ACCOUNTS, AUDIT & CSR

Under Companies Act, 2013

(Draft Rules Incorporated)

By:

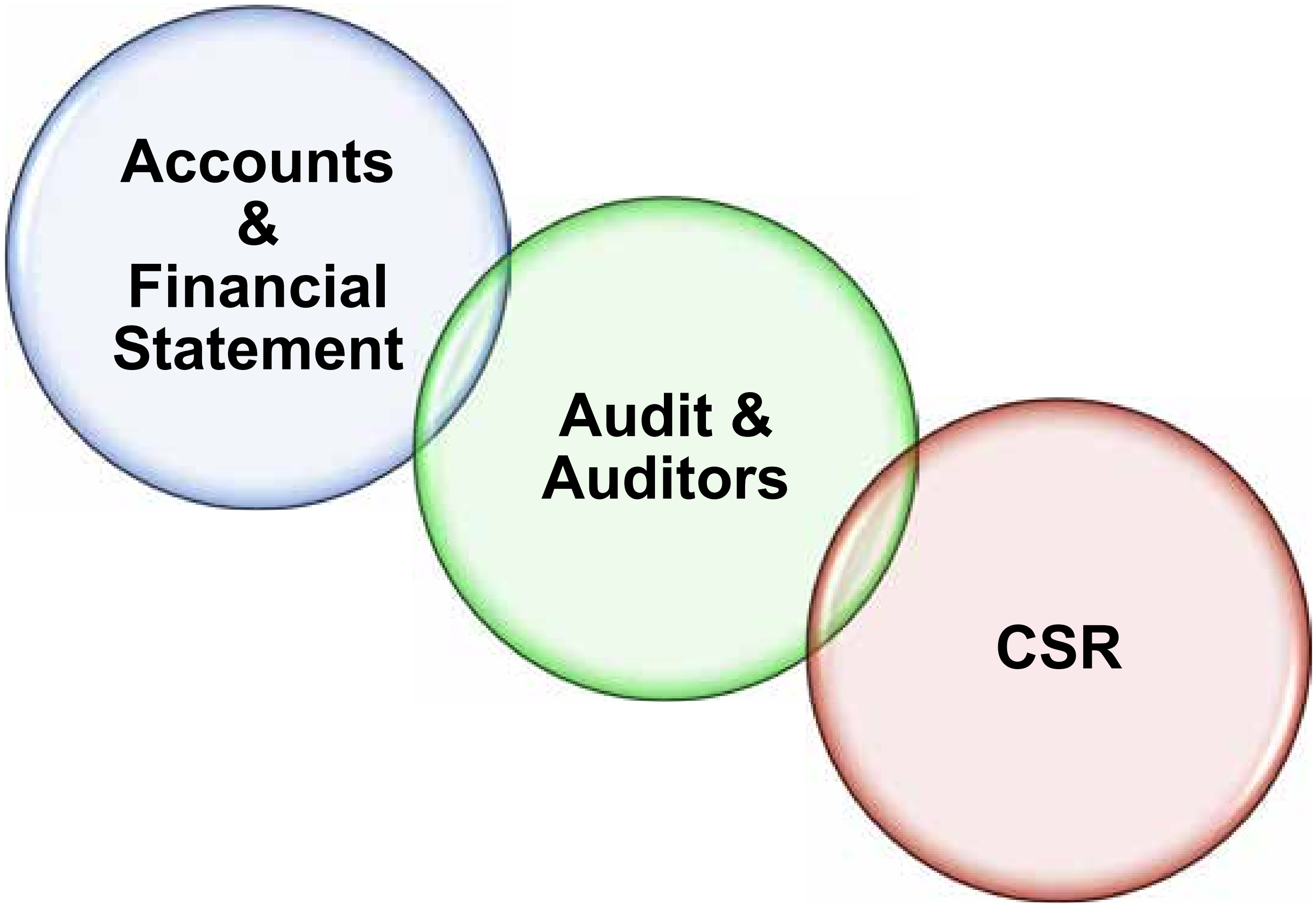
S. Dhanapal

Senior Partner

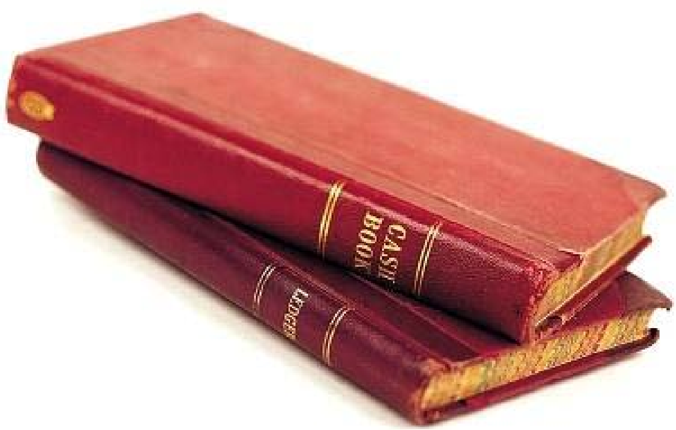
S Dhanapal & Associates

A Firm of Practising Company Secretaries

Flow of Presentation



Provisions of Companies Act, 2013 relating to accounts/ Financial Statements



Definition of Financial Year

"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:

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

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

Definition of Books of Accounts

"books of account" includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

Definition of Financial Statements

"financial statement" in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) 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;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv)

New provisions under Companies Act, 2013 relating to Financial Statements

CLAUSE 129 – FINANCIAL STATEMENT

Financial Statements to include Cash Flow Statement for all companies except One Person Company, Small Company and Dormant Company.

Accounting Standards to be complied in respect of each item of preparation of financial statements.

Consolidation of accounts mandated for all companies having subsidiaries, associates and joint ventures.

Maintenance of accounts in electronic form permitted.

Re-opening of Accounts

Re-opening of accounts on court's or Tribunal's orders

- Tribunal can pass order permitting a company to re-open its book of accounts and recast financial statements on application made by a statutory authority if accounts were prepared in fraudulent manner or affairs of the company

Voluntary revision of financial statements or Board's report

- Tribunal may permit a company to prepare revised financial statements or board's report for any 3 preceding financial year's on an application made by the company, if the director feel that the financial statements do not apply with provisions of law.

Signing of Financial Statements

CHAIRMAN ALONE

IF Authorised by Board to sign the statements

OR

TWO DIRECTORS

Out of which one shall be managing director

AND

CEO, CFO AND COMPANY SECRETARY

CEO can sign provided he is a director

Filing of Financial Statements with ROC

On holding of AGM	• **Copy of financial statements along with all necessary enclosures, duly adopted at the AGM, to be filed with ROC within 30 days of AGM.**
