

CMA FINAL - PAPER 13 **CORPORATE & ECONOMIC LAWS**

**VOLUME
1**

SECTION - A:
CORPORATE LAWS + IBC + C.G.
(60 Marks)

NEW SYLLABUS
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COMPANIES ACT, 2013

CHAPTER: ACCOUNTS & AUDIT

Meaning through “EXAMPLE”:



*Working as CMA in
Reliance Company*



*Because She is CMA in
whole time
employment, Hence,
She has to make Cost
Accounts of Reliance.*



*While preparing Cost
Accounts, She has to follow
“COST ACCOUNTING
STANDARDS”.*

*Working as Practising
CMA.*



*Because He is CMA in
whole time Practice,
Hence, He has to make
Audit of various
Companies.*



*While conducting Cost Audit,
he has to follow “COST
AUDITING STANDARDS”.*

MEANING OF BOOKS OF ACCOUNTS: According to Section 2 (13) of the Companies Act, 2013, “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 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 costs as may be prescribed under Section 148.

MAINTENANCE OF BOOKS OF ACCOUNTS [SECTION 128 (1)]:

- ✓ Every company shall prepare and keep at its registered office 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.
- ✓ The company shall be in a position to explain the transactions effected both at the registered office and its branches.
- ✓ Such books of Account shall be kept on accrual basis and according to the double entry system of accounting.

PLACE OF MAINTENANCE OF BOOKS OF ACCOUNT [SECTION 128 (1)]:

- ✓ The books of account and other relevant papers are required to be kept at the registered office of the company.
- ✓ The company may also keep all or any of the books of account at any other place in India as the Board of directors may decide. In such a case, the company shall file with the Registrar of Companies, a notice in writing giving the full address of that other place within 7 days of the Board's decision.

ELECTRONIC FORM OF BOOKS OF ACCOUNT [SECTION 128 (1)]: 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.
- ✓ Be retained completely in the format in which they were originally generated, sent or received and the information contained in the electronic records shall remain completed and unaltered.
- ✓ 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.
- ✓ The information in the electronic record of the document shall be capable of being displayed in a legible form.
- ✓ 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.

- ✓ 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.

NOTE:

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement:

- The name of the service provider.
- The internet protocol address of service provider.
- The location of the service provider (wherever applicable).
- Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider .

PROPER BOOKS OF ACCOUNT IN RELATION TO A BRANCH OF THE COMPANY [SECTION 128(2)]:

- ✓ Where company has a branch office in India or outside India, proper books of account relating to the transactions effected at the branch office may be kept at that branch office.

- ✓ Provided, proper summarised returns periodically must be sent by the branch office to the company at its registered office or the other place as decided by the Board of directors.

PERSONS WHO CAN INSPECT [SECTION 128 (3) AND (4)]:

- ✓ The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours.
- ✓ In the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director:
 - a. 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.
 - b. 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.
 - c. The company shall produce such financial information to the director within 15 days of the date of receipt of the written request.
 - d. The financial information required under Sub-rules (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.

- ✓ The inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.
- ✓ 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.

PERIOD OF MAINTENANCE [SECTION 128 (5)]:

- ✓ The books of account of every company together with the vouchers relevant to any entry in such books of account shall be kept in good order by the company for a minimum period of 8 financial years immediately preceding a financial year.
- ✓ Where the company had been in existence for a period of less than 8 years, it shall maintain the books of account in respect of all such preceding years in good order.
- ✓ Where an investigation has been ordered in respect of the company, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

PERSONS RESPONSIBLE FOR MAINTENANCE & PENALTY [SECTION 128 (6)]:

- a. The following persons are responsible for the maintenance of proper books of account:
 - i. The managing director, the whole - time director in charge of finance, the Chief Financial Officer; or
 - ii. Any other person of a company charged by the Board.

- b. If any of the persons mentioned above contravenes provisions of this Section, they shall be punishable with - Fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 lakhs.

FINANCIAL STATEMENT [SECTION 129]:

As per the definition of Financial Statement under Section 2(40), 'Financial Statement' in relation to the company includes:

- ✓ A balance sheet as at the end of the financial year
- ✓ A profit & loss account, or in 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;
- ✓ A statement of changes in equity, if applicable; and
- ✓ Any explanatory note annexed to or forming part of any document referred above.

NOTE: Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include Cash Flow Statement.

MANNER OF FINANCIAL STATEMENT:

- ✓ 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.
- ✓ However, the items contained in such financial statements shall be in accordance with the accounting standards.

NOTE: The above provisions relating to form and content of financial statement shall not apply to following companies:

- ✓ Insurance Companies;
- ✓ Banking companies;
- ✓ Company engaged in the generation or supply of electricity;
- ✓ Any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

LAYING OF FINANCIAL STATEMENTS AT ANNUAL GENERAL MEETING [SECTION 129(2)]:

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

CONSOLIDATED FINANCIAL STATEMENTS [SECTION 129(3) & (4)]:

- ✓ Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own.
- ✓ The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement.
- ✓ The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC - 1.
- ✓ For the purposes of consolidated financial statements, subsidiary shall include associate company.

EXCEPTIONS: Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:

- ✓ It is a wholly owned subsidiary, or is a partially owned subsidiary of another company and all its other members, including those who are not otherwise entitled to vote, having been intimated in writing and for which proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- ✓ it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

- ✓ its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with applicable Accounting Standards.'

DEVIATIONS FROM ACCOUNTING STANDARDS [SECTION 129 (5)]: If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following namely:

- ✓ The deviation from the accounting standards.
- ✓ The reasons for such deviation; and
- ✓ The financial effects, if any, arising out of such deviation.

EXEMPTIONS [SECTION 129 (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.

PUNISHMENT FOR CONTRAVENTION [SECTION 129 (7)]: If a company contravenes the provisions of this section:

- Managing director,
- Whole - time director in charge of finance,
- 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

- a. **with Imprisonment:** for a term which may extend to **one year**; or
- b. **with fine:** which shall **not be less than fifty thousand rupees** but which may extend to **five lakh rupees**; or
- c. **with both.**

PERIODICAL FINANCIAL RESULTS – UNLISTED COMPANIES [SECTION 129A]:

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

- ✓ To prepare the financial results of the company on such periodical basis and in such form as may be prescribed;
- ✓ 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; and
- ✓ **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.

AUTHENTICATION OF FINANCIAL STATEMENTS [SECTIONS 134 (1), (2) & (7)]:

- ✓ 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 at least by the following:
 - The chairperson of the company where he is authorised by the Board, or
 - By two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
 - The Chief Financial Officer, wherever he is appointed, and
 - The company secretary of the company, wherever he is appointed.

- ✓ In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.
- ✓ The auditors' report shall be attached to every financial statement [Section 134(2)].
- ✓ A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:
 - Any notes annexed to or forming part of such financial statement.
 - The auditor' report; and
 - The Board's report. [Section 134(7)].

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

1. 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, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that:
 - i. The relevant earlier accounts were prepared in a fraudulent manner; or
 - ii. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income - tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

2. Without prejudice to the provisions contained in this Act the accounts so revised or re - cast under sub - section 1 shall be final.
3. No order shall be made under sub - section 1 in respect of re - opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub - section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re - opened within such longer period.

VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [SECTION 131]: If it appears to the directors of a company that:

- a. The financial statement of the company; or
- b. The report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of **any of the three preceding financial years** after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

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

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

2. Where copies of the previous financial statement or report have been sent out to member or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to:
 - a. The correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
 - b. The making of any necessary consequential alternation.
3. The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular:
 - a. Make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
 - b. Make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
 - c. Require the directors to take such steps as may be prescribed.

CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SECTION 132]:

- ✓ The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- ✓ National Financial Reporting Authority shall:
 - a. Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - b. Monitor and enforce the compliance with accounting standards and in such manner as may be prescribed;
 - c. Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - d. Perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS (SECTION 133):

- ✓ Section 133 of the Companies Act, 2013 deals with the power of the Central Government to prescribe the accounting standards.
- ✓ Accounting Standards means the standards of accounting or any addendum thereto as recommended by the Institute of Chartered Accountants of India (ICAI) constituted under Section 3 of the Chartered Accountants Act, 1949, as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority constituted under Section 132 of the Companies Act, 2013.

- ✓ In respect of accounting standards, the role of National Financial Reporting Authority (NFRA) is limited to advise the Central Government on the accounting standards recommended by ICAI for adoption by companies.
- ✓ Alongwith Financial Reporting Authority, the existing Accounting Standards notified under the Companies Act, 1956 shall continue to apply.

AUTHENTICATION OF FINANCIAL STATEMENTS [SECTIONS 134 (1), (2) & (7)]:

- ✓ 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 at least by the following:
 - The chairperson of the company where he is authorised by the Board, or
 - By two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
 - The Chief Financial Officer, wherever he is appointed, and
 - The company secretary of the company, wherever he is appointed.
- ✓ In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.
- ✓ The auditors' report shall be attached to every financial statement [Section 134(2)].
- ✓ A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:
 - Any notes annexed to or forming part of such financial statement.
 - The auditor' report; and
 - The Board's report. [Section 134(7)].

