

Intermediate Course

Study Material

(Modules 1 to 3)

Paper 2

Corporate and Other Laws

(Relevant for May, 2026 Examination)

Module – 2



BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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MANAGEMENT AND ADMINISTRATION

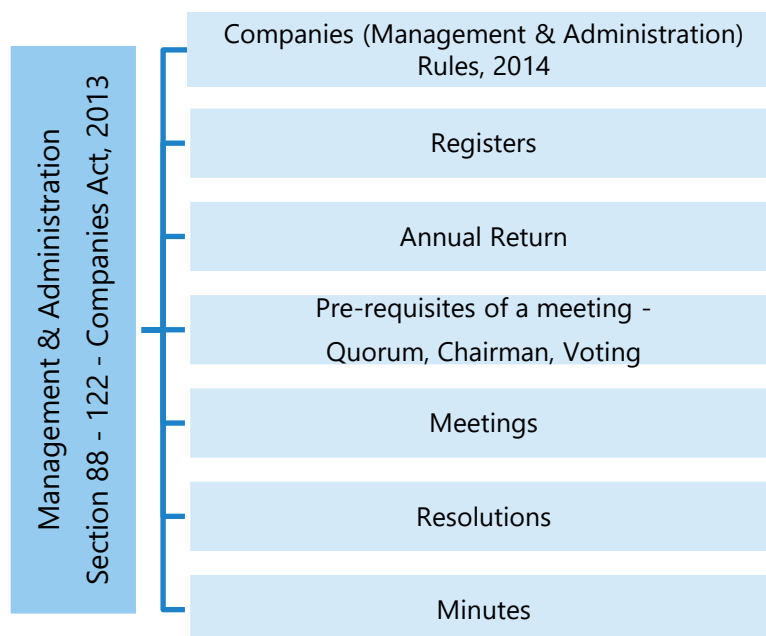


LEARNING OUTCOMES

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

- ◆ Learn about the maintenance of registers and other documents required to be kept by a company.
- ◆ Understand the significance and provisions relating to filing of Annual Return.
- ◆ Know about pre-requisites of holding meetings for transacting business.
- ◆ Explicate provisions governing Quorum and appointment of proxies.
- ◆ Identify the various modes of casting votes.
- ◆ Know about the ordinary and special resolution.
- ◆ Elucidate provisions in respect of maintenance of Minutes.

CHAPTER OVERVIEW



1. INTRODUCTION

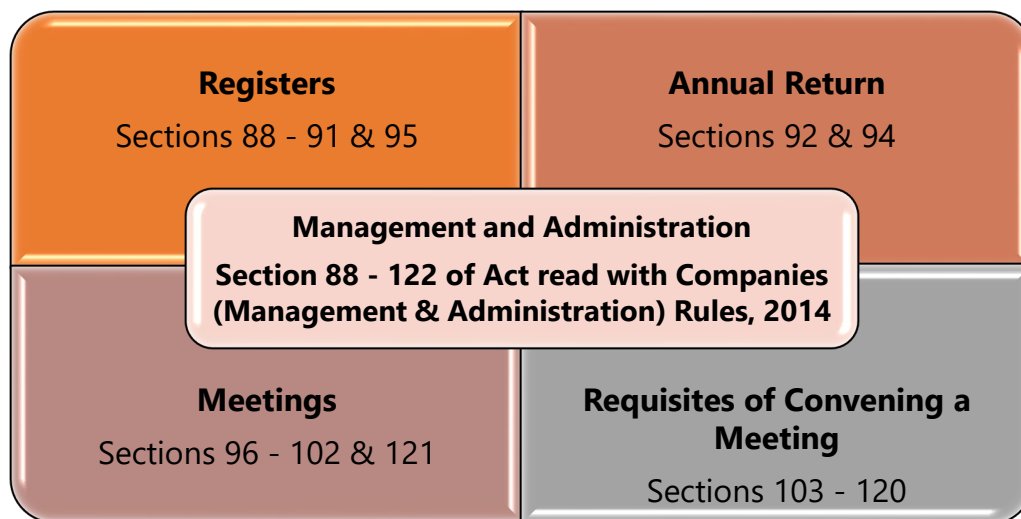
Chapter VII	Consists of sections 88 to 122 as well as the Companies (Management and Administration) Rules, 2014.
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A company is an artificial legal entity distinct from its members. The affairs of the company are managed by the members and directors through resolutions passed at the validly held meetings. The day-to-day affairs of the company are managed by the directors who collectively act through Board of Directors. The Board performs its role within the powers granted to it. Certain powers can be exercised by the board on its own and some with the consent of the company at the general meetings. In the capacity as owners of the company, the shareholders ratify the actions of the board at the general meetings. In a way, the general

meetings serve as the focal point for the shareholders to converge and give their decisions on the actions taken by the directors.

The proceedings of the general meetings are recorded in the 'minutes book'. On yearly basis, a company is required to hold its Annual General Meeting to transact requisite businesses including adoption of financial statements, appointment/re-appointment of directors and auditors, etc., after the close of the financial year. In between two AGMs, a company may hold extra-ordinary general meetings (EGM) also if there is any need to transact certain urgent business. After the conclusion of AGM, the company is required to prepare Annual Return and file a copy thereof with the jurisdictional Registrar of Companies. Every company is duty-bound to maintain register of members, register of debenture-holders and register of other security holders.

Chapter VII of Companies Act, 2013 deals with the provisions relating to management and administration of companies. It covers Sections 88 to 122 and is divided under the following headings–

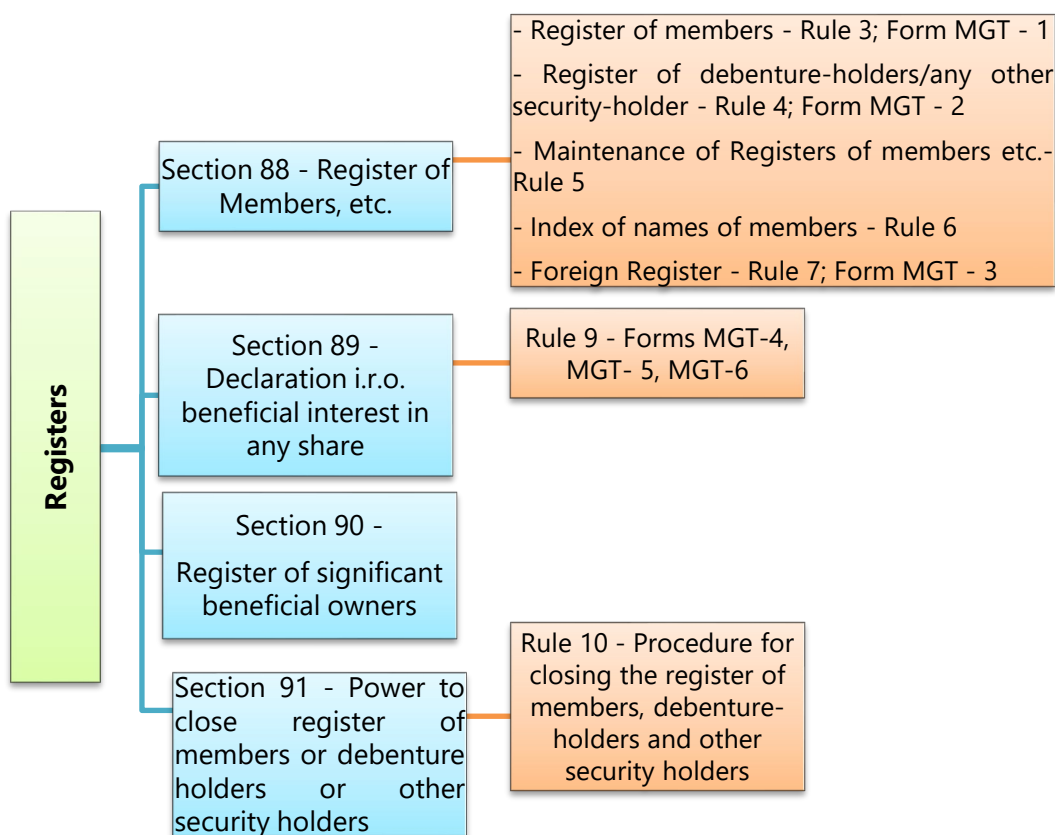


To initiate, it is imperative that we streamline the understanding of this chapter so as to link it with the essential concepts along with their procedures which can be found in the respective rules, i.e. *the Companies (Management and Administration) Rules, 2014* as amended from time to time.

Chapter VII applies to all the companies, public and private, and has special provisions applicable to One Person Company (OPC), which are enumerated in section 122 of the Act and are discussed later in this chapter.

2. REGISTERS

The provisions relating to maintaining the various registers as per the Companies Act, 2013 are contained in Sections 88 – 91. Along with these provisions, the *Companies (Management & Administration) Rules, 2014* are also applicable to the maintenance of registers by a company. Various provisions relating to keeping and maintenance of registers are as follows:



REGISTER OF MEMBERS, ETC. [SECTION 88]

Section 88 (1) of the Companies Act, 2013 requires that every company shall keep and maintain the following registers:

- (i) Register of Members (holding of each class of equity and preference shares of each member residing in or outside India shall be shown separately in the register)
- (ii) Register of Debenture-holders (DH); and
- (iii) Register of any other security holders (OSH).

Maintenance of Register of Members

- (i) Every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT-1. *[Rule 3 (1)]*

However, in case of a company existing on the commencement of the Companies Act, 2013, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No. MGT-1. In case additional information, required as per the provisions of the Companies Act, 2013 and the Rules made thereunder, is provided by the members, such information may also be added in the register as and when provided. *[Proviso to Rule 3 (1)]*

- (ii) In case of a company not having share capital, the register shall contain the following particulars, in respect of each member–
 - ◆ Name of the member, address (registered office address in case the member is a body corporate); email address; Permanent Account Number or Corporate Identity Number ('CIN'); Nationality; in case member is a minor – name of his guardian and the date of birth of the member, name and address of the nominee;
 - ◆ Date of becoming the member;
 - ◆ Date of cessation;
 - ◆ Amount of guarantee, if any;
 - ◆ Any other interest, if any; and
 - ◆ Instructions, if any, given by the member with regard to sending of notices, etc. *[Rule 3 (2)]*

However, in case of a company existing on the commencement of the Companies Act, 2013, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No. MGT-1. In case additional information,

required as per the provisions of the Companies Act, 2013 and the Rules made thereunder, is provided by the members, such information may also be added in the register as and when provided. *[Proviso to Rule 3 (2)]*

Maintenance of Register of Debenture Holders (DH) or any Other Security Holders

Every company which issues or allots debentures or any other security shall maintain a separate register for debenture holders or security holders, as the case may be, for each type of debentures or other securities in Form MGT-2. *[Rule 4]*

Other Requirements applicable to all the Registers

Rule 5 contains certain requirements which are applicable to all types of registers (*i.e. Register of Members, Register of Debenture-holders and Register of any Other Security Holders*). These are stated as under:

♦ Time period for making entries in Register

As per Rule 5 (1), entries have to be made in the Register within 7 days of the date of approval by the Board or Committee thereof by approving the allotment or transfer of shares, debentures or any other securities, as the case may be.

According to Rule 5 (3), consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

♦ Place of maintaining Register

According to Rule 5 (2), the registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is

situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside.

◆ **Other information also to be referred in register**

- ❖ In terms of Rule 5 (6), if any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or competent authority attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.
- ❖ According to Rule 5 (7), in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.
- ❖ According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

◆ **Updating of change in status of members**

Rule 5 (4) states that if any change occurs in the status of a member or debenture-holder or any other security holder:

- whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund (IEPF) or due to any other reason,

entries thereof explaining the change shall be made in the respective registers.

♦ **Rectification in register**

According to Rule 5 (5), if any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

Index of names

Section 88 (2) provides that every register maintained under section 88 (1) shall include an index of names included therein. However, according to Rule 6 of the *Companies (Management and Administration) Rules, 2014*, the maintenance of index is not necessary where the number of members is less than 50. Rule 6 also provides that the company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

Register and Index of Beneficial Owners being maintained by a Depository

Section 88 (3) is an enabling provision, which sets out that the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

Foreign Register [Section 88(4) read with rule 7]

■ **Maintenance of Foreign Register:**

A company which has share capital or which has issued debentures or any other security may, if so authorised by its articles, keep in any country outside India, a part of the register of members or debenture holders or of any other security holders or of beneficial owners, resident in that country. The register shall be called "**Foreign Register**".



■ **Other requirements relating to Foreign Register:**

In case a company decides to keep a Foreign Register, it shall comply with the following requirements:

- (i) *Filing of notice of the situation of the office:* Within 30 days from the date of the opening of any Foreign Register, the company shall file

with the Registrar of Companies, notice of the situation of the office where such register is kept. The notice shall be filed in Form No. MGT-3 along with the requisite fee.

- (ii) *Filing of notice in case of change or discontinuance:* In the event of any change in the situation of such office or of its discontinuance, the company shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No. MGT-3 with the Registrar of Companies, of such change or discontinuance.
- (iii) *Foreign Register part of company's register:* A foreign register shall be deemed to be part of the company's register (to be called 'principal register') of members or of debenture-holders or of any other security holders or beneficial owners, as the case may be.
- (iv) *Format of Foreign Register:* The foreign register shall be maintained in the same format as the principal register.
- (v) *Inspection, etc. of Foreign Register:* A foreign register shall be open to inspection and may be closed, and extracts may be taken therefrom and copies thereof may be required, in the same manner, as is applicable to the principal register. However, advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
- (vi) *Decision of the appropriate competent authority binding in regard to the rectification:* If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.
- (vii) *Making of Entries in Foreign Register:* Entries in the foreign register shall be made after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.
- (viii) *Transmission of a copy every entry:* The company shall transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made.

- (ix) *Keeping of Duplicate Foreign Register at Registered Office:* The company shall keep at the Registered Office a duplicate register of every foreign register duly updated from time to time.
- (x) *Duplicate Foreign Register to be part of Principal Register:* Every duplicate foreign register shall be deemed to be the part of the principal register, for all purposes of the Companies Act.
- (xi) *Transactions not to be registered in any other Register:* No transaction with respect to any shares or as the case may be, debentures or any other security, registered in a foreign register shall, during the continuance of that registration, be registered in any other register.
- (xii) *Transfer of Entries on discontinuation:* The company may discontinue the keeping of any foreign register and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

Penalty for failure to maintain register in accordance with the provisions of Section 88(1) and 88(2)

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Nature of offence

The offence under this section is a compoundable offence under section 441 of the Act.

Details of Nominations in the register

It is important to note that Form MGT – 1 and MGT – 2 require details of nomination as referred to in section 72 of the Act, *read with Rule 19 of the Companies (Share Capital and Debentures) Rules, 2014* to be entered in the register of members and register of debenture-holders or other security holders as the case may be.

Authentication of entries [Rule 8]

- The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.
- The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.

Illustration 1

Luxy Hairstyles Private Limited allotted 500 shares in the name of Mr. Zoey's daughter, Mila, who is 4 years old. Mr. Joe, the Director of the company, has approached you to advise him on the entries to be made in the register of members, since Mila is incompetent to contract in her capacity as minor.

Answer: Since minors are not competent to enter into any contract, their names cannot be entered in the register of members without the details of guardians. Therefore, Mr. Joe is advised that while filling MGT – 1, the name of a minor shall be entered only if the details of the guardian are available. Thus, Zoey's name shall also appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Illustration 2

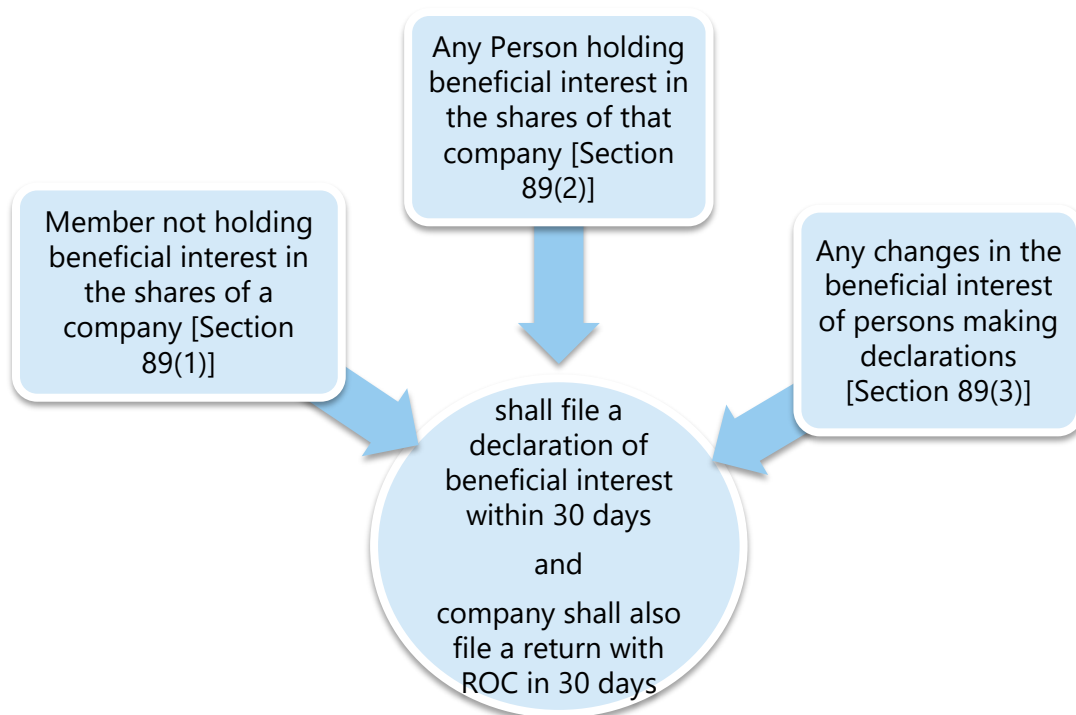
Tanya and Tarun who recently got married were jointly allotted 1000 shares by New Hospitality Services Private Limited. Tarun intimated the company that only the name of his wife should appear in the records of the company in respect of joint holding of shares allotted to them. The directors of the company are not sure whether this is possible, given that the shares are held in the names of both Tanya and Tarun.

Answer: Joint holders of shares may request the company to enter their names in the register in a certain order, or execute transfers to have their holdings split, with the result that part of the holding is entered showing the name of one holder and part showing the name of other holder. However, the condition of Tarun that only the name of his wife, Tanya, should appear in the register as a member cannot be acceded to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles

of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE [SECTION 89]

Section 89 of the Companies Act, 2013 contains provisions relating to declaration of beneficial interest in any share. Rule 9 of the Companies (Management and Administration) Rules, 2014 provides for procedural aspect.



- Declaration by registered holder of shares:** A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company, a declaration to that effect in Form No. MGT-4, specifying the name and other particulars of the person who holds the beneficial interest in such shares. The declaration MGT-4 shall be made within a period of thirty days from the date on which his name is entered in the register of members of such company. [Section 89 (1) and Rule 9 (1)]

- **Declaration by person holding beneficial interest in shares:** Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company in form MGT-5, within 30 days after acquiring such beneficial interest, specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed. [Section 89 (2) and Rule 9 (2)]
- **Declaration in case of change in beneficial interest:** Where any change occurs in the beneficial interest in any shares in respect of which a declaration has been filed under section 89 (1) by the registered owner and under section 89 (2) by the beneficial owner then, within 30 days of such change, a declaration is to be made to the company.
- **Filing of return by the company with the Registrar:** Where any declaration under section 89 is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in Form No. MGT-6 with the Registrar in respect of such declaration with fee. [Section 89 (6) and Rule 9 (3)]
- Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company. [Rule 9 (4)]
- For the purpose of sub-rule(4), the company may designate-
 - (i) a company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - (ii) a key managerial personnel, other than the company secretary; or
 - (iii) every director, if there is no company secretary or key managerial personnel. [Rule 9 (5)]
- Until a person is designated as referred under sub-rule (4), the following persons shall be deemed to have been designated person;
 - (i) company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or

- (ii) every Managing Director or Manager, in case a company secretary has not been appointed; or
- (iii) every director, if there is no company secretary or a Managing Director or Manager. [Rule 9 (6)]
- Every company shall inform the details of the designated person in Annual return. [Rule 9 (7)]
- If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014. [Rule 9 (8)]
- **Consequence of non-filing of declaration:** Where a declaration required to be made under section 89 is not made by the beneficial owner, then, any right with respect to such shares shall not be enforceable by the beneficial owner or by any person claiming through him. [Section 89 (8)]
- **Exemption:** Rule 9 shall not apply to a trust which is created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. Accordingly, such entities need not file the declarations as envisaged by this rule.
- **Duty of the Company to pay dividend not affected:** Nothing contained in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.
- **Meaning of beneficial interest:** For the purposes of section 89 and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:
 - (i) exercise or cause to be exercised any or all of the rights attached to such share; or
 - (ii) receive or participate in any dividend or other distribution in respect of such share. [Section 89(10)]

Exemption from the provisions of section 89 [Section 89(11)]

The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-

section (10), 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.

Exemption to a Government Company- In case of Government Company - Section 89 shall not apply. *[Notification No. GSR 463 (E), dated 5th June, 2015]*

The above-mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- *[Notification No. GSR 582 (E), dated 13th June, 2017].*

Penalty for default [Sections 89 (5) & 89 (7)]

Two kinds of penal provisions as described below are included under section 89 –

(i) **Relating to Default made by persons required to make a declaration** - If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees. [Section 89(5)]

(ii) **Relating to Default made by a company** - If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default. [Section 89(7)]

**REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY
[SECTION 90]**

As per Section 90 of the Companies Act, 2013, every Significant Beneficial Owner (SBO) is required to disclose the nature of his interest and other particulars within the prescribed period of time to the Company, which in turn will inform the same to the Registrar of Companies. In this connection, MCA has issued the Companies (Significant Beneficial Owners) Rules, 2018, which deal with identification and reporting in connection with SBO.

Definition of Significant Beneficial Owner: Section 90(1) provides that every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest of rights and any change thereof, as may be prescribed.

In terms of Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018, the term 'Significant Beneficial Owner' (SBO) in relation to a reporting entity means and individuals referred to in section 90(1), who:

- i. acting alone or together, or
- ii. through one or more persons or trust, possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed):
 - (i) holds indirectly, or together with any direct holdings, not less than 10% of the shares;
 - (ii) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
 - (iii) has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
 - (iv) has the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In simple terms, SBO is an individual who either alone or together with other individuals or trust, exercises rights or entitlements in the Reporting Company by way of holding 10% shares or 10% voting rights or right to receive 10% or more dividend, both indirect and direct holdings or right taken together or such individual exercises significant influence or control, indirectly or along with direct holding in the Reporting Company. The amended Rules further explain that if an

individual does not hold any indirect right or entitlement as mentioned in (i), (ii) or (iii) above, he will not be considered to be a 'significant beneficial owner'.

Significant influence: The term "significant influence" was previously not defined specifically for the rules, and hence, to provide clarity, the following definition has been inserted through SBO rules: "Significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies. [Rule 2 (1) (i)]

Majority stake: The Amendment Rules inserted a new term, "Majority Stake," which means:

- (i) holding more than one-half of the equity share capital in the body corporate; or
- (ii) holding more than one-half of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate. [Rule 2 (1) (d)]

Direct and Indirect shareholding: The Amendment Rules provide that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO. An individual will be considered to hold a right or entitlement directly in the Reporting Company, if he satisfies any of the following criteria:

- a. the shares in the Reporting Company representing such right or entitlement are held in the name of such individual;
- b. the individual holds or acquires a beneficial interest in the shares of the Reporting Company under section 89 (2), and has made a declaration in this regard to the Reporting Company.

Indirect shareholding is, when a shareholder is a (a) body corporate; (b) Hindu Undivided Family; (c) Partnership entity; (d) Trust; (e) Pooled investment vehicle.

Onus on the reporting company to identify a SBO and cause him to make declaration: The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form.

As per sub-section (5) of section 90 read with the Amendment Rules, every reporting company shall give notice in the Form BEN-4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe:

- (a) to be a significant beneficial owner of the company;
- (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

Maintenance of Register of SBO and Inspection thereof: According to section 90 (2) and 90 (3) read with Rule 5, every company shall maintain a register of significant beneficial owners in Form No. BEN-3 which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

Application to the Tribunal [Section 90 (7)]: The company shall,:

- (a) Where that person fails to give the company, the information required by the notice within the time specified therein. (According to Rule 7 notice shall be given in Form No. BEN-4 for providing information within 30 days of date of notice); or
- (b) Where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

Note: According to Rule 7, the reporting company shall apply to the Tribunal in accordance with section 90 (7), for order directing that the shares in question be subject to restrictions including:

- (i) restrictions on the transfer of interest attached to the shares in question;
- (ii) suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- (iii) suspension of voting rights in relation to the shares in question;
- (iv) any other restriction on all or any of the rights attached with the shares in question.

Section 90 (8) states that on any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

According to section 90 (9), the company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under section 90 (8) within a period of one year from the date of such order.

Provided that if no such application has been filed within a period of one year from the date of the order such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125 (i.e. Investor Education and Protection Fund Authority), in such manner as may be prescribed.

Declaration by SBO under Section 90

As regards declaration of significant beneficial ownership under section 90, Rule 3 of SBO Rules, 2018 states as under:

- (1) Every individual who is a significant beneficial owner (SBO) in a Reporting Company, as on the date of commencement of the Amendment Rules, 2019 (i.e. 8-2-2019), is required to file a declaration in Form No. BEN-1 with the Reporting Company within 90 days from such commencement.

Note: According to Rule 4, the Reporting Company shall be required to file a return in Form No. BEN-2 with the Registrar in respect of such declaration within 30 days of its receipt from the SBO.

- (2) Any individual, who subsequently becomes a significant beneficial owner (SBO) in the Reporting Company or whose significant beneficial ownership undergoes any change, shall be required to file a declaration in Form No.

BEN-1 with the Reporting Company in within 30 days of such acquisition or change.

Explanation: If an individual becomes a significant beneficial owner in the Reporting Company or if his significant beneficial ownership undergoes any change within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (i.e. 8-2-2019), it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

Non-Applicability of SBO Rules

Rule 8 of The Companies (Significant Beneficial Owner) Amendment Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the share of the Reporting Company is held by:

- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
- (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
- (c) the Central Government, State Government or any local authority;
- (d) (i) a reporting company or (ii) a body corporate or (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);
- (e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and
- (f) investment vehicles regulated by Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Penalty for Contravention

- (a) **By SBO:** If any person fails to make a declaration as required under subsection (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for

each day after the first during which such failure continues, subject to a maximum of two lakh rupees. [Section 90(10)]

- (b) **By Reporting Company:** If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees. [Section 90(11)]

It is worth noting that any contravention by Company and Officer in Default of the provisions of Section 90 and SBO Rules is compoundable.

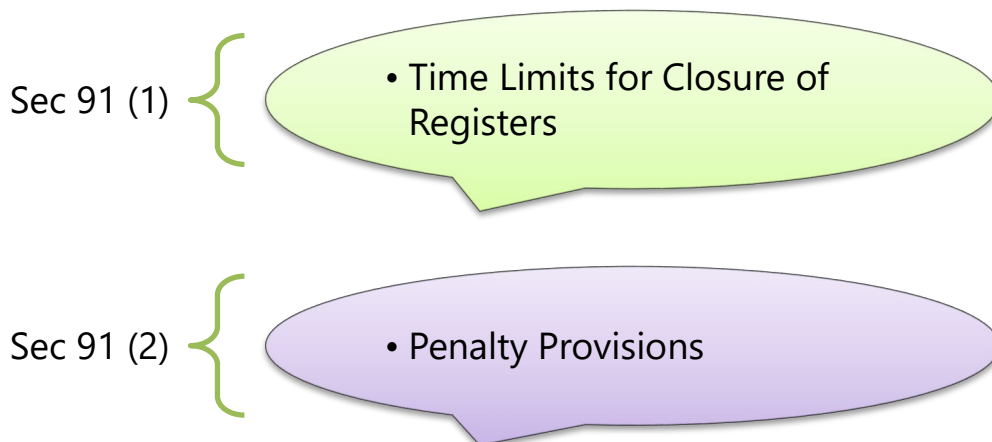
Note: Where any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made, he shall be liable for punishment for fraud under section 447. [Section 90(12)]

Exemption to a Government Company- In case of Government Company - Section 90 shall not apply - *Notification No. GSR 463 (E), dated 5th June, 2015.*

The above-mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- *Notification No. GSR 582 (E), dated 13th June, 2017.*

POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE-HOLDERS OR OTHER SECURITY HOLDERS [SECTION 91]

Section 91 (1) deals with the time limits for which the respective registers of members, debenture-holders and other security holders are allowed to be closed. Section 91 (2) mentions the penalty for contravention of the provisions of sub-section (1).



Section 91 (1) contains following provisions:

- (i) **Closure Period:** A company may close its register of members or register of debenture-holders or register of other security holders for an aggregate period of 45 days in each year but not exceeding 30 days at any one time.
- (ii) **Notice Period:** The respective registers of members, debenture-holders or other security holders may be closed by giving minimum 7 days' notice or such lesser period as may be specified by Securities Exchange Board of India ('SEBI') for listed companies or those companies which intend to get their securities listed.

Rule 10 of the *Companies (Management & Administration) Rules, 2014*, specifies the manner of closure of registers as under:

- (a) A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice and in such manner, as may be specified by SEBI, if such company is a listed company or intends to get its securities listed,
 - by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and
 - at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated, and

- publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company. [Rule 10 (1)]
- (b) *Exemption to Private Companies:* It is to be noted that a private company has been exempted from issuing a public notice in newspapers, provided it issues minimum 7 days' notice to its members prior to closure of the registers. [Rule 10 (2)]

Section 91 (2) contains **penalty provisions** as stated below:

In case of contravention of provisions of section 91(1) (i.e. if the respective registers are closed without giving notice, or after giving a shorter notice than that so provided, or for a continuous or an aggregate period in excess of the specified limits), section 91 (2) states following penalty:

- the company and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000 per day subject to a maximum of ₹ 1,00,000 during which the register is kept closed.

Note: The offence is a compoundable offence under section 441 of the Companies Act, 2013.



3. ANNUAL RETURN [SECTION 92 AND 94]

Provisions with regard to Annual Return are contained in section 92 of the Companies Act, 2013 and Rules 11 and 12 of the *Companies (Management & Administration) Rules, 2014*.

As per Rule 11, every company shall file its annual return in Form No. MGT-7 except One Person Company (OPC) and Small Company.

One Person Company and Small Company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.



Contents of Annual Return

According to section 92(1), every company shall prepare a return (referred to as the Annual Return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (b) its shares, debentures and other securities and shareholding pattern;

- ¹(c) [Omitted]
- (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
- ²(g) remuneration of directors and key managerial personnel;
- (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- (i) matters relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and
- (k) such other matters as may be prescribed.

Abridged Form of Annual Return

In terms of Second Proviso to Section 91 (1), the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed. Accordingly, as per Rule 11 (1) One Person Company and small company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

¹ Clause (c) of section 92(1) was omitted *vide* the Companies (Amendment) Act, 2017, w.e.f. 5th March, 2021.

² **In case of Private Company** – Clause (g) of sub-section (1) of Section 92 shall apply to private companies which are small companies, as under:-

(g) "aggregate amount of remuneration drawn by directors;". - Notification No. GSR 464 (E), dated 5-6-2015, as amended by Notification No. GSR 583 (E), dated 13th June, 2017.

Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

However, in relation to ³One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Certification of Annual Return by a Company Secretary in practice in certain cases

Section 92 (2) read with Rule 11 (2) of the *Companies (Management & Administration) Rules, 2014*, provides that the annual return, filed by:

- (i) a listed company or
- (ii) a company having paid-up share capital of ₹ 10 crore or more or a turnover of ₹ 50 crore or more, shall be certified by a Company Secretary in practice stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Such certificate shall be in Form No. MGT – 8.

³**In case of Private Company** - For proviso to sub-section (1) of Section 92, the following proviso shall be substituted, namely:-

"Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company."

