Accounts of Companies – Section 128

Every Company is required to prepare and keep books of accounts and other relevant books and papers

- either in paper or in electronic mode.
- on accrual basis and as per double entry system of accounting.
- And shall give a true and fair view of the state of 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.

Maintenance of books of accounts in electronic mode

- Shall have to remain accessible in India for subsequent use; and
- 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.
- 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 shall have to be maintained.
- 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.

Intimation to the Registrar

Rule 3(6) mandates a company maintaining books of accounts in electronic mode to intimate to the Registrar on an annual basis at the time of filing of financial statement-

(a) the name of the service provider;
(b) the internet protocol address of service provider;
(c) the location of the service provider (wherever applicable);
(d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Such books of accounts and relevant papers need to be kept at the registered office of the company or at such other place in India as the Board of Directors may decide.

When the Board of Directors of a company has taken a decision to keep all or any of the books of account and other relevant papers at such other place in India, other than at the registered office the company shall file with the Registrar a notice in writing giving the full address of that other place within seven days of such decision.

Periodical Returns from the branches – Branch office in India or outside shall be deemed to have kept and maintained the books of accounts at the registered office of the company, if – proper books of account relating to transactions effected at the branch office are kept at that office and summarized returns periodically are sent by the branch office to the company.

Inspection of Books of Accounts of the Company

Maintained by the company within India	Maintained by the Company outside India	Books of Accounts of Subsidiary
- At the registered office of the company or - At such other place in India as specified above - By any director - During business hours	Following conditions have to be complied with: Summarized returns of such books of account of the company be sent to the registered office at quarterly intervals. The director shall furnish a written request setting out the full details of the financial information sought Such financial information should be provided by the company to the director within fifteen days of the date of receipt of the written request. The financial information shall be sought for by the director himself only.	The inspection shall be done only by any person authorized in this behalf by a resolution of the Board of Directors of the Company.

Period for preservation of accounts (with the vouchers) –

(i) relating to a period of not less than eight financial years immediately preceding a financial year; or

(ii) in the case of a company in existence for a period less than eight years, in respect of all the preceding years.

* Where an investigation has been ordered in respect of a company under Chapter XIV the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

Punishment for Contravention (Section 128)

For wilful contravention

(*i*) the managing director

(*ii*) the whole-time director in charge of finance

(*iii*) the Chief Financial Officer or any other person charged by the Board of Directors with the duty;

- shall be punishable with
    - imprisonment for a term which may extend to one year or
    - with fine not less than fifty thousand rupees which may extend to five lakh rupees, or
    - with both.

Financial Statements:

As per Explanation to Section 129, Reference to 'financial statement' shall include reference to notes to accounts, or documents annexed or attached thereto, giving information required to be given by this Act and allowed by this Act.

Financial Statements shall:

- give a true and fair view of the state of affairs
- comply with the accounting standards notified under Section 133
    - In the event of a deviation, the deviation with reasons and the financial effects of such deviation, if any, must be disclosed.
- be in such form specified in Schedule III.
- and be laid down by the Board of directors at the annual General Meeting for every financial year

Non-applicability - The provisions shall not apply to Insurance Companies, Electricity Companies, Banking Companies and to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

Exemptions – The Central Government may *suo motu* or on an application made by a class or classes of companies exempt the same from applicability of the provisions of Section 129, if required in public interest. Such exemption may be conditional or unconditional, as may be specified in such notification.

Consolidated Financial Statements –

Consolidated financial statement of all the subsidiaries prepared in accordance with the provisions of Schedule III of the Act and the applicable accounting standards; should be laid before the AGM; and subsidiaries shall include joint ventures and associate companies. A statement containing the salient features of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures in Form AOC-1 shall be attached to the Financial Statement.

National Financial Reporting Authority (Section 132 & 133) –

NFRA shall be constituted by the Central Government vide notification and shall in compliance with section 132(2) –

(i) make recommendation on the formulation and laying down of accounting and auditing policies and standards.

