

CMA Inter Law – Dec 24 – Exam Oriented Marathons

1. **Starting from:** 23rd Oct 2024 (Wednesday)
2. **Platform:** Arjun Chhabra Tutorial YT Channel (Click here to land on YT Channel) (No Back up – only live stream in YT)
3. **Timing:** 04:00 PM onwards (Roughly 3 hours daily)

Features of Exam Oriented Marathons

1. Comprehensive coverage of entire syllabus of Law in least possible time.
2. Covering **all Important questions** of Commercial Laws, Corporate Laws, Industrial Laws and Ethics.
3. MCQ Practice from ICAI MCQ Bank – 30 Marks Coverage Click here to get MCQ Bank
4. Last attempt (June 24) 100 % paper was from ACT's Material: [Click here to watch](#)
5. Covering all Past exam paper | Model Question Paper | MTP | RTP | Postal Test Paper
6. Telegram group to stay connected with Arjun Sir: [Click here to Join Group](#)

Schedule of Exam Oriented Marathons

Date	Topic	Coverage	Link	Timing
23/10	Contract	16 Marks	YT Link	04:00 PM Onwards
24/10	Soga Partnership Nego LLP	14 Marks	YT Link	04:00 PM Onwards
25/10	Director & Constitution of India	25 Marks	YT Link	04:00 PM Onwards
26 /10	Companies Act Auditor	15 Marks	YT Link	04:00 PM Onwards
27/10	Industrial Law	15 Marks	YT Link	04:00 PM Onwards
-	MCQ Practice	30 Marks	YT Link	-
-	Ethics	15 Marks	YT Link	-

How to Avail Notes

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Arjun Chhabra (CS LLB LLM)

Operational and Financial Control

The roles of **financial controller** and **operational controller** each focus on specific aspects of a company's financial and operational management, though they both share responsibilities like

- budgeting,
- forecasting, and
- financial reporting.

Let's break down their distinctions and illustrate each role with examples.

Financial Controller

A financial controller is **responsible for overseeing the entire financial function** of the organization. This role includes managing core financial operations, such as:

- Accounting
- Payroll
- Accounts payable and receivable
- Budgeting for the whole organization
- Preparation and publishing of financial reports (monthly, quarterly, annual)

The **financial controller ensures the overall financial health and compliance of the company** by monitoring all financial transactions, maintaining accurate records, and preparing reports for top management and regulatory bodies. They gauge (measure, assess, or evaluate) the organization's fiscal efficiency and ensure that resources are being allocated effectively.

Example: Suppose **ABC Ltd.**, a multinational company, has a financial controller who is responsible for producing the consolidated financial statements each quarter. They manage the accounting processes for all departments, oversee payroll for all employees, and ensure that each financial report is accurate and compliant with regulations. If ABC Ltd. is planning an expansion, the financial controller would also evaluate whether the company has the funds for it, based on overall budgets and financial projections.

Operational Controller

An operational controller, in contrast, **manages the financial responsibilities of a specific division or unit within a larger organization**. Their duties vary according to the needs of their assigned unit, but they typically handle tasks like:

- Budgeting for the particular unit
- Fiscal reporting and analysis for the unit
- Monitoring the financial performance of that specific division
- Ensuring that operational costs and revenues align with forecasts

Operational controllers focus on a narrower scope than financial controllers, dealing directly with the operational metrics of one business unit rather than the entire organization. They help optimize financial performance and resource utilization within that specific segment.

Example: In the same company, **ABC Ltd.**, suppose there's an operational controller assigned to the manufacturing division. Their job would be to manage and monitor the financial operations specific to manufacturing. This includes preparing budgets for production, tracking costs related to materials and labor, and analyzing the division's profitability. If manufacturing costs start to exceed projections, the operational controller would investigate the root cause, such as rising raw material costs, and work with the team to adjust processes to remain within budget.

Key Differences Illustrated

- **Scope:** The financial controller oversees the entire organization's finances, whereas the operational controller focuses on one division.
- **Responsibility:** The financial controller is concerned with overall fiscal health, compliance, and resource allocation, while the operational controller is dedicated to optimizing the financial performance of a specific business unit.

In summary, while both roles share some financial reporting and budgeting duties, the financial controller's responsibilities span the entire organization, focusing on the "big picture," while the operational controller drills down into the details of a specific part of the business, ensuring efficiency within that operational unit.