The above exceptions/ modifications/ adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with Registrar. [Notification No. GSR 464 (E), dated 5-6-2015, as amended by Notification No. GSR 583 (E), dated 13th June, 2017. Notification Dated 13th June, 2017]

Placing of Annual Return on Website

⁴Every company shall place a copy of the annual return on its website, if any, and the web-link of such annual return shall be disclosed in the Board's report. [refer Section 92 (3)]

Time limit for Filing of Annual Return

A copy of annual return shall be filed with the RoC within 60 days from the date on which the Annual General Meeting ('AGM') is held. Where no annual general meeting is held in any year, it shall be filed within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM. [Section 92 (4) and Rule 12]

Penalty for contravention

(i) Section 92(5) specifies as under:

if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of **ten thousand rupees** and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of **two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.**

(ii) Section 92(6) specifies penalty in case of a Company Secretary in Practice as under:

If a company secretary in practice certifies the annual return otherwise than in accordance with section 92 or the rules made thereunder, he shall be **liable to a penalty of two lakh rupees.**

Illustration 3

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2024, for laying down the financial statements relating to the Financial Year ended 31st March 2024 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not

⁴ (i) In case of Specified IFSC Public Company - Sub-section (3) of section 92 shall not apply. - Notification No. GSR 8 (E), dated 4th January, 2017.

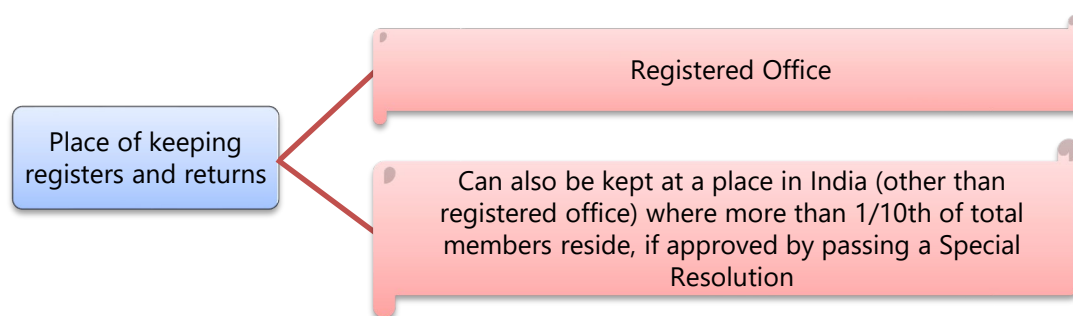
(ii) In case of Specified IFSC Private Company - Sub-section (3) of section 92 shall not apply. - Notification GSR 9 (E), dated 4th January, 2017.

take place and was cancelled. The company did not file the annual return for the year ending 31st March 2024, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

Answer: The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92(4) states that every company has to file an annual return with the RoC within 60 days from the date on which Annual General Meeting is held or where no Annual General Meeting is held in any year, it shall be filed within 60 days from the date on which the Annual General Meeting should have been held, along with the reasons for not holding the AGM.

In the above case, the Annual General Meeting should have been held by 30th September, 2024 but it did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of Section 92 of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in Section 92 (5) of the Act.

PLACE OF KEEPING AND INSPECTION OF REGISTERS, RETURNS, ETC. [SECTION 94]⁵



Place of keeping Registers and Returns

In respect of place of keeping Registers and Returns Section 94 (1) and First Proviso state as under:

⁵ Section 93 was omitted by the Companies (Amendment) Act, 2017 w.e.f. 13-6-2018.

(i) *At Registered office:* The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.

(ii) *At any other place in India:* The registers or copies of return may also be kept at any other place in India in which **more than one-tenth** of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

Inspection of Registers, etc.

According to section 94 (2), the registers and their indices, except when they are closed and the copies of all the returns shall be open for inspection by any member, debenture holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

As per Rule 14 (1), the registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the Board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the Articles of Association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.

Extracts of register or index: According to Section 94 (3) read with Rule 14 (2), any member, debenture-holder or security holder or beneficial owner or any other person can take the extracts without payment of any fee or can also get copies thereof with payment of fee not exceeding ₹ 10 for each page. Such copies or entries or return shall be supplied within 7 days of deposit of fee.

Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section.

As per Rule 14, Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members

of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely:

- (i) address or registered address (in case of a body corporate);
- (ii) e-mail ID
- (iii) Unique Identification Number
- (iv) PAN Number

Preservation of Register of Members etc. and Annual Return

As per Second Proviso to Section 94 (1), the period for which the registers, returns and records are required to be kept shall be such as may be prescribed. In this respect Rule 15 of the *Companies (Management & Administration) Rules, 2014* states as under:

- **Preservation of register of members:** The register of members along with the index shall be preserved **permanently** and shall be kept in the custody of company secretary of the company or any other person authorised by the Board for such purpose.
- **Preservation of register of debenture holders/other security holders:** The register of debenture-holder or any other security holder along with the index shall be preserved for a period of **8 years** from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.
- **Preservation of Copies of documents filed with ROC:** Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of **8 years** from the date of filing with the RoC.
- **Preservation of Foreign Register of Members:** The foreign register of members shall be preserved **permanently**, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register.

Foreign register of debenture-holders or any other security holders shall be preserved for a period of **8 years** from the date of redemption of such debentures or securities.

The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.

Penalty for refusing the inspection or making any extract or copy required –

- If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable for each such default, to a penalty of ₹ 1, 000 for every day subject to a maximum of ₹ 1, 00,000 during which the refusal or default continues. [Section 94 (4)]
- The Central Government* may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it. [Section 94 (5)]

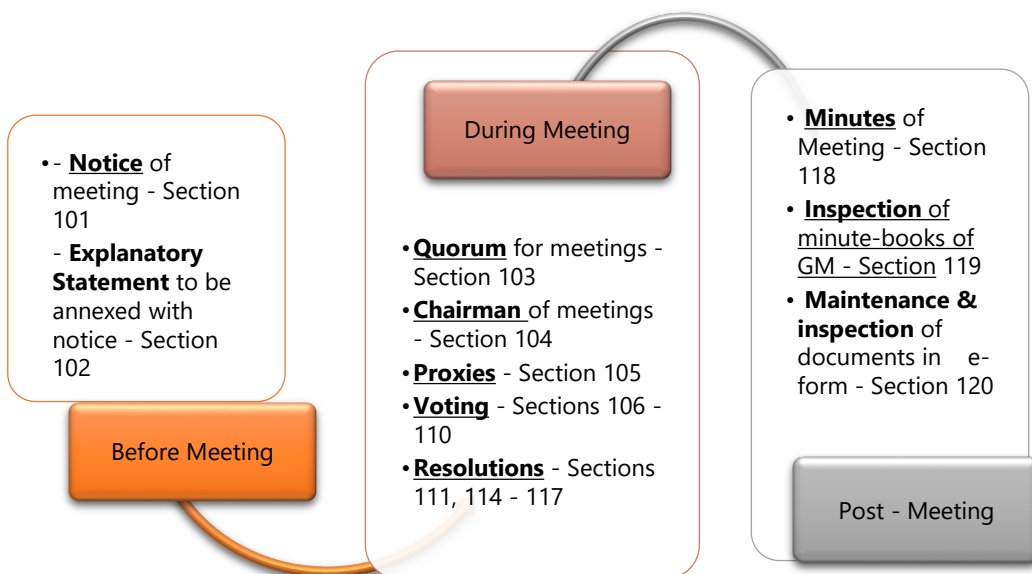
* Powers are delegated to Regional Directors.

REGISTERS, ETC. TO BE EVIDENCE [SECTION 95]

According to Section 95, the registers, indices and copies of annual return shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

4. PRE-REQUISITES OF A MEETING

Before we move on to our next concept of types of meetings and the procedure to convene them as per the Companies Act, 2013, let us understand the terms which are important to know for convening a meeting.



Key terms:

- (a) **General Meeting:** It is the meeting of the shareholders of a company to be held as per the provisions of the Act. The general meeting can be an Annual General Meeting (AGM) or an Extraordinary General Meeting (EGM). An annual general meeting (AGM) is a mandatory yearly gathering of a company's shareholders. The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company. An Extraordinary General Meeting (EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.
- (b) **Board Meeting:** It is the meeting of the Board of Directors of a company.
- (c) **Class Meeting:** It is the meeting of particular class of persons, like, creditors, preference shareholders, debenture-holders, etc.



The pre-requisites of the meetings are, in general, applicable to all kinds of meetings, although the time limits may differ and there might be a specific mention of a certain type of meeting in the respective section.

NOTICE OF A MEETING [SECTION 101]

Section 101 (1) of the Companies Act, 2013 states that in order to properly call a general meeting, a notice of at least *21 clear days* is required to be given either in writing or through electronic mode in such manner as may be prescribed.

In case of Specified IFSC Public Company - Section 101 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. [Notification No. GSR 8 (E), dated 4th January, 2017.]

In case of section 8 company, in clause (1) of Sub-section (1) of Section 101 for the words "21 days", the words "14 days" shall be substituted. This exception shall be applicable to a section 8 company which has not committed a default in filing

its financial statements under section 137 or annual return under section 92 with the Registrar. [Notification No. GSR 466 (E), 5-6-2015 as amended by Notification No. GSR 584 (E), dated 13th June, 2017.]

Contents of the Notice [Section 101(2)]

Every notice of a meeting must state the place, date, day and the hour of the meeting and shall contain a statement of business to be transacted at that meeting.

Persons entitled to receive the Notice of the General Meeting [Section 101(3)]

The notice of every meeting of the company shall be given to:

- (a) every member of the company, legal representative of any deceased member or the assignee of insolvent member;
- (b) the auditor or auditors of the company;
- (c) every director of the company.

Notice needs to be served to

- * Members
- * Legal representative of the deceased member
- * Assignee of the insolvent member
- * Auditor/auditors of the company
- * Every director of the company

Meaning of 21 clear days:

The term '21 clear days' means that the date on which notice is served and the date of meeting are excluded while sending the notice of a meeting. A company cannot curtail the requirement of 21 clear days through its Articles of Association.

Note: Where a notice of a meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted (*Rule 35(6) of the Companies (Incorporation) Rules, 2014*)

Sending of Notice of Meeting through Electronic Mode:

As per *Rule 18 of the Companies (Management & Administration) Rules, 2014*, sending of notices through electronic mode has been statutorily recognized. Accordingly, it is permitted for a company to give notice through electronic mode.

The expression “electronic mode” shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

- A notice may be sent through e-mail as a:
 - ◆ Text; or
 - ◆ As an attachment to e-mail; or
 - ◆ As a notification providing electronic link; or
 - ◆ Uniform Resource Locator for accessing such notice.
- Rule 18(3)
 - ◆ The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository.

It is to be noted that the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their e-mail ID recorded or to update a fresh e-mail ID and not from the members whose e-mail ids are already registered.
 - ◆ The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.
 - ◆ If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be in the Portable Document Format or in a

non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

- ◆ The company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control.
- ◆ If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- ◆ The company may send e-mail through in-house facility or its registrar and transfer agent or authorise any third-party agency providing bulk e-mail facility.
- ◆ The notice shall be placed simultaneously on the website of the Company, if any, and on the website as may be notified by Central Government.

Non-receipt of Notice: According to section 101(4) any accidental omission to give notice to or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting. The onus is on the company to prove that the omission was not deliberate.

Illustration 4

Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice for attending the Annual General Meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.

Answer: As per Rule 18 (3) (v) of the *Companies (Management & Administration) Rules, 2014*, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the

depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.

Shorter notice of less than 21 days [Proviso to Section 101 (1)]

As noted earlier, usually general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto:

- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
 - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
 - (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

Illustration 5

The paid-up share capital of Aakash Soaps Limited is ₹ fifty lakh divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth ₹ forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.

Answer: In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth ₹ forty lakh which works out to 80% ($40,00,000/50,00,000 \times 100$) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (*i.e. shareholders holding shares worth ₹ 47,50,000*) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.

Authority to call a General Meeting

A general meeting (AGM or EGM) has to be called by the Board of Directors. An individual director does not have the authority to call a General Meeting. Any notice of General Meeting given without the sanction of the Board is invalid; however, the same can be ratified by the Board. For calling a General Meeting, the Board passes a Board Resolution.

EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE [SECTION 102]⁶

Section 102 of the Companies Act, 2013 mentions that where any **special business** is to be transacted at the company's general meeting, then an 'Explanatory Statement' shall be annexed to the notice calling such general meeting. The 'Explanatory Statement' must specify,

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

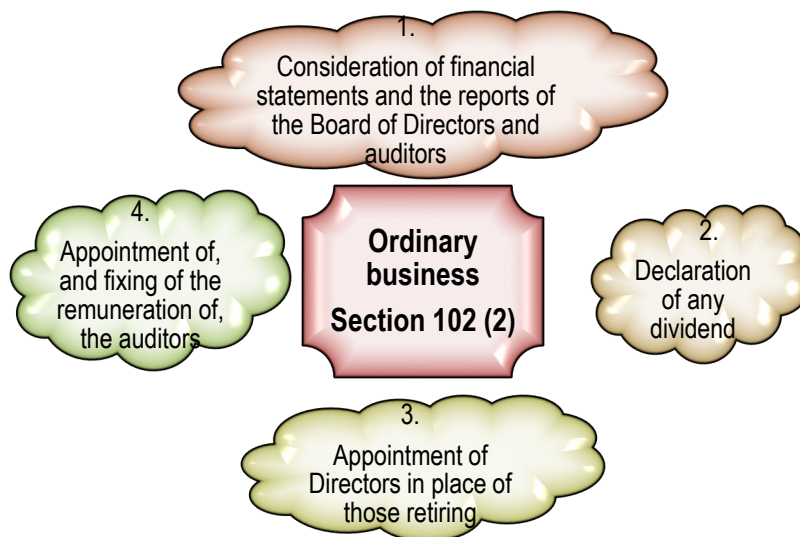
Ordinary business and Special business: Companies Act, 2013 sets out two types of businesses as under:

⁶ **In case of Specified IFSC Public Company** - Section 102 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification GSR 8 (E), Dated 4th January, 2017.

- Ordinary business (OB)
- Special business. (SB)

Ordinary business includes the following business which are transacted at the Annual General Meeting of a company–

- (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
- (ii) the declaration of any dividend;
- (iii) the appointment of directors in place of those retiring;
- (iv) the appointment of, and the fixing of the remuneration of, the auditors.



- In the case of AGM, all business to be transacted thereat except the ones stated above are **special business**. At the EGM, every business transacted is a **special business**. Explanatory statement is not required for transacting Ordinary Business.
- Proviso to section 102 (2) sets out that if any item of special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and of every other KMP shall be disclosed, if the extent of shareholding is 2% or more of the paid-up share capital of that other company.
- In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.

- **Effect of non-disclosure/insufficient disclosure in Explanatory Statement [Section 102(4)]:** If as a result of non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a promoter, director, manager, other key managerial personnel or their relatives, such person shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

Penalty for contravention of the provisions of section 102

Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher. [Section 102 (5)]

QUORUM FOR MEETINGS [SECTION 103]⁷

Quorum means the minimum number of members who must be personally present in order to constitute a valid meeting. Section 103 of the Companies Act, 2013 states that unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows—

Public Company -

☐

- ☐ If number of members is not more than 1000, quorum shall be 5 members personally present.
- ☐ if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present
- ☐ If the number of members exceed 5000, then quorum shall be 30 members personally present.

Private Company -

☐

- ☐ Two members personally present shall be the Quorum.

⁷ **In case of Specified IFSC Public Company** - Section 103 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. GSR 8 (E), Date 4th January, 2017.*

- It is to be noted that the term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Adjournment of Meeting for want of Quorum [Section 103 (2) and (3)]

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
- (b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Note:

The following points have been prescribed by Secretarial Standard– 2:

1. One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than one thousand members with a Quorum requirement of five members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more member is personally present.
2. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

3. Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of Quorum.
4. A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.
5. The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

Illustration 6

There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1st July 2024 at 2:00 p.m. at its registered office. There were 28 members present till 2:30 p.m. at the venue of the AGM. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions after observing due process. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

Answer: As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a general meeting of the company. Thus, the quorum for the Annual General Meeting of Nice Games Private Limited was complied with and the company has not contravened any of the provisions of the Companies Act, 2013.

Illustration 7

Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2024 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General Meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 and 5 and accordingly passed resolutions as per the consent of the remaining members. Comment whether

the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Answer: According to Secretarial Standard- 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

CHAIRMAN OF MEETING [SECTION 104]⁸

Election of Chairman by Members: Section 104 of the Companies Act, 2013 seeks to provide that unless the Articles of Association of the Company otherwise provide, the members, personally present, shall elect among themselves to be the Chairman on a show of hands.

Demand for Poll: The section further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.

Powers of Chairman: Chairman of the meeting is the person who manages the meetings and ensures that the required decorum of the meeting is maintained at all times, till the meeting is concluded and post that, executes the minutes of the meeting. The Chairman has *prima facie* authority to decide all questions which arise at a meeting and which require decision at that time. In order to fulfil his duty properly, he must observe strict impartiality.

Chairman to have 'casting vote' if so provided in the Articles: The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the company. The term 'casting vote' means that in

⁸In case of **Specified IFSC Public Company** - Section 104 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. GSR 8 (E), Dated 4th January, 2017.*

the event of equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote. If there is no provision in the articles for a casting vote, an ordinary resolution on which there is equality of votes is deemed to be dropped.

Exemption to a Private Company- In case of a private company - Section 104 shall apply, unless otherwise specified in respective section or the articles of the company provide otherwise. - *Notification No. GSR 464 (E), dated 5th June, 2015.*

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. - *Notification No. GSR 583 (E), dated 13th June 2017.*

5. PROXIES [SECTION 105]⁹

Section 105 of the Companies Act, 2013 and Rule 19 of the *Companies (Management & Administration) Rules, 2014* contain provisions relating to the proxies.

- Appointment of a proxy is an important right of a member of the company. Section 105 (1) provides that any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

- **Applicability** of the sub-section (1)– Unless the articles of a company otherwise provide, this sub-section shall not apply to a company not having a share capital. The Central Government may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

⁹ **In case of Specified IFSC Public Company** - Section 105 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. GSR 8 (E), Dated 4th January, 2017.*

According to Rule 19, a member of a company registered under section 8 (companies formed with charitable objects, etc.) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person can act as proxy on behalf of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights.

However, a member who is holding more than 10 per cent of the total share capital of the company carrying voting rights may appoint a single person as a proxy and such person shall not act as proxy for any other person or shareholder. [Rule 19 (2)]

- As a compliance requirement, in every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. [Section 105 (2)]
- The appointment of proxy shall be in Form No. MGT-11. [Rule 19(3)]
- If the instrument appointing a proxy is in the prescribed Form, it shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. [Section 105 (7)]
- The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument shall be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. [Section 105 (6)]
- Section 105 (4) provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
- Section 105 (8) provides that every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the

commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In simple words, it can be said that:

- every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled to inspect the proxies lodged.
- for the purpose of inspection, a minimum three days' notice in writing is required to be given to the company.
- inspection by any member can be made during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.
- inspection can be done at any time but only during the business hours of the company.

■ **Penalty for default**

- ◆ If default is made in complying with section 105 (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees. [Section 105(3)]
- ◆ If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, **shall be liable to a penalty of fifty thousand rupees.**

Provided that an officer shall **not be liable** under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy. [Section 105(5)]



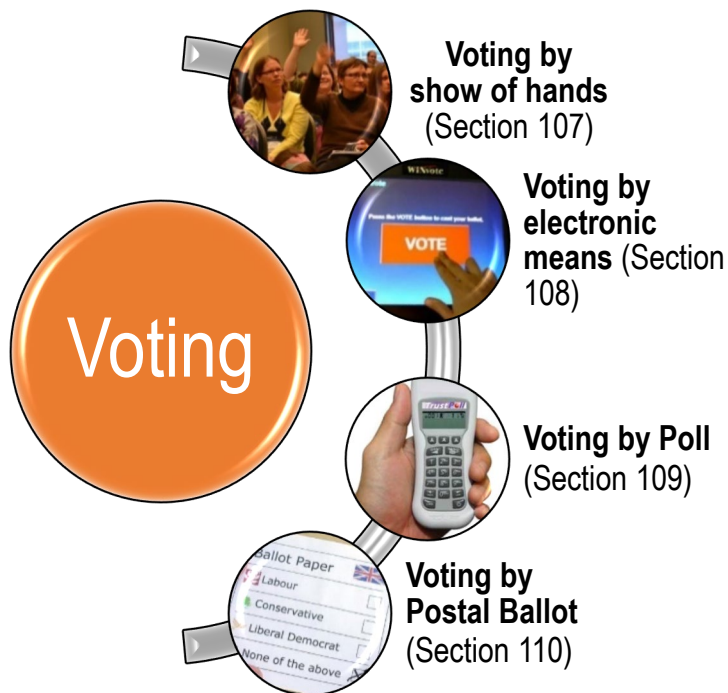
6. VOTING [SECTION 106-109]

The votes cast by the shareholders play decisive role in the business proposed in General Meetings of a company.

An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013 preference shareholder is entitled to vote only for a resolution pertaining to his rights.

The various modes through which a shareholder can cast his vote are as follows:

- ◆ Voting by show of hands – (section 107);
- ◆ Voting by electronic means – (section 108);
- ◆ Voting by demand of poll – (section 109);
- ◆ Voting by Postal Ballot – (section 110).



The right to vote is a personal right of a shareholder and he may use it as he likes it. He may split his vote for and against the resolution.

RESTRICTION ON VOTING RIGHTS [SECTION – 106]¹⁰

Section 106 (1) indicates the supremacy of Articles of Association and specifies that the Articles of a company may provide that:

- no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums presently payable by him to the company have not been paid, or
- in regard to which the company has exercised any right of lien.

Section 106 (2) requires that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned as above.

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses. [Section 106 (3)]

In other words, on a poll being taken at a meeting of a company, a member having more than one vote or his proxy, need not use all his votes or cast in the same way all the votes he uses.

Also, such member cannot sign a requisition for an extra-ordinary general meeting.

In case of joint shareholders, they must concur in voting unless the articles provide to the contrary. Regulation 52 of Table F states as under:

- (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- (ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

¹⁰ **In case of Specified IFSC Public Company** - Section 106 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. GSR 8(E), Dated 4th January, 2017.*

Note:

Where the articles of the company do not contain any provision restricting the exercise of voting rights of members, then a member cannot be prevented from voting, even though, calls or other sums payable by him have not been paid or the company has exercised any right of lien over his shares. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re-allotted, the new allottee being liable for the balance, if any, remaining unpaid on the shares would not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

Illustration 8

Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra-ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?

Answer:

The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members. Accordingly, in case of Mr. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

Illustration 9

Consider a situation where directors are also the shareholders of the company.

Answer:

Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director shall vote in the same manner as a common shareholder would have voted in a

general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

VOTING BY SHOW OF HANDS [SECTION 107]¹¹

- According to section 107 (1) of the Companies Act, 2013, unless the voting is demanded by way of poll or by electronic means, the voting shall be done by way of show of hands in the first instance.
- Section 107(2) states that the declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the minutes books shall be conclusive evidence that the resolution has been passed.

Illustration 10

Can an insolvent shareholder vote at the general meeting by show of hands?

Answer: Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as a member.

VOTING THROUGH ELECTRONIC MEANS [SECTION 108]

Section 108 of the Companies Act, 2013 has introduced the facility of e-voting in respect of prescribed classes of companies. Accordingly, the members of such companies may exercise their right to vote by electronic means.

Rule 20 of the Companies (Management & Administration) Rules, 2014 provides a detailed procedure for electronic voting.

Rule 20 (1) states that “**voting through electronic means**” shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of Rule 20.

¹¹ **In case of Specified IFSC Public Company** - Section 107 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. GSR 8 (E), Dated 4th January, 2017.*

Companies required to provide its members the facility of exercising right to vote by electronic means [Rule 20 (2)]:

Every company which:

- has listed its equity shares on a recognised stock exchange; and
- has not less than one thousand members;

shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

Exempted entity: However, a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Explanation-I.- For the purpose of this sub-rule, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Explanation-II.- For the purposes of this rule, the expression-

- ✓ 'cut-off date' means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting. [Explanation II (ii) to Rule 20(2)]
- ✓ 'cyber security' means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- ✓ 'electronic voting system' means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security. [Explanation II(iv) to Rule 20(2)]

- ✓ 'remote e-voting' means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting. [Explanation II(v) to Rule 20(2)]
- ✓ 'secured system' means computer hardware, software, and procedure that -
 - (a) are reasonably secure from unauthorised access and misuse;
 - (b) provide a reasonable level of reliability and correct operation;
 - (c) are reasonably suited to performing the intended functions; and
 - (d) adhere to generally accepted security procedures; [Explanation II (vi) to Rule 20(2)]
- ✓ 'voting by electronic mean' includes "remote e-voting and voting" at the general meeting through an electronic voting system which may be the same as used for remote e-voting. [Explanation II (vii) to Rule 20(2)]

Exercise of right to vote through voting by electronic means by a member: A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule.

Procedure: Rule 20 (4) states that a company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure:

- (i) Notice of meeting:** The notice of the meeting shall be sent to all the members, directors and auditors of the company either-
 - (a) by registered post or speed post; or
 - (b) through electronic means, namely, registered e-mail ID of the recipient; or
 - (c) by courier service;
- (ii) Placing of Notice on website:** The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) Particulars contained in Notice: The notice of the meeting shall clearly state–

- (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
- (b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
- (c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

(iv) The Notice shall:

- (a) indicate the process and manner for voting by electronic means;
- (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
- (c) provide the details about the login ID;
- (d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) Publication of notice:

The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least **twenty-one days** before the date of general meeting, at least once in a **vernacular newspaper** in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an **English newspaper** having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-

- (a) statement that the business may be transacted through voting by electronic means;
- (b) the date and time of commencement of remote e-voting;

- (c) the date and time of end of remote e-voting;
- (d) cut-off date;
- (e) The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
- (f) the statement that-
 - (A) remote e-voting shall not be allowed beyond the said date and time;
 - (B) the manner in which the company shall provide for voting by members present at the meeting;
 - (C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
 - (D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;
- (g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- (h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means;

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

- (vi) Time for opening of e-voting:** The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;
- (vii) Option for remote e-voting:** During the period when facility for remote e-voting is provided, the members of the company, holding shares either in

physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting.

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii) When to block facility: At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e- voting.

(ix) Appointment of scrutinizer(s): The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

(x) Willingness of scrutinizer for appointment: the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(xi) Role of Chairman: The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizer, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the

general meeting but have not cast their votes by availing the remote e-voting facility.

- (xii) Counting of votes:** The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:

Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

Explanation: It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

- (xiii) Scrutinisers to have access to details relating to members:** For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes.
- (xiv) Maintenance of Register by scrutinisers:** The scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.
- (xv) Safe Custody of register:** The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

(xvi) Results along with the report of the scrutiniser to be placed on websites: The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman:

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

(xvii) Date when resolution shall be deemed to be passed: Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Explanation: For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Companies Act, 2013.

(xviii) Resolution not to be withdrawn: A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

DEMAND FOR POLL [SECTION 109]¹²

Section 109 provides that before or on the declaration of result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion or on a demand made by the 'specified' members in that behalf.

■ Members who can demand for poll:

- ◆ In case of a company having a share capital, by the members present in person or proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than ₹ 5,00,000 or such higher amount as may be prescribed has been paid-up.

¹² **In case of Specified IFSC Public Company** - Section 109 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification No. 8 (E), Dated 4th January, 2017*

- ◆ In case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.
- **Withdrawal of demand for poll:** The demand for a poll may be withdrawn at any time by the persons who made the demand.
- **To take forthwith poll demanded for adjournment of meeting or appointment of Chairman:** A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
- **When to take poll demanded on any other question:** A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.
- **Appointment of sufficient number of scrutinizers:** Where a poll is to be taken, the Chairman of the meeting shall appoint sufficient number of scrutinizers to scrutinize the poll process and votes given on poll and to report thereon to him.
- **Duties of scrutinizer:** The duties of a scrutinizer shall be as follows–
 - ◆ To ensure proper conduct of the polling process;
 - ◆ To maintain proper records of the poll;
 - ◆ To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
 - ◆ To ensure the compliance of the provisions of section 109 and Rule 21.
- **Power of Chairman to regulate:** The Chairman of the meeting shall have the power to regulate the manner in which the poll shall be taken.
- **Rule 21** lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized–
 - ◆ According to Rule 21 (1), the Chairman of the meeting shall ensure that:

- ❖ The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- ❖ The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.
- ❖ The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in Form No. MGT-12.
- ❖ The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.
- ❖ The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
- ❖ The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
- ❖ In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
- ❖ The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- ❖ The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- ❖ Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

- ❖ The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
- ❖ The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
- ❖ The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.
- ◆ The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT-13. The report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizers, and the same shall be submitted by them to the Chairman of the meeting within **seven days** from the date the poll is taken. *[Rule 21 (2)]*
- ◆ The results of the poll shall be deemed to be the decision of the meeting on the resolution. *[Section 109 (7)]*

Applicability of section 101 to 107 and 109 to Private companies- Section 101 to 107 and 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. *[Notification No. 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13th June 2017].*

POSTAL BALLOT [SECTION 110]

Section 2(65) defines the term "postal ballot" to mean voting by post or through any electronic mode.

The provisions relating to passing of resolutions by means of 'postal ballot' are contained in Section 110.

Further, Rule 22 of the *Companies (Management and Administration) Rules, 2014* contains the provisions relating to procedure to be followed for conducting business through postal ballot.

Extract of Section 110 of the Companies Act, 2013

“(1) Notwithstanding anything contained in this Act, a company:

- (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and
- (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

- (2) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.”

- Section 110 seeks to provide that the Central Government may declare certain items of business that can be transacted only by postal ballot. In addition, in respect of any other item of business (except ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting) postal ballot may be used.
- Sub-section (2) of Section 110 makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.
- Manner in which postal ballot shall be conducted is prescribed in Rule 22 of the *Companies (Management & Administration) Rules, 2014*. The same is described as under:
 - ◆ Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting

them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.

- ◆ The notice shall be sent either:
 - (a) by Registered Post or speed post, or
 - (b) through electronic means like registered e-mail id or
 - (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.
- ◆ An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters, namely:-
 - (a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
 - (b) the date of completion of dispatch of notices;
 - (c) the date of commencement of voting;
 - (d) the date of end of voting;
 - (e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
 - (f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

- (g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.
- ◆ The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
 - ◆ The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
 - ◆ The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
 - ◆ Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
 - ◆ The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.
 - ◆ The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.
 - ◆ The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

- ◆ The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
- ◆ The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.
- ◆ The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.
- ◆ pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot—
 - (a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
 - (b) alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
 - (c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
 - (d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
 - (e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
 - (f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
 - (g) buy-back of shares by a company under sub-section (1) of section 68;

- (h) election of a director under section 151 of the Act;
- (i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;
- (j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186:

Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

Provided further that One Person Companies and other companies having members upto two hundred are not required to transact any business through postal ballot.

How does the counting happen at the time of postal ballot?

It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes in the same way. Therefore, following types of postal ballots may be received from the shareholders–

- (i) Ballots which contain assents;
- (ii) Ballots which contain dissents;
- (iii) Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and
- (iv) Invalid ballots (due to absence/mismatch of signature, overwriting, etc.)

The postal ballots shall be segregated as per the above criteria and resolution shall be deemed as passed if assents are greater in number.



7. CIRCULATION OF MEMBERS' RESOLUTIONS [SECTION 111]

Circulation of members' resolution and statements: While the board enjoys the primacy in setting the agenda of the meetings, the members are given a right under section 111 to propose resolutions for consideration at the general meetings. The number of members required to make a requisition under sub-section (1) of this section are as required to requisition a general meeting in sub-section (2) of section 100.

