

COMPANIES ACT 2013

FCA VENKAT DHANYAMRAJU

ACCOUNTS OF COMPANIES

Books of Account (Section 128)

- Every Company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statements for every financial year including its branch office or offices and explain the transactions effected both at registered office and its branches.
- Such books shall be kept on accrual basis and according to the double entry system of accounting
- Books of Account and other relevant papers may be kept at such other place in India as the Board of Directors may decide and in such case, the Company shall within seven days file with the Registrar a notice in writing the full address of such other place.
- **The books of account of the company may be kept in electronic form**
- If proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarized returns periodically are sent by the branch office to the registered office of the company, then it shall be deemed to have complied with the above stated provisions

Inspection of books of account and papers maintained by the Company

Within India

Shall be open for inspection at the registered office of the company or at such other place in India by any Director during business hours.

Outside India

Copies of such financial information shall be maintained and produced for inspection by any director through himself only but after making request to Company

- If documents maintained outside India, summarized returns of books of accounts shall be sent at quarterly intervals to the registered office and shall be kept open to Director for inspection
- For aforesaid inspection relating to documents outside India, Company shall produce financial information to the Director within fifteen days of date of receipt of written request
- Inspection in respect of any subsidiary Company shall be done only by any person authorized in this behalf by a resolution of the Board of Directors.
- Where such an inspection is made, the officers and other employees of the Company shall give to the person making such inspection all assistance in connection with the inspection which the Company may reasonably expected to give.

The books of account of every company together with the vouchers shall be kept in good order for atleast eight financial years or for period in which Company is in existence, whichever is earlier

Where an investigation has been ordered under chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

Penalty for contravention of this section

If

- the Managing Director,
- the Whole-Time Director in charge of finance,
- the Chief Financial Officer or
- any other person of a company charged by the Board, contravenes the provisions;

Imprisonment: Maximum one year, or

Fine: Minimum Rs. 50,000

Maximum Rs. 5,00,00

Or both

Financial Statement Section 129, Rule 5 and 6

Financial Statement

```
graph TD; A[Financial Statement] --> B[Shall give true and fair view of the state of affairs of the Company]; A --> C[Shall comply with accounting standards]; A --> D[Shall be as per schedule III of the Companies Act, 2013]
```

Shall give true and fair view of the state of affairs of the Company

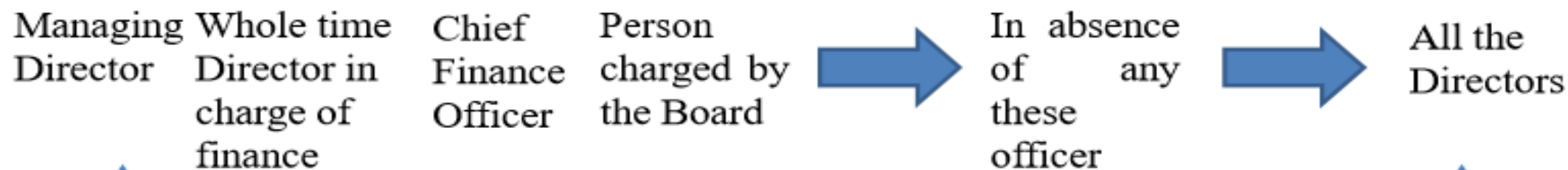
Shall comply with accounting standards

Shall be as per schedule III of the Companies Act, 2013

- No provision of this section shall apply to Insurance Company, Banking Company or any Company engaged in the generation or supply of electricity, or to any other class of Company for which a form of financial statement has been specified in or under the Act governing such class of Company.
- The Financial Statements shall be prepared and laid before at the every Annual General Meeting of the Company by the Board of Directors.
- Where a Company has one or more subsidiaries (Subsidiary include Associate Company and Joint Venture), Company shall in addition to its own financial statements prepare a consolidated Financial Statement of all the subsidiaries in the same manner as the Company prepare its own Financial Statement, which shall also be laid before the Annual General Meeting of the Company.

- The Company shall also attach along with its Financial Statement, a separate statement containing the salient features of the Financial Statement of its Subsidiaries in AOC-1
- If financial statements do not comply with accounting standards, then Company shall disclose in financial statements the deviation from accounting standards, reason for such deviation and financial effect due to such deviation

Penalty for contravention of this section

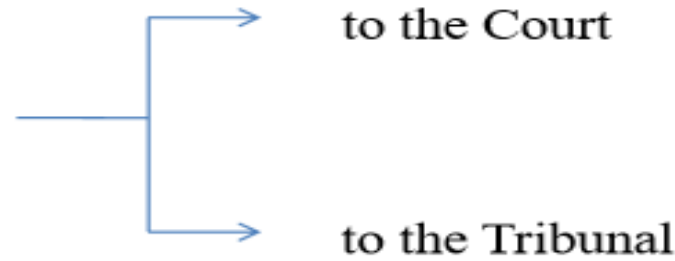


Imprisonment: Maximum one year, or Fine: Minimum Rs. 50,000, Maximum Rs. 5,00,00 or both

Re-opening of accounts on court's or Tribunal's order Section 130

An application may be made for re-opening of Books of Account of the Company and recast its Financial Statements by :

- The Central Government
- Income Tax Authorities
- S.E.B.I.
- Any other Statutory authority
- Authority or any person concerned



- An order is made by a court of competent jurisdiction or the Tribunal to the effect that—
 - (i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (ii) the affairs of the Company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements
- The court or the Tribunal, as the case may be, shall give notice to concerned authority and shall take into consideration the representations, if any, made by that concerned authority before passing any such order
- The accounts so revised or re-cast shall be final

- No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:
- Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.]

