

ACCOUNTS OF COMPANIES

1. Books of account to be kept by company [Section 128]

I: Maintenance of books of accounts [Section 128(1)]:

Definition [section 2(40)]: Books of account includes-

- ✓ Balance Sheet
 - ✓ Profit and loss account/Income Expenditure Account
 - ✓ Cash flow Statement (*OPC, small co. & dormant co. may not have CFS*)
 - ✓ Statement of changes in equity
 - ✓ Any explanatory note annexed to above statements
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- a. Every company shall prepare books of account for every FY and keep at its registered office (or) at any other place in India as the BOD may decide;
Accounts of the branch in India/outside India shall be kept at that branch office and proper summarised returns periodically must be sent by branch to the company at its registered office (or the other place as decided by the Board of directors).
 - b. Such books of account shall give a true and fair view of the state of the affairs of the company / its branch office(s);
 - c. Such books of Accounts shall be kept on accrual basis and;
 - d. According to the double entry system of accounting.
 - e. It may be kept in Physical or Electronic mode.
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- Company may kept its books of accounts in physical/Electronic mode

The Companies (Accounts) Rules, 2014: For books of accounts kept in electronic mode:

- 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.
- The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

- The information in the electronic record of the document shall be capable of being displayed in a legible form.
- 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:
- The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

- Intimation to the Registrar, shall be made by the company, on an annual basis
 - The name of the service provider;
 - The internet protocol(IP) address of service provider;
 - The location of the service provider;
 - Where the books of account are maintained on cloud, such address as provided by the service provider.

II: Inspection of books of accounts [Section 128(3) and (4)]:

- a. Any director can inspect books of account of company at register office during business hours.
- b. In the case of financial information maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director.
- c. The inspection in respect of any subsidiary shall be done only by the person authorised in this behalf by a resolution of BOD.
- d. The officers & employees of the company shall give all assistance in connection with the inspection.

III: Period of Maintenance [Section 128(5)]:

- a. The books of account of every company together with the vouchers relevant to any entry in such books of accounts shall be kept in order by the company for a **minimum period of 8 financial years** immediately preceding a financial year.
- b. Where the company had been in existence for a period of less than 8 years, it shall maintain the books in respect of all such preceding years.
- c. Where an investigation has been ordered in respect of the company, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

IV: Persons responsible for Maintenance & Penalty [Section 128(6)]:

- a. The following persons are responsible for the maintenance of proper books of account-

1. The managing director(MD), the whole-time director(WTD) in charge of finance, the Chief Financial Officer(CFO); or
 2. Any other person charged by the Board.
- b. If any of the persons above contravenes provisions, they shall be punishable with:
1. **Imprisonment** for a term which may extend to **1 year**; or
 2. **Fine** which shall not be less than **Rs.50,000** but which may extend to **Rs.5 lakh**; or
 3. **Both** with imprisonment or fine.

2. Financial Statement [Section 129]

I: Form of Financial statements [Section 129(1)]:

- a. The financial statements shall:
1. Give a true and fair view of the state of affairs of the company(ies),
 2. Comply with the accounting standards [S.133]. Disclosure of any non-compliance of AS-
 - The deviation from the accounting standards,
 - The reasons for such deviation and
 - The financial effects arising out of such deviation
 3. Shall be in the form as provided for different class(s) of companies in Schedule III.
- b. The above provisions shall not apply to-
1. Insurance Companies
 2. Banking companies
 3. Company engaged in the generation or supply of electricity
 4. Any other class of company for which a form of financial statement has been specified in the Act governing such class of company.

II: At every AGM, the BOD shall lay before the company the FS for the financial year [S.129(2)].

III: The financial statement shall include any notes annexed to or forming part of such FS.

III: Where a company has one or more subsidiaries, it shall, in addition, prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries.

IV: Exemptions [Section 129(6)]:

- a. The Central Government may, on its own (or) on an application by company(ies), exempt any class or classes of companies from complying with any of the requirements of this section or the rules.

- b. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

V: Contravention [Section 129(7)]:

- a. If a company contravenes the provisions of this section:
MD, WTD-in-charge of finance, CFO or any other person charged by the Board (and) in the absence of any of the officers mentioned above, all the directors shall be punishable with:
1. **Imprisonment** for a term which may extend to 1 year; or
 2. **Fine** which shall **not be less than Rs.50,000** but which may **extend to Rs.5 Lakhs**; or
 3. **Both** with imprisonment and fine.

