



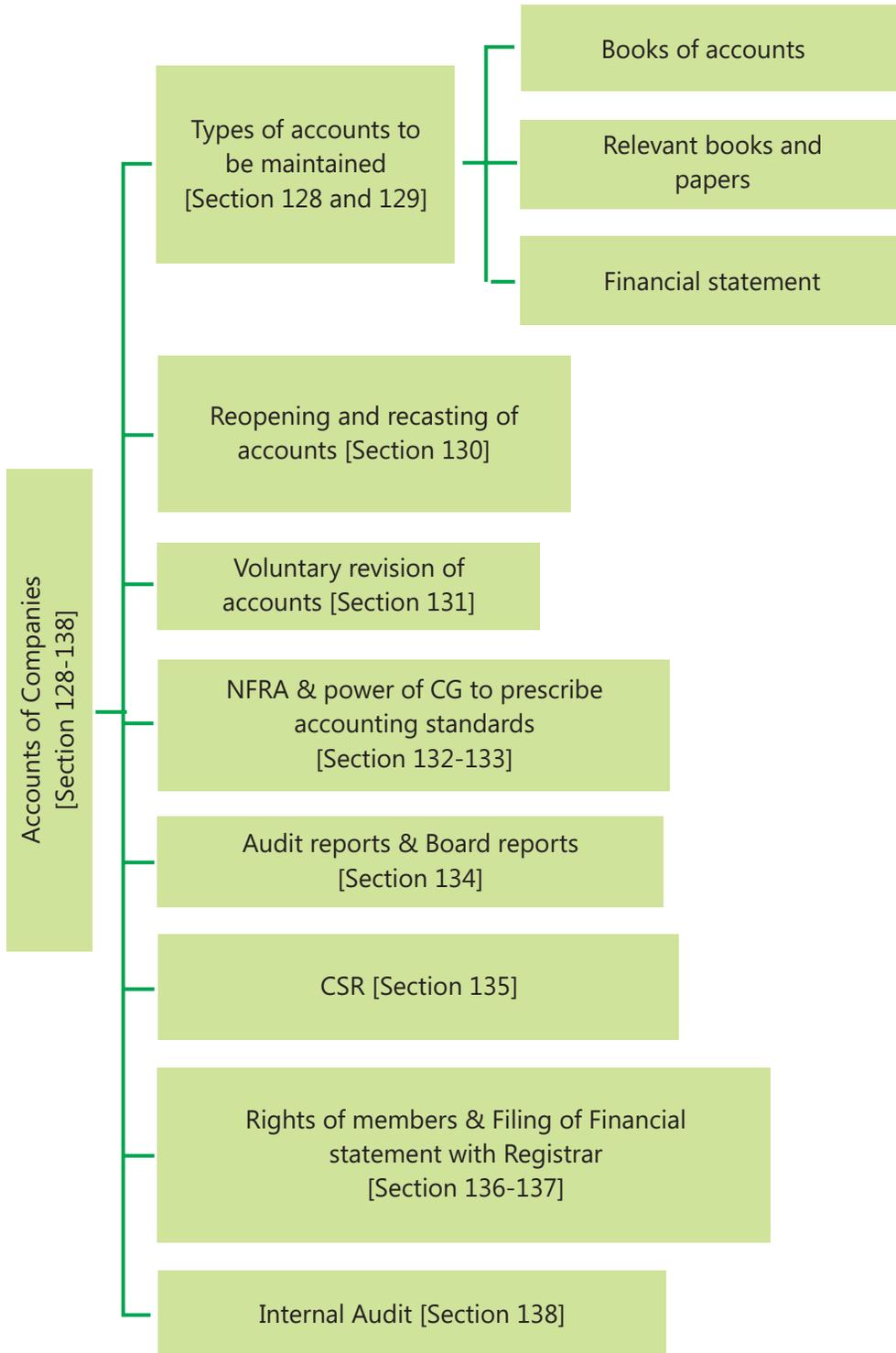
ACCOUNTS OF COMPANIES



LEARNING OUTCOMES

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

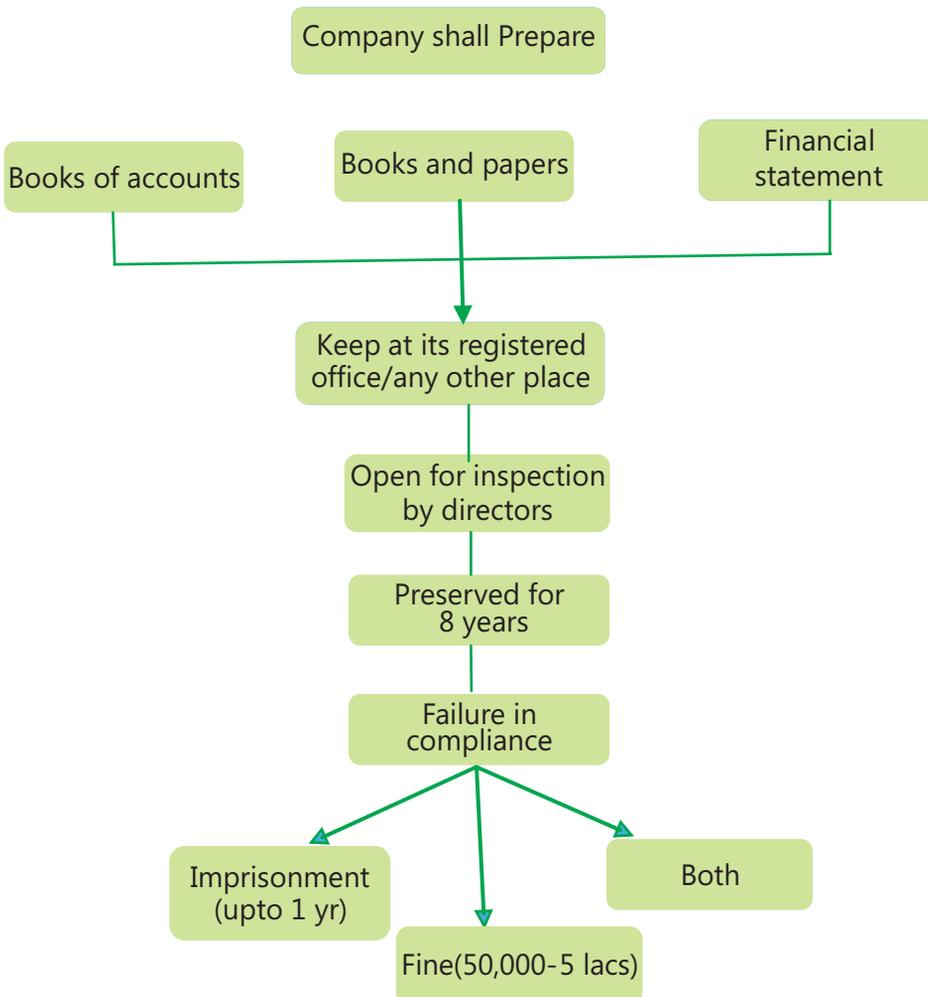
- Know about preparation and maintenance of books of Account etc. to be kept by company
- Know about the requirements as to preparation and filing of financial statement and other related matters.
- Know about the reopening and revision of financial statements
- Know about constitution, working and power of National Financial Reporting Authority.
- Explain various concepts related to Corporate Social Responsibility.
- 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. So, the Companies Act, 2013, lays down the various provisions related to maintenance of proper books of account etc. of the companies through required compliances.

