

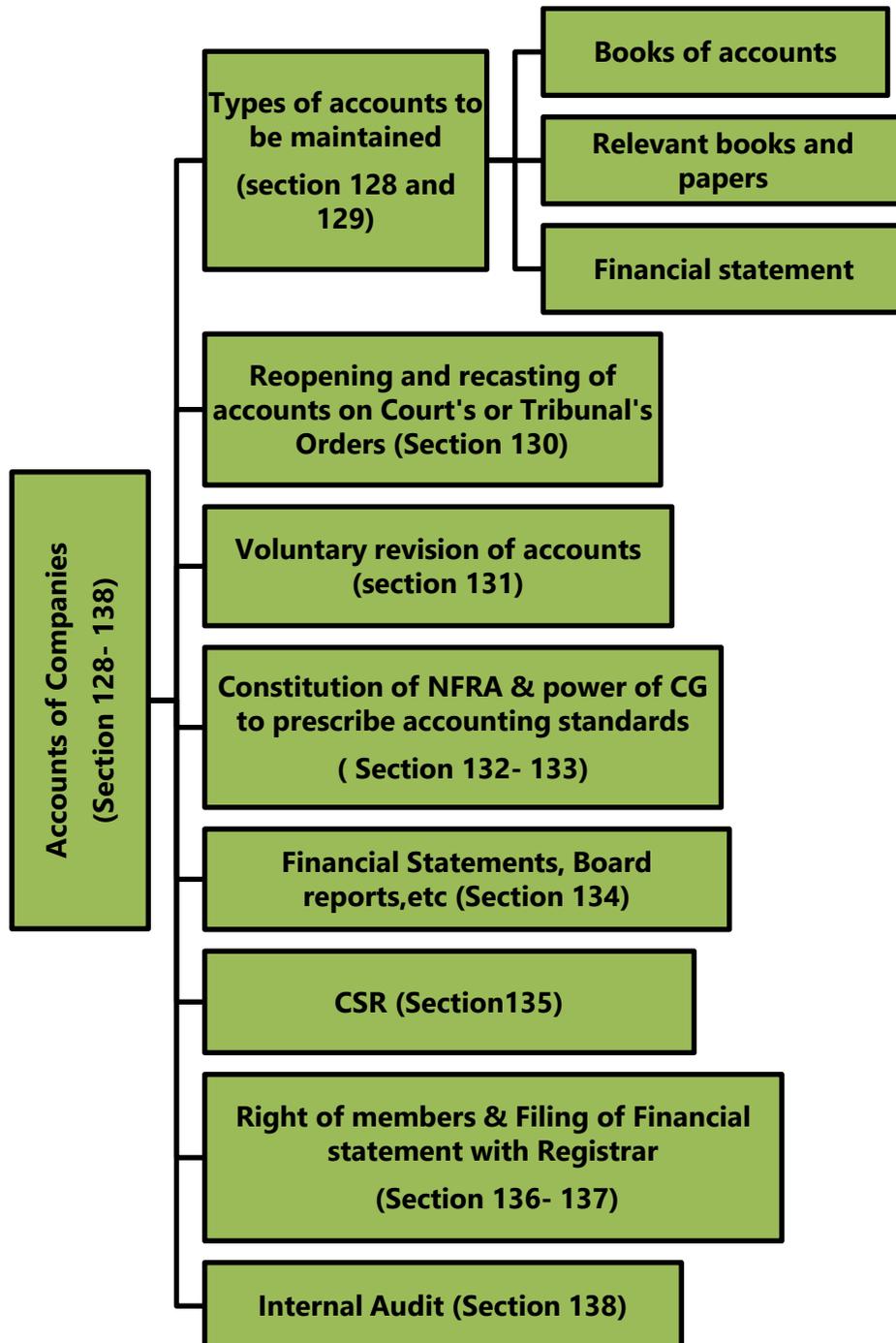
ACCOUNTS OF COMPANIES



LEARNING OUTCOMES

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

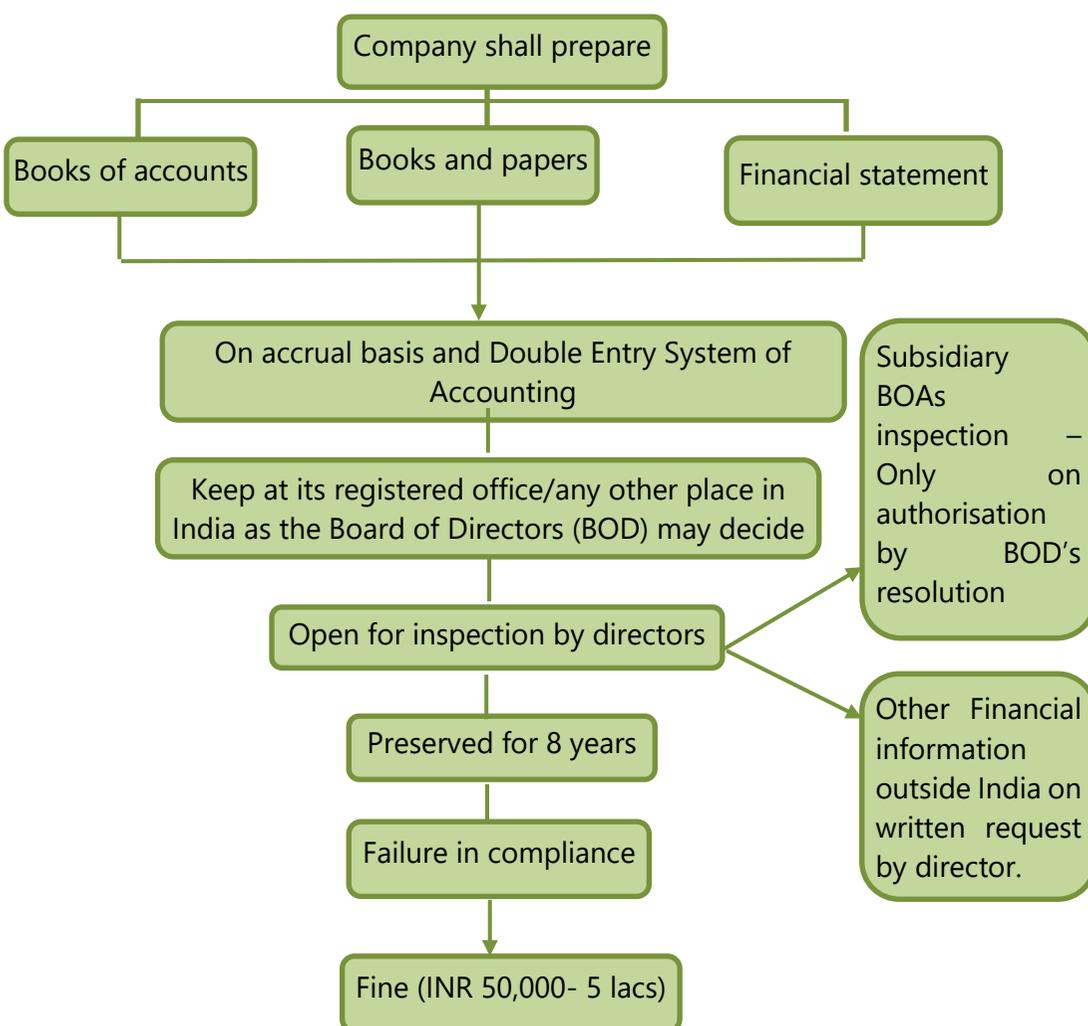
- Know about preparation and maintenance of books of accounts etc. to be kept by company.
- Know about the requirements as to preparation and filing of financial statements and other related matters.
- Know about the reopening and revision of financial statements.
- Know about constitution, working and power of National Financial Reporting Authority (NFRA).
- Explain various concepts related to Corporate Social Responsibility (CSR).
- Explain procedure related to internal audit of companies.