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

1. Contents of Board's Report of a company	<p>a) The web address, if any, where annual return (prepared as per Sec. 92) has been placed.</p> <p>b) Number of meetings of the Board.</p> <p>c) Directors' Responsibility Statement [for the contents of Directors' Responsibility Statement, refer to Sec. 134(5)].</p> <p>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.</p> <p>e) a statement on declaration given by independent directors under sub-section (6) of section 149.</p> <p>f) in case of a company covered under sub-section (1) of section 178, company's policy on</p> <ul style="list-style-type: none"> • directors' appointment and remuneration • including criteria for determining qualifications, positive attributes, independence of a director. <p>g) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the company secretary in practice in his secretarial audit report.</p> <p>h) particulars of loans, guarantees or investments under section 186.</p> <p>i) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form.</p> <p>j) the state of the company's affairs.</p> <p>k) the amounts, if any, which it proposes to carry to any reserves.</p> <p>l) the amount, if any, which it recommends should be paid by way of dividend.</p> <p>m) 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.</p>
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	<p>Example: "After the financial year-end, ABC Ltd. acquired a new production facility, expected to increase capacity by 20%."</p> <p>n) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.</p> <p>Example: "ABC Ltd. has implemented energy-efficient processes, reducing electricity usage by 10%. Foreign exchange earnings amounted to ₹3 crore, with an outgo of ₹1 crore."</p> <p>o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;</p> <ul style="list-style-type: none"> • in case of a listed company and • every other public company having such paid-up share capital as may be prescribed, <p>p) 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, among other things.</p>
2. Approval	The FS, including CFS, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board.
3. Signing	<p>(a) The FS, including CFS, if any, shall be signed on behalf of the Board, at least by -</p> <p>(i) the chairperson of the company, where he is authorised by the Board, or by 2 directors, one of whom shall be MD, if any;</p> <p>(ii) CEO, wherever he is appointed;</p> <p>(iii) CFO, wherever he is appointed; and</p> <p>(iv) CS, wherever he is appointed.</p>

	(b) In the case of a OPC, the FS, including CFS, if any, shall be signed by one director only.
4. Submission	The FS, including CFS, if any, shall be submitted to the auditor after they have been approved by the Board and signed on behalf of the Board.

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Audit Committee (Section 177)

Write briefly about Audit Committee according to Section 177 of Companies Act, 2013? [MQP Set 1 Syllabus 22]

Demonstrate the functions of audit committee are contained in Sec. 177 of the Companies Act 2013. [MQP Set 2 Syllabus 22]

1. The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
4. Every Audit Committee shall act in accordance to a written set of guidelines provided by the Board. which shall, inter alia, include, –

- i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

Example:

- **Personal Relationships:** Close relationships between audit team members and company employees, especially in key financial positions, could bias the audit. Suppose a member of the audit team is found to have a close personal relationship with a company executive. The Committee would see this as a potential risk to independence.
- **Past Business Relationships:** If the auditor's firm has been previously employed for other services (e.g., consultancy, tax planning), it may influence their independence. In response to a long-standing audit firm relationship, the Committee could require that the audit partner changes every few years to ensure a fresh perspective.
- **Length of Engagement:** A long-standing audit relationship might compromise independence due to familiarity, or the auditor may become lenient over time.

- iii) examination of the financial statement and the auditors' report thereon;
- iv) approval or any subsequent modification of transactions of the company with related parties;

Related Party Transactions

The Audit Committee approves or modifies transactions between the company and related parties, with the option for "omnibus approval" (bulk approval for future

transactions) under certain conditions.

Example: If a company director has a relative with a business interest, any transactions between the company and that business must receive Committee approval.

Provided further that in case of transaction,

- other than transactions referred to in section 188, and
- where Audit Committee does not approve the transaction,
- it shall make its recommendations to the Board:

Provided also that in case

- any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and
- if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- v) scrutiny of inter-corporate loans and investments;
- vi) valuation of undertakings or assets of the company, wherever it is necessary;
Example: Before acquiring new machinery, the Committee may review a third-party valuation to ensure fair pricing.
- vii) evaluation of internal financial controls and risk management systems;
Example: If the company lacks cybersecurity measures, the Committee may recommend implementing security protocols.
- viii) monitoring the end use of funds raised through public offers and related matters.
Example: If funds are raised to expand production, the Committee verifies that the funds are indeed used for that purpose.

5. Consultation with Auditors

The Committee can ask the auditors to comment on the company's internal controls, audit scope, and any other observations. They may also discuss issues with auditors and management.

Example: Before finalizing the annual report, the Committee might meet with the auditors to discuss any flagged discrepancies.

6. Investigative Powers

The Audit Committee can investigate matters within its mandate or as directed by the Board. It may also seek expert advice and access all company records for thorough investigation.