3. Central Government to prescribe Accounting Standards [Section 133]

ICAI (Recommend) → NFRA (Examine & Recommend) → C.G. (Prescribe)

4. Financial Statement, Board's report [Section 134]

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

- a. The financial statements (including CFS) shall be approved by BOD before they are signed, at least by the following:
- The chairperson of the company, if authorised by the Board; or
 - By 2 directors out of which one shall be MD and
 - The CEO, if he is a director,
 - The CFO, if he is appointed; and
 - The CS, if he is appointed.
- b. In the case of an OPC, the FS shall be signed by only 1 director, for submission to the auditor for report thereon.
- c. The auditors' report shall be attached to every FS.
- d. A signed copy of every FS (including CFS) shall be issued, circulated or published along with a copy each of—
- Any notes annexed to such FS;
 - The auditor's report; and
 - The Board's report.

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

(A) According Rules the Board's Report shall be prepared based on the stand alone FS of the company (and) the report shall contain a separate section is presented for the subsidiaries/ associates/JV companies included in the CFS.

(B) A report by BOD, which shall include —

1. The extract of the annual return [S.92(3)];
2. Number of meetings of the Board;
3. Directors' Responsibility Statement [Section 134(5). Discussed in Para III below];
4. A declaration given by independent directors [S.149];
5. Company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters u/s 178(3);
6. Explanations or comments 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 practice-in his secretarial audit report;
7. Particulars of loans, guarantees or investments u/s 186;
8. Particulars of contracts or arrangements with related parties referred u/s 188 [in Form AOC-2];
9. The state of the company's affairs;
10. The amounts which it proposes to carry to any reserves;
11. The amount which it recommends should be paid by way of dividend;
12. Material changes and commitments affecting the financial position of the company which have occurred **between** the end of FY to which the FS relate (and) the date of the report;
13. The conservation of energy, technology absorption, foreign exchange earnings and outgo in a manner as prescribed under **the Companies (Accounts) Rules, 2014** which provides for:

❖ **Conservation of energy-**

- the steps taken / impact on conservation of energy;
- the steps taken by the company for utilising alternate sources of energy;
- the capital investment on energy conservation equipments;

❖ **Technology absorption-**

- the efforts made towards technology absorption;
- the benefits derived like product improvement, cost reduction, product development or import substitution;
- in case of imported technology (imported during the last three years)-
 - ◆ the details of technology imported;
 - ◆ the year of import;
 - ◆ whether the technology been fully absorbed;

- ♦ if not fully absorbed, areas where absorption has not taken place and the reasons thereof; and
 - The expenditure incurred on R&D.
 - ❖ 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.
14. A statement indicating development and implementation of a risk management policy for the company.
 15. The details about the policy developed and implemented by the company on CSR initiatives taken during the year;
 16. Every listed company and other public company having PSC of Rs.25 crore shall include, in the report by Board, a statement indicating the manner in which formal annual evaluation of performance of Board, committees and individual directors.
 17. The report of the Board shall **also contain** [as prescribed under **the Companies (Accounts) Rules, 2014**] –
 - the financial summary or highlights;
 - the change in the nature of business, if any;
 - the details of directors/KMP who were appointed or have resigned during the year;
 - the names of companies which have become or ceased to be its subsidiaries/ JVs/ associate companies during the year;
 - the **details relating to deposits** like-
 - o accepted during the year;
 - o remained unpaid or unclaimed as at the end of the year;
 - o whether there has been any default in repayment of deposits or interest thereon during the year and the total amount involved-
 - i. At the beginning of the year;
 - ii. Maximum during the year;
 - iii. At the end of the year;
 - o Non-compliance with the requirements of Chapter V of the Act;
 - o 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;
 - o The details of adequacy of internal financial controls¹ with reference to the FS.

¹ **[Internal financial controls:** the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, 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]

- (C) Board's Report in case of OPC [Section 134(4)]: In case of a One Person Company, the report of the Board to be attached to the FS, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor.