Voluntary revision of financial statements or Board's report Section 131

- If the financial statement or Board's report do not comply with the provisions of section 129 or section 134, Directors of the Company may prepare revised Financial Statements or a revised report in respect of any of the three preceding financial year but after obtaining approval of the Tribunal.
- Tribunal's order shall be filed with Registrar
- The Tribunal before allowing such revisions of Financial Statements, shall give notice to the Central Government and Income Tax Authorities and shall also take representation.
- Revision may be made only once in a financial year
- Detailed reasons for such revision shall be disclosed in the Board's report in the relevant financial year in which such revision is being made.
- Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the Company in general meeting, the revisions must be confined to the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134 and the making of any necessary consequential alternation.

- The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised Director's report and such rules may, in particular—
 - (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
 - (b) make provisions with respect to the functions of the Company's auditor in relation to the revised financial statement or report;
 - (c) require the Directors to take such steps as may be prescribed

NATIONAL FINANCIAL REPORTING AUTHORITY

SECTION 132

- ❑ (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- ❑ (1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.]
- ❑ (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
 - (a) 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, as the case may be;

- ❑ (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) 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
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- ❑ *(3) The National Financial Reporting Authority 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 such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:
- ❑ ⁸[(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorized by the Chairperson.

- ❑ (3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).]
- ❑ Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:
- ❑ Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment:
- ❑ Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.
- ❑ ^{***}(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- ❑ (a) have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
- ❑ Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- ❑ (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
 - (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;

- ❑ (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- (iv) issuing commissions for examination of witnesses or documents;
- ❑ (c) where professional or other misconduct is proved, have the power to make order for—
 - ❑ (A) imposing penalty of—
 - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than ¹[five lakh rupees], but which may extend to ten times of the fees received, in case of firms;
 - ❑ ⁹[(B) debarring the member or the firm from—
 - ❑ I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
 - ❑ II. performing any valuation as provided under section 247,
 - ❑ for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.]

- ❑ (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before ²[the Appellate Tribunal in such manner and on payment of such fee as may be prescribed].
- ❑ (10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
- ❑ *(11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

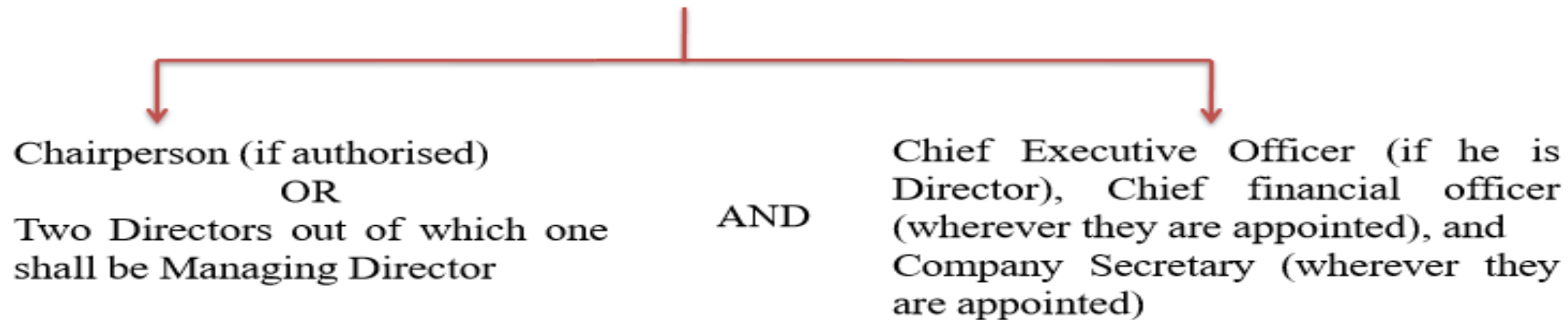
- ❑ (12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
- ❑ ^{***}(13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.
- ❑ ^{***}(14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.
- ❑ ^{***}(15) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

Central Government to Prescribe Accounting Standards – Section 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 under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- ❑¹[Provided that until the National Financial Reporting Authority is constituted under section 132 of the Companies Act, 2013 (18 of 2013), the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the recommendations made by National Advisory Committee on Accounting Standards Constituted under section 210A of the Companies Act, 1956".]

Financial statement, Board's report etc.
Section 134, Rule 8

- Financial statements including consolidated financial statements shall be approved by Board of Directors
- Financial statements shall be signed by



- In the case of a One Person Company, financial statement shall be signed only by one Director, for submission to the auditor for his report thereon
- The auditors' report shall be attached to every financial statement

Contents of Board's report

- Extract of the annual return
- Number of meetings of the Board
- Directors' Responsibility Statement
- Statement on declaration given by Independent Directors
- Company's policy on Directors' appointment and remuneration under section 178
- Explanations or comments by the Board on every adverse remark in audit report and secretarial audit report
- Particulars of loans, guarantees or investments under section 186
- Particulars of contracts or arrangements with related parties in Form AOC-2
- State of the company's affairs
- Amount which it proposes to carry to any reserves
- Amount which it recommends should be paid by way of dividend

Contents of Board's report

- Material changes and commitments affecting the financial position of the company occurred between the end of the financial year and the date of the report
- Conservation of energy, technology absorption, foreign exchange earnings and outgo
- Development and implementation of a risk management policy
- Policy developed and implemented by the company on corporate social responsibility
- Annual evaluation has been made by the Board of its own performance and that of its committees and individual directors (for listed and Company having paid up capital of twenty five crore rupees)
- Performance and financial position of each of the subsidiaries, associates and joint ventures
- Other prescribed matters

- Directors' Responsibility Statement shall state that:
 1. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 2. 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;
 3. 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;
 4. the Directors had prepared the annual accounts on a going concern basis; and
 5. 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
 6. 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

Other Provisions

- In case of One Person Company, Board's report means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report
- Board's report and any annexure thereto shall be signed by the chairperson of the company (if authorised) and by at least two Directors, one of whom shall be a Managing Director (If chairperson is not authorised)
- In case of One Person Company, Board's report shall be signed by one Director.
- Signed copy of every financial statement, including consolidated financial statement, if any, alongwith notes annexed to financial statement, auditor's report and Board's report shall be issued, circulated or published



CORPORATE SOCIAL RESPONSIBILITY

SECTION 135

- ❑ (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during 3[the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

- ❑ 4[Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.]