CHAPTER OVERVIEW 

1. INTRODUCTION

There is a need for disclosing the annual information to the shareholders by the directors about the working and financial position of the company so that the shareholders are aware of the affairs of the company. The Companies Act, 2013, lays down various provisions related to maintenance of proper books of account of the companies.

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



General requirement

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

These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s) and explain the transactions effected both at the registered office and its branches

These books of accounts must be kept on accrual basis and according to the double entry system of accounting.

Accrual basis and double-entry system of accounting

Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial statements. Accrual concept is one of the four principles of accounting concepts, which involves recording income and expenses as they accrue; distinct from when they are received or paid.

Double entry book-keeping is a method of recording any transaction of a business in a set of accounts, in which every transaction has a dual aspect of debit and credit and therefore, needs to be recorded in at least two accounts. Double aspect enables effective control of business because all the books of accounts must balance.

“Books of account” as defined in Section 2(13) includes records maintained in respect of—

- all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- all sales and purchases of goods and services by the company;
- the assets and liabilities of the company; and
- the items of cost as may be prescribed under section 148 (Cost Audit) of the Companies Act 2013 (“Act”) in the case of a company which belongs to any class of companies specified under that section.

“**Book and paper**” and “**book or paper**” as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

Place of keeping books of account

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

Provided all or any of the books of accounts may be kept at such other place in

India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within seven days thereof file with the registrar a notice in writing in form AOC-5 giving full address of that other place.

Maintenance of books of account in electronic form

A company has an option of keeping books of account or other relevant papers in electronic mode as per Rule 3 of the *Companies (Accounts) Rules, 2014*. Rule 3 lays down the manner of books of account to be kept in electronic mode.

- (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.

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

- (2) The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.
- (3) 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.
- (4) The information in the electronic record of the document shall be capable of being displayed in a legible form.
- (5) 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.

- (6) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement following relevant information related to service provider—
- (a) the name of the service provider;
 - (b) the internet protocol (IP) address of service provider;
 - (c) the location of the service provider (wherever applicable);
 - (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Books of account - Branch Office

Where a company has a branch office in or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office.

The summarised returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

Inspection by Directors

As per Section 128 (3), any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

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

Assistance by officers and Employees

As per Section 128 (4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

Other financial information: 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.

The company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.

The Director can seek the information only individually and not by or through his attorney holder or agent or representative with respect to financial information maintained outside the country [Rule 4(4) of the *Companies (Accounts) Rules, 2014*].

Period for preservation of books [Section 128(5)]

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

In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible and Penalty

As per Section 128 (6) the person responsible for the maintenance of books of account etc. shall be:

- (i) Managing Director,
- (ii) Whole-Time Director, in charge of finance
- (iii) Chief Financial Officer
- (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty for contravention

In case the aforementioned persons fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

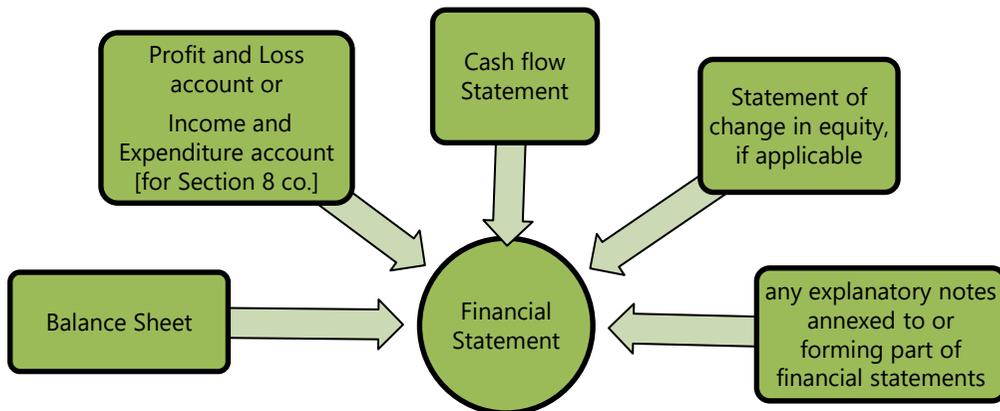
Example 1: XYZ Ltd. wants to maintain its books of account on cash basis. Is this a valid act of XYZ Ltd?

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

3. FINANCIAL STATEMENT [SECTION 129]¹

Financial Statement — Definition

Financial Statement is defined under Section 2 (40), to include—



However, the financial statement with respect to one Person Company, small company and dormant company, may not include the cash flow statement.

Exemption: For private companies, the proviso to section 2(40) shall be read as follows:

“Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;

Explanation – For the purposes of this Act, the term “start-up” or “start-up company” means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the

¹ Section 129 shall not apply to the Government Companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting”. [notification number G.S.R. 463(E) dated the 5th June, 2015]

notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.”

The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

Financial statement should be prepared for financial year and as per the requirements of Schedule III.

“Financial year” [Section 2(41)], in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Example 2: Mahindra and Mahindra Company Limited was incorporated as a company on 22nd February 2014. Now for the purpose of the first financial statements, the period ending shall be 31st March of the following year i.e. 31st March 2015.

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

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

Schedule III has been amended vide *Notification No. G.S.R. 404(E)* dated 6th April 2016 according to which Schedule III has been divided into two divisions.

Division I deals with financial statement for a company whose financial statement are required to comply with the *Companies (Accounting Standards) Rules, 2006*².

Division II deals with financial statement for a company whose financial statement is required to comply with the *Companies (Indian Accounting Standards) Rules, 2015*³.

True and fair view

As per section 129(1), the financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

Provided that the items contained in such financial statements shall be in accordance with the accounting standards.

Non-applicability

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to 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:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

Type of company	Matters
Insurance company	Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999
Banking company	Matters which are not required to be disclosed by the Banking Regulation Act, 1949
Company engaged in the generation or supply of electricity	Matters which are not required to be disclosed by the Electricity Act, 2003

² As amended from time to time.