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



General requirement

Every company shall prepare “books of account” and other relevant books and papers 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).

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 or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid.

Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt 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 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 giving full address of that other place.

Maintenance of Books of account in electronic form

Company have 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*. Rule 3 lays down the manner of Books of accounts to be kept in electronic mode.

- (1) Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent.
- (2) The information contained in the records 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) 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 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 India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office and are kept open for inspection at the registered office of the company or at such other place in India by any director during business hours.

Inspection by directors

As per Section 128 (3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression "Books and Papers" has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. 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 accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors. 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 and to produce such financial information [Rule 4(4) of the *Companies (Accounts) Rules, 2014*].

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

The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. The provisions of Income Tax Act shall also be complied with in this regard.

Where an investigation has been ordered in respect of a company, 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 to maintain books

As per Section 128 (6) the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts 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 provisions

In case the aforementioned persons referred to in sub-section (6) fail to take reasonable steps to secure compliance, they shall in respect of each offence, 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 both.

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

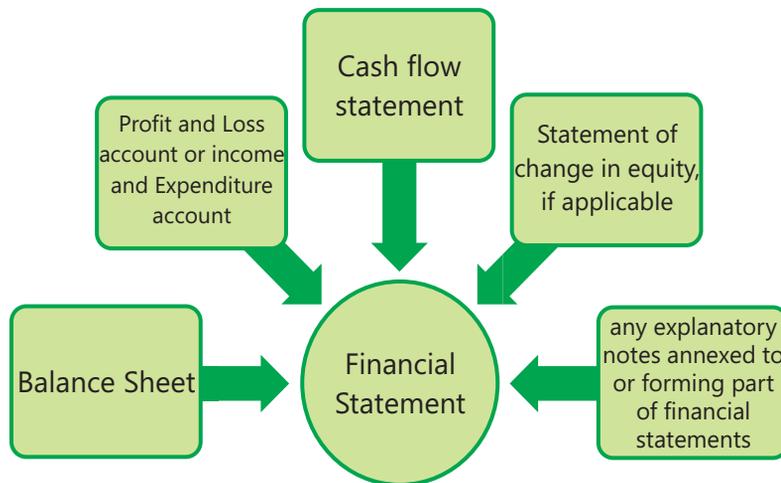
Answer : The Companies Act, 2013 vide section 128(1) now requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year shall be kept on accrual basis and according to the double entry system of accounting. Further, section clearly states that the books of accounts must be maintained on accrual basis and according to the 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, it is clear that XYZ Ltd. cannot maintain its books of accounts on cash basis.



3. FINANCIAL STATEMENT [SECTION 129]¹

Financial Statements—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.

Financial statements should be prepared for financial year and shall be in form as per 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 :

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year :

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;

¹ Section 129 shall not apply to the Government Companies to the extent of application of Accounting Standard 17 (*Segment Reporting*) to the companies engaged in defence production. [Inserted vide Notification dated 5th June 2015]

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 Statements for a company whose financial statements are required to comply with the *Companies (Accounting Standards) Rules, 2006*.

Division II deals with Financial Statements for a company whose financial statements are drawn up in compliance of the *Companies (Indian Accounting Standards) Rules, 2015*.

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.

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
Company governed by any other law	Matters which are not required to be disclosed by that law

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, it shall, in addition to its financial statements, prepare a consolidated financial statement of the company and of all

the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1 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*.

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 not require to prepare CFS : However, that in case of 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 on consolidated financial statements provided in Schedule III of the Act.

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

- (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 India 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 in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014."

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

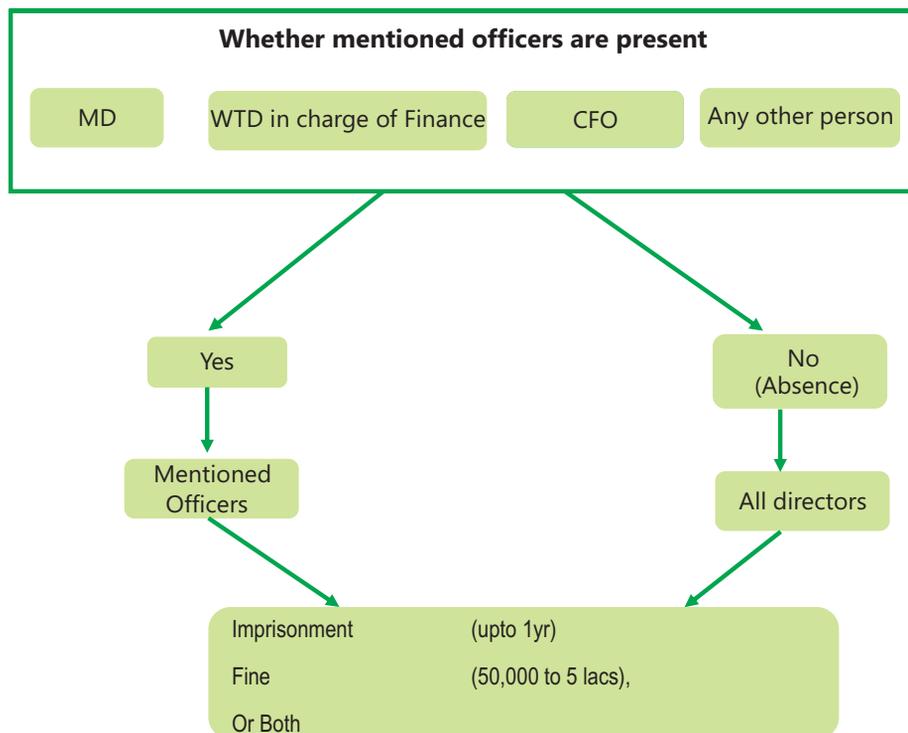
- (2) The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements. **[Section 129(4)]**

- (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,² exempt any class or classes of companies from complying with any of the requirements of this section or the rules made there under, 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.

Company Contravenes the provisions of section 129



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

Explanation : Here, 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.

Example : Suppose if A Ltd. is wholly owned subsidiary of B Ltd. Here in this case B Ltd. will consolidate financials of A Ltd.