(ii) monitor and enforce the compliance with accounting and auditing standards recommended by it.

(iii) oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures required for improvement in quality of services and such other matters as may be prescribed.

(iv) perform such other functions relating to (i) to (iii) above as may be prescribed.

The Central Government shall lay down the accounting standards as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendation made by the National Financial Reporting Authority

Approval of Financial Statements –

The Board of Directors of a Company shall approve the Financial Statements and thereafter, the same shall be signed by at least –

(i) by the Chairman where he is authorized by the Board or

(ii) by two directors out of which one shall be the managing director, if any and Chief Executive Officer, if any, if he is a director of the company and by Chief Financial Officer and Company Secretary of the Company.

(iii) in the case of One Person Company, only by one director.

Thereafter, such financial statements shall be sent to the auditors for their report thereon, which shall then be attached to the same.

Report of the Board of Directors

A report of the Board of Directors shall be attached to the financial statements of the company.

Contents of Board's Report of companies other than OPCs Section 134(3)	Matters to be included in Board's report Rule 8
The report of the Board of Directors shall include— (*i*) extracts of the annual return of the company as provided under section 92(3) (*ii*) Number of meetings of the Board (*iii*) Directors' Responsibility Statement. (*iv*) A statement on declaration given by independent directors under section 149(6) (*v*) explanations or comments given by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report and by the Company Secretary in his secretarial audit report. (*vi*) particulars of loans, guarantees or investments under section 186 (*vii*) particulars of contracts or arrangements with related parties referred to in section 188(1) in a prescribed form (*viii*) in case of a company covered under section 178(1) company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters as provided in section 178(3) (*ix*) the state of the Company's affairs (*x*) the amounts, if any, which it proposes to carry to any reserves in such balance sheet (*xi*) the amount, if any, which it recommends should be paid by way of dividend (*xii*) material changes and commitments, if any, affecting the financial position of the Company which have occurred between the end of its financial year to which the financial statements relate and date of the report (*xiii*) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed (*xiv*) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company. (*xv*) the details about the policy developed and implemented by the company on Corporate Social Responsibility initiatives taken during the year. (*xvi*) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which the formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. (*xvii*) such other matters as may be prescribed.	- It shall be prepared based on the stand alone financial statements of the company. - A separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented shall be included. - The particulars of contracts or arrangements with related parties in Form AOC-2 shall be included. The report shall contain the following information and details, namely:— (A) Conservation of energy— (*i*) the steps taken or impact on conservation of energy; (*ii*) the steps taken by the company for utilising alternate sources of energy; (*iii*) the capital investment on energy conservation equipments; (B) Technology absorption— (*i*) the efforts made towards technology absorption; (*ii*) the benefits derived like product improvement, cost reduction, product development or import substitution; (*iii*) in case of imported technology (imported during the last three years reckoned from the beginning of the F.Y.)— (*a*) the details of technology imported;\ (*b*) the year of import; (*c*) whether the technology been fully absorbed; (*d*) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and (*iv*) the expenditure incurred on Research and Development. (C) Foreign exchange earnings and Outgo— The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows. (4) Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. (5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain— (*i*) the financial summary or highlights; (*ii*) the change in the nature of business, if any; (*iii*) the details of directors or key managerial personnel who were appointed or have resigned during the year; (*iv*) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year; (*v*) the details relating to deposits, covered under Chapter V of the Act,-

	(*a*) accepted during the year; (*b*) remained unpaid or unclaimed as at the end of the year; (*c*) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved- (*i*) at the beginning of the year; (*ii*) maximum during the year; (*iii*) at the end of the year; (*vi*) the details of deposits which are not in compliance with the requirements of Chapter V of the Act; (*vii*) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future; (*viii*) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

* The Board's Report in the case of a One Person Company means 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.

