

ACCOUNTS OF COMPANIES



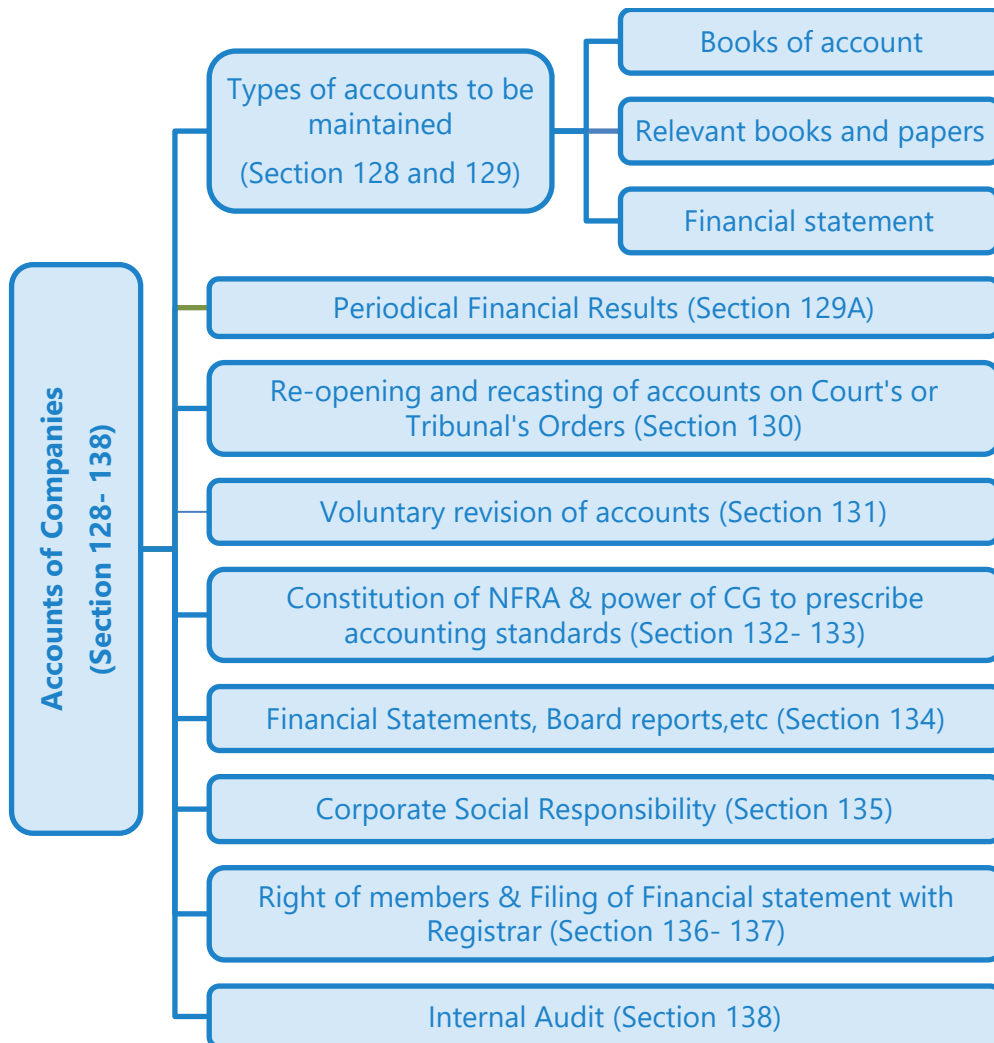
LEARNING OUTCOMES

At the end of this chapter, you will be able to:

- ♦ Gain knowledge about preparation and maintenance of books of account etc. to be kept by company.
- ♦ Identify the provisions as to preparation and filing of financial statements and other related matters.
- ♦ Explain about the re-opening and revision of financial statements.
- ♦ Gain knowledge about constitution, working and power of National Financial Reporting Authority (NFRA).
- ♦ Comprehend various concepts related to Corporate Social Responsibility (CSR).
- ♦ Explain procedure related to internal audit of companies.

CHAPTER OVERVIEW

This chapter explains the provisions of Chapter IX of the Companies Act, 2013 (hereinafter also referred to as “the Act” or “this Act”), consisting of sections 128 to 138 dealing with the accounts of companies. Chapter will also explain procedural aspects described in relevant rules notified in this context. Following diagram depicts the arrangement of relevant sections.

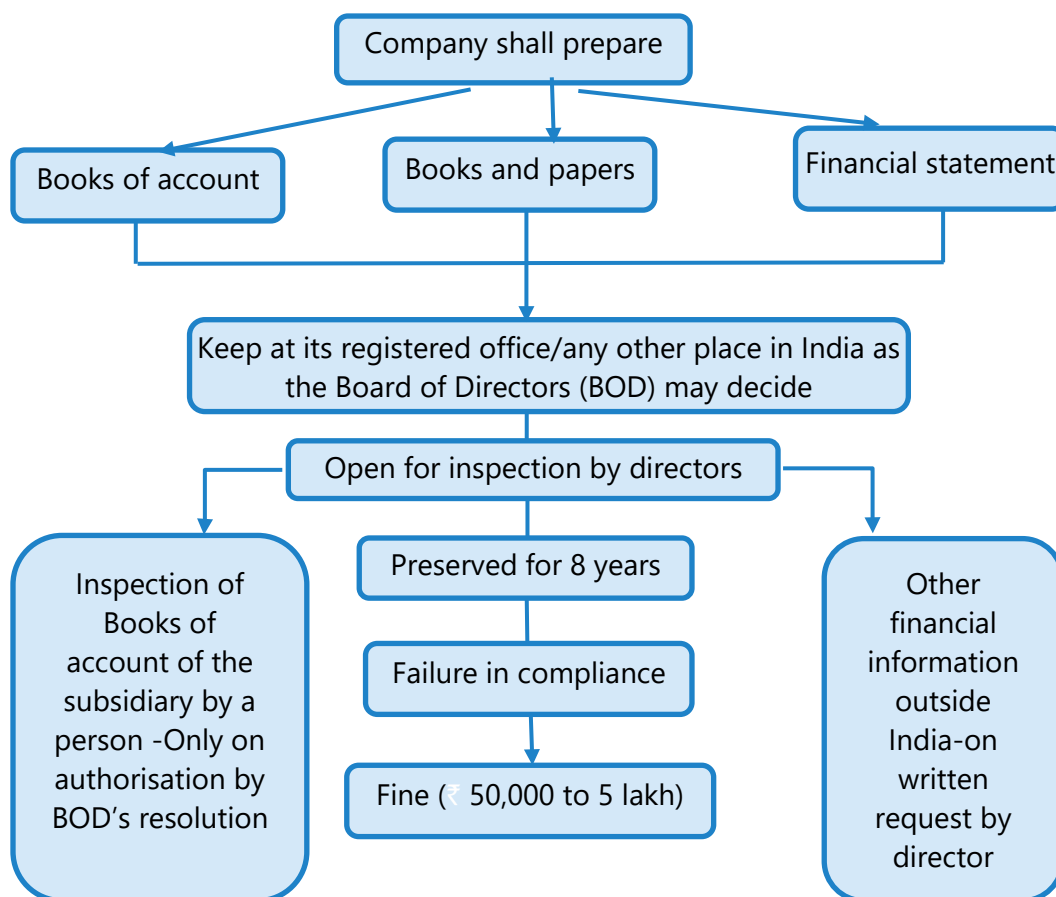


1. INTRODUCTION

Chapter IX	Consists of sections 128 to 138 as well as the Companies (Accounts) Rules, 2014.
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Directors who are agents of shareholders and acting in fiduciary capacity, required to report in order to disclose financial results (financial performance and position through financial results) to shareholders so that the shareholders remain aware of the working and affairs of the company. As stated earlier also, chapter IX of the Companies Act, 2013, lays down various provisions related to maintenance of proper books of account of the companies and allied aspects that are explained in this chapter.

2. BOOKS OF ACCOUNT, ETC., TO BE KEPT BY COMPANY [SECTION 128]



Every company shall prepare **books of account** and other relevant **books and records** and **financial statement** for every **financial year**.

Note:

(Despite these definition clauses already covered in chapter 1, a quick reference shall be handy to recapitulate)

1. As defined in Section 2(13) of the Act, the **“books of account”** includes records maintained in respect of
 - ❑ All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
 - ❑ All sales and purchases of goods and services by the company;
 - ❑ The assets and liabilities of the company; and
 - ❑ The items of cost as may be prescribed under section 148 (Cost Audit) of the Companies Act, 2013 (“Act”) in the case of a company which belongs to any class of companies specified under that section.
2. As per section 2(12) of this Act, the **“book and paper”** and **“book or paper”** include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.
3. Further as per section 2(40) of this Act, the **“financial statement”** in relation to a company, **includes-**
 - ❑ A balance sheet as at the end of the financial year;
 - ❑ A profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - ❑ Cash flow statement for the financial year with **exception** in case of one person company, small company, dormant company and private company (if such private company is a start-up and has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar¹);

¹ Vide exemption notification GSR 583(E) dated 13th June, 2017

- ❑ A statement of changes in equity, if applicable; and
- ❑ Any explanatory note annexed to, or forming part of, any document referred above.

It is worth noting here that for the purposes of this Act, the term '**start-up**' or "start-up company" means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and **recognised** as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

4. As per **section 2(41)** of this Act, the **Financial Year**, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

Example 1 - Mahindra Limited was incorporated as a company on 22nd February 2023. Its first financial year shall comprise of the period ending on the 31st day of the March of the following year i.e. 31st March 2024.

Two-year time from the date commencement of this Act was given to corporates to align their financial year to the provisions contained in 2(41). [Transition period]

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and which is required to follow a different financial year for consolidation of its accounts outside India, the **Central Government** may, on the basis of such application made in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

It is worth noting that in case of a specified IFSC public company and specified IFSC private company that is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required.

Earlier the power to hear and decide upon the application regarding different financial year for consolidation of its accounts outside India was vested with tribunal, which was assumed by Central Government through the Companies

(Amendment) Ordinance, 2018 dated 02.11.2018 (later repealed by the Companies (Amendment) Ordinance, 2019 dated 12.01.2019). This is the reason behind “why exemption notification specified above still carry the word tribunal” (which shall be read as Central Government now). Ordinance also provided that pending before the Tribunal shall be disposed of by the Tribunal in accordance with the provisions applicable to it before commencement of such ordinance.

BOOKS OF ACCOUNT SHOULD GIVE A TRUE AND FAIR VIEW AND MUST BE KEPT ON ACCRUAL BASIS AND DOUBLE-ENTRY SYSTEM OF ACCOUNTING

Section 128(1) requires these books of account should give a **true and fair view** of the **state of the affairs** of the company, including that of its branch office(s) and explain the transactions effected both at the registered office and its branches.



Section 128(1) also requires such books of account shall be kept on **accrual basis** and according to the **double entry system of accounting**. **Students are advised to take note:**

1. A **True and fair view** of the **state of the affairs** means that the financial statements are free from material misstatements and faithfully represents the financial performance and positioning of an entity.
2. **Accrual basis of accounting** is an accounting assumption, or an accounting concept followed in preparation of the financial statements, which warrants recording income and expenses **as they accrue** (earned or incurred); opposite to cash system when they are received or paid.
3. **Double entry system of accounting** is a method of recording any transaction of a business in a set of accounts, in which every transaction has a dual aspect of debit and credit and therefore, needs to be posted in at least two accounts. Double aspect enables an effective control of business because all the books of account must balance.

PLACE OF KEEPING BOOKS OF ACCOUNT

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



But first proviso to sub-section 1 provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of the *Companies (Accounts) Rules, 2014* in form AOC-5 giving full address of that other place.

MAINTENANCE OF BOOKS OF ACCOUNT IN ELECTRONIC FORM

Second proviso to section 128(1) allows company to keep books of account or other relevant papers in electronic mode as per manner specified in the **Rule 3** of the *Companies (Accounts) Rules, 2014*.



For the purposes of rule 3, the expression “**electronic mode**” includes **electronic form** and **electronic record** as defined in clause (r) and (t) respectively of sub-section (1) of section 2 of the Information Technology Act, 2000.

Remain accessible in India [Rule 3(1)]

The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, **at all times**, so as to be usable for subsequent reference.

