

Chapter IX – Accounts of Companies

Chapter IX comprises Sec.128 to Sec.138. The relevant Rules are called Companies (Accounts) Rules, 2014.

OVERVIEW

(1) Part 1	(2) Part 2	(3) Part 3
- Books of Accounts - Financial Statement - Re-opening of Accounts - Voluntary Revision of Financial Statement / Board's Report	- NAFRA - Prescribed Accounting Standards - Financial Statement Approval / Authentication - Board's Report	- Corporate Social Responsibility - Circulation of Audited Fin.Statement - Filing Financial Statement with ROC - Internal Audit

List of abbreviations used: **A/c** = Account, **BOD** = Board of Directors, **MD** = Managing Director, **WTD** = Whole Time Director, **CFO** = Chief Financial Officer, **ROC** = Registrar of Companies, **NAFRA** = National Financial Reporting Authority, **CFS** = Consolidated Financial Statements, **SFS** = Separate Financial Statements, **CSR** = Corporate Social Responsibility.

1. Books of Accounts [Sec.128]

Particulars	Description
Items to be kept	- Books of Accounts, - Other relevant Books and Papers, - Financial Statements for every Financial Year.
Basic conditions as to Books	True and Fair view of the state of affairs of the Company (and its Branches if any), - To explain the transactions effected at Registered Office and Branches, Accrual Basis, and Double Entry System of Accounting.
Place of Keeping	- Registered Office, - Any other place in India as Board of Directors may decide. Note: In case of (2) above, a written notice shall be filed with ROC providing full address of other place.
Branch Accounts	For Local or Foreign Branches: [as per Sec.128] - Proper books of accounts relating to Branch's transactions shall be kept at the Branch. - Proper Summarised Returns shall be sent periodically to the Registered Office, or other place where books are kept. For Foreign Branches [As per Rules]: Summarised Returns of the Books of A/c 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, and kept open to Directors for inspection.
Electronic Form	- 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. - 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. - be capable of being displayed in a legible form. - 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. - 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. - At the time of filing of Annual Financial Statements to the ROC, the Company should provide the following information in relation to maintenance of the Electronic Records – - Name of the Service Provider, - Internet Protocol Address of Service Provider, - Location of the Service Provider (wherever applicable), - Address as provided by Service Provider where the books are maintained on Cloud.

Particulars	Description
Period	Normal Period: Books of Accounts along with vouchers shall be kept by every Company for 8 preceding Financial Years. Shorter Period: The Company in existence less than 8 years, shall maintain books in respect of all such preceding years. Longer Period: If the Central Government has ordered an investigation on the Company, it should maintain the books for such longer period as directed in this regard.
Inspection of Books of A/c – General Points	Items: Books of Accounts, and the other books and papers maintained. Inspection: By any Director. Place: Registered Office or other place where they are kept. Time: During Business Hours.
Inspection of Books of A/c – Special Points	Foreign Financial Information: The conditions in this regard are – - Written Request is required from the Director, not by or through his Power of Attorney Holder or Agent or Representative. - The Request shall set out the full details of the financial information sought, the period for which such information is sought. - Details relating to Financial Information maintained outside India should be produced for inspection within 15 days from the date of receipt of request. Subsidiary Books: Inspection in respect of any Subsidiary of the Company shall be done only by the person authorized specifically by BOD's Resolution. Others: Officers and Employees of the Company shall give all reasonable assistance for the inspection, which the Company can be reasonably expected to give.
Non Compliance of Sec 128	Persons covered: - Managing Director, - Whole Time Director in charge of Finance, - Chief Financial Officer, - Any person authorised by Board of Directors to ensure compliance with Sec.128 Punishment: - Imprisonment of maximum 1 year, or - Fine of Minimum ` 50,000, Maximum ` 5,00,000, or - Both.

2. Financial Statement [Sec.129]

Particulars	Description
Financial Statements [Sec.2(40)]	"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 an Income and Expenditure Account (in the case of a Company carrying on any activity not for Profit) for the Financial Year, Cash Flow Statement for the Financial Year, A Statement of Changes in Equity, if applicable, and Any Explanatory Note annexed to, or forming part of, any document referred to above. Note 1: The Financial Statement, with respect to One Person Company, Small Company and Dormant Company, may not include the Cash Flow Statement. Note 2: Financial Statement shall include any Notes annexed to or forming part of Financial Statements, giving information required to be given and allowed to be given in the form of such Notes.
Basic Requirements as to Financial Statements	- Give a true and fair view of the state of affairs of the Company(ies), - Comply with the Accounting Standards notified u/s 133, and - Be in the form(s) provided in Schedule III. - Items contained in Financial Statements shall be in accordance with the Accounting Standards.
Above Basic requirements, not applicable to	- Any Insurance Company, or - Any Banking Company, or - Any Company engaged in the Generation or Supply of Electricity, or

Particulars	Description								
	4. Any other Class of Company for which a form of Financial Statement is specified under the Act governing such class of Company.								
Disclosure Exempted under Specific Acts = True and Fair	- Where the disclosure of certain matters in Financial Statements are not required under the Governing Act (as listed below), then – - Financial Statements shall not be treated as not disclosing a true and fair view of the state of affairs of the Company. Category of Company / Relevant Law: <table border="1"> <tr> <td>Insurance Company</td><td>Insurance Act, 1938, or Insurance Regulatory and Development Authority Act, 1999</td></tr> <tr> <td>Banking Company</td><td>Banking Regulation Act, 1949</td></tr> <tr> <td>Company engaged in the Generation or Supply of Electricity</td><td>Electricity Act, 2003</td></tr> <tr> <td>Any other Class of Company, governed under separate Act, for which a form of Financial Statement is specified under that Act</td><td>That relevant Act</td></tr> </table>	Insurance Company	Insurance Act, 1938, or Insurance Regulatory and Development Authority Act, 1999	Banking Company	Banking Regulation Act, 1949	Company engaged in the Generation or Supply of Electricity	Electricity Act, 2003	Any other Class of Company, governed under separate Act, for which a form of Financial Statement is specified under that Act	That relevant Act
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Any other Class of Company, governed under separate Act, for which a form of Financial Statement is specified under that Act	That relevant Act								
Transitional Provisions with respect to Accounting Standards	- Accounting Standards specified under Companies Act, 1956 shall be deemed to be the Accounting Standards until Accounting Standards are specified by the Central Govt u/s 133. - Till NAFRA is constituted u/s 132, the Central Government may prescribe the Accounting Standards or any addendum thereto, as recommended by ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted u/s 210A of the Companies Act, 1956.								
If Fin.Statements do not comply with applicable 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.								
Presentation at AGM	At every AGM , the Board of Directors shall lay the Financial Statements for the Financial Year, before such AGM.								
Consolidated Financial Statements in respect of Subsidiaries	- A Company having one or more Subsidiaries, shall, prepare and lay at AGM– - Its Own Financial Statements (Separate Financial Statements=SFS), and - a Consolidated Financial Statement(CFS) of the Company and all its Subsidiaries. - CFS shall be in the same form and manner as that of its own, i.e. SFS. - The Company shall also attach along with its Financial Statement, a separate Statement containing the salient features of the Financial Statement of its Subsidiary(ies) in Form AOC-1. - For this purpose, Subsidiary shall include Associate Company and Joint Venture. - Manner of Consolidation: <table border="1"> <tr> <th>Particulars</th><th>CFS to be made in accordance with</th></tr> <tr> <td>Required to prepare CFS under AS</td><td>Sch III and Applicable AS</td></tr> <tr> <td>Not Required to prepare CFS under AS</td><td>Only Sch III</td></tr> </table> - The provisions applicable to the preparation, adoption and audit of the Financial Statements of a Holding Company, shall equally be applicable for Consolidated Financial Statements.	Particulars	CFS to be made in accordance with	Required to prepare CFS under AS	Sch III and Applicable AS	Not Required to prepare CFS under AS	Only Sch III		
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Not Required to prepare CFS under AS	Only Sch III								
Power of CG to Exempt	- 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 Sec.129 or the Rules, - 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.								
Non Compliance of Sec.129	Person covered: - Managing Director, - Whole Time Director incharge of Finance, - Chief Financial Officer, - any person authorised by the BOD to ensure Compliance with Sec.129 - All Directors, in case of absence of any of the Officers in point (a) to (d).								