Example: If there's a suspicion of financial irregularity, the Committee can hire forensic experts to investigate.

7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
8. The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
9. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
10. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Rights of Shareholders [June 23 Syllabus 22 – 10 Marks]

As per Section 2(55) of the Companies Act, 2013 'Member,' in relation to a company, means -

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;	(Subscriber to memorandum)
(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;	(Person named in the register of members)
(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.	(Beneficial owner of shares)

Herdilia Unimers Ltd. v. Renu Jain [1995], it was held that the moment the shares were allotted and share certificate signed and the name entered in the Register of members, the allottee became the shareholder, irrespective of the allottee receiving the shares or not.

Explanation of the Ruling

The court clarified that the legal title to shares is established the moment these procedural steps are completed:

1. **Allotment of Shares:** The company decides to issue specific shares to an allottee.
2. **Issuance of Share Certificate:** The share certificate is prepared and signed by the company.
3. **Entry in the Register of Members:** The name of the allottee is recorded in the official Register of Members, which is a conclusive record of shareholders.

Once these steps are complete, the allottee gains the legal rights of a shareholder, such as voting rights, the right to receive dividends, and the ability to participate in general meetings, regardless of whether they have physically received the share certificate. The share certificate is merely documentary evidence of ownership, not the source of the ownership itself.

Sant Chemicals (P) Ltd. v. Aviat Chemicals (P.) Ltd.

A person whose name is not entered into register of members of company cannot be treated as member or deemed member

Thus, a person can agree to take shares of a company either as the subscriber to the memorandum at the initial stage of its formation or in any of the following manner:

- a) by subscribing to its further or new shares;
- b) on transfer of its shares from an existing member;
- c) on acquisition or purchase of its share (for example, take-over bid, renunciation of rights by an existing members);
- d) on acquisition of its shares by devolution (for example, transmission of shares to legal heir of a deceased member, on insolvency, upon merger/amalgamation through the Tribunal's order); and

e) on conversion of convertible debentures or loans pursuant to the terms of issue of such debentures or loan agreement respectively.

The fundamental difference between the subscribers who agree to take shares at the time of formation of the company and persons who agree to take shares later is that the former become members immediately on incorporation of the company, that is, they automatically become members.

The latter, through having agreed to take shares, become members only after their names are entered in the register of members of the company.

A member by virtue of the contract with the company and any other members via the Memorandum and Articles is entitled

- to have his name on the Register of members,
- to vote at the meeting of members,
- to receive dividends when declared,
- to exercise the right of pre-emption, return of capital on winding-up or on reduction of share capital of the company.

As a member he also has certain other rights which may or may not arise out of a contract. In exercise of such rights, he is entitled

- to bring action to restrain the company from doing an *ultra vires* act,
- to attend and take part in the proceeding of meetings of the company and to move amendments.

A person who is a shareholder of a company has many rights under the Act. Some of them are:

- i) The right to vote at all meetings [Sec.47];
- ii) The right to requisition an extraordinary general meeting of the company [Sec.100];
- iii) The right to receive notice of a general meeting [Sec.101];
- iv) The right to appoint proxy and inspect proxy register [Sec.105]
- v) In the case of a body corporate which he is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- vi) The right to require the company to circulate resolution [Sec.111].
- vii) To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]
- viii) To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- ix) To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].
- x) To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- xi) To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- xii) To participate in the removal of directors by passing an ordinary resolution [Sec.169]

Certain other rights of a member spelt out by the Supreme Court in Life Insurance Corporation of India v. Escorts Ltd. [1986] are:

- i) To elect directors and thus to participate in the management through them;
- ii) To enjoy the profits of the company in the shape of dividends;
- iii) To apply to the court (now Tribunal) for
 - relief in case of oppression;
 - relief in case of mismanagement;
 - winding-up of the company; and
- iv) To share in the surplus on winding-up

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POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS (Section 143)