Audit trail and edit log [Proviso to Rule 3(1)]

In order to ensure audit trail, in case of company which uses accounting software for maintaining its books of account, the proviso to rule 3(1) requires that:

- a. For the **financial year** commencing on or after the **1st day of April, 2023**,
- b. Every such company (which uses accounting software) shall use only such accounting software,
- c. Which has a feature of **recording audit trail** of each and every transaction,
- d. Creating an **edit log** of each change made in books of account along with the date when such changes were made and
- e. Ensuring that the **audit trail cannot be disabled**.

Retain in original or accurate form [Rule 3(2) and Rule 3(3)]

Sub-rule 2 requires the books of account and other relevant books and papers referred to in sub-rule (1) shall be **retained completely in the format** in which they were **originally generated, sent or received**, or in a format which shall

present **accurately** the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

Further sub-rule 3 requires the **information received from branch offices** shall not be altered and shall be kept in a manner where it shall depict what was **originally received** from the branches.

Proper storage, retrieval and legible display [Rule 3(4) and Rule 3(5)]

Sub-rule 4 requires the information in the electronic record of the document shall be capable of being **displayed in a legible form**.

Further sub-rule 5 requires there shall be a proper system for **storage, retrieval, display or printout** of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records **shall not be disposed** of or rendered unusable, unless permitted by law.

Proviso to sub-rule 5 requires the **back-up** of the books of account and other books and papers of the company **maintained in electronic mode**, including at a **place outside India**, if any, shall be kept in servers physically located in India on a **daily basis**.

Intimation to Registrar – Information of Service Provider [Rule 3(6)]

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

- a. The name of the service provider;
- b. The internet protocol (IP) address of service provider;
- c. The location of the service provider (wherever applicable);
- d. Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
- e. Where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

BOOKS OF ACCOUNT - BRANCH OFFICE [SUB-SECTION 2]

Where a company has a branch office in or outside India, it shall be deemed to have complied with the provisions of sub-section (1) if-

- ❑ Proper books of account relating to the transactions effected at the branch office are kept at that office, and
- ❑ Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place (referred to sub-section 1).

As per **Rule 4(1)** of the *Companies (Accounts) Rules, 2014*, the summarised returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

INSPECTION BY DIRECTORS [SUB-SECTION 3 & 4]

In case of books of account and other books and papers maintained by the company within India.

Any director can inspect the books of account and other books and papers maintained by the company within India during business hours. Hence same shall be kept open for inspection at the registered office of the company or at such other place in India.

In the case of financial information, if any, maintained outside the country

Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought under **Rule 4(2)** of the *Companies (Accounts) Rules, 2014*

Sub-rule 3 requires the company shall produce such financial information to the director within **fifteen days** of the date of receipt of the written request.

Note:

1. The financial information (referred in sub-rule 2 and 3 above) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

2. As per **sub-section 4**, where an inspection is made under sub-section 3, the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

Inspection in respect of any subsidiary company

The proviso to sub-section 3 provides that a person can inspect the books of account of the subsidiary, only on **authorisation** by way of the **board resolution**.

Period for preservation of books [Sub-section 5]

The **books of account**, together with **vouchers relevant to any entry** in such books, are required to be preserved in **good order** by the company for a period of **not less than eight years** immediately preceding the relevant financial year.



Note:

1. In case of a company incorporated less than eight years before the financial year, the books of account for the entire period preceding the financial year together with the vouchers shall be so preserved.
2. As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible and Penalty [Sub-section 6]

Following shall be punishable with fine **not less than fifty thousand rupees**, which **may extend to five lakh rupees**; if duty-bound to comply with provisions of this section (Section 128 of this Act) but contravene such provisions:

- ☐ Managing Director defined under section 2(54),
- ☐ Whole-Time Director, in charge of finance defined under section 2(94),
- ☐ Chief Financial Officer defined under section 2(19), or
- ☐ Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Illustration 1- True false

Statement – *Vouchers need not to be preserved as part of requirement of preserving books for period of 8 years.*

Answer

False

Reason – As per **section 128(5)** of the Companies Act, 2013, the **books of account**, together with **vouchers relevant to any entry** in such books, are required to be preserved in **good order** by the company for a period of **not less than eight years** immediately preceding the relevant financial year.

Illustration 2

Can XYZ Limited maintain its books of account on cash basis?

Answer

The Companies Act, 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and according to double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Limited cannot maintain its books of account on cash basis.



3. FINANCIAL STATEMENT [SECTION 129]

As per sub-section 1, the financial statement shall:

- ☐ Give a **true and fair view** of the state of affairs of the company or companies,
- ☐ Comply with the **accounting standards notified under section 133**, further the items contained in such financial statements shall be in accordance with the accounting standards and
- ☐ Shall be in the **form** or forms as may be provided for different class or classes of companies in **Schedule III**.

Note**1. Schedule III** has been divided into two divisions:

Division I deal with financial statement for a company whose financial statement are required to comply with the *Companies (Accounting Standards) Rules, 2021*⁵.

Division II deals with financial statement for a company whose financial statement is required to comply with the *Companies (Indian Accounting Standards) Rules, 2015*⁶.

2. Nothing contained in sub-section 1 to section 128 shall apply to any:

- Insurance company or
- Banking company or
- Company engaged in the generation or supply of electricity, or
- Other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

3. Further, if **matters which are not required to be disclosed** by Act governing the companies specified at point 2 above (such as *Insurance Act, 1938; Insurance Regulatory and Development Authority Act, 1999; Banking Regulation Act, 1949; or Electricity Act, 2003*), then **non-disclosure of such matters** shall **not be considered as not presenting a true and fair view** of the state of affairs of such company.

Note – Point 3 stated above can be further simplified in the sense that ‘Despite **non-disclosure of matters which are not required to be disclosed** by applicable governing Act, the financial statement of companies specified at point 2 above are said to **present a true and fair view** of the state of affairs.’

4. For the purposes of section 129, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

⁵ Vide notification GSR 432(E) dated 23rd June, 2021 as amended from time to time

⁶ Vide notification GSR 111(E) dated 16th February, 2015 as amended from time to time

LAYING OF FINANCIAL STATEMENTS AT AGM [SUB-SECTION 2]

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

CONSOLIDATED FINANCIAL STATEMENTS [SUB-SECTION 3]

Consolidation of financial Statement

Where a company has one or more subsidiaries or associate companies, it shall (in addition to financial statements provided under sub-section 2);

- ❑ Prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries, associate companies and joint ventures in the same form and manner as that of its own and in accordance with applicable accounting standards,
- ❑ Which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

Salient features of financial statement of Subsidiaries, Associates and JVs – Form [First proviso to Sub-section 3 read with rule 5]

The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first proviso to sub-section (3) of section 129 shall be in Form AOC-1 as per Rule 5 of the *Companies (Accounts) Rules, 2014*.

Manner of consolidation of Accounts [Second proviso to Sub-section 3 read with rule 6]

Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the *Companies (Accounts) Rules, 2014*, as explained below:

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

Exception to manner stated above

1. A company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III of the Act.

2. For a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint Ventures or both will not be required to comply with this rule of consolidation of financial statements in respect of associate companies or joint ventures or both, as the case may be, only for the financial year commencing from the 1st day of April, 2014 and ending on the 31st day of March, 2015.
3. Nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India commencing on or after 1st April 2014.

Exemptions from preparation of CFS

The preparation of consolidated financial statements by a company is not required if it meets the following conditions:

- a. It is a wholly owned subsidiary, or is a partially owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- b. It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in or outside India; and
- c. Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

Preparation, adoption and audit of consolidated financial statements [Sub-section 4]

The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, also apply to the consolidated financial statements.

DISCLOSURE OF DEVIATION FROM ACCOUNTING STANDARDS ALONG WITH REASON AND EFFECT THEREOF [SUB-SECTION 5]

Without prejudice to sub-section (1), where the financial statements of a company **do not comply** with the **accounting standards** referred to in sub-section (1), the company **shall disclose** in its financial statements, the **deviation** from the

accounting standards, the **reasons** for such deviation and the **financial effects**, if any, arising out of such deviation.

EXEMPTION BY CENTRAL GOVERNMENT IN PUBLIC INTEREST [SUB-SECTION 6]

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

Section 129 shall not apply to the **Government Companies engaged in defence production** to the extent of application of relevant Accounting Standard on segment reporting⁷

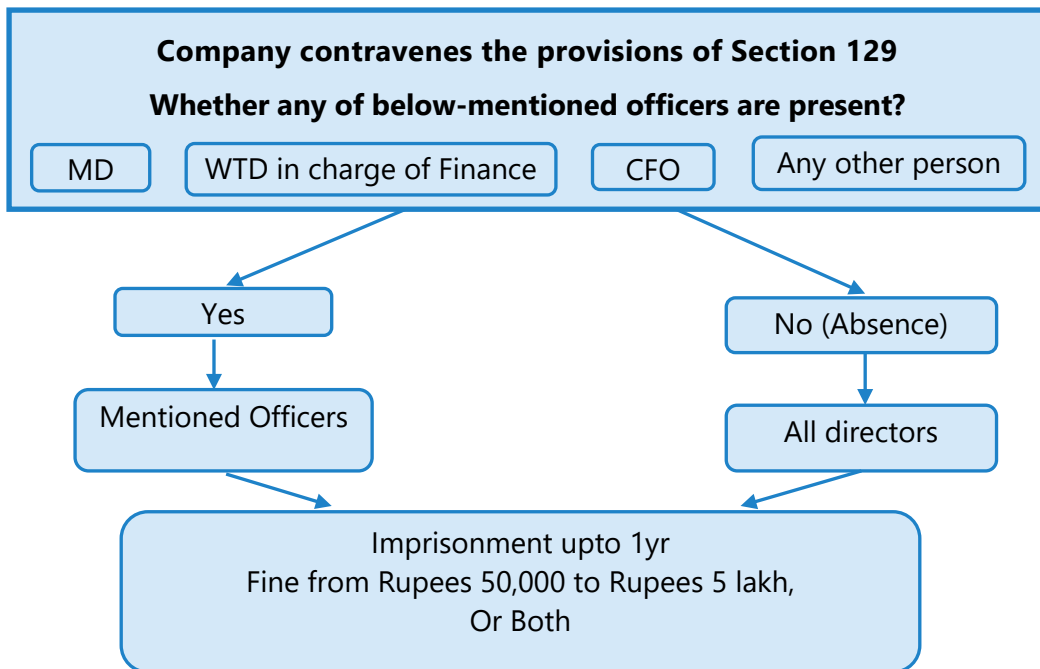
The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar⁸

PENALTY [SUB-SECTION 7]

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

⁷ Exemption originally granted vide notification number G.S.R. 463(E) dated the 5th June, 2015, later substituted vide notification number G.S.R. 802(E) dated 23.02.2018 to replace "AS-17" with relevant Accounting Standard

⁸ Vide notification number G.S.R. 582(E) dated 13th June, 2017



Note: For listed companies, provisions contained in Regulation 33 and 52 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 are to be applied in addition to provisions of section 129 of this Act.

Illustration 3

Modern Furniture Limited (MFL) is required to prepare the financial statement that comply with accounting standards and shall be in form specified in Schedule III. But the financial statement prepared and presented are not in compliance with applicable accounting standards, therefore MFL is required to disclose which of following:

- i. Deviation
- ii. Reason of deviation
- iii. Financial effects arise out of such deviation.

Options

- a. Only i
- b. Only i and ii
- c. Only i and iii
- d. All of i, ii, and iii

Answer – d

Reason – Where the financial statements of a company, which required to but do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.



4. PERIODICAL FINANCIAL RESULTS [SECTION 129A]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed:

- a. To prepare the financial results of the company on such **periodical basis** and in **such form** as may be prescribed;
- b. To obtain approval of the Board of Directors and **complete audit** or **limited review** of such periodical financial results in such manner as may be prescribed;
- c. File a copy with the Registrar within a period of **thirty days** of completion of the relevant period with such fees as may be prescribed.