Where A/c not approved	• **In case financial statements are not adopted at the AGM, then un-adopted financial statements to be filed within 30 days of AGM. ROC will take them as provisional statements. Once the accounts get approved at an adjourned AGM, copy of the same must be filed with ROC within 30 days of adjourned AGM.**
Where AGM not held	• **In case AGM is not held for any year, then statements to be filed within 30 days of the last day by which AGM ought to have been held along with reasons for not holding AGM.**

RELEVANT PRESCRIPTIONS UNDER FIRST SET DRAFT RULES

Maintenance of Book of Accounts in electronic mode
(Section 128(1) proviso 2)

Meaning of Electronic Mode -

- "electronic mode" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.

Definition of Electronic Record as per IT Act

- "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Maintenance of Book of Accounts in electronic mode contd....
(Section 128(1) proviso 2)

- Records in electronic form to be accessible in India and usable for subsequent reference.
- Records to be maintained in same form as they were generated, sent or received.
- Information to remain complete and unaltered.
- Information to be capable of legible display
- Proper systems to be devised for storage, display, retrieval and print out of records.
- Records not to be disposed off or made useless unless permitted by law.

Inspection of Financial Information maintained outside India
(Section 128(3))

Summarized returns of books of accounts maintained outside India to be sent to registered office at monthly or quarterly intervals as may be decided by Board. Directors can inspect the same.

Director to make written request himself (not through POA holder)in case he requires any other financial information maintained outside India providing complete details of information required, period and reason for which information is required.

Company to provide the information within 15 days.

Financial Statements

- Central Government to notify which companies will be required to file financial statements under XBRL mode.

- Statement containing salient features of financial information of subsidiary, associate or joint venture companies to be made in **Form 9.1**.

- **Consolidation of accounts** – Consolidation to be done in accordance with Accounting Standards. Where Accounting Standards don't mandate consolidation for reason that immediate holding company is outside India, then consolidation has to be done in accordance with Schedule III of Act.