Now suppose, if A Ltd. has one subsidiary i.e. B Ltd. & one associate company i.e. C Ltd. B Ltd. is the entity incorporated outside India and C Ltd, is the entity incorporated in India. Here in the given case A Ltd. will consolidate financial statement of both B and C Ltd. A Ltd. shall also attach the financial statement of B Ltd. along with filing of consolidated financials of A Ltd. Also a statement containing the salient features of the financial statement of a company's subsidiary, associate or joint venture shall be filed as an annexure to the board's report. The word 'Subsidiary' includes Associate Company and joint venture.

Example : 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 :

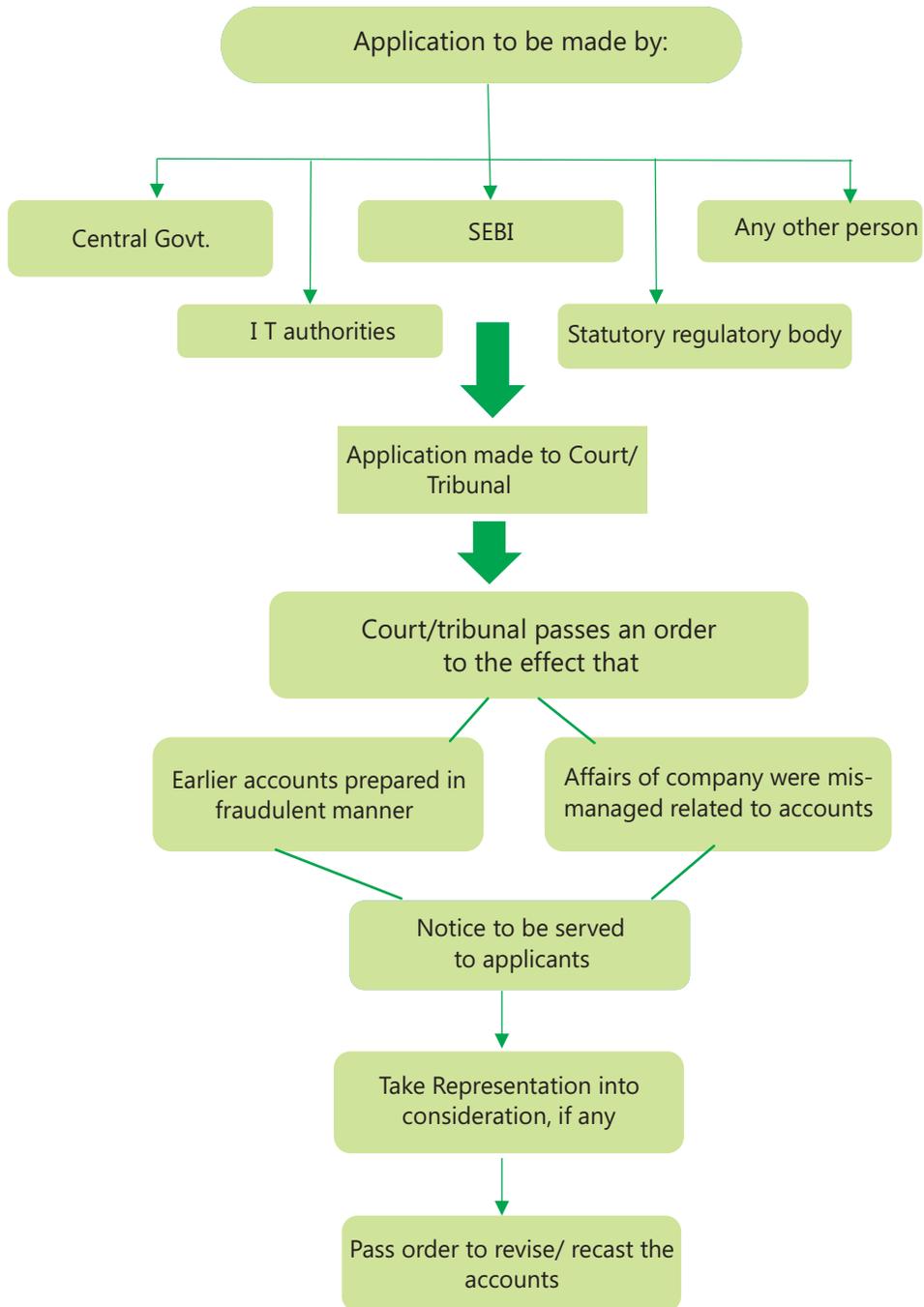
- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report.

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.



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

This section seeks to provide for the opening of books of accounts and recasting its 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-

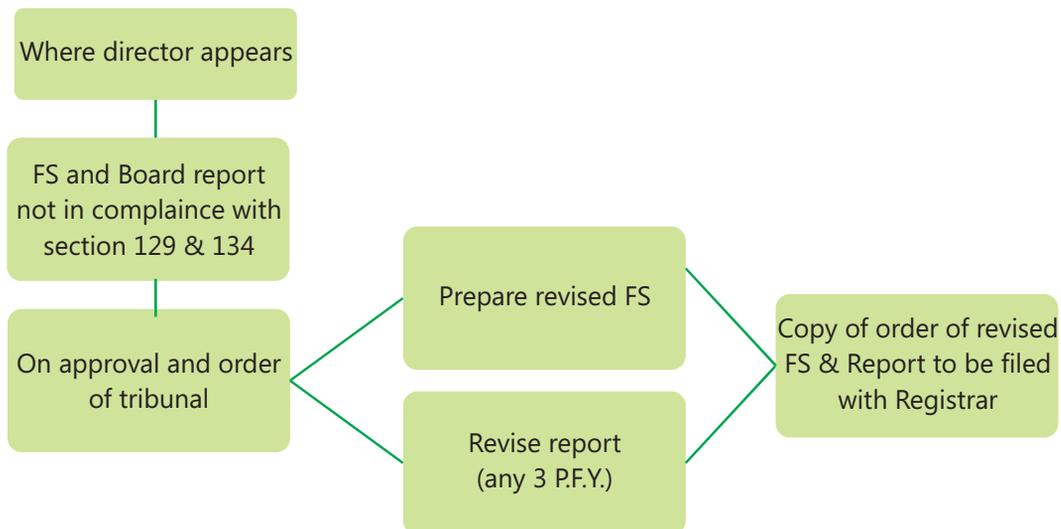
(a) the Central Government,

- (b) the Income-tax authorities,
- (c) the Securities and Exchange Board,
- (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 and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

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

5. 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 :

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

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



6. CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SECTION 132] (YET TO BE NOTIFIED)³

Section 132 of the Companies Act, 2013 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory

³. This section is not notified till 30.4.2017

Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). It shall have the powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

7. 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.