³ As amended from time to time.

Company governed by any other law	Matters which are not required to be disclosed by that law
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Note: The proviso to section 129(1) with respect to non-applicability states that merely because of the matters which are not required to be disclosed under the above given acts, in the financial statements of the above given companies, the financial statements of such companies shall not be treated as not disclosing a true and fair view of the state of affairs of the company.

Laying of financial Statements [Section 129(2)]

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

Consolidation of financial statements [Section 129(3)]

- (1) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

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 and associate company or companies in Form AOC-1 as per Rule 5 of the *Companies (Accounts) Rules, 2014*.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the *Companies (Accounts) Rules, 2014*.

Explanation - For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture.

Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner

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

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

Exemptions from preparation of CFS: As per *Companies (Accounts) Amendment Rules, 2016*, preparation of consolidated financial statements by a company is not required if it meets the following conditions:

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

Provided also that nothing contained in this rule shall subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be.

Explanation: The above proviso states that for a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint Ventures or both will not be required to comply with this rule of consolidation of financial statements in respect of associate companies or joint ventures or both, as the case may be, only for the financial year commencing from the 1st day of April, 2014 and ending on the 31st day of March, 2015.

Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India commencing on or after 1st April 2014.

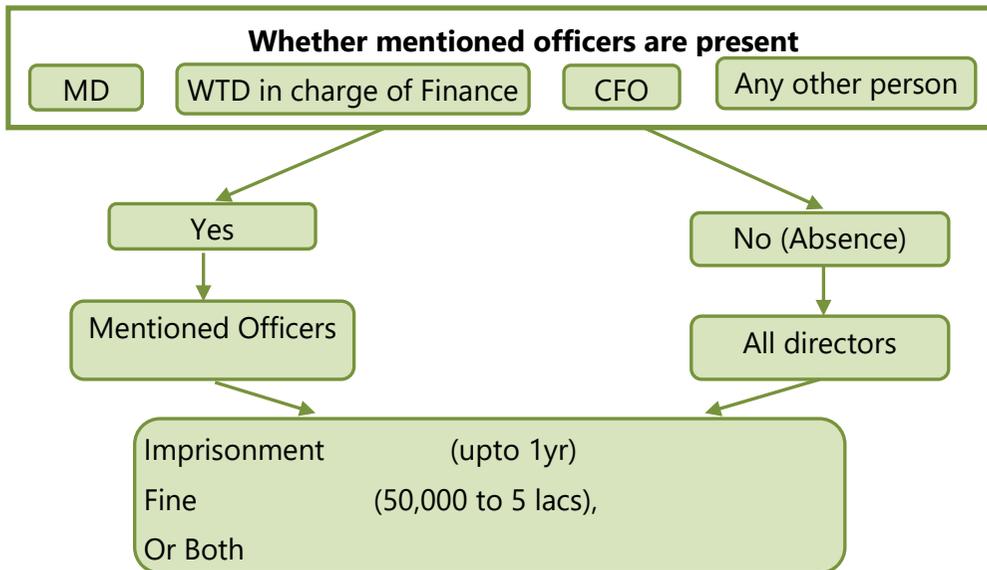
- (2) The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, also apply to the consolidated financial statements **[Section 129(4)]**.
- (3) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation **[Section 129(5)]**.
- (4) The Central Government may, on its own or on an application by a class or classes of companies, by notification,⁴ exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification **[Section 129(6)]**.

Penal provisions **[Section 129(7)]**

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

⁴ For exemptions granted to government companies engaged in production of Defence Equipments *Vide notification dated 4-9-2015*.

Company Contravenes the provisions of section 129



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

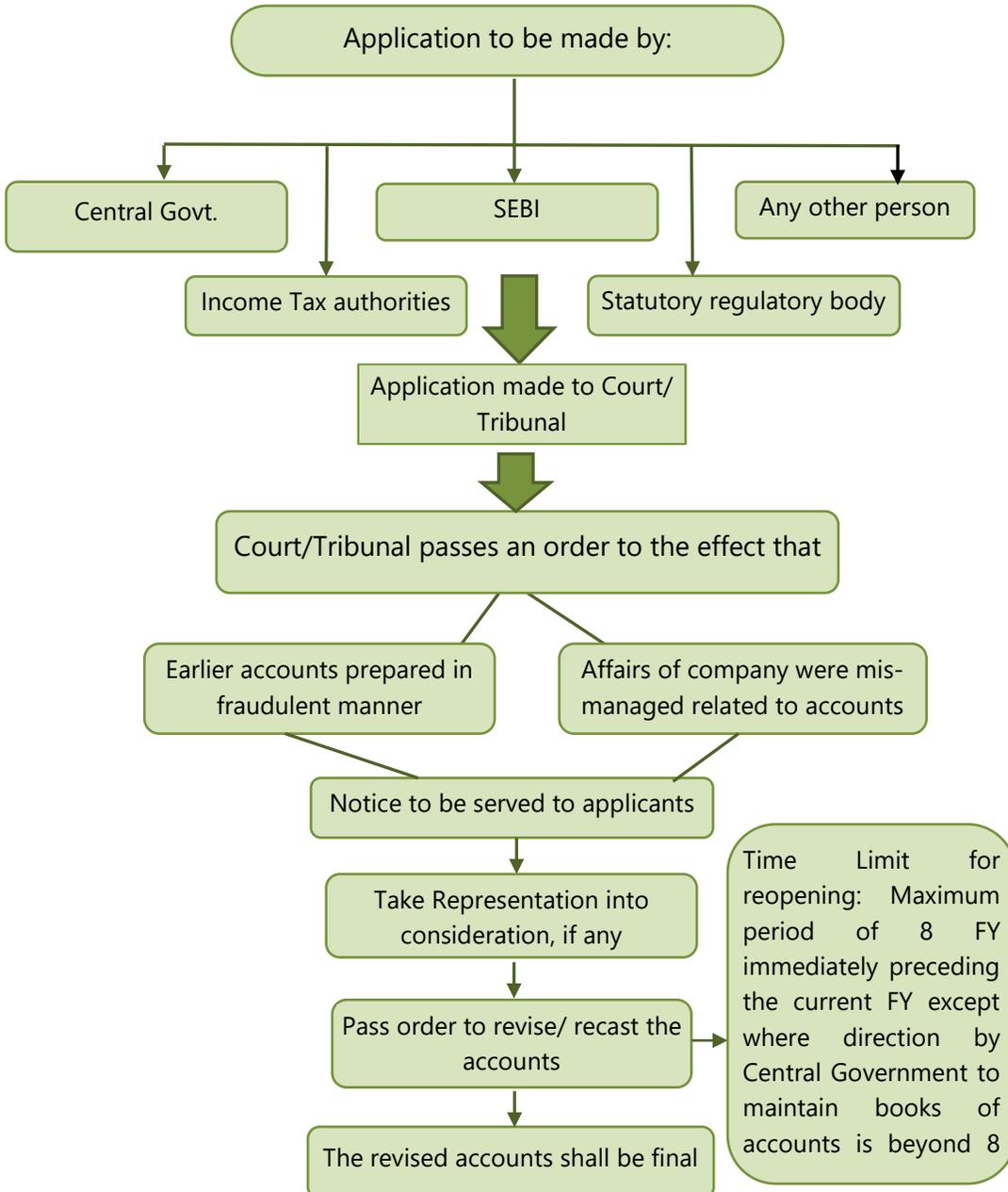
4. PERIODICAL FINANCIAL RESULTS [SECTION 129A]

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

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

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

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



(1) Apply to court for re-opening of accounts—A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by-

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

Serving of notice: 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, SEBI or the body or authority concerned or the other person concerned before passing any order under this section [Sub- section (1)].

