
 - b) Companies having 1000 shareholders
- Security
 - a) MD, CS and any other director or officer as Board may decide will be responsible for security
 - b) Provide adequate protection against unauthorised access, alteration or tampering
 - c) Ensure against loss
 - d) Ensure that computer systems, software and hardware are adequately secured
 - e) Capable of being reproduced or copied later
 - f) Ensure that the records cannot be altered or erased
 - g) Take back up every day
 - h) Limit access
 - i) Arrange index
- Penalty
 - In case of default – penalty of Rs.5000 plus Rs.500 per day for continuing default

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Corporate Social Responsibility-135 (CSR) - Rules

- Mandatory provisions introduced to ensure Corporate's contribution for the benefit of the society.
- CSR is a commitment by organization towards society & not a mere charity or donation. It is a visible contribution to social good.
- No penalty prescribed for non contribution to CSR however it has to report the same with reasons to all stake holders through Board's report.
- Every Company Having:
 - Net worth of Rs. 500 crore or more or;
 - Turnover of Rs. 1000 Crore or more or;
 - Net profits of Rs. 5 Crore or more during any financial year
- shall constitute **CSR Committee** of Board consisting of 3 or more directors, 1 of which shall be independent director.

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CSR Contd...

- The CSR Committee shall,—
 - (a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII and as per operating provisions provided in CSR Rules;
 - (b) recommend the amount of expenditure to be incurred on the activities referred and
 - (c) monitor the CSR Policy of the company from time to time.
- Responsibility of the Board of every company to ensure that the company **spends**, in every financial year, **at least 2% of the average net profits** of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy.
- Net profit is PBT excluding profits of foreign branches (CSR Rules 3 (d))
- The list of CSR activities indicated in Schedule VII which generally includes eradicating extreme hunger and poverty, promotion of education, gender equality & empowering women, ensuring environmental sustainability, employment, enhancing vocational skills around the local area/s of the Company where it operates.
- The Company shall give preference to the local areas

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CSR Contd...

- The list of CSR activities indicated in Schedule VII which includes eradicating extreme hunger and poverty, promotion of education, gender equality & empowering women, ensuring environmental sustainability, employment, enhancing vocational skills around the local area/s of the Company where it operates.
- CSR activity could be a project or programme different from normal business.
- CSR could be done through a trust or charitable company formed in India by contributing company or by others. Contributing company should specify the projects to be done & utilization of funds & should have monitoring mechanism. Operating companies should have 3 years track record. (CSR Rules)
- A report by Board of Directors – format prescribed in CSR rules. It will also be published on the companies' website. Reporting to start from FY 2014-15.
- Donation or funding to group trust or charitable company, whether hit by other provisions?

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ACCOUNTS - Rules

Maintaining books of accounts in electronic mode

- a) Information should be complete and shall remain unaltered.
- b) Should be capable of being displayed in legible form
- c) Proper system of storage, retrieval, display or printout.
- d) The back up of all data whether located in India or abroad should be kept in India
- e) The company should provide on annual basis :
 - a) Name of the service provider
 - b) Internet protocol address of the service provider
 - c) Location of the service provider
 - d) Where maintained on cloud – such address as provided by service provider

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- Manner of circulation of financial statements in certain cases
 - Applicable to
 - Listed companies
 - Public companies – networth of Rs.1 crores and turnover of Rs.10 crores
 - The financial statements may be sent by electronic mode whose email id is registered
- CFS :
- No CFS to be prepared is no subsidiaries and only associates exists – for the year 2014-15
 - If the intermediate WOS not required to make CFS unless parent is situated outside India.
 - File CFS in AOC 4 CFS form

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Audit - Rules

Internal Audit

- Mandatory for following companies
 - a) Listed Company
 - b) Unlisted Public Companies
 - a. Paid up capital of Rs.50 crores during preceding financial year
 - b. Turnover of 200 cr during preceding financial year
 - c. Outstanding loans from banks/financial institution more than 100 cr any time during preceding financial year
 - d. Outstanding deposits Rs.25 crores at any point of time during preceding financial year
 - c) Every private company
 - a. Turnover of Rs.200 crores during the preceding financial year
 - b. Outstanding loans or borrowings from bank/FI – Rs.100 crore during preceding financial year.