Section 133 provides that Central Government shall prescribe the Standards of Accounting as recommended by ICAI in consultation with and after examination of the recommendations made by NFRA constituted under section 132 of the Act. Till date section 132 is not notified. So the following transitional Provisions with respect to Accounting Standards has been made.

- (1) The standards of accounting as specified under the Companies Act, 1956 (1 of 1956) shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133.
- (2) Till the National Financial Reporting Authority is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

Relevant Accounting Standards

The Companies (Accounting Standards) Rules, 2006

The Companies (Accounting Standards) Rules, 2006 amended vide Notification No. G.S.R 364(E) dated 30th March, 2016

The Companies (Indian Accounting Standards) Rules, 2015

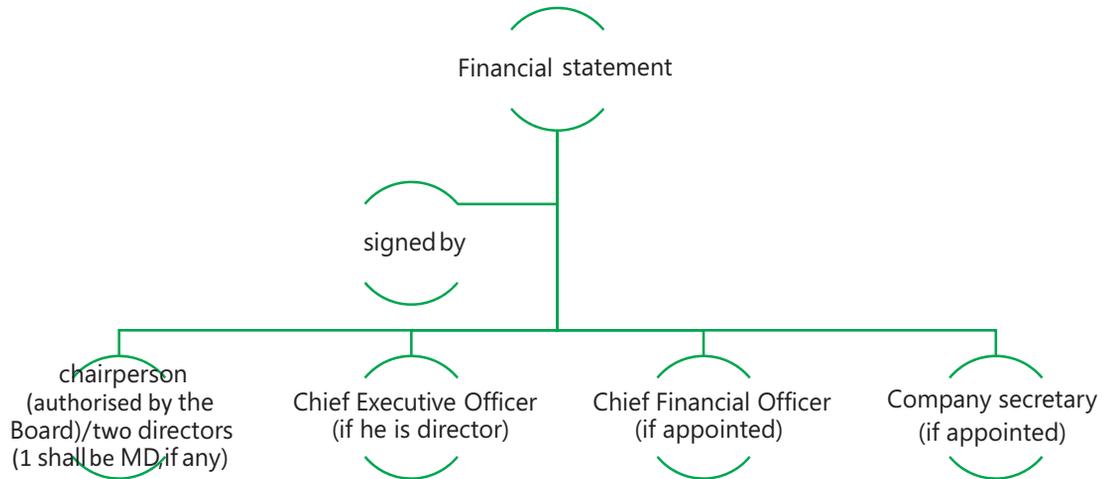
The Companies (Indian Accounting Standards) (Amendment) Rules, 2016

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

Section 134 deals with financial statements as well as board's 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 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.

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

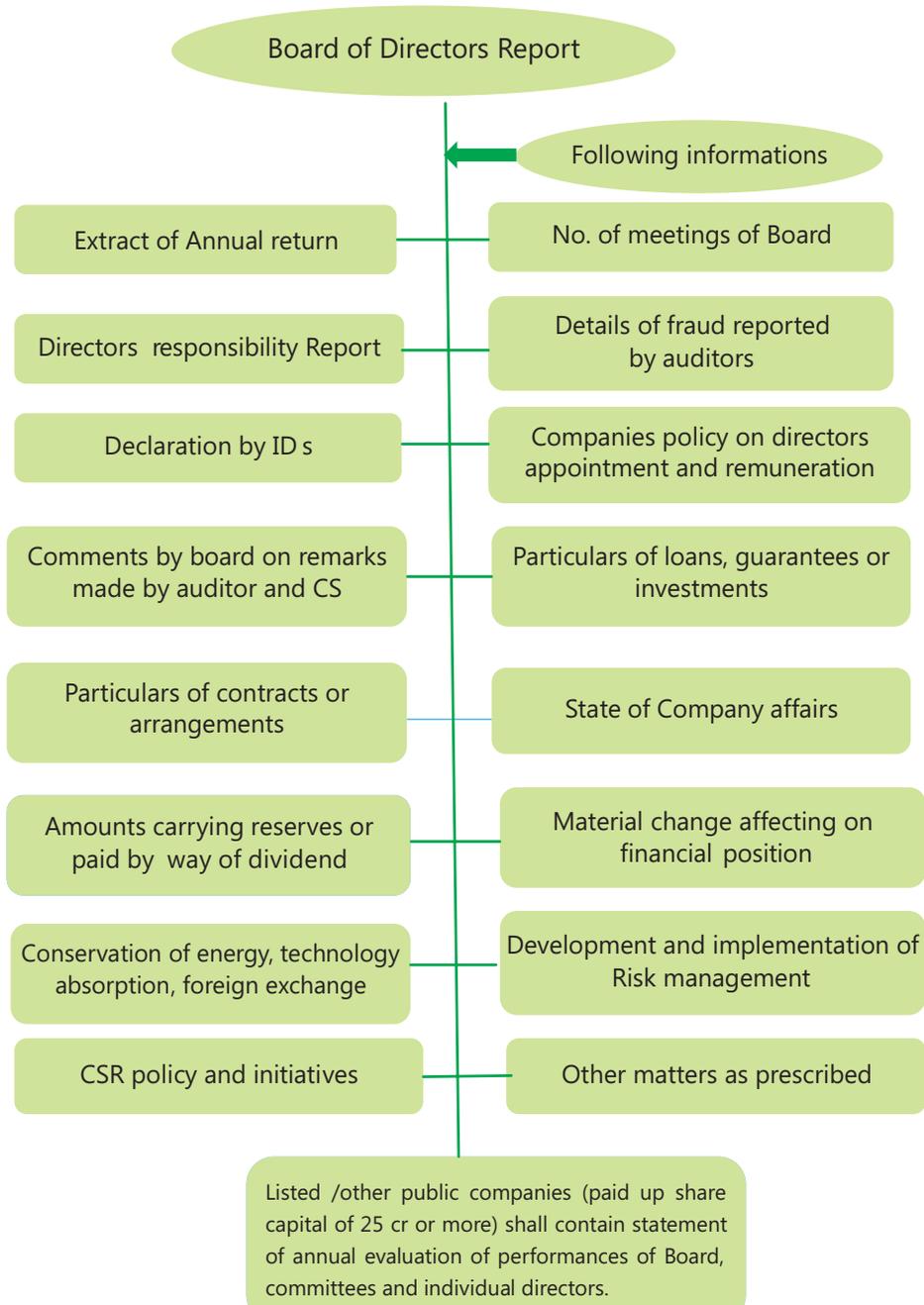


- (a) The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the following:
 - (1) The chairperson of the company where he is authorised by the Board; or
 - (2) By two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
 - (3) The Chief Financial Officer, wherever he is appointed; and
 - (4) The company secretary of the company, wherever he is appointed.
- (b) In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.
- (c) The auditors' report shall be attached to every financial statement.
- (d) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—
 - (1) Any notes annexed to or forming part of such financial statement;
 - (2) The auditor's report; and
 - (3) The Board's report.