1. Rights and duties as per Sec. 143(1)	Right of access to books	<ul style="list-style-type: none"> ■ The auditor shall have access, at all times, to the books of account and vouchers of the company. ■ His right extends to all the books, whether kept at the registered office of the company or at any other place. ■ The auditor shall also have access to the records of all the subsidiary companies and associate companies, in so far as access to the books of subsidiary companies and associate companies is required for the purpose of consolidation of financial statements of the company with its subsidiary companies and associate companies.
	Right to require information	The auditor shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.
	Duty to make inquiries	<p>(a) Whether loans and advances made by the company</p> <ul style="list-style-type: none"> • on the basis of security • have been properly secured and • whether the terms on which they have been made • are prejudicial to the interests of the company or its members. <p>(b) Whether transactions of the company</p> <ul style="list-style-type: none"> • which are represented merely by book entries • are prejudicial to the interests of the company. <p>(c) In case of any company</p> <ul style="list-style-type: none"> • other than an investment company or a banking company, • whether so much of the assets of the company • as consist of shares, debentures and other securities • have been sold • at a price less than that at which they were purchased by the company. <p>(d) Whether loans and advances made by the company</p> <ul style="list-style-type: none"> • have been shown as deposits. <p>(e) Whether personal expenses</p> <ul style="list-style-type: none"> • have been charged to revenue account.
		(f) Where it is stated in the books and documents of the company

		<ul style="list-style-type: none"> that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the B/S is correct, regular and not misleading. 	
2. Duty to Make Report [Sec. 143(2)]	■	The auditor shall make a report to the members of the company.	
	■	In his audit report, the auditor shall report on -	
		(a)	the accounts examined by him; and
		(b)	FS which are required to be laid before the company in GM.
	■	The auditor shall state in his report as to whether the accounts examined by him and FS give a true and fair view of-	
		(a)	the state of the company's affairs as at the end of its FY;
		(b)	the profit or loss for the year; and
		(c)	cash flow for the year.
	■	The auditor shall state in his report such other matters as may be prescribed.	
	■	The auditor shall prepare his report after taking into account the provisions of this Act, the Accounting Standards and the Auditing Standards.	
3. Report on principal assertions [Sec. 143(3)]	(a)	->	whether he has sought and obtained all the information and explanations
		->	which, to the best of his knowledge and belief were necessary for the purpose of his audit
		->	and if not, the details thereof and the effect of such information on the FS
	(b)	->	whether, in his opinion, proper books of account as required by law have been kept by the company
		->	so far as appears from his examination of those books
		->	and proper returns adequate for the purposes of his audit have been received from branches not visited by him

	(c)	->	whether the report on the accounts of any branch office of the company
		->	audited by a person other than the company's auditor
		->	has been sent to him and the manner in which he has dealt with it in preparing his report
	(d)		whether the company's B/S and P&L A/c dealt with in the report are in agreement with the books of account and returns
	(e)	->	whether, in his opinion,
		->	the FS comply with the Accounting Standards
	(f)	->	the observations or comments of the auditors on FS or matters
		->	which have any adverse effect on the functioning of the company
	(g)	->	whether any director is disqualified from being appointed as a director u/s 164(2)
	(h)	->	any qualification, reservation or adverse remark
		->	relating to the maintenance of accounts and other matters connected therewith
	(i)	->	whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls
			<p>For the FYs commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls with reference to financial statements and operating effectiveness of such controls. However, for the FY commencing on or after 1st April, 2014 and ending on or before 31st March, 2015, the auditor may voluntarily include such statement in the audit report.</p> <p>This requirement shall not apply to a private company -</p> <p>(i) which is OPC or a small company; or</p> <p>(ii) which has turnover less than Rs. 50 crore as per latest audited FS and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the FY less than Rs. 25 crore if such company has not committed any default in filing with the Registrar its financial statements under section 137 or annual return under section 92.</p>
	(j) ->		such other matters as may be prescribed.
4. Other matters to be included in	The auditor shall include in his report, his views and comments on the following matters:		

<p style="color: red; margin: 0;">auditor's report (Rule 11)</p>	<p style="color: blue;">(a) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its FS.</p> <p style="color: blue;">(b) Whether the company has made provision, as required under any law or Accounting Standards, for material foreseeable losses, if any, on long term contracts including derivative contracts.</p> <p style="color: blue;">(c) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.</p> <p style="color: blue;">(d) * * * [Omitted]</p> <p style="color: blue;">(e) (i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries.</p> <p style="color: blue;">(ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and</p> <p style="color: blue;">(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.</p> <p style="color: blue;">(f) Whether the dividend declared or paid during the year by the company is in compliance with Sec. 123 of the Companies Act, 2013.</p> <p style="color: blue;">(g) Whether the company, in respect of FYs commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail</p>
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	feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention. '	
5. Reasons to be given [Sec. 143(4)]	Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons thereof.	
SPECIAL PROVISIONS W.R.T. GOVERNMENT COMPANIES [Sec. 143(5), (6) and (7)]		
1. Directions by CAG to the auditor [Sec. 143(5)]	<ul style="list-style-type: none">■ In the case of a Government company or any other company owned or controlled, directly or indirectly, by CG or SG(s) or partly by CG and partly by SG(s), CAG shall direct the auditor the manner in which the accounts of the Government company are required to be audited.■ The auditor shall submit a copy of his audit report to CAG.■ The audit report shall, among other things, include - '<ul style="list-style-type: none">(i) the directions, if any, issued by CAG;(ii) the action taken in pursuance of directions issued by CAG; and(iii) the impact on the accounts and FS of the company.	
2. Right of CAG to conduct supplementary Audit or supplement the audit report [Sec. 143(6)]	CAG shall, within 60 days from the date of receipt of the audit report, have the following rights:	
	Supplementary audit	<ul style="list-style-type: none">■ CAG may order conduct of a supplementary audit of the FS of the company.■ Supplementary audit shall be conducted by such person(s) as CAG may authorise in this behalf.■ CAG may authorise such person(s) to obtain such information as may be required for conduct of supplementary audit.
	Supplement or comment	<ul style="list-style-type: none">■ CAG may comment upon the audit report.■ CAG may supplement the audit report.■ Any such comments or supplement shall be sent by the company to every person entitled to copies of audited FS.