Students are advised to take note:

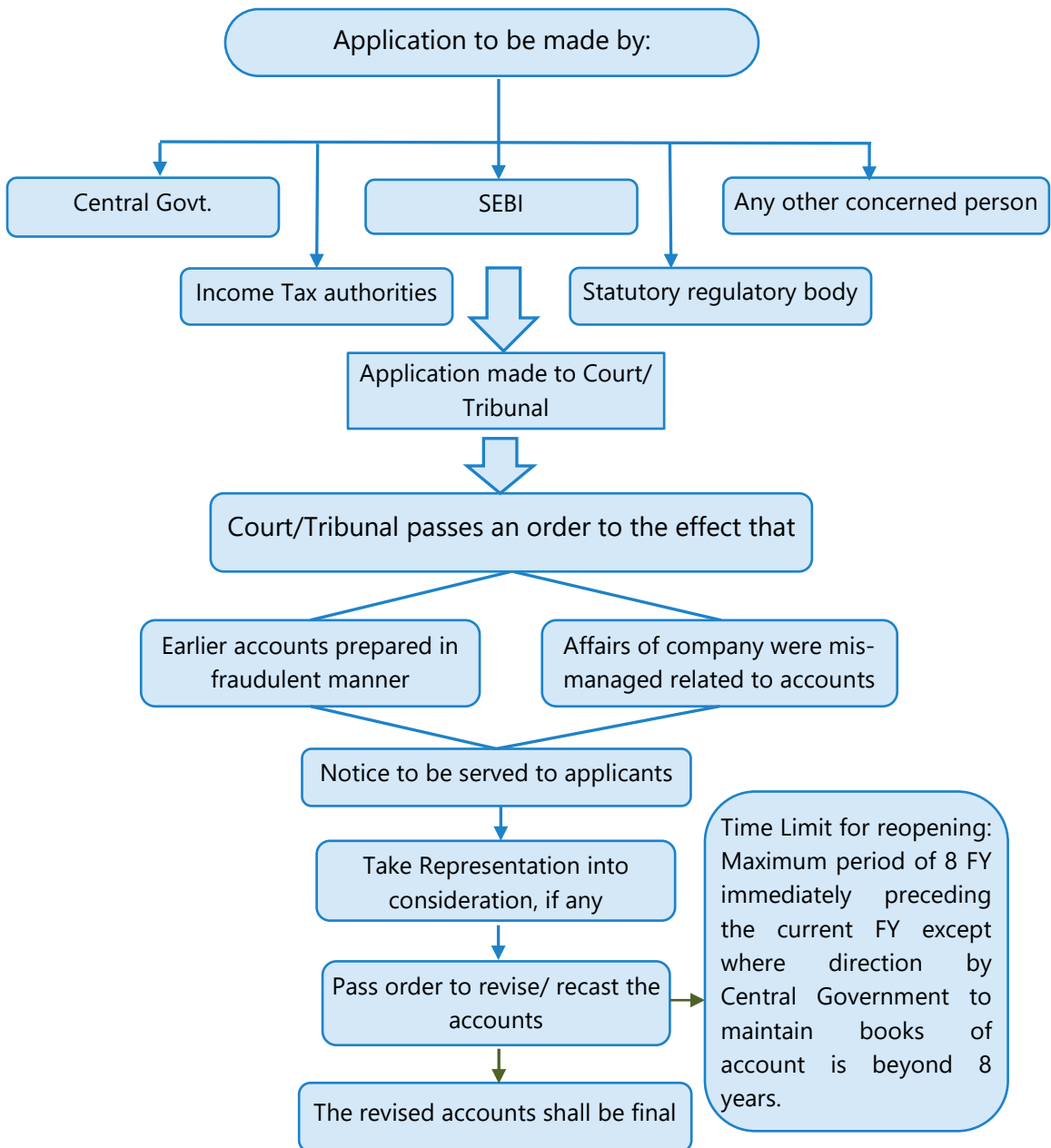
At present there are approximately over 11 lakh unlisted companies actively operating in India. Some of these are really large enough with widely-spread interests, that make corporate governance critical issue in case of such unlisted companies as well. Hence this new section inserted vide Amendment Act of 2020 aims to improve corporate governance of certain class or classes of unlisted companies by requiring them to prepare financial results on 'periodic' basis in addition to annual submission of financial reports.

Mind it, no rule has been prescribed or notification has been made as on date (30.04.2024) under the said section.



5. RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDERS [SECTION 130]

This section seeks to provide for the re-opening of books of account and recasting of financial statements.



COURT/TRIBUNAL ORDER FOR RE-OPENING OF ACCOUNTS [SUB-SECTION 1]

A company **shall not**:

- a. **re-open** its books of account and
- b. **recast** its financial statements,

Unless an **application in this regard is made by**

- a. the Central Government,
- b. the Income-tax authorities,
- c. the Securities and Exchange Board of India (SEBI),
- d. any other statutory regulatory body or authority or
- e. any person concerned.

& an **order** is made by a **court of competent jurisdiction or tribunal** to the effect

- a. That the relevant earlier accounts were prepared in a **fraudulent** manner; or
- b. The affairs of the company were **mismanaged** during the relevant period, casting a doubt on the reliability of financial statements.

Proviso to section 130(1) requires the Court or Tribunal, as the case may be, **shall:**

- ☐ Give **notice** to the Central Government, Income-tax authorities, SEBI, or any other statutory regulatory body or authority concerned, or any other person concerned and
- ☐ Take into consideration the **representations**, if any, made by them **before passing any order under this section.**

Sub-section 2 is sort of saving clause that provides, without prejudice to the provisions of this Act, the accounts so revised or re-casted; shall be final.

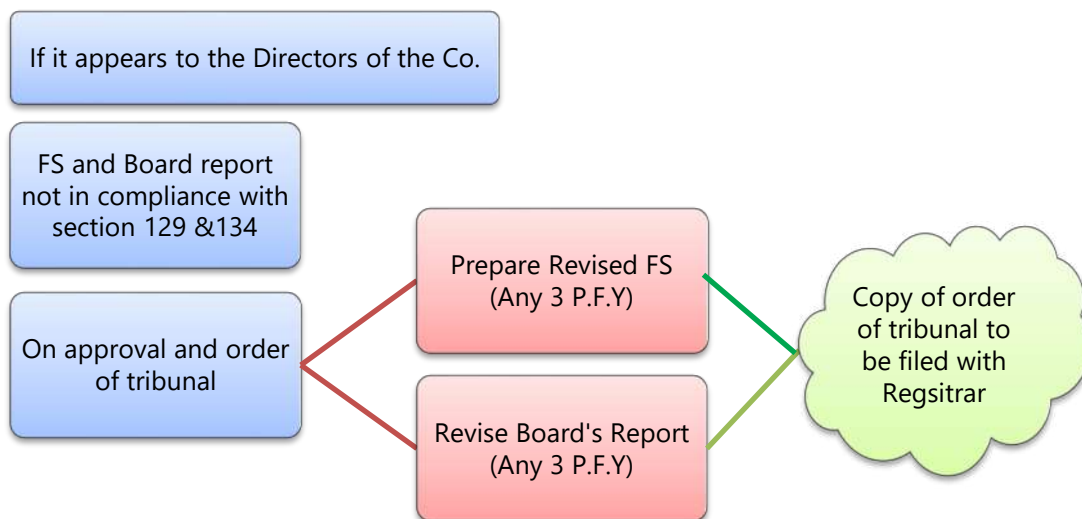
TIME LIMIT [SUB-SECTION 3]

Order of re-opening of books of account shall only relate to eight financial years immediately preceding the current financial year.

But where a direction has been issued by the Central Government (under the proviso to section 128(5) 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.



6. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [SECTION 131]



VOLUNTARY REVISION OF FINANCIAL STATEMENT OR BOARD'S REPORT ON THE APPROVAL OF TRIBUNAL [SUB-SECTION 1]

If it appears to the **directors** of a company that:

- a. the **financial statement** of the company does **not comply** with the provisions of **section 129**; or
- b. the **report of the Board** does **not comply** with the provisions of **section 134**



They may prepare **revised** financial statement or board's 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 Form No. NCLT 1 within fourteen days of the decision taken by the Board.

A **certified copy** of the **order** of the Tribunal shall be filed with the **Registrar of Companies within thirty days** of the date of receipt of the certified copy.

Note:

1. Section 131 deals with the revision of financial statement or boards report, as the case may be, on a **voluntary** basis, if the board of directors so opines, unlike section 130.
2. Such revised financial statement or report shall not be prepared or filed more than **once in a financial year**.
3. **Rule 77** of the *National Company Law Tribunal Rules, 2016* requires:
 - a. The **application** shall **contain** the following particulars/details, namely:
 - Financial year or period to which such accounts relates;
 - The name and contact details of the Managing Director, Chief Financial Officer, directors, Company Secretary and officer of the company responsible for making and maintaining such books of account and financial statement;
 - Where such accounts are audited, the name and contact details of the auditor or any former auditor who audited such accounts;
 - Copy of the Board resolution passed by the Board of Directors;
 - Grounds for seeking revision of financial statement or Board's Report;
 - In case the majority of the directors of company or the auditor of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such facts in the application.
 - b. The company shall **advertise the application** at least **fourteen days** before the date of hearing;
 - c. The Tribunal shall issue **notice to the auditor** of the original financial statement and heard him.
 - d. The Tribunal may pass **appropriate order** in the matter as may deem fit, after considering the application, hearing the auditor and/or any other person.

Note – As per first proviso to section 131(1), the tribunal shall also 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.

- e. On receipt of approval from Tribunal a **general meeting** may be called and notice of such general meeting along with reasons for change in financial statements may be published in newspaper in English and in vernacular language.

Note – As per third proviso to section 131(1), 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.

- f. In the general meeting, the **revised financial statements**, statement of directors and the statement of auditors may be **put up for consideration** before a decision is taken on **adoption of the revised financial statements**.
- g. On approval in the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the **Registrar** of Companies **within thirty days** of the date of approval by the general meeting.

SCOPE OF REVISIONS [SUB-SECTION 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. **Correction** in respect of which the previous financial statement does not **comply with** the provisions of **section 129**; and
- b. **Correction** in respect of which the previous board report does not **comply with** the provisions of **section 134**; and
- c. Making of any **necessary consequential alternation**.

FRAMING OF RULES BY THE CENTRAL GOVERNMENT IN RELATION TO REVISED FINANCIAL STATEMENT/DIRECTOR'S REPORT [SUB-SECTION 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 director's 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. **Steps required to be taken by the directors.**

Note:

Rule 77 of the *National Company Law Tribunal Rules, 2016*, notified in this regard by the Central Government.



7. CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SECTION 132]

CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY (REFERRED AS TO NFRA OR THE AUTHORITY) [SUB-SECTION 1]

The Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

Note:

The Central Government hereby appoints the 1st October 2018 as the date of constitution of National Financial Reporting Authority, with head office at New Delhi (as require by sub-section 12).

Extra Reading (only to lay the foundation)

Provisions pertaining to NFRA and Power vested with NFRA are applicable only in context of those companies and bodies corporate that are governed by the NFRA, hence at outset, it is essential to list-out them.

As per rule 3 of the *National Financial Reporting Authority Rules 2018*, the Authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:

- a. Companies whose securities are listed on any stock exchange in India or outside India;

- b.** Unlisted public companies having paid-up capital of not less than rupees five hundred crore or having annual turnover of not less than rupees one thousand crore or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crore as on the 31st March of immediately preceding financial year;
- c.** Insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;
- d.** Body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and
- e.** A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net worth of such subsidiary or associate company exceeds twenty percent of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

FUNCTIONS AND DUTIES OF THE NFRA [SUB-SECTION 1A AND 2]

Sub-section 1A to section 132 provides that, National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

Further sub-section 2 to section 132 read with **rule 4, 6 to 9** of the *National Financial Reporting Authority Rules 2018* lays down the functions and duties that NFRA shall perform, namely:

The Authority shall **protect the public interest** and the **interests of investors, creditors and others associated** with the companies or bodies corporate by establishing **high quality standards of accounting and auditing** and exercising effective **oversight of accounting functions** performed by the companies and bodies corporate and auditing functions performed by auditors.

Without prejudice to the generality, the Authority in particular shall: -

- a. **Maintain** details of **particulars of auditors** appointed in the companies and bodies corporate governed by NFRA;
- b. **Recommend accounting standards and auditing standards** for approval by the Central Government;

Note:

For the purpose of recommending accounting standards or auditing standards for approval by the Central Government, Rule 6 requires, the NFRA:

- ☐ Shall receive recommendations from the Institute of Chartered Accountants of India (ICAI) on proposals for new accounting standards or auditing standards or for Amendment to existing accounting standards or auditing standards;
- ☐ May seek additional information from the ICAI on the recommendations received under clause (a), if required.