Particulars	Description
	2. Punishment: (a) Imprisonment of Maximum 1 year, or (b) Fine of Minimum ₹50,000, Maximum ₹ 5,00,000, or (c) Both.

3. Re-opening of Accounts on Courts' or Tribunals' order [Sec.130]

Particulars	Description
No Re-opening / Re-casting of Financial Statements	1. Rule: A Company shall not re-open its books of account or not recast its financial statements. 2. Exception: Re-opening of Books/ Re-casting of Financial Statements can be done only if an order is made by a court or Tribunal.
Grounds for re-opening / re-Casting	1. The relevant earlier accounts were prepared in a fraudulent manner , or 2. The affairs of the Company were mis-managed during the relevant period, thereby casting a doubt on the reliability of Financial Statements.
Person Eligible to apply for Reopening / Recasting	1. Central Government, 2. Income-Tax Authorities, 3. Securities and Exchange Board of India (SEBI), 4. Any other Statutory Regulatory Body or Authority, or 5. Any person concerned.
Order by Court / Tribunal	1. Court or Tribunal shall give notice to above Persons [1 to 4 (not 5) above] and shall take into consideration the representations made , if any before passing an order. 2. The accounts so revised or re-cast pursuant to the order shall be final .

4. Voluntary Revision of Financial Statements or Boards' Report [Sec.131]

Particulars	Description	
Grounds for Revision [Sec. 131(1)]	If it appears to the Directors of the Company that – (a) The Financial Statement of the Company, or (b) Board's Report	
Restrictions / Conditions for Revision [Sec. 131(2)]	do not comply with the provisions of Sec. 129 or Sec. 134	
	1. Revision can be in any of the 3 preceding financial years . 2. Revised Financial Statement or Report shall not be prepared or filed more than once in a Financial Year. 3. 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. 4. Revision must be restricted / confined as below:	
	If the copies of the previous Financial Statement or Report have already been – (a) Sent out to Members, or (b) delivered to the Registrar, or (c) laid before the Company in General Meeting	The revision must be confined to – (a) The correction in respect of which the previous Financial Statement or Report do not comply with the provisions of Sec. 129 or Sec. 134, and (b) The making of any necessary consequential alternation.
Procedure	1. The Company shall apply to the Tribunal for its approval. 2. Tribunal shall give notice to (a) the Central Government, and (b) Income Tax Authorities, and shall take into consideration the representations, if any, made. 3. Tribunal shall pass an order thereon. 4. A copy of the Tribunal's order shall be filed with the ROC. 5. Board shall effect the revision in Financial Statement / Report as per above order.	
Power of CG to make Rules [Sec. 131(3)]	Central Government may make Rules as to the application of the Act in relation to Revised Financial Statement or a Revised Director's Report, covering the following– 1. make different provisions according to which the previous Financial Statement or Report are replaced or are supplemented by a document indicating the corrections to be made,	

Particulars	Description
	2. make provisions with respect to the functions of the Company's Auditor in relation to the Revised Financial Statement or Report, 3. require the Directors to take such steps as may be prescribed.

5. National Financial Reporting Authority (NAFRA) [Sec.132]

- Constitution [Sec.132(1)]:** The Central Govt may, by notification, constitute a National Financial Reporting Authority (**NAFRA**) to provide for matters relating to Accounting and Auditing Standards under the Companies Act 2013.
- Members [Sec.132(3)]:** NAFRA shall consist of –
 - A Chairperson, who shall be a person of eminence and having expertise in Accountancy, Auditing, Finance or Law to be appointed by the Central Government, and
 - Other Members not exceeding **fifteen**, consisting of part-time and full-time Members as may be prescribed.
- Conditions as to Members of NAFRA [Sec.132(3) Provisos]:**
 - Terms and Conditions:** Terms and Conditions and the manner of appointment of the Chairperson and Members shall be prescribed by Central Government.
 - Independence / Conflict of Interest:** Chairperson and Members shall make a declaration to the Central Government regarding **no conflict of interest** or **lack of independence** in respect of his or their Appointment.
 - No Nexus with Audit Firm:** The Chairperson and Members, who are in full-time employment with NAFRA, 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.
- Scope of NAFRA's Duties [Sec.132(2)]:**
 - Make **recommendations** to the Central Government on the formulation and laying down of Accounting and Auditing Policies and Standards for adoption by Companies or class of Companies or their Auditors,
 - Monitor** and enforce the compliance with Accounting and Auditing Standards in prescribed manner,
 - Oversee** the Quality of Service of the Professions associated with ensuring compliance with such Standards, and suggest measures required for improvement in Quality of Service and such other related matters as may be prescribed, and
 - Perform such **other functions** relating to the above points (a), (b) and (c) as may be prescribed.

Note: The above areas shall be NAFRA's duties, notwithstanding anything contained in any other law.
- Investigation and Other Powers of NAFRA [Sec.132(4)]:** Notwithstanding anything contained in any other law, NAFRA shall have the following powers –

(a) Investigation	- NAFRA have the power to investigate, either suo motu or on a reference made to it by the Central Government, for specified class of Bodies Corporate or Persons, into the matters of professional or other misconduct committed by any Member or Firm of Chartered Accountants, registered under the CA Act, 1949. - Where NAFRA has initiated an investigation, no other Institute or Body shall initiate or continue any proceedings in such matters of misconduct.
(b) Civil Court Powers	NAFRA 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 – - discovery and production of books of account and other documents, at the place and time specified by it, - summoning and enforcing the attendance of persons and examining them on oath, - inspection of any books, registers and other documents of any person at any place, - issuing commissions for examination of witnesses or documents,
(c) Punish for professional misconduct	Where professional or other misconduct is proved, NAFRA have the power to make order for – Imposing penalty of – - Minimum ₹ 1,00,000, Maximum five times of Fees Received, in case of Individuals, and - Minimum ₹ 10,00,000, Maximum ten times of Fees Received, in case of Firms, Debarring the Member or the Firm from engaging himself or itself from practice as Member of the ICAI for a period, Minimum 6 months, Maximum 10 years.

Note: "Professional or Other Misconduct" shall have the same meaning as u/s 22 of the CA Act, 1949.

6. Appeal against NAFRA's Orders [Sec.132(5) to (9)]:

(a) Constitution [Sec. 132(6)]	The Central Government may, by notification, constitute, an Appellate Authority consisting of a Chairperson and not more than two other Members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the NAFRA.
(b) Appellant [Sec. 132(5)]	Any person aggrieved by any order of the NAFRA u/s 132(4)(c), may prefer an appeal before the Appellate Authority constituted u/s 132 (6).
(c) Appellate Authority [Sec. 132(7)]	The Central Government shall prescribe – • qualifications for appointment of the Chairperson and Members of Appellate Authority, • manner of selection, • terms and conditions of their service, • requirement of the supporting staff, and • procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority.
(d) Fees [132(8)]	The Fee for filing the appeal shall be prescribed by the Central Government.
(e) Annual Report [Sec. 132(9)]	• The Officer authorised by the Appellate Authority shall prepare its Annual Report giving a full account of its activities. • He shall forward a copy thereof to the Central Government. • Central Govt shall cause the Annual Report to be laid before each House of Parliament.