(ii) Board's report [Section 134(3) & (4)]:

- (1) According to Rule 8 of the *Companies (Accounts) Rules, 2014*, the Board's Report shall be prepared based on the stand alone financial statements 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)⁴ There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—



4. In case of specified IFSC public & IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

- (a) The extract of the annual return as provided under sub-section (3) of section 92;
- (b) Number of meetings of the Board;
- (c) Directors' Responsibility Statement;
- (ca) By the Companies (Amendment) Act, 2015, this is a new clause added under the Section 134(3), whereby details in respect of frauds reported by auditors under section 143(12) other than those which are reportable to the Central Government.
- (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
- (e) ⁵in case of a company covered under sub-section (1) of section 178, 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;
- (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 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 prescribed under the Rule 8(3) of the *Companies (Accounts) Rules, 2014* which provides for:
 - (A) Conservation of energy—**
 - (i) the steps taken or impact on conservation of energy;
 - (ii) the steps taken by the company for utilising alternate sources of energy;
 - (iii) the capital investment on energy conservation equipments;

5. This clause is not applicable to the Government Company as per the *Notification dated 5th of June 2015*.

(B) Technology absorption—

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - (a) the details of technology imported;
 - (b) the year of import;
 - (c) whether the technology been fully absorbed;
 - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

By the *Companies (Accounts) Second Amendments Rules, 2015*, vide Notification dated 4th September 2015, a proviso has been inserted saying that the requirement of furnishing information and details under this sub-rule shall not apply to a Government Company engaged in producing defence equipment.

- (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) Every listed company and every other public company having a paid up share capital of 25 crore rupees or more calculated at the end of the preceding financial year shall include (as prescribed under the *Companies (Accounts) Rules, 2014*), in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

This clause shall not apply to the Government Company 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[Inserted *vide Notification dated 5th June 2015*]

- (q) Such other matters as contain as prescribed under *the Companies (Accounts) Rules, 2014*. According to which the report of the Board shall also contain—
- (i) the financial summary or highlights;
 - (ii) the change in the nature of business, if any;
 - (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
 - (iv) the names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;
 - (v) the details relating to deposits like—
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved—
 - (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 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.
- (3) **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 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)] :

Persons liable	Punishment for contravention of any provision of this section
Company	fine which shall not be less than ₹50,000 but which may extend to ₹25 Lacs
Every officer of the company who is in default	(1) Imprisonment for a term which may extend to 3 years; or (2) fine which shall not be less than ₹50,000 but which may extend to ₹5 Lacs; or (3) Both with imprisonment and fine

Example : XYZ is the company who has not prepared and filed statements for the last 5 years, whether the current directors can sign all the financial statements for the past 5 years?

Answer : As per section 134 (1), the financial statements of the company shall be signed by the chairperson of the company where he is authorised by the Board; or two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer; and the company secretary of the company, wherever they are appointed. Therefore, if the financial statements are being prepared for the last 5 years in the current year, the current directors can sign the financial statements for the last 5 years. However, company can approach the Tribunal for compounding of offences for not holding the AGM's for the past 5 years and for non-filing of the financial statement for such periods.

Example : 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.



9. CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]⁶

The Companies Act, 2013 lays down the provisions requiring corporate to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, CSR implies a concept, whereby companies decide voluntarily 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 in a voluntary way.

Corporate Social Responsibility : *The Companies (CSR Policy) Rules, 2014* provides the exhaustive definition of CSR which provides that the CSR means and includes but is not limited to :

- (i) Projects or programs relating to activities specified in Schedule VII to the Act; or
- (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

According to section 135 of the Companies Act, 2013 read with the *Companies (Corporate Social Responsibility) Rules, 2014* :

6. 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.

(i) Which Company is required to constitute CSR committee:

- (a) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having
- (1) net worth* of rupees 500 crore or more, or
 - (2) turnover of rupees 1000 crore or more or
 - (3) a net profit of rupees 5 crore or more
- during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.
- (b) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
- (c) However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1) (a) and section 198 of the Act.

*"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium 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.

(ii) Exclusion of Companies

Every company which ceases to be a company covered under sub section (1) of section 135 of the Act for three consecutive financial years

- (1) shall not be required to constitute a CSR Committee, and
- (2) is not required to comply with the provisions as per section 135

(iii) Composition of CSR Committee :

- (a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.
- (b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.
- (c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- (d) With respect to a foreign company covered as above, the CSR Committee shall

comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.

- (e) The Board's report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee.

(iv) Duties of CSR Committee :

The CSR Committee shall,—

- (a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the CSR Policy of the company from time to time.

(v) Contents of the CSR Policy :

- (a) List of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
- (b) monitoring process of such projects or programs;
- (c) However, the CSR activities do not include the activities undertaken in pursuance of normal course of business of a company.
- (d) The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the activities included in Schedule VII of the Act.
- (e) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

(vi) Duties of the Board in relation to CSR :

The Board of every company referred to in sub-section (1) shall,—

- (1) after taking into account the recommendations made by the CSR Committee, approve the CSR 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
- (2) ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

(vii) Amount of contribution towards CSR :

- (a) The Board of every company 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, in pursuance of its CSR Policy.
- (b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

- (c) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount
- (d) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years. However, such expenditure including expenditure on administrative overheads, [inserted by the *Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014*] shall not exceed five percent of total CSR expenditure of the company in one financial year.

(viii) CSR Activities :

Rule 4 of the *Companies (CSR Policy) Rules, 2014* states the various CSR activities that shall be undertaken by the companies. Following are the CSR activities-

- (1) The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities excluding activities undertaken in pursuance of its normal course of business.
- (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through
 - (a) a company established under section 8 of the Act or a registered trust or a registered society, 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 any entity established under an Act of Parliament or a State legislature :

Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism”.

- (3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.
- (4) Subject to provisions contained in section 135(5), the CSR projects or programs

or activities undertaken in India only shall amount to CSR Expenditure.

- (5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.
- (6) Companies may build CSR capacities of their own personnel as well as those of implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed 5% of total CSR expenditure of the company in one financial year.
- (7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

(ix) Exceptions to CSR Activities :

The *Companies (CSR Policy) Rules, 2014* provides for some activities which are not considered as CSR activities :

- (1) The CSR projects or programs or activities undertaken outside India.
- (2) The CSR projects or programs or activities that benefit only the employees of the company and their families.
- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

(x) Calculation of Average Net profit :

- (a) Here, "average net profit" shall be calculated in accordance with the provisions of section 198.
- (b) "Net profit" shall not include the following:
 - (1) Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
 - (2) Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.
- (c) However, net profits in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act:
- (d) It is further 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.

(xi) CSR Reporting :

- (a) The Board's Report of a company covered under these rules pertaining to a

financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR.