Voluntary Revision of financial statements / Board's Report

- Application to be made by company to Tribunal within 2 weeks of Board decision in form 9.2.
- Change in majority of directors or auditor immediately before Board's decision to be disclosed in application.
- Tribunal to issue notice and hear the auditor of the original financial statement, if the present auditor is different.
- Copy of order to be filed with ROC within 30 days in form number 9.3.
- General meeting to be convened for the purpose of approval of revised financial statements, Board's report and Auditor's report.
- Revised Financial Statements to be filed with ROC within 30 days of general meeting in form 9.4

MANNER OF REVISION

- The previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:

  (a) A summarised statement of revisions effected

  (b) The copy of the Order of the Tribunal.

  (c) The revised auditor's report on the revised financial statement, if applicable

- The word "revised" to be prefixed prominently on all the documents forming part of the revised financial statements / revised board report.

FUNCTIONS OF AUDITOR IN CASE OF REVISION

To carry out the audit procedures as required

To review the procedure adopted by company to intimate stakeholders regarding revision

To issue revised auditors report and mention the fact of revision therein

Reason for revision to be mentioned in Bold in revised auditors report with reference to earlier report

OTHER PROVISIONS RELATING TO REVISION

Proposed revision to be placed before the Board and auditor who signed the earlier statements and their opinion to be sought. Voting on the proposal of revision to be recorded in minutes.

↓

Revision to be reported upon by current auditor and his consent to be obtained in case the current auditor is different from original auditor.

↓

Revised statements/reports to be sent to all members, and stock exchanges and other regulatory authorities in case of listed companies.

↓

Board to convene general meeting for approval of revised statements/reports.

OTHER PROVISIONS RELATING TO REVISION CONTD…..

Revised financial statements to be signed as per the provisions applicable to original statements.

Reasons justifying the proposed revision to be accompanied along with revised financial statements/reports.

Members to approve the revised statements/reports in general meeting.

Management has to necessarily revise the financial statements for all the relevant period, subsequent to the financial year for which the revision of financial statement is sought to be made by the Board of Directors.

ACCOUNTING STANDARDS
(SECTION 133)

- **Accounting Standards prescribed under Companies Act, 1956 will be applicable until Accounting Standards are notified by Central Government.**

- **As per Sub-section 3C of Section 211 of Companies Act, 1956:**

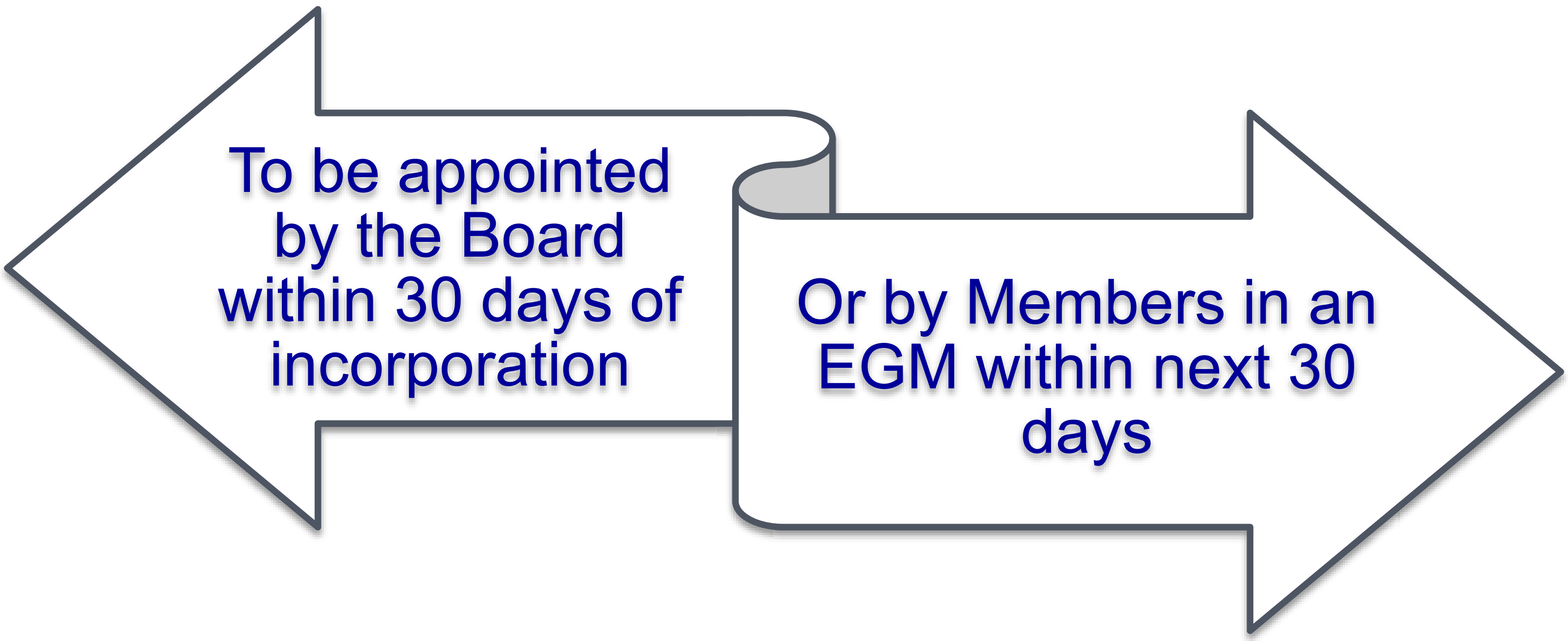
For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A :