7. NAFRA's Working and Administration [Sec.132(10) to (15)]:

(a) Procedure [Sec. 132(10)]	NAFRA shall meet at such times and places and shall observe rules of procedure in regard to the transaction of business at its meetings in such manner as prescribed.
(b) Secretary and Employees [Sec. 132(11)]	• The Central Government may appoint a Secretary and other Employees as it may consider necessary for the efficient performance of functions by the NAFRA. • The terms and conditions of service of the Secretary and Employees shall be prescribed by the Central Government.
(c) Head Office [Sec. 132(12)]	• The Head Office of the NAFRA shall be at New Delhi. • NAFRA may meet at such other places in India as it deems fit.
(d) Books [Sec. 132(13)]	NAFRA shall maintain books of account and other books in relation to its accounts, in the form and manner prescribed by the Central Government, in consultation with the C&AG of India.
(e) Audit [Sec. 132(14)]	• NAFRA's accounts shall be audited by the C&AG at specified intervals. • The accounts as certified by the C&AG, together with the Audit Report thereon shall be forwarded annually to the Central Government by NAFRA.
(f) Annual Report [Sec. 132(15)]	• NAFRA shall prepare its Annual Report, giving a full account of its activities during the Financial Year. • NAFRA shall forward a copy thereof to the Central Government. • The Central Government shall cause the Annual Report and the Audit Report given by the C&AG, to be laid before each House of Parliament.

6. Central Government to prescribe Accounting Standards [Sec.133]

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted u/s 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the NAFRA.

7. Financial Statement Approval / Authentication [Sec.134]

1. Signing of Financial Statements [Sec. 134(1)]:

Signing of Financial Statements [Sec 13(2)].				
Approval	Before submission to the Auditor for his report, the Financial Statement, including Consolidated Financial Statement, shall be approved by the Board of Directors.			
Signing	The signing requirements of Financial Statement are as below –			
	(a) By the Chairperson of the Company, where he is authorised by the Board, or	AND	(a) The Chief Executive Officer, if he is a Director in the Company,	} wherever they are appointed
	(b) By two Directors out of which one shall be Managing Director,		(b) The Chief Financial Officer, and	
			(c) The Company Secretary of the Company	
	Note: In case of a One Person Company, the Financial Statement shall be signed only by one Director .			

2. **Circulation of Financial Statement [Sec. 134(7)]:** 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** annexed to or forming part of such Financial Statement,
 - (b) the **Auditor's Report**, and
 - (c) the Board's Report referred u/s 134 (3).

Note: Auditors' Report shall be attached to every Financial Statement. **[Sec. 134 (2)]**

8. Board's Report [Sec.134]

To the statements laid before a Company in General Meeting, a Report by its Board of Directors shall be **attached**. The provisions in this regard are –

1. **Basis = SFS [Rules]:**
 - (a) The Board's Report shall be prepared based on the **stand-alone** Financial Statements of the Company.
 - (b) The Report shall contain 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.
2. **Signature of Board's Report [Sec.134(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,
 - (b) where Chairperson is not so authorised, by atleast two Directors, one of whom shall be a Managing Director, or
 - (c) by the Director where there is one Director.
3. **Contents [Sec.134 (3)]:** This Board's Report shall include the following –
 - (a) the extract of the **Annual Return** as provided u/s 92 (3),
 - (b) **Number of Meetings** of the Board,
 - (c) Directors' **Responsibility Statement**, **[See Point 4]**
 - (d) a Statement on Declaration given by **Independent Directors** u/s 149(6),
 - (e) in case of a Company covered u/s 178(1), **Company's Policy on Directors' Appointment** and Remuneration, including criteria for determining qualifications, positive attributes, independence of a Director and other matters provided u/s 178(3),
 - (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 u/s 186,
 - (h) Particulars of Contracts or Arrangements with **Related Parties** referred to u/s 188(1) in **Form AOC–2**,
 - (i) the **state** of the Company's affairs,
 - (j) the Amounts, if any, which it proposes to carry to any **Reserves**,
 - (k) the Amount, if any, which it recommends should be paid by way of **Dividend**,
 - (l) **Material Changes and Commitments**, if any, affecting the Financial Position of the Company which have occurred between the end of the Financial Year of the Company to which the Financial Statements relate and the date of the Report,
 - (m) the Conservation of Energy, Technology Absorption, Foreign Exchange Earnings and Outgo, **[See Point 5]**,
 - (n) a Statement indicating development and implementation of a **Risk Management Policy** for the Company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the Company,
 - (o) the details about the policy developed and implemented by the Company on **Corporate Social Responsibility** initiatives taken during the year, as per Annexure attached to Companies (CSR) Rules, 2014,
 - (p) in case of a Listed Company and every other Public Company having Paid-Up Share Capital of ₹ 25 Crores or more, 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,
 - (q) such **other matters** as may be prescribed. **[See Point 4]**

4. **Directors' Responsibility Statement [Sec.134(5)]:** The Directors' Responsibility Statement referred u/s 134(3)(c) shall state the following –
- in the preparation of the Annual Accounts, the applicable **Accounting Standards** had been followed along with proper explanation relating to material departures,
 - 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,
 - 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,
 - the Directors had prepared the annual accounts on a **going concern** basis, and
 - the Directors, in the case of a Listed Company, had laid down **Internal Financial Controls** to be followed by the Company and that such Internal Financial Controls are adequate and were operating effectively.
 - 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.

Note: "Internal Financial Controls" means the policies and procedures adopted by the Company for ensuring the orderly and efficient conduct of its business, including adherence to Company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

5. **Information u/s 134(3)(m):** The Board's Report shall contain the following information and details –

(a) Conservation of Energy	- Steps taken or impact on Conservation of Energy, - Steps taken for utilizing alternate sources of Energy, - Capital Investment on Energy Conservation Equipments.
(b) Technology Absorption	- Efforts made towards Technology Absorption, - Benefits derived like Product Improvement, Cost Reduction, Product Development or Import Substitution, - In case of Imported Technology (imported during the last 3 years reckoned from the beginning of the financial year) – - Details of Technology imported, - Year of Import, - Whether the Technology has been fully absorbed, - If not fully absorbed, areas where absorption has not taken place, and reasons thereof. - Expenditure incurred on Research and Development
(c) Foreign Exchange Earnings and Outgo	- Foreign Exchange earned in terms of actual inflows during the year, - Foreign Exchange outgo in terms of actual outflows during the year.

6. **Information u/s 134(3)(q):** The Board's Report shall also contain the following –
- Financial Summary or Highlights,
 - Change in the nature of Business, if any,
 - Details of Directors or Key Managerial Personnel who were appointed or have resigned during the year,
 - Names of Companies which have become or ceased to be its Subsidiaries, Joint Ventures, or Associate Companies during the year,
 - Details relating to Deposits, covered under Chapter V of the Act –
 - 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,
 - at the end of the year,
 - Details of Deposits which are not in compliance with the requirements of Chapter V of the Act,

- (g) 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,
(h) Details in respect of adequacy of Internal Financial Controls with reference to the Financial Statements.

7. Other Points:

Punishment for Contravention of Sec.134 [Sec.134(8)]	For Company: Fine of Minimum ` 50,000, Maximum ` 25,00,000. For every Officer in Default: - Imprisonment of maximum 3 years, or - Fine of Minimum ` 50,000, Maximum ` 5,00,000, or - Both.
For One Person Company [Sec.134(4)]	In case of a One Person Company, the Board's Report u/s 134 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. [Note: No other detailed contents required.]