(1) Prerequisites of a valid Requisition: The prerequisites for a valid requisition prescribed in sub-section (2) of section 111 are as under:

- (a) Requisition must be made in writing and signed
 - (i) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
 - (ii) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote.
- (b) Two or more copies of the said requisition are required to contain signatures of all the requisitionists.
- (c) The requisition must be deposited at the registered office of the company not less than six weeks before the meeting in the case of a requisition requiring notice of a resolution. In case of other resolutions, the same is to be deposited not less than two weeks before the meeting.
- (d) A sum reasonably sufficient to meet the company's expenses in giving effect to proposing the resolution is deposited or tendered. When the money is tendered, no payment is made but an unconditional offer is made to pay money.

The proviso to sub-section (2) of section 111 provides that the time period provided above need not be complied with in case an annual general meeting is called on a date within six weeks after the copy has been

deposited. The copy of requisition, in such a case, shall be deemed to have been properly deposited for the purposes thereof although not deposited within the time required by this sub-section. The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with.

- (2) **Notice to members:** As per section 111 of the Companies Act, 2013, a company shall, on requisition in writing of such number of members, as required in section 100 (calling of EGM), give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.
- (3) **Exemption from circulation of any statement:** The company shall not be bound to circulate any statement, if on the application either on behalf of the company or of any other person who claims to be aggrieved, the ¹³Central Government, by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.
- (4) **Order to bear the cost:** An order made as above by the Central Government may also direct that the cost incurred by the company shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.
- (5) **Default in complying with the provisions:** If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.



8. REPRESENTATION OF THE PRESIDENT & GOVERNORS IN MEETING OF COMPANIES TO WHICH THEY ARE MEMBER [SECTION 112]

Section 112 of the Companies Act, 2013 provides that the President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and such other

¹³ The Power of the Central Government has been delegated to Regional Director. *MCA Notification 4090 (E) dated 19th December, 2016.*

person shall be entitled to exercise the same rights and powers including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

9. REPRESENTATIONS OF CORPORATIONS MEETING OF COMPANIES AND CREDITORS [SECTION 113]

Section 113 of the Companies Act, 2013 seeks to provide that where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

10. RESOLUTIONS [SECTION 114–117]

In lay man's language, a resolution is the formal decision of an organization while transacting a business at a meeting. A motion which has obtained the necessary majority vote in its favour becomes a resolution. When a resolution is passed, a company is bound by it.

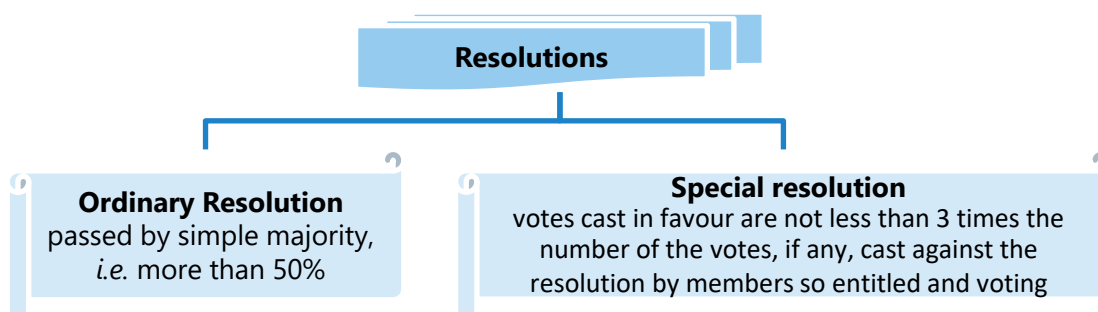
Difference between Motion and Resolution

- Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done.
- A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, e.g. where a motion is made for the adjournment of the meeting.
- A motion whether it is passed for the closure of discussion or adjournment, etc. can be passed by an ordinary resolution unless there is a specific provision in the articles.

ORDINARY AND SPECIAL RESOLUTION [SECTION 114]

As per the Companies Act, 2013, resolutions are of two types–

- Ordinary Resolutions – which are passed by simple majority; and
- Special Resolutions – votes cast in favour are not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting



Section 114 of the Companies Act, 2013 states as to what constitutes an Ordinary Resolution and a Special Resolution.

Ordinary Resolution

Section 114(1) states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution by any mode of voting should exceed the votes cast against it.

Special Resolution

As per Section 114(2) of the Act, a resolution shall be a special resolution, when–

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and

- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Characteristics of Special Resolution

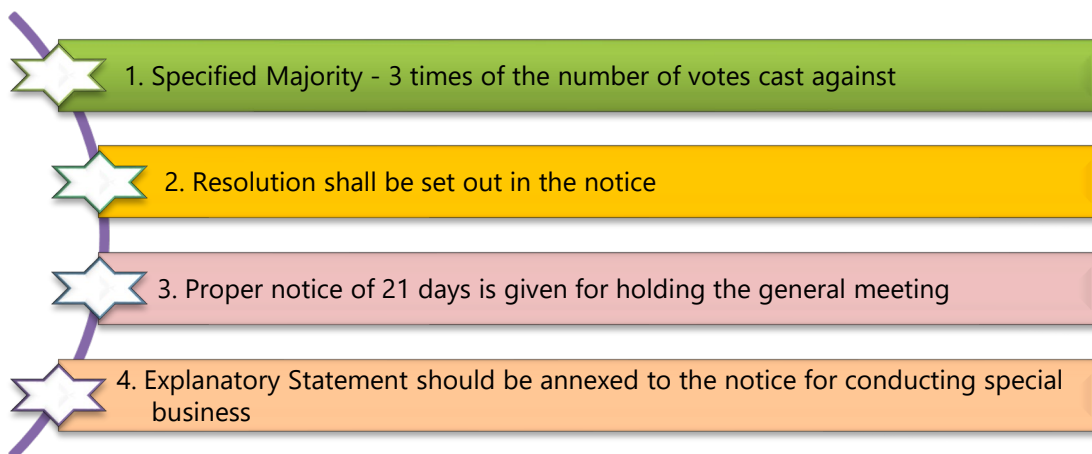
- 
1. Specified Majority - 3 times of the number of votes cast against
 2. Resolution shall be set out in the notice
 3. Proper notice of 21 days is given for holding the general meeting
 4. Explanatory Statement should be annexed to the notice for conducting special business

Illustration 11

The Annual General Meeting of Super Star Bakers Limited was attended by 60 members. In respect of a particular business, the resolution was to be passed as a special resolution. Ten members voted against the resolution whereas five abstained themselves from the voting. The Chairman of the meeting Mr. Ravinder declared that the resolution was passed as a special resolution. Whether the declaration is valid.

Answer: In case of a special resolution, the requirement is that the votes cast in favour of the resolution must be three times the number of the votes cast against it. In the above case, ten members voted against the resolution which implies that minimum thirty members (three times of ten) must vote in favour of the resolution. Ignoring five members who abstained themselves from voting, forty-five members (sixty minus ten minus five) voted in favour of the resolution which far exceeds the required majority of thirty members. Therefore, declaration by Mr. Ravinder, Chairman of the meeting, that the resolution was passed as a special resolution is valid.

Illustration 12

In the annual general meeting of Steel Products Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.

Answer: For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting decides that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would be immaterial.

RESOLUTIONS REQUIRING SPECIAL NOTICE [SECTION 115]

Section 115 of the Companies Act, 2013 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice

According to Section 115 where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Special notice for passing a resolution is required in the following cases

- (a) Resolution for appointment of an auditor other than the retiring auditor at an annual general meeting. [Section 140 (4)]

- (b) Resolution at an annual general meeting providing expressly that a retiring auditor shall not be re-appointed. [Section 140 (4)]
- (c) Resolution to remove a director before the expiry of his period of office. [Section 169 (2)]
- (d) Resolution to appoint another person as director in place of the removed director at the meeting at which he is removed. [(Section 169 (2)]

Further, the articles may provide for certain additional matters which require special notice.

Rule 23 specifies the procedure to be followed in respect of Special Notice as under:

1. A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.
2. The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
3. The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.
4. Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.
5. The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

RESOLUTIONS PASSED AT ADJOURNED MEETING [SECTION 116]

As per Section 116 of the Companies act, 2013, where a resolution is passed at an adjourned meeting of:

- (a) a company; or
- (b) the holders of any class of shares in a company; or
- (c) the Board of Directors of a company,

the resolution shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.

Example

The extra-ordinary general meeting of the company, Purple Cosmetics Private Limited was due to be held on Thursday, 1st August, 2024. However, due to want of quorum, the meeting was adjourned to a later date on Thursday, 8th August, 2024 and two resolutions were passed on that date.

According to section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the adjourned date of meeting, *i.e.* Thursday, 8th August, 2024 and not on the earlier date.

RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]

Section 117^{14&15} of the Companies Act, 2013 provides that a copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed.

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be

¹⁴ **In case of Specified IFSC Public Company** - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days". *Notification No. GSR 8 (E), Dated 4th January, 2017.*

¹⁵ **In case of Specified IFSC Private Company** - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days". *Notification No. GSR 9 (E), Dated 4th January, 2017.*

embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

According to Rule 24 of the *Companies (Management and Administration) Rules, 2014*, a copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. MGT-14 along with the fee.

Resolutions and agreements to be filed with the Registrar as per section 117(3) are as under:-

- Special Resolutions
- Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members.
- Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
- ^{16 & 17} Resolutions passed in pursuance of sub-section (3) of section 179.

¹⁶ **In case of a private company** - clause (g) of Sub-section 3 of Section 117 shall not apply.

The above mentioned exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- *Notification No. GSR 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13th June, 2017.*

¹⁷ **In case of Specified IFSC Public Company** - Clause (g) of sub-section (3) of section 117 shall not apply. *Notification No. GSR 8 (E), Dated 4th January, 2017.*

Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;

Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,

- (a) a banking company;
 - (b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
 - (c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and
- any other resolution or agreement as may be prescribed and placed in the public domain.

Penalty for contravention [Section 117(2)]

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.



11. MINUTES (SECTION 118)

- Section 118 of the Companies Act, 2013, states that every company shall prepare, sign and keep minutes of every general meeting of any class of shareholders or creditors, including the meeting called by the requisitionists, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, within 30 days of the conclusion of every such meeting concerned, or passing of resolution by

postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub-section (1)]¹⁸ & ¹⁹

- The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting.
- All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain–
 - ◆ the names of the directors present at the meeting; and
 - ◆ in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
- There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–
 - ◆ is or could reasonably be regarded as defamatory of any person; or
 - ◆ is irrelevant or immaterial to the proceedings; or
 - ◆ is detrimental to the interests of the company.
- The matter to be included or excluded in the minutes of the meetings on the afore-said grounds shall be at the absolute discretion of the Chairman of the meeting.

¹⁸**In case of Specified IFSC Public Company-** In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC public company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose."- *Notification Date 4th January, 2017*

¹⁹**In case of Specified IFSC Private Company-** In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose."- *Notification Date 4th January, 2017*

- The minutes kept in accordance with the provisions of section 118 shall serve as the evidence of the proceedings recorded therein.
- Where the minutes have been kept in accordance with section 118 (1), then until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.
- No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters requires by this section to be contained in the minutes of the proceedings of such meeting.
- Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government.^{20 & 21} [Section 118 (10)]
- **Penalty for contravention–**
 - ◆ If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000.
 - ◆ If a person is found guilty of tampering with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1,00,000.

Rule 25 of the Companies (Management & Administration) Rules, 2014 prescribes the procedure for maintenance of minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot as follows–

- ◆ *Distinct minute books to be maintained for each type of meeting:* A distinct minute book shall be maintained for each type of meeting namely:

²⁰ **In case of Specified IFSC Public Company-** Sub-section (10) of section 118 Shall not apply. - Notification No. GSR 8 (E), Dated 4th January, 2017.

²¹ **In case of Specified IFSC Private Company-** Sub-section (10) of section 118 Shall not apply. - Notification No. GSR 9 (E), Dated 4th January, 2017

- (i) general meetings of the members;
- (ii) meetings of the creditors
- (iii) meetings of the Board; and
- (iv) meetings of each of the committees of the Board.

Note: Resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

- ◆ *Maximum time allowed for entering minutes of proceedings:* The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.
- ◆ *Data to be entered when a resolution is passed by Postal Ballot:* In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.
- ◆ *Signing of Minute Books:* Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed—
 - (i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the Chairman of the next succeeding meeting;
 - (ii) in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorised by the Board for the purpose;
 - (iii) In case of every resolution passed by postal ballot, by the Chairman of the Board within the aforesaid period of thirty days or in the event of there being no Chairman of the Board or the

death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

- ◆ *Place of keeping minute books of general meetings and their preservation:* The minute books of general meetings shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board.
- ◆ *Place of keeping minute books of Board and committee meetings and their preservation:* The minute books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Exemption to Section 8 companies: In case of section 8 companies (companies formed with charitable objects, etc.), section 118 shall not apply as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

The exceptions, modifications and adaptations, shall be applicable to a section 8 company which has not committed a default in filing its financial statements under 137 or Annual Return under section 92 with the Registrar. *Notification No. GSR 466 (E), dated 5th June, 2015 as amended by Notification No. GSR 584 (E), dated 13th June, 2017.*



12. INSPECTION OF MINUTES-BOOKS OF GENERAL MEETING [SECTION 119]

Section 119 of the Companies Act, 2013 contains the provisions in respect of inspection of minute-books of general meeting.

Accordingly, the books containing the minutes of the proceedings of any general meeting of a company shall–

- be kept at the registered office of the company; and

- be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. However, at least 2 hours in each business day shall be allowed for inspection. [Section 119 (1)]

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes. [Section 119 (2)]

In other words, within 7 working days of making a request along with the requisite fees, the member shall be furnished with a copy of any minutes.

Penalty for contravention [Section 119 (3)]

If any inspection under sub-section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub-section (2), then the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000 for each such refusal or default, as the case may be.

Power of Tribunal to order inspection [Section 119 (4)]

In case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

Copy of minute book of general meeting [Rule 26]

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page:

Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM [SECTION 120]

Section 120 of the Companies Act, 2013 seeks to provide that any document, record, register or minute, etc., required to be kept by a company or allowed to be inspected or copies given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

Provisions prescribed in *Rules 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014* are relevant in this respect. *Rule 30* states the penalty in case of contravention.

Companies which may maintain records in electronic form: Rule 27 of the Companies (Management and Administration) Rules, 2014 states as under:

- Every listed company or a company having at least 1000 shareholders, debenture-holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made thereunder, in **electronic form**.

Explanation.- For the purposes of this sub- rule, it is hereby clarified that in case of existing companies, data 1[may] be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

- The records in electronic form shall be maintained in such manner as the Board of directors may think fit:

Provided that -

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;
- (b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;

- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;
- (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;
- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made thereunder, and the date of updating shall be capable of being recorded on every updating.

■ *Explanation:-* For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company.

Who is responsible for the maintenance and security of electronic records:

Rule 28 sets out that the Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

The person who is responsible for the maintenance and security of electronic records shall-

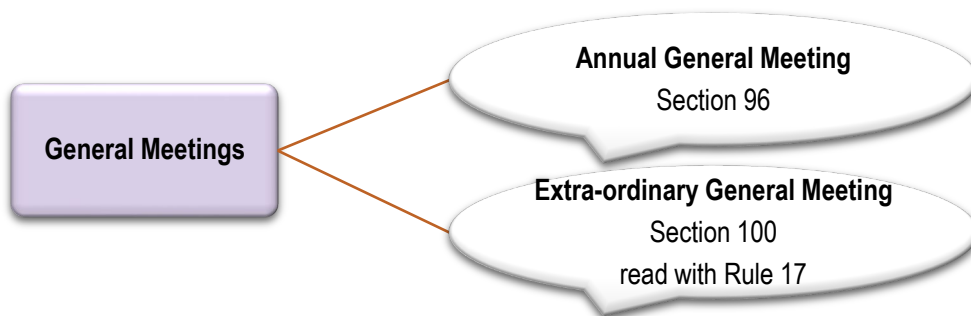
- (a) provide adequate protection against unauthorized access, alteration or tampering of records;
- (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
- (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- (e) ensure that the computer systems can discern invalid and altered records;
- (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
- (g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

- (h) ensure that records are kept in a non-rewritable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
- (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and copies of records maintained in electronic form: *Rule 29* states that the records maintained in electronic form shall be made available for inspection by the company in electronic form. Copies of the records maintained in electronic form, containing a clear reproduction of the whole or part thereof, shall be provided on payment of not exceeding ₹ 10 per page.

13. GENERAL MEETINGS

Now that we have understood the basic terms which are required to call, convene and conduct the meetings properly, let us discuss the provisions related to meetings given in the Companies Act, 2013. The Act describes two types of general meetings to be held by a company. They are—



ANNUAL GENERAL MEETING (AGM) [SECTION 96]

- Section 96(1) of the Companies Act, 2013 states that every company, whether public or private, except One Person Company, shall hold an annual general meeting every year and that the gap between two AGMs shall not be more than 15 months.
- The company shall specify the meeting as such [i.e. Annual General Meeting (AGM)] in the notices calling it.

Holding of Annual General Meeting (AGM)

- Annual general meeting should be held once every year.
- First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
- Subsequent annual general meetings of the company should be held within 6 months from the closing of the financial year.
- The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Illustration 13

Abbeys Grocers Private Limited closed its financial year on 31st March, 2024. When should it hold its Annual General Meeting (AGM) for the financial year 2023-24?

Answer: According to section 96 (1) of the Companies Act, 2013, Abbeys Grocers Private Limited should hold its annual general meeting for the financial year 2023-24 latest by 30th September 2024 unless an extension is granted by jurisdictional Registrar of Companies for any special reason.

Illustration 14

Abbyrush Mechanics Limited was incorporated on 12th July, 2024. When should the company hold its first Annual General Meeting (AGM)?

Answer: In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2025. According to section 96 (1), the company must hold its first AGM latest by 31st December 2025 *i.e.* within 9 months of the close of its financial year on 31st March 2025. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Time and place for holding an annual general meeting: Section 96 (2) states that every annual general meeting shall be called during business hours, *i.e.*, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

Exemption to Section 8 companies:

In case of Section 8 company- In Sub-section (2) of Section 96 after the proviso and before the explanation the following proviso shall be inserted;

Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. - *Notification No. GSR 466 (E), dated 5th, June 2015.*

The above-mentioned exception shall be applicable to a section 8 company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar. - *Notification No. GSR 584 (E), dated 13th June, 2017.*

Exemption to Government companies:

In case of Government company, section 96(2) shall be read as:

‘Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf. *Notification No. GSR 463 (E), dated 5th June, 2015 read with Notification Dated 13th June, 2017.*

The above-mentioned exception/ modification/ adaptation shall be applicable to Government company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar. - *Notification No. GSR 582 (E), dated 13th June, 2017*’.

POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING [SECTION 97]

In case a company defaults in holding Annual General Meeting, then Section 97 of the Companies Act, 2013 empowers Tribunal to call AGM. The provisions of Section 97 are as under:

- (1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC. [SECTION 98]

- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the

company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

- (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

PUNISHMENT FOR DEFAULT IN COMPLYING WITH THE PROVISIONS OF SECTION 96 TO 98 [SECTION 99]

Section 99 lists out the punishment for contravention of section 96 to 98.

Accordingly, if any default is made in holding a meeting of the company in accordance with section 96 (*i.e.* AGM) or section 97 (*i.e.* AGM called by Tribunal) or section 97 (a meeting of members other than AGM called by Tribunal) or in complying with any the directions issued by the Tribunal, then the company and every officer of the company who is in default shall be punishable with fine which may extend to ₹ 1,00,000 and in the case of a continuing default, with a further fine which may extend to ₹ 5,000 for every day during which the default continues.

REPORT ON ANNUAL GENERAL MEETING [SECTION 121]

According to Section 121 of the Companies Act, 2013, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder.

A copy of the report is to be filed with the Registrar in Form No. MGT-15 within thirty days of the conclusion of AGM along with the prescribed fee. According to Rule 31 of the *Companies (Management and Administration) Rules, 2014*, the report shall be prepared in the following manner:

- (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
- (b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing Director, if there is one and company secretary of the company;
- (c) the report shall contain the details in respect of the following, namely:-
 - (i) the day, date, hour and venue of the AGM;
 - (ii) confirmation with respect to appointment of Chairman of the meeting;
 - (iii) number of members attending the meeting;
 - (iv) confirmation of Quorum;
 - (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made thereunder with respect to calling, convening and conducting the meeting;
 - (vi) business transacted at the meeting and result thereof;
 - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
 - (viii) any other points relevant for inclusion in the report.
- (d) the report shall contain fair and correct summary of the proceedings of the meeting.

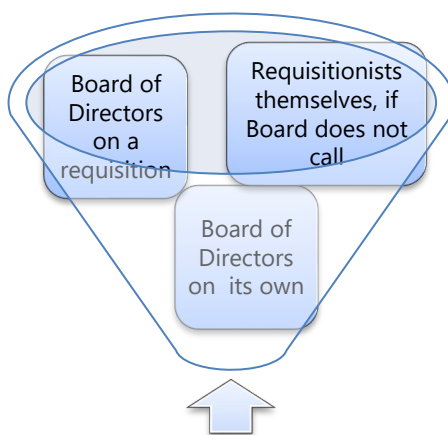
Penalty for default : If the company fails to file the report within 30 days of conclusion of AGM, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in

case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

EXTRA-ORDINARY GENERAL MEETINGS [SECTION 100]

All general meetings other than annual general meetings are called extra-ordinary general meetings (EGMs). Section 100 of the Companies Act, 2013 contains provisions regarding the calling of EGMs.

Calling of EGM



Who can call EGM

²² & ²³ 1. By Board of Directors on its own -

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

²² **In case of Specified IFSC Private Company** - In sub-section (1) of section 100, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India." - *Notification No. 9 (E), Dated 4th January, 2017.*

²³ **In case of Specified IFSC Public Company** - In sub-section (1) of section 100, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC public company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India." - *Notification No. GSR 8 (E), Dated 4th January, 2017.*

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India. [Section 100 (1)]

2. **By the Board of Directors at the requisition of –**

- (a) In the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting;
- (b) In the case of company not having a share capital, such number of members who have, on the date of receipt of requisition, at least 1/10th of total voting power of all the members having on the said date a right to vote. [Section 100 (2)]

The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100 (3)]

Note: The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

3. **By requisitionists themselves:** If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Section 100 (4)]

A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. [Section 100 (5)]

Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100 (6)]

Rule 17 of the *Companies (Management and Administration) Rules, 2014* contain provisions with regard to calling of EGM by requisitionists as under:

- (1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.
- (2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-

Explanation.- For the purposes of this sub-rule, it is hereby clarified that requisitionists should convene meeting at Registered Office or in the same city or town where Registered office is situated and such meeting should be convened on any day except National Holiday.

- (3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- (4) The notice shall be signed by all the requisitionists or by a requisitionist duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- (5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
- (6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
- (7) Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if

any, before the expiry of the forty-five days from the date of receipt of a valid requisition.

- (8) The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

Illustration 15

The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10th voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2024. However, the directors did not pay any heed to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.

Answer: In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitionists and therefore, the Board Directors is required to initiate the process of calling the meeting. According to section 100 (4), if the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of such requisition, then the requisitionists may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to section 100 (5), a meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board of Directors.

Accordingly, the requisitionists being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

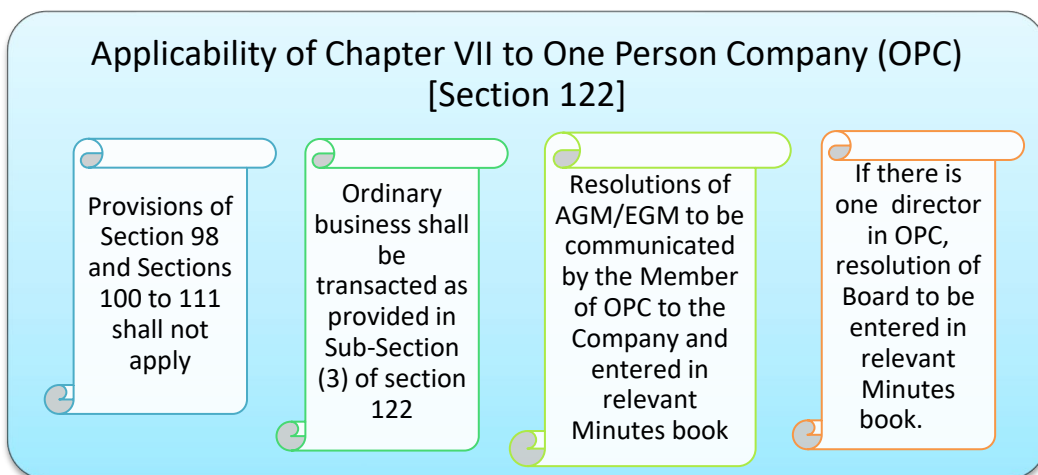
Illustration 16

The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on

2nd October, 2024. Discuss whether the general meeting can be convened on the said date and place.

Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitionists. As per *Rule 17 (2) of the Companies (Management and Administration) Rules, 2014*, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2024 is a National Holiday.

14. APPLICABILITY OF THIS CHAPTER TO ONE PERSON COMPANY [SECTION 122]



- (1) Section 122 (1) of the Companies Act, 2013 states that the provisions of section 98 and section 100 to 111 shall not apply to a One Person Company (OPC). An overview of these sections is as under:

Section No.	Heading of Section
Section 98	Power of Tribunal to call meetings of members, etc.
Section 100	Calling of EGM
Section 101	Notice of meeting
Section 102	Statement to be annexed to notice

Section 103	Quorum for meetings
Section 104	Chairman of meetings
Section 105	Proxies
Section 106	Restrictions on voting rights
Section 107	Voting by show of hands
Section 108	Voting through electronic means
Section 109	Demand for poll
Section 110	Postal ballot
Section 111	Circulation of Members' Resolution

- (2) The ordinary businesses as mentioned under section 102 (2) (a), which a company is required to transact at an AGM, shall be transacted in the case of One Person Company, as provided in sub-section (3). [Section 122 (2)]
- (3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act. [Section 122 (3)]

In other words, following procedure shall be adopted for any business to be transacted at an AGM or any other meeting (*i.e. EGM*) of OPC:

- (i) The resolution of AGM or EGM shall be communicated by the member to the company;
- (ii) The said resolution shall be entered in the relevant minutes book.
- (iii) The minutes book shall be signed and dated by the member.

Note: The date on which the minutes book is signed by the member shall be deemed to be the date of the meeting for all the purposes.

- (4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is

required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act. [Section 122 (4)]

Simply stated, in case OPC has only one director, following procedure shall be adopted for any business to be transacted at the meeting of Board of Directors:

- (i) The resolution by such director shall be entered in the relevant minutes book.
- (ii) The minutes book shall be signed and dated by such director.

Note: The date on which the minutes book is signed by the director shall be deemed to be the date of the meeting for all the purposes.

Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officer or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues. [Rule 30]

SUMMARY

- The Chapter discusses about the registers and returns to be kept and maintained by the company as per the provisions of the Companies Act, 2013 and the types of meetings to be held in accordance with the Act. It also discusses the terms relevant to properly convening and conducting of the meetings.
- Section 89 states that a person holding beneficial interest in the shares of a company shall intimate the company about such interest in Form No. MGT-4 or MGT-5, as applicable, and thereafter, the company shall intimate the RoC about the interest of member within 30 days in Form No. MGT-6.

- Section 90 requires a significant beneficial owner to make a declaration to the company specifying the nature of his interest and other prescribed particulars.
- Section 91 deals with the time limits within which the registers of the company are allowed to be closed and also mentions the penalty for contravention. It states that the registers may be closed for a maximum of 30 days at a time and 45 days in aggregate in a year.
- Section 92 provides that every company shall file its Annual Return in Form No. MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file Annual Return from the financial year 2020-2021 onwards in Form No. MGT-7A which is an abridged form of Annual Return.
- Section 92 provides that annual return is to be filed after the conclusion of each Annual General Meeting and specifies the contents to be included in the annual return.
- The annual return shall be signed by a director of the company and the Company Secretary; and in case, there is no Company Secretary, by a Company Secretary in Practice.
- In case of One Person Company and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.
- Section 94 describes that the registers and returns and other documents of the company shall be kept at the registered office of company. However, they can also be kept at any other place where more than 1/10th of the total members reside but the same should be approved by way of a special resolution.
- There are two types of general meetings that are held within the company – Annual General Meeting as mentioned in section 96 and Extra-Ordinary General Meeting as stated in section 100.
- Section 96 discusses about the annual general meeting (AGM) to be held in a company every year and prescribes that the AGM shall be held within 6 months from the date of the closing of the financial year and that the gap between two AGMs shall not exceed 15 months.

- In case of a newly incorporated company, first Annual General Meeting shall be held within 9 months from the closing of the first financial year. Accordingly, the company is not required to hold any annual general meeting in the year of its incorporation.
- The AGM shall be held within the business hours and on a working day, i.e. other than National Holidays.
- In case of default in holding Annual General Meeting, the Tribunal is empowered to call, or direct the calling of, an annual general meeting of the company. The Tribunal may give such ancillary or consequential directions as it thinks expedient.
- If for any reason it is impracticable to call a meeting of a company other than AGM, the Tribunal may, either *suo motu* or on the application of any director or member, order a meeting of the company to be called, held and conducted in such manner as it thinks fit.
- Listed public companies shall file a report on AGM with the RoC in MGT-15 within 30 days of the AGM.
- Section 100 prescribes the provisions for holding an Extra-ordinary General Meeting (EGM) and states that either the board of directors or specified number of members making a requisition to the Board, are authorised to call an EGM.
- A notice is required to be sent to the members and others for calling the general meetings. The notice shall specify the place, date, day and the hour of the meeting and shall also contain a statement of the business to be transacted at such meeting.
- Quorum is the minimum number of members who must be personally present in order to constitute a valid meeting.
- Quorum needs to be present not only at the time of commencement of the meeting but also while transacting business.
- A Chairman needs to be appointed for the meetings. In the absence of any contrary provision in the Articles of a company, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

- Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. The appointment of proxy shall be in Form No. MGT-11.
- At any general meeting, a resolution put to vote of the meeting shall be decided on a show of hands except where a poll is demanded or the voting is carried out electronically.
- There are certain items of business which need to be transacted only by means of voting through a postal ballot.
- If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
- The members of a company have a right to propose resolutions for consideration at the general meetings.
- A resolution can be ordinary resolution or a special resolution. Ordinary resolution can be passed by simple majority whereas special resolution requires minimum 75% majority for its passing.
- A resolution passed at an adjourned meeting shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.
- Copies of specified resolutions and agreements are required to be filed with the Registrar of Companies.
- As regards minutes, every company shall prepare, sign and keep minutes of every general meeting including the meeting called by the requisitionists, every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board.
- The minutes kept in accordance with the prescribed provisions shall serve as the evidence of the proceedings recorded therein.
- The books containing the minutes of the proceedings of any general meeting shall be open for inspection during business hours by any member,

without charge, subject to certain reasonable restrictions. At least 2 hours in each business day shall be allowed for inspection.

- Any document, record, register or minute, etc., required to be kept or allowed to be inspected or copies given to any person by a company, may be kept or inspected or copies given, as the case may be, in electronic form.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *The Annual General Meeting (AGM) of Green Limited was held on 31.8.2024. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.*
 - (a) *Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.*
 - (b) *No, the signing is not in order as only the Chairman is authorised to sign the report*
 - (c) *Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.*
 - (d) *No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.*
2. *The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?*
 - (a) *75% of members entitled*
 - (b) *90% of members entitled*

- (c) 91% of members entitled
 - (d) 95% of members entitled
3. Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?
- (a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
 - (b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
 - (c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
 - (d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

Descriptive Questions

1. In a General meeting of Alpha Software Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?
2. A General Meeting was scheduled to be held on Friday, 15th April, 2024 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 09-04-2024 was deposited by Mr. Y with the company at its registered Office on 11-04-2024. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively?

3. *M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.*
4. *Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.*
 - (i) *Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.*
 - (ii) *Whether Mr. Rich, a director holding only 400 shares of worth ₹ 4000, has the right to inspect the Register of Members?*
5. *Examine the validity of the following situation with reference to the relevant provisions of the Companies Act, 2013:*

The Board of Directors of Shreya Transporters and Logistics Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.
6. *Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?*
7. *Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.*
 - (i) *In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than $1/10^{\text{th}}$ of the total voting power, demanded for poll. The chairman of the meeting*

rejected the request on the ground that only the members present in person can demand for poll.