- ❑ (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- ❑ (3) The Corporate Social Responsibility Committee shall,—
 - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company ⁵[in areas or subject, specified in Schedule VII];
 - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- ❑ (4) The Board of every company referred to in sub-section (1) shall,—
 - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
 - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

- ❑ (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years ⁷[or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:
- ❑ Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:
- ❑ Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount ⁸[and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year].

- ❑ [Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.]
- ❑ 9[6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.
- ❑ (7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
- ❑ (8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.]

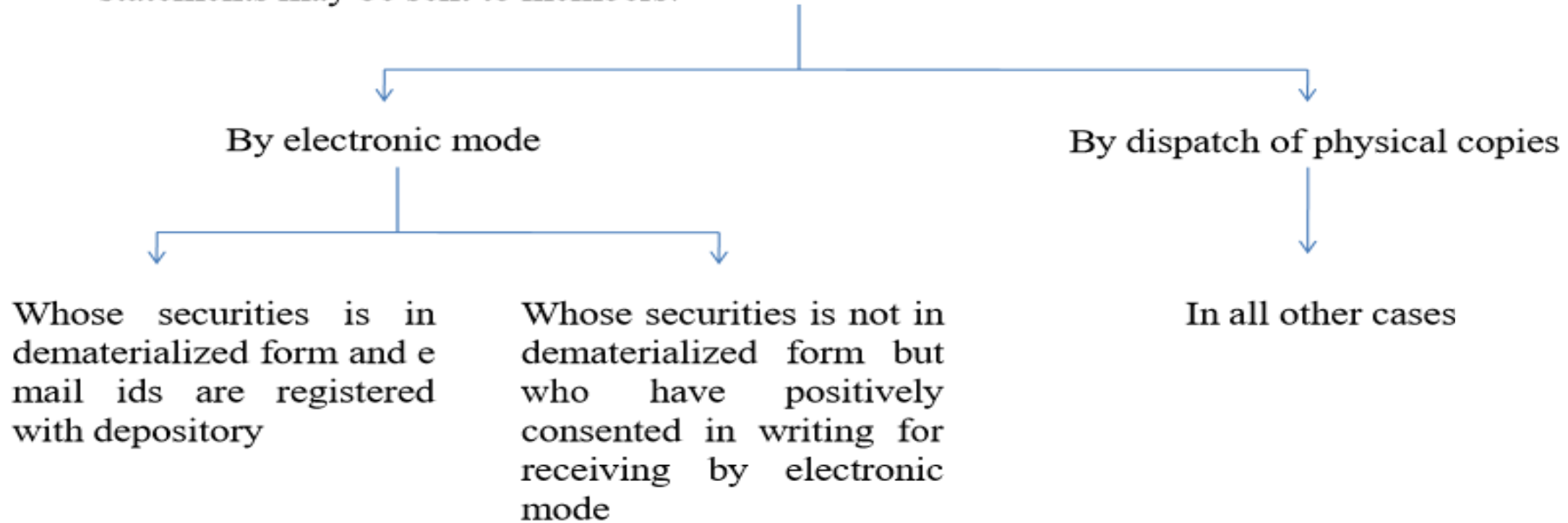
Right of members to copies of financial statements Section 136, Rule 10 and 11

Financial statements, consolidated financial statements, Auditor's report and every other document required to be annexed to the financial statements, which are to be laid before a company in its general meeting, shall be sent to



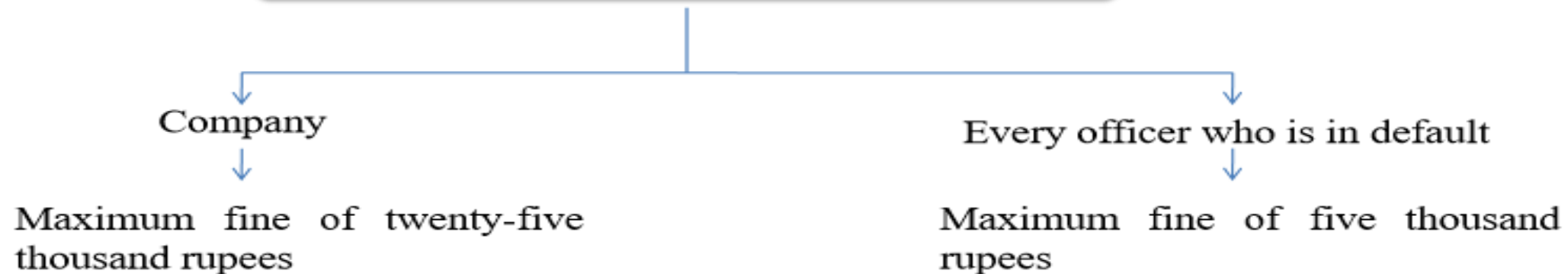
- In the case of a listed Company the provisions of section 136(1) shall be deemed to be complied with if :
 - the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting, and
 - a statement containing the salient features of such documents in Form AOC-3 is sent to every member and to every trustee for the debentures holders issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements

- In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent to members:



- A listed company and every Company having a subsidiary or subsidiaries
 - shall place its financial statements including consolidated financial statements and all other documents required to be attached thereto, on its website.
 - Provide a copy of Audited financial statements in respect of its subsidiary to any shareholder who asks for it.
- Company shall allow every member or trustee of the debenture holders to inspect the documents stated under Section 136(1) at its registered office during business hours

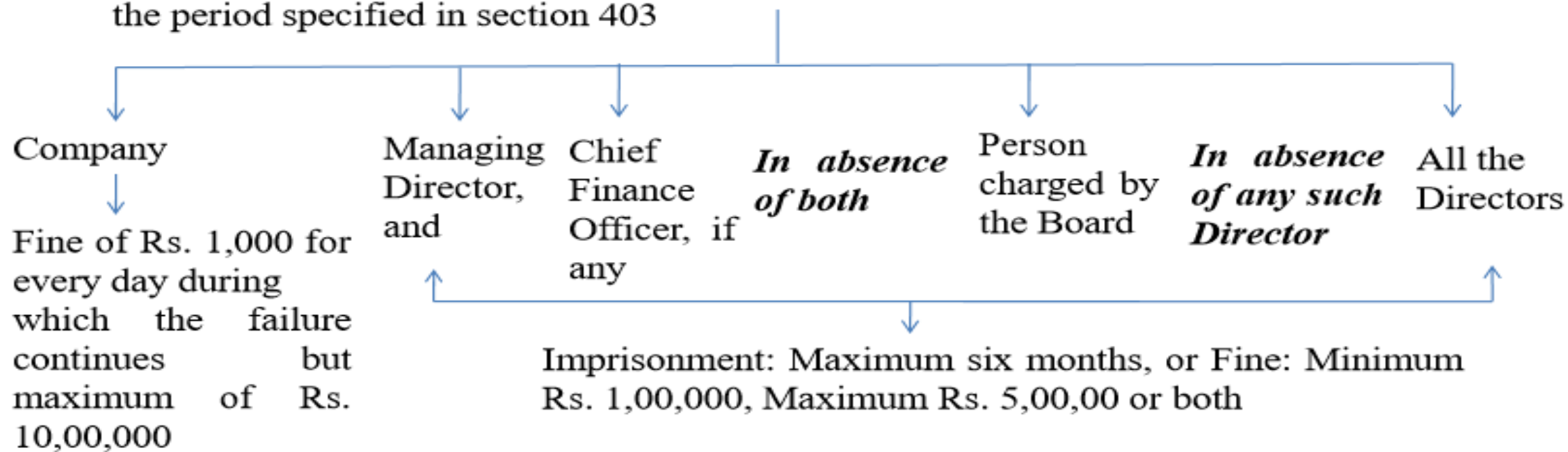
Penalty for non compliance section 136



Copy of financial statements to be filed with the Registrar Section 137, Rule 12

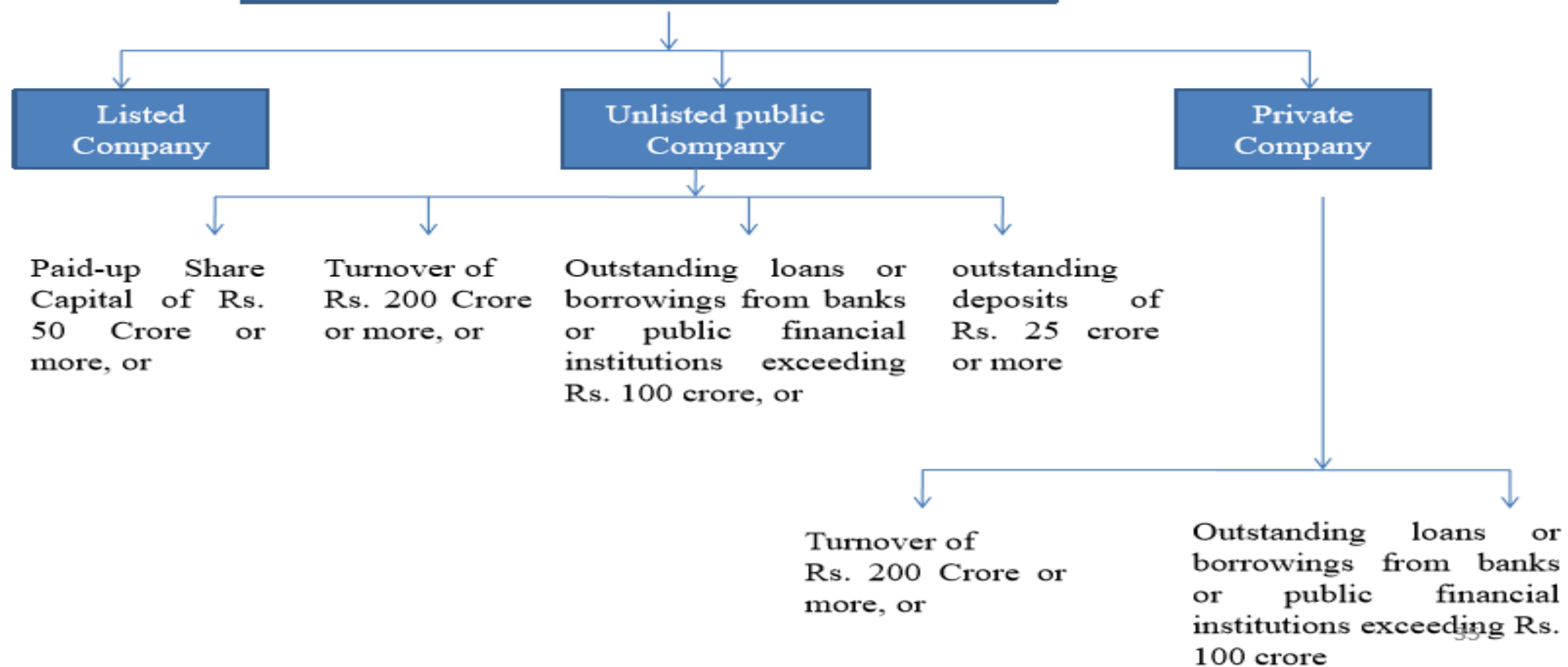
- Copy of the financial statements, including consolidated financial statements along with all the documents required to be or attached duly adopted at the annual general meeting shall be filed with the Registrar in form AOC-4
- Shall be filed within thirty days of the date of annual general meeting in such manner, with such fees as specified in Companies (Offices and Fees) Rules, 2014.
- Unadopted financial statements shall be filed in case they are not adopted at the annual general meeting or adjourned annual general meeting within the same time and the Registrar shall take them as provisional till the adopted statements are filed.
- The class of companies as may be notified by the Central Government shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format
- The Central Government may specify the manner of such filing for such class of companies.
- One person Company shall file a copy of the Financial Statements duly adopted by its members along with all the documents within 180 days from the closure of the Financial Year.