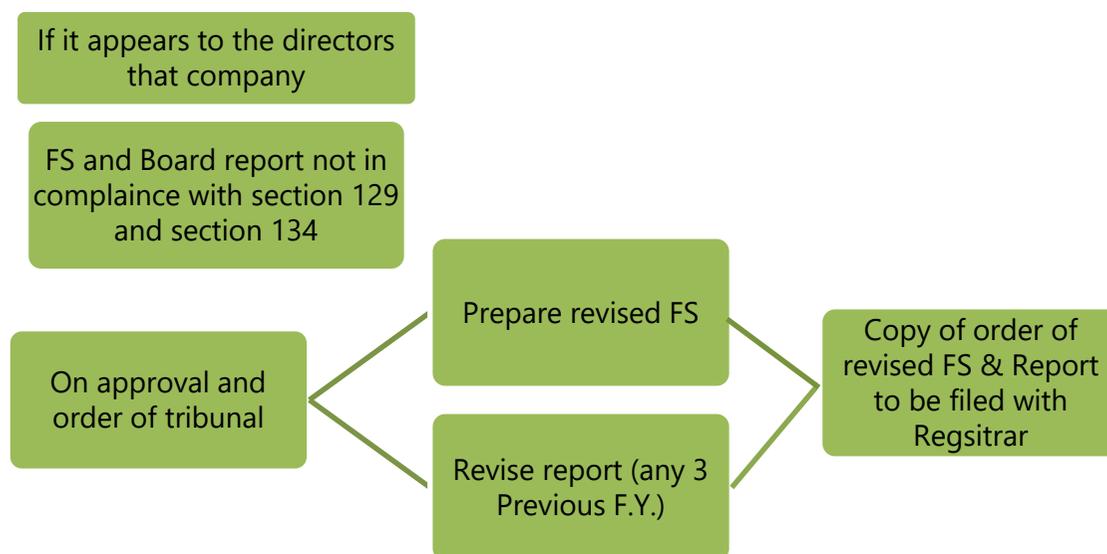
(2) Revised accounts shall be final: The accounts so revised or re-casted, shall be final.

(3) Time Limit in respect of re-opening of books of account: 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.



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



(1) Preparation of revised financial statement or revised report on the approval of Tribunal: 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.

Explanation: Section 131 deals with the revision of financial statement or boards report, as the case may be, on a voluntary basis in the opinion of the board of directors unlike section 130.

Tribunal to serve the notice:

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.

Number of times of revision and recast:

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

Explanation: The above provision states that when a company has revised its financial statement or boards report pertaining to any of the three preceding financial years than such revised financial statement or boards report, as the case may be, shall not be revised again for the period it has been so revised.

Reason for revision to be disclosed:

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) Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

- (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
- (b) the making of any necessary consequential alternation.

(3) Framing of rules by the Central Government in relation to revised financial statement or director's report: 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.



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

(1) The Central Government may, ⁵by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(3) The NFRA shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:

(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient

⁵ The Central Government hereby appoints the 1st October 2018 as the date of constitution of National Financial Reporting Authority.

discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

Provided also that the chairperson and members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

(4) Notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) have the **power to investigate**, either *suo moto* or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

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

(b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the NFRA;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;

(iv) issuing commissions for examination of witnesses or documents;

- (c) where professional or other misconduct is proved, the NFRA shall have the power to make order for—
- (A) imposing penalty of—
- (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
- (B) debarring the member or the firm from-
- I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
 - II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.

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

Appeal against orders of NFRA

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

Meetings of NFRA

The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

Secretary and other employees

The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

Head office of NFRA

The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

Maintenance of books by NFRA

The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

Audit of account of NFRA

The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

Annual Report on working of NFRA

The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, the Central Government made the National Financial Reporting Authority Rules, 2018 (NFRA Rules).

As per NFRA rules, NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors. Rule 3 provides for the classes of companies and bodies corporate governed by the NFRA. These include:

- (a) companies whose securities are listed on any stock exchange in India or outside India;

- (b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;
- (c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of section 1 (4) of the Companies Act, 2013;

Explanation.- For the purpose of this clause, "banking company" includes 'corresponding new bank' as defined in section 2 (d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 2(b) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and 'subsidiary bank' as defined in section 2(k) of the State Bank of India (Subsidiary Bank) Act, 1959.

- (d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and
- (e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or networth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.

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

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

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



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

Section 133 of the Companies Act, 2013 deals with the power of the Central Government to prescribe the accounting standards.

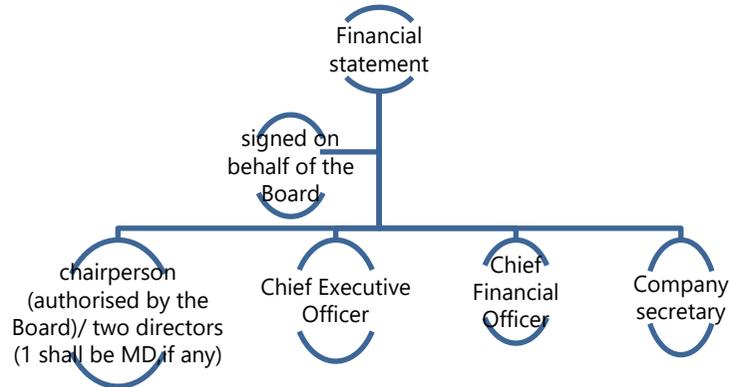
The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA.

Provided that until the NFRA is constituted under section 132 of the Companies Act, 2013, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards (NACAS) constituted under the previous company law.



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

Section 134 provides that the financial statement including consolidated financial statements should be approved by the Board of Directors before they are signed and submitted to auditors for their report. The auditor's report is to be attached to every financial statement. A report by the Board of Directors containing details on the matters specified including Director's responsibility statement shall be attached to every financial statement laid before the company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company in case of any contravention.

(i) Authentication of Financial statements [Section 134(1), (2) & (7)]:

- (a) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board OR by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One person company, only by one director, for submission to the auditor for his report thereon.
- (b) The auditors' report shall be attached to every financial statement [Sub-section (2)].
- (c) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy of [Section 134(7)] —
- (1) Any notes annexed to or forming part of such financial statement;
 - (2) The auditor's report; and
 - (3) The Board's report referred to in sub section 3.