BOARD'S REPORT [SECTIONS 134 (3) & (4)]:

- ✓ Every company needs to prepare Board Report. According to Companies (Accounts) Rules, 2014, the Board's Report shall be prepared based on the stand alone financial statements of the company. However, it does include a separate section that covers the performance and financial position of any subsidiaries, associates, or joint ventures that are included in the consolidated financial statement.
- ✓ There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include:
 - The extract of the annual return as provided under Sub-Section (3) of Section 92 in Form MGT - 9; to be placed in website and web address to be mentioned in Board Report.
 - Number of meetings of the Board;
 - Directors' Responsibility Statement;
 - Details in respect of frauds reported by auditors under Section 143 (12) other than those which are reportable to the Central Government.
 - a statement on declaration given by independent directors under Sub - Section (6) of Section 149.
 - Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made:

- a. by the auditor in his report; and
 - b. by the company secretary in practice in his secretarial audit report.
- Particulars of loans, guarantees or investments under Section 186.
 - Particulars of contracts or arrangements with related parties referred to in Sub- Section (1) of Section 188 in Form AOC - 2.
 - the state of the company's affairs.
 - the amounts, if any, which it proposes to carry to any reserves.
 - the amount, if any, which it recommends should be paid by way of dividend.
 - 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.
 - the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as prescribed under the Rule 8(3) of the Companies (Accounts) Rules, 2014 which provides for.
 - 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.

- the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year along with the web address where the policy is hosted. Salient features of the policies including on directors appointment & remuneration be mentioned in the Board Report, besides website disclosure.
- Every listed company and every other public company having a paid up share capital of ₹25 crores or more calculated at the end of the preceding financial year shall include (as prescribed under the Companies (Accounts) Rules, 2014), in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- Such other matters as contain as prescribed under the Companies (Accounts) Rules, 2014. According to which the report of the Board shall also contain:
 - 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.
 - 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 like:
 - a. accepted during the year.

- b. remained unpaid or unclaimed as at the end of the year.
- c. 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:
 - i. at the beginning of the year.
 - ii. maximum during the year.
 - iii. at the end of the year.
- the details of deposits which are not in compliance with the requirements of Chapter V of the Act.
- 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.
- the details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- a statement regarding opinion of the Board with regard to, expertise and experience of the independent directors appointed during the year.

BOARD'S REPORT IN CASE OF OPC [SECTION 134 (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.

DIRECTORS' RESPONSIBILITY STATEMENT [SECTION 134 (5):

The Directors' Responsibility Statement referred to in 134 (3) (c) shall state that:

- ✓ In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.
- ✓ 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.
- ✓ 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.
- ✓ The directors had prepared the annual accounts on a going concern basis, and
- ✓ The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- ✓ 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.

SIGNING OF BOARD'S REPORT [SECTION 134(6)]: The Board's report and any annexures thereto shall be signed by:

- ✓ Its chairperson of the company if he is authorised by the Board.
- ✓ Where chairperson is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director; or
- ✓ by the director where there is one director.

CONTRAVENTION [SECTION 134(8)]:

If a company contravenes any provision of this Section, the penalty would be ₹ 3 lakhs for the company and ₹ 50,000 for every officer in default.

SECTION 135 OF COMPANIES ACT, 2013 AND SCHEDULE VII:

Every company including subsidiary company, if has:

- Net worth of Rs. 500 crores or more;
- Turnover of Rs. 1000 crores or more;
- Net Profit of Rs. 5 crores or more

during the immediately preceding financial year.

NOTE: if any branch office or project office in India of any foreign company fulfills above condition then must contribute to CSR.

MINIMUM AMOUNT TO CONTRIBUTE: At least 2% of average net profit of immediately preceding 3 financial years.

CSR COMMITTEE:

- ✓ Company falling u/s 135, must have a CSR committee.
- ✓ At least 3 directors should be member of CSR committee
- ✓ Out of 3 directors 1 must be independent director.
- ✓ But if company is not required to have an independent director as per section 149, then only 2 directors.

RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT (SECTION 136): According Section 136 of the Companies Act, 2013:

- ✓ A copy of the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following:
 - To every member of the company,
 - To every trustee for the debenture holder of any debentures issued by the company, and
 - To all persons other than such member or trustee, being the person so entitled.
- ✓ Consolidated financial statements, if any, auditors' report and every other document required by law to be annexed or attached to the financial statements shall be annexed with financial statements.

- ✓ These financial statements shall be sent in not less than 21 days before the date of the meeting. May be sent less than 21 days before if shareholders with 95% voting agree.
- ✓ In the case of a listed company:
 - The above provisions shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting.
 - Along with it a statement containing the salient features of such documents in the Form AOC - 3 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.
 - The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.
- ✓ A company shall also allow every member or trustee of the debenture holder to inspect the audited Financial Statement at its registered office during business hours.
- ✓ In case of all listed companies and **such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees**, the financial statements may be sent:
 - by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes.
 - where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode, and

CONTRAVENTION:

- ✓ If any default is made in complying with the provisions of this Section, the company shall be liable to a penalty of ₹25,000.
- ✓ Every officer of the company who is in default shall be liable to a penalty of ₹5,000.

COPY OF FINANCIAL STATEMENTS TO BE FILED WITH REGISTRAR (SECTION 137 OF THE COMPANIES ACT, 2013):

Section 137 of the Companies Act, 2013 provides for copy of financial statements to be filed with Registrar. According to this Section:

a. Filing of Financial Statements when adopted [Section 137 (1)]:

- i. A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company;
- ii. shall be filed with the Registrar within 30 days of the date of Annual General Meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under Section 403.

b. If Financial Statements are not adopted [First proviso to Section 137 (1)]:

- i. Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting.

- ii. 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.
- iii. If the financial statements are adopted in the adjourned annual general meeting, then they shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under Section 403 (i.e. within 270 days from the date by which it should have been filed with additional fees).

c. Filing by One Person Company [Third proviso to Section 137 (1)]:

A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

d. Company having subsidiaries outside India [Fourth proviso to Section 137 (1)]:

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.

NOTE: It has also been clarified vide General Circular No. 11/2015 dated 21st July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian may place or file such unaudited accounts to comply with requirements of Section 136 (1) and 137 (1) as applicable.

Further, 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.

e. Annual General meeting not held [Section 137 (2)]:

Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within 30 days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under Section 403.

PENALTY [SECTION 137 (3)]:

If any of the provisions of this Section are contravened:

- a. The company shall be punishable with fine of ₹1,000 for every day during which the failure continues but which shall not be more than ₹10 Lakhs, and
- b. 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 ₹1 lakh and in case of continues failure, a sum of ₹1,000 for each day, subject to maximum of ₹5 lakhs.

INTERNAL AUDIT (SECTION 138): Section 138 of the Companies Act, 2013 came into force from 1st April, 2014 which provides first time new provision for internal audit. According to Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014:

- **Companies required to appoint Internal Auditor:**
- ✓ The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate namely:
 - a. every listed company.
 - b. every unlisted public company having:
 - i. paid up share capital of Rs. 50 crores or more during the preceding financial year, or
 - ii. turnover of Rs. 200 crores or more during the preceding financial year, or
 - iii. outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crores or more at any point of time during the preceding financial year, or
 - iv. outstanding deposits of Rs. 25 crores or more at any point of time during the preceding financial year, and
 - c. every private company having:
 - i. turnover of Rs. 200 crores or more during the preceding financial year, or
 - ii. outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crores or more at any point of time during the preceding financial year.
- ✓ 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.

TRANSITIONAL PERIOD: 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 IS INTERNAL AUDITOR:

- ✓ 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. Here, the term Chartered Accountant shall mean a Chartered Accountant whether engaged in practice or not.
- ✓ The internal auditor may or may not be an employee of the company.

PREVIOUS YEAR QUESTIONS:

Q.1: Board of every Company shall ensure that the Company spends in Every financial year on account of CSR Policy at least:

- a. 5% of Average Net Profit
- b. 3% of Average Net Profit
- c. 2.5% of Average Net Profit
- d. 2% of Average Net Profit

Q.2: During any financial year Corporate Social Responsibility Committees of the Board shall be constituted by every Copmany having:

- a. Turnover of ₹5,000 Crores or more.
- b. A Net Profit of ₹2 Crores or more.
- c. Net Worth of ₹5 Crores or more.
- d. Authorized capital of ₹500 Crores or more.

Q.3: ABC Ltd., is a company which has a net worth of INR ₹ 200 crores, it manufactures rubber parts for automobiles. The sales of the company are affected due to low demand of its products.

The previous year's financial state: (₹ in Crore)

| | March 31, 2019 (Current year) | March 31, 2018 | March 31, 2017 | March 31, 2016 |
|---------------------|----------------------------------|-------------------|-------------------|-------------------|
| Net Profit | 3.00 | 8.50 | 4.00 | 3.00 |
| Sales (turnover) | 850 | 950 | 900 | 800 |

Does the company have an obligation to form a CSR Committee since the applicability criteria is not satisfied in the current financial year?

APPOINTMENT OF FIRST AUDITOR: SEC. 139 (6):

➤ **In case of government company :-**

- ✓ The first auditor shall be appointed by CAG within 60 days from the date of incorporation.
- ✓ If CAG fails to appoint first auditor then BOD shall appoint first auditor within next 30 days.