		■ Any such comments or supplement shall also be placed before the members in the AGM at the same time and in the same manner as the audit report.
3. Test Audit [Sec. 143(7)]	CAG may, by an order, cause test audit to be conducted of the accounts of the company.	
BRANCH AUDIT [Sec. 143(8)]		
1. Branch in India - Appointment of auditor	The accounts of any branch office in India, shall be audited by - (a) the company's auditor; or (b) any other person qualified for appointment as an auditor of the company.	
2. Branch outside India - Appointment of auditor	The accounts of any branch office outside India, shall be audited by - (a) the company's auditor; or (b) an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.	
3. Duties and powers of the company's auditor	The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, shall be such as may be prescribed.	
	Duties and powers of the company's auditor prescribed under the Rules (Rule 12). (a) The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of Sec. 143. (b) The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.	
4. Report of Branch Auditor	■ The branch auditor shall prepare a report on the accounts of the branch examined by him. ■ The branch auditor shall send his report to the auditor of the company. ■ The auditor of the company shall deal with the report of the branch auditor, in his report in such manner as he considers necessary.	

AUDITOR TO COMPLY WITH AUDITING STANDARDS [Sec. 143(9) and (10)]

1. Nature of duty	Every auditor shall comply with the Auditing Standards.
2. CG to prescribe auditing standards	<p>Stages in prescribing the Auditing Standards are as follows:</p> <p>(i) At the first stage, ICAI recommends the Standards of Auditing.</p> <p>(ii) At the second stage, these Standards of Auditing shall be examined by the National Financial Reporting Authority (NFRA). NFRA may also make its own recommendations.</p> <p>(iii) At the third stage, CG examines the recommendations made by NFRA. Then, CG may prescribe, after consultation with NFRA, the Auditing Standards.</p>
3. Position, until Auditing Standards are notified	Until any Auditing Standards are notified, any standard or Standards of Auditing specified by ICAI shall be deemed to be the Auditing Standards.

AUDIT REPORT TO INCLUDE A STATEMENT ON PRESCRIBED MATTERS [Sec. 143(11)]

> CG may, in consultation with the National Financial Reporting Authority,

> by general or special order,

> direct, in respect of such class or description of companies, as may be specified in the order,

> that the auditor's report shall also include a statement on such matters as may be specified therein.

As per the Companies (Removal of Difficulties) Order, 2016, until the National Financial Reporting Authority is constituted u/s 132, CG may (instead of holding consultation with the National Financial Reporting Authority) hold consultation with a Committee consisting of-

- (a) an officer of the rank of Joint Secretary or equivalent in the Ministry of Corporate Affairs, who shall be the Chairman of such Committee;
- (b) a representative from the Institute of Chartered Accountants of India;
- (c) a representative from the Industry Chambers;

- (d) special invitees from the National Advisory Committee on Accounting Standards;
(e) special invitees from the office of the Comptroller and Auditor-General of India.