- (ii) *In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.*
8. *Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position in respect of demand for inspection of proxies by Surya as per the provisions of the Companies Act, 2013*
9. *There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.*
10. *Infotech Ltd. was incorporated on 1.4.2022. No General Meeting of the company has been held till 30.4.2024. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.*
11. *The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:*
- (i) *A is the representative of Governor of Uttar Pradesh.*
 - (ii) *B and C are preference shareholders,*
 - (iii) *D is representing Y Ltd. and Z Ltd.*
 - (iv) *E, F, G and H are proxies of shareholders.*
- Could it be said that the quorum was present in the meeting?*
12. *What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.*

13. *Super Mart Limited called its AGM in order to lay down the financial statements for the approval of the shareholders. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?*
14. *Madurai Bakes Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2024. The notice was posted to the members on 16th August, 2024. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:*
- (i) Whether the meeting has been validly called?*
 - (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?*
 - (iii) Can the delay in giving notice be condoned?*
15. *KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2024 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.*
- 1. P1, P2 & P3 shareholders*
 - 2. P4 representing ABC Ltd.*
 - 3. P5 representing DEF Ltd.*
 - 4. P6 & P7 as proxies of the shareholders*
- (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.*
 - (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?*
 - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.*

What happens if there is no Quorum at the adjourned meeting?

16. *As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?*
17. *With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesch is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ₹ 30 crore divided into 3 crore shares of ₹ 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.*
18. *Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2024. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2024, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.*
19. *Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.*
20. *The paid-up share capital of Disha Home Appliances Limited is ₹ 8 crore divided into 80 lakh shares of ₹ 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.*
21. *Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.*
 - (i) *State within how much time it is required to file the said Report.*

- (ii) *In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure.*

ANSWERS

Answer to MCQ based Questions

1.	(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.
2.	(d) 95% of members entitled
3.	(c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange

Answer to Descriptive Questions

1. Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) of section 118.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

2. A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf in his

absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.

However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

3. Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity were required to be sent with the notice of

meeting. The notice is, therefore, cannot be said to be a valid one when the provisions of Section 102 of the Companies Act, 2013 are considered.

4. (i) **Maintenance of the Register of Members etc.:** As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

5. According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

6. Under section 102 (2) (b) of the Companies Act, 2013, in the case of any general meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

7. Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands.

Accordingly, section 109 (1) lays down as under:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (a) In the case of a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which

an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand for poll: According to section 109 (2), the demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to the provisions contained in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawal of the demand for poll.

8. Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

9. Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018²⁴ states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:
- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
 - (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
 - (c) the Central Government, State Government or any local authority;
 - (d)
 - (i) a reporting company; or
 - (ii) a body corporate; or
 - (iii) an entity,controlled wholly or partly by the Central Government and/ or State Government(s);
 - (e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;
 - (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.
10. According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2022 to 31st March 2023, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2023.

The section further provides that the Registrar may, for any special reason, extend the time within which any Annual General Meeting, other than the

²⁴ As amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019.

first Annual General Meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2023. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

- 11.** According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further, the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not

have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but proxies representing the members.

Thus, it can be said that the requirement of quorum has not been met and the composition shall not constitute a valid quorum for the meeting.

- 12.** A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf in his absence. The term also applies to the person so appointed and in such case a proxy is a person appointed by a member of a company, to attend the general meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy are contained in section 105 of the Companies Act, 2013. They are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
 2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by show of hands.
 3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
 4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
 5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.
- 13.** According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual

general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 (5) of the Act.

- 14.** According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected- in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
 - (ii) As explained in (i) above, notice falls short by 2 days.
 - (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.
- 15.** According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.
- (i) (1) P1, P2 and P3 will be counted as three members.
 - (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
 - (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted as constituting quorum.
- In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Cables Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.
- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the requirement of quorum and he reaches after 11:30 A.M. (*i.e.* after half an hour from the starting time of the meeting), the meeting will be adjourned as provided above.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103 of the Companies Act, 2013.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

- 16.** In this respect Rules 5 (7) and 5 (8) of the Companies (Management and Administration) Rules, 2014 are relevant.

Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

- 17.** Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—

- (i) in the case of an **annual general meeting**, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of **any other general meeting**, by members of the company—
 - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
 - (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

Second proviso to Section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

- 18.** Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within

thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the *Companies (Management and Administration) Rules 2014* read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

- 19.** Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that in case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

- (i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.
- (ii) there should be entered the result of the voting made by the shareholders in respect of resolution.
- (iii) there should be entered the summary of the scrutinizer's report.
- (iv) there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

20. In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

- (i) a listed company; or
- (ii) a company having paid-up share capital of ₹ 10 crore or more or turnover of ₹ 50 crore or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to ₹ 10 crore or more or its turnover becomes ₹ 50 crore or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, *inter-alia*, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

21. (i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto-parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.
- (ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:
- **Company:** ₹ one lakh and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ five lakh.

- ***Every officer who is in default:*** Minimum ₹ twenty-five thousand and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ one lakh.

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to ₹ five lakh in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be ₹ one lakh in case of continuing failure.

DECLARATION AND PAYMENT OF DIVIDEND



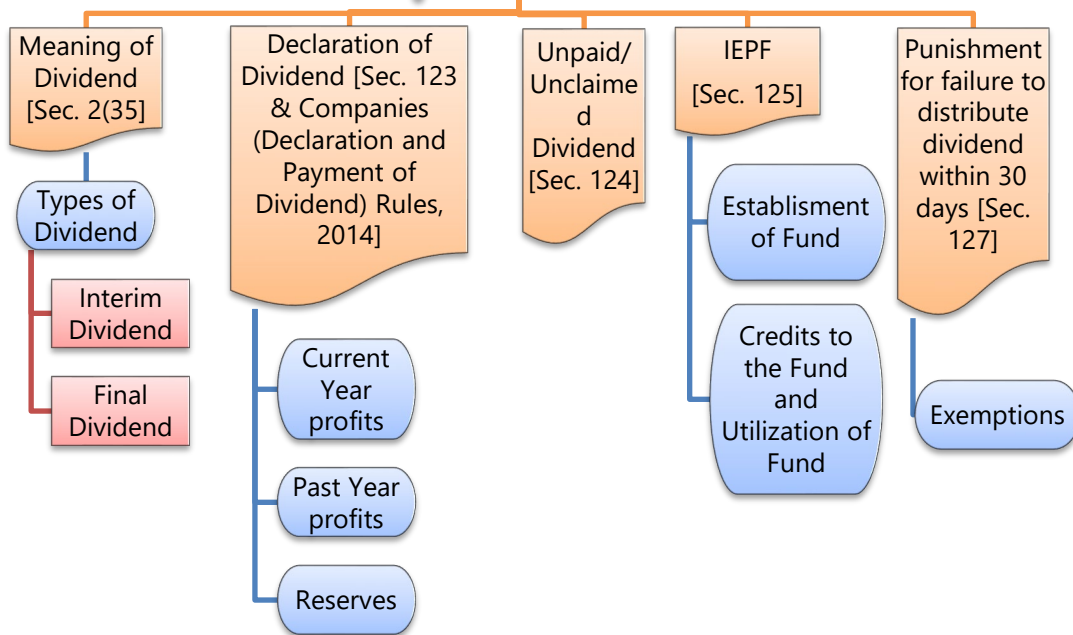
LEARNING OUTCOMES

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

- ◆ Comprehend the legal provisions relating to declaration and payment of dividend
- ◆ Identify about the conditions which need to be fulfilled before declaring dividend out of accumulated reserves.
- ◆ Appreciate the manner in which unpaid and unclaimed dividend is to be dealt with.
- ◆ Identify the nature and framework of the Investor Education and Protection Fund (IEPF).
- ◆ Appreciate the consequences for failure to distribute dividend.

CHAPTER OVERVIEW

Dividend



1. MEANING OF DIVIDEND

Definition

Section 2(35) of the Companies Act, 2013, while defining the term dividend simply states that "dividend" includes any interim dividend. In common parlance, "Dividend" implies a distribution of any sums to members out of profits and wherever permitted out of free reserves available for the purpose.

Dividend is the shareholders return on their investment / capital in the company. Dividend is part of the distributable profits which has been paid out to them. In simple words, it is a distribution of profits *i.e.* a portion of profits earned and allocated as payable to the shareholders whenever declared.

The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. (Clause 80 of Table F in Schedule I)

Dividend is recommended by Board of Directors in the Board's Report¹ and approved by Shareholders at the Annual General Meeting. Dividend is not a liability unless it is declared by the shareholders at a validly constituted general meeting by passing an ordinary resolution² at the rates recommended by the Board or such lower rates as they may decide.

Declaration of dividend by the company at a rate higher than the rate recommended by the Board is not permitted.

Dividend is Declared as a proportion of Nominal or Face Value of a share.

Example 1: AB Ltd. has issued equity shares having face value of ₹ 10 per share. The shares are currently quoting on the NSE at ₹ 250/- per share. The company at its AGM held on 27.7.24 has declared a dividend of 20%. Mr. Shekar owns 1000 shares which he purchased at ₹ 300/- per share. What is the amount of dividend he will receive?

The dividend is to be calculated on Face Value i.e. ₹ 10/-. So dividend per share is 20% of ₹ 10/- = ₹ 2/- per share. So, Mr. Shekar will receive ₹ 2 * 1000 shares = ₹ 2000/-.

Example 2: The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution.

Articles of Association companies usually contain provisions with regard to declaration of dividend on the pattern of regulations 80 to 85 of Table F to Schedule I of the Companies Act, 2013. Under regulation 80, although the power to declare a dividend vests with the shareholders however under no circumstances they can declare dividend exceeding the amount recommended by the Board of Directors.

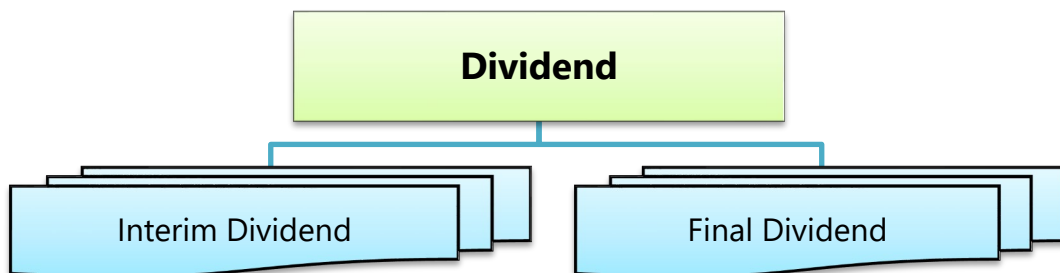
¹ As per Section 134 (3) (k).

² As per section 102 (2) declaration of any dividend at the AGM is an ordinary business requiring ordinary resolution. At any other general meeting it will be special business.



2. TYPES OF DIVIDEND

I. Classification based on time i.e. when declared



Interim Dividend

Section 123 (3) and also section 123 (4) contain provisions regarding interim dividend. Following points are noteworthy:

- ♦ Interim dividend may be declared by the Board of Directors at any time during the period from closure of financial year till holding of the annual general meeting.
The declaration of interim dividend is done out of profits before the final adoption of the accounts by the shareholders and therefore, interim dividend is said to be declared and paid between two AGMs.
- ♦ The sources for declaring interim dividend include:
 - Surplus in the profit and loss account; or
 - Profits of the financial year in which such dividend is sought to be declared; or
 - Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
- ♦ If the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average (rate of) dividend declared by the company during the immediately preceding three financial years.

Example 3: If a company declared dividend at the rate of 16% during the immediately preceding three financial years, then in case the company

incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 16%.

- ♦ The amount of the dividend, including interim dividend, shall be deposited in a separate account maintained with a scheduled bank within five days from the date of declaration.
- ♦ All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

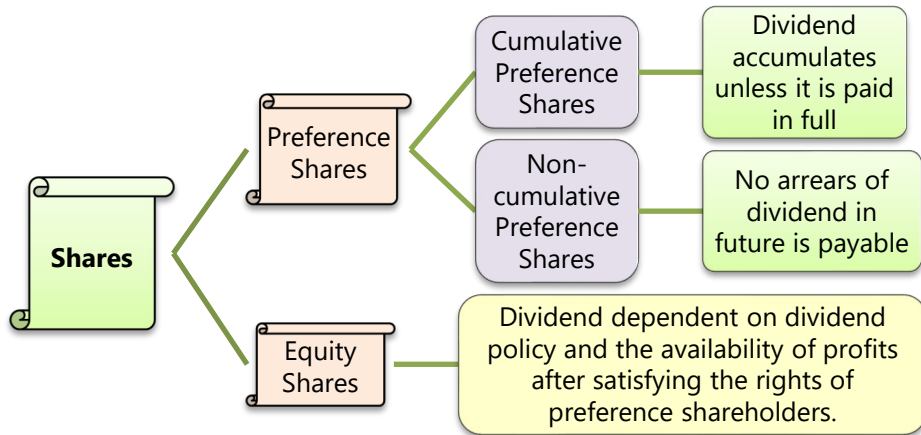
Final Dividend

- ♦ When the dividend is declared at the Annual General Meeting of the company, it is known as 'final dividend'.
- ♦ The rate of dividend recommended by the Board cannot be increased by the members.

The table given below provides a quick summary of the above concepts of Interim Dividend and Final Dividend.

BASIS FOR COMPARISON	INTERIM DIVIDEND	FINAL DIVIDEND
Definition	Interim dividend is declared and paid during an accounting year, i.e. before the finalization of accounts for the year.	Final dividend is the dividend recommended by the board of directors, and approved by shareholders at the company's Annual General Meeting, after the close of financial year.
Announcement	Announced by Board of Directors.	Recommended by Board of Directors and approved by shareholders.
Time of Declaration	Before preparation of financial statements.	After preparation of financial statements.
Revocation	It can be revoked with the consent of all shareholders.	It cannot be revoked.

II. Classification based on Nature of Shares does not require any specific provision in the articles.



Shares can be classified into two categories *i.e.* preference shares and equity shares. The manner of payment of dividend is dependent upon the nature of shares.

- (i) **Preference Shares:** According to Section 43 of the Companies Act, 2013, shareholders holding preference shares are assured of a preferential dividend at a fixed rate during the life of the company.

Preference dividend unless otherwise agreed as cumulative in nature need not be paid every year *i.e.* a company may decide not to declare any dividend where there is deficiency of profits.

Classification of preference shares on the basis of payment of dividend is as follows:

- (a) **Cumulative Preference Shares:** A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years. Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.
- (b) **Non-cumulative Preference Shares:** A non-cumulative preference share is one where the dividend is payable only in a year of profit. There is no accumulation of profit as in the case of cumulative preference shares. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year lapses and the

holder of such a share is not entitled to be paid arrears of dividend out of future year profits.

- (ii) **Equity Shares:** Equity shares are those shares, which are not preference shares. They do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital. The rate of dividend on equity shares is recommended by the Board of Directors and may vary from year to year. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

3. PROVISIONS REGARDING DECLARATION AND PAYMENT OF DIVIDEND

A. Sources for Declaration of Dividend

According to Section 123 (1), the dividend for any financial year shall be declared or paid from the following sources:

- (a) **Profits of the current financial year-** Profits arrived at after providing for depreciation in accordance with Schedule II³.
- (b) **Profits of any previous financial year or years-** Profits of any previous financial year(s) arrived at after providing for depreciation in accordance with Schedule II and remaining undistributed *i.e.* credit balance in profit and loss account and free reserves. It is to be noted that only free reserves⁴ and no other reserves are to be used for declaration or payment of dividend⁵.
- (c) Both (a) and (b).

³ As per Section 123 (2).

⁴ Section 2 (43) defines the term 'free reserves' to mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. However, following items shall not be treated as free reserves:

- (a) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise; or
- (b) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

⁵ As per Third Proviso to Section 123 (1).

- (d) **Provision of money by the Government-** Money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Note 1: Before declaration of any dividend, carried over previous losses and depreciation not provided in previous year or years are required to be set off against profit of the company for the current year⁶.

Note 2: In computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded⁷.

Note 3: Capital profits are not same as distributable profits because they are not earned in the normal course of business; and therefore, normally not available for distribution as dividend.

Need for providing for depreciation out of profits before declaring dividend

Dividend is an apportionment from revenue profits. Therefore, dividend should never be declared out of capital. This is also the reason for prohibition on issue of shares at a discount which you studied in the topic Share Capital and Debentures.

"Depreciation" is a notional estimate of the reduction in the value of an asset due to

- i. wear and tear,
- ii. efflux of time,
- iii. improvements in technology etc.

If depreciation is not provided for there will be two consequences:

- i. The value of the asset will be overstated in Balance Sheet
- ii. The profits of the current year will be overstated.

⁶ As per Fourth Proviso to Section 123 (1).

⁷ As per Proviso to Section 123 (1) (a).

Let us take a hypothetical case where a company declares all the profits earned during any year as dividend.

At the time of winding up of the company the value of assets appearing in the Balance-sheet would appear to be sufficient to repay the capital of the shareholders but the actual realizable value thereof will be a paltry sum which may not be sufficient even to meet the expenses of winding up.

This is because the company has failed to retain the amount of wear and tear in the value of the asset by way of provision for depreciation. In a way the company would have declared dividend out of capital, which is prohibited.

Hence the law mandates provision for depreciation out of profits before declaration of dividend.

Example 4: Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ₹ 20,00,000. The Board of Directors is keen to utilize this ₹ 20,00,000 along with free reserves of ₹ 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2023. But according to Proviso to Section 123(1)(a), the amount of ₹ 20,00,000 cannot be considered as it does not form part of Free Reserves as the same cannot be utilized towards declaration of dividend.

B. Transfer to Reserves

Transfer of profits to reserves for any financial year has been left to the discretion of the company. Therefore, a company is free to transfer any portion of its profit to reserves as it may deem fit. It may also decide not to transfer any amount to reserves.

Illustration 1: *For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?*

Answer: The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the

company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit.

Illustration 2: *Brix Shipyards Limited has earned a profit of ₹ 1,000 crore for the financial year 2023-24. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?*

Answer: The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any amount of profits to the reserves.

C. Declaration of Dividend when there is inadequacy or Absence of Profits (Second Proviso to Sec. 123)

Where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of *the Companies (Declaration and Payment of Dividend) Rules, 2014*.

Free Reserves⁸ means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

The following shall not be treated as free reserves;

Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Under Rule 3 such declaration shall be subject to the following conditions:

⁸ Section 2 (43)

CONDITION I

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

$$\text{Rate of Dividend} \leq (RD_1 + RD_2 + RD_3)/3$$

Where, RD_1 , RD_2 , RD_3 are rates at which dividend was declared by the company in the immediately preceding three years.

However, **this condition shall not apply** if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement. In other words:

$$\begin{array}{lcl} \text{Total amount that can be drawn from} & \leq & 10\% \text{ of (paid up} \\ \text{accumulated profits} & & \text{share capital + free reserves)} \end{array}$$

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

$$\text{Free Reserves} - \text{Amount of withdrawal} \geq 15\% \text{ of paid up share capital}$$

It may be noted that all the above three conditions have to be satisfied.

The conditions prescribed by Rule 3 are not applicable to a Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments (vide Notification No. 463 (E), dated 05-06-2015).

Illustration 3: *Capricorn Industries Limited has a paid-up capital of ₹ 200 lakh and accumulated Reserves of ₹ 240 lakh. Loss for the year ending 31st March 2024 is ₹ 30 lakh. Dividend was declared at the following rates during the three years immediately preceding.*

Year 1	9%
Year 2	10%
Year 3	12%

What is the maximum rate at which the company can declare dividend for the current year?

Answer: In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March, 2024, but it still wants to declare dividend. Let us apply the conditions:

Condition I:

$$\text{Average rate} = \frac{9+10+12}{3} = 10.33\%$$

Therefore, the rate of dividend shall not exceed 10.33%.

i.e. 10.3% of Paid up Capital i.e. ₹ 200 lakh = ₹ 20.6 lakh

Condition II:

Paid-up capital + Free reserves	=	₹ (200+240) lakh
(Assuming all reserves are free)		₹ 440 lakh
10% thereof	=	₹ 44 lakh
Less: loss for the year [Condition III]	=	₹ 30 lakh
Amount available	=	₹ 14 lakh

Hence, the quantum of dividend is further restricted to ₹ 14 lakh.

Condition IV:

Amount of reserves available after adjustment of current year loss = ₹ 210 lakh

Proposed withdrawal declaration of dividend ₹ 14 lakh

Balance of Reserves ₹ 196 lakh

This is more than 15% of paid-up capital (i.e. 15% of ₹ 200 lakh) i.e. ₹ 30 lakh.

Thus, the company can declare a dividend of ₹ 14 lakh i.e. at a rate of 7% on its paid-up capital of ₹ 200 lakh.

Illustration 4: *Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March, 2024, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%.*

Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2023-24, as per the provisions of the Companies Act, 2013.

Answer: The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

- The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
- The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
- After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

D. Depositing of Amount of Dividend

In terms of section 123(4), the amount of the dividend (including interim dividend), shall be deposited in a separate account maintained with a scheduled bank. This is to be done within 5 days from the date of declaration of dividend⁹.



Example 5: The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is ₹ 50 lakh divided into 5,00,000 equity shares of ₹ 10 each. At its Annual General Meeting (AGM) held on 24th September, 2024, the company declared a dividend of ₹ 2 per share by passing an ordinary resolution. The amount of dividend must be deposited in a scheduled bank in a separate account latest by 29th September, 2024.

E. Payment of Dividend

Section 123(5) contains provisions regarding payment of dividend. These are stated as under:

(a) Dividend shall be payable only to the registered shareholder or to his order or to his banker.

In case a shareholder informs the company to pay dividend to a particular banker and if the payment is so made by the company, then it shall be deemed to be made to the shareholder himself.

A purchaser of shares whose name is not entered in the Register of Members cannot claim payment of dividend to him though he might have made full payment to the seller of shares. In this regard we will, later in this chapter, see Section 126 which provides for keeping of dividend etc., in

⁹ In terms of *Notification No. 463 (E), dated 05-06-2015*, this requirement shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.

abeyance pending registration of transfer of shares, unless the registered holder has authorized the company to pay the dividend to the purchaser.

Illustration 5: *The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2023-2024. The company announced 7th September 2024 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 3rd September 2024.*

Mr. Binoy was the holder of 2000 equity of shares since 31st March, 2018, but he transferred the shares to Mr. Mohan in 2024, whose name has been entered in the register of members on 18th June, 2024. Who will be entitled to the above dividend?

Answer: According to section 123, dividend shall be paid by a company only to the registered shareholder of such share.

Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e. Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan who is the registered shareholder on the record date.

Note: In terms of section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only ₹ 5 (face value ₹ 10) on each share held by them. In case of declaration of dividend at the rate of ₹ 5 per share, the company, if authorised by its articles, shall be justified in paying dividend of ₹ 2.50 per share in respect of such partly paid shares.

- (b) Dividends are payable in cash and not in kind. Dividends that are payable to the shareholders in cash may also be paid by cheque or dividend warrant or through any electronic mode.**



Section 127 requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend

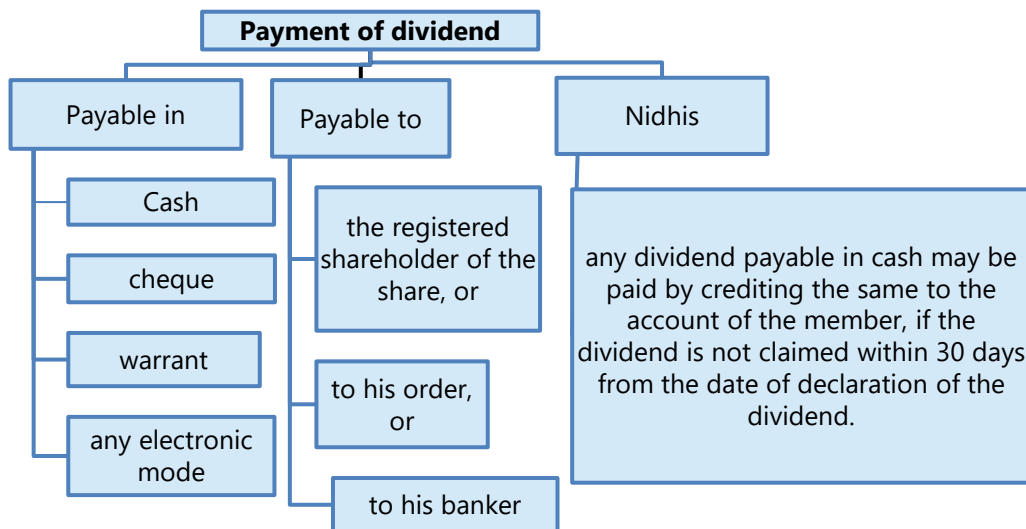
warrants, such warrants must be posted at the registered addresses within the prescribed time.

Note: Dividends shall be paid only in cash. The exception to this is the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company¹⁰.

But you may note that while Declaration of dividend does not affect the company's power to issue fully paid up bonus shares, such shares cannot be issued in lieu of dividend.

- (c) **Applicability of Section 123 (5) to Nidhis:** In terms of *Notification No. GSR 465 (E), dated 05-06-2015*, this sub-section shall apply to the Nidhis, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.

Chart depicts the mode of payment and recipient of dividend



F. Prohibition on Declaration of Dividend

In the following cases declaration and payment of dividend is prohibited.

¹⁰ First Proviso to Section 123 (5)

(i) Prohibition in case of any Defaulting Company:

¹¹ A company which fails to comply with the provisions of section 73 (Prohibition on acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act of 2013) shall not, so long as such failure continues, declare any dividend on its equity shares.

No dividend for Co. which fails to comply with sec 73/ 74

(ii) Prohibition in case of Section 8 Companies:

According to section 8(1), a company having licence under Section 8 (*Formation of companies with charitable objects, etc.*) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

No dividend for Section 8 Co.s



4. UNPAID DIVIDEND ACCOUNT (UDA)

Section 124 of the Act contains the provisions relating to Unpaid Dividend Account (UDA). These are as follows:

(i) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account-

Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(ii) Preparing of Statement of the Unpaid Dividend-

Within 90 days of transferring any amount to the Unpaid Dividend Account, the company shall prepare a statement containing the names, last known addresses and the amount of unpaid dividend to be paid to each person and place such statement on its

¹¹ Section 123 (6)

web-site, if any, and also on any other web-site approved by the Central Government for this purpose.

(iii) Payment of Interest if default is made in transferring the Amount- If any default is made in transferring the total unpaid dividend amount or any part thereof to the Unpaid Dividend Account, the company shall pay, from the date of such default, interest at the rate of twelve per cent per annum on the amount not so transferred to the said account. The interest accruing on such amount shall ensure i.e. be available to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(iv) Claimant to apply for payment of Claimed Amount- Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account may apply to the company concerned for payment of the money so claimed.

(v) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)- Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

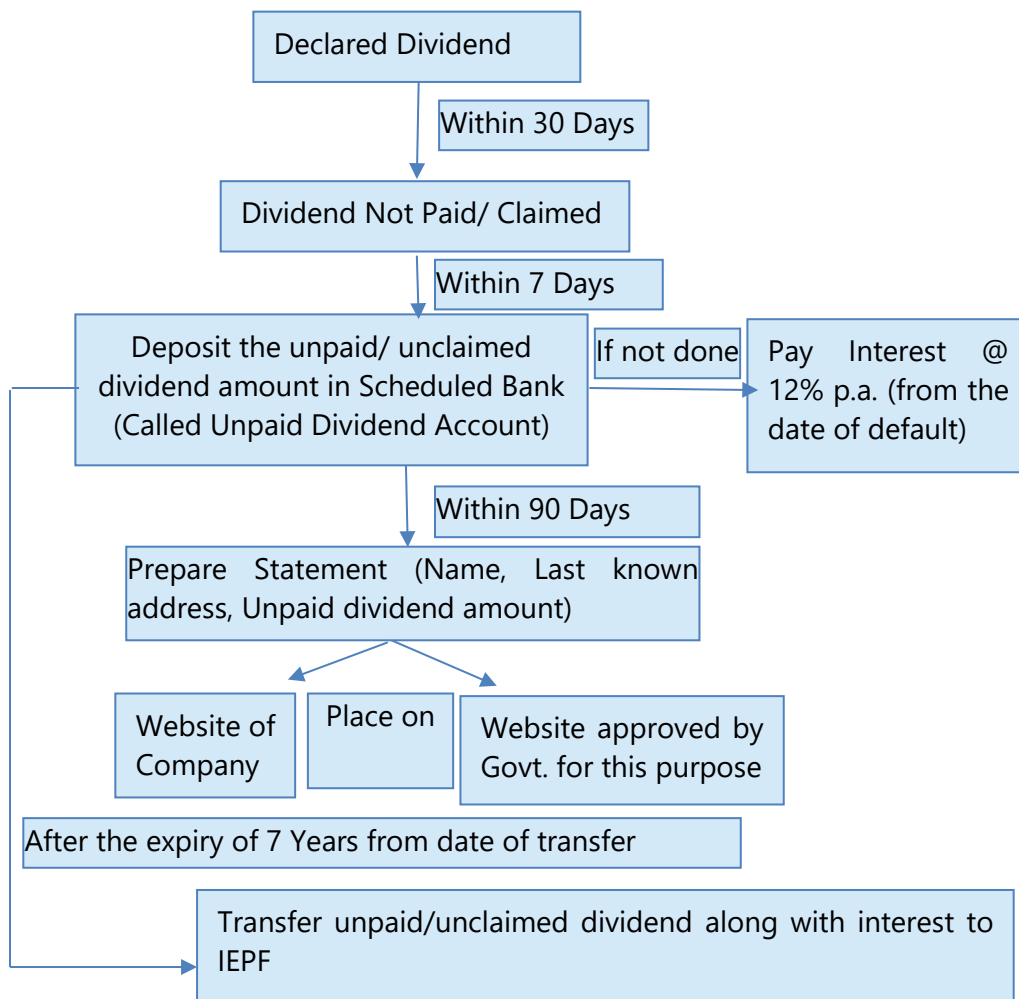
Further, the company shall send a prescribed statement containing the details of such transfer to the IEPF Authority and in turn, the Authority shall issue a receipt to the company as evidence of such transfer.

(vi) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

By way of Explanation, it is clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

(vii) Right of Owner of 'transferred shares' to Reclaim- Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

(viii) Punishment for Contravention- If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.





5. INVESTOR EDUCATION AND PROTECTION FUND (IEPF)

Section 125 of the Act along with various Rules framed from time to time including ¹²*Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016* deal with the Investor Education and Protection Fund (IEPF). This fund, being established by the Central Government, shall be credited with specified amounts and utilized for refund of unclaimed and unpaid amounts, promotion of investors' awareness and protection of the interests of investors, etc.

The relevant provisions are discussed below:

1. **Credit of Specified Amounts to the Fund:** Following specified amounts shall be credited to the Fund:
 - (a) **Amount given by the Central Government-** The amount given by the Central Government by way of grants after due appropriation made by Parliament;
 - (b) **Donations by the Central Government-** Donations given by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
 - (c) **Amount lying in the Unpaid Dividend Account-** The amount lying in the Unpaid Dividend Account (UDA) of companies which is transferred by them to the Fund under section 124(5);
 - (d) **Amount in the General Revenue Account of the Central Government-** The amount in the General Revenue Account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of the Act of 2013;
 - (e) **Amount in IEPF-** The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
 - (f) **Income from Investments-** The interest or other income received out of investments made from the Fund;

¹² Notified vide Notification No. GSR 854 (E), dated 05.09.2016 w.e.f. 07.09.2016.