- ✓ It BOD also fails to appoint first auditor than members shall appoint first auditor within maximum 60 days.

NOTE: First Auditor shall hold office till the conclusion of First AGM.

EXAMPLE:



A Govt. Co., incorporated on 31st July.

Kya hua C.S. Sahab badi tension me lag rahe ho yaar.



Sunil bhai is C&AG ko 29th sep. tak (60 days ke andar) meri Govt. Co. ka first Auditor appoint karna tha but nahi kiya.

C.S.

Ohho, toh phir.



C.S.

- Phir kya yaar BOD'S ko B.M. me 29th Oct. tak (next 30 dino ke andar) first Auditor appoint karna tha because C&AG ne nahi kiya tha.
- Par hamare BOD'S bhi toh kaamchor hain, unhone ne bhi appoint nahi kiya.



Ohho, toh ab?

Ab yaar 28th Dec. tak (within next 60 days) ke andar General Meeting me members ke through first auditor appoint karwana hai.



C.S.



Yaar C.S. Sahab ye first Auditor ke appointment ka itna jhamela hai, ye kab tak ke liye appoint rehta hai?

Anna sirf 1st AGM tak. Uske baad kisi new ko Auditor bana sakte hain ya first Auditor ko bhi appoint kar sakte hain.



C.S.

PREVIOUS YEAR QUESTION:

Q.: In case the Comptroller and Auditor General of India does not appoint first auditor within the stipulated date who will appoint such auditor within next 30 days?

- a. Share holders
- b. Board of Directors

- c. Managing Directors
- d. Company Secretary

FIRST AUDITOR IN A COMPANY OTHER THAN GOVT. COMPANY :

- ✓ BOD shall appoint first auditor within 30 days from the date of incorporation.
- ✓ If BOD fails to appoint first auditor then members shall appoint first auditor within 90 days.

NOTE: Term of office of first auditor: Till the conclusion of first AGM.

APPOINTMENT OF SUBSEQUENT AUDITORS IN NON - GOVT. COMPANY:

- ✓ Every company shall at its first AGM appoint an individual or a firm as an auditor who shall hold his office from the conclusion of that meeting till the conclusion of 6th consecutive AGM of the company.
- ✓ The company shall place the matter relating to auditors appointment for ratification by member at every AGM.
- ✓ Before such appointment written consent of auditor shall be obtained.
- ✓ Company shall obtain a certificate from auditor indicating that the auditor satisfies all the criteria eligibility norms provide U/S 141.

- ✓ The company shall inform the auditor about his appointment and shall also file a notice of such appointment in E - Form ADT - 1, with the ROC within 15 days from the meeting in which the auditor was appointed.

NOTE:

- If Audit committee is compulsory in Company, recommendation of name of Auditor must be given by Audit Committee.
- If not , recommendation of name of Auditor must be given by Board of Directors.

EXAMPLE:



Bhaiya ji aapki co. ki toh AGM hone wali hai na? jisme aap First Auditor ko hatakar sebsequesnt Auditors appoint karenge.


Yahi toh tension hai bablu beta, kaise hota hai ye sab?



Bhaiya ji aapne ki hai kya kisi se baat Auditor banne ke liye?


Haan, ki toh hai.





Toh bhaiya ji Sabse pahle, Aap usse writing me le lo ki wo aapki co. me Auditor banne ko taiyaar hai and wo pahle se 20 co.'s me Auditor nahi hai & kisi bhi disqualification me fall nahi hota?

Ek khali page par likh wale kya usse?




Co. Ltd.




Are nahi bhaiya ji, Section 141 ke andar usse certificate le lo in sab baato ka.

Uske baad?




Co. Ltd.



Uske baad bhaiya ji usse bolo shanti rakhe or aap A.G.M. me members ke saamne uski sab details rakh do, phir members se pucho isko kar lein kya appoint.

Agar members bole ki kar lo appoint, toh?




Co. Ltd.




Toh phir bhaiya ji 15 dino ke andar us Auditor ko badhai de do writing me and ROC ko bhi bata do E-Form ADT - I file karke.

Abey har A.G.M. me karna padega kya ye appointment?





Co. Ltd.



Are nahi bhaiya ji, ek baar jo Auditor aapne appoint kar liya wo agle 5 A.G.M. tak ke liye Auditor ki tarah appointed rahega.
Aapko 6th AGM me new Auditor appoint karna hoga.


Matlab har AGM me appoint karne ka lafda khatam?



Co. Ltd.

Haan bhaiya appoint karne ka lafda toh nahi rahega par aapko har AGM me members se ye poochna padega ki isi ko bane rahne de Auditor ya hata dein.


Aisa kyun Bablu beta?



Co. Ltd.

Bhaiya ji agar usne sahi se kaam nahi kiya ya kuch galat kiya ya ab disqualification me fall ho gaya toh hatana toh padega na.
Isliye appoint toh 5 AGM tak ho jata hai auditor par har AGM me members se confirmation liya jata usko continue karne ka.

Bablu beta agar hamko uska kaam accha lag jata hai toh Phir agle 5 saalo ke liye dobara usko appoint kar sakte hain kya?



Co. Ltd.



Bhaiya ji agar aapne kisi individual person ko appoint kiya tha toh nahi kar sakte. Agar kisi firm ko appoint kiya tha toh kar sakte ho, agle 5 saalo ke liye. Phir aage nahi. Matlab lagataar 10 saal.

APPOINTMENT OF SUBSEQUENT AUDITORS IN GOVT. COMPANY:

1. Will be appointed by C&AG.
2. Within 180 days from the starting of Financial Year.
3. Will hold office till conclusion of Next AGM.

TERM OF AUDITOR [SECTION 139 (2)]:

1. Section 139 (2) provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re - appoint:
 - a. an individual as auditor for more than one term of five consecutive years, and
 - b. an audit firm as auditor for more than two terms of five consecutive years.
2. Rule 5 of the Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of Section 139 (2):
 - a. all unlisted public companies having paid up share capital of Rs. 10 crores or more.
 - b. all private limited companies having paid up share capital of Rs. 20 crores or more.

- c. all companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more.

NOTE:

- ✓ If Audit committee is compulsory in Company, recommendation of name of Auditor must be given by Audit Committee.
- ✓ If not , recommendation of name of Auditor must be given by Board of Directors.

EXAMPLE:



1 term = 3 years

Appointed Shaktimaan as Auditor for one term.
And after one term removed.



1 term = 5 years

Appointed Chota Bheem as Auditor for one term.
And after one term removed.



Both are right as 1 term can be max. of 5 years.

COOLING OFF PERIOD:

- ✓ An individual auditor who has completed his term (i.e., one term of five consecutive years) shall not be eligible for re - appointment as auditor in the same company for five years from the completion of his term.
- ✓ An audit firm which has completed its term (i.e., two terms of five consecutive years) shall not be eligible for re - appointment as auditor in the same company for five years from the completion of such term.

NOTE: As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

EXAMPLE:



Appointed Kushti firm as Auditor for 1 term from 2020 - 2025.



Now, appointing Dhol firm as Auditor for next term.



Conclusion: Airtel cannot do this because Rajpal Yadav is common partner in both firms and as per law Auditor must be independent.

ROTATION OF AUDITOR [SECTION 139 (3) AND (4)]: Members of a company may resolve to provide that:

- ✓ In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members, or
- ✓ Audit shall be conducted by more than one auditor.
- ✓ The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors.
- ✓ Manner of rotation of auditors by the companies on expiry of their term as provided under Rule 6 the Companies (Audit and Auditors) Rules, 2014:
 - The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
 - Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.
- ✓ For the purpose of the rotation of auditors:
 - in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

- the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

The term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

NOTE: For the purpose of rotation of auditors:

- ✓ A break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation.
- ✓ If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Q.: ROTATION OF AUDITOR APPLICABLE TO WHICH COMPANIES?

Ans.: The Central Government has notified the Companies (Audit and Auditors) Rules, 2014 and prescribed that these provisions shall be applicable to following class of the companies excluding one person companies and small companies.

- ✓ All Listed Companies.
- ✓ All unlisted public companies having paid up capital of Rs. 10 crores or more.
- ✓ All private limited companies having paid up capital of Rs. 50 crores or more.
- ✓ All companies having paid up share capital of below threshold limit mentioned in (a) & (b) above and having borrowing from financial institutions, banks or public deposits of Rs. 50 crores or more.

FILING A CASUAL VACANCY 139 (8) :

- Meaning: Casual vacancy means a vacancy like resignation, disqualification, dissolution of a CA firm, etc.

➤ **In case of a Govt. company:**

- ✓ casual vacancy shall be filled by C&AG within 30 days.
- ✓ If CAG fails to fill the casual vacancy; the BOD's shall fill the same within next 30 days.

Legal Language: In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor - General of India, be filled by the Comptroller and Auditor-General of India within thirty days: Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

➤ **For a Company other than a Govt. company:** casual vacancy shall be filled by the BOD's within 30 days.

EXCEPTION: In case casual vacancy has occurred due to resignation of auditor, such appointment should also be approved by the company in general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

Legal Language: in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three

months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

Q.: How Auditor can resign?