The Authority shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

- c. **Monitor and enforce compliance** with accounting standards and auditing standards;

Note:

For the purpose of monitoring and enforcing compliance with **accounting standards** under the Act by a company or a body corporate, Rule 7 requires NFRA:

1. May review the financial statements of such company or body corporate, as the case may be, and if so required, direct such company or body corporate or its auditor by a written notice, to provide further information or explanation or any relevant documents relating to such company or body corporate, within such reasonable time as may be specified in the notice.
2. May require the personal presence of the officers of the company or body corporate and its auditor for seeking additional information or

explanation in connection with the review of the financial statements of such company or body corporate.

3. Shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.
4. Where the Authority finds or has reason to believe that any accounting standard has or may have been violated, it may decide on the further course of investigation or enforcement action through its concerned Division.

For the purpose of monitoring and enforcing compliance with **auditing standards** under the Act by a company or a body corporate, Rule 8 requires NFRA:

1. May review working papers (including audit plan and other audit documents) and communications related to the audit;
2. May evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and
3. May perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.
4. May require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
5. May seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
6. Shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
7. Shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

8. Shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.
9. May send a separate report containing proprietary or confidential information to the Central Government for its information.
10. Where the Authority finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

- d. **Oversee the quality of service of the professions** associated with ensuring compliance with such standards and **suggest measures for improvement** in the quality of service;

Notes

1. Rule 9 provides, on the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
2. It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.
3. The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
4. The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
5. The NFRA may take the assistance of experts for its oversight and monitoring activities.

- e. **Promote awareness** in relation to the compliance of accounting standards and auditing standards;
- f. **Co-operate** with **national and international organisations** of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and
- g. Perform such **other functions and duties** as may be **necessary or incidental** to the aforesaid functions and duties.

Note:

The Central Government may,

- ☐ By notification,
- ☐ Delegate any of its powers or functions under the Act to NFRA, **other than** the power to make rules;
- ☐ Subject to such conditions, limitations and restrictions as may be specified in such notification.

Sub-section 2 has overriding effects anything contained in any other law for the time being in force.

COMPOSITION OF NFRA [SUB-SECTION 3, 3A, 3B]

The NFRA shall consist of

- a. **Chairperson**, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law and
- b. Such other members **not exceeding fifteen** consisting of **part-time and full-time members**.

Each division of the NFRA shall be presided over by the Chairperson or a full-time member authorised by the Chairperson.

There shall be an executive body of the NFRA consisting of the Chairperson and full-time members of such Authority for efficient discharge of its functions.

Chairperson and Members shall be appointed by the Central Government in the manner and on the terms as prescribed under the *National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018*.

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.

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.

The following persons **shall** be appointed as **part time members** of NFRA, namely:

- a. One member to represent the MCA, who shall be an officer not below the rank of Joint Secretary, ex-officio;
- b. One member to represent the CAG of India, who shall be an officer not below the rank of Accountant General or Principal Director, ex-officio;
- c. One member to represent the RBI, who shall be an officer not below the rank of Executive Director, ex-officio;
- d. One member to represent the SEBI, who shall be an officer not below the rank of Executive Director, ex-officio;
- e. President, ICAI, ex-officio;
- f. Chairperson, Accounting Standards Board, ICAI, ex-officio;
- g. Chairperson, Auditing and Assurance Standards Board, ICAI, ex-officio; and
- h. Two experts from the field of accountancy, auditing, finance or law.

Sub-section 11 empowers the Central Government to 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.

POWER TO INVESTIGATE [SUB-SECTION 4]

NFRA shall have the **power to investigate**,

- a. Into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.
- b. Either *suo moto* or on a reference made to it by the Central Government in such manner as prescribed by rule 10 of the *National Financial Reporting Authority Rules, 2018*.

Students are advised to take note:

No other institute or body shall initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation under this section.

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

Sub-section 4 has overriding effects anything contained in any other law for the time being in force.

Quasi-judicial powers [Section 132(4)(b)]

NFRA 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:

- a. Discovery and production of books of account and other documents, at such place and at such time as may be specified by the NFRA;
- b. Summoning and enforcing the attendance of persons and examining them on oath;
- c. Inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- d. Issuing commissions for examination of witnesses or documents.

Power to make order [Section 132(4)(c)]

Where professional or other misconduct is proved, the NFRA shall have the power to **make order** for:

Imposing **penalty** as stated below:

Liable (in case of)	Minimum	Maximum
Individual	one lakh rupee	five times of the fees received
Firms	five lakh rupees	ten times of the fees received

Debarring the member or the firm

From	Minimum period	Maximum period
Appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or Performing any valuation as provided under Sec 247,	Six months	Ten years

APPEAL AGAINST ORDERS OF NFRA [SUB-SECTION 5]

Any person aggrieved by any order of the NFRA issued under clause (c) of sub-section (4), may prefer an appeal before the **Appellate Tribunal** in such manner and on payment of such fee as may be prescribed.

MEETINGS OF NFRA [SUB-SECTION 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 prescribed under Rule 3 of the *National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019*.

Note – NFRA may, meet at such other places in India as it deems fit.

MAINTENANCE OF BOOKS OF ACCOUNT BY NFRA & AUDIT THEREOF BY CAG [SUB-SECTION 13 & 14]

The National Financial Reporting Authority shall maintain 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 CAG of India prescribe.

The accounts of the NFRA shall be audited by the CAG of India at such intervals as may be specified by him.

Such accounts as certified by the CAG of India together with the audit report thereon shall be forwarded annually to the Central Government by the NFRA.

ANNUAL REPORT ON WORKING OF NFRA [SUB-SECTION 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.

Note:

Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein [i.e. mentioned in points (a) to (e) above].

Punishment in case of non-compliance - If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of NFRA Rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

**8. CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS [SECTION 133]**

Section 133 of the Companies Act, 2013 empowers the Central Government to prescribe the accounting standards or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA.

Proviso to section 133 suggests, until the NFRA is constituted under section 132 of the Companies Act, 2013, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory

Committee on Accounting Standards (NACAS) constituted under the previous company law. Since NFRA constituted in 2018, hence this proviso lost its operating effects.

Note:

Exercising the powers conferred under section 133, the MCA on behalf of Central Government so far has notified:

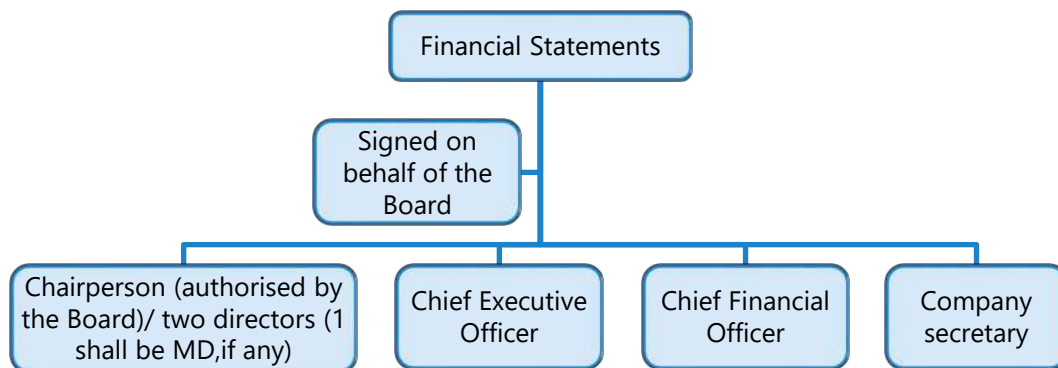
- ❑ Companies (Accounting Standards) Rules, 2021⁹ and
- ❑ Companies (Indian Accounting Standards) Rules, 2015¹⁰.

Regulation 48 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 supplement the provisions to section 133 of this Act by providing that, the listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

9. FINANCIAL STATEMENT, BOARD'S REPORT, ETC. [SECTION 134]

Section 134 deals with approval of financial statement by the Board of Directors in addition to report by the Board of Directors including Director's responsibility statement.

AUTHENTICATION OF FINANCIAL STATEMENTS [SUB-SECTION 1, 2, AND 7]



⁹ Vide notification GSR 432(E) dated 23rd June, 2021 as amended from time to time.

¹⁰ Vide notification GSR 111(E) dated 16th February, 2015 as amended from time to time.

As per sub-section 1, the financial statement shall be approved by the Board of Directors before they are signed on behalf of the Board for the submission to the auditor for his report thereon; at least by:

- a. The chairperson of the company where he is authorised by the Board **OR** the two directors out of which one shall be managing director, if any, **and**
- b. The Chief Executive Officer, **and**
- c. The Chief Financial Officer **and**
- d. The company secretary of the company, wherever they are appointed.



Consolidated financial statement, if any also need to be approved in similar manner. In the case of **one person company** financial statements shall be approved only by one director.

Sub-section 2 requires the auditors' report shall be attached to every financial statement.

Further sub-section 7 provides a signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy 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.

Illustration 4

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

Answer

Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated

financial statement, if any, shall be issued, circulated or published along with a copy each of:

- a. Any notes annexed to or forming part of such financial statement;
- b. The auditor's report; and
- c. The Board's report.

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

BOARD'S REPORT [SUB-SECTION 3, 3A, AND 4 READ WITH RULE 8 OF THE COMPANIES (ACCOUNTS) RULES, 2014]

Board's report shall be attached to statements laid before a company in general meeting.

Content of Board's Report

Section 134(3) read with rule 8 prescribes, the board report shall include:

- a. The **web address**, if any, where **annual return** referred to in sub-section (3) of section 92 (i.e., *Annual Return*) 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 (i.e. *Powers and duties of auditors....*), 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 (i.e., *Company to have board of board of Directors in relation to independent director*);
- e. In case of a company covered under sub-section (1) of section 178 (i.e., *Nomination and 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;

Clause (e) shall not apply to the **Government Companies**¹¹.

The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the registrar¹².

- 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 section 188 (1) (i.e., *Related Party Transactions*) in the **form AOC-2**;
- i.** The **state of the company's affairs**;
- j.** The amounts, if any, which it **proposes** to carry to any **reserves**;
- k.** The amount, if any, which it **recommends** should be paid by way of **dividend**;
- l.** **Material changes** and commitments, if any, **affecting the financial position** of the company which have **occurred between the end of the financial year** of the company to which the financial statements relate and the **date of the report**;
- m.** The **conservation of energy, technology absorption, foreign exchange earnings and outgo**, in such manner as may be prescribed;

The Government companies engaged in producing defence equipment is exempted from disclosure under clause m.¹³

- n.** A statement indicating development and implementation of a **risk management policy** for the company including identification therein of

¹¹ Exemption granted vide notification number G.S.R. 463(E) dated the 5th June, 2015.

¹² Vide notification number G.S.R. 582(E) dated 13th June, 2017.

¹³ Exemption granted vide Companies (Accounts) Second Amendment Rules, 2015 dated 4th September, 2015.

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 of twenty five crore rupees or more** calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which **formal annual evaluation of the performance of the Board, its Committees and of individual directors** has been made;

Clause (p) shall not apply to the **Government Companies**¹⁴

The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the registrar¹⁵.

- q.** Such other matters as prescribed Rule 8 of the *Companies (Accounts) Rules, 2014*, namely:

 - i. The **financial summary** or highlights;
 - ii. The change in the **nature of business**, if any;
 - iii. The details of **directors** or **key managerial personnel** who were **appointed** or have **resigned** during the year;
 - iiia. A statement regarding opinion of the Board with regard to **integrity, expertise** and **experience** (including the proficiency) of the **independent directors** appointed during the year.

Explanation - For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150 (i.e.,

¹⁴ Exemption granted vide notification number G.S.R. 463(E) dated the 5th June, 2015.

¹⁵ Vide notification number G.S.R. 582(E) dated 13th June, 2017.

Manner of selection of Independent Directors and maintenance of databank of independent directors).