- (g) **Amount received through disgorgement or disposal of Securities-** The amount received under section 38(4) *i.e.* amount received through disgorgement ¹³ or disposal of securities seized from a person who has been convicted for personation for acquisition of securities as provided in section 38(3);
- (h) **Application Money-** The application money received by companies for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);
- (i) **Matured Deposits-** Matured deposits with companies other than banking companies (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);
- (j) **Matured Debentures-** Matured debentures with companies (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);
- (k) **Interest-** Interest accrued on the amounts referred to in clauses (h) to (j);
- (l) **Amount received from Sale Proceeds-** Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) **Redemption Amount-** Redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) **Other Amounts-** Such other amounts as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. They are as under:
 - (a) all amounts payable as mentioned in clause (a) to (n) of section 125 (2) of the Act [as stated above];
 - (b) all shares in accordance with section 124 (6) *i.e.* all those shares in whose case dividends have not been claimed or paid for seven consecutive years or more;

¹³ Disgorgement is the legally enforced repayment of ill-gotten gains imposed on wrongdoers by the courts. Funds that were received through illegal or unethical business transactions are disgorged, or paid back, often with interest and/or penalties to those affected by the action.

- (c) all the resultant benefits arising out of shares held by the Authority under clause (b) above;
- (d) all grants, fees and charges received by the Authority under these rules;
- (e) all sums received by the Authority from such other sources as may be decided upon by the Central Government;
- (f) all income earned by the Authority in any year;
- (fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;
- (g) all amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 sub-section (3) of section 38A of the State Bank of India Act, 1955 and section 40A of the State Bank of India (Subsidiary Bank) Act, 1959; and;
- (h) all other sums of money collected by the Authority as envisaged in the Act.

Further, according to Rule 3 (3), in case of term deposits and debentures of companies, due unpaid or unclaimed interest shall be transferred to the Fund along with the transfer of the matured amount of such term deposits and debentures.

2. Utilization of the Fund: According to section 125 (3) the Fund shall be utilized for:

- (a) refund of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

- (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) any other purpose incidental thereto in accordance with the rules framed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Refund of Amount- A person amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C were transferred to IEPF, after the expiry of 7 years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

3. **Application to the Authority for payment:** According to section 125 (4), any person claiming to be entitled to the amount referred in section 125 (2) may apply to the Authority constituted under section 125 (5) for the payment of the money claimed.

4. **Other Provisions governing the IEPF**

- (i) **Constitution of the Authority for Administration of Fund-** In terms of Notification dated 13.01.2016¹⁴, the Ministry of Corporate Affairs has notified sub-section (5), sub-section (6) (except with respect to the manner of administration of the Fund) and sub-section (7) of section 125 of the Act w.e.f. 13.01.2016. With this Notification, an Authority is being constituted for the administration and maintenance of accounts as well as other relevant records of the Fund.

Further, with the notification of *IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016* on 13.01.2016, the Secretary, Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority. In addition, there shall be six members (maximum limit seven) and a Chief Executive Officer who shall be the convenor of the Authority.

- (ii) **Provision of required Resources by the Central Government for Administration of the Fund-** The Central Government may provide to

¹⁴ Vide Notification No. GSR 26 (E), dated 13.01.2016.

the Authority such offices, officers, employees and other resources in accordance with the *IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016*.

- (iii) **Authority to work in consultation with CAG of India-** The Authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.
- (iv) **Spending of Money-** The Authority shall be competent to spend money out of the Fund for carrying out the objects specified in section 125 (3) *i.e.* purposes for which the fund shall be utilized.
- (v) **Audit of the Fund-** The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him. Such audited accounts together with the audit report thereon shall be forwarded annually by the Authority to the Central Government.
- (vi) **Preparation of Annual Report by the Authority-** For each financial year, the Authority shall prepare in the prescribed form and at prescribed time its annual report giving full account of its activities during the financial year and forward a copy thereof to the Central Government. In turn, the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.



6. RIGHT OF DIVIDEND, RIGHTS SHARES AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES

According to Section 126, in case any instrument of transfer of shares has been delivered by a shareholder for registration and the transfer of such shares has not been registered by the company, such company shall take the following steps:

- (a) Transfer the dividend in relation to such shares to the Unpaid Dividend Account unless it is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in the instrument of transfer; and
- (b) Keep in abeyance in relation to such shares any offer of rights shares under section 62 (1) (a) and any issue of fully paid-up bonus shares in pursuance of first proviso to section 123 (5).



7. PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN 30 DAYS

Section 127 of the Act contains time limit for distribution of dividends and punishment for failure to distribute dividend on time. Certain exemptions from punishments are also provided. These provisions are stated as under:

A. Time Limit for Distribution of Dividends

Where a company declares dividend, it must be paid or the dividend warrant thereof must be posted within 30 days from the date of declaration of dividend to the shareholders entitled to the same. Posting of dividend warrants within 30 days absolves the company from any punishment irrespective of whether it is received by the shareholder concerned within this time or not. The offence is committed only when the company fails to post dividend warrants to the registered address of the members within 30 days of declaration. Non-receipt of dividend warrants by the shareholders within the prescribed time does not attract any punishment.

B. Punishment for Failure

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

- (i) Every director of the company shall be punishable with imprisonment of up to two years, if he is knowingly a party to the default. And, he shall also be liable to pay minimum fine of ₹ 1,000 for every day during which such default continues.

- (ii) The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

C. Exemption from Punishment

Under the following cases, where the company has failed to pay declared dividend within 30 days of declaration, no offence shall be deemed to have been committed and therefore, no punishment is attracted:

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the prescribed period of 30 days was not due to any default on the part of the company.

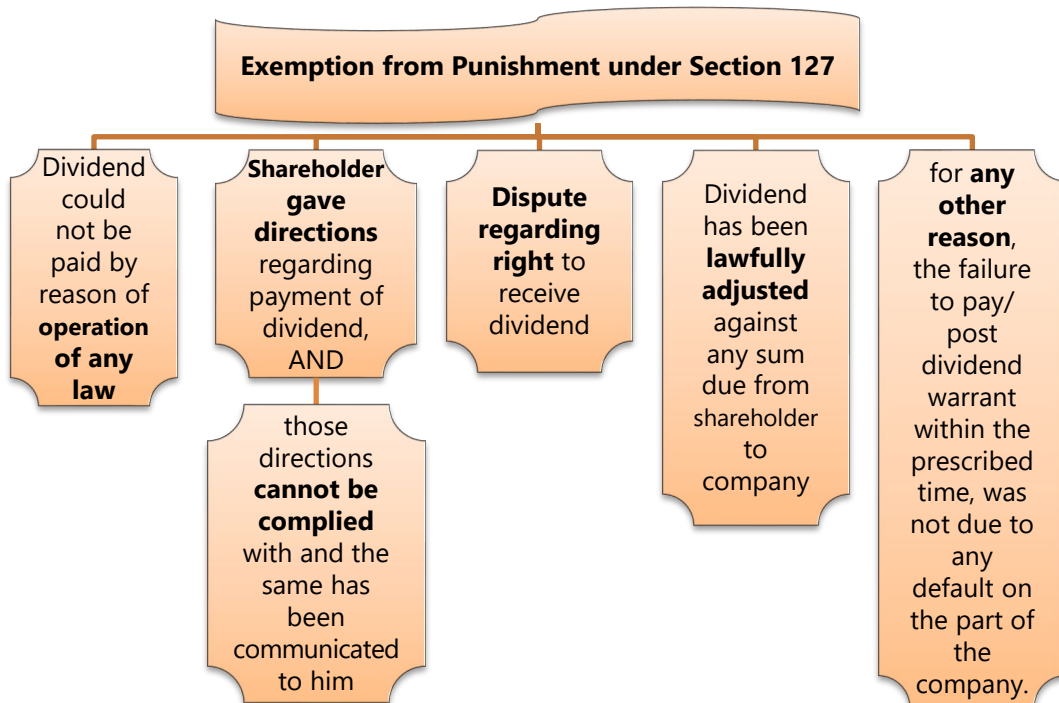


Illustration 6: Mr. Alok, holding equity shares of face value of ₹ 10 lakh, has not paid ₹ 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

Answer: Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to ₹ 80,000 is justified and therefore, no punishment is attracted.

Applicability of Section 127 to Nidhis

In terms of *Notification No. GSR 465 (E), dated 05-06-2015*, Section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification:

In case the dividend payable to a member is ₹ 100 or less, it shall be sufficient compliance of the provisions of the section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least 3 months.

SUMMARY

- Section 2(35) of the Companies Act, 2013, states that “dividend” includes any interim dividend.
- Dividend can be declared out of:
 - ◆ Profits of the current year after depreciation,
 - ◆ Profits for any previous financial year or years arrived at after providing for depreciation and remaining undistributed,
 - ◆ Both of the above,
 - ◆ Money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

[**Note:** Depreciation shall be provided in accordance with the provisions of Schedule II.]

- Before declaration of dividend, the company may, at its discretion, transfer any appropriate percentage of its profits to the reserves.
- When there is inadequacy or absence of profits, the company may declare dividend out of free reserves after following the conditions prescribed in the Rules.
- Amount of dividend (including interim dividend) shall be deposited in a separate bank account maintained with a scheduled bank within 5 days from the date of declaration of dividend.
- Payment of dividend-
 - ◆ Payable
 - ☐ in cash; or
 - ☐ by cheque; or
 - ☐ by dividend warrant; or
 - ☐ by any electronic mode
 - ◆ Payable
 - ☐ to the registered shareholder of the shares; or
 - ☐ to his order; or
 - ☐ to his banker.
 - ◆ In case of Nidhis
 - ☐ any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
- Unpaid Dividend Account (UDA)
 - ◆ Declared dividend not paid or claimed to be transferred to the Unpaid Dividend Account (UDA).
 - ◆ Prepare statement of particulars of the unpaid dividend.
 - ◆ Default in transferring of amount to UDA - Interest @ 12% p.a.
 - ◆ Entitled shareholders can apply for payment of amount from UDA.

- ◆ Transfer unpaid or unclaimed amount of dividend (and shares thereof) to Investor Education and Protection Fund (IEPF) after the expiry of seven years from the date of such transfer to UDA.
- ◆ Right of owner of shares transferred to IEPF to claim from IEPF: Claimant of transferred shares is entitled to reclaim the transfer of shares from IEPF by following the prescribed procedure and on submission of prescribed documents.
- ◆ In case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the shares shall not be transferred to IEPF.
- ◆ Punishment: In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.
- Exemptions from punishment under section 127
 - ◆ dividend could not be paid by reason of operation of any law;
 - ◆ shareholder gave directions regarding payment of dividend but those directions could not be complied with and the same had been communicated to him;
 - ◆ dispute regarding right to receive dividend;
 - ◆ dividend had been lawfully adjusted against any sum due from the shareholder to the company;
 - ◆ for any other reason and the failure to pay/post dividend warrant within the prescribed time was not due to any default on the part of the company.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *When the dividend is declared at the Annual General Meeting of the company, it is known as*
 - (a) *Final Dividend*
 - (b) *Interim Dividend*
 - (c) *Dividend on preference shares*
 - (d) *Scrip Dividend*
2. *Amount to be transferred to reserves out of profits before any declaration of dividend is _____*
 - (a) *5%*
 - (b) *7.5%*
 - (c) *10%*
 - (d) *at the discretion of the company.*
3. *The Board of Directors of Vidyt Limited are contemplating to declare interim dividend in the last week of July, 2024 but the company has incurred loss during the current financial year up to the end of June, 2024. However, it is noted that during the previous five financial years i.e., 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.*
 - (a) *Maximum at the rate of 10%.*
 - (b) *Maximum at the rate of 11%.*
 - (c) *Maximum at the rate of 10.5%.*
 - (d) *Maximum at the rate of 11.5%.*

4. *The amount accumulated in the Investor Education and Protection Fund shall not be used for:*
 - (a) *refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.*
 - (b) *reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.*
 - (c) *grants or donation to the Central Government for the purpose of investor's education and training.*
 - (d) *distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.*
5. *In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, company shall be liable to pay simple interest at the rate of during the period for which such default continues.*
 - (a) *6% p.a.*
 - (b) *12% p.a.*
 - (c) *15% p.a.*
 - (d) *18% p.a.*

Descriptive Questions

1. *The Annual General Meeting of ABC Bakers Limited held on 30th May, 2024, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2024. Mr. Ranjan filed a suit against the company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act.*
2. *The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for*

diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

3. *Referring to the provisions of the Companies Act, 2013, examine the validity of the following:*

The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

4. *Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2023-24, except in the following two cases:*

- (i) Mrs. Sheela Bhatt, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela Bhatt about this discrepancy.*
- (ii) Dividend amount of ₹ 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession.*

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

5. *Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2024. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.*
6. *YZ Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2023-2024 out of the profits of current year. The company has earned a profit of ₹ 910 crore during 2023-2024. The*

company does not intend to transfer any amount to the general reserves out of the profits. Is YZ Medical Instruments Limited allowed to do so? Comment.

7. *PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.*
8. *Alex limited is facing loss in business during the financial year 2023-2024. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid?*

ANSWERS

Answer to MCQ based Questions

1.	(a) Final Dividend
2.	(d) at the discretion of the company.
3.	(b) Maximum at the rate of 11%
4.	(c) grants or donation to the Central Government for the purpose of investor's education and training.
5.	(d) 18% p.a.

Answer to Descriptive Questions

1. Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted

within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

- (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and
- (b) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

- 2.** According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

- (i). Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which

remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

- (ii). The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine of rupees one thousand for every day during which such default continues.
 - (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
3. Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

4. (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non-compliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

- (ii) Section 127, *inter-alia*, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its directors, etc.

5. According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

6. According to section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of ₹ 910 crore for the financial year 2023-2024. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

7. Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

8. As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2023-2024. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates $(7+11+12=30/3)$ at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2023-2024 is not valid.

ACCOUNTS OF COMPANIES



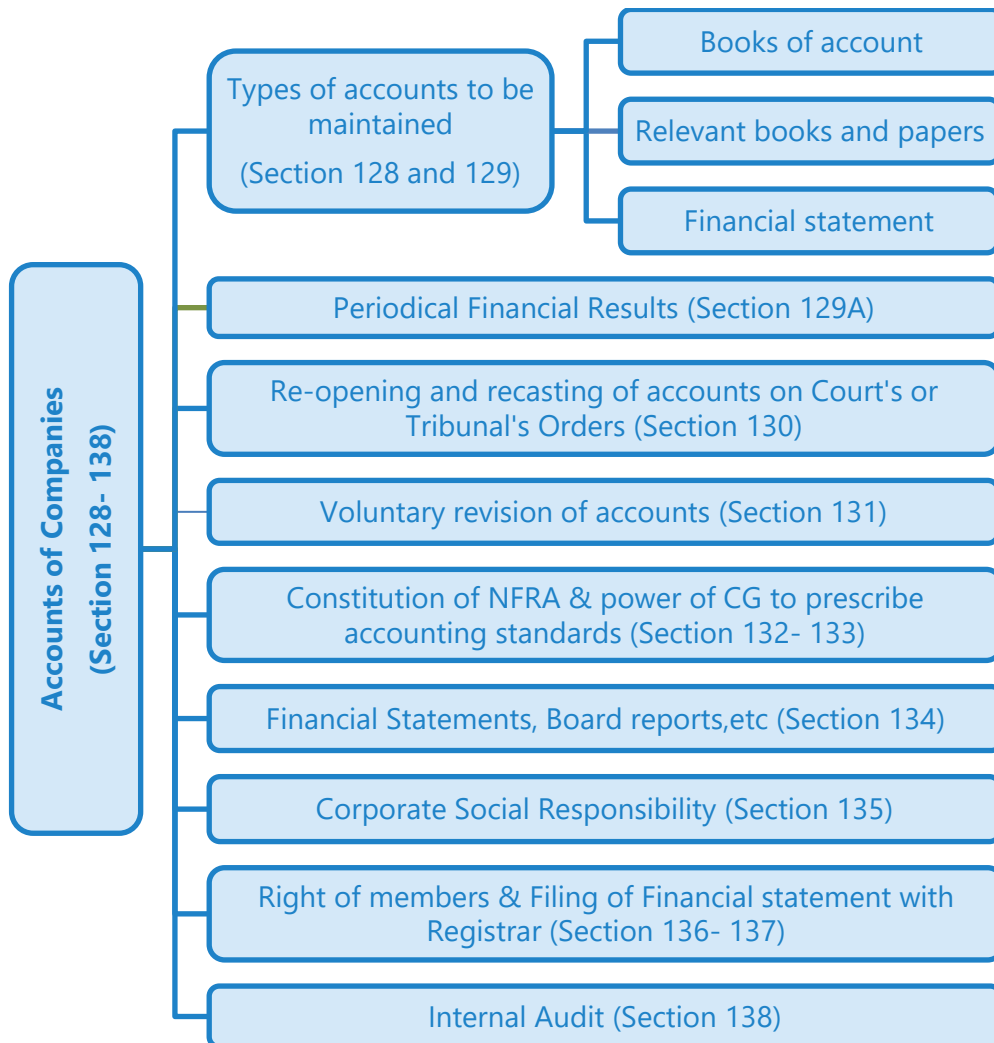
LEARNING OUTCOMES

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

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

CHAPTER OVERVIEW

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

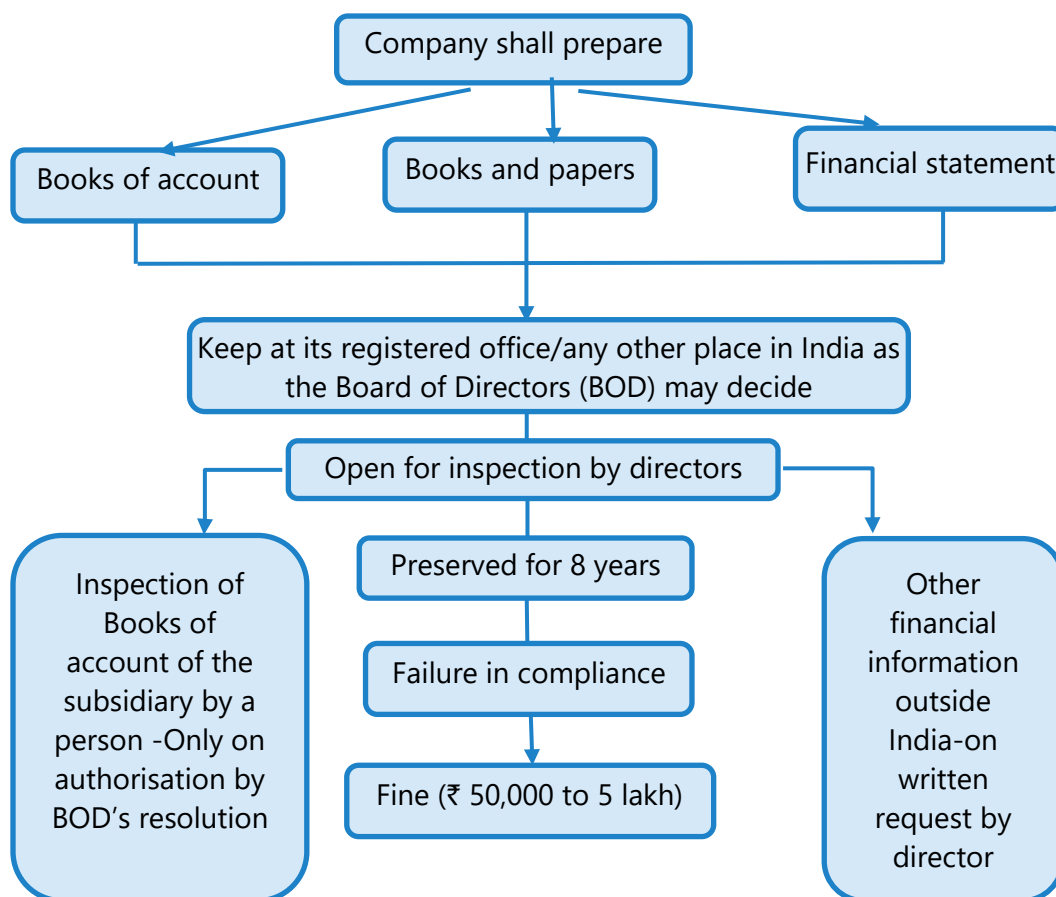


1. INTRODUCTION

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

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



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

Note:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

PLACE OF KEEPING BOOKS OF ACCOUNT

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



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

MAINTENANCE OF BOOKS OF ACCOUNT IN ELECTRONIC FORM

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



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

Remain accessible in India [Rule 3(1)]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INSPECTION BY DIRECTORS [SUB-SECTION 3 & 4]

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

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

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

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

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

Note:

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

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

Inspection in respect of any subsidiary company

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

Period for preservation of books [Sub-section 5]

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



Note:

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

Persons responsible and Penalty [Sub-section 6]

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

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

Illustration 1- True false

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

Answer

False

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

Illustration 2

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

Answer

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



3. FINANCIAL STATEMENT [SECTION 129]

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

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

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

Division I deal with financial statement for a company whose financial statement are required to comply with the *Companies (Accounting Standards) Rules, 2021*².

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

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

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

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

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

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

² Vide notification GSR 432(E) dated 23rd June, 2021 as amended from time to time

³ Vide notification GSR 111(E) dated 16th February, 2015 as amended from time to time

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

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

CONSOLIDATED FINANCIAL STATEMENTS [SUB-SECTION 3]

Consolidation of financial Statement

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

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

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

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

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

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

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

Exception to manner stated above

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

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

Exemptions from preparation of CFS

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

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

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

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

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

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

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

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

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

Section 129 shall not apply to the **Government Companies engaged in defence production** to the extent of application of relevant Accounting Standard on segment reporting⁴

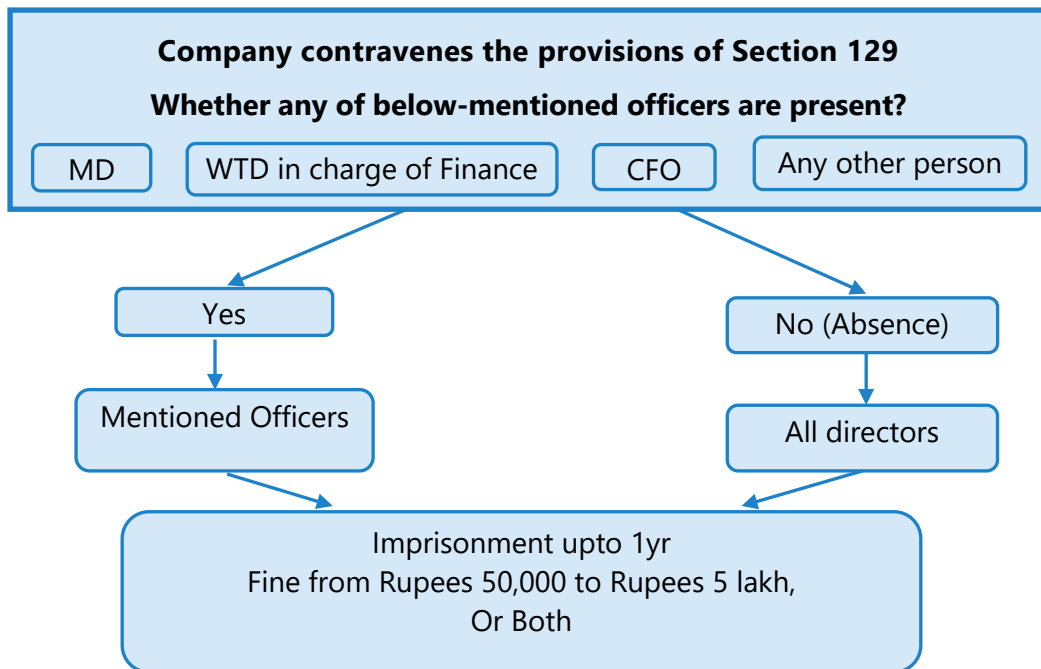
The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar⁵

PENALTY [SUB-SECTION 7]

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

⁴ Exemption originally granted vide notification number G.S.R. 463(E) dated the 5th June, 2015, later substituted vide notification number G.S.R. 802(E) dated 23.02.2018 to replace "AS-17" with relevant Accounting Standard

⁵ Vide notification number G.S.R. 582(E) dated 13th June, 2017



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

Illustration 3

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

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

Options

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

Answer – d

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



4. PERIODICAL FINANCIAL RESULTS [SECTION 129A]

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

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

Students are advised to take note:

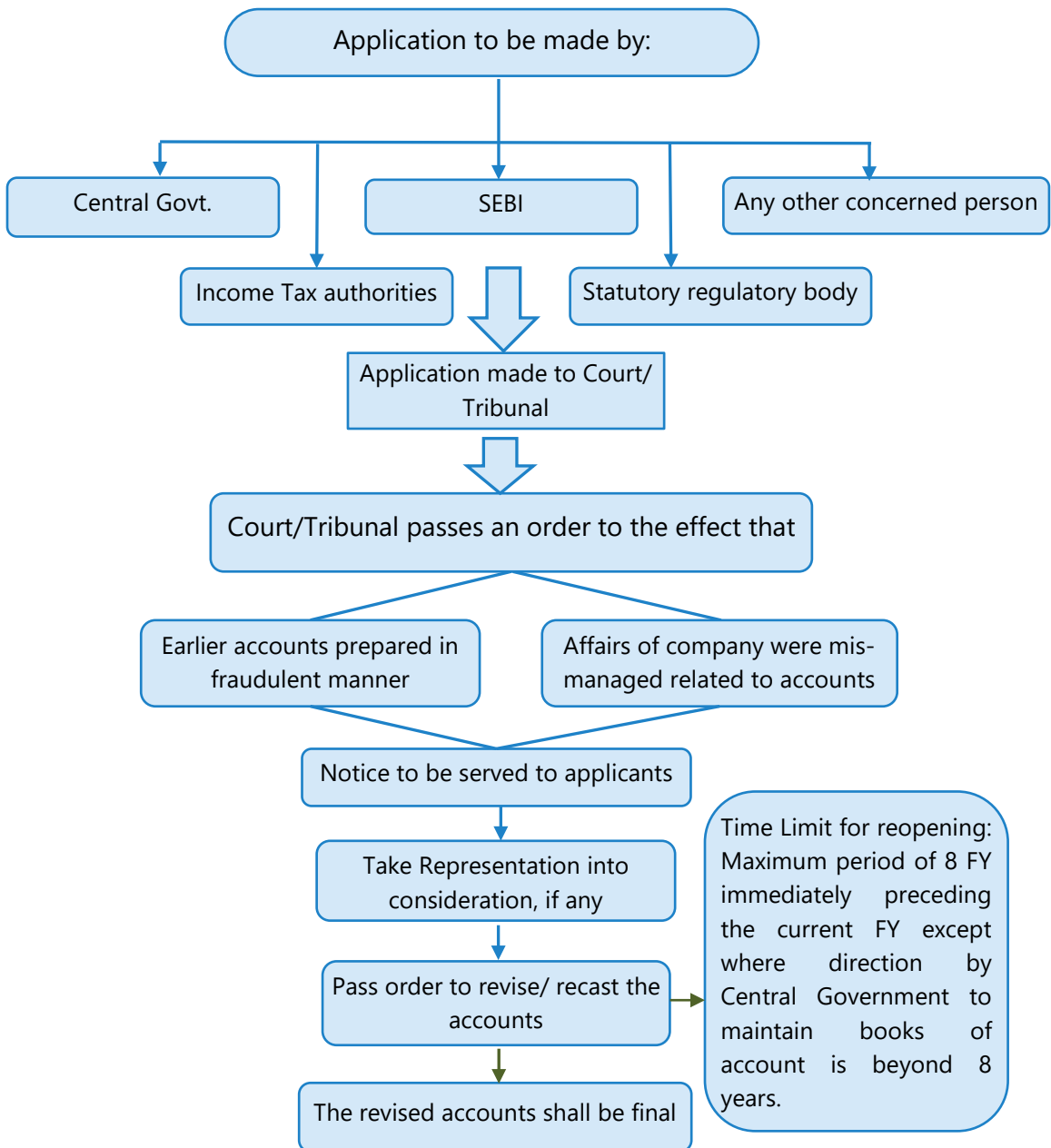
At present there are approximately over 11 lakh unlisted companies actively operating in India. Some of these are really large enough with widely-spread interests, that make corporate governance critical issue in case of such unlisted companies as well. Hence this new section inserted vide Amendment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

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



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

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



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

A company **shall not**:

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

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

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

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

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

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

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

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

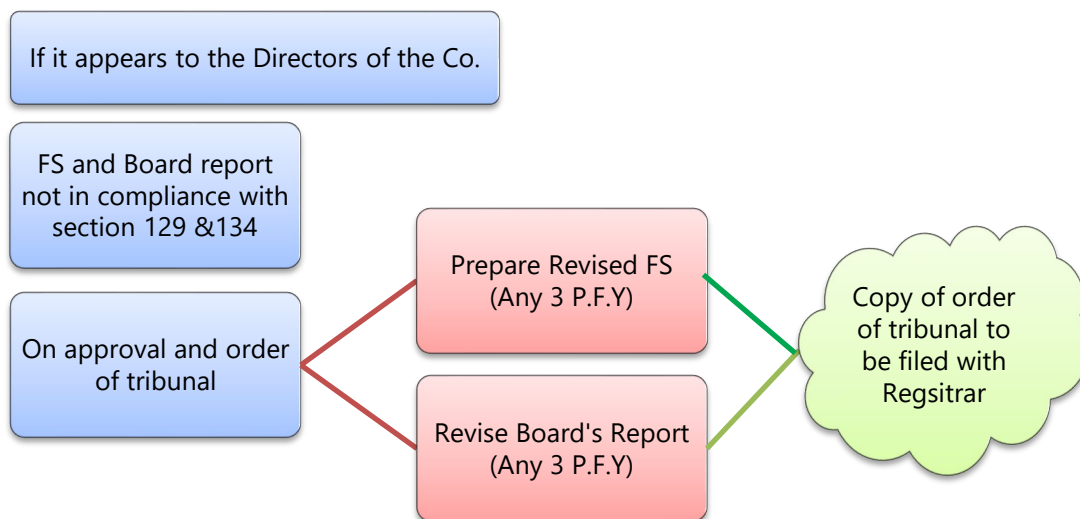
TIME LIMIT [SUB-SECTION 3]

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

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



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



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

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

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



They may prepare **revised** financial statement or board's report in respect of any of the **three preceding financial years**.

After obtaining **approval of the Tribunal** on an **application** made by the company in Form No. NCLT 1 within fourteen days of the decision taken by the Board.

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

Note:

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

Note – As per first proviso to section 131(1), the tribunal shall also give **notice to the Central Government and the Income tax authorities** and shall take into consideration the **representations**, if any, made by that Government or the authorities before passing any order under this section.

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

Note – As per third proviso to section 131(1), the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

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

SCOPE OF REVISIONS [SUB-SECTION 2]

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

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

FRAMING OF RULES BY THE CENTRAL GOVERNMENT IN RELATION TO REVISED FINANCIAL STATEMENT/DIRECTOR'S REPORT [SUB-SECTION 3]

The **Central Government may make rules** as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, **in particular**:

- a. Make different provisions according to which the previous financial statement or director's report are replaced or are supplemented by a document **indicating the corrections** to be made;

- b. Make provisions with respect to the **functions of the company's auditor** in relation to the revised financial statement or report;
- c. **Steps required to be taken by the directors.**

Note:

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



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

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

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

Note:

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

Extra Reading (only to lay the foundation)

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

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

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

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

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

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

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

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

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

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

Note:

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

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

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

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

Note:

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

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

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

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

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

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

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

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

Notes

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

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

Note:

The Central Government may,

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

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

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

The NFRA shall consist of

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

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

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

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

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

The chairperson and members, who are in full-time employment with National Financial Reporting Authority shall **not be associated with any audit firm** (including related consultancy firms) **during** the course of their appointment **and two years after** ceasing to hold such appointment.

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

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

Sub-section 11 empowers the Central Government to appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

POWER TO INVESTIGATE [SUB-SECTION 4]

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

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

Students are advised to take note:

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

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

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

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

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

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

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

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

Imposing **penalty** as stated below:

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

Debarring the member or the firm

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

APPEAL AGAINST ORDERS OF NFRA [SUB-SECTION 5]

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

MEETINGS OF NFRA [SUB-SECTION 10]

The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as prescribed under Rule 3 of the *National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019*.

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

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

The National Financial Reporting Authority shall maintain such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the CAG of India prescribe.