Ans.:

- ✓ The auditor who makes resign gives the intimation to the company and registrar in form ADT - 3 within 30 days from his resignation.
- ✓ Further the auditor must prescribe the reason and facts as may be relevant to his resignation.
- ✓ If the auditor does not comply with the section 140(2) he or it shall be liable for the penalty of Rs 50,000/- or an amount equal to the remuneration to the auditor, whichever is less and in case of continuing failure, with further penalty of Rs 500/- for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

NOTE: Attachment for e - form ADT - 3 is the Resignation Letter only.

RE - APPOINTMENT OF RETIRING AUDITOR : SEC. 139 (9): Such auditor shall be re - appointed at AGM except under following circumstances:

- ✓ He has given written notice to company of his unwillingness.
- ✓ He has been disqualified.
- ✓ If special resolution is passed that retiring auditor shall not be reappointed.

NOTE: At AGM if no auditor is re - appointed or appointed than existing auditor shall continue to be auditor till the conclusion of next AGM.

EXAMPLE:



As per law, retiring Auditor can be re - appointed.



By Auditor himself





- But co. not appointed any other auditor and even not re - appointed him.
- And meeting getting ended.
- In this situation retiring Auditor will by default be re-appointed till next AGM.

REMOVAL OF AUDITOR BEFORE EXPIRY OF HIS TERM: To remove Auditor, firstly Board Resolution must be passed.

- ✓ Prior approval of CG is required through an application in form no. ADT - 2 within 30 days from the date of board resolution.
- ✓ Special resolution at general meeting shall be passed within 60 days from approval of CG is obtained ([Every special resolution is required to be filed in E-Form MGT-14).
- ✓ Before removal, an opportunity of hearing (Audi Alteram Partem) shall be given to the auditor.

EXAMPLE:



Company wants to remove him from the position of Auditor



Kaise hatana hai?



C.S.

- Sabse pahle khud paaka decide karo ki hatana mangta hai. Board Meeting me Board Resolution pass karo.
- Phir C.G. ki permission maangne ka Auditor ko hatane ke liye, application ADT - 2 me lagegi C.G. ko.
- Application 30 days me lagegi C.G. jab se Board Resolution pass hua hai.
- C.G. ki approval ka wait karne ka
- Or jab aa jaye toh 60 dino ke andar General meeting bulake members se permission lene ka special resolution pass karwake.

RESIGNATION OF AUDITOR BEFORE EXPIRY OF HIS TERM (SEC. 140):

- ✓ The auditor who makes resign gives the intimation to the company and registrar in form ADT - 3 within 30 days from his resignation.
- ✓ Further the auditor must prescribe the reason and facts as may be relevant to his resignation.
- ✓ If the auditor does not comply with the section 140(2) he or it shall be liable for the penalty of Rs. 50,000/- or an amount equal to the remuneration to the auditor, whichever is less and in case of continuing failure, with further penalty of Rs 500/- for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

NOTE: Attachment for e - form ADT - 3 is the Resignation Letter only.

EXAMPLE:



- Resigned from the position of Auditor.
- And informed to ROC within 30 days in Form No. ADT - 3.



Want to appoint on position of Auditor

BOD'S



Should recommend Virat's name within 3 months from casual vacancy of Dhoni and will get approval from members in General Meeting.

SPECIAL NOTICE FOR REMOVING AUDITOR BEFORE THE EXPIRY OF HIS TERM [SECTION 140 (4)]:

- ✓ If the retiring auditor has not completed a consecutive tenure of 5 years or, as the case may be, 10 years, as provided under Sub-Section (2) of Section 139, special notice shall be required for a resolution at an AGM.

appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re - appointed.

- ✓ On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- ✓ Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so:
 - In any notice of the resolution given to members of the company, state the fact of the representation having been made, and
 - Send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.
- ✓ If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.
- ✓ However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.

ELIGIBILITY & QUALIFICATION OF AUDITORS:- (SEC. 141)

As per Section 141 of Companies Act, 2013, the following persons should be considered as qualified for being a company auditor:

- ✓ A person shall be eligible for appointment as an auditor of a company, only if he is a Chartered Accountant [Section 141(1)].
- ✓ A firm can also be appointed by its firm name to act as the auditor of a company if majority of its partners practicing in India are qualified for appointment as company auditor [Section 141(1)].
- ✓ Where a firm, including a limited liability partnership, is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm [Section 141(2)].

EXAMPLE:



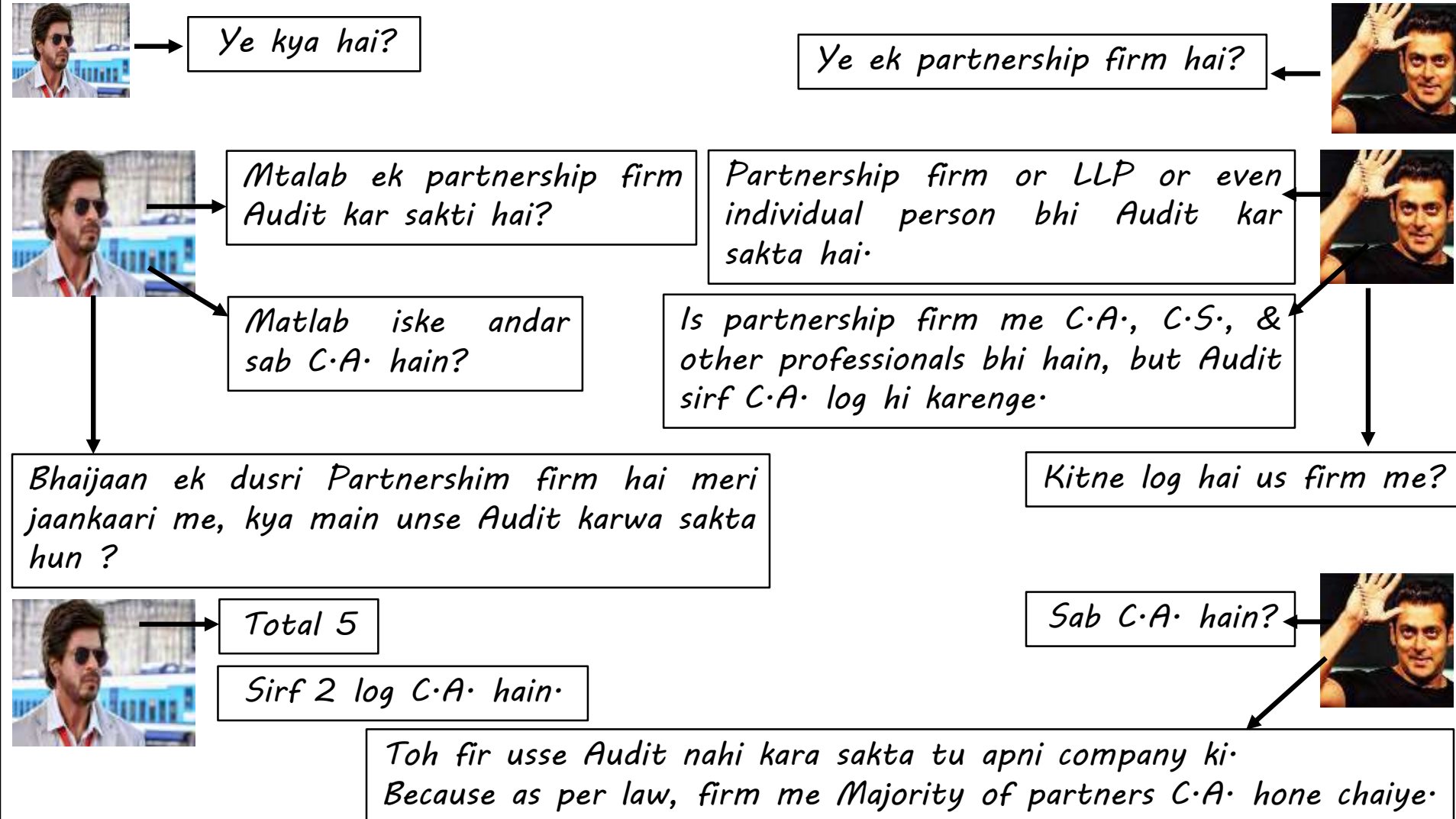
Kya hua SRK?



Bhaijaan Audit karani hai company ki, par kisse karaun?