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.

Provisions of companies act, 2013 (along with draft rules) relating to audit and auditors

NON GOVERNMENT COMPANIES

Appointment of First Auditor



First Auditor will hold office till conclusion of first AGM of the company

Appointment of Subsequent Auditor

To be appointed by the members in AGM

Auditor to hold office from conclusion of that AGM till conclusion of sixth AGM

Appointment to be ratified by members every year in AGM

TERM OF APPOINTMENT OF AUDITOR

- **OPC and Small Company** – Same Auditor can be re-appointed every five years.

- **Listed Companies and Companies other than OPC and Small Company** –

  Individual – One term of 5 consecutive years. Can be re-appointed after cooling off period of 5 years.

  Firm of Auditors – Two Terms of 5 consecutive years. Can be re-appointed after cooling off period of 5 years.

PROCEDURE FOR APPOINTMENT OF AUDITOR

- In case of companies which have constituted audit committee, audit committee to recommend appointment of auditor to board, in other cases, Board to consider on their own.
  - If Board is satisfied with recommendation of audit committee, it shall consider and recommend the same to members in general meeting.
  - If Board is not satisfied, it will send back to audit committee for reconsideration along with Board's reasons.
  - If audit committee does not reconsider, then Board will make its own recommendation to the Members and record the reason for rejection of recommendation of audit committee in Board's report.

PROCEDURE OF APPOINTMENT OF AUDITOR CONTD….

Audit Committee/Board to consider following factors before appointment:

- qualifications and experience of the person
- size and requirements of the company
- completed and pending proceedings against the auditor before the ICAI or the NFRA or Tribunal or any Court of law

PROCEDURE OF APPOINTMENT OF AUDITOR CONTD….

- On recommendation of Board, members to appoint an individual or firm as auditor for five years subject to ratification by members in every AGM.
- Company to intimate auditor regarding his appointment and also to ROC within 15 days of meeting.

DOCUMENTS TO BE OBTAINED FROM AUDITOR BEFORE APPOINTMENT

- Consent letter to act as auditor
- Certificate confirming following particulars:

(1) He or it is **eligible** for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and Rules and Regulations made therein.

(2) The proposed appointment is within the **term** allowed under the Act.

(3) The proposed appointment is within the **limit** laid down in the Act.

ROTATION OF AUDITORS

- Members can provide for following by passing a resolution:

  (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

  (b) the audit shall be conducted by more than one auditor.
- Rotation on expiry of term: Same procedure as appointment.
- For the purpose of rotation, the period for which the auditor is holding office prior to the commencement of this act will also be counted in calculating the period of 5 years or 10 years as the case may be.
- Where a company has appointed two or more persons as joint auditors, the company shall follow the rotation of auditors in such a manner that all of the joint auditors do not complete their term in the same year.

LIMIT ON NUMBER OF COMPANIES FOR APPOINTMENT OF AUDITOR

- An individual or partner of an audit firm cannot be appointed as an auditor in more than twenty companies.

- No clarity in the Act or rules as to which companies are included in the above limit of twenty companies.