9. Corporate Social Responsibility – CSR [Sec.135]

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10. Right of Members to Copies of Audited Financial Statements [Sec.136]

Particulars	Description	
Items to be circulated	1. Copy of the Financial Statements, including Consolidated Financial Statements, if any, 2. Auditor's Report, and 3. 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.	
Persons entitled to receive above	1. Every Member of the Company, 2. Every Trustee for the Debenture-holder of any Debentures issued by the Company, and 3. All Persons other than such Member or Trustee, being the person so entitled.	
Time Limit	Not less than 21 days before the date of the Meeting.	
Inspection	A Company shall allow every Member or Trustee of the Holder of any Debentures issued by the Company to inspect the above documents at its Registered Office during business hours.	
Punishment for Non-Compliance	1. For Company: Penalty of ₹ 25,000 2. For every Officer in Default: Penalty of ₹ 5,000	
Special Points for Listed Companies	1. Copies of above documents should be made available for inspection at its Registered Office during working hours for a period of 21 days before the date of the Meeting. 2. Unless the Shareholders ask for full Financial Statements, the Company may circulate as under, not less than 21 days before the date of the Meeting –	
	Items to be sent	To whom sent?
	(a) A Statement containing the salient features of these documents in Form AOC-3, or (b) Copies of the documents, as the Company may deem fit.	(a) To every Member of the Company, and (b) To every Trustee for the Holders of any Debentures issued by the Company.
Special Points for Circulation in certain cases	In case of all Listed Companies and Public Companies which have a Net Worth of more than ₹ 1 Crore and Turnover of more than ₹ 10 Crores, the Financial Statements may be sent – 1. By Electronic Mode to Members whose Shareholding is in Demat Form, and whose email ids are registered with the Depository for communication purposes, 2. By Electronic Mode to Members who have positively consented in writing to receiving by electronic mode, where the Shareholding is not in Demat Form, 3. By Despatch of Physical Copies through any recognised mode of delivery u/s 20, in all other cases.	
Website Hosting by Listed Companies	A Listed Company shall also place its Financial Statements including Consolidated Financial Statements, if any, and all other documents required to be attached thereto, on its Website, which is maintained by or on behalf of the Company.	

Particulars	Description
For Holding Companies	Every Company having a Subsidiary or Subsidiaries shall – 1. place Separate Audited Accounts in respect of each of its Subsidiary on its Website, if any, 2. provide a copy of Separate Audited Financial Statements in respect of each of its Subsidiary, to any Shareholder of the Company who asks for it.

11. Copy of Financial Statement to be filed with Registrar [Sec.137]

Particulars	Description
Documents to be filed with ROC	Following documents duly adopted at the AGM of the Company, should be filed with ROC – 1. Copy of the Financial Statements, including Consolidated Financial Statement, if any, along with 2. All the documents which are required to be or attached to such Financial Statements under the Act.
Time Limit	Within 30 days of the date of AGM.
Manner	1. Fees or Additional Fees as may be prescribed within the time specified u/s 403, shall be paid. 2. Company shall file the Financial Statements with ROC, together with Form AOC-4.
If Financial Statement not adopted at AGM	1. Where the Financial Statements are not adopted at AGM or adjourned AGM, such Unadopted Financial Statements along with the required documents shall be filed with the ROC within 30 days of the date of AGM. 2. 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.
After adoption at adjourned AGM	Adopted Financial Statements shall be filed with the Registrar within 30 days of such adjourned AGM, with fees or additional fees.
If AGM not held [Sec.137(2)]	If the AGM for any year has not been held, the following shall be filed with the ROC within 30 days of the last date before which the AGM should have been held, along with prescribed fees – 1. Financial Statements and other documents as normally required, duly signed, 2. Statement of Facts and Reasons for not holding the AGM.
For One Person Company	A One Person Company shall file a copy of the Financial Statements duly adopted by its Member, along with all the documents which are required to be attached to such Financial Statements, within 180 days from the closure of the Financial Year.
Subsidiaries outside India	Along with its Financial Statements to be filed with ROC, a Company shall 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.
Punishment for Contravention [Sec.137(3)]	1. Act / Omission: Failure to file the copy of Financial Statements u/s 137(1)/(2), within the period specified u/s 403, i.e. 270 days from the date on which it should have been filed. 2. Persons punishable: (a) Company itself, (b) the Managing Director and the Chief Financial Officer of the Company, if any, (c) in the absence of the MD and CFO, any other Director who is charged by the Board with the responsibility of complying with the provisions of Sec.137, (d) in the absence of any such Director, all the Directors of the Company. 3. Punishment: (a) For Company: Fine of ₹ 1,00,000 per day during which failure continues, Maximum ₹ 10,00,000. (b) Other Persons in Default: • Imprisonment of maximum 6 months, or • Fine of Minimum ` 1,00,000, Maximum ` 5,00,000, or • Both.

12. Internal Audit [Sec.138]

The provisions relating to Internal Audit are as under –

Particulars	Description
Companies required to appoint Internal Auditor	1. Every Listed Company 2. Every Unlisted Public Company, during the preceding Financial year having – (a) Paid Up Share Capital of ₹ 50 Crores or more, or (b) Turnover of ₹ 200 Crores or more, or (c) Outstanding Loans or Borrowings from Banks or Public Financial Institutions exceeding ₹ 100 Crores or more at any point of time during the preceding financial year, or (d) Outstanding Deposits of ₹ 25 Crores or more at any point of time during the preceding financial year. 3. Every Private Company having – (a) Turnover of ₹ 200 Crores or more during the preceding financial year, or (b) Outstanding Loans or Borrowings from Banks or Public Financial Institutions exceeding ₹ 100 Crores or more at any point of time during the preceding financial year.
Existing Companies	Existing Company covered under any of the above criteria shall appoint Internal Auditor within the month of Sep 2014 (i.e. 6 months from the commencement of this section).
Conditions as to appointment	1. Internal Auditor may be an Individual or a Firm. 2. Internal Auditor, shall either be a Chartered Accountant or a Cost Accountant, or such other Professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company. 3. The term Chartered Accountant shall mean a CA, whether engaged in practice or not. 4. The Internal Auditor may or may not be an Employee of the Company.
Other Points	1. The Audit Committee or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit. 2. Manner and Intervals of Internal Audit shall be prescribed by the Central Government.

Chapter X – Audit and Auditors

Chapter X comprises Sec.139 to Sec.148. The relevant Rules are called Companies (Audit and Auditors) Rules, 2014.

OVERVIEW

(1) Qualifications	(2) Appointment	(3) Removal, Rights, Misc, etc.
1. Qualifications of Auditors 2. Disqualifications of Auditors 3. Auditor not to render Certain Services 4. Remuneration of Auditors 5. Audit of Branches	1. Appointment of First Auditors 2. Appointment of Auditors of Govt Companies 3. Appointment of Auditors at AGM 4. Manner & Procedure for Selection & Appointment of Auditors 5. Casual Vacancy 6. Re-appointment of Retiring Auditor 7. Rotation of Auditors 8. Illustration on Rotation of Auditors	1. Removal of Auditors before expiry of term 2. Removal of Auditors at AGM 3. Change of Auditors based on Tribunal's Direction 4. Resignation of Auditors 5. Rights of Auditors 6. Duties of Auditors 7. Punishment for Contravention 8. Cost Audit

1. Qualifications

1.1 Qualifications of Auditors [Sec.141(1), (2)]

1. A person shall be eligible for appointment as an Auditor of a Company only if he is a Chartered Accountant.
2. A Firm whereof **majority** of the Partners **practising in India** are qualified for appointment, as aforesaid, may be appointed by its Firm Name to be the Auditors of a Company.
3. Where a Firm (including a LLP) is appointed as Auditor of the Company, only the **Partners who are Chartered Accountants** are authorised to act and sign on behalf of the Firm.

1.2 Disqualifications of Auditors [Sec.141(3), (4) and Rules]

1. **Disqualifications [Sec.141(3)]:** The following persons are not eligible for appointment as an Auditor of a Company –
 - (a) a **Body Corporate** other than a Limited Liability Partnership,
 - (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,
 - (d) a Person who, or his Relative or Partner –
 - (i) is holding any security of or interest in the Company or its Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company. (**Note:** A Relative may hold security or interest in the Company of Face Value not exceeding ₹ 1,00,000.)
 - (ii) is indebted to the Company or its Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company, in excess of ₹ 5,00,000, or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company, in excess of ₹ 1,00,000.
 - (e) a Person or a Firm who, whether directly or indirectly, has **business relationship** with the Company, or its Subsidiary, Holding or Associate Company or Subsidiary of such Holding Company or Associate Company,
 - (f) a Person whose **Relative is a Director** or is in the employment of the Company as a Director or Key Managerial Personnel,
 - (g) a Person who is in full time employment elsewhere or a person or a Partner of a Firm **holding audits of more than 20 Companies** on the date of appointment or re-appointment as Auditor,
 - (h) 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,

- (i) 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 Sec.144.