- (b) In case of a foreign company, the balance sheet filed under section 381(1)(b) shall contain an Annexure regarding report on CSR.

(xii) Activities specified under Schedule VII :

Activities which may be included by companies in their CSR Policies 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, agro forestry, 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;
- (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 any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (9) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (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.]

The MCA vide *General Circular No. 21/2014 dated 18th 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.
- (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.
- (iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with 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.

Penal Provisions

The Companies Act requires that—

- (i) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per subsection (3) of section 134;
- (ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it shall be punishable with fine, which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Example : ABC, a company with a turnover of ₹ 1000 Crores or more and having incurred a loss in any of the preceding three financial years, will 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 than the company is mandatorily required to comply with the CSR provisions.

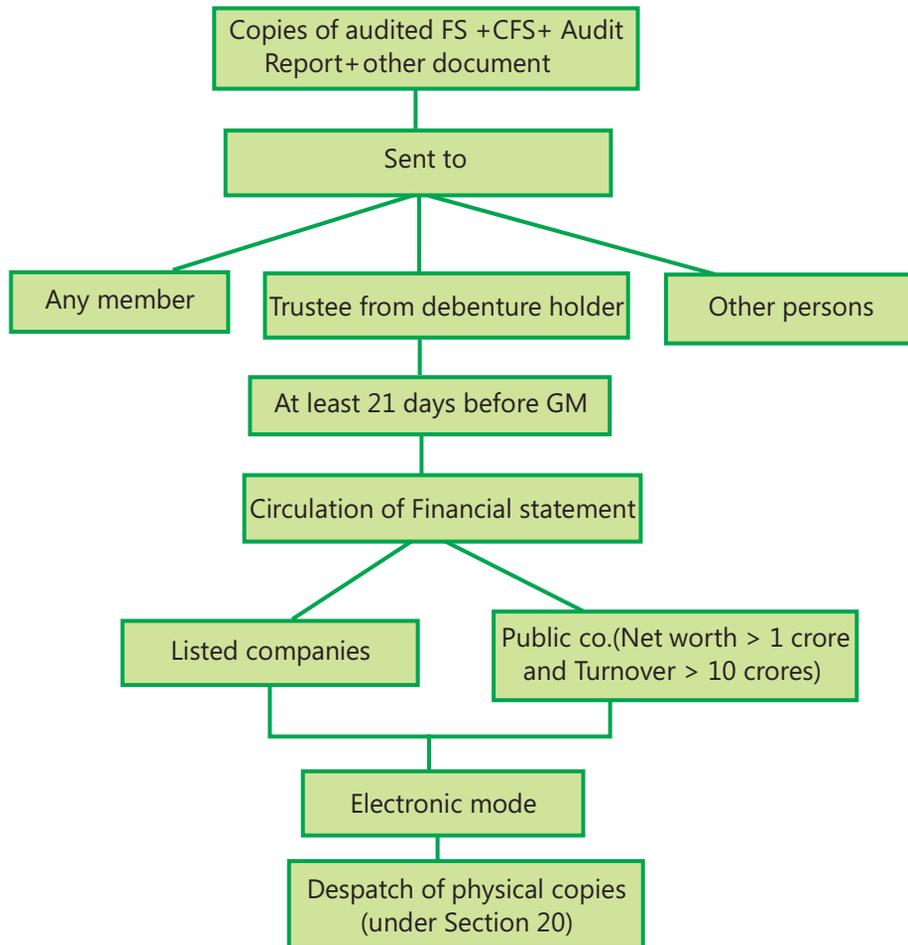
Example : XYZ Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise.

Answer : In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending.



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

This section seeks to provide that a copy of financial statements including consolidated financial statement and auditor's report to be sent to every member, every trustee for the debenture holder and all other persons who are so entitled, twenty one days before the date of general meeting.



(i) Who are entitled for audited financial statement ?

- (a) A copy of the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following:
- (1) every member of the company,
 - (2) to every trustee for the debenture-holder of any debentures issued by the company, and
 - (3) to all persons other than such member or trustee, being the person so entitled.
- (b) Consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements shall be annexed with financial statements.
- (c) These financial statements shall be sent in not less than 21 days before the date of the meeting.
- (d) In the case of a listed company:

- (1) The above provisions shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting.
 - (2) Along with it a statement containing the salient features of such documents in the Form AOC-3 or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company.
 - (3) The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.
- (e) 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.

[Note : *Vide Notification dated 5th June 2015* for the companies under section 8 the word "twenty one days", the words "Fourteen days" shall be substituted]

(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-
- (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; and
 - (3) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.
- (b) 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.

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

(iii) Subsidiary Companies :

Every company having a subsidiary or subsidiaries shall,—

- (1) place separate audited accounts in respect of each of its subsidiary on its website, if any;
- (2) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

This sub-section (1) of the Section 136 shall apply to the Nidhis company 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 1% 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 Nidhi is situated stating the date, time and venue of the annual general meeting 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. [As per the *notification dated 5th June 2015*]

- (iv) Every company shall be under an obligation to allow every member or trustee of the holder of any debentures issued by the company to inspect the financial statements and documents to be attached thereto stated under sub-section (1) at its registered office during business hours.

In case of listed companies, copies of documents shall be available for inspection at its registered office during working hours for a period of 21 days before the date of meeting and company may send the salient features of financial statements to members and debenture trustees in prescribed form.

(v) Contravention :

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

Vide General Circular No. 11/2015, dated 21st July 2015, clarification was issued by Ministry of Corporate Affairs with regards to circulation and filing of financial statement.