The Directors' Responsibility Statement

The Directors' Responsibility statement shall state that—

(*a*) in the preparation of 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, and

(*e*) in the case of a listed company, the directors had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

(*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.

Explanation to Section 134(5)(e) defines the term "internal financial controls" as 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.

Signature on Board's Report and its Annexures by -

(*i*) Chairman of the company, if he is authorized by the Board and

(*ii*) if the Chairman is not so authorized, by at least two directors, one of whom shall be a managing director or by the director where there is one director.

Circulation of Financial Statements –

A **signed copy of every financial statement**, including consolidated financial statement, if any, shall be **issued, circulated or published** along with a copy each of—

(*a*) any notes or documents which are required to be attached to the financial statement as per section 129,

(*b*) the auditor's report; and

(*c*) the Board's report

Right of members {Section 136(1)} - The company shall send a copy of

(*i*) the financial statement, including consolidated financial statement, if any

(*ii*) auditor's report and

(*iii*) every other document required by law to be annexed or attached to the financial statement [*i.e.* the Board's Report and annexures thereto] which are to be laid before a company in general meeting to -
(*a*) every member of the company
(*b*) every trustee for the debenture holder of any debentures issued by the company and
(*c*) to other persons who are so entitled.

not less than twenty-one days before the date of the general meeting.

Compliance by a listed company

Sufficient compliance of Section 136(1) shall be deemed -

(*i*) 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 meeting and

(*ii*) if a statement containing the salient features of such documents in Form AOC-3 or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company

(ii) not less than twenty one days before the date of the meeting unless the shareholders ask for full financial statement.

Also, the financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, shall have to be placed on the company's website.

Separate audited accounts of each subsidiary shall have to be placed on the website of the company and be provided to any shareholder who asks for it.

Manner of circulation of 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 –

(*a*) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes;

(*b*) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and

(*c*) by despatch of physical copies through any recognized mode of delivery as specified under section 20 of the Act, in all other cases.

Inspection of financial statement, auditor's report and other documents during business hours is permissible to –
(*a*) every member of the company
(*b*) trustee for the holder of any debentures issued by the company.

<u>Filing of Accounts with ROC</u>

By One Person Company	By other than One Person Company
3rd Proviso to Section 137(1)	Section 137(1)
A one person company shall file a copy of the financial statements duly adopted by the member, alongwith all the documents which are required to be attached to such financial statement within one hundred eighty days from the closure of the financial year	Within thirty days of the date of the annual general meeting - (*i*) a copy of the financial statement including consolidated financial statement, if any, along with all the documents which are required to be annexed or attached to thereto in Form AOC-4. (*ii*) the above duly adopted at the annual general meeting and (*iii*) in such manner with such fee or additional fee as may be prescribed for filing within two hundred seventy days from the last date by which it should have been filed. * The class of companies as may be notified by the Central Government from time to time shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format.

Where the financial statement is not adopted at the AGM or at the adjourned AGM	Where the financial statement is adopted at the adjourned AGM	Where the AGM is not held
1st Proviso to Section 137(1)	2nd Proviso to Section 137(1)	137(2)
The company shall file the un-adopted financial statement along with the required documents as per Section 137(1) with the Registrar within thirty days of the date of the AGM. The Registrar shall take the documents so filed in his records as provisional till the financial statement	The company shall file with the Registrar the financial statement and other documents within thirty days of the date of such adjourned AGM. The company shall pay such fee or additional fee if such documents are filed within two hundred seventy days from the date by which they should have been filed.	The financial statement along with the documents required to be attached, duly signed. A statement of facts and reasons for not holding the AGM. within thirty days of the last date before which the AGM should have been held. And payment of such fee or additional fee as may be prescribed within the time specified in Section 403.