III: Directors' Responsibility Statement [Section 134(5)]:

1. In the preparation of the annual accounts, ASs had been followed along with proper explanation of material departures;
2. Selection of accounting policy and consistent application thereof.
3. The directors had taken care for
 - a. the maintenance of adequate accounting records
 - b. safeguarding the assets of the company
 - c. preventing and detecting fraud and other irregularities;
4. Preparation of the annual accounts on a going concern basis; and
5. Internal financial controls are adequate and were operating effectively.
6. Proper systems to ensure compliance with the provisions of all applicable laws and such systems were adequate and operating effectively.

IV: Signing of Board's Report [Section 134(6)]:

The Board's report and any annexures thereto shall be signed by

- ✓ its chairperson of the company if he is authorised, otherwise
- ✓ at least 2 directors, one of whom shall be MD, or
- ✓ in case of 1 director, by such director.

V: Contravention [Section 134(8)]:

- If a company contravenes any provisions of this section, the company shall be punishable with fine which shall not be less than **Rs.50,000** but which may extend to **25 Lacs**.
- Every officer of the company who is in default shall be punishable with:
 1. Imprisonment for a term which may extend to **3 years**; or
 2. Fine which shall not be less than **Rs.50,000** but which may extend to **5 Lacs**; or
 3. **Both** with imprisonment and fine

5. Corporate Social Responsibility [Section 135]

I: Applicability to constitute CSR committee:

- Every company (including its holding or subsidiary, and a foreign company having its branch office or project office in India), having
 - Net worth² of **Rs.500 crore** or more, or
 - Turnover² of **Rs.1000 crore** or more or
 - Net profit² of **Rs.5 crore** or more
 during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.
- The CSR Committee shall institute a transparent monitoring mechanism (TMM) for implementation of the CSR projects.

II: This section not applies to:

Every company which ceases to be a company covered under above limits for three consecutive financial years shall not be required to constitute a CSR Committee, (and) is not required to comply with the provisions of section 135

III: Composition of CSR Committee:

1. 3 or more directors, out of which at least 1 director shall be an independent director.
2. 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.
3. A private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors.
4. In case of a foreign company covered as above, Committee shall comprise of at least 2 persons of which 1 shall be as specified under section 380(1)(d) and 1 shall be nominated by the foreign company.
5. The disclosure in Board's report about the composition of the CSR Committee.

IV: Duties of CSR Committee:

1. formulate and recommend to the Board, a CSR Policy - activities to be undertaken by the company;
2. recommend the amount of expenditure to be incurred on the activities referred above; and
3. Monitor the CSR Policy of the company from time to time.

² computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of *section 381(1)(a)* and *section 198* of the Act.

V: Contents of the CSR Policy:

1. List of CSR projects/programs which a company plans to undertake, specifying modalities of execution of such project/programs and implementation schedules for the same; and monitoring process of such projects or programs:
2. The CSR activities **do not include** the activities undertaken in pursuance of normal course of business.
3. The Board shall ensure that activities included in CSR Policy are related to the activities included in **Schedule VII** ^{para X} of the Act.
4. Policy shall specify that the surplus arising out of the CSR projects/programs/activities shall not form part of the business profit of a company.

VI: Duties of the Board in relation to CSR:

The Board of every company shall—

1. Approve the CSR Policy for the company, after considering recommendation by committee, (and) disclose contents of such Policy in its report
2. Also place it on the company's website, if any; and
3. Ensure that the activities as are included in Policy are undertaken by the company.

VII: Amount of contribution towards CSR:

1. The Board shall ensure that the company spends, in every year, **at least 2 per cent of the average net profits** ^{para IX} made during the three immediately preceding financial years, in pursuance of its CSR Policy.
2. The company shall give preference to the local area and areas around it where it operates, for spending the amount.
3. If the company fails to spend such amount, the Board shall specify the reasons for not spending the amount in its report.
4. **Building CSR capacities:** Companies may build of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least 3 financial years. However, **such expenditure** (including expenditure on administrative overheads) shall **not exceed 5% of** total CSR expenditure of the company in 1 FY.

VIII: Following are not to be considered as CSR Activities: [The Companies (CSR Policy) Rules, 2014]

1. The CSR projects/programs/activities undertaken outside India.
2. The CSR projects/programs/activities that benefit only the employees and their families.
3. Contribution of any amount directly/indirectly to any political party u/s 182 of the Act.