- iv. The names of companies which have **become** or **ceased** to be its **subsidiaries, joint ventures** or **associate companies** during the year;
- v. The details relating to **deposits** such as **accepted** during the year; remained **unpaid or unclaimed** as at the end of the year; whether there has been any **default in repayment** of deposits or payment of interest thereon during the year and if so, **number of such cases and the total amount involved** at the beginning of the year, maximum during the year, and at the end of the year;
- vi. The details of **deposits** which are **not in compliance with the requirements of Chapter V** (i.e., *Acceptance of Deposits by Companies*) of the Act;
- vii. The details of **significant and material orders** passed by the regulators or courts or tribunals **impacting the going concern status** and company's operations in future;
- viii. The details in respect of **adequacy of internal financial controls** with reference to the Financial Statements.
- ix. A disclosure, as to whether **maintenance of cost records** as specified by the Central Government under sub-section (1) of section 148 of this Act, is required by the Company and accordingly such accounts and records are made and maintained,
- x. A statement that the company has complied with provisions relating to the constitution of **Internal Complaints Committee** under the ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013***.
- xi. The details of application made or **any proceeding pending** under the ***Insolvency and Bankruptcy Code, 2016*** during the year along-with their status as at the end of the financial year.
- xii. The details of **difference** between amount of the **valuation** done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

Note - Rule 8 of the Companies (Accounts) Rules, 2014 shall not apply to One Person Company or Small Company. Instead rule 8A is applicable upon them that is detailed on next page.

Students are advised to take note:

1. Where disclosures referred to in sub-section 3 to section 134 have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report. (It is worth noting earlier this benefit rest with specified IFSC public company¹⁶ and specified IFSC private company¹⁷ only, but w.e.f. 31.7.2018 extended to all)
2. Where the policy referred to in clause (e) or clause (o) of section 134(3) 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.
3. **Board's Report** shall be prepared based on the **standalone financial statement** of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

Abridged Board's report for One Person Company and Small Company [Sub-section 3A read with rule 8A of the Companies (Accounts) Rules, 2014]

The Board's Report of One Person Company and Small Company shall be prepared based on the stand-alone financial statement of the company, which shall be in abridged form and contain the following;

- 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 as referred to in sub-section (5) of section 134;
- d. 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;

¹⁶ Vide notification GSR 08(E) dated 4th January, 2017.

¹⁷ Vide notification GSR 09(E) dated 4th January, 2017.

- e. Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- f. The state of the company's affairs;
- g. The financial summary or highlights;
- h. Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- i. The details of directors who were appointed or have resigned during the year;
- j. The details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- k. The particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

Board's Report in case of OPC [Sub-section 4]

In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Students may note, after insertion of sub-section 3A to section 134 and rule 8A to *the Companies (Accounts) Rules, 2014* the importance of sub-section 4 reduced substantially.

DIRECTORS' RESPONSIBILITY STATEMENT [SUB-SECTION 5]

The Directors' Responsibility Statement referred to in 134(3)(c) 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**;
- 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**, were **operating effectively**; and

The term "internal financial controls" for clause e specified above 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**.

Illustration 5

Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can state that controls are adequate and operating efficiently?

Answer

Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not.

Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here, adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

SIGNING OF BOARD'S REPORT [SUB-SECTION 6]

The Board's report and any annexures thereto shall be signed by:

- a. Chairperson of the company if he is authorised by the Board **and**
- b. Where he is not so authorised, shall be signed by:
 - i. At least two directors, one of whom shall be a managing director, **or**
 - ii. The director where there is one director.

CONTRAVENTION [SUB-SECTION 8]

If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. Penalty provisions are tabled below:

Persons liable	Punishment
Company	₹ 3,00,000
Every officer of the company who is in default	₹ 50,000

Illustration 6

ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Answer

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order.



10. CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]

The corporate (as legal person) use variety of other capitals in blend with economic capital provided by shareholders to make revenue, earn profit, ensure survival and register growth. Hence instead of being responsible only towards fund providers, the corporate is responsible for wide range of stakeholders including the society within which it exists and operate (even to the environment as well, under the

concept of triple bottom line). India become torch bearer for rest of world by giving legal mandate to corporate social responsibility by incorporating legal provisions regarding same as section 135 in the Companies Act, 2013 that requires corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities.

Broadly, Corporate Social Responsibility (CSR) implies a concept, whereby companies decide to contribute to a better society and a cleaner environment– a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general.

The provisions that are enshrined under section 135 of the Act pertaining to Corporate Social Responsibility shall be referred in light of the Companies (Social Responsibility Policy) Rules, 2014 (herein after referred as to 'the CSR Rules').

DEFINITIONS

Corporate Social Responsibility (CSR) (Rule 2(d) of the CSR Rules)

CSR means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

- i. Activities undertaken in pursuance of normal course of business of the company

Note:

Any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that;

- a. Such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
- b. Details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.

- ii. Any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level
- iii. Contribution of any amount directly or indirectly to any political party under section 182 of the Act
- iv. Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019
- v. Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
- vi. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.

CSR Committee (Rule 2(e) of the CSR Rules)

CSR Committee means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act (i.e., constituted under sub-section 1 of section 135).

CSR Policy (Rule 2(f) of the CSR Rules)

CSR Policy means a statement containing;

- a. The **approach** and **direction** given by the board of a company, taking into account the **recommendations of CSR Committee**, and
- b. Includes **guiding principles** for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Administrative overheads (Rule 2(b) of the CSR Rules)

Administrative overheads means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company **but shall not** include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.

International Organisation (Rule 2(g) of the CSR Rules)

International Organisation means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations

(Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply.

Net Profit (Rule 2(h) of the CSR Rules read with explanation to section 135 of the Act)

Net profit means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions (net profit shall be calculated in accordance with provisions of section 198) of the Act, and **but shall not include** the following, namely: -

- i. Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- ii. Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

In case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act.

Ongoing Project (Rule 2(i) of the CSR Rules read with explanation to section 135 of the Act)

Ongoing Project means:

- a. A **multi-year project** undertaken by a Company in fulfilment of its CSR obligation having timelines **not exceeding three years excluding the financial year in which it was commenced**, and
- b. Such project that was **initially not approved as a multi-year project** but whose **duration has been extended beyond one year** by the board based on **reasonable justification**.



Example 2

Modern Furniture Limited (MFL) undertake a CSR project in light of its CSR policy; of placing and installing benches as public parks and gardens in supervision of district administration. Initially it was estimated that project will be completed in a span of 8-10 months; but due to renovation of half a dozen of parks the task of

installing benches there postponed till the construction is completed (which was expected to take further couple of quarters). Board of MFL considering the circumstances declare the project an ongoing project, extend the duration beyond one year; and also provided reasonable justification. Whether board of MFL correctly re-categories the project as ongoing project or not?

Rule 2(i) of the CSR rules provides that projects which are initially of less than a year's time (therefore not registered as multi-year project) but duration of which extended beyond the one-year period, by board based on reasonable causes or justification; shall be re-categories as ongoing project. Hence, decision of board of MFL is legal and valid.

Public Authority (Rule 2(j) of the CSR Rules)

Public Authority means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005.

COMPANIES THAT REQUIRED TO CONSTITUTE A CSR COMMITTEE AND COMPOSITION THEREOF [SUB-SECTION 1 and 9]

Criteria that mandate constitution of CSR committee:

A company shall constitute a Corporate Social Responsibility Committee of the Board if during the **immediately preceding financial year** such company having;

- a. Net worth of rupees five hundred crore or more **or**
- b. Turnover of rupees one thousand crore or more **or**
- c. Net profit of rupees five crore or more.

As per Rule 3(1) of CSR Rules, every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfils the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and CSR rules.

Further, proviso to rule 3(1) of CSR Rules states, a company having any amount/balance in its **Unspent Corporate Social Responsibility Account** as per section 135(6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.

1. Net-worth and Turnover is defined in clause (57) and (91) to section 2 of the Act, respectively; same are stated under chapter 1 of this module. Whereas Net Profit is defined under the Rule 2(h) of the CSR Rules read with explanation to section 135 of the Act.
2. The net worth, turnover or net profit of a **foreign company** of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

Illustration 7

ABC Ltd is a company with a turnover of more than ₹ 1000 crore in each of the preceding three financial years and have incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?

Answer

As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Exception

According to sub-section 9, where the amount to be spent by a company under sub-section 5 does **not exceed fifty lakh rupees**, the **requirement for constitution** of the Corporate Social Responsibility Committee **shall not be applicable** and the **functions** of such Committee provided under this section shall, in such cases, **be discharged by the Board** of Directors of such company.

Composition of CSR committee

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**.

Proviso to section 135(1) of the Act read with **Rule 5 (1)** of the CSR Rule further states:

- a. Where a company covered under section 135(1) but is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more directors, without such independent director.
- b. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors
- c. A foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

Note:

1. Independent Director is defined under section 2(47) of the Act, same is stated under chapter 1 of this module.
2. As per section 135(2), the Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

Summary of the constitution of CSR Committee in different scenarios

Category	Sub-category	Constitution
Company covered under section 135(1)	not required to appoint an independent director under section 149(4)	Two or more directors, without independent director
	private company having only two directors	Two such directors
	a foreign company	Least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company

	Not covered in any of sub-categories defined above	Three or more directors , out of which at least one shall be an independent director .
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DUTIES OF CSR COMMITTEE [SUB-SECTION 3 READ WITH RULE 5(2)]

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 in areas or subject, specified in Schedule VII;
- b. Recommend the **amount of expenditure** to be incurred on the activities referred to in above clause; and
- c. **Monitor** the Corporate Social Responsibility Policy of the company from time to time.

Further, according to Rule 5(2) of Companies (CSR) Rules, 2014, the CSR Committee shall formulate and recommend to the Board, an **annual action plan** in pursuance of its CSR policy, which **shall include** the following, namely:

- a. The list of **CSR projects or programmes** that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act
- b. The **manner of execution** of such projects or programmes as specified in sub-rule (1) of rule 4 (itself or through other section 8 company, etc.)
- c. The modalities of **utilisation of funds** and implementation schedules for the projects or programmes
- d. **Monitoring and reporting mechanism** for the projects or programmes; and
- e. Details of need and **impact assessment**, if any, for the projects undertaken by the company.

Note:

Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

DUTIES OF THE BOARD IN RELATION TO CSR [SUB-SECTION 4 READ WITH RULE 9 OF THE CSR RULES]

The Board of every company referred to in sub-section (1) i.e., where CSR committee required to be constituted, 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
- b. Disclose contents of such Policy in its report and
- c. Also place it (CSR Policy) along with composition of the CSR committee and project approved by board on the company's website; and
- d. Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

AMOUNT AND FORM OF CSR EXPENDITURE [SUB-SECTION 5 AND 6 READ WITH RULE 4, 7, AND 10 OF CSR RULES]

The Board of every company referred to in sub-section (1) i.e., where CSR committee required to be constituted, shall ensure that the company spends, in every financial year, at least **two percent** of the **average net profits** of the company made during the **three immediately preceding financial years**.

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

The board shall ensure that the **administrative overheads shall not exceed five percent** of total CSR expenditure of the company for the financial year.

Where the company has not completed the period of three financial years since its incorporation

Where the company has not completed the period of **three financial years** since its incorporation, the company shall spend, in every financial year, at least **two percent** of the **average net profits** of the company made **during such immediately preceding financial years**, in pursuance of its Corporate Social Responsibility Policy.

Illustration 8

Compute the minimum amount that Modern Furniture Limited is required to spend on account of Corporate Social responsibility year 2022-2023. MFL was incorporated in August 2020. Net-profit made during the financial years 2020-2021 and 2021-2022 are ₹ 20 crore, and ₹ 38 crore respectively.

Options

- a. ₹ 76 lakh
- b. ₹ 1.16 crore
- c. ₹ 58 lakh
- d. Since the company has not completed the period of **three financial years** since its incorporation, hence no CSR spending is required.

Answer – c

Reason – Section 135(5).

Surplus arising out of CSR activities [Rule 7(2) of CSR] Rules]

Any **surplus** arising out of the CSR activities shall:

- ✗ Not form part of the business profit of a company

And

- ✓ Be ploughed back into the same project or
- ✓ Be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or
- ✓ Transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Where the company spend in excess to minimum prescribed CSR amount [Second proviso to Section 135(5) read with Rule 7(1)]

If the company spends an amount in excess of the requirements provided under this sub-section, such company may **set off such excess amount** against the requirement to spend under this sub-section for **up to immediate succeeding three financial years** subject to the conditions that:

- a. The excess amount available for set off shall **not include the surplus** arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- b. The **board resolution** shall pass to that effect.