REPORTING OF FRAUD BY AN AUDITOR [Sec. 143(12) to (15)]

<p>1. Reporting of frauds involving Rs. 1 crore or above [Sec. 143(12)]</p>	<p>(a) If an auditor of a company has reason to believe that a fraud involving such amount as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to CG.</p> <p>As per Rule 13, any fraud which involves or is expected to involve individually an amount of Rs. 1 crore or above is required to be reported to CG.</p> <p>(b) The auditor shall report such fraud within such time and in such manner as may be prescribed.</p>
	<p>As per Rule 13, the manner of reporting of such fraud shall be as follows:</p> <ol style="list-style-type: none"> The auditor shall report such fraud to the Audit Committee or to the Board, immediately but not later than 2 days of his knowledge of the fraud. The auditor shall seek the reply or observations of the Audit Committee or the Board, within 45 days. If the auditor receives the reply or observations of the Audit Committee or the Board, the auditor shall, within 15 days of receipt of such reply or observations, forward to the Central Government - <ol style="list-style-type: none"> his report; the reply or observations of the Audit Committee or the Board; and his comments on the reply or observations of the Audit Committee or the Board. If the auditor fails to receive the reply or observations of the Audit Committee or the Board within 45 days, he shall forward to CG - <ol style="list-style-type: none"> his report; and a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations. The report shall be sent - <ul style="list-style-type: none"> - to the Secretary, Ministry of Corporate Affairs - in a sealed cover - by Registered Post with Acknowledgement Due or by Speed Post. After the report is sent, an e-mail shall also be sent to the Secretary, Ministry of Corporate Affairs in confirmation of the report sent.

	<p>6. The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number.</p> <p>7. The report shall be signed by the auditor with his seal and shall indicate his Membership Number. .</p> <p>8. The report shall be in the form of a statement as specified in Form ADT-4.</p> <p>9. These provisions shall also apply, mutatis mutandis, to -</p> <p>(a) a cost auditor during the performance of his duties u/s 148; and</p> <p>(b) a secretarial auditor during the performance of his duties u/s 204.</p>
<p>2. Reporting of frauds involving less than Rs. 1 crore [Sec. 143(12)]</p>	<p>(a) In case of a fraud involving lesser than Rs. 1 crore, the auditor shall report the matter to -</p> <p>(i) the audit committee constituted u/s 177; or</p> <p>(ii) the Board, in case the company is not required to constitute the audit committee.</p> <p>(b) The auditor shall report such fraud within such time and in such manner as may be prescribed.</p> <p>As per Rule 13, the auditor shall report such fraud to the Audit Committee or to the Board, immediately but not later than 2 days of his knowledge of the fraud. The auditor shall specify the following points in his report:</p> <p>(a) Nature of fraud with description;</p> <p>(b) Approximate amount involved; and</p> <p>(c) Parties involved.</p>
	<p>(c) The company shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.</p>
	<p>As per Rule 13, the following details of each such fraud shall be disclosed in the Board's Report:</p> <p>(a) Nature of fraud with description;</p> <p>(b) Approximate amount involved;</p> <p>(c) Parties involved, if remedial action is not taken; and .</p> <p>(d) Remedial actions taken.</p>
<p>3. No liability of auditor</p>	<p>An auditor shall not be deemed to be guilty for breach of any of his duties by reason of his reporting any matter to CG if such reporting is done in good faith.</p>

[Sec. 143(13)]	
4. Provisions applicable to other auditors [Sec. 143(14)]	The provisions w.r.t. reporting of fraud shall mutatis mutandis apply to - (a) the cost accountant conducting cost audit u/s 148; or (b) the company secretary in practice conducting secretarial audit u/s 204.
5. Punishment for non-compliance [Sec. 143(15)]	If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of Sec. 143(12), he shall, - (a) in case of a listed company, be liable to a penalty of Rs. 5 lakh; and (b) in case of any other company, be liable to a penalty of Rs. 1 lakh.

Arjun Chhabra (CS LLB LLM)