- Every Company at the time of filing shall attach the Accounts of subsidiary or subsidiaries which have been incorporated outside India and which have not establish their place of business in India
- Where the annual general meeting has not been held, the financial statements and all other document along with the statement of reasons for not holding the meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner as may be prescribed.
- **Penalty**, if Company fails to file the copy of financial statements before the expiry of the period specified in section 403



**Internal Audit
Section 138, Rule 13**

Companies required to appoint internal auditor



Other Provisions

- Internal Auditor appointed by the Board to conduct Internal Audit, shall be either a chartered accountant or a cost accountant or any other professional
- Chartered Accountant” shall mean a Chartered Accountant whether engaged in practice or not
- Internal Auditor may or may not be an employee of the Company
- The Central Government may prescribe the manner, intervals in which Internal Audit shall be conducted and reported to Board.
- The Audit Committee of the Company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.
- Existing Companies shall comply with the provisions of this section within six months of commencement of such section



AUDIT AND AUDITORS

APPOINTMENT OF FIRST OR SUBSEQUENT AUDITOR



SUBSEQUENT AUDITOR

LISTED COMPANY
PUB. CO PUC \geq Rs.10 Cr.
PVT. CO. PUC \geq Rs. 20 Cr.
ALL COS. BORROWING \geq
RS. 50 Cr.

AUDIT FIRMS

TWO CONSECUTIVE TERMS OF FIVE YEARS

INDIVIDUAL AUDITOR

APPOINTMENT FOR ONE TERM OF FIVE YEARS

COOLING PERIOD OF FIVE YEARS

NON SPECIFIED CLASS

AUDITORS TO HOLD OFFICE FOR A PERIOD OF FIVE YEARS

RATIFICATION AT EACH AGM

ROTATION OF AUDITOR

Illustration explaining rotation in case of individual auditor



Illustration 1:- Number of consecutive years for which an individual auditor has been functioning as auditor in the same company I	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

ROTATION OF AUDITOR

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	Maximum number of consecutive years for which the firm may be appointed in the same company	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

ROTATION OF AUDITOR

CONTD..

- ❖ Audit Committee should recommend the incoming Auditor.
- ❖ No common partner between incoming and outgoing firm.
- ❖ During the tenure the auditor can resign or may be removed.
- ❖ Members in General Meeting may decide the rotation of the audit partner and his team or may appoint joint auditor.
- ❖ Auditor to give his consent for appointment.
- ❖ Company to inform to the auditor and the Registrar.