Where the company fails to spend minimum prescribed CSR amount [Sub-section 6 read with Second proviso to Section 135(5)]

If the company fails to spend minimum prescribed CSR amount under section 135(5), the Board shall,

- a. Specify the reasons for not spending the amount in board report prepared under section 134(3)(o), and

- b. Where the unspent amount relates to **project/s other than ongoing project**, then such unspent amount shall be transferred to a **Fund specified in Schedule VII**, within a period of **six months of the expiry of the financial year**.

Or

Where any amount remaining unspent pursuant to any **ongoing project** (undertaken by a company in pursuance of its CSR Policy), then such unspent amount shall be transferred to **Unspent Corporate Social Responsibility Account** by the company within a period of **thirty days from the end of the financial year**.

Notes

1. Unspent Corporate Social Responsibility Account (referred as to Unspent CSR Account) shall be operated with Scheduled bank.
2. Any sum transferred to Unspent CSR Account, shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer.
3. In case of failure in spending the amount transferred in Unspent CSR Account in pursuance of its obligation towards the CSR Policy within a period of three financial years from the date of such transfer, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.
4. As per rule 10 of CSR Rules, until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

CSR expenditure for creation or acquisition of a capital Asset [Rule 7(4) of CSR Rules)

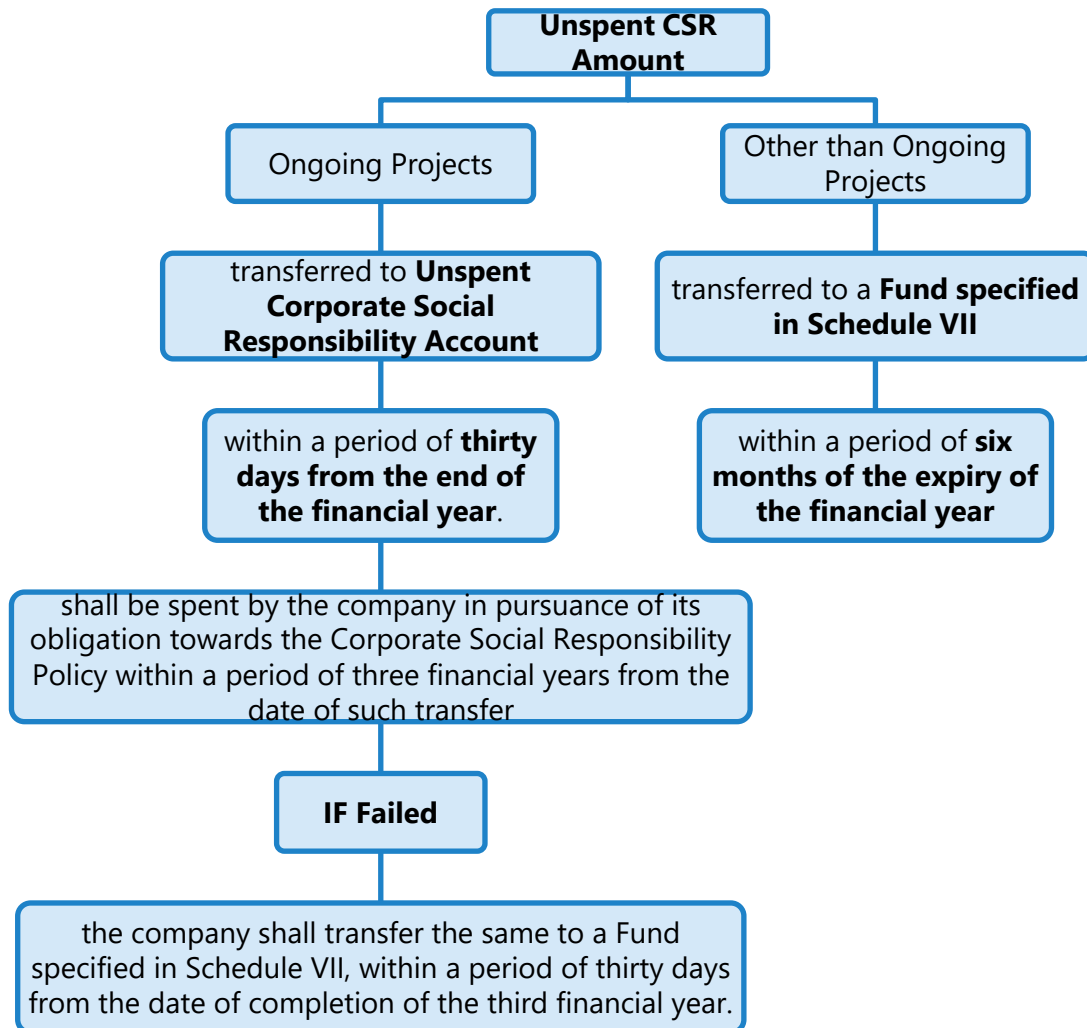
CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by:

- a. A company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2); or

- b. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- c. A public authority.

Note

Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 days with the approval of the Board based on reasonable justification.



CSR IMPLEMENTATION [RULE 4 OF THE CSR RULES]

CSR activities can be undertaken by company itself or through specified entities – Onus (or ultimate responsibility) lies on Board [Sub-rule 1]

The Board shall ensure that the CSR activities are undertaken by the **company itself or through:**

- a. Connected charitable entity** - A company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or
- b. Entity established by Government** – A company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- c. Statutory entity** - Any statutory body established under an Act of Parliament or a State legislature to undertake activities covered in Schedule VII of the Act; or
- d. Any Charitable entity with three year of experience** - A company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Notes:

1. CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as CSR expenditure.¹⁸

¹⁸ MCA vide General Circular No. 21/2014 dated 18th June 2014

2. Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
3. Registered Trust would include Trusts registered under Income Tax Act 1961, for those states where registration of Trust is not mandatory.
4. Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Registration of undertake CSR activity [Sub-rule 2]

Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021.

The provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.

Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

International Organisations may be engaged [Sub-rule 3]

A company may engage international organisations for **designing, monitoring** and **evaluation** of the CSR projects or programmes as per its CSR policy as well as for **capacity building** of their own personnel for CSR.

Note:

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

CSR projects can be undertaken in collaboration [Sub-rule 4]

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

Onus to ensure application fund lies on Board [Sub-rule 5]

The Board of a company shall satisfy itself that the **funds so disbursed have been utilised** for the purposes and in the manner as approved by it and the **Chief Financial Officer** or **the person responsible** for financial management shall **certify to the effect**.

Board shall monitor ongoing projects [Sub-rule 6]

In case of **ongoing project**, the Board of a Company shall **monitor the implementation** of the project with reference to the approved timelines and year-wise allocation and shall be competent to **make modifications**, if any, **for smooth implementation** of the project within the overall permissible time period.

Illustration 9

Can an international organisation be engaged for implementation of CSR project?

Answer

Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

CSR REPORTING [RULE 8 OF CSR RULES]**Annual Reporting on CSR as part of Board Report [Sub-Rule 1 and 2]**

The Board's Report of a company (that covered under these rules, basically those required to constitute CSR committee) pertaining to any financial year shall include an annual report on CSR containing particulars.

While as per sub-rule 2, in case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR.

Note:

Annexure I and II are provided to the CSR rules as format for such annual reporting.

Annexure I provides the format for the annual report on CSR activities to be included in the board's report for financial year commencing before the 1st day of April, 2020.

While Annexure II prescribes the format for the annual report on CSR activities to be included in the board's report for financial year commencing on or after the 1st day of April, 2020.

Impact Assessment [Sub-Rule 3]

Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher.

Penal Provisions [Sub-section 7]

If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

Summary of penalties, if a company is in default in complying with the provisions of sub-section (5) or sub-section (6) to section 135:

Liabe	Penalty
Company	twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees , whichever is less
Every officer, who is in default	one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees , whichever is less

SPECIAL INSTRUCTIONS OF THE CENTRAL GOVERNMENT [SUB-SECTION 8]

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

Activities specified under the Schedule VII

Activities which may be included by companies in their CSR Policies (i.e., Activities as specified under Schedule VII) are as follows:

- i.** Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- ii.** Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- iii.** Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

- iv.** Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
- v.** Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- vi.** Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- vii.** Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- viii.** Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND) any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, Tribes, other backward classes, minorities and women;
- ix.**
 - (a)** Contribution to incubators or research development projects in the field of science, technology, engineering and medicine, funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and
 - (b)** Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and Autonomous Bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs);

- x. Rural development projects;
- xi. Slum area development. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]
- xii. Disaster management, including relief, rehabilitation and reconstruction activities.

Students are advised to take note:

The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities¹⁹.

Practical Insight

Clarifications with respect to CSR on COVID

Outbreak of novel corona virus (COVID-19 or COVID) threatened the entire mankind with severe social and economic consequences. COVID was declared pandemic by WHO and national disaster by GoI. The prevention from widespread of COVID and combating against same was possible only with war-footing efforts of all including businesses and corporates. Hence CSR funds/expenditure required to be channelised towards activities that are part of prevention and support mechanism; therefore in order to give effect to the same following clarifications in form of circulars are issued by MCA;

General Circular No. 10/2020, dated 23rd March, 2020

The spending of CSR funds for COVID-19 is eligible CSR activity. Funds may be spent for **various activities related to COVID-19** under item nos. (i) and (xii) of Schedule VII of the Act, relating to promotion of health care, including preventive health care and sanitation, and, disaster management.

¹⁹ MCA vide General Circular No. 21/2014 dated 18th June 2014

General Circular No. 01/2021, dated 13th January, 2021

The spending of CSR funds for **awareness campaigns/ programmes** and **public outreach on COVID-19 Vaccination programme** is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Act, relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

General Circular No. 05/2021, dated 22nd April, 2021

The spending of CSR funds for setting up **makeshift hospitals** and **temporary COVID Care facilities** is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

General Circular No. 09/2021, dated 5th May, 2021

The spending of CSR funds for '**creating health infrastructure for COVID care**', '**establishment of medical oxygen generation and storage plants**', '**manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19**' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfilment of CSR Rules and the guidelines issued by MCA from time to time.

General Circular 13/2021, dated 30th July, 2021

The spending of CSR funds of COVID- 19 **vaccination for persons other than the employees and their families**, is an eligible CSR activity under item no. (i) of

Schedule VII of the Act relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

MCA Office Memorandum Dated 28th March 2021

Any contribution made to **PM CARES Fund** shall qualify as CSR expenditure for purpose of section 135 of this Act.

Practical Insight

Clarifications with respect to CSR on 'Har Ghar Tiranga' campaign

General Circular 08/2022, dated 26th July, 2022

'Har Ghar Tiranga', a campaign under the aegis of *Azadi Ka Amrit Mahotsav*, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag.

In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

In case of specified IFSC public company²⁰ and specified IFSC private company²¹ the section 135 shall not apply for period of **5 years** from the commencement of business of a specified IFSC public company and specified IFSC private company.

After reading the provisions pertaining to CSR, a genuine question may strike in your mind: why were a plethora of changes introduced in 2020-2021? CSR rules almost re-written; but why?

The COVID management to some extent highlighted the pitfalls in public infrastructure facilities, whereas CSR could play a drastic role in improving such facilities, provided accountability is tagged with a full-proof mechanism, hence need to consolidate the CSR provisions was felt and secondly, the CSR numbers

²⁰ Vide notification GSR 08(E) dated 4th January, 2017

²¹ Vide notification GSR 09(E) dated 4th January, 2017

(tabled below)²² didn't show convincing and steady growth.

Year	No. of CSR Projects	No. of Corporates	CSR Expenditure (in Cr. ₹)
2020-21	8,009	1,619	8,828
2019-20	34,828	22,531	24,689
2018-19	32,248	25,099	20,150
2017-18	26,858	21,517	17,098
2016-17	23,076	19,552	14,344



11. RIGHT OF MEMBERS TO COPIES OF AUDITED FINANCIAL STATEMENT [SECTION 136]

Section 136 read with Rule 10 and 11 of the *Companies (Accounts) Rules 2014*, confirms a right of members to copies of audited financial statements and prescribe the manner of circulation of financial statement. Relevant provisions are detailed below:

WHAT, TO WHOM, WHEN & HOW [SUB-SECTION 1 AND 2 READ WITH RULE 10 AND 11 OF THE COMPANIES (ACCOUNTS) RULES 2014]

What required to be circulated?