Jaani Dushman & Associates se kara le



NOTE: In this context, the meaning of the term 'Chartered Accountant' shall be interpreted based on the provisions of The Chartered Accountants Act, 1949 as follows:

- i. “Chartered Accountant” means a person who is a member of the Institute [Section 2].**
- ii. A person is a member of the Institute if his name appears in the Register of the Institute [Section 3].**
- iii. The following persons shall be entitled to have his name entered in the Register [Section 4]:**
 - a. Any person who is a registered accountant or a holder of a restricted certificate at the commencement of this Act.**
 - b. Any person who has passed such examination and completed such training as may be prescribed for members of the Institute.**
 - c. Any person who has passed the examination for the Government Diploma in Accountancy or an examination recognized as equivalent thereto by the rules for the award of the Government Diploma in Accountancy before the commencement of this Act and fulfils such conditions as specified by the Central Government in this behalf.**
 - d. Any person who, at the commencement of this Act, is engaged in the practice of accountancy in any State and fulfils such conditions as specified by the Central Government in this behalf.**

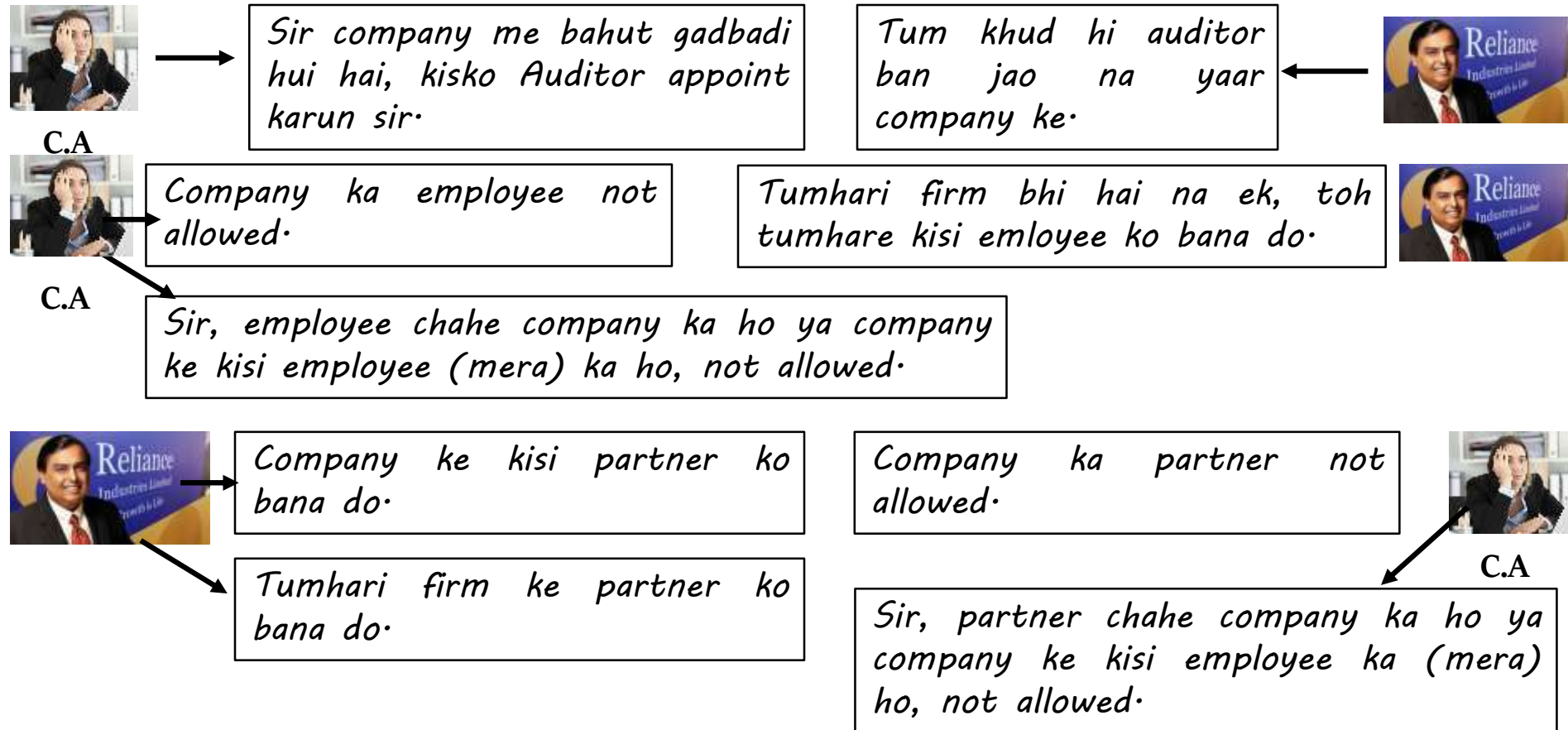
- e. Any person who has passed such other examination and completed such other training without India as is recognized by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute.
- f. Any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, have passed the examination or completes the training within five years after the commencement of this Act.

NOTE:

- ✓ In order to become the member of the Institute, the aforesaid persons must reside in India or must be in practice in India.
- ✓ For any person outside India with all other requisite qualifications, the Central Government or the Institute may impose additional conditions.
- ✓ Moreover, any qualified persons will have to formally apply for the membership to the Institute with requisite fees. His name will be included in the Register only if the application is accepted.

DISQUALIFICATION OF AUDITOR 141(3): Following persons are disqualified to be appointed as auditor:

- A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- An officer or employee of the company;
- A person who is a partner, or who is in the employment, of an officer or employee of the company;



- d. a person who, or his relative or partner:**
 - (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of face value exceeding rupees one lakh;**

Provided that the relative may hold security or interest in the company of face value not exceeding Rs. 1 Lakh as prescribed under the Company (Audit and Auditors) Rules, 2014.

The Company (Audit and Auditors) Rules, 2014 provides that a relative of an auditor may hold securities in the company of face value not exceeding Rs. 1 Lakh.

Further, the above condition shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities.

If the relative acquires any security or interest above the prescribed threshold i.e., Rs. 1 Lakh, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.

EXAMPLE:



Ooye Motu, apun ko teri company me Auditor banne ka hai.

Vasooli bhai aapne hamari company me shares karide hain kya?



MOTU PATLU
CO. LTD.



Sirf Rs. 1 ke share

Haan toh nahi ban sakte, law mana karta hai.



Abe tumhari company ke nahi kharide balki tumhari subsidiary ke kharide hain.

Haan toh bhi nahi ban sakte, law mana karta hai.



Sun be Subsidiary company ke nahi kharide balki tumhari holding ke kharide hain.

Haan toh bhi nahi ban sakte, law mana karta hai.



Associate?

Nahi



Apun ne shares nahi kharide hue smajha kya, apun ke ek rishtedaar ne kharide hue hain.
Ab toh apun Auditor ban ke rahega Auditor teri company me.

Vasooli bhai aapke rishtedaar ne hamari company me kitne Rs. ke shares karide hain?



Sirf 3 lakhs ₹ Ke.

Haan toh nahi ban sakte, law mana karta hai. 11 akhs se jyada ke shares nahi kharide hue hote toh aap ban sakte the.

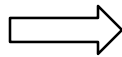




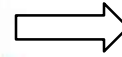
Aap Auditor nahi ban sakte agar:
Aapne ek bhi rs. Ke shares kharide hue hain toh ya fir aapke relative ne
₹ 1 lakh se jyada ke shares liye hue hai toh.



EXAMPLE OF PROVIDED THAT:



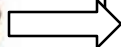
Auditor in
Airtel Co.



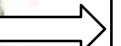
Relative



- Hold shares or interest of Rs. 1,00,000 in Company.
- On 1st Aug., purchased shares of Rs. 50,000



Ye tune kya kiya re baba, mera kaam kharab kar diya.

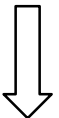
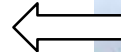


Jis Company (Airtel) me main Auditor hun usme mera relative (matlab tu) 1 lakh Rs. Se jyada ke shares nahi rakh sakta.



Ab tu agar 60 dino ke andar apne kuch shares bech deta hai and dobara se 1 lakh Rs. Ke andar aa jata hai, toh koi dikkat nahi hai re baba.
Nahi toh mujhe Auditor ki position se hatna padega.

Kya hua babu bhaiya?

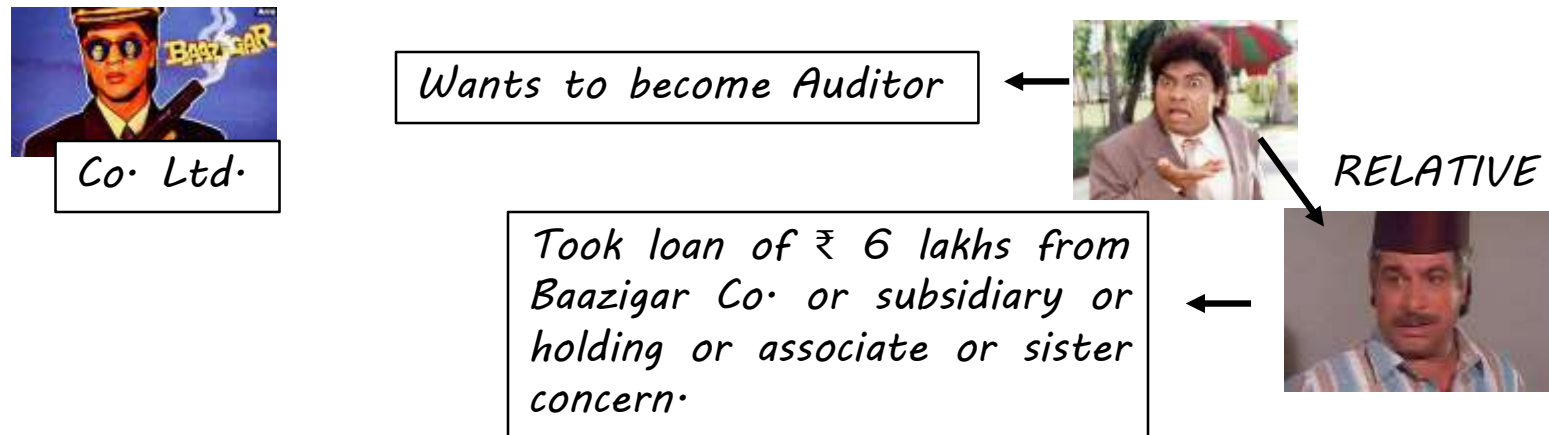


Toh
ab?