<u>Re-opening or revision of accounts [Sec. 130]:</u> Only on the order of Court of Competent Jurisdiction or Tribunal to the effect that –

1. the relevant earlier accounts were prepared in a fraudulent manner; or
2. the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

<u>Voluntary revision of financial statements or Board's report [Sec. 131]</u> is permissible if the Directors of a company find that –

(*a*) the financial statement of the company or
(*b*) the report of the Board

do not comply with the provisions of section 129 or 134.
However, the approval of the Tribunal shall be required, and accounts of any of the 3 preceding financial years can be revised.
Only one revision in a financial year is permissible and the Board Report shall disclose reasons for such revision.
The order of Tribunal shall have to be mandatorily filed with the Registrar in Form INC-28.

<u>Corporate Social Responsibility [Section 135]:</u>
Rule 2(c) of Companies (Corporate Social Responsibility Policy) Rules, 2014: "Corporate Social Responsibility (CSR)" means and includes but is not limited to:-

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

Applicability –
Every company having:

1. Net worth of Rupees five hundred crore or more; or
2. Turnover of rupees one thousand crore or more; or
3. Net Profit of rupees five crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board which shall consist of three or more directors out of which at least one director shall be an independent director.

CSR Committee

Scope	Constitution
(*a*) To Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the Company as specified in Schedule VII. (*b*) To Recommend the amount of expenditure to be incurred on the above activities. (*c*) To Monitor the Corporate Social Responsibility Policy from time to time.	*(i)* an unlisted public company or a private company which is not required to appoint an independent director, shall have its CSR Committee without such director , *(ii)* a private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors: *(iii)* with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (*d*) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

Mandatory CSR Spends Section 135(5)	Net Profit Rule 2(f)	Schedule VII Activities
In every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.	Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but **shall not include the following**, namely:- *(i)* any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and *(ii)* any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act	Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:— (*i*) eradicating extreme hunger and poverty; (*ii*) promotion of education; (*iii*) promoting gender equality and empowering women; (*iv*) reducing child mortality 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.

CSR Policy Rule 6	CSR Expenditure Rule 7	CSR Reporting Rule 8
"CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company. It shall include – (*a*) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and (*b*) monitoring process of such projects or Programs: Disclosure shall be made in the Board's Report and company's website {Rule 9}	It **shall include** all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, **but does not include** any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.	The Board's Report shall include an annual report on CSR containing particulars specified in Annexure. In case of a foreign company, the balance sheet filed shall contain an Annexure regarding report on CSR.

<u>Internal Audit [Section 138]:</u>

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:—

(*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.

Transitional Period of 6 months for an existing period to comply with the provision.

<u>Depreciation {Section 123(2) and Schedule II} –</u>

Schedule II of the Companies Act, 2013 provides the **useful life as against the minimum rates of depreciation** prescribed in Schedule XIV of the Companies Act, 1956;

Now, **for intangible assets, the provisions of the Accounting Standards would be applicable**;

Component Accounting made mandatory: Where <u>cost of a part of the asset is significant to total cost</u> of the asset and <u>useful life of that part is different from the useful life of the remaining asset</u>, useful life of that significant part shall be determined separately

The **depreciable amount** of an asset is:

1. the cost of an asset; or
2. other amount substituted for cost,
3. ***less*** its residual value [Part A of Schedule II].

Depreciation is the systematic allocation of the depreciable amount of an asset over its **useful life [≤ life under Part 'C', unless justified];**

The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its **residual value [≤ 5% of Original Cost, unless justified];**

The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the **number of production or similar units expected to be obtained** from the asset by the entity;

Transitional Provisions: From the date this Schedule comes into effect, the carrying amount of the asset as on that date—

1. <u>shall</u> be depreciated over the remaining useful life of the asset as per this Schedule;
2. after retaining the residual value,
3. <u>shall</u> be recognised in the opening balance of retained earnings where the remaining useful life of an asset is *nil*

Disclosure Requirements: The following information shall also be disclosed in the accounts, namely:—

1. **depreciation methods** used; and
2. the **useful lives** of the assets for computing depreciation, <u>if they are different</u> from the life specified in the Schedule