A copy of financial statements including

- Consolidated financial statement, 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.

Proviso to sub-section 2 provides 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**.

²² Only for information of the students.

To whom copies shall be sent?

- a. To every member of the company,
- b. To every trustee for the debenture-holder of any debentures issued by the company, and
- c. To all persons other than such member or trustee, being the person so entitled.

When (timing) to send?

At least **twenty-one days** before the date of the meeting.

First proviso to section 136(1) provides, even if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall be **deemed to have been duly sent** if it is **so agreed by members**:

- a. **if the company has a share capital** – holding **majority in number** entitled to vote and who represent not less than **ninety-five percent** of such part of the **paid-up share capital** of the company as gives a right to vote at the meeting;

Or

- b. **if the company has no share capital** - having not less than **ninety-five percent of the total voting power** exercisable at the meeting

Students are advised to take note:

In case of **section 8 company** the words "twenty-one days", shall be substituted by the words "**fourteen days**".²³

Mode and Manner of Circulation [Rule 11 of the Companies (Accounts) Rules, 2014]

Third Proviso to Section 136 (1) empowers central government to prescribe the manner of circulation of financial statements of companies having such net worth and turnover.

In this regard, Rule 11 of the *Companies (Accounts) Rules, 2014* states the financial statements, in case of all **listed companies**, and

²³ Vide Notification No. GSR 466 (E), dated 5th June, 2015

Such **public companies** which have a **net worth of more than one crore rupees** and **turnover of more than ten crore rupees**, may be sent:

- a. By **electronic mode** to such members only whose

Shareholding is in dematerialized format	Whose email are registered with Depository for communication purposes
Shareholding is in Otherwise than by dematerialized format	But they have positively consented in writing for receiving by electronic mode (this may not be relevant considering that shareholding is not held otherwise than by dematerialized form anymore)

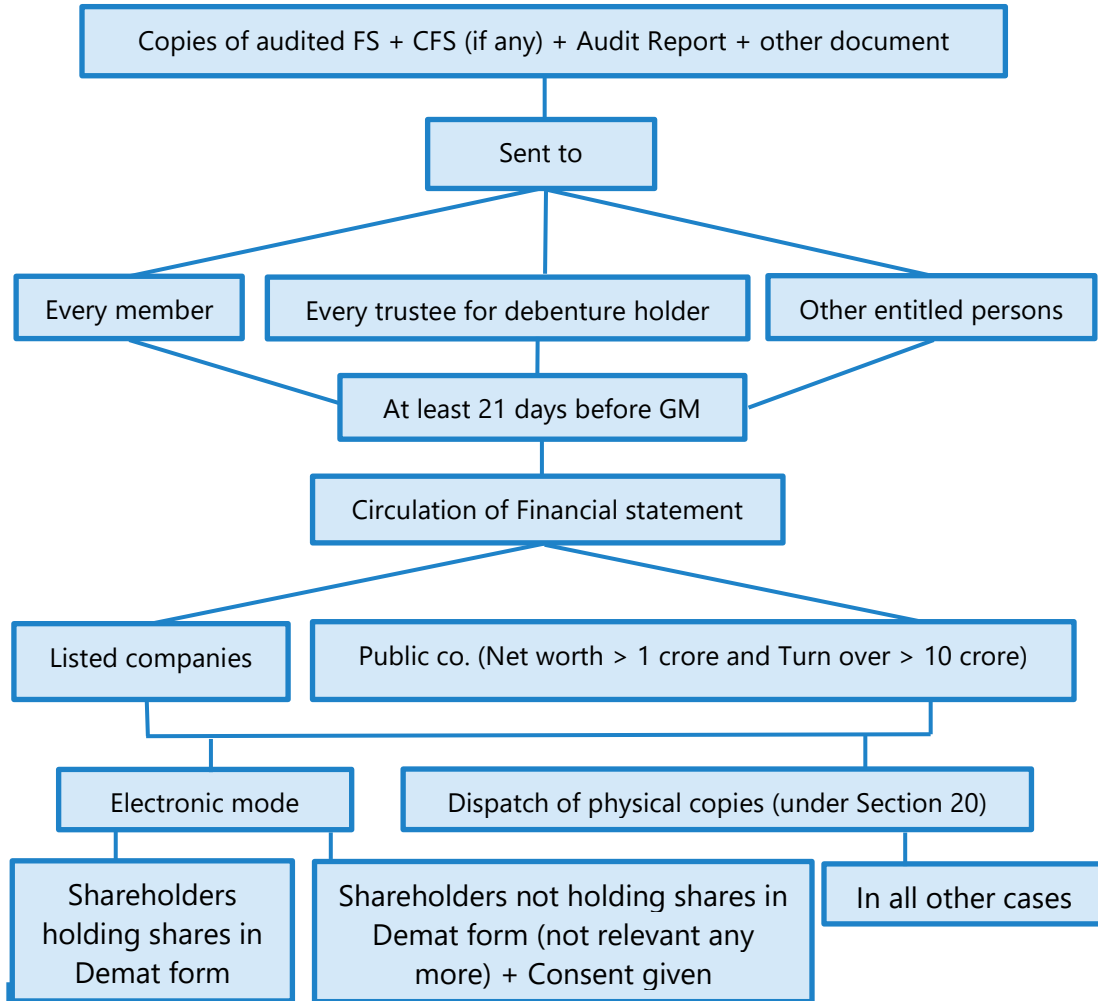
- b. By **dispatch of physical copies** through any recognised mode of delivery as specified under section 20 of the Act, **in all other cases**.

Statement containing Silent Features may be circulated by Listed Company

Second proviso to section 136(1) provides that in the case of a listed company, the provisions of this sub-section shall be **deemed to be complied with**:

- a. 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
- b. A statement containing the **salient features** of such documents in the Form AOC-3 (Form AOC-3A in case of companies which are required to comply with *Companies (Indian Accounting Standards) Rules, 2015*) 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
- c. **Unless** the shareholders ask for **full** financial statements.

Summary



Fourth and Fifth Proviso to section 136(1) provides that a **listed company** shall also on its website, (which is maintained by or on behalf of the company) place its **financial statements** including:

- a. Consolidated financial statements, if any,
- b. Separate audited accounts in respect of each of subsidiary, if any
- c. All other documents required to be attached thereto,

Students are advised to take note that **sixth proviso to Section 136(1)** in this context provides that a listed company that has a subsidiary incorporated outside India (referred as to foreign subsidiary),

Category	Requirement
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 such 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.

Illustration 10

RELM Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of RELM Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, RELM Industries Limited has placed its audited financial statement including consolidated financial statement on its website. RELM Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its country of incorporation. You are required to examine whether RELM Industries Limited has complied with the provisions of section 136?

Answer

No, RELM Industries Limited has not complied with the provisions of section 136 because RELM Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RELM Industries Limited in this case) 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.

In case of Nidhi company²⁴

Section 136 (1) shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

INSPECTION [SUB-SECTION 2]

A company shall also 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.

CONTRAVENTION [SUB-SECTION 3]

If any default is made in complying with the provisions of section 136,

- a. The company shall be liable to a penalty of 25,000 rupees and
- b. Every officer of the company who is in default shall be liable to a penalty of 5,000 Rupees.

*Vide **General Circular No. 11/2015, dated 21 July 2015***, clarification was issued by MCA with regard to circulation and filing of financial statement.

1. A company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.
2. The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this

²⁴ Vide Notification No. GSR 465 (E), dated 5th June, 2015

is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.



12. COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR [SECTION 137]

This section provides that copies of financial statement including consolidated financial statement, if any, along with all the documents annexed to financial statement shall be filed with Registrar.

WHERE AGM CONVENED [SUB-SECTION 1 READ WITH RULE 12 OF THE COMPANIES (ACCOUNTS) RULES 2014 AND RULE 3 OF THE COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE) RULES, 2015]

What is required to be filed with registrar?

A copy of financial statements including

- a. Consolidated financial statement, if any,
- b. Along with all the documents which are required to be or attached to such financial statements under this Act,
- c. **Duly adopted at the annual general meeting** of the company, shall be filed with the Registrar.

By when required to be filed?

Within thirty days of the date of annual general meeting except in case of OPC.

One Person Company (not require to conducted AGM) 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.

Mode, Manner and Form of filing

Every company shall file the financial statement with Registrar together with applicable form as specified below along-with such fee or additional fee as prescribe by *Companies (Registration Offices and Fees) Rules, 2014*:

- a. **Rule 12(1)** of the ***Companies (Accounts) Rules, 2014*** states every company shall file the financial statement with Registrar together with Form AOC-4 and the consolidated financial statement, if any with Form AOC-4. CFS.
- b. Further **rule 12(1A)** states every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).
- c. **Rule 12 (1B)** requires that every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.
- d. **Rule 3(1)** of the ***Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015*** states that, the following class of companies shall file their financial statements & other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I
 - (i) companies listed with stock exchanges in India and their Indian subsidiaries;
 - (ii) Companies having paid up capital of five crore rupees or above;
 - (iii) companies having turnover of one hundred crore rupees or above;
 - (iv) All companies which are required to prepare their financial statements in accordance with *Companies (Indian Accounting Standards) Rules, 2015*

The companies which have filed their financial statements under Rule 3(1) of the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015* and erstwhile rules (i.e., the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011*) shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years. Meaning thereby **once company started reporting in XBRL format shall continue to report in XBRL format in succeeding years also, even if criteria mentioned above is not met in succeeding years.**

Example 3

Amazon Company Limited, a company incorporated under the Companies Act, 2013, has a turnover of ₹ 150 crore and ₹ 90 crore during the financial year ended 31st March 2023 and 31st March 2024 respectively. Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2024 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

Summary of Form and Manner of Filing

Category	Standalone	Consolidated Financial Statement (if any)
1. Companies listed with stock exchanges in India and their Indian subsidiaries; 2. Companies having paid up capital of five crore rupees or above; 3. Companies having turnover of one hundred crore rupees or above; 4. All companies which are required to prepare their financial statements in accordance with the <i>Companies (Indian Accounting Standards) Rules, 2015</i> Note - Non-banking financial companies, Housing finance companies and Companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i> i.e., in XBRL format	Shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format in e-form AOC-4 XBRL Using the Taxonomy provided in Annexure-II of the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i>, if preparing their financial statements as per the <i>Companies (Accounting Standards) Rules, 2021</i> Using the Taxonomy provided in Annexure-II A of the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i>, if preparing their financial statements as per <i>Companies (Indian Accounting Standards) Rules, 2015</i>	

Non-Banking Financial Company that is required to comply with Indian Accounting Standards	AOC-4 NBFC (Ind AS)	AOC-4 CFS NBFC (Ind AS)
Every Other Company not covered above	Form AOC-4	Form AOC-4 CFS
Every company covered under the provisions of sub-section (1) to section 135 i.e., Corporate Social Responsibility (CSR)	Shall furnish a report on CSR in Form CSR-2 as an addendum to the applicable form (out of those stated above, as the case may be).	

If the financial statements are not adopted:

First proviso to Section 137(1) provides that where the financial statements are not adopted at AGM or adjourned AGM, such un-adopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM.

The Registrar shall take them in his records as **provisional** till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

Further, **second proviso to Section 137(1)** provides, if the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

Company having subsidiaries:

Fourth proviso to Section 137(1) provides 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.

Fifth proviso to Section 137(1) provides 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.

But where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.²⁵

Illustration 11

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31st March 2024, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

Answer

Vandana Ltd. would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per its accounting policies for the purpose of consolidation.

Further, as per the requirements of section 137(1) of the Companies Act, 2013, Vandana Ltd. would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further, the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

ANNUAL GENERAL MEETING NOT HELD [SUB-SECTION 2]

Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have

²⁵ vide General Circular no. 11/2015 dated 21 July 2015

been held and in such manner, with such fees or additional fees as may be prescribed.

Illustration 12

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2024, was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer

In the present case, though AGM was not held, it ought to be held by 30 September 2024 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e. by 30 October 2024 along with such fees or additional fees as may be prescribed.