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

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh;

EXAMPLE:



Now, you cannot become Auditor

Because as per law, if relative is indebted from co. or its related co. for more than ₹ 5 lakhs.

Sapplicant cannot become Auditor.

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

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh;

EXAMPLE:

Apun ko 2 lakhs ₹ ka loan maangta hai.



Kisi ki guarantee ya security rakhwa do.

Main deta hun 2 lakhs ki security nawaz bhai ke liye.

Sir, aap hamari co. me Auditor nahi ban sakte.

Mujhe aapki Banking Co. me Auditor banna hai

Because aapke relative ne (Sohail) guarantee di hui 1 lakh se jyada ki hai kisi or ke liye (nawaz).



(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

EXCEPTION: if Arm's length transaction.

EXAMPLE:

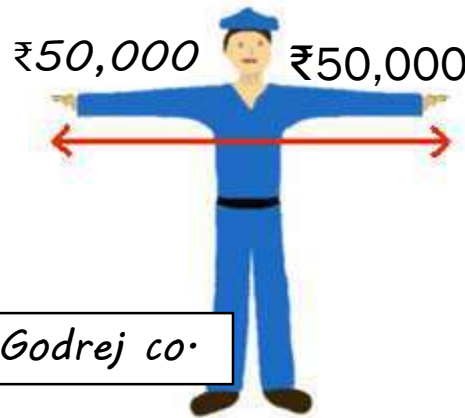
Khan associates (firm)

Sold chairs for ₹ 50,000



Market value of those chairs ₹ 50,000.





Whole market

Khan associates
(firm)

Godrej co.

Can be appointed as auditor of godrej co.

(f) Applicant is Auditor in more than 20 companies.

EXCEPTION:

- A person is ineligible if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupee.

EXAMPLE:

Private Limited
Company
in India

Please become
Auditor in our
company

Par main already 20 companies
me Auditor hun, law ke hisaab se
ab nahi ban sakta.



Private Limited Company in India



Are Sir ban sakte hain because hamari pvt. Co. ki paid up share capital ₹ 100 crores se kam hai. Agar 100 cr. ya usse jyada hoti toh nahi ban sakte the.

Kya main Public co. me bhi ban sakta hun Auditor.



Nahi public me nahi ban sakte and wo private co. jiski share capital 100 cr. se jyada ho.

OPC, DORMANT, SMALL CO., pvt. Jiski paid up share capital 100 cr se kam ho.

- (g) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel.
- (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

EXAMPLE:

Convicted in 2015 in fraud case.



Wants to become Auditor in 2021.

Abi nahi, 2026 me aana. (10 saal baad 2015 se).



- (i) a person who, directly or indirectly, renders any of the following service referred to in Section 144 to the company or its holding company or its subsidiary company.
- i. accounting and book keeping services;
 - ii. internal audit;
 - iii. design and implementation of any financial information system;
 - iv. actuarial services;
 - v. investment advisory services;
 - vi. investment banking services;
 - vii. rendering of outsourced financial services;
 - viii. management services; and
 - ix. any other kind of services as may be prescribed.

NOTE:

- Where a person appointed as an auditor of a company incurs any of the disqualifications, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor [Section 141(4)].

VACATION OF OFFICE BY AN AUDITOR [SECTION 141 (4)]:

If a person appointed as an auditor of a company incurs any of the disqualification specified in Section 141 (3), he shall be deemed to have vacated his office. Such vacation shall be deemed to be a casual vacancy in the office of the auditor.

REMUNERATION OF AUDITOR (SECTION 142):

- ✓ Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fix in its general meeting or in such manner as may be determined therein.
- ✓ The Board may fix remuneration of the first auditor appointed by it.
- ✓ The remuneration will be in addition to the out of pocket expensed incurred by the auditor in connection with the audit of the company but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

EXAMPLE:



*Auditor for Rs.
50,000.*



*Gave some service other than Audit on the request of Company for Rs. 10,000.
This Rs. 10,000 is not a part of Audit, and will not be included in Remuneration.*

RIGHTS & DUTIES OF AUDITOR & AUDITING STANDARDS: (SEC. 143):

Powers of Auditor [Section 143(1)]:

- **Access to books of account and vouchers:** Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place.
- **Entitled to have necessary information and explanation:** He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

- **Matters of inquiry:** The auditor may also inquire into the following matters, namely:
- i. Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members.
 - ii. Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company.
 - iii. Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company.
 - iv. Whether loans and advances made by the company have been shown as deposits.
 - v. Whether personal expenses have been charged to revenue account.
 - vi. Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.
- **Access to record of all its subsidiaries:** The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

DUTIES OF AUDITORS [SECTIONS 143 (2), (3) AND (4)]:

- The auditor shall make a report to the members of the company on the following:
 - i. On the accounts examined by him, and
 - ii. On every financial statements which are required by or under this Act to be laid before the company in general meeting.
- The auditor while making the report shall take into account the provisions of the Act, **the accounting and auditing standards and matters** which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under Section 143 (11).
- The auditor shall express his opinion of the accounts and financial statements examined by him. He shall express the opinion which according to him and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.
- The auditors' report shall also state:
 - i. whether he has sought and obtained all the information and explanations which to the **best of his knowledge and belief** were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements.
 - ii. 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.
 - iii. whether the report on the **accounts of any branch office** of the company audited under Sub- Section (8) **by a person other than the company's auditor has been sent to him** under the proviso to that Sub-Section and the manner in which he has dealt with it in preparing his report.

- iv. whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns.
- v. whether, in his opinion, the financial statements comply with the accounting standards.
- vi. the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
- vii. whether any director is disqualified from being appointed as a director under Sub - Section (2) of Section 164.
- viii. any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- ix. whether the company has adequate internal financial controls with reference to financial statement in place and the operating effectiveness of such controls.
- x. Such other matters as prescribed under Rule 11 of the Companies (Audit and Auditors) Rules, 2014 which provides that the auditor's report shall also include their views and comments on the following matters, namely:
 - a. whether the company has disclosed the **impact**, if any, of **pending litigations** on its financial position in its financial statement.
 - 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.
 - c. whether there has been any **delay in transferring amounts**, required to be transferred, to the Investor Education and Protection Fund by the company.

- Where any of the matters is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.
- Compliance with auditing standards:
 - i. **Every auditor shall comply with the auditing standards [Section 143(9)].**
 - ii. The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under Section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
 - iii. It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.
- Additional matters to be reported in case of specified companies: In respect of such class or description of companies, as may be specified in the general or special order by the Central Government may, in consultation with the National Financial Reporting direct, the auditor's report shall also include a statement on such matters as may be specified therein.
- **Reporting of frauds by auditors [Section 143 (12)]**: If an event of fraud is identified, the statutory auditor should initiate the procedure prescribed under Rule 13 of Audit Rules. Reporting to the Board, Audit Committee, and the Central Government (as the case may be) will be done as per below procedures:
 - a. **Report within two days to the Board/Audit Committees**: A statutory auditor is required to report a fraud/suspected fraud to the Board/Audit Committee immediately but not later than two days of his/her knowledge of the fraud and seek their reply within 45 days.

- b. Report to the Central Government: On receipt of such reply or observations, the auditor should forward his/her report and the reply or observations of the Board or the Audit Committee along with his/her comments (on such reply or observations of the Board or the Audit Committee) to the Central Government (only if the amount exceeds INR 1 crore) within 15 days from the date of receipt of such reply or observations.
- c. Amount involved is INR 1 crore more: If the individual amount involved or expected to be involved in the fraud is INR 1 crore or above, the statutory auditor fails to get any reply/observations from the Board/Audit Committee within 45 days, the auditor should forward a report in the specified form i.e. ADT-4 to the Central Government. The form will be submitted along with a note containing the details of his/her report that was earlier forwarded in the Board or the audit committee for which he/she has not received any reply or observations.
- d. Mode of communication to the Central Government: The report should be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by registered post with acknowledgement due or by speed post followed by e - mail in confirmation of the same.
- e. Details of the auditor: The report should be on the letterhead of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his/her seal and should indicate his/her membership number.
- f. The report shall be in the form of a statement as specified in Form ADT - 4.
- g. No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred above if it is done in good faith [Section 143(13)].

- h. The provision of this section shall mutatis mutandis apply to the cost accountant in practice conducting cost audit under section 148 and also to the company secretary in practice conducting secretarial audit under section 204 [Section 143(14)].
- i. Penalty for non compliance of Section 143 (12): If any auditor, the cost accountant or the company secretary in practice do not comply with the provisions of Section 143 (12) (reporting about the offence to the Central Government), he shall be punishable with fine which shall be ₹ 1 lakh for unlisted company and ₹ 5 lakhs for listed company.