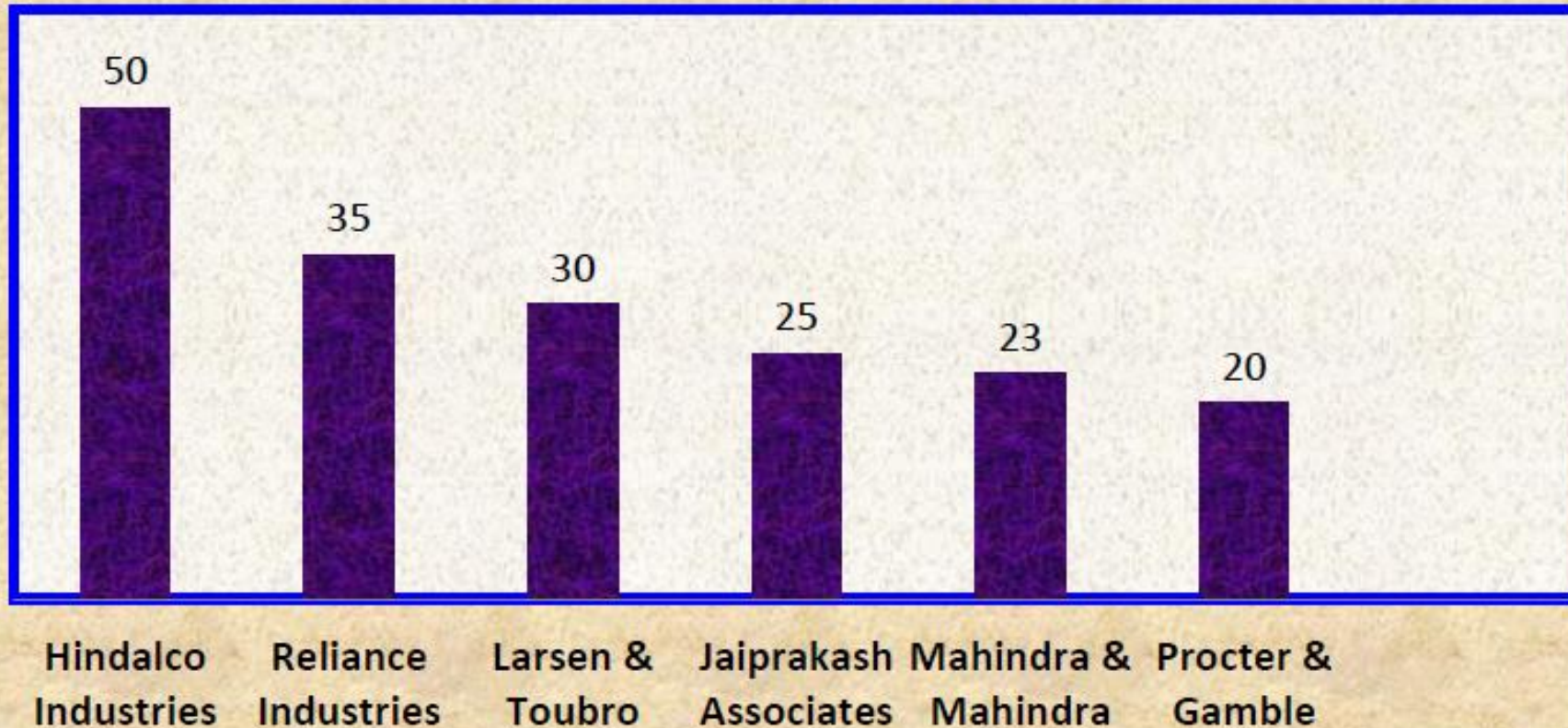
ACTION STEPS

- ❖ Companies should assess as to whether a change in auditors is required and prepare for the transition accordingly. This may result in increased cost.

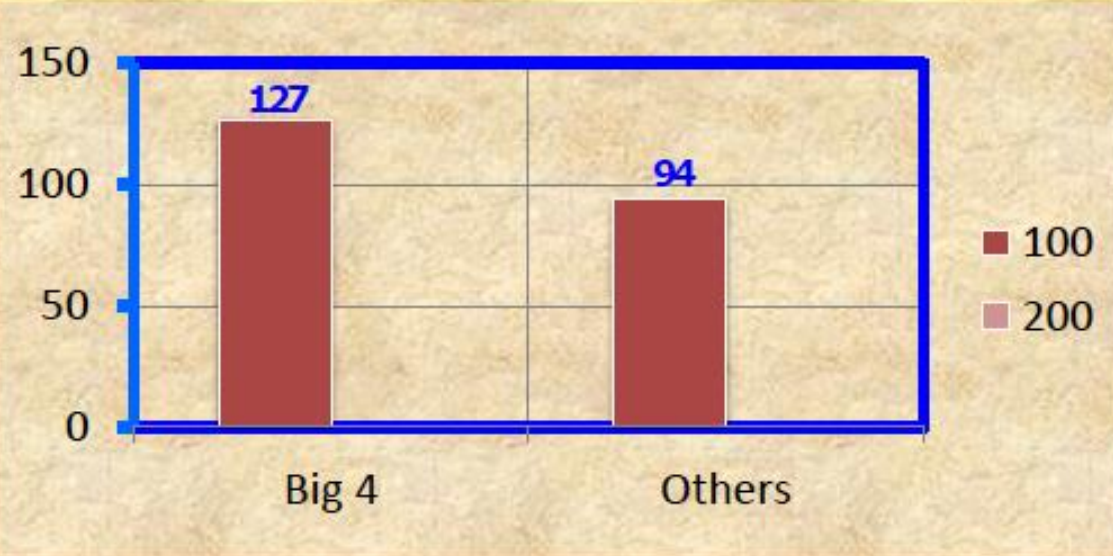
VINTAGE AUDITOR

Large business groups including Reliance Industries, Mahindra & Mahindra, L & T and a few MNCs like P&G have had the same auditors for decades