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Rotation of Auditors

- Following Class of Companies (Section 139(2))
 - a) All unlisted public companies having paid up share capital of Rs.10 crore or more
 - b) All private limited companies having paid up share capital of Rs.20 crores
 - c) All companies having paid up share capital of (a) and (b) above but having public borrowings from banks and financial institution or deposit of Rs.50 crores.
- Removal of Auditor before expiry of the term
- Application to Central Government to be made (Form ADT 2)
- Application within 30 days of the resolution passed by the Board
- Company to hold EOGM within 60 days from the date of receipt of approval of CG for passing the Special Resolution.

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• Resignation of Auditors

- Section 140(2) – When an auditor has resigned – he shall file Form ADT 3

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Threshold Limit - Disqualification of Auditor

- Investment in securities
 - Relative of Auditor can hold securities in the Company of a face value upto Rs.1 lac.
 - (corrective measure to be taken within 60 days)
- Indebtedness
 - A person, relative or his partner is indebted to the Company, holding company, subsidiary, associate, fellow subsidiary – in excess of Rs.5 lacs
- Guarantee or security
 - Above persons have given guarantee or security for above companies – in excess of Rs.5 lacs
- Business Purpose
 - Any transaction entered into for commercial purpose
 - a) Any professional services permitted under CA Act
 - b) Commercial transactions in ordinary course of business at arms length price – telecommunication, airlines, hospitals, hotels and such other similar business

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Audit Report

- Other matters to be included in Auditors Report
 - a) Pending litigation – impact to be disclosed on its financial position
 - b) Made provision for foreseeable losses on long term contract including derivative contracts
 - c) Delay in transferring amounts required to be transferred to IEPF.
- Fraud Reporting – Whistleblower
- Procedure to be followed by the Auditor when he has sufficient reason to believe that a fraud is or being committed :
 - a) He shall forward his report to Board or Audit Committee and require them to respond within 45 days
 - b) If Board or Audit Committee responds within 45 days, to inform CG with the reply received from Board or Audit Committee within 15 days
 - c) If no reply received from Board or Audit Committee within 45 days, he should report to CG along with his report sent to the Board/AC.

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Fraud - S 447

"**fraud**" in relation to affairs of a company or any body corporate, includes

- any act, omission, concealment of any fact, abuse of position committed by any person or any other person with the connivance in any manner,
 - with intent to deceive
 - to gain undue advantage from
 - or to injure the interests of, the company or its shareholders or its creditors or any other person
- whether or not there is any wrongful gain or wrongful loss;
 - (i) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
 - (ii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

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Auditors Responsibilities

- Auditor is required to report to the Central Government any material fraud detected - Role as a whistle blower.

Material Fraud =

- (a) Frauds occurring frequently
- (b) 5% of Profits
- (c) 2% of Turnover
- Non reporting of fraud to CG attracts penalty - min Rs.1 lac - max Rs.5 lakhs.

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Reporting of Frauds

- Guidance note of ICAI
- Section 143(12) – "has reason to believe"
- The fraudulent transactions to be part of accounts
- Evidence of fraud should be there.
- Don't presume or assume fraud.
- Auditor shall forward his report to the Board.
- Seeking their reply/observations within 45 days.
- forward his report & board reply to the Central Government
- If no response - forward report to the Central Government alongwith the intimation that he has not got the reply from board within 45 days.

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APPOINTMENT AND QUALIFICATION OF DIRECTORS - Rules

- DIN is mandatory before any person is appointed as Director
- Woman Director – Criteria
 - a) Listed Company
 - b) Other public company
 - a. Paid up capital of Rs.100 crore
 - b. Turnover of Rs.300 crore
- (as per last audited accounts)
- In case of vacancy, the same may be filled up immediate next BM or three months whichever is later

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Independent Director

- Class of Companies – Shall have atleast two directors as independent directors
 - a) Public Companies – paid up capital of Rs.10 crore
 - b) Public Companies – having turnover Rs.100 crore
 - c) Public Companies – outstanding loans, debentures and deposits exceeding 50 crore
- Small Shareholder Director
- Applicable to Listed Company
- When : Notice by
 - a) 1000 small shareholders or
 - b) 1/10th of total number of such shareholders
 - Whichever is lower
- Have a small shareholder director elected by small shareholders

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MEETINGS OF BOARD AND ITS POWERS