REAPPOINTMENT OF RETIRING AUDITOR

- Subject to the maximum tenure of appointment, a retiring auditor can be re-appointed if—

  (a) he is not disqualified for re-appointment;

  (b) he has not given the company a notice in writing 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.

- Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

Removal of Auditor before term

- Special Resolution to be passed by company for removal of auditor.
- Application to be filed with Central Government in form no. 10.1 within 30 days of passing special resolution.
- The application shall be accompanied by such fees as specified .
- The auditor concerned shall be given a reasonable opportunity of being heard.

Resignation of auditor

- Auditor to file statement in form 10.2 within 30 days of resignation giving reasons and other facts for resignation.
- Statement to be filed with ROC and Company.
- If the auditor does not comply with above provisions, he or it shall be punishable with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5,00,000/-.

APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR

- Special notice required for appointment of auditor other than retiring auditor except in case where term has got over.
- On receipt of special notice, company to send notice to retiring auditor.
- Retiring auditor can make representation which needs to be circulated to members.

Eligibility, Qualifications & Disqualifications of auditor

- Only a Chartered Accountant or a firm where majority of partners practising in India are Chartered Accountants can be appointed as auditor.

- 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 authorised to act and sign on behalf of the firm.

Eligibility, Qualifications & Disqualifications of auditor contd….

The following persons shall not be eligible for appointment as an auditor of a company, namely:

- **A body corporate, except LLP.**
- **an officer or employee of the company;**
- **Any partner/employee of officer or employee of company**
- **A person who himself or his partner is holding security or interest in a company, or any company which is its holding, subsidiary, associate or fellow subsidiary.**
- **A person whose relative is holding security or interest not exceeding Rs. One Lakh face value in companies as mentioned above.**

Eligibility, Qualifications & Disqualifications of auditor contd….

- A person who himself or his relative or partner is indebted, or has given guarantee for indebtedness of any third party to the company, its subsidiary, holding, fellow subsidiary or associate company in excess of rupees one lakh.

- 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 fellow subsidiary.

  "business relationship" shall construe any transaction entered into for a commercial purpose except those which are in the nature of professional services as permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act and the rules and the regulations made under such Act.

Eligibility, Qualifications & Disqualifications of auditor contd….

- a person whose relative is a director or is in the employment of the company as a director or key managerial personnel

- a person who is in full time employment elsewhere

- Person who is auditor of more than 20 companies.

- a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

- any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

PROHIBITED SERVICES

- Auditor not to render following services to company, holding company or subsidiary company, directly or indirectly:

  (*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:*

GOVERNMENT COMPANIES

APPLICABILITY

- The foregoing provisions pertaining to appointment of auditor and audit of accounts will apply to 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

Appointment of Auditor

Who?	Whom?	When?	Till?
CAG will appoint the Auditor for each FY	Who is duly qualified to be appointed as auditor	Within 180 days of start of FY	To hold office till end of AGM of that financial year

Procedure for Appointment of First Auditor

By CAG – Within 60 days of incorporation

By Board – Within next 30 days

By Members – Within next 60 days

Appointment of Auditor in casual vacancy

By CAG – Within 30 days

By Board – Within next 30 days

RECAP

Appointment of Auditor

First Auditor
(To hold office till first AGM)

↓

CAG
(Within 60 days of Incorporation)

↓ **On Failure**

Board of Directors
(Within next 30 days)

↓ **On Failure**

Members
(Within next 60 days at an EGM)

Subsequent Auditor
(For each financial year)

↓

CAG
(Within 180 days of start of FY)

Auditor appointment in casual vacancy

↓

CAG
(Within 30 days of vacancy)

↓ **On Failure**

Board of Directors
(Within next 30 days)

Audit Procedure for government companies

1. Appointment of Auditor and Issue of Directions by CAG
2. Auditor to conduct Audit and submit report to CAG
3. CAG can conduct supplemental audit or issue comments on the audit report
4. CAG to forward audit report including supplemental report or comments to company
5. Company to forward all reports to members and place before AGM

INTERNAL AUDIT

- Following companies to appoint Internal Auditor:

  (a) every listed company

  (b) every public company having paid up share capital of Rupees 10 crores or more;

  (c) every other public company which has any outstanding loans or borrowings from banks or public financial institutions exceeding 25 crore rupees or which has accepted deposits of 25 crore rupees or more at any point of time during the last financial year.