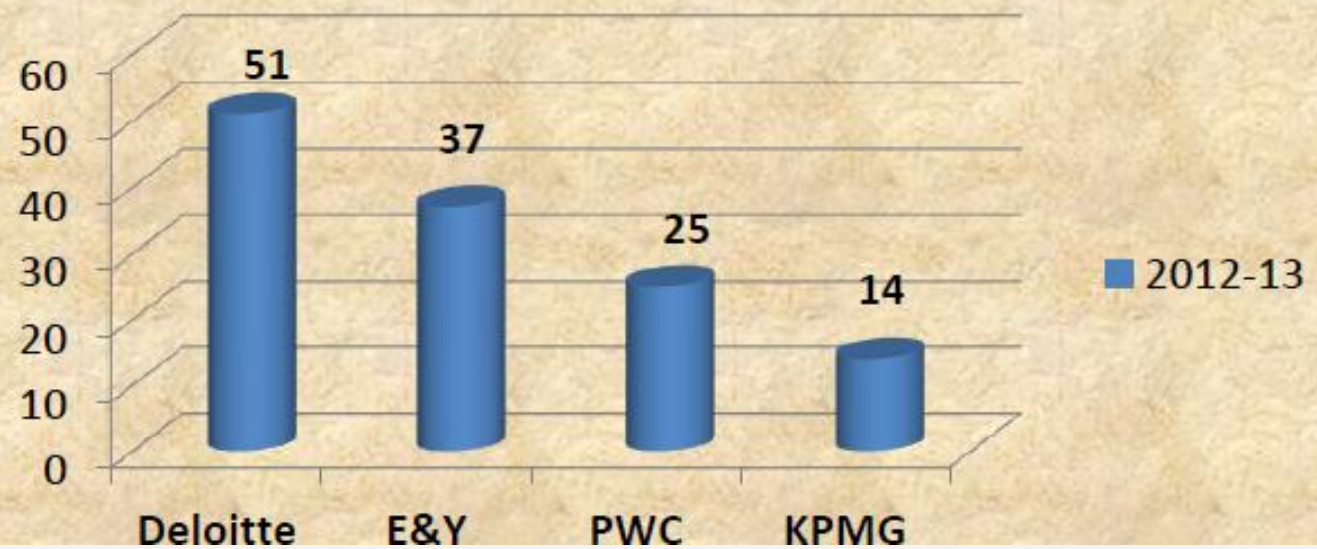
Auditors' tenure (in years) at Company



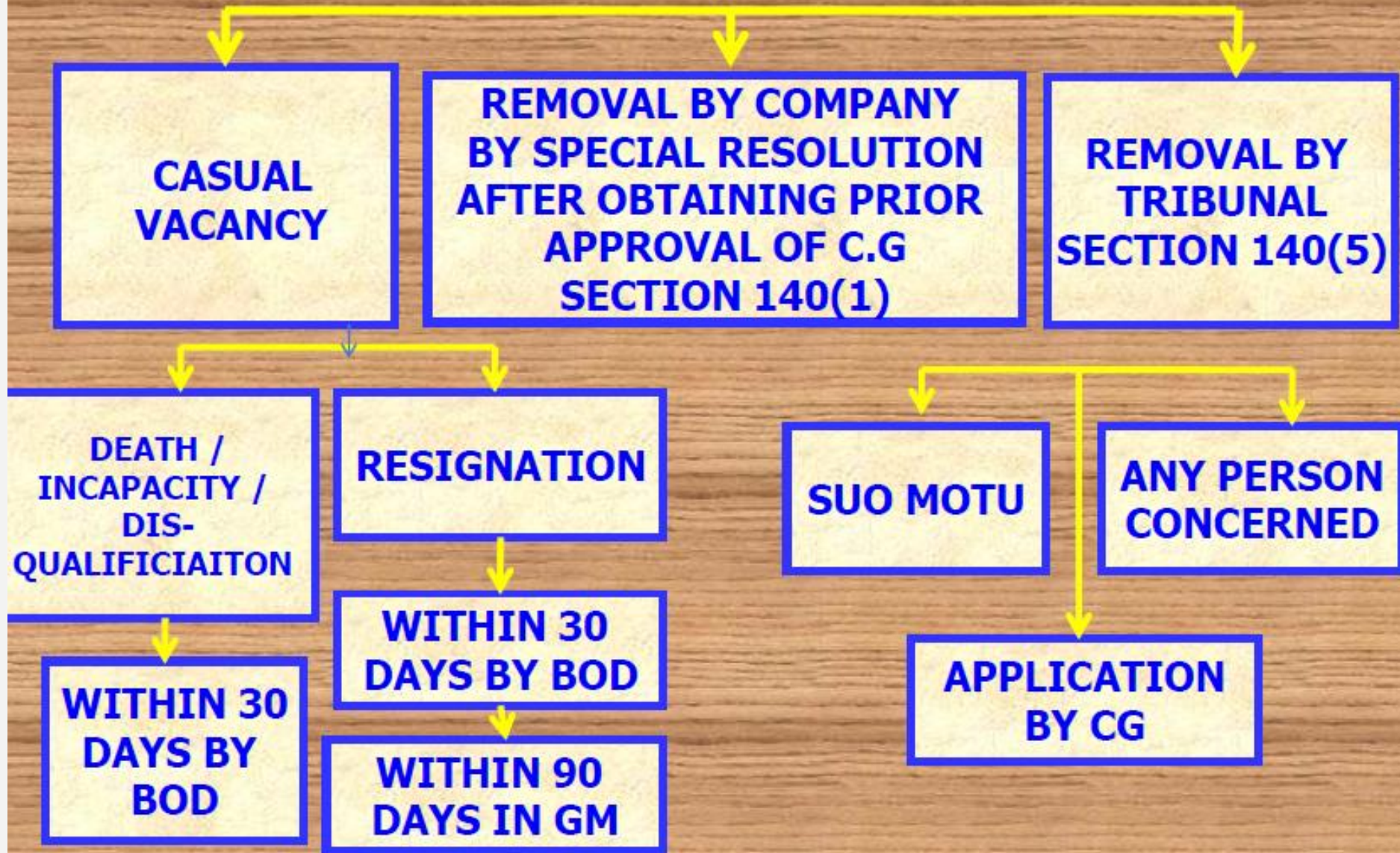
AUDITOR OLIGOPOLY



2012-13



VACANCY IN THE OFFICE OF AUDITOR



RE-APPOINTMENT OF RETIRING AUDITOR

A retiring auditor may be re-appointed at an Annual General Meeting,

- ❖ if he is not disqualified for re-appointment;
- ❖ he has not given the company a notice in writing of his unwillingness to be re-appointed; and
- ❖ a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.