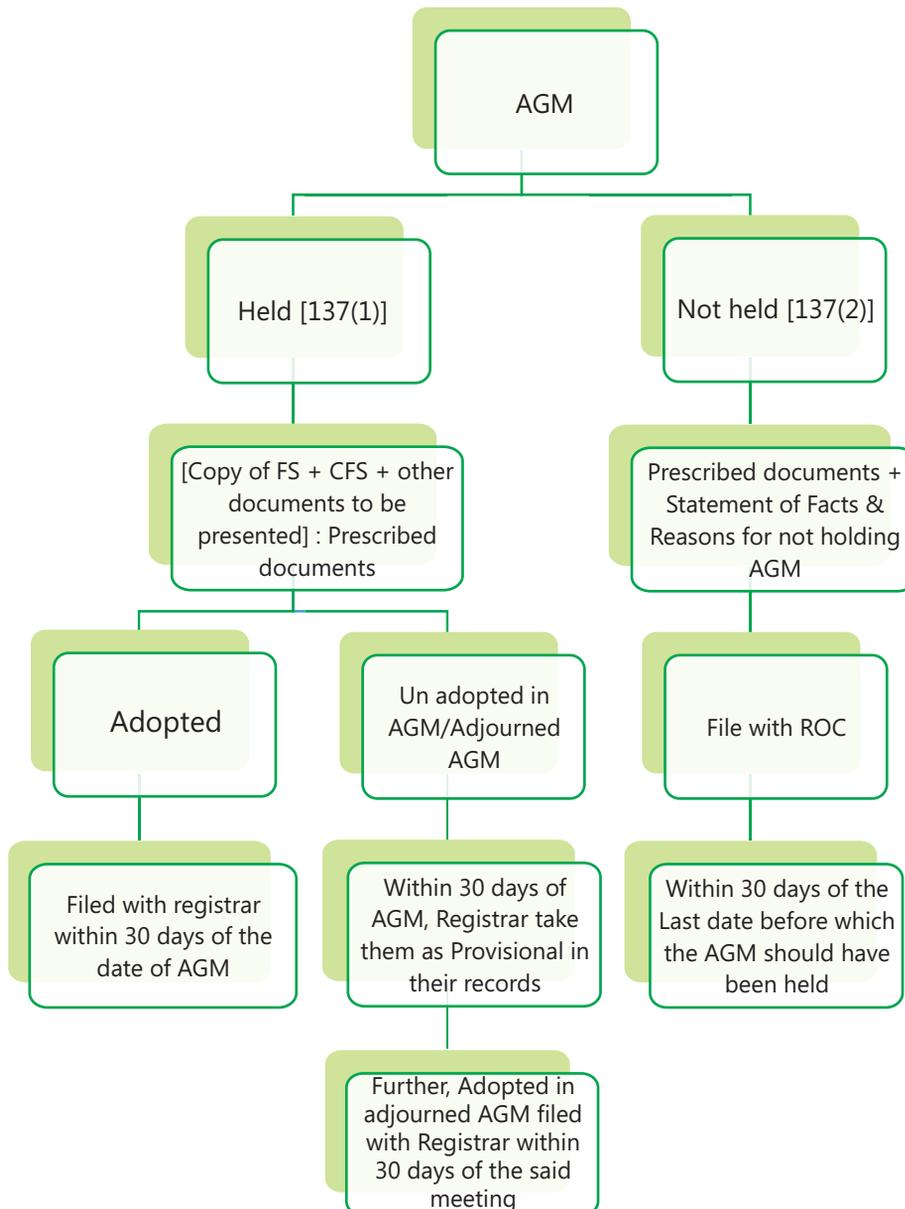
It has been clarified that a company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.

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 may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.



11. 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)] :

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

As per Rule 3 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015* vide Notification dated 9th September, 2015, following class of companies shall file their financial statement and other documents under this section with the registrar in e-form AOC-4 XBRL given in Annexure I for the financial years commencing on or after 1st April, 2014 using the XBRL taxonomy, namely—

- (1) All companies listed with any stock exchange(s) in India and their Indian subsidiaries, or
- (2) All companies having paid up capital of rupees five crore or above, or
- (3) All companies having turnover of rupees hundred crore or above, or
- (4) All companies which were hitherto covered under the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011* :

Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.

(ii) If Financial Statements are not adopted [Section 137(1)] :

- (a) Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting.
- (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 annual general meeting for that purpose.
- (c) If the financial statements are adopted in the adjourned annual general meeting, then they shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

(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.

It has also been clarified vide *General Circular no. 11/2015 dated 21st July 2015* that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

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

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

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

- (a) The company shall be punishable with fine of ₹1,000 for every day during which the failure continues but which shall not be more than ₹10 Lacs, 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 punishable with :
 - (1) Imprisonment for a term which may extend to 6 months or
 - (2) Fine which shall not be less than ₹ 1 lac but which may extend to ₹5 Lacs, or
 - (3) Both with imprisonment and fine.

Person Liable	Punishment for contravention of section 137
Company	with fine of ₹ 1,000 for every day during which the failure continues but which shall not be more than ₹ 10 Lacs,
Officers— managing director and the Chief Financial Officer 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.	(1) Imprisonment for a term which may extend to 6 months or (2) Fine which shall not be less than ₹ 1 lac but which may extend to ₹ 5 Lacs, or (3) Both with imprisonment and fine.

Example : The Annual General Meeting of R Ltd., for laying the Annual Accounts thereat for the year ended 31st March, 2016 was not held. What remedies 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 Annual General Meeting was not held, it ought to be held by 30th September, 2016 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 annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held i.e. by 30th October 2016 along with such fees or additional fees as may be prescribed.

Example : Will it make any difference in case the Annual Accounts were duly laid before the Annual General Meeting held on 27th September, 2016 but the same were not adopted by the shareholders?

Answer : Since the Annual General Meeting has been held in time on 27th September 2016, the unadopted 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 annual general meeting 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 annual general meeting for that purpose.

Example :

ABC Ltd is an unlisted public company engaged in pharma sector and has paid up capital of rupees 10 crores and achieved turnover of rupees 200 crores during financial year 2015-16. Is it necessary for ABC Ltd to file its financial statement in XBRL mode?

Answer : The following class of companies shall file their financial statement in XBRL (extensible Business Reporting Language) mode and by using the XBRL taxonomy:

- (i) all companies listed with any stock exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid up capital of rupees 5 crores or above;
- (iii) all companies having turnover of rupees 100 crores or above; or
- (iv) all companies which were covered under the *Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011*.

However, Banking Companies, Insurance Companies, Power Companies and Non-Banking Financial Companies (NBFCs) and housing finance companies need not file financial statements under this rule. ABC Ltd is required to file its financial statement in XBRL mode.



12. INTERNAL AUDIT [SECTION 138]⁷

Section 138 is to read with Rule 13 of the *Companies (Accounts) Rules, 2014* for the law related to internal audit in a company.

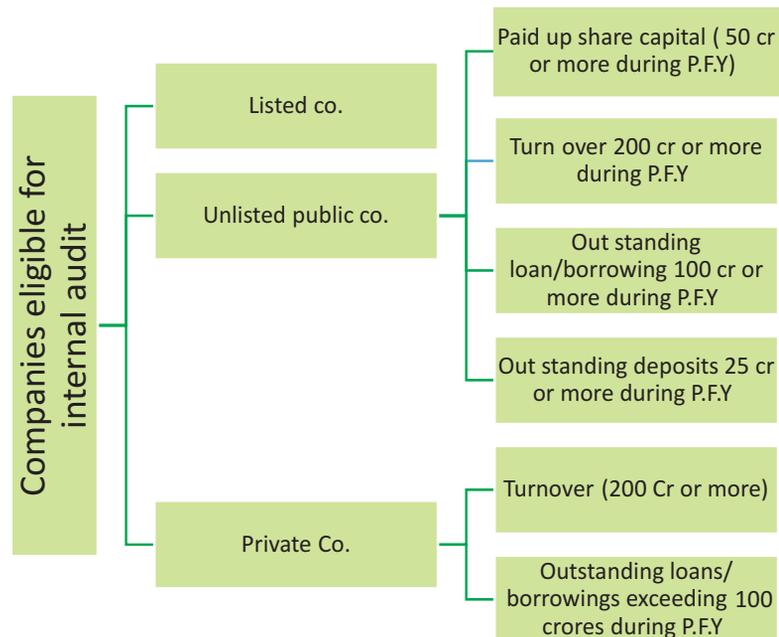
(i) Companies required to appoint Internal Auditor :

- (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

7. 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.