Note: For the purposes of Point (e) above, **Business Relationship** shall be construed as **any transaction** entered into for a **commercial purpose**, except –

- (a) Commercial Transactions which are in the nature of **Professional Services** permitted to be rendered by an Auditor or Audit Firm under the Companies Act or CA Act and Rules / Regulations thereunder
- (b) Commercial Transactions 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, in the ordinary course of business, by Companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

2. **Subsequent Disqualification = Casual Vacancy:** If an Auditor, after his appointment, becomes subject to any of the above disqualifications, he shall be deemed to have automatically vacated his office and that vacancy shall be considered to be a Casual Vacancy. **[Sec.141(4)]**

1.3 Auditor not to render Certain Services [Sec.144]

1. **Only Approved Services:** An Auditor of the Company can provide only those Other Services as approved by the Board of Directors or the Audit Committee.
2. **Prohibited Services:** The following services shall **not** be provided by an Auditor directly or indirectly to the Company or its Holding Company or Subsidiary Company –
 - (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,
 - (i) Any other kind of Services as may be prescribed.
3. **1 Year Timeframe:** An Existing Auditor which renders any of the non-audit services, shall comply with Sec.144 before the closure of the first financial year after the date of commencement of this Act.

4. **Meanings:** The term “**directly or indirectly**” includes rendering of services by the Auditor –

In case of Auditor being an Individual	In case of Auditor being an Audit Firm
(a) either himself, or (b) through his Relative, or (c) any other person connected or associated with such Individual, or (d) through any other Entity, in which such Individual has significant influence or control, or whose Name or Trademark or Brand is used by such Individual,	(a) either itself, or (b) through any of its Partners, or (c) through its Parent, Subsidiary or Associate Entity, or (d) through any other Entity, 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.

1.4 Remuneration of Auditors [Sec.142]

1. The Remuneration of the Auditor shall be fixed by the Members – (a) in its General Meeting, or (b) in such manner as may be determined at the Meeting.
2. Remuneration of the First Auditor may be fixed by the Board of Directors.
3. Remuneration **includes** –
 - (a) Fees Payable to the Auditor,
 - (b) Expenses if any, incurred by the Auditor in connection with the audit and any facility extended to the Auditor.
4. However, Remuneration **does not include** amount paid for any other service rendered by the Auditor at the request of the Company.

1.5 Audit of Branches [Sec.143(8), Rules]

1. **Qualifications:** The following persons are eligible for appointment as Branch Auditors –

In case of Local Branches	In case of Foreign Branches
(a) The Company's Auditor appointed u/s 139, or (b) A person qualified for appointment as an Auditor u/s 139.	(a) The Company's Auditor appointed u/s 139, or (b) An Accountant or other person duly qualified to act as an Auditor in accordance with the laws of that foreign country.

2. **Audit Report of Branch:**

- (a) The Branch Auditor shall prepare a Report on the accounts of the Branch Office examined by him.
(b) The Branch Auditor shall submit his report to the Company's Auditor, who shall deal with it in the manner required to finalise his Audit Report.

3. **Duties and Powers of Company and Branch Auditor:** 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 Sec.143(1) to 143(4).

4. **Frauds at Branch:** Sec.143(12) along with Rules, relating to reporting of fraud by the Company Auditor, shall also extend to Branch Auditor, to the extent it relates to the concerned Branch.

2. Appointment

2.1 Appointment of First Auditors [Sec.139(6), 139 (7)]

Provision	Sec.139(7)	Sec.139(6)
Type of Company covered	1. Government Companies, or 2. Any other Company owned or controlled, directly or indirectly, by – (a) By the Central Government, or (b) By any State Government or Governments, or (c) Partly by the Central Government and partly by one of more State Governments.	Any other Company
Appointment of First Auditor	Appointment by: C&AG of India. Time Limit: Within 60 days from the date of registration of the Company.	Appointment by: Board of Directors. Time Limit: Within 30 days from the date of registration of the Company.
In case of failure of above	The Board of Directors shall appoint the First Auditor, within the next 30 days .	See next point below.
In case of BOD failure	- BOD shall inform the Members of its failure. - Members shall appoint the Auditor, within 60 days, in an EGM.	- BOD shall inform the Members of its failure. - Members shall appoint the Auditor, within 90 days, in an EGM.
Tenure	First Auditor shall hold office till the conclusion of the First AGM .	First Auditor shall hold office till the conclusion of the First AGM .
Overriding of	The above provisions override Sec.139(1) & 139(5).	The above provisions override Sec.139(1).

2.2 Appointment of Auditors of Govt Companies [Sec.139(5)]

Point	Description
Type of Companies	1. Government Companies, or 2. Any other Company owned or controlled, directly or indirectly, by – (a) By the Central Government, or (b) By any State Government or Governments, or (c) Partly by the Central Government and partly by one of more State Governments.

Point	Description
Appointment of Auditors	Appointee: Auditor duly qualified to be appointed as Auditor under the Act. Appointment by: Comptroller and Auditor General (C&AG) of India. Time Limit: Within 180 days from the commencement of the financial year. Tenure: To hold office till the conclusion of the AGM.

2.3 Appointment of Auditors at AGM [Sec.139(1)]

Point	Description
Appointment at AGM	Every Company shall appoint an Individual or a Firm as Auditor of the Company, at its 1st AGM. Note: Appointment includes re-appointment. Firm includes a Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008.
Tenure	- Auditor shall hold the office from the conclusion of 1st AGM to till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th AGM. - For the above purpose, the Meeting wherein such appointment has been made will be counted as the first Meeting.
Ratification at every AGM	- The Company shall place the matter relating to appointment of Auditors, for ratification by Members, at every AGM, by way of passing an Ordinary Resolution. - If the appointment is not ratified by the Members of the Company at the AGM, the Board of Directors shall appoint another Individual / Firm as the Auditor(s), after following the procedure laid down in this behalf under the Act.
Duties of Company	- The Company should obtain the written consent of the Auditor, and the prescribed Certificate from the Auditor, before appointing the Auditor. [Note: See next point for Certificate.] - The Company should inform the Auditor about his appointment and file a notice with the Registrar, within 15 days of the Meeting in which Auditor was appointed, in Form ADT-1. ADT-1 Contents include details as to Auditors' – (a) Income Tax PAN, (b) Name, (c) Membership Number / Firm Registration Number, (d) Address, with City, State and PIN Code, (e) email id.
Contents of Certificate by Auditor	- The Auditor (Individual / Firm), is eligible for appointment, and is not disqualified for appointment under the Companies Act, the Chartered Accountants Act, 1949 and its related Rules or Regulations, - The proposed appointment is as per the term provided under the Act, - The proposed appointment is within the limits laid down by or under the authority of the Act, - 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.
Effect of no appointment at AGM	If at any AGM, the Auditor is not appointed or re-appointed, the Existing Auditor shall continue to be the Auditor of the Company. [Sec.139(10)]

2.4 Manner & Procedure for Selection & Appointment of Auditors [S.139(1) & Rules]

Situation "A"	Where Audit Committee is required to be constituted u/s 177 (i.e. for Listed Companies and other prescribed class(es) of Companies)
Initial Selection of Auditors by Committee	The Audit Committee shall recommend to the BOD, the name of an Individual / Firm as Auditor, after considering the following – - Qualifications and Experience of the Individual / Firm. - Whether such Qualifications and Experience are commensurate with the size and requirements of the Company. - Order or Pending Proceedings against the Individual / Firm relating to professional matter of conduct, before the ICAI or Competent Authority or Court. - Any other information which the Committee has called for from the Proposed Auditor.