RE-APPOINTMENT OF RETIRING AUDITOR

Action steps

- ❖ Companies to make an assessment of the timing for change of existing auditors in line with the amendments;
- ❖ Companies to involve audit committees up-front in developing an internal system for assessment of eligible firms for appointment;
- ❖ Management and audit committee to plan for seamless transition of auditors.



QUALIFICATION & DIS-QUALIFICATION OF AUDITOR

- ❖ A limited liability partnership registered under the Limited Liability Partnership Act' 2008 will be eligible for appointment as an auditor.
- ❖ Persons who shall not be eligible for appointment as an auditor of a Company, namely:
 - ❖ A person who is a relative or partner;
 - ❖ Is holding any security or interest in excess one Lac rupees in the Company*;
 - ❖ Is indebted in excess or Rupees Five Lacs to the Company*; or
 - ❖ Has given a guarantee or provided any security in connection with the indebtedness of any third person in excess of one Lac rupees to the Company

*Company includes subsidiary, holding, associate company or subsidiary of such holding company.

- ❖ Any person who has a business relationship with the Company of commercial nature except transaction of professional service rendered by an auditor or transactions which are in the ordinary course of business and on arms length.

ELIGIBILITY, QUALIFICATION & DIS-QUALIFICATION OF AUDITOR

CONTD.

- ❖ A person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- ❖ A person who is holding appointment as auditor of more than twenty companies;
- ❖ A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- ❖ Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

POWER & DUTIES OF AUDITORS

- ❖ Right of access to records of all its subsidiaries.
- ❖ Auditors Report on Accounts, Financial Statements, Auditing and Accounting Standards.
- ❖ Auditor's Report shall state about
 - ❖ Adequate internal financial controls systems.
 - ❖ Effect of pending litigation on its financial position.
 - ❖ Provision for material foreseeable losses.
 - ❖ Delay in depositing money in IEPF.



FRAUD BY THE COMPANY



AUDITOR NOT TO RENDER CERTAIN SERVICES

- An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—
 - (a) accounting and book keeping services;
 - (b) internal audit;
 - (c) design and implementation of any financial information system;
 - (d) actuarial services;
 - (e) investment advisory services;
 - (f) investment banking services;
 - (g) rendering of outsourced financial services;
 - (h) management services; and
 - (i) any other kind of services as may be prescribed: Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

PUNISHMENT FOR CONTRAVENTION

❑ (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees ¹[or four times the remuneration of the auditor, whichever is less]


- ❑ Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and ²[with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less]
- ❑ (3) Where an auditor has been convicted under sub-section (2), he shall be liable to—
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company, statutory bodies or authorities ³[or to members or creditors of the company] for loss arising out of incorrect or misleading statements of particulars made in his audit report.`

- ❑ (4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.
- ❑ (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally
- ❑ *4["**Provided** that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."]



DIVIDEND


Declaration & Payment of Dividend



(1) No dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of ⁵[both:].

⁶["**Provided** that in computing profits any amount representing unrealized gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or"]




(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

³**Provided further** that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and ⁷[transferred by the company to the free reserves], such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:]


Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.



[Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.]

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.


(3) ⁸[The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:



Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.]

⁴[(4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.]

²[(5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:




Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.]


(6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

Unpaid Dividend Account




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

(2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.




(3) If any default is made in transferring the total amount referred to in subsection (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(4) Any person claiming to be entitled to any money transferred under subsection (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed



(5) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(6) All shares in respect of which ¹[dividend has not been paid or claimed for seven consecutive years or more shall be] transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:




Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

²[Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.]

(7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Right to Dividend, Rights Shares
and Bonus Shares to be Held in
Abeyance Pending Registration of
Transfer of Shares




Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

(a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorized by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and


(b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

Punishment for failure
to distribute dividends





Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed:—

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

Investor Education & Protection Fund

- 
- The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).
 - There shall be credited to the Fund—
 - (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilized for the purposes of the Fund;
 - (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
 - (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;




(d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of [section 205A](#) of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;


(e) the amount lying in the Investor Education and Protection Fund under [section 205C](#) of the Companies Act, 1956;

(f) the interest or other income received out of investments made from the Fund;

(g) the amount received under sub-section (4) of [section 38](#);

(h) the application money received by companies for allotment of any securities and due for refund;

- 
- (i) matured deposits with companies other than banking companies;
 - (j) matured debentures with companies;
 - (k) interest accrued on the amounts referred to in clauses (h) to (j);
 - (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
 - (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
 - (n) such other amount [as may be prescribed](#):



Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.


#(3) The Fund shall be utilized for—

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(b) promotion of investors' education, awareness and protection;

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

(d) reimbursement of legal expenses incurred in pursuing class action suits under [sections 37](#) and [245](#) by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and




(e) any other purpose incidental thereto,
in accordance with such rules [as may be prescribed](#):

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of [section 205C](#) transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

#(4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.




(5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

*(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules [as may be prescribed](#).

Note : Sub-Section (6) is Notified - except with respect to the manner of administration of the Investor Education and Protection Fund..

Note : Manner of administration of the Investor Education and Protection Fund has been notified on 7th September, 2016



*(7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules [as may be prescribed](#).

** (8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form [as may be prescribed](#) after consultation with the Comptroller and Auditor-General of India.

** (9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).

** (10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

** (11) The authority shall prepare in such form and at such time for each financial year [as may be prescribed](#) its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

A white rectangular card is placed diagonally on a background of numerous pink rose petals. The petals are vibrant pink with some yellow centers. The card has the words "Thank you" written in a black, cursive script. The overall composition is soft and romantic.

Thank you