Important Notes:

- ✓ Auditor not being the first person to identify the fraud: The statutory auditor is duty bound to submit Form ADT- 4 to the Central Government under Section 143(12) of the 2013 Act even in cases where the statutory auditor is not the first person to identify the fraud/suspected fraud.
- ✓ The auditor's right to investigate and report a fraud under subsection (12) is limited to frauds committed by officers or employees of companies. The auditor cannot investigate to unravel a fraud committed by any other person.
- ✓ Sub - Section (12) is attracted if the following conditions are fulfilled:
 - i. The auditor of a company has, in the course of the performance of his duties as auditor, fostered a reason to believe that a fraud has been committed in relation to the affairs of the company;
 - ii. The fraud has been committed by any of the company's officers or employees;
 - iii. The fraud involves any amount (more or less than the prescribed amount).
- ✓ The following details of each of the fraud reported to the Audit Committee or the Board under Sub – Rule (3) during the year shall be disclosed in the Board's Report:
 - i. Nature of Fraud with Description;
 - ii. Approximate Amount involved;
 - iii. Parties involved, if remedial action not taken; and
 - iv. Remedial Action taken.

PREVIOUS YEAR QUESTION:

Q.: Mr. Faithful is an Auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. For 2016 – 2017, he finds manipulation of funds around ₹ 2 crores committed by the officers of the company against the Daga Ltd. Examine in the light of the Companies Act, 2013, the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. In relation to reporting of such frauds.

AUDIT OF GOVERNMENT COMPANIES [SECTIONS 143 (5), (6) & (7)]

- ✓ In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of India shall appoint the auditor under Section 139 (5) or 139 (7) and direct such auditor the manner in which the accounts of the Government company are required to be audited and there upon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor General of India.
- ✓ The audit report among other things, include the following:
 - i. the directions, if any, issued by the Comptroller and Auditor General of India,
 - ii. the action taken thereon and
 - iii. its impact on the accounts and financial statement of the company.
- ✓ The Comptroller and Auditor General of India shall within 60 days from the date of receipt of the audit report have a right to:
 - i. conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor General of India may direct, and

- ✓ The Comptroller and Auditor General of India shall within 60 days from the date of receipt of the audit report have a right to:
 - i. conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor General of India may direct, and
 - ii. comment upon or supplement such audit report.
- ✓ Any comments given by the Comptroller and Auditor General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under Section 136 (1) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
- ✓ Test Audit: For Government Company or Company controlled by State Government or Central Government the Comptroller and Auditor General of India may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors. The provisions of Section 19A of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

AUDIT OF ACCOUNTS OF BRANCH OFFICE OF COMPANY [SECTION 143(8)]:

- ✓ Branch office in India: Where a company has a branch office, the accounts of that office shall be audited either by:
 - a. the company's auditor appointed under Section 139; or
 - b. by any other person qualified for appointment as an auditor of the company under Section 139.

- ✓ **Branch office outside India:** If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:
 - i. the company's auditor; or
 - ii. By an accountant; or
 - iii. 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.

NOTE:

- ✓ The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor will be same as of Normal Auditor.
- ✓ The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.
- ✓ The provisions of regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

AUDITOR NOT TO RENDER CERTAIN SERVICES (SECTION 144):

- ✓ accounting and book keeping services.
- ✓ internal audit.
- ✓ design and implementation of any financial information system.
- ✓ actuarial services.

- ✓ investment advisory services.
- ✓ investment banking services.
- ✓ rendering of outsourced financial services.
- ✓ management services. and
- ✓ any other kind of services as may be prescribed

NOTE: According to the explanation given under Section 144, the term directly or indirectly shall include rendering of services by the auditor:

- i. in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual.
- ii. in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

PREVIOUS YEAR QUESTIONS:

Q.1: What is the role of the Audit Committee vis-à-vis the statutory auditor when the company wishes to engage them to perform certain agreements not restricted under Section 144?

Q.2: X Ltd. Appointed CA Innocent as a statutory auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. Comment.

SEC. 145: AUDITOR TO SIGN AUDIT REPORTS, ETC. :

- ✓ The person appointed as an auditor shall sign audit report or document of the company in accordance with the provisions of Sub-Section (2) of Section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).
- ✓ The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor' report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

AUDITORS TO ATTEND GENERAL MEETING (SECTION 146):

- ✓ All notices of and other communications relating to, any general meeting shall be forwarded to the auditor of the company.
- ✓ The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.
- ✓ The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

PUNISHMENT FOR CONTRAVENTION (SEC. 147):

Continue on Next Page

| Contravention of Sections | Who shall be Liable? | Penalty |
|-----------------------------------|---|--|
| Section 139 - 146 | Company: Fine | Minimum ₹25,000 Maximum ₹5 Lakhs |
| | Officer in Default: Fine | Minimum ₹10,000 Maximum ₹1 Lakh |
| Section 139, 144 & 145 | Auditor: Fine | Minimum: ₹25,000 Maximum: Lower of ₹ 5 Lakhs OR 4 times of Auditor's remuneration |
| | Wilful / Intention to deceive the Company or its shareholders or creditors or tax authorities: Imprisonment & Fine | Imprisonment: Maximum 1 year Fine: Minimum: ₹50,000 Maximum: Lower of ₹25 Lakhs OR 8 times of Auditor's remuneration. |
| | If Auditor convicted: Refund | Where an auditor has been convicted, he shall be liable to refund the remuneration received by him to the company and pay for damages to the company, statutory bodies or authorities or to members or creditors of company for loss arising out of incorrect or misleading statements of particulars made in his audit report. |

| Contravention of Sections | Penalty |
|--|---|
| Authorities for prompt payment of damages | The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification. |
| Contravention by partner of an Audit Firm | <p>Where, in case of audit of a company being conducted by an audit firm. It is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.</p> <p>Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.</p> |

SEC. 148: COST AUDITOR / COST AUDIT:

- ✓ The central government may by order in respect of such class of companies engaged in the production activities, direct that particulars relating to utilisation of material and labour shall also be included in the accounts of such companies.
- ✓ If the CG is of opinion, it may direct that audit of cost records shall be prepared in form no. CRA – 1.
- ✓ The audit under this section shall be conducted by a cost accountant in practice or a cost Audit firm of cost accountant appointed by the BOD's.
- ✓ Remuneration of such cost accountant shall be decided by the BOD/Audit committee which shall be ratified by the members subsequently.
- ✓ The cost auditor shall comply with the cost auditing standards.
- ✓ Qualification, Disqualifications, Rights and duties of cost auditor are same as statutory auditor.
- ✓ Report on audit on cost records shall be submitted to BOD's, Company shall within 30 days furnish the same to the Central Government with full explanations & observations.

NOTE: Penalties in case of contravention:

- ✓ Same as Sec. 147 (1) for companies & officers
- ✓ Same as sec. 147 (2) for cost auditor.

- ✓ Qualification, Disqualifications, Rights and duties of cost auditor are same as statutory auditor.
- ✓ Report on audit on cost records shall be submitted to BOD's, Company shall within 30 days furnish the same to the Central Government with full explanations & observations.

NOTE: Penalties in case of contravention:

- ✓ Same as Sec. 147 (1) for companies & officers
- ✓ Same as sec. 147 (2) for cost auditor.

CARO (Module content)

COMPANY AUDITOR REPORT ORDER (CARO) RULES:

- ✓ MCA has notified now Companies (Auditor's Report) Order, 2020 on 25th February, 2020 which replaced CARO, 2016.
- ✓ It is a new format of reporting of statutory audit having additional reporting requirements decided in consultation with National Financial Reporting Authority (NFRA) CARO, 2020 is applicable for all statutory audits commencing on or after 1.4.2020 corresponding of Financial Year 2019-20.
- ✓ However, by notification, applicability of CARO has been deferred by one year. Now, CARO will be

applicable for the accounts of financial year 2020 - 21.

- ✓ CARO 2020 is applicable to every company including a foreign company as defined in clause (42) of Section 2 of the Companies Act, 2013.

COMPANY AUDITOR REPORT ORDER (CARO), 2020:

- ✓ CARO means Companies (Auditor's Report) Order.
- ✓ They are set of guidelines issued by the Indian government that lays down the requirements for the auditor's report of certain classes of companies.
- ✓ These guidelines which must be followed by an Auditor while conducting audit & preparing Audit Report.
- ✓ They are made in consultation with NFRA (National Financial Reporting Authority).
- ✓ CARO is applicable on all companies but not on following:
 - a. Banking company as defined under Section 5 (c) of the Banking Regulation Act, 1949.
 - b. Insurance company as defined under the Insurance Act 1938.
 - c. Company licensed to operate under Section 8 of the Companies Act 2013 (companies registered with charitable object).
 - d. A one person company (OPC) as defined under clause (62) of Section 2 of Companies Act 2013 (OPC means a company which has only one person as a member).

- e. A small company under Section 2 (85) of the Companies Act, 2013.
- f. The auditor of following type of Private Companies are not required to comment on the matter prescribed under CARO 2020:
 - A private company which is not holding or subsidiary company of a public company, and
 - A private company having a paid up capital and reserve and surplus not more than Rs. 1 crore as on the balance sheet date, and
 - A private company which does not have total borrowing exceeding Rs. 1 crore from any bank and financial institution at any point of time during the financial year, and
 - A private company which does not have total revenue exceeding Rs. 10 crores during the financial year.

EXAMPLE:



Mohit Sir, ye CARO kya hota hai?