Situation "A"	Where Audit Committee is required to be constituted u/s 177 (i.e. for Listed Companies and other prescribed class(es) of Companies)
If Audit Committee and BOD agree	If the BOD agrees with the recommendation of Audit Committee, the BOD shall – 1. further recommend the appointment to the Members, 2. place the matter for consideration by Members in the AGM.
If Audit Committee and BOD disagree	1. If the BOD disagrees with Audit Committee's recommendation, it should refer back to the Audit Committee for its reconsideration, citing the reasons for its disagreement. 2. If the Audit Committee does not reconsider its recommendation, after taking the reasons given by the BOD, then, the BOD shall – (a) record the reasons for its disagreement with the Committee. (b) send its own recommendation for consideration of the Members in the AGM.

Note: If a Company is required to constitute Audit Committee u/s 177, all appointments, including the filling of a casual vacancy of an Auditor should be made after considering that Committee's recommendations. **[Sec.139(11)]**

Situation "B": When there is no requirement as to Audit Committee

The **Board of Directors** (BOD) shall recommend to the **Members** in the AGM, the name of an Individual / Firm as Auditor, after considering the factors mentioned in the Table above in Situation A.

2.5 Casual Vacancy [Sec.139(8)]

Type of Company	For Companies whose accounts are subject to audit by an Auditor appointed by the C&AG	For all other Companies
Filling of Casual Vacancy	C&AG shall fill the Casual Vacancy, within 30 days. - If C&AG does not fill the vacancy within 30 days, the BOD shall fill the vacancy, within next 30 days.	Board of Directors shall fill the casual vacancy, within 30 days. See Notes below.
Tenure	Till the conclusion of the next AGM. [as per Sec.139(5)]	Till the conclusion of the next AGM. [Sec.139(8)]

Note:

- If vacancy is caused by resignation, the appointment should also be approved by the Company at a General Meeting convened within 3 months of BOD recommendation.
- For Companies in which an Audit Committee u/s 177 is required, the recommendations of that Committee shall also be considered for Casual Vacancy.

2.6 Re-appointment of Retiring Auditor [Sec.139(9)]

Subject to Sec.139(1), the Retiring Auditor may be re-appointed at an AGM, if –

- If the Retiring Auditor is **not disqualified** for re-appointment,
- If the Retiring Auditor has **not given** the Company a notice in writing of his unwillingness to be re-appointed,
- If a Special Resolution has **not** been passed at that AGM, appointing another Auditor instead of the Retiring Auditor or providing expressly that the Retiring Auditor shall not be re-appointed.

2.7 Rotation of Auditors [Sec.139(2), (3), (4), Rules]

Rotation Principles Applicable to	- Listed Companies - All Unlisted Public Companies having Paid Up Share Capital of ₹ 10 Crores or more, - All Private Limited Companies having Paid Up Share Capital of ₹ 20 Crores or more, - All Companies having Paid Up Share Capital below the above specified limits, but having Public Borrowings from Financial Institutions, Banks or Public Deposits of ₹ 50 Crores or more. Note: Excluded Companies – (a) One Person Company, and (b) Small Company.
Maximum Tenure of Auditors	The above Companies shall not appoint / re-appoint – - An Individual as Auditor, for more than 1 term of 5 consecutive years, and - An Audit Firm as Auditor, for more than 2 terms of 5 consecutive years.

Auditors Ineligible for appointment – Different Scenarios	Cooling Off Period: Any Individual or Audit Firm shall not be eligible for re-appointment as Auditor in the same Company, for 5 years from the completion of their audit term. Common Partners: Any Audit Firm having common partner(s) on the date of appointment, in the retiring Audit Firm whose tenure has expired immediately preceding the financial year, shall not be appointed as Auditor, for a period of 5 years. Old Certifying Partner in New Firm: If a 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, then such Other Firm is also ineligible to be appointed for a period of 5 years. Same Network Firms: The Incoming Auditor or Audit Firm is not eligible to be appointed, if it is associated with the Outgoing Auditor or Audit Firm under the same network of Audit Firms. [Note: "Same Network" includes the Firms functioning, hitherto or in future, under the same brand name, trade name or common control.]
3 Year Time Period for Compliance	Every Existing Company which is required to comply with Sec.139(2), shall comply with the requirement, within 3 years from the date of commencement of this Act.
Additional Conditions [Sec.139(3)]	Subject to the provisions of the Act, the Members of a Company may resolve to provide that – - In the Audit Firm appointed by it, the Auditing Partner and his Team shall be rotated at such intervals, as may be resolved by the Members, or - The Audit shall be conducted by more than one Auditor.
Other Points	- When there is a Rotation of Auditors on expiry of 5-year term, the Audit Committee or BOD shall follow the Manner and Procedure for Selection and Appointment of Auditors, as specified u/s 139(1) and Rules above, e.g. consideration of qualifications, etc. - A break in the term for a continuous period of 5 years is considered as fulfilling the requirement of rotation. - Sec.139(2) shall not affect – (a) the right of the Company to remove an Auditor, or (b) the right of the Auditor to resign his office. Note: This means that the appointment for 5 year period is not irrevocable, and the Auditor may resign, or Company may remove the Auditor before that period.

2.8 Illustration on Rotation of Auditors [Rules]

Illustration 1: 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 [in the first AGM held after the commencement of provisions of Sec.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 years	4 years	5 years

Notes:

- Individual Auditor shall include other Individuals or Firms whose Name or Trademark or Brand is used by such individuals, if any.
- 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 2: 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 [in the first AGM held after the commencement of provisions of Sec.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 years	9 years	10 years

Notes:

1. Audit Firm shall include other Firms whose Name or Trademark or Brand is used by the Firm or any of its Partners.
2. 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.

3. Removal, Rights, Misc, etc.

3.1 Removal of Auditors before expiry of term [Sec.140(1) and Rules]

Procedure for Removal before expiry of term	1. BOD should pass a Resolution for removal of Auditors. 2. Application should be made to Central Government in Form ADT-2, within 30 days of BOD Resolution. 3. Previous Approval of Central Government should be obtained, in response to Form ADT-2. 4. A General Meeting should be held within 60 days of receipt of approval from Central Government. 5. Special Resolution should be passed in the above General Meeting, for removal of Auditors. 6. Before taking any action u/s 140(1), the Auditor shall be given a reasonable opportunity of being heard.
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Note: Contents of Form ADT-2 include the following –

1. Grounds of seeking removal of Auditor,
2. Details of Qualifications in Accounts in past 3 years,
3. Details of Opportunity of being heard given to the Auditor,
4. Details of Civil / Criminal Proceedings pending between Company / Concerned Officers,
5. Special Notice received for Removal of Auditors, if any.
6. Percentage of Capital held by Members who propose removal of Auditors,
7. Whether all due Audit Fees has been paid to the concerned Auditors,
8. Details of Other Services rendered by such Auditors to the Company,
9. Number of years for which audit is pending,
10. Stage of accounts for each financial year, e.g. yet to be approved by Board, or yet to be handed over to Auditors, etc.
11. Dispute with regard to Books of Accounts in the possession of Auditors but not delivered back to the Company,

3.2 Removal of Auditors at AGM [Sec.140(4) and Rules]

This is done by appointing an Auditor other than the Retiring Auditor with the following points –

2. **Special Notice:** Special Notice is required for a resolution at an AGM for –
 - (a) appointing as Auditor, a person other than the Retiring Auditor, or
 - (b) providing expressly that the Retiring Auditor shall not be re-appointed.

Note: If the Retiring Auditor has completed a consecutive tenure of 5 years (for Individual) or 10 years (for Firm), such Special Notice is not required.

3. **Copy to Auditor:** On receipt of above notice, the Company shall send **forthwith** a copy thereof to the Retiring Auditor.
4. **Rights of Retiring Auditor:** The Retiring Auditor has the following rights –
 - (a) To make a representation of a reasonable length to the Company,
 - (b) To request that such representation be circulated among the members,
 - (c) To require that the representations be read out at the AGM, and he be heard orally at the AGM.
5. **Company's Duties:** Where the Retiring Auditor makes a representation in writing to the Members of the Company, the Company shall –
 - (a) state the fact of representations being made, in any notice of the resolution given to Members of the Company, and
 - (b) send a copy of representation to every Member of the Company to whom notice of meeting is sent, whether before or after the receipt of representation by the Company.