Example 3: The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

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

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

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

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

(ii) Board's report [Section 134(3) & (4) read with Rule 8 of the Companies (Accounts) Rules, 2014]:

- (1) According to ⁶Rule 8 of *the Companies (Accounts) Rules, 2014*, the Board's Report shall be prepared based on the standalone financial statement of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.
- (2) Sub-section (3) of section 134 read with rule 8 prescribes the following contents of the board's report:
 - (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 (Annual Return) has been placed;
 - (b) number of meetings of the Board;
 - (c) directors' responsibility statement;
 - (ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 (Powers and duties of auditors and auditing standards) other than those which are reportable to the Central Government;

⁶ This rule (i.e. Rule 8) shall not apply to One Person Company or Small Company. [Sub Rule (6) of Rule 8]

- (d) a statement on declaration given by independent directors under sub-section (6) of section 149 (Company to have board of Directors in relation to independent director);
- (e) in case of a company covered under sub-section (1) of section 178 (Nomination and Remuneration Committee and Stakeholders Relationship Committee), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

Note: The above clause (e) shall not apply in the case of a government company.

- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the form AOC-2;
- (i) the state of the company's affairs;
- (j) the amounts, if any, which it proposes to carry to any reserves;
- (k) the amount, if any, which it recommends should be paid by way of dividend;
- (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; However, the Govt. companies engaged in producing defence equipment is exempted from disclosure under this clause.
- (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of

elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made;

According to Rule 8(4), every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Exemption to Government company- The above clause (p) of Sub-section (3) of Section 134 shall not apply, in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology [*vide Notification dated 5 June 2015*].

- (q) such other matters as may be prescribed [See **].

Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report.

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

**According to Rule 8 of the *Companies (Accounts) Rules, 2014*, 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;
- (iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

Explanation.-For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150 (Manner of selection of Independent Directors and maintenance of databank of independent directors).

- (iv) the names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;
- (v) the details relating to deposits 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-
 - (1) at the beginning of the year;
 - (2) maximum during the year;
 - (3) at the end of the year;
- (vi) the details of deposits which are not in compliance with the requirements of Chapter V (Acceptance of Deposits by Companies) of the Act;
- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

- (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
- (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (xi) *the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year alongwith their status as at the end of the financial year.***
- (xii) *the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.***

Non- applicability of Rule 8 of Companies (Accounts) Rules, 2014: This rule shall not apply to One Person Company or Small Company.

- (3) **Abridged Board's report [Section 134(3A)]:** The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.
- (4) **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.

(iii) Directors' Responsibility Statement [Section 134(5)]: The Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) 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;

- (3) 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;
- (4) the directors had prepared the annual accounts on a going concern basis; and
- (5) 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.

Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (6) 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.

(iv) Signing of Board’s Report [Section 134(6)]:

The Board’s report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(v) Contravention [Section 134(8)]:

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

Persons liable	Punishment for contravention of any provision of this section
Company	Rs. 3 lakh
Every officer of the company who is in default	Rs. 50,000

Example 4: ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

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



10. CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]⁷

The Companies Act, 2013 lays down the provisions requiring corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, Corporate Social Responsibility (CSR) implies a concept, whereby companies decide to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general.

The provisions related with Corporate Social Responsibility has been enshrined under section 135 and Companies (Social Responsibility Policy) Rules, 2014⁸.

DEFINITIONS

1. “Corporate Social Responsibility (CSR)” means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section

⁷ In case of specified IFSC public & IFSC private company, section 135 shall not apply for period of **5 years** from the commencement of business of a specified IFSC public company and specified IFSC private company.

⁸ These rules have been recently amended by the Companies (CSR Policy) Amendment Rules, 2021 dated 22nd January, 2021.

135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) activities undertaken in pursuance of normal course of business of the company:

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

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019;

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India; [Rule 2(d)]

2. "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act; [Rule 2(e)]

3. "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan; [Rule 2(f)]

4. ***“Administrative overheads” means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme; [Rule 2(b)]***

5. ***“International Organisation” means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply; [Rule 2(g)]***

6. ***“Net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-***

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

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act; [Rule 2(h)]

7. ***“Ongoing Project” means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification; [Rule 2(i)]***

8. ***“Public Authority” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005; [Rule 2(j)]***

COMPANIES REQUIRED TO CONSTITUTE CSR COMMITTEE

According to section 135(1), every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of

the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

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

Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

"Net worth" [As per Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.⁹

Example 5: The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

⁹ For the purposes of this section (i.e. section 135) "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

For details about more about refer later pages- heading 'Calculation of Net Profits'

Answer: As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

Example 6: ABC Ltd is a company with a turnover of more than Rs.1000 crores in the preceding three financial years and having incurred a loss in one of the preceding three financial years. Will it be required to comply with CSR?

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

Exclusion of Companies [Rule 3(2) of the Companies (CSR) Rules, 2014]

Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to-

- (a) constitute a CSR Committee; and**
- (b) comply with the provisions contained in sub-section (2) to (6) of the said section,**

till such time it meets the criteria specified in sub-section (1) of section 135.

Composition of CSR Committee

Corporate Social Responsibility Committee of the Board shall consist of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

According to Rule 5(1) of the Companies (CSR) Rules, 2014:

The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

(i) a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;

(ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

Disclosure of composition of CSR Committee

As per SECTION 135(2), the Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

Duties of CSR Committee

According to section 135(3),

The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

According to Rule 5(2) of Companies (CSR) Rules, 2014,

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

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

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

DUTIES OF THE BOARD IN RELATION TO CSR

According to 135(4), the Board of every company referred to in sub-section (1) shall,—

- (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and***
- (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.***

Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access. [Rule 9 of the Companies (CSR Policy) Rules, 2014]

AMOUNT OF CONTRIBUTION TOWARDS CSR

According to section 135(5),

The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

According to section 135(6), any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial

years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

'Calculation of Net Profits'

1. For the purposes of this section (i.e. section 135) "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. [Explanation in section 135(5)]

2. "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-

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

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act; [Rule 2(h)]

CSR EXPENDITURE [Rule 7 of Companies (CSR) Rules, 2014]

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

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.*
- (ii) the Board of the company shall pass a resolution to that effect.*
- (4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -*
 - (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or*
 - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or*
 - (c) a public authority:*

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

Transfer of unspent CSR amount [Rule 10 of Companies (CSR Policy) Rules, 2014

Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

Penal Provisions

If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less. [Section 135(7)].