INTERNAL AUDIT CONTD…

- Internal Audit can be done by a CA, Cost Accountant or any other professional as may be decided by Board of Directors.

- Scope, functioning, periodicity and methodology for conducting the internal audit to be decided by Audit Committee/Board in consultation with Internal Auditor.

CORPORATE SOCIAL RESPONSIBILITY

APPLICABILITY

- Following companies to constitute CSR committee
  - ✓ net worth of Rs. 500 crore or more, or
  - ✓ Turnover of Rs. 1000 crore or more, or
  - ✓ Net Profit of Rs. 5 crore of more

- Committee to consist of atleast 3 directors out of which atleast 1 to be independent director.

- Board's Report to disclose composition of CSR Committee.

- CSR rules shall come into force on the date of their publication in the official gazette and shall be applicable from the financial year 2014-15.

Functions of CSR Committee

- formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII

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

- monitor the Corporate Social Responsibility Policy of the company from time to time.

- prepare a transparent monitoring mechanism for ensuring implementation of the projects / programmes / activities proposed to be undertaken by the company.

BOARD’S RESPONSIBILITY

- To ensure that atleast 2% of average net profit of last 3 preceding years is spent on CSR activities every year.

- ***‘Net Profit’*** shall mean, net profit ***before*** tax as per books of accounts and shall not include profits arising from branches outside India.

- 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years ending on or before 31 March 2014.

BOARD'S RESPONSIBILITY CONTD….

- To approve the CSR Policy after considering recommendations of CSR Committee.
- To disclose CSR policy and initiatives in Board's report and Company's website
- To ensure that activities reflected in CSR policy are actually undertaken by company.
- If the company does not spend 2% of net profits as required, then Board to report the reasons in the Board's report.

Contents of CSR Policy

- Projects and programmes that are to be undertaken

- List of CSR projects/programmes which a company plans to undertake during the implementation year , specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.

- A statement that surplus arising out of the CSR activity will not be part of business profits of a company.

- A statement that the corpus would include the following:
    - a. 2% of the average net profits,
    - b. any income arising therefrom
    - c. surplus arising out of CSR activities.

Other points pertaining to CSR

- **Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by CBDT.**

- **A Company may set up an organization which is registered as a Trust or Section 8 Company, or Society or Foundation or any other form of entity operating *within India* to facilitate implementation of its CSR activities in accordance with its stated CSR Policy.**

- **A company may also conduct/implement its CSR programmes through Trusts, Societies, or Section 8 companies *operating* in India, which are not set up by the company itself.**

- **Companies may collaborate or pool resources with other companies to undertake CSR activities and any expenditure incurred on such collaborative efforts would qualify for computing the CSR spending.**

Other points pertaining to CSR

- Only such CSR activities will be taken into consideration as are undertaken within India.
- Only activities which are not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity.
- 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.
- Format of annual report on CSR initiatives to be included in the board report by qualifying companies has been prescribed under draft Rules.

Activities which may be included by companies in their Corporate Social Responsibility Policies (SCHEDULE VII)

Activities relating to:—

(i) eradicating extreme hunger and poverty;

(ii) promotion of education;

(iii) promoting gender equality and empowering women;

(iv) reducing child mortlity and improving maternal health;

(v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

(vi) ensuring environmental sustainability;

(vii) employment enhancing vocational skills;

(viii) social business projects;

(ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

(x) such other matters as may be prescribed.

Post your reflections to:
S. Dhanapal, Managing Partner
Smita Chirimar, Partner
N. Ramanathan, Partner

S DHANAPAL & ASSOCIATES
Practising Company Secretaries

Suite No.103, First Floor, Kaveri Complex, 96/104, Nungambakkam High Road,
Next to Ganpat Hotel & ICICI Bank, Nungambakkam, Chennai - 600 034
Ph.No. 044 - 4553 0256 / 57, Direct Ph: 044-42652127

New No. 42(old No. 12), Reddy Street,
Near, Avichi School, Virugambakkam, Chennai – 600 092

#1B, First Floor, Vantage Plaza, No. 1, M.G. Road,
Near Adyar Bus Depot, Thiruvanmiyur, Chennai – 600 041

Cell No. 96770 22712 , 9840552790, 9677123774
Email Id. csdhanapal@gmail.com