- Rules

- Meeting of Board through video conferencing or other audio visual means
 - a) Ensure and make necessary arrangements to avoid failure of video or audio visual connection
 - b) To ensure availability of proper equipments for effective participation
 - c) To record proceedings and prepare the minutes of the meeting
 - d) To store for safe keeping
 - e) To ensure that no other person except persons authorised have access
 - f) The participants are able to hear and see other participants clearly

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- Procedure for conducting the meeting
 - a) Notice will inform the directors of option to participate through video conferencing
 - b) Director intending to participate through video conferencing will inform the Company
 - c) The director may also intimate at the beginning of the calendar year and that will be valid for the entire year.
 - d) In case no intimation is received it will be assumed that he will attend the meeting in person
 - e) The chairman will take roll call and note the details of the directors including from where they are participating.
 - f) The scheduled place of the meeting will be the place where the meeting is convened
 - g) Every participants will identify itself for record before speaking on any agenda
 - h) If the audio or video is garbled or interrupted, the Chairman will require the same to be repeated
 - i) The meeting shall disclose the names of the person who attended meeting through video conferencing

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- Matters which cannot be dealt with in Video Conferencing Meetings

- a) Approval of Annual Financial Statements
- b) Approval of Board Report
- c) Approval of prospectus
- d) Audit Committee meetings for approval of accounts
- e) Approval of matters concerning amalgamation, mergers, demergers, acquisition or takeovers

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Committees of the Board

- Applicable
- Listed Companies
- Public Companies – paid up capital of Rs.10 crore
- Public Companies – turnover of Rs.100 crore
- Public Companies – aggregate outstanding loans, debentures, or deposits – Rs.50 crores
- Shall constitute the following committees
- Audit
- Nomination
- Remuneration

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Powers of the Board

- Following can be exercised only at the Board Meetings
- a) To make political contribution
- b) To appoint or remove KMP
- c) To take note of appointment of one level below KMP
- d) To appoint Internal Auditors and Secretarial Auditor
- e) To take note of Directors interest and Shareholding
- f) To buy sell investments held by the Company constituting 5% of paid up capital and free reserves of the investee company
- g) To invite or accept or renew public deposits
- h) To review or change the terms and conditions of public deposits
- i) To approve quarterly half yearly and annual financial statements or financial results

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Additional Disclosures in Director's Report (Sec 134)

- Extract of Annual Return
- Number of meetings of the Board
- A statement on declaration given by independent directors
- Company's policy on directors' appointment & remuneration including criteria for determining qualifications, positive attributes, independence & other matters
- Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Auditors & the **CS in his secretarial audit report**
- Particulars of loans, guarantees or investments
- Particulars of contracts or arrangements with related parties
- Material changes & commitments, affecting the financial position of the company;
- 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

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Director's Report Disclosure contd...

- Details about the policy developed & implemented on CSR initiatives
- Other matters as prescribed in Rule 9.10.
- The **Directors' responsibility statement** to include following:
 - The directors have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems is adequate and operating effectively
 - In case of listed companies, the directors has laid down **internal financial controls** to be followed by the company & that such internal financial controls are **adequate** and were **operating** effectively;
 - Listed company and every other public company having prescribed paid-up share capital, to attach a statement indicating the manner in which **formal annual evaluation** has been made by the **Board of its own performance** and that of its committees and individual directors

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APPOINTMENT AND REMUNERATION - Rules

- Unlisted Companies
- Subsidiaries of Listed Companies
- May pay without approval of CG – remuneration to Directors in excess of limits specified in Schedule V
- Procedure to be followed in that case
 - a) Remuneration to be approved by Board – In case of Nomination and Remuneration Committee is applicable – approval of the same
 - b) No default in payment of debts to bank/financial institution, public deposits, debentures, interest, preference redemption,
 - c) Special Resolution for a payment not exceeding three years
 - d) Justification for payment beyond the limits
 - e) Balance sheet and Annual return within time limits

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KMP

- Listed company
- Unlisted Public Company paid up share capital of Rs.10 cr
- To appoint a KMP
- Whole time Company Secretary
- Company with paid up share capital of Rs.5 crore – Whole time Company Secretary.