SPECIAL INSTRUCTIONS OF THE CENTRAL GOVERNMENT

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions. [Section 135(8)]

WHEN IT IS NOT NECESSARY TO CONSTITUTE A CSR COMMITTEE

According to section 135(9), where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

CSR IMPLEMENTATION [Rule 4 of the Companies (CSR Policy) Rules, 2014]:

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through-

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or***
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or***
- (c) any entity established under an Act of Parliament or a State legislature; or***
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.***

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

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

- (b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.*
- (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.*
- (3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.*
- (4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.*
- (5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.*
- (6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.*

CSR REPORTING (Rule 8):

- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.*
- (2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.*
- (3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one*

crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

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

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

ACTIVITIES SPECIFIED UNDER SCHEDULE VII

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

- (1) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (2) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (3) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (4) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
- (5) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (6) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

- (7) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- (8) contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND) any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, Tribes, other backward classes, minorities and women;
- (9)
 - (a) Contribution to incubators or research development projects in the field of science, technology, engineering and medicine, funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and
 - (b) contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and Autonomous Bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs);
- (10) rural development projects;
- (11) slum area development. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.
- (12) disaster management, including relief, rehabilitation and reconstruction activities.

CLARIFICATIONS

The MCA vide *General Circular No. 21/2014 dated 18 June 2014* has provided many clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013 which are as under:

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

(ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

(iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

¹⁰(v) "Any financial year" referred under sub-section (1) of section 135 of the Act read with the Companies CSR Rule, 2014, implies 'any of the three preceding financial years.

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

(vii) 'Registered Trust' would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Clarifications with respect to CSR on COVID

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

The Ministry of Corporate Affairs have clarified that keeping in view of the spread of novel Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organisation (WHO), and, decision of Government of India to treat this as a notified disaster, spending of CSR funds for COVID-19 is eligible CSR activity.

¹⁰ Point (iv) has been omitted (Refer clarification dated 17.09.2014)

Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

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

The Ministry of Corporate Affairs, have made a clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme.

This Circular is in continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID19 is an eligible CSR activity , it is further clarified that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i),(ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by this ministry from time to time.

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

A clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities.

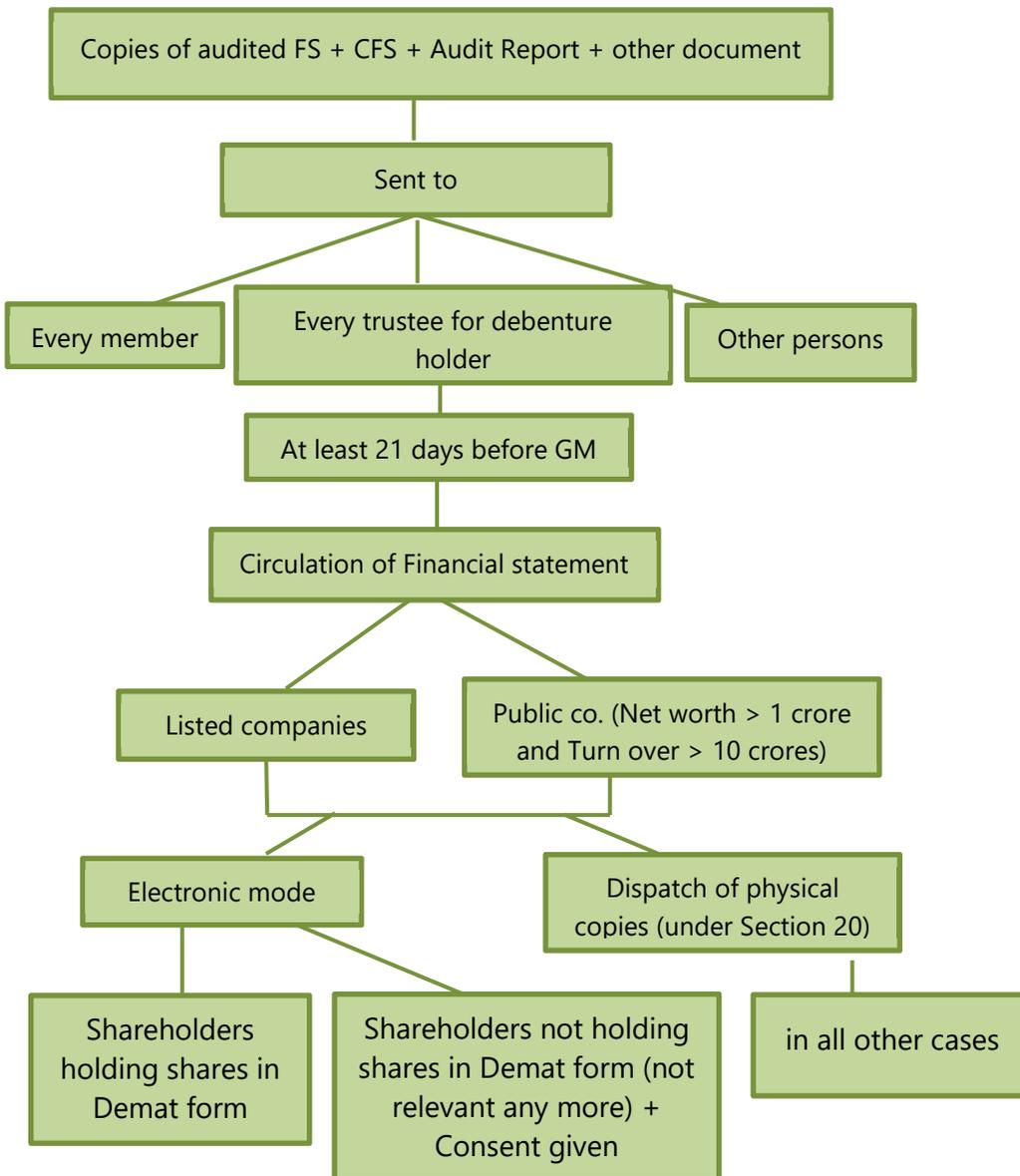
In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.



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

Section 136 provides that a copy of financial statements including consolidated financial statement, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid

before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.



(i) What if the documents are sent less than 21 days before the date of meeting?

According to Section 136, If the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—

- (a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. Of such part of the paid-up share capital of the company as gives a right to vote at the meeting; **or**
- (b) having, if the company has no share capital, not less than ninety five percent of the total voting power exercisable at the meeting:

Provided further that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements.