IX: Calculation of Average Net profit [S.198]:

1. "Net profit" shall **not include** the following:
 - ✓ Any profit from any overseas branch(s); and
 - ✓ Any dividend received from other companies in India,
2. Net profits in respect of a FY for which the relevant FS were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act:
3. In case of a foreign company, the net profit of such company shall be as per p&L account prepared in terms the Act.

X: Activities specified under Schedule VII:

1. Basic living requirement: eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation and making available safe drinking water;
2. Education: promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
3. Equality: promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
4. Nature: ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water;
5. Heritage: protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
6. Army: measures for the benefit of armed forces veterans, war widows and their dependents;
7. training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
8. Charity: contribution to the Prime Minister's National Relief Fund or any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
9. Technology: contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
10. rural development projects;
11. Slum area development.

6. Right of member to copies of Audited Financial Statement [Section 136]

I: Who are entitled for audited financial statement?

- a. A copy of the FS, which are to be laid in general meeting, shall be sent to the following:
 - every member of the company,
 - to every trustee for the debenture-holder, and
 - to all persons, being the person so entitled.
- b. CFS, auditor's report and every other document required to be annexed or attached to FS shall be annexed.
- c. These FS shall be sent in **not less than 21 days before** the date of the meeting.
- d. In the case of a listed company:
 - i. Deemed compliance of above provisions, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting.
 - ii. Along with it a statement containing the salient features of such documents [in Form AOC-3] is sent to every member of the company and to every trustee for the holders of any debentures.
 - iii. The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.
- e. A company shall also allow every member or trustee of the debenture holder to inspect the audited FS at its registered office during business hours.

II: Manner of circulation of financial statements in certain cases:

(A) All companies which have a net worth of more than **Rs.1 Crore** (and) turnover of more than **Rs.10 Crore**, the FSs may be sent-

1. By electronic mode
 - a. to such members whose shareholding is in dematerialized format and whose email ids are registered with Depository for communication purposes;
 - b. In other cases, to such members who have positively consented in writing for receiving by electronic mode; and
2. By dispatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

(B) A **listed company** shall also place its FSs (including CFS) and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

III: Contravention:

1. If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of **Rs.25,000**.
2. Every officer of the company who is in default shall be liable to a penalty of **Rs.5,000**.

7. Copy of FS to be filed with Registrar [Section 137]

I: Filing of financial statements

1. Where the FS are adopted at AGM: FS (including CFS) and other documents shall be filed with the Registrar **within 30 days of** the date of AGM.
2. Where the FS are **not** adopted at AGM or adjourned AGM, such unadopted FS and other documents (as provisional FS) shall be filed with the Registrar **within 30 days** of the date of AGM.
3. If the FS are adopted in the adjourned AGM, then they shall be filed **within 30 days** of the date of such adjourned AGM.
4. Where no AGM has been held, the FS and other documents along with reasons for not holding the AGM shall be filed with the Registrar **within 30 days** of the last date before which the AGM should have been held.

II: Filing by One Person Company [Section 137(1)]:

A OPC shall file a copy of the FS duly adopted by its member, and all other documents, **within 180 days** from the closure of the financial year.

III: Penalty [Section 137(3)]:

If any of the provisions of this section are contravened,

1. The company shall be punishable with fine of **Rs.1,000 for every day** during which the failure continues but **maximum up to Rs.10 Lacs**, and
2. The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with:
 - a. Imprisonment for a term which may extend to **6 months** or
 - b. Fine which shall not be less than **Rs.1 lac** but which may extend to **Rs.5 Lacs**, or
 - c. **Both** with imprisonment and fine.

8. Internal Audit [Section 138]

Companies required to appoint Internal Auditor:

Applicability: The following class of companies shall be required to appoint an internal auditor-

1. Every listed company;
2. Every **unlisted public** company having-
 - a. PSC of **Rs.50 crore** or more during the preceding FY; or
 - b. Turnover of **Rs.200 crore** or more during the preceding FY; or
 - c. Outstanding loans/borrowings from banks or PFI exceeding **Rs.100 crore** or more at any point of time during the preceding FY; or
 - d. Outstanding deposits of **Rs.25 crore** or more at any point of time during the preceding FY; and
3. Every **private company** having- criteria (c) and (d) above.

Scope and Qualification:

1. The Audit Committee / the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.
2. Internal Auditor shall either be a CA or a CMA, or such other professional.