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Depreciation

Accounting Standard AS6 deals with Depreciation

Depreciation is defined as :

It is a measure of the wearing out, consumption or other loss of value arising from use

It is allocated so as to charge fair proportion in each accounting period

It includes amortisation where useful life is predetermined

Depreciable Asset is defined as

- (a) Expected to be used in more than one accounting period
- (b) Have a limited useful life
- (c) Held by enterprise for use in production, supply of goods/services, rentals and administration

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Depreciation is based on the following

- Carrying amount
- Expected Useful Life
- Estimated residual value

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Useful Life

- Predetermined based on contractual term
- Extraction or consumption
- Physical deterioration or wear and tear
- Repair and Maintenance policy of the company
- Nature of usage – hotel, transport car vs private vehicles
- obsolescence

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How to estimate useful life

- Matter of judgement by management
- Based on technical
- Subject to review periodically
- Statutes provides basis for depreciation – Schedule II

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Movements during the year

- Depreciation to be provided on pro-rata basis for
 - Additions
 - Sold
 - Discarded
 - Demolished
 - Destroyed

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Schedule II of the Companies Act

From the date this Schedule comes into effect, the carrying amount of the asset as on that date-

- (a) shall be depreciated over the remaining useful life of the asset as on Schedule;
- (b) after retaining the residual value, *may be recognised* in the opening balance of retained earnings where the remaining useful life of an asset is nil. – This is optional as per MCA clarification

The Schedule has come into effect from 1st April 2014.

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Schedule II

For Tangible Asset

- Depreciation includes amortization
- The Schedule does not apply to Electricity Companies
- Residual value shall not be more than 5% of the cost of assets
 - Residual value should be based on current estimates not future
- useful life/ residual value shall not ordinarily be different.
- Useful life vs Economic Life – policy of sale of cars after 3 years
- If different then disclose such difference and support by Technical Advice
 - To disclose which difference – the amount of depreciation or the useful life
- In case of Sch XIV – one can take higher rate than provided.
- In Sch II one can estimate higher or lower number of useful life.

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Extra Shift Depreciation

- No extra shift where NESD is mentioned against a particular class of assets
- 50% extra for double shift – pro rata for the period of working
- 100% extra for triple shift – pro rata for the period of working

Problem : the above will change the useful life and shorten the same.

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For Intangible Asset

- As per AS 26 i.e. Intangible Asset other than BOT
 - As per estimated useful life of the asset
 - Based on production, output etc.
 - BOT - As per Mode of Amortisation
 - Mode of Amortisation
- Amortisation rate = $\frac{\text{Amortisation Amount}}{\text{Cost Of Intangible Asset}} \times 100$
- Amortisation Amount = $\frac{\text{Cost of Intangible Asset} \times \text{Actual Revenue for the year}}{\text{Projected Revenue from intangible asset}}$
- Method : WDV/Straight line**

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Example:-

- Cost of creation of Intangible Assets : Rs 500/- Crores.
- Total period of Agreement : 20 Years
- Time used for creation of intangible Assets : 2 Years
- Intangible Assets to be amortized in : 18 Years
- Total Revenue expected over 18 years : Rs.600 crores
- Revenue in first year : Rs.5 crore
- Based on this the charge for first year would be Rs. 4.16 Crore (approximately)(i.e. Rs. 5/Rs. 600 X Rs 500 Crores) which would be charged to profit and loss and 0.83% (i.e. Rs. 4.16 Crore/Rs 500 Crore x 100) is amortization rate for the first year.
- If any other method used to work out Amortisation, then disclose the method.

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Depreciation Disclosure

The following information shall also be disclosed in the accounts, namely:-

- Depreciation methods used; and
- The useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

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Component Accounting

- If a significant part of an asset has different useful life, work out depreciation separately.
- This is as per IFRS-IndAs
- Example Automobile –Tire and Car has different useful life
- How to allocate cost to various significant component
- What about replacements
- Useful life of component greater than the whole asset ?
Choice if component can be independently used
- Voluntary for 2014-15
- mandatory for financial statements in respect of financial years commencing on or after the 1st April,2015.

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Component Accounting...2

- Component to be segregated if cost more than 10% and useful life different
- How to calculate component cost :
 - Break up by vendor
 - Technical certificate
 - Proportionate to current cost
- Whether replacement accounting relating to components to be considered – Refer Application Guidance from ICAI. Refer para 8.3 of AS10.

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ANY QUERIES?



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