- (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and
- (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.



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.

➤ 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 imprisonment for a term which may extend to one year or 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 ;
- **Manner of keeping books of Accounts in Electronic Mode–Rule 3 Chapter IX**
 - The information in electronic record shall be capable of being displayed in a legible form
 - There shall be proper system for storage ,retrieval ,display or printout of the electronic records.
- **Section 129-Financial Statement**
 - FS for the FY shall be prepared as per Schedule III and laid before the AGM.
 - Consolidated FS of the company and of all the subsidiaries to be laid before the AGM.
 - A company is required to attach with its FS, a separate statement in Form AOC-1 containing the salient features of the FS of its subsidiaries.
- **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.
- **National Financial Reporting Authority (NFRA) –Section 132 : This section is yet to be notified**
 - Recommend formulation of Accounting and Auditing policies and standard for Companies and Auditors.
 - Monitor and Enforce Compliance of Accounting and Auditing Standard.
 - Oversee the quality of concerned professions.
 - Perform such other functions as may be prescribe.
- **Signing of Financial Statements –Section 134(1)**

FS shall be approved by the board and than signed on behalf of the Board at least by the :

- chairperson of the company where he is authorized by the Board; or
 - two directors out of which one shall be MD and the CEO, if director in the company;
 - chief financial officer; and
 - company secretary
- **Section 136–Right of the member to copies of audited financial statement**
- Audited Financial Statements with auditors report & every other document which is required to be annexed to the financial statement, Shall be sent to every person entitled to receive the same; not less than 21 days before the date of general meeting ;
 - Listed Companies to shall also place its financial statements , on its website which is maintained by or on behalf of the Company
 - Penalty for Contravention of this section:Company shall be liable to a penalty of 25 thousand rupees and every officer of the company who is in default shall be liable to a penalty of 5 thousand rupees.
- **Filing of Financial statement & 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 crores 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 IA formulates the scope, functioning and methodology for internal audit.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. The books of accounts of every company shall be maintained in order for :
 - (a) 3 Years
 - (b) 5 years
 - (c) 8 years
 - (d) 10 years

2. A company can re- open / recast its book of accounts on an application to Tribunal made by :
 - (a) Registrar
 - (b) Member
 - (c) Board of Directors
 - (d) Income –tax authorities
3. CSR Committees of the Board shall consists of :
 - (a) Directors forming 1/3rd of the total no. directors.
 - (b) Atleast 2 directors
 - (c) 3/ more directors
 - (d) 3/ more directors, out of which atleast 1 director shall be an independent.
4. Provisions of CSR are applicable to :
 - (a) Companies with net worth of 500 cr/more
 - (b) Companies with turnover of 1000 cr/more
 - (c) Companies with net profit of 5 cr/ more in any financial year
 - (d) All of the above
5. OPC shall file a copy of the duly adopted financial statements to registrar in :
 - (a) 30 days of the date of meeting in which it was adopted
 - (b) 90 days of the date of meeting in which it was adopted
 - (c) 90 days from the closure of the financial statement
 - (d) 180 days from the closure of the financial statement
6. Who can be appointed as an internal auditor ?
 - (a) Chartered Accountants
 - (b) Cost accountants
 - (c) Any other professional
 - (d) All of the above

Answer to MCQs

1. (c)	2. (d)	3. (d)	4. (d)	5. (d)	6. (d)
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Question and Answer

Question 1

The Board of directors of Bharat Ltd. has a practical problem. The registered office of the company 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. 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. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure.

Question 2

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) 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

Under 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 at least :

- The chairperson of the company where he is authorised by the Board; or
- Two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, and
- the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed 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

Mr. Bhagvath, recently acquired 76% of the equity shares of M/s Renowned Company Ltd., in the hope of earning good dividend income. Unfortunately the existing Board of Directors have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of the Company to allow him to examine the Books of Accounts, which is summarily rejected by the Company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.

Answer

Inspection of Books of Accounts of the Company (Section 128 of the Companies Act, 2013)—

Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 76% of the equity shares of M/s Renowned Company Ltd. According to sections 128(3) and 206 of the Companies Act, 2013, following persons have the right to carry out the inspection of the books of accounts of the company.

- (i) Directors of the Company [Section 128(3) of the Companies Act, 2013]
- (ii) Registrar of Companies [Section 206 of the Companies Act, 2013]
- (iii) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206 of the Companies Act, 2013).
- (iv) Such officers of SEBI as may be authorised by SEBI [Section 206 read with Section 24 of the Companies Act, 2013].

Since Mr. Bhagvath does not fall in any of above mentioned categories, he is not eligible to carry out the inspection.

[Note : According to Regulation 89(ii) of the Table F of the Schedule I of the Companies Act, 2013, a member shall have right of inspecting any account or book or document of the company only if conferred by law or authorized by the Board or by the company in general meeting]

Question 4

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2015 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

- (i) *Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.*
- (ii) *What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report ?*

Answer

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least :

- (1) The Chairperson of the company where he is authorized by the Board; or
- (2) Two directors out of which one shall be the managing director and
- (3) The other Chief Executive Officer, if he is a director in the company
- (4) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

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.

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, 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.

- (i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.
- (ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Question 5

DJA Company Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries – AJD Limited and AMR Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2015. Examining the provisions of the Companies Act, 2013, answer the following :

- (i) *In what manner the subsidiaries – AJD Limited and AMR Limited shall prepare their Balance Sheet and Profit & Loss Account ?*
- (ii) *What would be your answer in case the DJA Limited – the holding company, is not required to prepare consolidated financial statements under the Indian Accounting Standards ?*
- (iii) *What shall be your answer in case one of the subsidiary company's financial statements do not comply with the Accounting Standards ?*
- (iv) *To what extent is the Central Government empowered to exempt a company from preparing the financial statements in compliance with the Indian Accounting Standards ?*

Answer

- (i) In accordance with the provisions of the Companies Act, 2013, as contained under section 129(3) and (4):

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

- (ii) According to *Companies (Accounts) Rules, 2014*, the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III to the Act and the applicable accounting standards. However, for a company 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 to the Act. 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.
- (iii) If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following viz.
 - (a) The deviation from the accounting standards,
 - (b) The reasons for such deviation, and
 - (c) The financial effects, if any, arising out of such deviation.

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