(1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

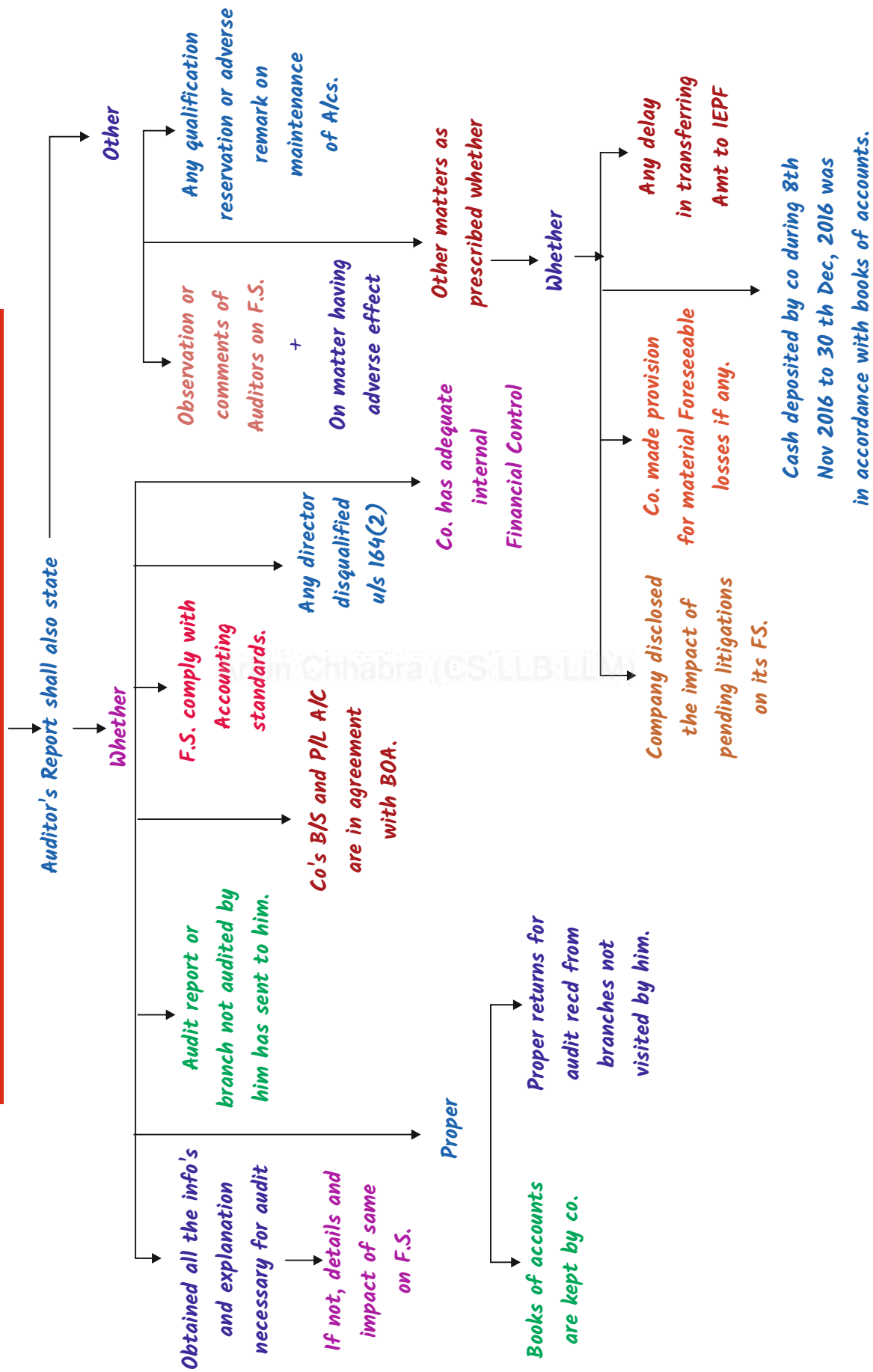
(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