Haseen Dilruba ji, CARO ka matlab hai Companies (Auditor's Report) Order. Means ye kuch orders /guidelines hain jo ki auditor ko audit karte time fulfill karne chahiye.

Mohit Sir, ye CARO sabhi companies par applicable hota hai?

*Nahi, sab companies par applicable nahi hota. Ek statement yaad kar lo:
One small person went to private bank to get insured its NPO.
Means CARO is not applicable on: OPC, Small company, Banking company, Insurance company, Sec-8 company & Private company.*





Mohit Sir, ye CARO sabhi Private companies par applicable nahi hota hai?

Sirf following private companies par applicable nahi hota:

(a) Whose gross receipts or revenue (including revenue from discontinuing operations) is less than or equal to Rs 10 crores in the financial year.



Has 3 branches: Mumbai, Jaipur & Delhi.

Revenues:

Mumbai: Rs. 6 crores.

Jaipur: Rs. 2 crores.

Delhi: Rs. 2 crores.

Now, Operations in Delhi branch are discontinued due to losses.

Revenue is not more than ₹10 crores, Hence, CARO is not applicable.



Aur kaun kaun si Private companies?

(b) Whose paid up share capital + reserves is less than or equal to ₹1 crore as on the balance sheet date (i.e. usually at the end of the FY).





*(c) Not a holding or subsidiary of a Public company.
(d) Whose borrowings is less than or equal to ₹1 crore at any time during the FY.*

MATTERS INCLUDED IN CARO 2020 ARE DISCUSSED BELOW:

☐ **Property, Plant & Equipment (PPE) [clause 3 (i)]:**

- Whether the company is maintaining proper records, showing full particulars including quantitative details and situation of PPE & full particulars of intangible assets.
- Whether these fixed asset have been physically verified by management at reasonable interval, whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account.
- Matters relating to title deeds not in the name of the company, revaluation and effects thereof etc.
- Whether the company has revalued its PPE or intangible assets and in this respect any material discrepancies of 10% or more has been observed.
- Whether any proceeding have been initiated or pending against the company for holding any benami property.

☐ **Inventory [Clause 3 (ii)]**

- Whether physical verification of inventory has been conducted at reasonable interval by the management, any material discrepancies of 10% or more has been noticed on such verification and if so, whether the same has been properly dealt with in the books of account
- Whether during any point of time, the company has been sanctioned working capital limits in excess of ₹ 5 crores.

- ☐ **Investment / providing any guarantee or security or granted loan and advances [Clause 3(iii)]:** Whether the company has granted any loans, secured or unsecured to companies, firms, LLP or other parties.
 - Whether terms and conditions of the grant of such loan are not prejudicial to the company's interest.
 - Whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments and receipts are regular.
 - If the amount is overdue, state the total amount overdue for more than 90 days and whether reasonable steps have been taken by the company for recovery of principal.
- ☐ **Compliance with Sec 185 & 186 of the Companies Act: Loan to director and investment by the company [Clause 3 (iv)].**
- ☐ **Acceptance of Deposits [Clause 3 (v)]:** In case, the company has accepted deposits, whether the following has been complied with: Directives issued by the Reserve Bank of India
 - The provision of sec 73 to 76 or any other relevant provision of Companies Act, 2013 and the rules framed there under, and
 - Nature of contraventions, due to non compliance.
- ☐ **Maintaining of Cost Records [Clause 3(vi)]:**

If the companies required to maintain records whether such records have been maintained and non - compliance, if any.

NOTE: Applicability of maintaining cost records: If aggregate turnover of Company (whether Regulated sector i.e. TYPE A or Unregulated sector i.e. TYPE B) in immediately preceeding Financial Year is minimum ₹35 crores.

☐ **Depositing Statutory Dues [Clause 3 (vii)]:**

- Whether the company is regular in depositing statutory dues with the appropriate authorities including **GST, Provident fund, Employees State Insurance fund, income tax, sales tax, service tax, duty of custom, duty of excise, value added tax, cess or any other statutory dues**. If the company is not regular in depositing such statutory dues, the extent of arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than 6 months from the date they become payable, shall be indicated by the auditor.
- In case disputed statutory dues, the amount involved and the forum where dispute is pending.

☐ **Reporting of Transactions not covered in books of Accounts [Clause 3(viii)]:**

Whether any transactions not recorded in the books of accounts have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (43 of 1961) and properly recorded in the books of accounts.

☐ **Repayment of Loan [Clause 3(ix)]:**

Whether the company has defaulted in repayment of loans and borrowing to a financial institution, banks, government or dues to debenture holders. If yes, the period and the amount of default to be reported.

☐ **Money raised through IPO and further public offer [Clause 3(x)]:**

Whether money raised by way of initial public offer or further public offer and the term loans were applied for the purpose for which those are raised. If not, the details together with delays and defaults and subsequent rectification, if any, as may be applicable, be reported.

☐ **Disclosure regarding Fraud [Clause 3(xi)]:** Whether any fraud by the company or any fraud on the company by its officers and employees has been noticed or reported u/s 143(12) during the year: if yes, the nature and the amount involved is to be indicated.

☐ **Nidhi Company [Clause 3(xii)]:**

Whether the Nidhi company has complied with the net owned funds to deposit in the ratio of 1:20 to meet out the liability and whether the Nidhi company is maintain 10% unencumbered term deposit as specified in the Nidhi rules 2014 to meet out the liability. Details of any default in payment of interest on deposits or repayment.

☐ **Related Party Transaction [Clause 3(xiii)]:**

Whether the company has complied with section 188 of the Companies Act, 2013 in respect of related party transactions and with appropriate disclosure.

☐ **Internal Audit [Clause 3(xiv)]:**

- Whether the company has an internal audit system commensurate with the size and nature of its business;
- Whether the report of the Internal Auditors for the period under audit were considered by the statutory auditor.

☐ **Non Cash Transaction [Clause 3(xv)]:**

Whether the company has entered into any non-cash transactions with directors or persons connected with them and if so, whether provisions of section 192 of The Companies Act, 2013 have been complied with.

☐ **Registration under Section 45 1A of the RBI Act 1934 [Clause 3(xvi)]:**

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

Other matters to be reported by the Auditor relates to cash losses, resignation of statutory auditors, material uncertainty, transfer of fund under Schedule VII, adverse auditor remark in other company of the group etc.

- ☐ **Report on cash losses [Clause xvii]:** Whether the company has incurred cash losses in the financial year and in the immediately preceding financial, if so, the amount of cash losses to be indicated.
- ☐ **Reporting on auditor's resignation [Clause xviii]:** Whether there has been any resignation by the statutory auditor during the financial year, if so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditor.
- ☐ **Reporting on financial position [Clause xix]:** Whether there is, as per auditor's opinion, material uncertainty and the company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the date of balance sheet.
- ☐ **Reporting on CSR compliance [Clause xx]:**
 - Whether unspent CSR amount in respect of other than ongoing projects has been sent to a Fund as specified in Schedule VII to the companies Act.
 - whether unspent CSR amount in respect of ongoing project has been transferred to special designated Bank account.
- ☐ **Reporting on consolidated financial statement [Clause xxi]:** Whether there have been any qualification or adverse remarks by the respective auditors in the CARO reports of the companies included in the consolidated financial statements, if so, details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remark to be indicated.

IMPORTANT QUESTIONS:

Q.1: What is the difference between CARO 2016 and CARO 2020?

Ans.:

- (a) The CARO 2020 contains 21 clauses, whereas CARO 2016 has only 16 clauses.
- (b) In CARO 2020, seven new clauses have been inserted, and the existing clauses of CARO 2016 have been re-drafted to elicit detailed comments from the auditors.

Q.2: Is CARO applicable to foreign companies?

Ans.: Yes, it is applicable to foreign companies as defined under section 2(42) of the Companies Act, 2013.

Q.3: Is CARO applicable to LLP?

Ans.: No. CARO 2020 is applicable to the audit reports of the companies registered under the Companies Act, 2013. Since LLP is registered under the Limited Liability Act, 2008, the CARO 2020 does not apply to them.

Q.4: Is Caro 2020 applicable to consolidated financial statements?

Ans.:

- (a) The CARO 2016 did not apply to the consolidated financial statements.
- (b) But the CARO 2020 contains a clause that is now applicable to report on consolidated financial statements.
- (c) According to this clause, where any adverse remarks or qualifications are highlighted by the auditors in their respective standalone companies' CARO reports, then the details of such remarks should be mentioned by the auditors of the companies in their CARO reports of consolidated financial statements.

Q.5: What is the aim of CARO?

Ans.: CARO aims to improve the quality and reliability of financial reporting, and to increase accountability and trust in the corporate sector. The order has been revised several times over the years to address new issues and keep up with regulatory changes.

ICAI'S GUIDANCE NOTE ON CARO 2020:

The ICAI, with a view to provide appropriate guidance to its members, has brought out Guidance Note on the Companies (Auditor's Report) Order, 2020 on 13th June 2020. It is divided into:

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

This Guidance Note has been written in an easy to understand language and contains detailed guidance on various Clauses of CARO, 2020 and the various issues and intricacies involved therein, so that the requirements and expectations of the Order can be fulfilled in letter and spirit by the auditors. It's a comprehensive and self contained reference document for the members. It would suspended the guidance on CARO 2016.