Note: The Auditors' Representations **need not be circulated to Members** by the Company, if –

- (a) The representations are received too late by the Company, or
- (b) The Tribunal is satisfied, on the application made by the Company or any other aggrieved person, that the right of representation is being abused by the Auditor.

If the representation is not sent to the Members, a copy thereof should be filed with the ROC.

3.3 Change of Auditors based on Tribunal's Direction [Sec.140(5)]

Situation	Tribunal is satisfied that the Auditor of a Company has, directly or indirectly, – 1. acted in a fraudulent manner , or 2. abetted or colluded in any fraud by, or in relation to, the Company or its Directors or Officers.
Basis for Tribunal's findings	1. suo-motu by Tribunal, or 2. Application made to Tribunal by Central Government, or 3. Application made to Tribunal by any person concerned.
Order of Tribunal	1. The Tribunal can order the Company to change its Auditors, on the abovesited grounds. 2. In case of Application by Central Government, the Tribunal shall make an order within 15 days of receipt of application, that the person shall not function as an Auditor. The Central Government may appoint another Auditor in his place.
Effect of Tribunal's Final Order	1. The Individual / Firm against whom a Final Order u/s 140 is passed by Tribunal, is not eligible to be appointed as Auditor of any Company for a period of 5 years from the date of the order. 2. If the order is against any Firm, the liability shall be of the Firm and of every Partner(s) who have acted in a fraudulent manner, or abetted or colluded in the fraud. 3. The erring Auditors are also liable for action u/s 447. 4. In case of criminal liability of any Audit Firm, the liability other than fine shall devolve only on the concerned Partner(s) who acted in a fraudulent manner, or abetted or colluded in the fraud.

3.4 Resignation of Auditors [Sec.140(2), (3) and Rules]

Procedure	1. An Auditor has the right to resign from the Company, before the expiry of his term. 2. The Resigning Auditor should file Form ADT-3, within 30 days of date of resignation.
Form ADT-3 Time Limit	Form ADT-3 shall be filed with – 1. the Company, 2. the ROC, and also 3. the C&AG in case of Sec.139(5) Companies.
Form ADT-3 Contents	Form ADT-3 requires details to be furnished in respect of – (a) reasons for resignation, and (b) any other facts as may be relevant with regard to the resignation.
Non-Compliance	If the Auditor fails to furnish Form ADT-3 as above, he is punishable with Fine of Minimum ₹ 50,000 to Maximum ₹ 5,00,000.

3.5 Rights of Auditors

1. **Right of Access to Books and Vouchers [Sec.143(1)]:**
 - (a) The Company Auditor 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 elsewhere.
 - (b) The Auditor of a Holding Company shall also have the right of access to the records of all its Subsidiaries in so far as it relates to the **consolidation** of its Financial Statements.
2. **Right to obtain information and Explanations[Sec.143(1)]:**
The Company Auditor is entitled to require from the Officers of the Company, such information and explanations as the Auditor may think necessary for the performance of his duties.
3. **Right to visit Branches, and access Branch Accounts [Sec.143(8)]:** **See Para 1.5**
4. **Right to Remuneration [Sec. 142]:** **See Para 1.4**
5. **Right to have Qualifications, etc. read out at General Meeting [Sec.145]:** Qualifications, Observations or Comments on the Financial Transactions or matters, which have any adverse effect on the functioning of the Company mentioned in the Auditor's Report, shall be –
 - (a) **read** before the Company in its General Meeting.
 - (b) **open for inspection** by any Member of the Company.
6. **Right to receive Notices and to attend General Meetings [Sec.146]**
 - (a) All Notices of and other communications relating to, any General Meeting of a Company should be forwarded to the Auditors of a Company.
 - (b) The Auditor shall be entitled to attend any General Meeting and to be heard at any General Meeting, which concerns him as Auditor.
 - (c) Unless otherwise exempted by the Company, the Auditor shall attend the General Meeting –
 - either by himself, or
 - through his Authorised Representative, who shall also be qualified to be an Auditor.

Note: Thus, it is also the **duty** of the Auditor to attend the General Meeting.

3.6 Duties of Auditors

1. **Inquiry into specified areas [Sec.143(1)]:** The Company Auditor shall inquire into the following aspects –
 - (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 is not an Investment Company or Banking Company, whether Assets of the Company consisting 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 any Shares have been allotted for cash, whether cash has actually been received, and if no cash has been received, whether the position as stated in the account books and the Balance Sheet is correct, regular and not misleading.
2. **Reporting as to True and Fair [Sec.143(2)]:**

Items reported on	The Auditor shall make a Report to the Members of the Company – (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.
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Reporting Considerations	The Report shall be made after taking into account, the following – (a) the provisions of the Act, (b) the accounting and auditing Standards, (c) matters which are required to be included in the Audit Report under the provisions of the Act / Rules / Order u/s 143(11) (d) best of his information and knowledge.
Essence of Report	In addition to other reporting matters, the Audit Report shall state whether the said Accounts, Financial Statements, give a true and fair view of – (a) the state of the Company's affairs as at the end of the financial year, (b) Profit or Loss, (c) Cash Flow for the year.

3. **Reporting Requirements [Sec.143(3)]:** The Auditor's Report shall also state –

- (a) Whether he has sought and obtained all **information and explanations** to the best of his knowledge and belief that are necessary for the purpose of his audit. If the required information is not obtained, details and effect in Financial Statements should be mentioned.
- (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** audited by a person other than the Company Auditor has been forwarded to him and how he has dealt with the same in preparing the Auditor's 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**, the observations or comments of the Auditors on financial transactions or matters which have any **adverse effect** on the **functioning** of the company,
- (f) Whether any Director is disqualified from being appointed as a Director u/s 164(2),
- (g) any **Qualification, Reservation or Adverse Remark** relating to the maintenance of accounts and other matters connected therewith,
- (h) Whether the Company has adequate **Internal Financial Controls** system in place and the operating effectiveness of such controls,
- (i) Other matters as may be prescribed –
 - (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.

4. **Reasons for Negative / Qualification [Sec.143(4)]:**

- (a) In case of Negative Remark or Qualification in any of the reporting matters u/s 143, the Audit Report shall state the **reasons** therefor.
- (b) Qualifications, Observations or Comments on the 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 its General Meeting.
 - **open for inspection** by any Member of the Company. **[Sec.145]**

5. **Duties w.r.t. audit of Government Companies [Sec.143(5), (6), (7)]:**

Directions by C&AG	The C & AG of India can issue directions to the Statutory Auditors on the manner in which the accounts are required to be audited, in case of Auditors appointed by C&AG u/s 139(5) or 139(7).
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Audit Report	The Auditor shall submit a copy of the Audit Report to C&AG. In addition to the matters u/s 143, the report shall include the following additional points – (a) Directions issued by C&AG, (b) Actions taken thereon, and (c) Its impact on the Accounts and Financial Statement of the Company.
Supplementary Audit	Within 60 days from the receipt of above Audit Report, the C&AG have right to – (a) Conduct a Supplementary Audit of the accounts with the help of authorized persons. C&AG shall also direct persons to provide additional information and other details for conducting supplementary audit. (b) Comment upon or supplement the Audit Report.
Comments of C&AG	(a) The comments or supplement given by C&AG on the Audit Report shall be sent to the Company. (b) The Company shall forward the same to every person entitled to copies of Financial Statements u/s 136(1). (c) The comments / supplement shall also be placed in the AGM similar to that of the Audit Report.
Test Audit	(a) The C&AG, if it deems fit, may order for conduct of Test Audit in case of a Company covered u/s 139(5) or 139(7). (b) The provisions of Sec.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.