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

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

ANNUAL REPORT ON WORKING OF NFRA [SUB-SECTION 15]

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

Note:

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

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

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

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

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

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

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

Note:

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

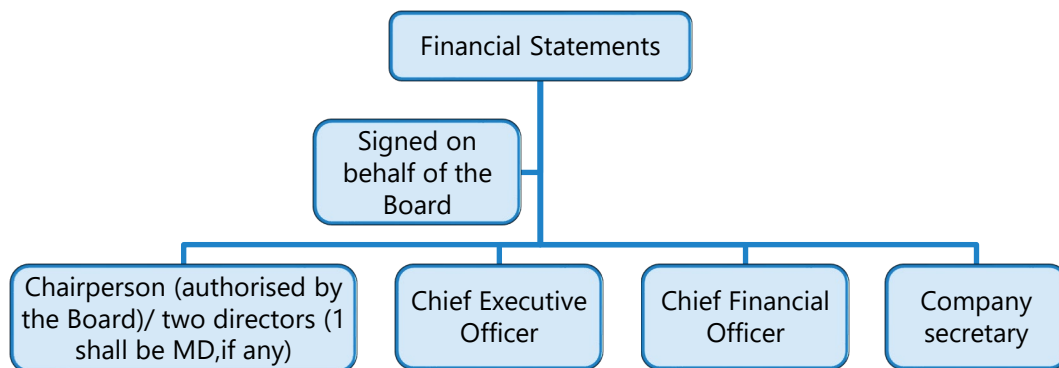
- ❑ Companies (Accounting Standards) Rules, 2021⁶ and
- ❑ Companies (Indian Accounting Standards) Rules, 2015⁷.

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

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

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

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



⁶ Vide notification GSR 432(E) dated 23rd June, 2021 as amended from time to time.

⁷ Vide notification GSR 111(E) dated 16th February, 2015 as amended from time to time.

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

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



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

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

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

- a. Any notes annexed to or forming part of such financial statement:
- b. The auditor's report; and
- c. The Board's report referred to in sub section 3.

Illustration 4

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

Answer

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

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

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

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

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

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

Content of Board's Report

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

- a. The **web address**, if any, where **annual return** referred to in sub-section (3) of section 92 (i.e., *Annual Return*) has been **placed**;
- b. **Number of meetings** of the Board;
- c. **Directors' responsibility statement**;
- ca. Details in respect of **frauds reported by auditors** under sub-section (12) of section 143 (i.e. *Powers and duties of auditors....*), other than those which are reportable to the Central Government;
- d. A **statement on declaration** given by **independent directors** under sub-section (6) of section 149 (i.e., *Company to have board of board of Directors in relation to independent director*);
- e. In case of a company covered under sub-section (1) of section 178 (i.e., *Nomination and Remuneration Committee and Stakeholders Relationship Committee*), company's **policy on directors' appointment and remuneration** including **criteria for determining qualifications, positive attributes, independence** of a director and other matters provided under sub-section (3) of section 178;

Clause (e) shall not apply to the **Government Companies**⁸.

The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the registrar⁹.

- f. Explanations or comments** by the Board on every **qualification, reservation or adverse remark** or **disclaimer** made:
 - i. By the **auditor** in his report; and
 - ii. By the **company secretary** in practice in his secretarial audit report;
- g.** Particulars of **loans, guarantees** or **investments** under section 186;
- h.** Particulars of **contracts or arrangements** with **related parties** referred to in section 188 (1) (i.e., *Related Party Transactions*) in the **e-Form AOC-2**;
- i.** The **state of the company's affairs**;
- j.** The amounts, if any, which it **proposes** to carry to any **reserves**;
- k.** The amount, if any, which it **recommends** should be paid by way of **dividend**;
- l.** **Material changes** and commitments, if any, **affecting the financial position** of the company which have **occurred between the end of the financial year** of the company to which the financial statements relate and the **date of the report**;
- m.** The **conservation of energy, technology absorption, foreign exchange earnings and outgo**, in such manner as may be prescribed;

The Government companies engaged in producing defence equipment is exempted from disclosure under clause m.¹⁰

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

⁸ Exemption granted vide notification number G.S.R. 463(E) dated the 5th June, 2015.

⁹ Vide notification number G.S.R. 582(E) dated 13th June, 2017.

¹⁰ Exemption granted vide Companies (Accounts) Second Amendment Rules, 2015 dated 4th September, 2015.

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

- o. The details about the policy developed and implemented by the company on **corporate social responsibility** initiatives taken during the year;
- p. In case of a listed company and every other public company having such **paid-up share capital of twenty five crore rupees or more** calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which **formal annual evaluation of the performance of the Board, its Committees and of individual directors** has been made;

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

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

- q. Such other matters as prescribed Rule 8 of the *Companies (Accounts) Rules, 2014*, namely:
 - i. The **financial summary** or highlights;
 - ii. The change in the **nature of business**, if any;
 - iii. The details of **directors** or **key managerial personnel** who were **appointed** or have **resigned** during the year;
 - iiia. A statement regarding opinion of the Board with regard to **integrity, expertise** and **experience** (including the proficiency) of the **independent directors** appointed during the year.

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

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

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

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

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

xii. The details of **difference** between amount of the **valuation** done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

xiii. a statement by the company with respect to the compliance of the provisions relating to the Maternity Benefit Act 1961.

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

Students are advised to take note:

1. Where disclosures referred to in sub-section 3 to section 134 have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report. (It is worth noting earlier this benefit rest with specified IFSC public company¹³ and specified IFSC private company¹⁴ only, but w.e.f. 31.7.2018 extended to all)
2. Where the policy referred to in clause (e) or clause (o) of section 134(3) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.
3. **Board's Report** shall be prepared based on the **standalone financial statement** of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

¹³ Vide notification GSR 08(E) dated 4th January, 2017.

¹⁴ Vide notification GSR 09(E) dated 4th January, 2017.

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

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

- a.** The web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- b.** Number of meetings of the Board;
- c.** Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
- d.** Details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
- e.** Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- f.** The state of the company's affairs;
- g.** The financial summary or highlights;
- h.** Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- i.** The details of directors who were appointed or have resigned during the year;
- j.** The details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- k.** The particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

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

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

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

DIRECTORS' RESPONSIBILITY STATEMENT [SUB-SECTION 5]

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

- a. In the preparation of the annual accounts, the **applicable accounting standards had been followed** along with proper explanation relating to material departures
- b. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a **true and fair view** of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- c. The directors had taken **proper and sufficient care** for the maintenance of adequate accounting records in accordance with the provisions of this Act **for safeguarding the assets** of the company and **for preventing and detecting fraud and other irregularities**;
- d. The directors had prepared the annual accounts on a **going concern basis**;
- e. The directors, in the case of a listed company, had laid down **internal financial controls** to be followed by the company and that such internal financial controls are **adequate**, were **operating effectively**; and

The term "internal financial controls" for clause e specified above means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

- f. The directors had devised **proper systems to ensure compliance** with the provisions of all applicable laws and that such systems were **adequate** and **operating effectively**.

Illustration 5

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

Answer

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

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

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

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

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

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

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

CONTRAVENTION [SUB-SECTION 8]

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

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

Illustration 6

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

Answer

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



10. CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]

The corporate (as legal person) use variety of other capitals in blend with economic capital provided by shareholders to make revenue, earn profit, ensure survival and register growth. Hence instead of being responsible only towards fund providers, the corporate is responsible for wide range of stakeholders including the society within which it exists and operate (even to the environment as well, under the concept of triple bottom line). India become torch bearer for rest of world by giving legal mandate to corporate social responsibility by incorporating legal provisions regarding same as section 135 in the Companies Act, 2013 that requires corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities.

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

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

DEFINITIONS

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

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

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

Note:

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

- a. Such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
 - b. Details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.
- ii. Any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level
 - iii. Contribution of any amount directly or indirectly to any political party under section 182 of the Act
 - iv. Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019
 - v. Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
 - vi. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.

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

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

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

CSR Policy means a statement containing;

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

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

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

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

International Organisation means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply.

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

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

- i. Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

- ii. Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

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

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

Ongoing Project means:

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



Example 2

Modern Furniture Limited (MFL) undertake a CSR project in light of its CSR policy; of placing and installing benches as public parks and gardens in supervision of district administration. Initially it was estimated that project will be completed in a span of 8-10 months; but due to renovation of half a dozen of parks the task of installing benches there postponed till the construction is completed (which was expected to take further couple of quarters). Board of MFL considering the circumstances declare the project an ongoing project, extend the duration beyond one year; and also provided reasonable justification. Whether board of MFL correctly re-categories the project as ongoing project or not?

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

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

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

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

Criteria that mandate constitution of CSR committee:

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

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

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

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

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

Illustration 7

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

Answer

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

Exception

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

Composition of CSR committee

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

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

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

(d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

Note:

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

Summary of the constitution of CSR Committee in different scenarios

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

DUTIES OF CSR COMMITTEE [SUB-SECTION 3 READ WITH RULE 5(2)]

The Corporate Social Responsibility Committee shall:

- a. Formulate and recommend to the Board, a **Corporate Social Responsibility Policy** which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
- b. Recommend the **amount of expenditure** to be incurred on the activities referred to in above clause; and

- c. **Monitor** the Corporate Social Responsibility Policy of the company from time to time.

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

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

Note:

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

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

The Board of every company referred to in sub-section (1) i.e., where CSR committee required to be constituted, shall,

- a. After taking into account the recommendations made by the Corporate Social Responsibility Committee, **approve the Corporate Social Responsibility Policy** for the company and
- b. Disclose contents of such Policy in its report and
- c. Also place it (CSR Policy) along with composition of the CSR committee and project approved by board on the company's website; and
- d. Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

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

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

Company shall give **preference to the local area and areas around it** where it operates, for spending the amount earmarked for Corporate Social Responsibility activities

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

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

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

Illustration 8

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

Options

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

Answer – c

Reason – Section 135(5).

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

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

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

And

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

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

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

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

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

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

- a. Specify the reasons for not spending the amount in board report prepared under section 134(3)(o), and
- b. Where the unspent amount relates to **project/s other than ongoing project**, then such unspent amount shall be transferred to a **Fund specified in Schedule VII**, within a period of **six months of the expiry of the financial year**.

Or

Where any amount remaining unspent pursuant to any **ongoing project** (undertaken by a company in pursuance of its CSR Policy), then such unspent

amount shall be transferred to **Unspent Corporate Social Responsibility Account** by the company within a period of **thirty days from the end of the financial year**.

Notes

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

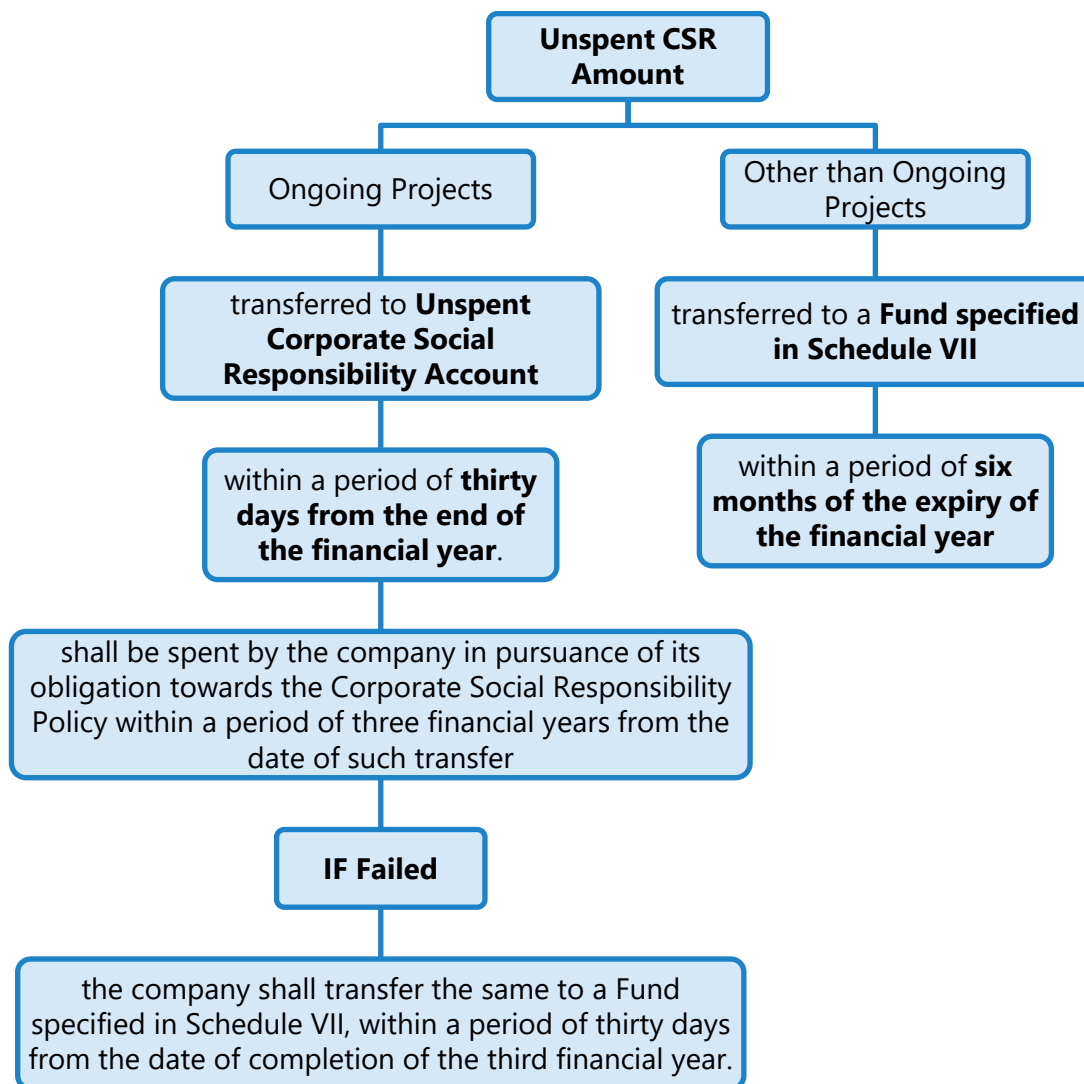
CSR expenditure for creation or acquisition of a capital Asset [Rule 7(4) of CSR Rules)

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

- a. A company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2); or
- b. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- c. A public authority.

Note

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



CSR IMPLEMENTATION [RULE 4 OF THE CSR RULES]

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

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

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

Notes:

1. CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as CSR expenditure.¹⁵

¹⁵ MCA vide General Circular No. 21/2014 dated 18th June 2014

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

Registration of undertake CSR activity [Sub-rule 2]

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

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

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

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

International Organisations may be engaged [Sub-rule 3]

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

Note:

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

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

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

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

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

Board shall monitor ongoing projects [Sub-rule 6]

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

Illustration 9

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

Answer

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

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

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

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

Note:

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

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

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

Impact Assessment [Sub-Rule 3]

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

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

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

Penal Provisions [Sub-section 7]

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

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

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

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

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

Activities specified under the Schedule VII

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

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

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

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

Students are advised to take note:

The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities¹⁶.

Practical Insight**Clarifications with respect to CSR on COVID**

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

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

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

¹⁶ MCA vide General Circular No. 21/2014 dated 18th June 2014

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

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

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

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

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

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

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

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

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

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

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

MCA Office Memorandum Dated 28th March 2021

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

Practical Insight

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

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

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

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

In case of specified IFSC public company¹⁷ and specified IFSC private company¹⁸ the section 135 shall not apply for period of **5 years** from the commencement of business of a specified IFSC public company and specified IFSC private company.

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

The COVID management to some extent highlighted the pitfalls in public infrastructure facilities, whereas CSR could play a drastic role in improving such facilities, provided accountability is tagged with a full-proof mechanism, hence need to consolidate the CSR provisions was felt and secondly, the CSR numbers (tabled below)¹⁹ didn't show convincing and steady growth.

¹⁷ Vide notification GSR 08(E) dated 4th January, 2017

¹⁸ Vide notification GSR 09(E) dated 4th January, 2017

¹⁹ Only for information of the students.

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



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

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

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

What required to be circulated?

A copy of financial statements including

- a. Consolidated financial statement, if any,
- b. Auditor's report and
- c. Every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting.

Proviso to sub-section 2 provides that every company having a subsidiary or subsidiaries shall **provide a copy of separate audited or unaudited financial statements**, as the case may be, as prepared in respect of each of its subsidiary to any member of the company **who asks for it**.

To whom copies shall be sent?

- a. To every member of the company,
- b. To every trustee for the debenture-holder of any debentures issued by the company, and

- c. To all persons other than such member or trustee, being the person so entitled.

When (timing) to send?

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

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

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

Or

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

Students are advised to take note:

In case of **section 8 company** the words "twenty-one days", shall be substituted by the words "**fourteen days**".²⁰

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

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

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

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

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

²⁰ Vide Notification No. GSR 466 (E), dated 5th June, 2015

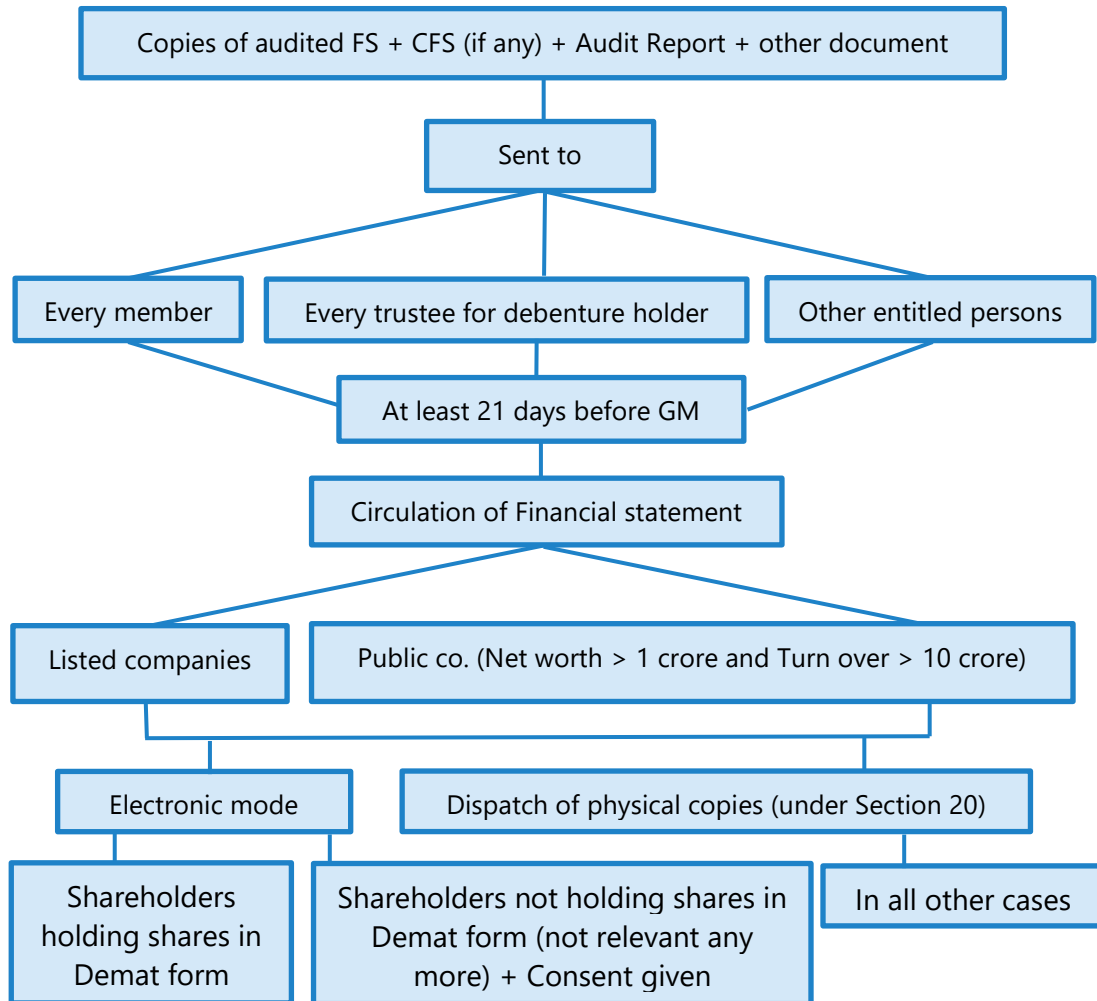
Shareholding is in dematerialized format	Whose email are registered with Depository for communication purposes
Shareholding is in Otherwise than by dematerialized format	But they have positively consented in writing for receiving by electronic mode (this may not be relevant considering that shareholding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

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

Statement containing Salient Features may be circulated by Listed Company

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

- a. If the copies of the documents are made **available for inspection** at its **registered office** during working hours for a period of **twenty-one days before** the date of the meeting and
- b. A statement containing the **salient features** of such documents in the Form AOC-3 (Form AOC-3A in case of companies which are required to comply with *Companies (Indian Accounting Standards) Rules, 2015*) or copies of the documents, as the company may deem fit, is **sent to every member of the company and to every trustee** for the holders of any debentures issued by the company not less than **twenty-one days before** the date of the meeting
- c. **Unless** the shareholders ask for **full** financial statements.

Summary**Hosting on website**

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

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

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

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

Illustration 10

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

Answer

No, RELM Industries Limited has not complied with the provisions of section 136 because RELM Industries Limited is also required to place unaudited financial

statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RELM Industries Limited in this case) may **place such unaudited financial statement** on its website **and** where such financial statement is in a language other than English, **a translated copy of the financial statement in English** shall also be placed on the website.

In case of Nidhi company²¹

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

INSPECTION [SUB-SECTION 2]

A company shall also allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

CONTRAVENTION [SUB-SECTION 3]

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

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

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

²¹ Vide Notification No. GSR 465 (E), dated 5th June, 2015

1. A company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.
2. The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.



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

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

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

What is required to be filed with registrar?

A copy of financial statements including

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

By when required to be filed?

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

One Person Company (not required to conduct AGM) shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.

Mode, Manner and Form of filing

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

- a. **Rule 12(1)** of the **Companies (Accounts) Rules, 2014** states every company shall file the financial statement with Registrar together with Form AOC-4 and the consolidated financial statement, if any with Form AOC-4. CFS.
- b. Further **rule 12(1A)** states every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).
- c. **Rule 12 (1B)** requires that every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.
- d. **Rule 12 (1C) – Every company, along with the relevant e-Form No. AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 NBFC (Ind AS) or AOC-4 CFS NBFC (Ind AS) and the respective attachments in portable document format as required, shall also file e-Form Extract of Board Report, Extract of Auditor's Report (Standalone) and Extract of Auditor's Report (Consolidated), as the case may be:**

Provided that a copy of signed financial statements duly authenticated as per section 134 of the Act (including Board's report, auditors' report and other documents) in portable document format shall also be attached with XBRL Forms.

- e. **Rule 3(1)** of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 states that, the following class of companies shall file their financial statements & other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I
 - (i) companies listed with stock exchanges in India and their Indian subsidiaries;
 - (ii) Companies having paid up capital of five crore rupees or above;

- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) All companies which are required to prepare their financial statements in accordance with *Companies (Indian Accounting Standards) Rules, 2015*

Rule 3(1A) of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 – The companies which have filed their financial statements under sub-rule (1), shall also attach a copy of signed financial statements duly authenticated as specified in section 134 of the Act (including Board's report, auditors' report and other documents) in PDF format in eForm AOC-4 XBRL.

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

Example 3

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

Summary of Form and Manner of Filing

Category	Standalone	Consolidated Financial Statement (if any)
1. Companies listed with stock exchanges in India and their Indian subsidiaries; 2. Companies having paid up capital of five crore rupees or above; 3. Companies having turnover of one hundred crore rupees or above; 4. All companies which are required to prepare their financial statements in accordance with the <i>Companies (Indian Accounting Standards) Rules, 2015</i> Note - Non-banking financial companies, Housing finance companies and Companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i> i.e., in XBRL format	Shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format in e-form AOC-4 XBRL Using the Taxonomy provided in Annexure-II of the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i>, if preparing their financial statements as per the <i>Companies (Accounting Standards) Rules, 2021</i> Using the Taxonomy provided in Annexure-II A of the <i>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015</i>, if preparing their financial statements as per <i>Companies (Indian Accounting Standards) Rules, 2015</i>	
Non-Banking Financial Company that is required to comply with Indian Accounting Standards	AOC-4 NBFC (Ind AS)	AOC-4 CFS NBFC (Ind AS)
Every Other Company not covered above	Form AOC-4	Form AOC-4 CFS
Every company covered under the provisions of sub-section (1) to section 135 i.e., Corporate Social Responsibility (CSR)	Shall furnish a report on CSR in Form CSR-2 as an addendum to the applicable form (out of those stated above, as the case may be).	

If the financial statements are not adopted:

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

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

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

Company having subsidiaries:

Fourth proviso to Section 137(1) provides a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Fifth proviso to Section 137(1) provides in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect.

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

The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.²²

²² vide General Circular no. 11/2015 dated 21 July 2015

Illustration 11

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

Answer

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

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

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

ANNUAL GENERAL MEETING NOT HELD [SUB-SECTION 2]

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

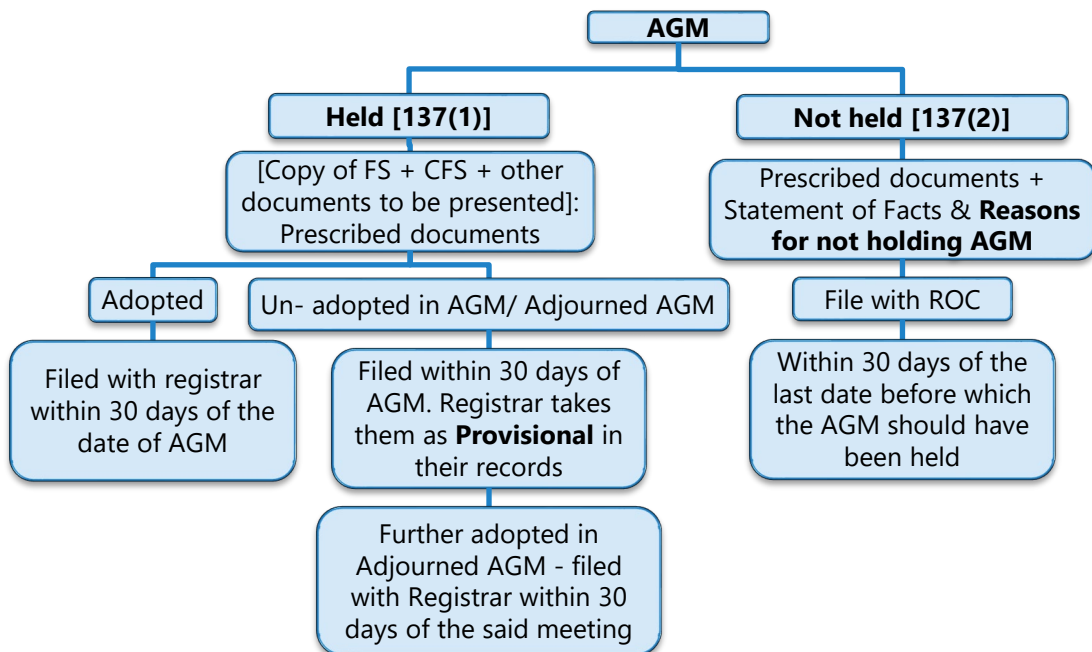
Illustration 12

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

Answer

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

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

Summary of Sub-section 1 and 2 to section 137**Illustration 13 (In continuation to above illustration)**

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

Answer

Since the AGM has been held in time on 27 September 2024, the un-adopted financial statements along with the required documents under sub-section (1) of section 137

shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

PENALTY [SUB-SECTION 3]

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

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

The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of **ten thousand rupees**, and in case of continuing failure, with further penalty of **one hundred rupees for each day** after the first during which such failure continues, subject to a **maximum of fifty thousand rupees**.

Summary of penalty provisions

Person liable	Penalty
Company	Fine of ₹ 10,000 and In case of continuing failure, with a further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakh .
MD and CFO of the company, if any; <i>In their absence</i> Any other director who is charged by the Board with the responsibility; <i>In its absence</i> All the directors of the company.	Fine of ₹ 10,000 and In case of continuing failure, with a further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 50,000 .



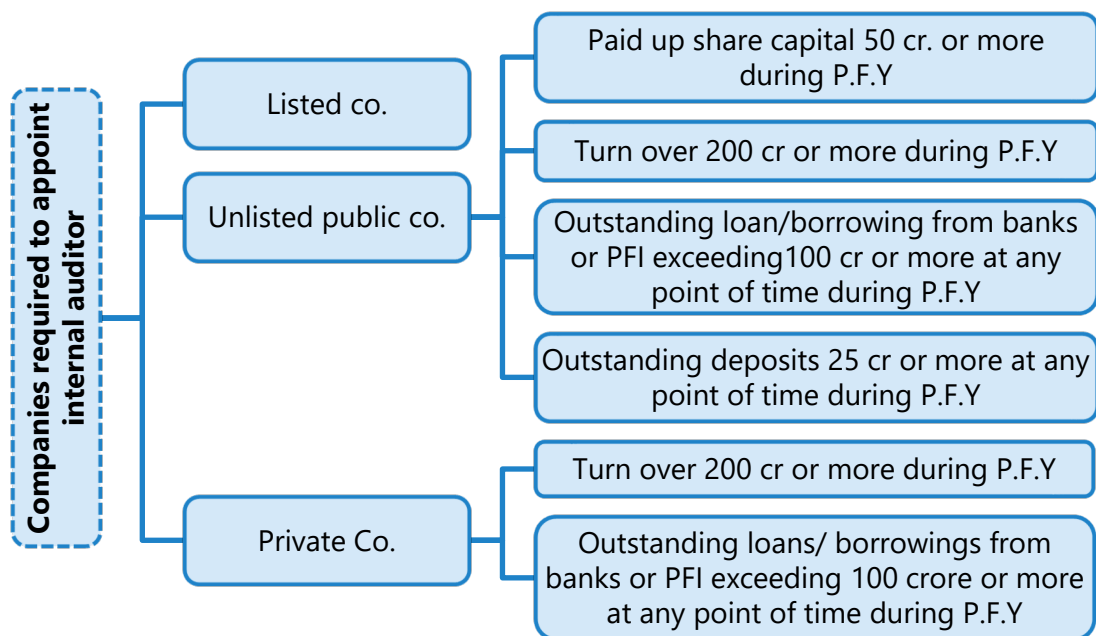
13. INTERNAL AUDIT [SECTION 138]

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

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

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

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



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

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

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

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

Students are advised to take note:

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

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

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

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

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

In case of a specified IFSC public company²³ and specified IFSC private company²⁴ the section 138 shall apply if the articles of the company provide for the same.

Illustration 14

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

Answer

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

SUMMARY

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

²³ Vide notification GSR 08(E) dated 4th January, 2017

²⁴ Vide notification GSR 09(E) dated 4th January, 2017

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

- The financial statement shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III. Provided that the items contained in such financial statements shall be in accordance with the accounting standards.
- A company shall not re-open its books of account and not recast its financial statement, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board of India, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect.
- If it appears to the directors of a company that the financial statement of the company; or the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.
- National Financial Reporting Authority is an independent regulator set up to oversee the auditing profession and to provide for the matters pertaining to Accounting and Auditing Standards
- The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the

Company Secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon. The auditors' report shall be attached to every financial statement. A report by its Board of Directors shall be attached to statements laid before a company in general meeting.

- Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The Board of every such company, shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial year, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- A copy of the financial statement, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debenture issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.
- A copy of the financial statement, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed.
- Every listed company; every unlisted public company (having paid up share capital of fifty crore rupees or more during the preceding financial year; or turnover of two hundred crore rupees or more during the preceding financial year; or Outstanding loans or borrowings from banks or public financial

institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year); and every private company (having turnover of two hundred crore rupees or more during the preceding financial year; or outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year) shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

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

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

Descriptive Questions

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

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

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

ANSWERS

Answer to MCQ based Questions

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

Answer to Descriptive Questions

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

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

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

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

Person Company, only by one director, for submission to the auditor for his report thereon.