Summary of Sub-section 1 and 2 to section 137

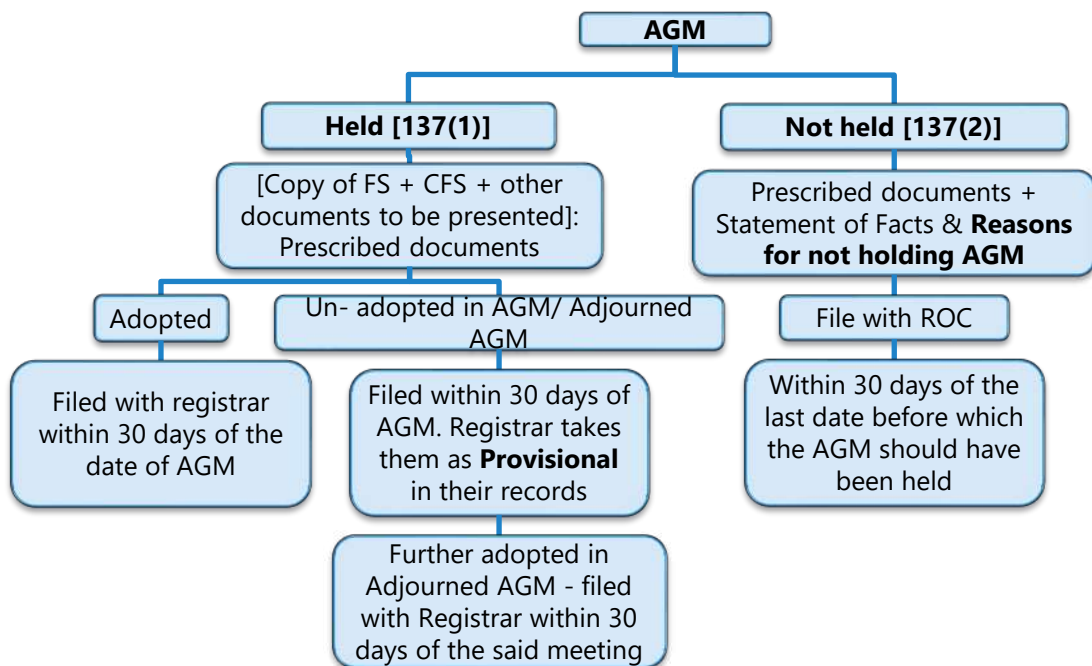


Illustration 13 (In continuation to above illustration)

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2024 but the same were not adopted by the shareholders?

Answer

Since the AGM has been held in time on 27 September 2024, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

PENALTY [SUB-SECTION 3]

If any of the provisions of section 137 is contravened, then;

The company shall be liable to a penalty of **ten thousand rupees** and in case of continuing failure, with a further penalty of **one hundred rupees for each day** during which such failure continues, subject to a **maximum of two 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 liable to a penalty of **ten thousand rupees**, and in case of continuing failure, with further penalty of **one hundred rupees for each day** after the first during which such failure continues, subject to a **maximum of fifty thousand rupees**.

Summary of penalty provisions

Person liable	Penalty
Company	Fine of ₹ 10,000 and In case of continuing failure, with a further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakh .

MD and CFO of the company, if any; <i>In their absence</i> Any other director who is charged by the Board with the responsibility; <i>In its absence</i> All the directors of the company.	Fine of ₹ 10,000 and In case of continuing failure, with a further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 50,000 .
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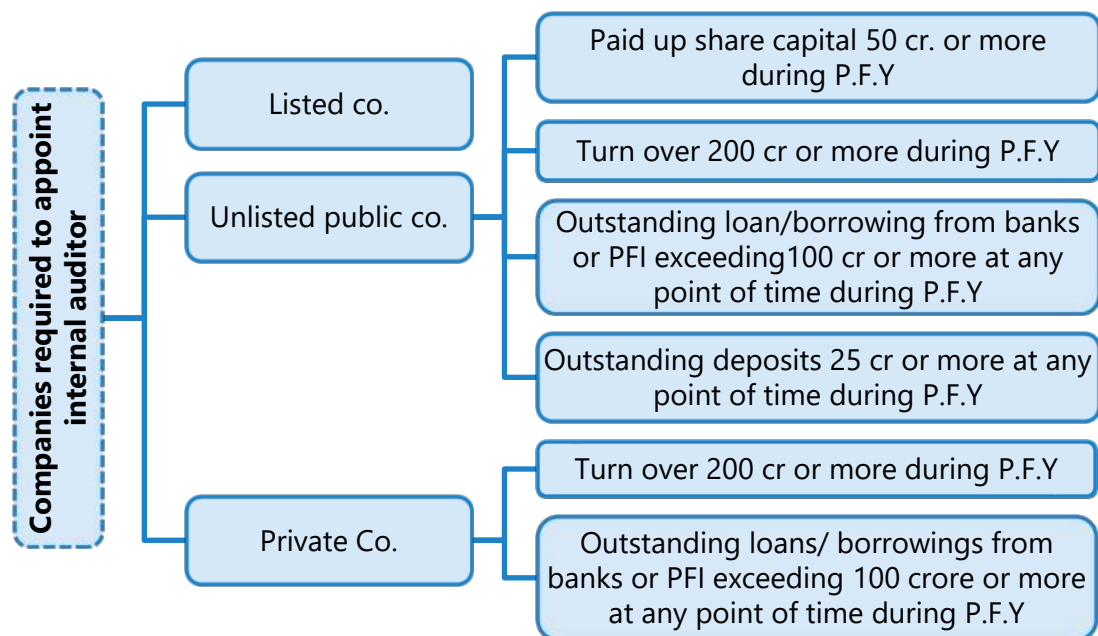
13. INTERNAL AUDIT [SECTION 138]

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

COMPANIES REQUIRED TO APPOINT INTERNAL AUDITOR [SUB-SECTION 1 READ WITH RULE 13(1) OF COMPANIES (ACCOUNTS) RULES, 2014]

- a. Every listed company;
- b. Every unlisted public company having;
 - i. **Paid up share capital** of **fifty crore rupees or more** during the preceding financial year; or
 - ii. **Turnover** of **two hundred crore rupees or more** during the preceding financial year; or
 - iii. **Outstanding loans or borrowings** from banks or public financial institutions exceeding **one hundred crore rupees or more** at any point of time during the preceding financial year; or
 - iv. **Outstanding deposits** of **twenty-five crore rupees or more** at any point of time during the preceding financial year; and
- c. Every private company having
 - i. **Turnover** of **two hundred crore rupees or more** during the preceding financial year; or
 - ii. **Outstanding loans or borrowings** from banks or public financial institutions exceeding **one hundred crore rupees or more** at any point of time during the preceding financial year.

Summary of Rule 13(1) of the Companies (Accounts) Rules, 2014



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

WHO CAN BE APPOINTED AS INTERNAL AUDITOR? [SUB-SECTION 1 READ WITH RULE 13(1) OF COMPANIES (ACCOUNTS) RULES, 2014]

Sub-section 1 to section 138 states that internal auditor shall either be-

- A chartered accountant or
- A cost accountant or
- Such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Students are advised to take note:

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

The internal auditor **may or may not be an employee** of the company.

MANNER AND INTERVAL OF INTERNAL AUDIT [SUB-SECTION 2 READ WITH RULE 13(2) OF COMPANIES (ACCOUNTS) RULES, 2014]

Sub-section 2 to section 138 empowers central government to draw rules, to prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

In this regard, **Rule 13(2)** of *the Companies (Accounts) Rules, 2014* states the Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

In case of a specified IFSC public company²⁶ and specified IFSC private company²⁷ the section 138 shall apply if the articles of the company provide for the same.

Illustration 14

Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co. LLP, as its internal auditors for the year ended 31st March 2024. However, for the financial year 2024-25, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co. LLP as its internal auditors. Please advise.

Answer

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co. LLP.

SUMMARY

- Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches

²⁶ Vide notification GSR 08(E) dated 4th January, 2017

²⁷ Vide notification GSR 09(E) dated 4th January, 2017

and such books shall be kept on accrual basis and according to the double entry system of accounting.

- The financial statement shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III. Provided that the items contained in such financial statements shall be in accordance with the accounting standards.
- A company shall not re-open its books of account and not recast its financial statement, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board of India, 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.
- If it appears to the directors of a company that the financial statement of the company; or 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.
- National Financial Reporting Authority is an independent regulator set up to oversee the auditing profession and to provide for the matters pertaining to Accounting and Auditing Standards
- 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.
- 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. The auditors' report shall be attached to every financial statement. A report by its Board of Directors shall be attached to statements laid before a company in general meeting.

- 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 any financial year 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. The Board of every such company, shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial year, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- A copy of the financial statement, 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 debenture 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.
- A copy of the financial statement, 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.
- Every listed company; every unlisted public company (having paid up share capital of fifty crore rupees or more during the preceding financial year; or turnover of two hundred crore rupees or more during the preceding financial year; or Outstanding loans or borrowings from banks or public financial

institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year); and every private company (having turnover of two hundred crore rupees or more during the preceding financial year; or outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year) 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.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2024, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of account of the Company. You, as an expert, are called upon by SEBI to advise the financial year upto which the application for reopening of books of account may be granted by Tribunal?*
 - (a) 2019-2020
 - (b) 2017-2018
 - (c) 2014-2015
 - (d) 2015-2016
2. *As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities:*
 - (a) *The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.*
 - (b) *The surplus shall not form part of the business profit of a company*

- (c) *The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.*
 - (d) *The surplus shall form part of the business profit of a company*
3. *Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of the Companies Act, 2013 this would mean that:*
- (a) *This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year*
 - (b) *No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year*
 - (c) *Only half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year*
 - (d) *Only the amount that has been spent on the employees having salary of ₹ 20,000 per month or less, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.*

Descriptive Questions

1. *The registered office of the Bharat Ltd. is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advice.*
2. *The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a Company Secretary.*
The financial statements of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

3. *A Housing Finance Ltd. is a housing finance company having a paid-up share capital of ₹ 11 crore and a turnover of ₹ 145 crore during the financial year 2023-24. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.*
4. *Herry Limited is a company registered in Thailand. SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.*
5.
 - (i) *Ravi Limited maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?*
 - (ii) *State the persons responsible for complying with the provisions regarding maintenance of Books of Account of a company.*
 - (iii) *Whether a company can keep books of Account in electronic mode accessible only outside India?*
6. *The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2022-23 were placed at its annual general meeting held on 31st August 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2023 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 12th November, 2023. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?*
7. *The Income Tax Authorities in the current financial year 2023-24 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2012-13 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2012-13. Examine the validity of the application filed by the Income Tax Authorities to NCLT.*

ANSWERS

Answer to MCQ based Questions

1.	(d) 2015-2016
2.	(b) The surplus shall not form part of the business profit of a company
3.	(b) No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year

Answer to Descriptive Questions

1. According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of account or other relevant papers in electronic mode as per the Rule 3 of the *Companies (Accounts) Rules, 2014*.

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the above-mentioned procedure.

2. According to section 134(1) of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board 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.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a Company Secretary, he should also sign the financial statements.

3. As per Rule 3(1) of *the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015*, following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

- (i) Companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) Companies having paid up capital of five crore rupees or above;
- (iii) Companies having turnover of one hundred crore rupees or above;
- (iv) All companies which are required to prepare their financial statements in accordance with *Companies (Indian Accounting Standards) Rules, 2015*.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode.

4. Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year. Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. Also, a company or body corporate, existing on

the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause. SKP Limited is advised to follow the above procedure accordingly.

5. (i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare “books of account” and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.
- (ii) Persons responsible to maintain books: As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:
- (a) Managing Director,
 - (b) Whole-Time Director, in charge of finance
 - (c) Chief Financial Officer
 - (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
- (iii) A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of *the Companies (Accounts) Rules, 2014*. According to such Rule,
- (a) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

- (b) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- (c) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of account in electronic mode accessible only outside India.

- 6.** According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such un-adopted financial statements along with the required documents 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.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed. In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2023 and filing of financial statements with Registrar was done on 12th November, 2023 i.e. within 30 days of the date of adjourned AGM. But Sun Ltd. has not filed its un-adopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2023.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of un-adopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

- 7.** As per section 130 of the Companies Act, 2013, 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 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:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2012-2013 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2023-2024, is invalid.