6. **Compliance with Auditing Standards [Sec.143(9), (10)]:**

- Every Auditor shall comply with the Auditing Standards.
- The Central Government may prescribe the Standards of Auditing, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- Till such Auditing Standards are notified, Standards of Auditing specified by the ICAI shall be deemed to be the Auditing Standards.

7. **Additional Matters reporting per NAFRA [Sec.143(11)]:** In consultation with the National Financial Reporting Authority (NAFRA), the Central Government may order for the inclusion of a Statement on specified matters in the Auditor's Report for specified class or description of Companies.

8. **Reporting of Frauds [Sec.143(12), (13), (15)]:**

Situation	If the Company Auditor, in the course of performance of his duties, has reason to believe that an offence involving fraud is being or has been committed against the Company, by Officers or Employees of the Company.
Auditors' Duties – to report to Central Govt within 60 days	(a) Immediate Report to BOD / Audit Committee: Immediately after he comes to knowledge of the fraud, the Auditor shall forward his Report to the Board or the Audit Committee seeking their reply or observations within 45 days . (b) Report to Central Government: Within 15 days of receipt of reply / observations as above, the Auditor shall forward to the Central Government – - his Report (on Fraud), - Reply or Observations of BOD / Audit Committee thereon, and - his Comments on above reply or observations. Note: If no reply is received from BOD / Audit Committee in 45 days, the Auditor shall forward his report only to the Central Government, mentioning the fact of non-receipt of reply/observations.
Report Requirements	(a) Sent to: The Secretary, Ministry of Corporate Affairs, in a sealed cover . (b) Mode: Registered Post with Acknowledgement Due, or by Speed post, followed by an e-mail in confirmation thereof. (c) Stationery: Report shall be in Auditors' Letterhead, containing his Membership Number, Postal Address, Email Address and Contact Number. It shall be signed and sealed by Auditor. (d) Format: Report shall be in Form ADT-4 .
ADT-4 Contents	(a) Full details of suspected offence involving fraud (with documents in support), (b) Particulars of Officers / Employees who are suspected to be involved in the offence, (c) Basis on which fraud is suspected, (d) Period during which the suspected fraud has occurred,

	(e) Date of sending report to BOD / Audit Committee, and Date of reply, if any, received, (f) Whether Auditor is satisfied with the reply / observations of BOD / Audit Committee, (g) Estimated amount involved in the suspected fraud, (h) Steps taken by the Company, if any, in this regard, with full details of references.
Good faith [Sec.143(13)]	No duty to which the Company Auditor may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred u/s 143(12), if it is done in good faith.
Contravention	(a) Persons: Auditor / Cost Accountant / Company Secretary, who do not comply with S.143(12) (b) Punishment: Fine of Minimum ₹ 1,00,000 Maximum ₹ 25,00,000.

Note:	Cost Audit / Secretarial Audit [Sec.143(14)]: Sec.143 (in entirety) shall be applicable for – (a) A Cost Accountant in Practice, conducting Cost Audit u/s 148, and (b) A Company Secretary in Practice, conducting Secretarial Audit u/s 204.
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9. Signing Audit Report [Sec.145]:

- The person appointed as Auditor of the Company shall – (i) sign the Auditor's Report, and (ii) sign or certify any other document of the Company as per Sec.141(2).
- If a Firm is appointed as Auditor of the Company, signing or certification shall be done only by the Chartered Accountants who are Partners and are authorised to act and sign on behalf of the Firm.

3.7 Punishment for Contravention [Sec.147]

Sec.	Nature of Act / Omission	Person punishable	Punishment
147 (1)	Contravention of Sec.139 to Sec.146	(a) Company	Fine of Minimum ₹ 25,000 Maximum ₹ 5,00,000.
		(b) Every Officer in Default	- Imprisonment of Maximum 1 Year, or - Fine of Minimum ₹ 10,000 Maximum ₹ 1,00,000, or - Both of the above.
147 (2)	Contravention of Sec.139, 143, 144, 145	Auditor	(a) Normal: Fine of Minimum ₹ 25,000 Maximum ₹ 5,00,000. (b) If done knowingly or wilfully, with intention to deceive the Company or its Shareholders or Creditors or Tax Authorities: - Imprisonment of Maximum 1 Year, or - Fine of Minimum ₹ 1,00,000 Maximum ₹ 25,00,000, or - Both of the above.

Notes: **Additional Liability of Auditor [Sec.147(3), (4)]**

- If the Auditor is convicted u/s 147(2), he shall be liable to –
 - refund the remuneration** received by him to the Company, and
 - pay for damages** to the Company, Statutory Bodies or Authorities or to any other persons for loss arising out of incorrect or misleading statements made in his Audit Report.
- The Central Government can notify any Statutory Body / Authority / Officer, to ensure prompt payment of damages to the Company or other entitled parties, and to file a report for compliance.

Joint and Several Liability in case of Audit by Firm [Sec.147(5)]

Situation	Where it is proved that the Partner or Partners of the Audit Firm has or have – (a) acted in a fraudulent manner, or (b) abetted or colluded in any fraud by, or in relation to or by, the Company or its Directors or Officers
Liability	The civil or criminal liability, as provided in this Act or in any other law, for such act shall be of the Partner or Partners concerned of the Audit Firm and of the Firm jointly and severally .

3.8 Cost Audit [Sec.148]

1. Maintenance of Cost Accounts / Records [Sec.148(1)]:

- The Central Government can order for maintenance of Cost Accounts / Records.
- Cost Accounts / Records shall comprise particulars relating to – (i) utilisation of material or labour, or (ii) other items of cost as may be prescribed.
- Such order may be for specified class of Companies, engaged in – (i) production of specified goods, or (ii) providing prescribed services.
- For such Companies, the books of account shall include these Cost Accounts / Records.
- In case of Companies regulated under a Special Act, the Central Government shall consult that Regulatory Body established under that Act, before ordering maintenance of Cost Records.

2. Cost Audit [Sec.148(2)]:

- The Central Government may, if it feels necessary, direct by an order that an audit of the Cost Records kept by a Company shall be conducted in the prescribed manner.
- Such order relating to Cost Audit shall be given in case of Companies –
 - which are covered u/s 148(1), i.e. maintenance of Cost Records / Accounts, **and**,
 - which have a Net Worth or Turnover of prescribed amounts.

3. Cost Auditor [Sec.148(3)]:

- Cost Audit shall be conducted by a Cost Accountant in practice (either Individual or Firm)
- A Statutory Auditor of the Company u/s 139 **cannot** be a Cost Auditor of the Company.
- Cost Auditor shall comply with the Cost Auditing Standards issued by the Institute of Cost and Works Accountants of India, with the approval of the Central Government.
- The appointment and remuneration of Cost Accountant is as under –

Situation	If Audit Committee is required u/s 177	No Requirement as to Audit Committee
Appointment	By Board, on the recommendations of the Audit Committee.	By Board, on its own.
Remuneration	- Recommended by Audit Committee, - Approved by Board of Directors, and - Ratified by Shareholders.	- Fixed by Board of Directors, and - Ratified by Shareholders.

- Cost Audit shall be in addition to the audit conducted u/s 143.

4. Rights, etc. of Cost Auditor [Sec.148(5)]:

- The Qualifications, Disqualifications, Rights, Duties and Obligations applicable to Auditors under Chapter X, are applicable to Cost Auditor also.
- The Company is duty bound to give all assistance and facilities to the Cost Auditor for auditing the Cost Records.

5. Cost Audit Report [Sec.148(5), (6), (7)]:

- The Cost Auditor shall submit his report to the **Board of Directors** of the Company.
- Within 30 days** from the receipt of Cost Audit Report, the Company shall furnish full information and explanation on every reservation or qualification contained in the Cost Audit Report, to the Central Government.
- If Central Government calls for further information and explanations, the Company should furnish the same within the timeframe specified by Central Government.

6. Non Compliance [Sec.148(8)]:

- The Company / Officer in Default is punishable in the manner provided in Sec.147(1).
- The Cost Auditor is punishable in the manner provided in Sec.147(2) to (4).