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

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

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

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

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

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

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

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

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

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

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

6. According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such un-adopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

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

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

7. As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax

authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that:

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

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

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

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

AUDIT AND AUDITORS



LEARNING OUTCOMES

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

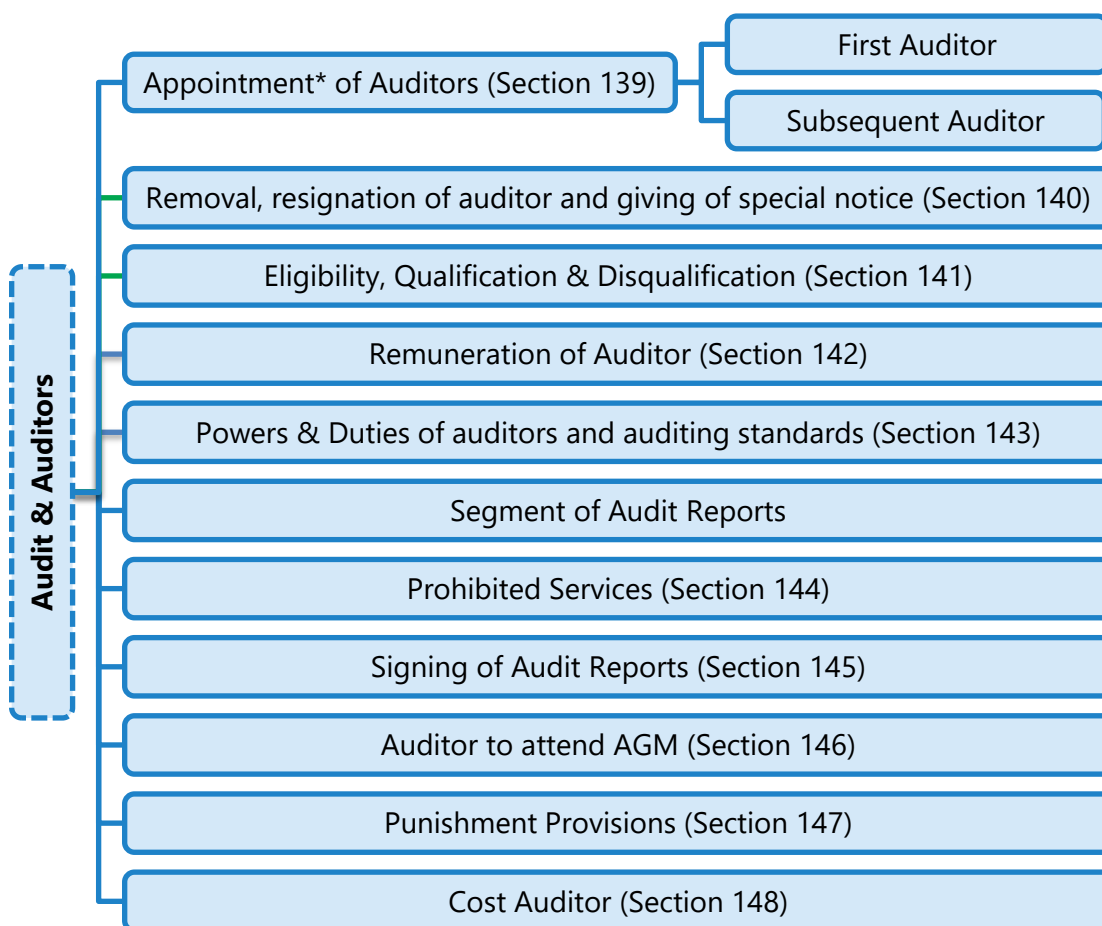
- ♦ Comprehend the procedure for appointment of auditors, their removal, resignation, eligibility, qualifications, disqualifications and remuneration.
- ♦ Identify the powers and duties of auditors.
- ♦ Explain about auditing services and certain services which an auditor cannot render.

CHAPTER OVERVIEW



This chapter explains the provisions of Chapter X of the Companies Act, 2013 (hereinafter also referred to as "the Act" or "this Act"), consisting of sections 139 to 148 dealing with the Audit and Auditors. The provisions contained in chapter X of the Act are supplemented by the *Companies (Audit and Auditors) Rules, 2014*.

The relevant aspects (and arrangement of sections) to be covered in this book chapter are presented below:



*** Appointment includes re-appointment**



1. INTRODUCTION

Chapter X

Consists of sections 139 to 148 as well as the Companies (Audit and Auditors) Rules, 2014.

Large business corporations are managed by the directors who represent the members who are the real owners of the company through board. In the absence of any check, the directors may mismanage the finances of the organisation. Thus, members appoint auditor/auditors to look into the true and fair view of the financial affairs of the company. Large business corporations are managed by the directors, who act as fiduciaries (a person who prudently takes care of finances or other assets for another person) to the members (the real owners). This is the reason that the board of directors is responsible for the preparation of the financial statement and laying it out at the general meeting of members.

Despite assuming a fiduciary role, in the absence of proper checks and balances, the directors may indulge in mismanagement of the finances and other assets of the corporation. Hence, financial statements prepared and laid down by the board need to be audited by an independent auditor.

Thus, members appoint auditors to have an independent professional opinion on the financial affairs of the company, who examine such financial statements to frame opinion to report; whether they reflect a true and fair view of financial position and performance or not.



2. APPOINTMENT¹ OF AUDITORS [SECTION 139]

APPOINTMENT OF AUDITOR [SUB-SECTION 1 READ WITH RULE 3 AND 4 OF THE COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

Who can be appointed as Auditor and when?

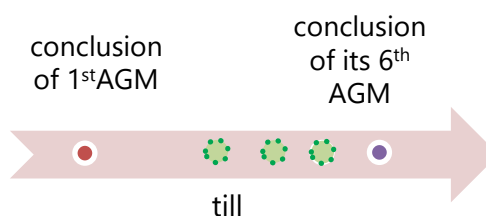
Every company shall appoint **an individual** or **a firm** ("firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008) as an auditor of the company at the first Annual General Meeting (AGM).



¹ Appointment includes re-appointment

Tenor of appointment as Auditor

The auditor shall hold office from the conclusion of 1stAGM (or the AGM in which he is appointed) till the conclusion of its 6th AGM (and thereafter till the conclusion of every sixth AGM).



Example 1: Rashail Tech Labs Private Limited was incorporated during the financial year 2023-24. First AGM of the company held on 30.09.2024. The company appointed M/s. Rams & Associates, Chartered Accountant firm for the period of 5 Years as a subsequent statutory auditor.

Manner and procedure of selection and appointment of auditors [Rule 3 of the Companies (Audit and Auditors) Rules, 2014]

The manner and procedure of selection of auditors by the members of the company at AGM has been prescribed under the Rule 3 of the *Companies (Audit and Auditors) Rules, 2014*; tabled and stated below.

Categories of Companies	Competent authority	Responsibility of the competent authority
A company which is required to constitute an Audit Committee under section 177	Audit Committee*	The competent authority shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and such qualifications and experience are commensurate with the size and requirements of the company. It shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India (ICAI) or any competent authority or any Court.
A Company which is not required to constitute an Audit Committee under section 177	Board of Directors	It may call for such other information from the proposed auditor as it may deem fit.

* **Where competent authority is audit committee**, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

If the **Board agrees** with the recommendation of the Audit Committee - It shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.

If the **Board disagrees** with the recommendation of the Audit Committee - It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

Example 2: Audit Committee recommended KPM & Associates, Chartered Accountants firm for appointment as statutory auditor to the board of Surya Solar Limited. However, board of the company disagreed with the recommendation of the audit committee. In such condition, board shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the AGM.

Note:

Companies that require to constitute an audit committee

Section 177² of the Act, read with *Companies (Meetings of Board and its Powers) Rules, 2014* provides Audit Committee shall be constituted by Board of directors in case of:

- i. Every **listed public companies** and
- ii. Those **public companies** which having:
 - a. **Paid up capital of ten crore rupees or more;** or
 - b. **Turnover of one hundred crore rupees or more;** or

² Not a part of syllabus at Intermediate level, but necessary to build understanding of the students.

- c. Aggregate, **outstanding loans or borrowings or debentures or deposits** exceeding **fifty crore rupees** or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purposes of this rule.

It is also worth noting that where a company ceases to fulfil any of three conditions laid down above for three consecutive years, it shall not be required to comply with the provisions pertaining to audit committee until such time as it meets any of such conditions.

Consent of auditors (proposed/selected auditor) for appointment, certificate from such auditor and notice to Registrar [Sub-section 1 read with rule 4 of the Companies (Audit and Auditors) Rules, 2014]

Written consent

Before the appointment is made, the **written consent** of the auditor to such appointment shall be obtained.

Certificate

A **certificate** shall be also obtained from the auditor stating that:

- a. The individual or the firm (as the case may be to be, appointed as auditor) is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- b. The proposed appointment is as per the term provided under the Act;
- c. The proposed appointment is within the limits laid down by or under the authority of the Act;
- d. The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Note

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 [i.e. eligibility, qualification and disqualification of Auditor which will be discussed later] of this Act.

Notice to Registrar

The company shall inform the concerned auditor of his or its appointment, and also file a notice in the Form ADT-1 of such appointment with the Registrar within **15 days** of the meeting in which the auditor is appointed.

Students are advised to take note**Intimation to NFRA under the National Financial Reporting Authority Rules, 2018 (here-in-after referred as to NFRA Rules)**

As per Rule 3(2) of NFRA Rules, every existing body corporate other than a company governed by NFRA rules, shall inform the National Financial Reporting Authority (NFRA) within 30 days of the commencement of the NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the NFRA rules.

According to Rule 3(3) of NFRA Rules, every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate, provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

TERM OF AUDITOR [SUB-SECTION 2 READ WITH RULE 5 OF COMPANIES (AUDIT & AUDITORS) RULES, 2014]**Maximum terms and length thereof in case of individual and firm**

Section 139(2) provides that:

- i. Listed companies and
- ii. All companies (excluding one person companies & small companies), which are
 - a. Unlisted public companies and having paid up share capital of rupees ten crore or more;
 - b. Private limited companies and having paid up share capital of rupees fifty crore or more;
 - c. Having public borrowings from financial institutions, banks or public deposits of rupees fifty crore or more.

Shall **not appoint or re-appoint**

- i. An individual as auditor for more than **one term of five consecutive years**;
- ii. An audit firm as auditor for more than **two terms of five consecutive years**.

Students are advised to take note:

Nothing contained in sub-section 2, shall prejudice the right of the:

- a. Company to remove an auditor or
- b. Auditor to resign from such office of the company.

Example 3: XYZ Ltd. which is a listed company appoints individual Mr. Raghav as an auditor in its AGM dated 29th September, 2022. Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2027. Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd at 6th AGM (i.e. 2027).

Example 4: XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016. M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021. Now as per sub-section (2), M/s Raghav & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year 2026. It shall not be re-appointed as Audit firm in XYZ Ltd at 11th AGM (i.e. 2026).

Cooling Period (to ensure re-instatement of independence)

An **individual auditor** who has completed his term (i.e. one term of five consecutive years) shall **not be eligible for re-appointment** as auditor in the same company for **five years** from the completion of his term;

An **audit firm** which has completed its terms (i.e. two terms of five consecutive years) shall **not be eligible for re-appointment** as auditor in the same company for **five years** from the completion of second term.

Summary

Auditor	Appointed/Reappointed for	Not eligible for re-appointment
Individual	One term of five consecutive years (1 st AGM to 6 th AGM)	For five years from the completion of his term (till 11 th AGM)
Firm	Two terms of five consecutive years (1 st AGM to 11 th AGM)	For five years from the completion of its second term (till 16 th AGM)

Example 5: XYZ Ltd. which is a listed company appoints individual Mr. Raghav as an auditor in its AGM dated 29th September, 2016. Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2021. Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor in XYZ Ltd. upto year 2026.

Example 6: XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016. M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021. Now as per sub-section (2), M/s Raghav & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year 2026. It shall not be re-appointed as Audit firm in XYZ Ltd. for further term of five years after year 2026 to year 2031.

Note: On the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a company immediately preceding the financial year.

It means, the audit firm with **common partner/s** shall **not be appointed** as succeeding auditor of same company after two terms of five consecutive years.

Example 7: M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods of 5 years i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam is the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto

year 2031. After cooling period of 5 years, Golden Smith Ltd. may appoint M/s Kukreja & Associates or M/s. Krishna & Associates as its auditors.

Transitional period

Every company, existing on or before the commencement of this Act which is required to comply with the provisions as mentioned in above mentioned points (a) to (d) (i.e. provisions of this sub-section), shall comply with those provisions within a period which shall not be later than the date of the first AGM of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act.

ROTATION OF AUDITOR [SUB-SECTION 3 AND 4 READ WITH RULE 6 OF COMPANIES (AUDIT & AUDITORS) RULES, 2014]

Power to Members [Sub-section 3]

Members of a company may resolve to provide that:

- a. In the audit firm appointed by them, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- b. The audit shall be conducted by more than one auditor.

Manner of rotation of auditors by the companies on expiry of their term [Sub-section 4 read with Rule 6 (2) and (3)]

The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors. The manner of rotation of auditors by the companies on expiry of their term as provided under Rule 6 of the *Companies (Audit and Auditors) Rules, 2014*, as stated below:

- a. Where a company is **required to constitute an Audit Committee**
 - i. Such Audit Committee shall recommend to the Board, the **name of an individual auditor or of an audit firm** who may **replace the incumbent auditor** on expiry of the term of such incumbent
 - ii. The **Board shall consider the recommendation** of such committee, and make its recommendation for appointment of the next auditor by the members in annual general meeting.

- b. In **other cases**, the **Board shall itself consider the matter of rotation of auditors** and make its recommendation for appointment of the next auditor by the members in annual general meeting.

Note

Most of provisions of Rule 6 are either complementary, or in confirmation/ conformance to Rule 3.

In case where Audit committee is not required to be constituted under section 177, but constituted by the company voluntarily, then such audit committee shall recommend to the Board, the **name of an individual auditor or of an audit firm** who may **replace the incumbent auditor** on expiry of the term of such incumbent; but in such cases **board may or may not consider the recommendation** of such committee.

Manner of rotation in case of auditors appointed prior to commencement of this Act and continuing after such commencement [Rule 6(3)]

For the purpose of the rotation of auditors in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.

Example 8: Dass & Dass Co, a Chartered Accountants firm was appointed as auditor of Modern Furniture since 28th September 2012. The firm can continue to assume the office of auditor till AGM conducted for financial year 2021-22.

Illustration explaining rotation in case of individual auditor

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [till the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more

4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Here,

- a. Individual auditor shall include other individuals or firms whose name or trademark or brand is used by such individual, if any.
- b. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Illustration explaining rotation in case of audit firm

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [till the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Here,

- a. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
- b. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.

Manner of rotation in case of same network and common partner [Rule 6(3)]

The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the **same network** of audit firms. The term **same network** includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

For the purpose of **rotation of auditors**, a break (**cooling period**) in the term for a continuous period of five years shall be considered as **fulfilling the requirement of rotation**. But if a partner (**common partner**), who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm **shall also be ineligible to be appointed** for a period of five years i.e. cooling period.

Manner of rotation in case of joint auditors [Rule 6(4)]

Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the **company may follow the rotation of auditors** in such a manner that **both or all of the joint auditors**, as the case may be, **do not complete their term in the same year**.

Illustration 1

Modern Furniture Limited (MFL), despite not mandated by section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee.

Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

Answer – Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under section 177, but constituted by company, then also such audit

committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.

Hence, act of audit committee and board at MFL is legally valid.

FIRST AUDITORS [SUB-SECTION 6]

The **first auditor** of a company, **other than a Government Company**, shall be:

- a. Appointed by the **Board of directors**
- b. Within **30 days of the date of registration** of the company and
- c. The auditor so appointed shall **hold office until the conclusion of the first AGM**.

Illustration 2

Unicorn Steel Private Limited is incorporated as on 02.06.2024, board of directors of the company held board meeting as on 15.06.2024 to appoint Jain Ajmera & Associates as a first auditor of the company for a term of 5 years. As per section 139(6) of the Companies Act, 2013, the board shall appoint first director within 30 days from the date of registration of the company. Evaluate the legal validity:

Options

- a. Valid
- b. Invalid
- c. Valid after approval of shareholder in General Meeting
- d. Valid only after approval of Central Government

Answer - b

Reason – As per section 139(6), the first auditor so appoint by Board of Director shall hold office until the conclusion of the first AGM.

If the **Board fails to exercise its powers** i.e. appointment of first auditor, it shall

- a. Inform the members of the company and
- b. The company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and
- c. Such auditor shall hold office till the conclusion of the first AGM.

Illustration 3

Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

Answer - Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Hence in the instant case, the appointment of Mr. Ganpati by the Managing Director himself is invalid due to violation of Section 139(6) of the Companies Act, 2013.

AUDITOR OF GOVERNMENT COMPANY [SUB-SECTION 5 & 7]**First Auditor [Sub-section 7]**

The first auditor is to be appointed by **Comptroller and Auditor General** of India (CAG) **within 60 days** from the **date of registration** of the company, who shall hold office **till the conclusion of the first annual general meeting**; in case of:

- i. A Government company or
- ii. Any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Note

If Comptroller and Auditor General of India fails in this respect, the Board is to appoint the auditor within next 30 days.

Further if the Board also fails to do so, it has to inform the members of the company who have to make the appointment within 60 days at an extraordinary general meeting (EGM).

Mind it, even appointed by Board or by members at EGM, the first auditor shall hold office till the conclusion of the first annual general meeting

Subsequent Auditor [Sub-section 5]

In respect of **financial year**, the **Comptroller and Auditor General** of India shall appoint a duly qualified auditor **within 180 days** from the **commencement of the financial year**, who **shall hold office till conclusion of annual general meeting**; in case of:

- a. A Government company or
- b. Any other company owned or controlled, directly or indirectly, by the Central

Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

FILLING UP CASUAL VACANCY [SUB-SECTION 8]

Other than company whose accounts are subject to audit by an auditor appointed by the CAG

The **Board may** fill any casual vacancy in the office of an auditor **within 30 days**. Any auditor appointed in a casual vacancy shall **hold office until** the conclusion of the **next annual general meeting**.

Note

Where such vacancy is caused by the **resignation** of an auditor, such appointment shall also be **approved by the company at a general meeting** convened **within three months** of the recommendation of the Board.

Company whose accounts are subject to audit by an auditor appointed by the CAG

Casual vacancy of an auditor shall be filled by the **Comptroller and Auditor General** of India within **30 days**.

Further, in case the **CAG does not fill the vacancy** within the said period, the **Board of Directors** shall fill the vacancy within **next 30 days**.

Example 9: Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2023. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2023 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor.

In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

RE-APPOINTMENT OF RETIRING AUDITOR [SUB-SECTION 9 AND 10]

As per sub-section 9, a retiring auditor may be re-appointed at an AGM if:

- a. He is not disqualified for re-appointment;
- b. He has not given a notice in writing to the company of his unwillingness to be re-appointed; and
- c. A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

Further as per sub-section 10, where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

Note

Even in case of continuation of auditor due to deeming provision of sub-section 10, the conditions specified under sub-section 9 shall be checked.

AUDIT COMMITTEE'S RECOMMENDATION [SUB-SECTION 11]

Sub-section 11 prescribes the confirming provision, that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

**3. REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE [SECTION 140]**

Section 140 of the Companies Act, 2013 provides for removal, resignation of auditor and giving of special notice. According to this section:

REMOVAL OF AUDITOR BEFORE HIS TERM [SUB-SECTION 1 READ WITH RULE 7 OF THE COMPANIES (AUDIT & AUDITORS) RULES, 2014]**Manner and Procedure**

The auditor appointed under section 139 may be removed from his office **before the expiry of his term** only by—

- a. A **special resolution** of the company³ and
- b. After obtaining the **previous approval** of the Central Government (powers are delegated to **Regional Director**)⁴ by making an application in Form ADT-2 that shall be accompanied with the prescribed fees as provided for this purpose under *the Companies (Registration Offices and Fees) Rules, 2014*.

Note

The application shall be made to the Central Government within 30 days of the resolution passed by the Board.

The Company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

Example 10: Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as an auditor in his place. The first auditor appointed by the Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor in this case is invalid. The company contravened the provision of the Act.

In case of a **Specified IFSC public company**⁵ and **Specified IFSC private company**⁶, where, **within a period of sixty days** from the date of submission of the application to the Central Government under this sub-section, **no decision is communicated by the Central Government to the company**, it would be **deemed that the Central Government has approved** the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.

³ **Basant Ram & Sons v Union of India**, (2002) 110 Comp Gas 38 (Del), after approval of the Central Government, general body approval is necessary to make the removal effective.

⁴ Vide notification S.O. 4090(E) dated 19th December 2016 (in supersession to notification S.O. 1352(E) dated 21st May 2014)

⁵ Inserted vide Exemption Notification to specified IFSC Public Companies, GSR 08 (E) dated 04.01.2017

⁶ Inserted vide Exemption Notification to specified IFSC Private Companies, GSR 09 (E) dated 04.01.2017

Giving opportunity of being heard (*Audi Alteram Partem*)

Before taking any action for removal of auditor before the expiry of his term, the auditor concerned shall be given a reasonable opportunity of being heard.

The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard to respond to the charge, evidence or action against them.

Illustration 4

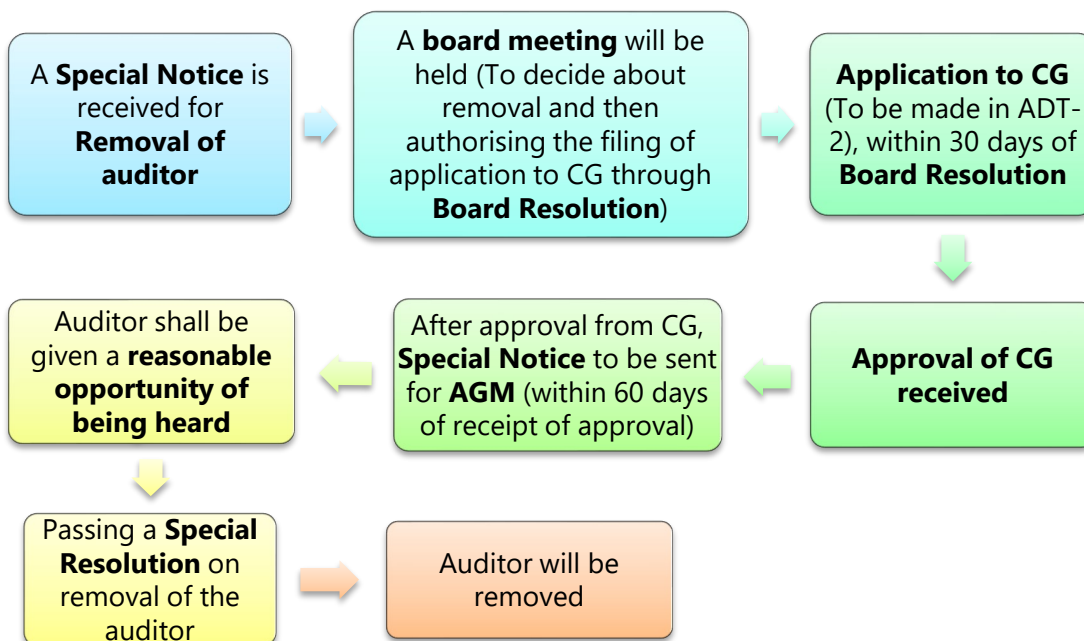
Special Resolution to remove auditor at general meeting shall be passed within _____, form the approval from central government.

- a. 30 days
- b. 1 month
- c. 60 days
- d. 3 months

Answer - c

Reason – Rule 7(3) of the Companies (Audit & Auditors) Rules, 2014 that states the company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Summary of steps for removal of auditor



RESIGNATION BY AUDITOR [SUB-SECTION 2 & 3 READ WITH RULE 8 OF COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

File a statement [Sub-section 2 read with rule 8]

If the Auditor has resigned from the company, he shall file a statement in the form ADT-3 with the company and the Registrar within a period of 30 days from the date of such resignation.

The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.

Statement to CAG in case of Government Company [Sub-section 2]

The auditor shall file such statement with the Comptroller and Auditor-General of India (CAG) along with the company and the Registrar indicating the reasons and other facts as may be relevant with regard to his resignation, in case if he is auditor of:

- i. A Government company or
- ii. Any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Summary

Particulars	In case of Government Co.	In other Cases
Form of statement	ADT-3	ADT-3
Time Period for filling	Within 30 days of resignation	Within 30 days of resignation
Statement filled with	Company, Registrar & CAG	Company and Registrar

Penalty for contravention [Sub-section 3]

If the auditor does not comply with aforesaid provision of filling statement then;

- a. He or it shall be liable to a penalty of ₹ 50,000 **or** an amount equal to the remuneration of the auditor, **whichever is less,**
- and**
- b. In case of continuing failure, with a **further penalty** of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 2 lakh.

APPOINTING AUDITOR OTHER THAN THE RETIRING AUDITOR [SUB-SECTION 4]

Special notice for resolution

If the retiring auditor has not completed a consecutive tenure of 5 years (or 10 years in case of firm, as the case may be), **special notice shall be required** for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

Copy of special notice to retiring auditor

On receipt of notice of such a resolution, the company **shall** forthwith send a copy thereof to the retiring auditor.

Representation of auditor

Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,

- a. In any **notice** of the resolution given to members of the company, **state the fact of the representation** having been made; and
- b. **Send a copy** of the representation **to every member** of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

If a copy of the representation is not sent to members

If a copy of representation is not sent to member as aforesaid,

- a. Either because it was received too late or of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be **read out at the meeting**.
- b. A copy of such representation shall be **filed with the Registrar**.

Second proviso to section 140(4) read with Rule 78 of *the National Company Law Tribunal Rules, 2016*, provides, if the Tribunal i.e. NCLT is satisfied:

- a. On an application in Form No. NCLT. 1 may be filed by the director on behalf of the company or the aggrieved auditor to the Tribunal
- b. That the **rights** conferred by the provisions of section 140 are **being abused** by the auditor,

- c. Then, the **copy of the representation need not be sent** and the representation need **not be read out** at the meeting.

AUDITOR ACTS IN A FRAUDULENT MANNER OR ABETTED OR COLLUDED IN ANY FRAUD [SUB-SECTION 5]

Tribunal may order the company to change its auditor/s.

Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the **Tribunal** (i.e. NCLT) either on

- a. Its own (*Suo-moto*); or
- b. An application (in Form No. NCLT 9) made to it by the **Central Government**; or
- c. An application (in Form No. NCLT 9) made to it by **any person concerned**,

If it is satisfied that the **auditor** of a company has, whether **directly or indirectly, acted in a fraudulent manner** or **abetted** or **colluded in any fraud** by, or in relation to, the company or its directors or officers, it may, by order, direct the company to **change its auditors**.

Rule 78(3) of the National Company Law Tribunal Rules, 2016 provides exactly similar provision to what is stated as first proviso to Sub-section 5 of Section 140, if the application is made by the **Central Government** and the Tribunal is satisfied that any **change of the auditor is required**, it shall within **fifteen days of receipt of such application** make an **order** that the auditor **shall not function as an auditor** and the **Central Government may appoint another auditor** in his place.

Ineligibility of auditor to be appointed and criminal liability

An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under section 140, shall:

- a. **Not be eligible to be appointed as an auditor** of any company for a **period of 5 years** from the date of passing of the order and
- b. Also be liable for **action under section 447** of the Companies Act, 2013.

Note

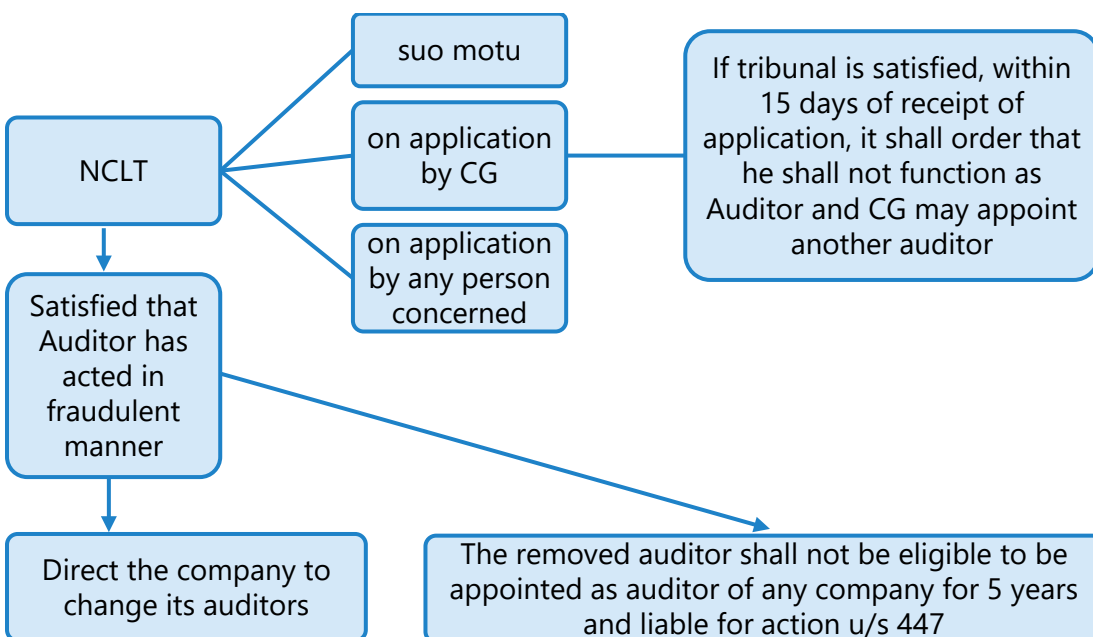
In case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

The word "auditor" also includes a firm of auditors.

Illustration 5

FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crore. During the year ended 31st March 2024, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer - The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act, 2013.

Summary of Sub-section 5



4. ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS [SECTION 141]

Section 141 of the Companies Act, 2013 provides for eligibility, qualifications and disqualifications of auditors.

QUALIFICATION OF AN AUDITOR [SUB-SECTION 1 AND 2]

Auditor shall be CA in Practice [Sub-section 1]

A person shall be eligible to be appointed as an auditor of a company only if he is a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

Note

Since section 139 allows a firm also to be appointed as an auditor, hence proviso to section 141(1) prescribe clearly that only those firms wherein majority of partners practicing in India, are qualified for appointment by its firm name.

Who shall sign if firm appointed as Auditor [Sub-section 2]

Where a firm including a Limited Liability Partnership is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm.

DISQUALIFICATIONS OF AUDITORS [SUB-SECTION 3 READ WITH RULE 10 OF COMPANIES (AUDIT AND AUDITORS) RULE, 2014]

Following persons shall not be qualified for appointment as auditor of a company

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

Illustration 6

Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2023 in which he accepted the assignment. Subsequently, in January 2024, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Answer

Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

- d. A **person** who himself or his partner is **holding any security of or interest** in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary) or **his relative or partner**

Illustration 7

Mr. Ashish, a practicing Chartered Accountant, is holding securities of XYZ Ltd. having face value of ₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of XYZ Ltd.?

Answer

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr. Ashish is holding security of ₹ 900 in XYZ Ltd, therefore he is not eligible for appointment as an Auditor of XYZ Ltd.

Note – In earlier Act i.e. the Companies Act, 1956 the holding securities of par value upto the limit of ₹ 1000 by auditor was not the disqualification criteria. Under current Act i.e. the Companies Act, 2013, not a single rupee of holding by auditor is allowed.

- e. A **person** whose relative (defined u/s 2(77) is **holding any security of or interest** in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary) of face value exceeding ₹ 1,00,000.

Illustration 8

"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ₹ 90,000/-. Whether "Mr. P" is qualified for being appointed as an auditor of "ABC Ltd."?

Answer

As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face value in ABC Ltd., which is as per requirement of proviso to section 141(3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Though rule 10(1) says, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh but here rather than a literal interpretation, reasonable construction is required. And holding of all the relatives together shall be checked against the threshold.

Further, even if relative of one of the partners of any firm hold securities or interests exceeding the threshold then, not only such partner even firm shall not be eligible to appointed as auditor.