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

Provided further that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

Provided also that every listed company having a subsidiary or subsidiaries shall -

- (a) place separate audited accounts in respect of each of subsidiary on its website, if any;

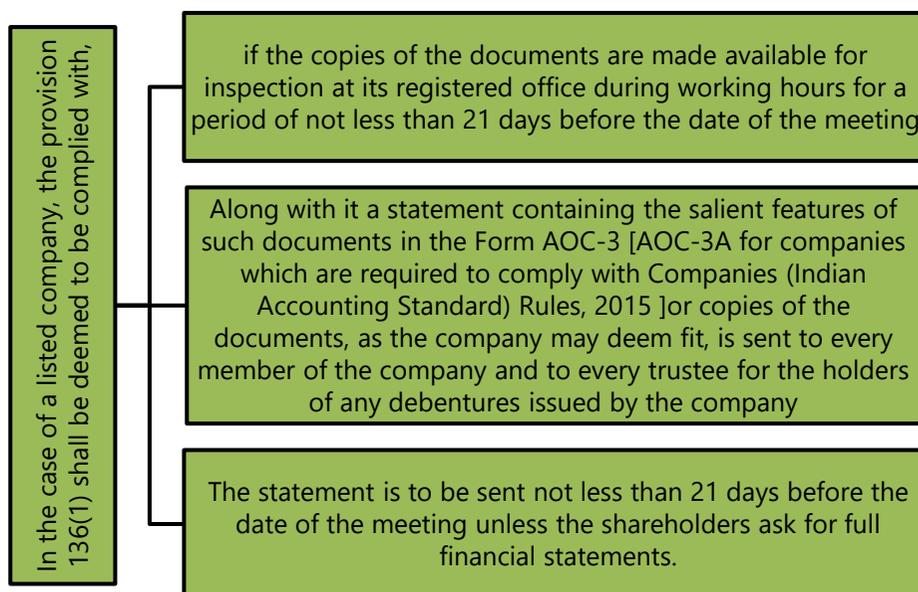
- (b) provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary, to any member of the company who asks for it.

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—

- (a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;
- (b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Example 7: Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiary of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiary located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Answer: No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136.



*****Exemption to Section 8 Companies:** In case of section 8 company - in Sub-section (1) of Section 136 for the words "twenty one days", the words "fourteen days" shall be substituted.

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

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.

(ii) Manner of circulation of financial statements in certain cases:

- (a) 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 [Rule 11 of the Companies (Accounts) Rules, 2014]-

- (1) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes;
- (2) where shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode (this may not be relevant considering that shareholding is not held otherwise than by dematerialized form anymore); and
- (3) by dispatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

(iii) Contravention:

- (a) If any default is made in complying with the provisions of section 136, the company shall be liable to a penalty of 25,000 rupees and
- (b) Every officer of the company who is in default shall be liable to a penalty of 5,000 Rupees.

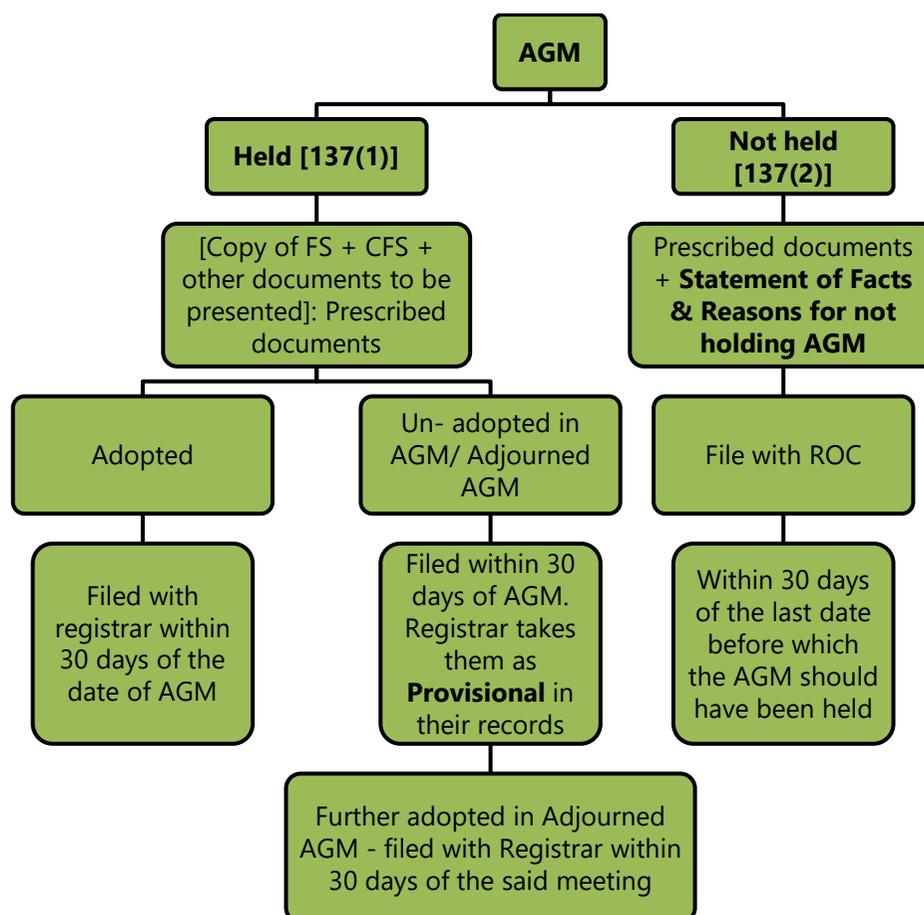
Vide General Circular No. 11/2015, dated 21 July 2015, clarification was issued by MCA with regard to circulation and filing of financial statement.

It has been clarified that a company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.

It has also been clarified 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 company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1), as applicable. These, however, would need to be translated in English, if the original accounts are not in English. 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.

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

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



(i) Filing of financial statements [Section 137(1)]:

- (1) Section 137 read with Rule 12 of the Companies (Account Rules), 2014 states that - A copy of the financial statements with form AOC-4, including consolidated financial statement with form AOC-4 CFS, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the AGM of the company, shall be filed with

the Registrar within 30 days of the date of AGM in such manner, with such fees or additional fees as may be prescribed.

- (1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with FORM AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any with FORM AOC-4 CFS NBFC (Ind AS).

As per Rule 1 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015-*

The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

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

Provided that the companies preparing their financial statements under the *Companies (Accounting Standards) Rules, 2006* shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under *Companies (Indian Accounting Standards) Rules, 2015*, shall file the statements using the Taxonomy provided in Annexure-II A.

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

- (2) The companies which have filed their financial statements under sub-rule (1) and erstwhile rules shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.

The companies which have filed their financial statements under the erstwhile rules, namely the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011*, shall continue to file their financial

statements and other documents as prescribed in sub-rule (1) though they do not fall under the class of companies specified therein.

Example 8: Amazon Company Limited, a company incorporated under the Companies Act, 2013, has a turnover of Rs. 150 crores and Rs. 90 crores during the financial year ended 31st March 2019 and 31st March 2020 respectively. Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2020 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

(ii) If the financial statements are not adopted [Section 137(1)]:

- (a) Where the financial statements are not adopted at AGM or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM.
- (b) The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.
- (c) If the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

(iii) Filing by One Person Company [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.

(iv) Company having subsidiaries [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 (fourth proviso to Section 137(1)).

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required

to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide *General Circular no. 11/2015 dated 21 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 company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. 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.

Example 9: Vandana Ltd., based out of India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2019, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how should the Indian parent deal with this financial statement.

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

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

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

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

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

(vi) Penalty [Section 137(3)]: If any of the provisions of this section are contravened-

- (a) The company shall be liable to a penalty of **ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees**; and
- (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 which shall not be less than **ten thousand rupees**, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of **fifty thousand rupees**.