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



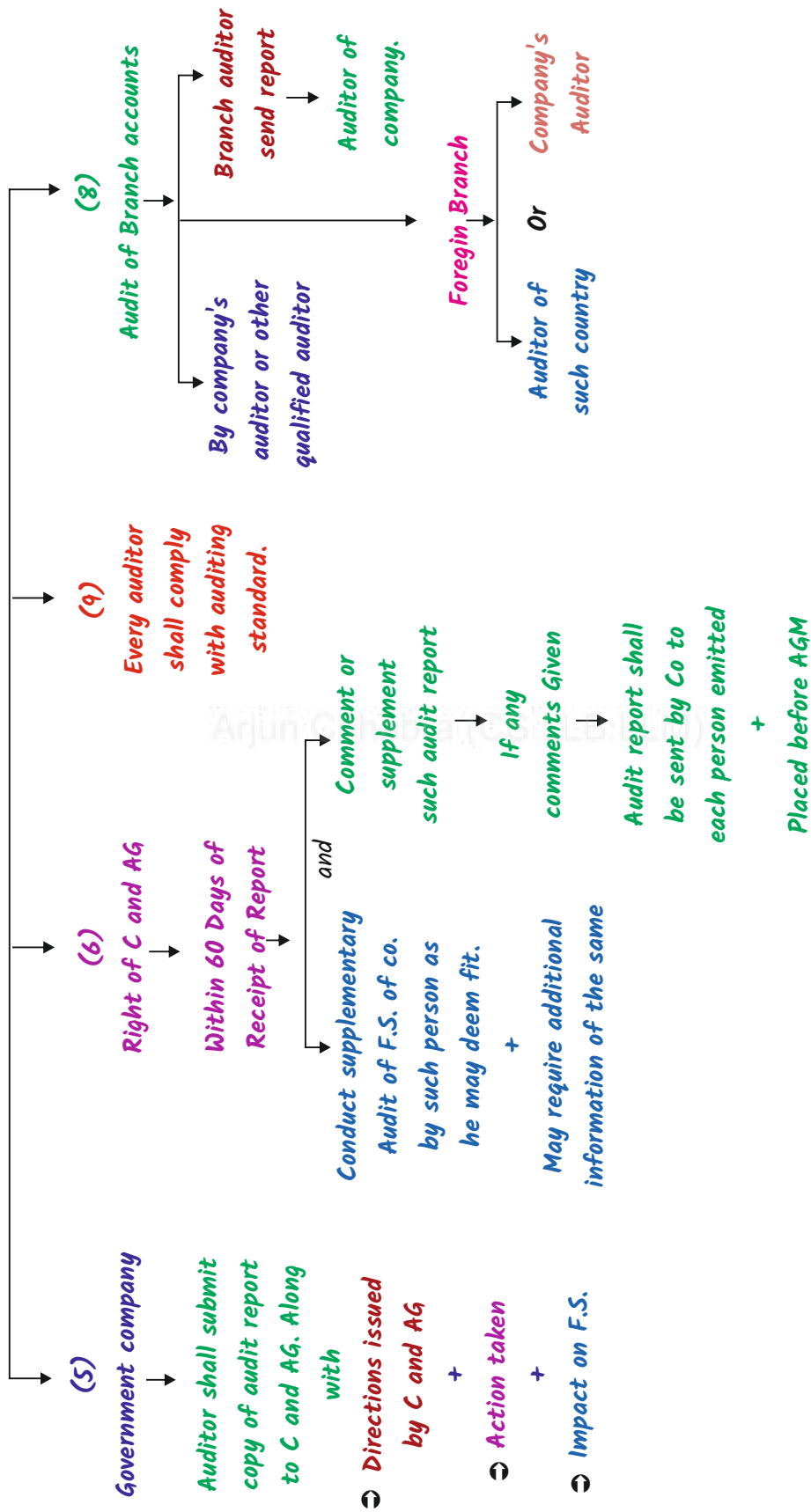


Section -143 (3)





Section - 143





Section - 143(12) + Rule 13 - Reporting of Fraud by officers or employee

Individual Fraud Amount

Less than 1 Crore

Auditor shall within 2 days of knowledge of fraud report

- (a) Nature of Fraud
- (b) Approximate Amt involved
- (c) Parties involved
- (d) Remedial action taken

Audit Committee or BOD

Board shall disclose the details of fraud in its BOD report along with details of remedial action taken

1 Crore or more

Same

Auditor will seek their reply within 45 days

Reply RECD

Within 15 days of receipt

Report to C.G. in FORM ADT -4 addressed to secretary MCA

Details of fraud
Reply Received
Auditor's observation on reply

NOT RECD

within 15 days of expiry of 45 days

Report to C.G. FORM ADT-4

Details of fraud
No reply Recd

Section -143

(13)

No contravention of section 143 (2) if fraud not reported by auditor in good faith

(14)

The provisions of this section shall apply mutatis Mutandis

Cost accountant

Conducting cost audit u/s 148

Company secretary in practice

Conducting secretarial audit u/s 204

(15)

Non-Compliance of sub-sec (12) by CA.CMA., or CS in practice

Penalty

Listed co

Rs.5 Lakh

Other Co

Rs. 1 Lakh

Key Managerial Personnel

Section 2(51) of the Companies Act, 2013, key managerial personnel, in relation to a company has been defined as:

- i) the Chief Executive Officer or the managing director or the manager;
- ii) the company secretary;
- iii) the whole-time director;
- iv) the Chief Financial Officer
- v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- vi) such other officer as may be prescribed.

Section 2(51) of the Companies Act, 2013, defines Key Managerial Personnel (KMP) as key executives responsible for a company's management and operations. The KMP roles include:

1. **CEO, Managing Director, or Manager** – Oversees overall management and strategic direction.
2. **Company Secretary (CS)** – Ensures compliance and maintains records.
3. **Whole-Time Director (WTD)** – Actively involved in day-to-day operations.
4. **Chief Financial Officer (CFO)** – Manages financial aspects and regulatory compliance.
5. **Other Officers Designated as KMP** – Employees one level below directors, if designated by the board.
6. **Additional Officers as Prescribed** – Other roles that may be prescribed by the government.

These roles ensure accountability, compliance, and effective management within the company.