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

If the relative acquires any security or interest above the prescribed threshold i.e. ₹ 1,00,000, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.

Illustration 9

"BC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of "Mr. C", is holding securities of "MWF Ltd." having face value of ₹ 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?

Answer

As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

- f. A person who himself, or whose partner or relative is **indebted** to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in **excess of ₹ 5 Lakh**.
- g. A person who or whose relative or partner has given a **guarantee or provided any security** in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in **excess of one lakh rupees**.
- h. A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

The term "business relationship" shall be construed as **any transaction entered into for a commercial purpose**, but **except**–

- ☐ Commercial transactions which are in the nature of **professional services** permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
- ☐ Commercial transactions which are in the **ordinary course of business** of the company at **arm's length price** like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

- i. A person whose relative is a director or is in the employment of the company as a director (as defined u/s 2(34) or key managerial personnel (as defined u/s 2(51));
- j. A person who is in full time employment elsewhere
- k. A person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies.

Note

While calculating the ceiling limit of 20, the one person companies, small companies and private companies having paid-up share capital less than 100 crore rupees shall be excluded.⁷

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

Before appointment is given to any auditor, the company must obtain a certificate from him to the effect that the appointment, if made, will not result in an excess holding of company audit by the auditor concerned over the limit laid down in section 141(3)(g) of the Companies Act, 2013.

⁷ Vide Notification no. G.S.R. 464(E) dated 5th June 2015

⁸ Vide notification no. G.S.R. 583(E) dated 13th June 2017

Illustration 10

"ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as auditors in 4, 6 and 10 companies respectively.

- i. Provide the maximum number of audits remaining in the name of "ABC & Co."*
- ii. Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.*

Answer

In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹100 crore.

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be $3 \times 20 = 60$ companies' audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Total Number of audits for which the firm would be eligible = $20 \times 3 = 60$

Number of audits already taken by all the partners

In their individual capacity = $4+6+10$ = 20

Remaining number of audits available to the firm = 40

With reference to above provisions, an auditor can hold more appointment as auditor (i.e. ceiling limit as per section 141(3)(g) - already holding appointments as an auditor). Hence

- i. Mr. A can hold: $20 - 4 = 16$ more audits.
- ii. Mr. B can hold $20 - 6 = 14$ more audits and
- iii. Mr. C can hold $20 - 10 = 10$ more audits.

Note - It has been assumed that the companies given in the question are not one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹100 crore.

- l. a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;
- m. A person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

VACATION OF OFFICE BY AN AUDITOR [SUB-SECTION 4]

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



5. REMUNERATION OF AUDITORS [SECTION 142]

Section 142 of the Companies Act, 2013 provides for remuneration of auditors.

WHO WILL FIX THE REMUNERATION?

Subsequent auditors

The remuneration of auditors has to be fixed by the company in general meeting or in such manner as the general meeting may determine.

First Auditor

While the remuneration of first auditor shall be fixed by the board, which appointed him.

INCLUSION AND EXCLUSIONS

Components

- a. The remuneration so fixed is, in addition to the fee payable to an auditor to,
- Includes**
- b. The expenses, if any, incurred by him in connection with the audit of the company (i.e. out of pocket expense) and
- c. Any facility extended to him.

Exclusion

It is not to include any remuneration paid to him for any other service rendered by him at the request of the company.

Example 11: SHRD Private Ltd is engaged in the business of software and consultancy. The company has an annual turnover of ₹ 2,000 crore but its profit margins are not very good as compared to the industry standards. For the financial year ended 31st March 2024, the company proposed appointment of its statutory auditors at its Board meeting, however, the remuneration was not finalized. The statutory auditors completed the engagement formalities including the engagement letter between the company and the auditors and it was decided that the engagement letter be signed without fee i.e. with the clause that the fee to be mutually decided. In this situation, engagement letter with such arrangement is valid.



6. POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS [SECTION 143]

POWERS OF AUDITORS [SUB-SECTION 1]

Access to books of account and vouchers

Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

Entitled to have necessary information and explanation

He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

Access to record of all its subsidiaries

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

DUTIES OF AUDITORS**Matters of inquiry [Sub-section 1]**

The auditor shall inquire into the following matters, namely:

- a. Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- b. Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- c. Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- d. Whether loans and advances made by the company have been shown as deposits;
- e. Whether personal expenses have been charged to revenue account;
- f. Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

Report to members [Sub-section 2 and 3]

The auditor shall make a report to the members of the company on the following:

- a. On the accounts examined by him; and
- b. On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

Note

The auditor while making the report shall take into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11).

The auditor shall express his opinion on the accounts and financial statements examined by him. He shall express an opinion, according to him and to the best of his information and knowledge, whether the said accounts/financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Further, sub-section 3 requires, the auditors' report shall also state:

- a. Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- b. Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- c. Whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- d. Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- e. Whether, in his opinion, the financial statements comply with the accounting standards;

- f.** The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- g.** Whether any director is disqualified from being appointed as a director under sub section (2) of section 164;
- h.** Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- i.** Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
- j.** Such other matters as may be prescribed.

In context of clause j stated above, Rule 11 of the Companies (Audit & Auditors) Rules, 2014 i.e. Other Matters to be Included in Auditors Report requires the auditor's report shall also include their views and comments on the following matters, namely:

- (i) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- (ii) Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (iii) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.
- (iv) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been:
 - 1. Advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of

the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

2. Received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
 3. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) [i.e. pt 1] and (ii) [i.e. pt 2] contain any material mis-statement.
- (v) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.
- (vi) Whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

Note

As per sub-section 4 to section 143, where any of the matters is answered in the negative or with a qualification, the auditor's report shall state the reason for the same.

Clause (i) of Sub-Section (3) of Section 143 (i.e. Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls) shall not apply⁹ to a private company,

- i. which is a one person company or a small company; or
- ii. Which has turnover less than rupees fifty crore as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees 25 crore.

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

Illustration 11

MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded.

During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded.

Auditors are waiting for certain additional information– Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer

In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit these additional information.

⁹ Inserted Vide Exemption Notification No. G.S.R. 583(E) Dated 13th June, 2017.

Hence the auditor should conclude the work without delaying because of this additional information.

Compliance with auditing standards [Sub-section 9 and 10]

Every auditor shall comply with the auditing standards.

The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA).

It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

Additional matters to be reported in case of specified companies [Sub-section 11]

In respect of such class or description of companies, as may be specified in the general or special order by the Central Government, may in consultation with the NFRA direct, the auditor's report shall also include a statement on such matters as may be specified therein.

Note

CARO 2020 issued by MCA should be complied by the statutory auditor of every company, on which it applies.

REPORTING OF FRAUDS BY AUDITORS [SUB-SECTION 12, 13 AND 15 READ WITH RULE 13 OF THE COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

Fraud involving amount of one crore or more [Sub-section 12 read with Rule 13(2)]

Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor,

- a. Has reason to believe that an **offence involving fraud**
- b. Which involves or is expected to involve individually an amount of **rupees one crore or above**

- c. Is being or has been committed **against the company** by officers or employees of the company,
- d. He shall **immediately report** the matter to the **Central Government** within such **time** and in such **manner** as may be **prescribed**.

In this regards Rule 13(2) the auditor shall report the matter to the Central Government in following manner:

- (a) The auditor shall **report** the matter to the **Board or the Audit Committee**, as the case may be, immediately but **not later than 2 days** of his knowledge of the fraud, **seeking their reply** or observations **within 45 days**;
- (b) On receipt of such reply or observations, the auditor shall **forward his report** and the reply or observations of the Board or the Audit Committee **along with his comments** (on such reply or observations of the Board or the Audit Committee) to the **Central Government** within **15 days** from the date of receipt of such reply or observations;
- (c) In case the auditor **fails to get any reply or observations from the Board or the Audit Committee** within the stipulated period of **45 days**, he shall forward his **report to the Central Government** along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
- (d) the report shall be filed electronically in form ADT-4.**
- (e)¹⁰ Omitted**
- (f) Omitted**

Fraud involving amount less than one crore

Report to Audit Committee or Board [First Proviso to Sub-section 12 read with Rule 13(3)]

In case of a fraud involving lesser than an amount of rupees one crore, the auditor shall report the matter to the **audit committee** (if constituted under section 177) or to the **Board** (in other cases) immediately but **not later than two days** of his knowledge of the fraud and he shall report the matter specifying the following:

- a. Nature of Fraud with description;

¹⁰ **clauses (e) and (f) have been omitted with effect from 14th July, 2025 vide the Companies (Audit and Auditors) Amendment Rules, 2025 [Notification G.S.R. 359(E)]**

- b. Approximate amount involved; and
- c. Parties involved.

Disclosure in Board's Report [Second Proviso to Sub-section 12 read with Rule 13(4)]

The audit committee or the Board shall disclose the following details about such frauds (reported to them, but not to the Central Government i.e. when amount involved is less than ₹ 1 crore), in the **Board's report**;

- a. Nature of fraud with description;
- b. Approximate amount involved;
- c. Parties involved, if remedial action not taken; and
- d. Remedial actions taken.

Exception of *bonafide* faith [Sub-section 13]

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

Penalty for non-compliance of section 143(12) [Sub-section 15]

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall

- a. Be liable to a penalty of five lakh rupees in case of a listed company; and
- b. Be liable to a penalty of one lakh rupees in case of any other company.

Summary of quantum of penalty

Liabe	In case of	Quantum
auditor, cost accountant, or company secretary in practice does not comply with the provisions of section 143(12)	listed company	five lakh rupees
	any other company	one lakh rupees

Illustration 12

NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspicious transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor deal with such matter?

Answer

As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

Note - The auditors need to report about this matter appropriately in their CARO report.

AUDIT OF GOVERNMENT COMPANIES [SUB-SECTION 5, 6 & 7]**Powers vested with CAG [Sub-section 5]**

Sub-section 5 provides, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments:

- a. **CAG shall appoint the auditor** under section 139(5) or 139(7) and
- b. Direct such auditor the **manner in which the accounts** of the Government company are **required to be audited** and
- c. Thereupon the **auditor so appointed shall submit a copy of the audit report to the CAG.**

The audit report among other things, shall include the following:

- a. The directions, if any, issued by the CAG;
- b. The action taken thereon; and
- c. Its impact on the accounts and financial statement of the company.

Comment by CAG and Supplementary Audit [Sub-section 6]

Sub-section 6 provides that, the CAG shall within 60 days from the date of receipt of the audit report have a right to:

- a. Conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorize in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the CAG may direct; and
- b. Comment upon or supplement such audit report.

Note

Any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under section 136(1) and also be placed before the AGM of the company at the same time and in the same manner as the audit report.

Test Audit [Sub-section 7]

For Government Company or Company controlled by State Government or Central Government, the CAG may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors. The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

AUDIT OF ACCOUNTS OF BRANCH OFFICE OF COMPANY [SUB-SECTION 8 READ WITH RULE 12 OF THE COMPANIES (AUDIT & AUDITORS) RULES, 2014]

Branch office in India

Where a company has a branch office, the accounts of that office shall be audited either by:

- a. The company's auditor appointed under section 139, or
- b. By any other person qualified for appointment as an auditor of the company under section 139.

Branch office outside India

If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:

- a. The company's auditor or
- b. By an accountant or
- c. By any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor [Rule 12 of the Companies (Audit & Auditors) Rules, 2014]

The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

The branch auditor shall submit his report to the company's auditor.

The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

APPLICATION OF PROVISIONS OF SECTION 143 TO COST ACCOUNTANTS AND COMPANY SECRETARY [SUB-SECTION 14]

The provisions of this section shall mutatis mutandis apply to:

- a. The **cost accountant** conducting **cost audit** under section 148; or
- b. The **company secretary in practice** conducting **secretarial audit** under section 204.

Sub-rule 5 to rule 13 of the Companies (Audit & Auditors) Rules, 2014 provide exactly confirmatory provision.



7. AUDITOR NOT TO RENDER CERTAIN SERVICES [SECTION 144]

An auditor appointed under this Act shall provide to the company only such other services as are **approved by the Board of Directors or the audit committee**, as the case may be.

But such services **shall not include** any of the following services (whether such services are rendered **directly or indirectly** to **the company or its holding company or subsidiary company**), namely:

- a. Accounting and book keeping services;
- b. Internal audit;
- c. Design and implementation of any financial information system;
- d. Actuarial services;
- e. Investment advisory services;
- f. Investment banking services;
- g. Rendering of outsourced financial services;
- h. Management services; and
- i. Any other kind of services as may be prescribed

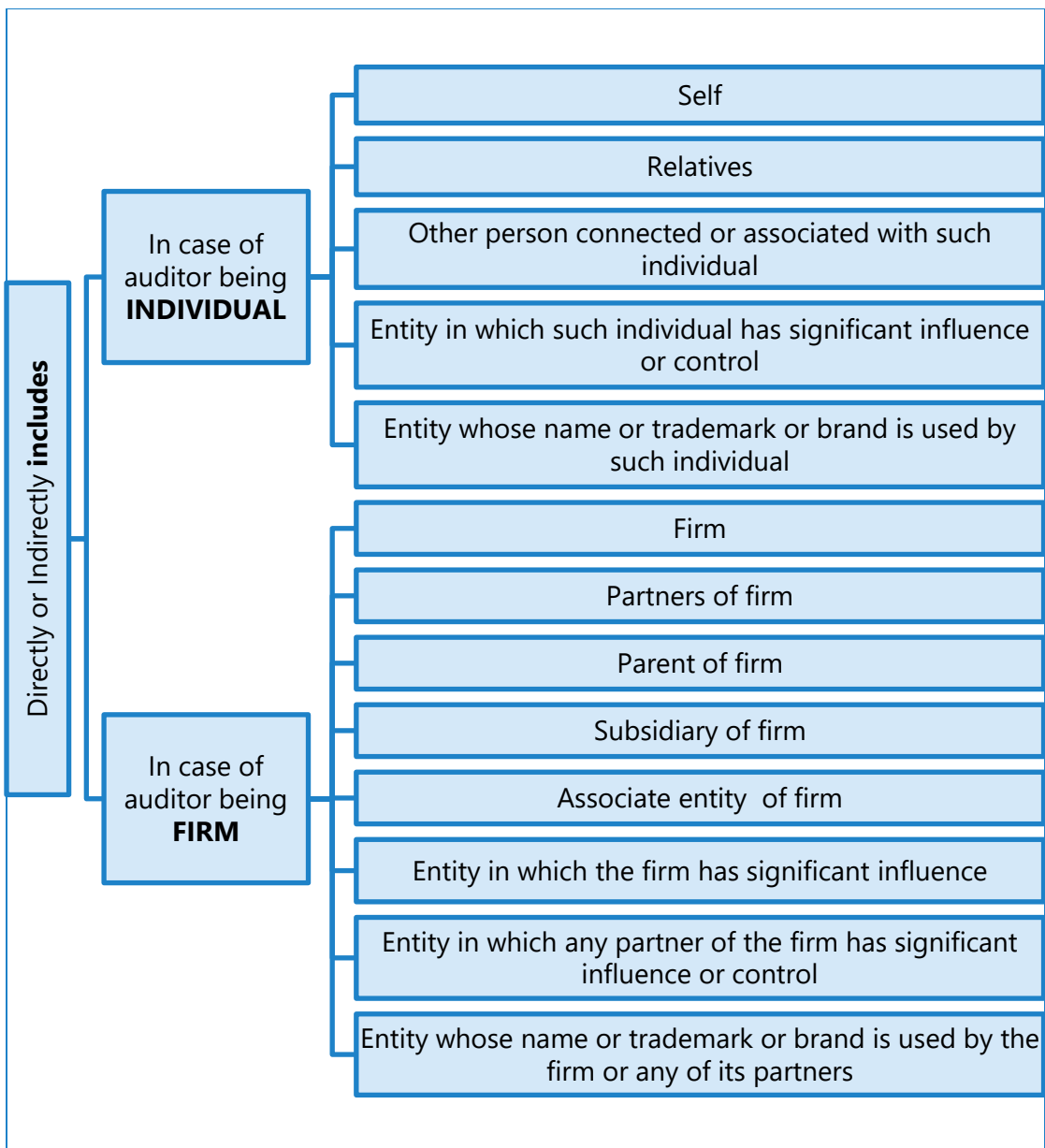
Snapshot of prohibited services

Accounting and book keeping services	Investment advisory services	Investment banking services
Internal audit	Actuarial services	Management services
Rendering of outsourced financial services	Design and implementation of any financial information system	Any other kind of services as may be prescribed

Students are advised to take note:

1. However no other kind of services has been prescribed till date under clause i specified above.
2. Here it is worth noting that as per proviso to section 148(3), no person (or firm including LLP) appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.
3. The term "directly or indirectly" shall include rendering of services by the auditor
 - ❑ In case of **auditor being an individual**, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trademark or brand is used by such individual;
 - ❑ In case of **auditor being a firm**, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trademark or brand is used by the firm or any of its partners.

Example 12: MNP Ltd. is a medium-sized company engaged in the business of pharmaceuticals. For the year ended 31st March 2024, the company is looking for appointment of GST (Goods and Services Tax) auditor. The company wants to appoint somebody for this work who is familiar with the business of the company i.e. who would have worked with the company in the past so that lesser efforts are required to get the GST audit completed. The company has options of statutory auditors that can be appointed for this work for betterment of company.

Summary of what shall be included in directly and indirectly



8. AUDITORS TO SIGN AUDIT REPORTS, ETC. [SECTION 145]

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc.

The person appointed as an **auditor** of the company **shall sign the auditor's report or sign or certify any other document** of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).

The **qualifications, observations or comments** on financial transactions or matters, which have any **adverse effect** on the functioning of the company mentioned in the auditor's report shall be **read before the company** in **general meeting** and shall be **open to inspection** by any member of the company.

Illustration 13

Whether entire audit report need to read before the company in general meeting?

Answer

No, as per section 145 of the Companies Act, 2013, **qualifications, observations or comments** on financial transactions or matters, which have any **adverse effect** on the functioning of the company mentioned in the auditor's report shall be **read before the company** in **general meeting** and shall be **open to inspection** by any member of the company.



9. AUDITORS TO ATTEND GENERAL MEETING [SECTION 146]

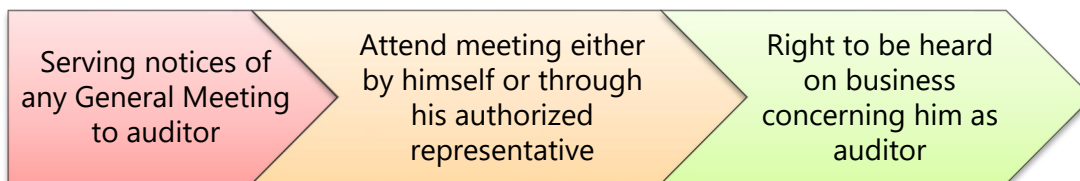
Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting.

All **notices** of, and **other communications** relating to, **any general meeting** shall be **forwarded to the auditor** of the company.

The **auditor shall**, unless otherwise exempted by the company, **attend either by himself or through his authorized representative**, who shall also be qualified to be an auditor, any general meeting.

The auditor shall have **right to be heard** at such meeting on any part of the business which concerns him as the auditor.

Summary of the section 146



Example 13

Modern Furniture Limited (MFL) convened its general meeting on 21st March 2024, the notice of same was not served at auditor. Since company is obligated under section 146 to forward a notice of general meeting to auditor as well, hence non-serving of notice to auditor by MFL is in contravention to section 146 and liable for penalty under section 147.

Illustration 14

Regarding the general meeting for which notice is served on auditor:

- i. *Whether auditor is mandatorily required to be attend the said general meeting?*
- ii. *If yes, whether he is required to attend the meeting personally?*

Answer

Answer to first part is yes, while no in case of second, because as per section 146 of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.



10. PUNISHMENT FOR CONTRAVENTION [SECTION 147]

Section 147 of the Companies Act, 2013 provides for punishment for contravention.

CONTRAVENTION BY COMPANY [SUB-SECTION 1]

Penalty on company

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

Penalty on officer/s who is/are in default

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Summary of quantum of penalty

Liabe	Minimum (in ₹)	Maximum (in ₹)
Company	25,000	5,00,000
Every officer of the company who is in default	10,000	1,00,000

CONTRAVENTION BY AUDITOR [SUB-SECTION 2 AND 3]

Penalty on auditor [Sub-section 2]

If an auditor of a company contravenes any of the provisions of section 139, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less.

Summary of quantum of penalty

Liabe	Liabe for	Minimum (in ₹)	Maximum (in ₹)
Auditor	Contravenes any of the provisions of section 139, 144 or 145	25,000	Lower of i. 5,00,000 or ii. 4 times the remuneration

Penalty for knowing/willful contravention [Proviso to Sub-section 2]

If an auditor has contravened any of the provisions of section 139, section 144 or section 145, knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with the imprisonment for a term which may extend to 1 year and with the fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

Summary of quantum of penalty

Liabe	Liabe for	Minimum	Maximum
Auditor	Knowing or willful contravenes any of the provisions of section 139, 144 or 145	Fine of ₹ 50,000	Fine, Lower of ₹ 25,00,000 Or 8 times the remuneration
		and	
		Imprisonment for a term which may extend to 1 year	

Refund of remuneration and payment of damages [Sub-section 3]

Where an auditor has been convicted under sub-section 2, he shall be liable to:

- a. Refund the remuneration received by him to the company; and

- b. Pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Note:

For operation of sub-section 3, the sub-section 4 empowers the Central Government, to specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons, by notification.

Such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

CONTRAVENTION BY AUDIT FIRM [SUB-SECTION 5]

Where, in case of audit of a company being conducted by an audit firm,

It is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability,

Whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force,

For such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Note

1. In case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.
2. Since act constitute to fraud, hence shall also be liable under section 447. Provisions of section 447, explained and decoded under book chapter 3 i.e. 'Prospectus and allotment of securities' of this module. Students may refer the same.



11. CENTRAL GOVERNMENT TO SPECIFY AUDIT OF ITEMS OF COST IN RESPECT OF CERTAIN COMPANIES [SECTION 148]

COST RECORDS [SUB-SECTION 1 READ WITH RULE 3 AND 5 OF THE COMPANIES (COST RECORDS AND AUDIT) RULES, 2014]

Who shall prepare cost records? [Rule 3]

Notwithstanding anything contained in the provisions related to audit and auditor (Chapter X), the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept under section 128 by that class of companies.

The Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

For the purposes of sub-section (1) of section 148 of the Act, rule 3 of *the Companies (Cost Records and Audit) Rules, 2014* provides, the class of companies (including foreign companies defined in clause (42) of section 2 of the Act) engaged in the production of the goods or providing services, specified in the Table A (6 Regulated Sectors) and/or Table B (33 Non-Regulated Sector), having an overall turnover from all its products and services of **rupees thirty five crore or more** during the immediately preceding financial year, shall include cost records for such products or services in their books of account.

Note

Nothing contained in Rule 3 shall apply to a company which is classified as a micro enterprise or a small enterprise including as per the turnover criteria under sub-section (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

Applicability for maintenance of Cost Records

Domestic or Foreign Company

Engaged in production of goods or providing services listed in table A (Regulated) or B (Non-Regulated) of Rule 3

Overall turnover from all of its products and services $\geq$ ₹ 35 crore (immediately preceding financial year)**COST AUDIT**

If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered aforesaid (under sub-section 1 i.e. required to prepare cost records) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

As per sub-section 4, an audit conducted under this section (cost audit u/s 148) shall be in addition to the audit conducted under section 143.

The cost statements, including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director authorised by the Board, for submission to the cost auditor to report thereon.

COST AUDITOR [SUB-SECTION 3 AND 5]**Who can be appointed as cost auditor? [Sub-Section 3]**

Only a Cost Accountant, as defined under section 2(28)* of the Companies Act, 2013, can be appointed as a cost auditor.

*Clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 defines "Cost Accountant".

A Cost Accountant who holds a valid certificate of practice under sub-section (1) of section 6 of the Cost and Works Accountants Act, 1959 and is in whole-time practice.

Cost Accountant includes a Firm of Cost Accountants and a LLP of cost accountants.

Accountants Act, 1959 and is in whole-time practice. Cost Accountant includes a Firm of Cost Accountants and a LLP of cost accountants.

First Proviso to sub-section 3 provides that person appointed under section 139 as an auditor of the company (i.e. company auditor) shall not be appointed for conducting the audit of cost records.

Illustration 15

Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139

Answer

No, because as per proviso to section 148(3), no person (or firm including LLP) appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.

Qualifications, disqualifications, rights, duties and obligations of cost Auditor [Sub-section 5]

The qualifications, disqualifications, rights, duties and obligations applicable to auditors (i.e. applicable to company auditor) shall, so far as may be applicable, apply to a cost auditor appointed under section 148 and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

Provided that the report on the audit of cost records shall be submitted by the cost accountant to the Board of Directors of the company.

Note:

The provisions of sub-section (12) of section 143 of the Act and the relevant rules made thereunder shall apply *mutatis mutandis* to a cost auditor during performance of his functions under section 148 of the Act and rule notified thereunder.

Cost auditor to comply with cost auditing standards [Second Proviso to Sub-section 3]

The auditor conducting the cost audit shall comply with the cost auditing standards.

Here, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost Accountants of India (erstwhile ICWAI), constituted under

the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

COST AUDIT REPORT

A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein. [Sub- section (6)]

If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government. [Sub- section (7)]

CONTRAVENTION AND PUNISHMENT THEREOF [SUB-SECTION 8]

If any default is made in complying with the provisions of section 148;

- a. The company and every officer of the company who is in default shall be punishable in the manner as provided in section 147(1);
- b. The cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

Note: The provision of the section 147 explained in details under heading 10, earlier in this chapter.

12. NFRA [NATIONAL FINANCIAL REPORTING AUTHORITY] AND AUDITOR

MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS

Rule 8 of ***The National Financial Reporting Authority Rules, 2018*** empowers NFRA for the purpose of monitoring and enforcing compliance with auditing standards under the Act by a company or a body corporate governed under rule 3.

NFRA may:

- a. **Review working papers** (including audit plan and other audit documents) and communications related to the audit;
- b. Evaluate the sufficiency of the **quality control system** of the auditor and the manner of **documentation** of the system by the auditor; and
- c. Perform such other **testing of the audit**, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

Rule 8 further provides that:

NFRA may require:

1. **Require an auditor to report on its governance practices and internal processes** designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
2. Seek **additional information** or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
3. Send a **separate report containing proprietary or confidential information** to the Central Government for its information.
4. Where the NFRA finds or has reason to believe that any **law or professional or other standard has or may have been violated** by an auditor, it may decide on the **further course of investigation** or enforcement action through its concerned Division.

NFRA shall:

1. Perform its **monitoring and enforcement activities** through its **officers or experts** with sufficient experience in audit of the relevant industry.
2. **Publish its findings** relating to non-compliances on its website and in such other manner as it considers fit, unless it has **reasons not to do so in the public interest** and it records the reasons in writing.

NFRA shall not

Publish **proprietary or confidential information**, unless it has reasons to do so in the public interest and it records the reasons in writing.

OVERSEEING THE QUALITY OF SERVICES AND SUGGESTING MEASURES FOR IMPROVEMENT

Further Rule 9 of *The National Financial Reporting Authority Rules, 2018* empowers NFRA for **overseeing the quality of services and suggesting measures for improvement**

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

FILLING OF RETURN WITH NFRA

Rule 5 requires every auditor of classes of companies and bodies corporate governed by the NFRA, shall file a **return** with the Authority i.e. NFRA on or before 30th November every year in Form NFRA-2.

SUMMARY

- **First Auditor** shall be appointed by **Board of directors** within thirty days from the date of registration of the company, who **hold office till first annual general meeting**. Thereafter every company shall, at the **first annual general meeting**, appoint an **individual or a firm as an auditor** who shall hold office from the conclusion of that meeting **till the conclusion of its sixth annual general meeting** and thereafter till the conclusion of every sixth meeting and so on.

- Whereas, in case of **Government Company or those controlled by Government** (central or state or any combination thereof) auditor shall be appointed by **CAG** (Comptroller and Auditor-General of India).
- The auditor appointed under section 139 may be **removed from his office before the expiry of his term** only by a **special resolution** of the company, after obtaining the **previous approval of the Central Government** in that behalf in the prescribed manner
- Only a **Chartered Accountants in practice can be appointed as auditor**, where firm is appointed then only a Chartered Accountants in practice shall be authorised by the firm to act and sign on behalf of the firm. Section 141 (3) list out certain disqualifications that bar an individual or firm to appointed as auditor.
- The **remuneration** of the auditor of a company shall be **fixed in its general meeting** or in such manner as may be determined therein. **Board** may fix remuneration of the **first auditor** appointed by it.
- Every auditor shall **comply with the auditing standards**. Rights and duties of auditor are prescribed in section 143. The person appointed as an auditor of the company shall **sign the auditor's report**.
- All **notices of any general meeting shall be forwarded to the auditor** of the company, and the **auditor shall**, unless otherwise exempted by the company, **attend** either by himself or through his authorised representative. Auditor shall have **right to be heard** at such meeting on any part of the business which concerns him as the auditor.
- An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but **certain services are specifically prohibited** to render either directly or indirectly. These are; (a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services; and (h) management services.
- Penalties for contravention of the applicable provisions by **company, auditor, and audit firm** is provided under section 147. In case, it is proved that the partner or partners of the audit firm has or have acted in a **fraudulent manner** or **abetted** or **colluded in any fraud** by, or in relation to or by, the company or its directors or officers; then in addition to **section 147**, such

offence is punishable under **section 447**; even liable for **civil or criminal liability** under **any other law for the time being in force**.

- Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that **particulars relating to the utilisation of material or labour or to such other items of cost** as may be prescribed shall also be included in the books of account kept by such class of companies. Further if the Central Government is of the opinion, in relation to any such company, that it is necessary to do so, it may, by order, direct that the **audit of cost records** of such company shall be conducted in the manner specified therein.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:*
 - (a) One year only
 - (b) One term of 3 consecutive years only
 - (c) One term of 4 consecutive years only
 - (d) Two terms of 5 consecutive years
2. *Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its:*
 - (a) Second annual general meeting
 - (b) Fourth annual general meeting
 - (c) Sixth annual general meeting
 - (d) Eight annual general meeting
3. *For appointing an auditor other than the retiring auditor,*
 - (a) Special notice is required.
 - (b) Ordinary notice is required.
 - (c) Neither ordinary nor special notice is required
 - (d) Approval of Central Government is required.

Descriptive Questions

1. State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:
 - (i) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.
 - (ii) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.
2. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2024 by an ordinary resolution. Mr. Sanjay, a shareholder of the company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.
3. EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2023. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of EF Limited on 15 October 2023. But Naresh & Company continues to function as statutory auditors of the company. Advice.
4. Explain how the auditor will be appointed in the following cases:
 - (i) A Government company within the meaning of section 394 of the Companies Act, 2013.
 - (ii) A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.
5. Examine the following situations in the light of the Companies Act, 2013:

"Mr. Abhi", a practicing Chartered Accountant, is holding securities of Abhiman Ltd. having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?

6. *Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:*
- (i) *"Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company.*
 - (ii) *Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.*
 - (iii) *Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company*
7. *The Board of Directors of A Limited requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?*

ANSWERS

Answer to MCQ based Questions

1.	(d) Two terms of 5 consecutive years
2.	(c) Sixth annual general meeting
3.	(a) Special notice is required.

Answer to Descriptive Questions

1. (i) Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint

such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

- a. Inform the members of the Company;
 - b. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
 - c. Members shall at that extra ordinary meeting appoint the first auditors of the company;
 - d. The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.
- (ii) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the *Companies (Audit & Auditors) Rules, 2014*, following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the *Companies (Registration Offices and Fees) Rules, 2014*.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

2. As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

3. According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the company even after 15 October 2023 i.e. after the investment made by his wife in the equity shares of EF Limited.

4. (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

- (ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

- (1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- (2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the

Registrar within 15 days of the meeting in which the auditor is appointed.

5. As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

In the present case, Mr. Abhi is holding security of ₹ 1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

6. (i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.
- (ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lakh. In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 Lakh.
- (iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

7. According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.