Person liable	Punishment for contravention of section 137
Company	with fine of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees .

<p>Officers— MD and CFO of the company, if any; In their absence, any other director who is charged by the Board with the responsibility; In its absence, all the directors of the company.</p>	<p>Fine which shall not be less than ten thousand rupees, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.</p>
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Example 10: The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2018 was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer: In the present case, though AGM was not held, it ought to be held by 30 September 2018 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e. by 30 October 2018 along with such fees or additional fees as may be prescribed.

Example 11: Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2018 but the same were not adopted by the shareholders?

Answer: Since the AGM has been held in time on 27 September 2018, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.



13. INTERNAL AUDIT [SECTION 138]¹¹

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

Section 138 states that:

“(1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.”

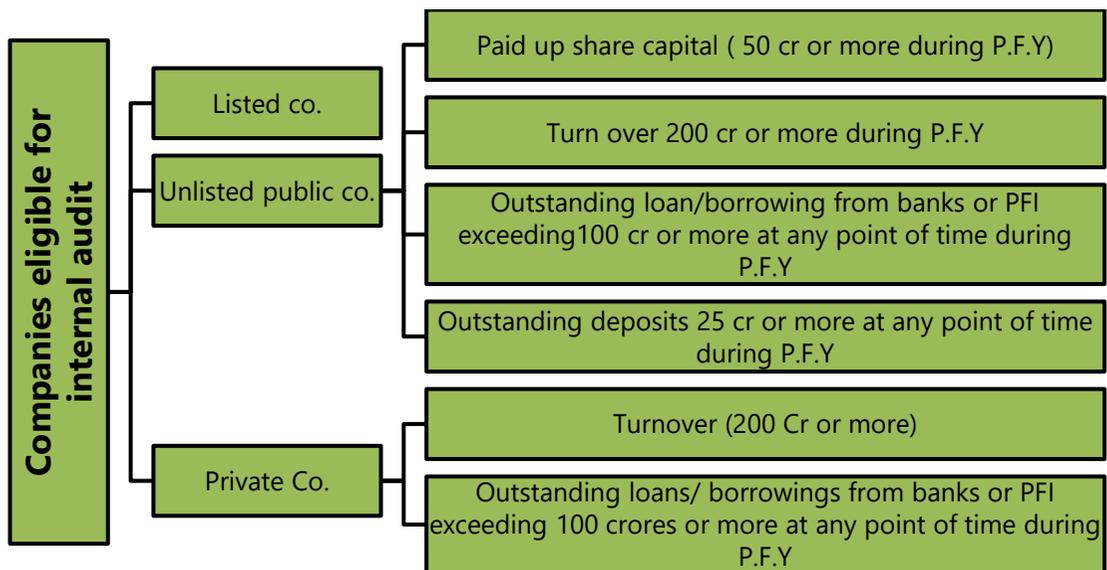
Rule 13 of the Companies (Accounts) rules, 2014 states that:

(i) Companies required to appoint Internal Auditor:

- (a) 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:
- (1) every listed company;
 - (2) every unlisted public company having-
 - (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (B) turnover of 200 crore rupees or more during the preceding financial year; or
 - (C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
 - (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

¹¹ In case of a specified IFSC public company & IFSC private company, section 138 shall apply if the articles of the company provides for the same.

- (3) every private company having—
- (A) turnover of 200 crore rupees or more during the preceding financial year; or
 - (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.
- (b) 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.



(ii) 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.

(iii) Who is Internal Auditor

- (a) 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.

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

(b) The internal auditor may or may not be an employee of the company.

Example 12: Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co LLP, as its internal auditors for the year ended 31st March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

Answer

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

SUMMARY

□ Financial statement- Section 2(40)

Financial statement in relation to a company includes:

- A balance sheet as at the end of the FY;
- A profit & loss account, or in case of a company carrying on any activity not for profit an income & exp. Account for the FY;
- Cash flow statement for the FY;
- A statement of changes in equity, if applicable; and
- Any explanatory note annexed to, or forming part of, any document referred above. the financial statement with respect to one Person Company, small company and dormant company, may not include the cash flow statement.

➤ Financial Year--Section 2(41)

- Uniform financial year in Companies Act, 2013.

- Financial year in relation to a company means the period ending on 31st day of March every year.

➤ **Section 128– Books of Accounts to be kept by Company**

- Books of Accounts to be kept at registered office of the Company;
- Books of Accounts & relevant papers, books & financial statements shall give a true fair view of the financial position of the Company including that of its branch offices or other offices, if any;
- The books of accounts shall remain open for inspection by directors of the Company or such other place, during business hours;
- The books of accounts relating to a period not less than eight preceding financial years, shall be kept in good order;
- Penalty for contravention: Officer in default under this section shall be punishable with a fine minimum of ₹ 50,000 and maximum of ₹ 5 lakhs.

➤ **Proviso to section 128(1)**

- Books of Accounts & other relevant papers, can be kept at such other place in India as the Board of Directors may decide;
- The Company shall within seven days, file with the registrar a notice in writing giving full address of that other place.

➤ **Section 129-Financial Statement**

- The financial statements shall give a true and fair view of the state of affairs of the company or companies.
- It shall 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.

➤ **Re-opening of Accounts- Section-130**

The Company may, if it appears to the directors that the Financial Statements or Board's Report are not in compliance with the provisions of the Act, may prepare revised financial statement or a revised Board's Report with the approval of Tribunal.

➤ **Internal Audit-Section 138**

- Every Listed Co.
- Every Public Co. having – Paid up Share Capital of ₹ 50 Crores or more /Turnover of ₹ 200 crores or more / outstanding loans & borrowing from banks & Public financial institutions exceeding ₹ 100 crore.
- Every Pvt Co. having – turnover of 200 crore or more / outstanding loans & borrowing from banks & Public financial institutions exceeding ₹100 crore
- Above Companies are required to appoint Internal Auditors
- Audit committee in consultation with Internal Auditor formulates the scope, functioning and methodology for internal audit.

TEST YOUR KNOWLEDGE

Question 1

The registered office of the Bharat Ltd. is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Please advise.

Answer

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

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

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

Question 2

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.

The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

Answer

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

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

Question 3

A Housing Finance Ltd. is a housing finance company having a paid up share capital of ₹ 11 crores and a turnover of ₹ 145 crores during the financial year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.

Answer

Filing of financial statements in XBRL Mode

As per Rule 1 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their

financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

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

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

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

Question 4

Herry Limited is a company registered in Thailand. SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

Answer

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

Question 5

- (i) *Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?*
- (ii) *State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.*
- (iii) *Whether a Company can keep books of Accounts in electronic mode accessible only outside India?*

Answer

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

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

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

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

Question 6

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

Answer

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as

provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed. In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM But Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2018.

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

Question 7

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

Answer

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

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

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.