

**COMPANIES ACT, 2013**

**ACCOUNTS  
OF  
COMPANIES**



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

## **ACCOUNTS OF COMPANIES**

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The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more. But they have every right to know as to how their money has been dealt with by the directors in a particular period. This is why perhaps compulsory disclosure through annual information to the shareholders by the directors about the working and financial position of the company enables them to exercise a more intelligent and purposeful control over the affairs of the company. For preparation of annual accounts the maintenance of proper books of account is a must. Section 128 of the Companies Act, 2013 contains the provisions for books of account etc. to be kept by company.

### **REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128)**

Maintenance of books of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

- (i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines “books of account”.
- (ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.
- (iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.
- (iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches.

“books of account” as defined in Section 2(13) includes records maintained in respect of—

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

### **Place of Keeping Books of Account**

Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place.

### **Maintenance of Books of account in electronic form**

The maintenance of books of account and other books and papers in electronic mode is permitted and is optional. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use (the Companies (Accounts) Rules, 2014 hereinafter referred in this Chapter as Rule) (Rule 3(1)).

The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered (Rule 3(2)).

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 (Rule 3(3)).

The information in the electronic record of the document shall be capable of being displayed in a legible form (Rule 3(4)).

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:

Provided that 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. (Rule 3(5))

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement -

- (a) the name of the service provider;
- (b) the internet protocol address of service provider;
- (c) the location of the service provider (wherever applicable);
- (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider. (Rule 3(6)).

### **Books of Account in Respect of Branch Office**

The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in sub-section (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.

### **Accrual basis and Double-entry system of accounting**

According to sub-section (1), books of account are required to be kept on accrual basis and in accordance with the double entry system of accounting.

Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial statements. Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid. The main feature of the accrual concept is that the accounting period covers only the revenue and expense transactions of that period and ignores the timing of actual cash receipts and payments. In this method, revenues and expenses are identified with specific period of time, such as a month or a year, and are recorded as 'incurred' along with acquired assets, without regard to the date of actual receipt or payment of cash in any form.

Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt and credit and therefore, needs to be recorded in at least two accounts. For example, when a person (debtor) pays cash to a business for goods he has purchased, the cash held by the business is increased and the amount due from the debtor is decreased by the same amount; similarly, when a purchase is made on credit, the purchase account is debited and the amount owed to creditor is increased by the same amount. This double aspect enables effective control of business because all the books of accounts must balance. Thus, double entry book-keeping is a method in which every transaction is recorded in a business in such a manner that it involves one or more debit entries and one or more credit entries. The debit entries / amount must equal the credit entries / amount for each transaction recorded.

### **Inspection by directors**

As provided in sub-section (3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression "Books and Papers" has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director- nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors. Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought (Rule 4(2)). The said information shall be provided to director within 15 days of receipt of request (Rule 4(3)). The director can seek the information only individually and not by or through his attorney holder or agent or representative (Rule 4(4)).

The right to inspect books of accounts and other books and papers under this section has been provided to the directors only.

### **Period for which books to be preserved**

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the

company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved. The provisions of Income Tax Act shall also be complied with in this regard.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

### **Persons responsible to maintain books**

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

- i) Managing Director,
- ii) Whole-Time Director, in charge of finance
- iii) Chief Financial Officer
- iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

### **Penalty**

In case the aforementioned persons referred to in sub-section (6) (i.e. MD, WTD, CFO etc.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

### **SECTION 129: FINANCIAL STATEMENT**

This Section seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the companies in the form as provided for different class or classes in Schedule III and shall comply with accounting standards. Insurance companies, banking company, companies engaged in generation / supply of electricity or any other class of companies shall make financial statements in the form as has been specified in or under the Act governing such companies. The financial statement shall be laid in the annual general

meeting of that financial year. In case of subsidiary companies, the company shall prepare a consolidated financial statement of the Company and all subsidiaries and lay before the annual general meeting. The Central Government shall have the power to exempt a class or classes of companies from any of the requirements of this section. The section also provides the penalty where company contravenes the provision of this section.

### **Definition of Financial Statement**

Financial Statement is defined under Section 2 (40), to include -

- Balance Sheet
- Profit and Loss account or Income and Expenditure account
- Cash flow Statement
- Statement of change in equity, if applicable
- any explanatory notes annexed to or forming part of financial statements, giving information required to be given and allowed to be given in the form of notes.

However, the financial statement with respect to one person company, small company and dormant company, may not include the cash flow statement.

Financial statements should be prepared for financial year and shall be in form as per Schedule III.

### **True and Fair view**

As per provisions of sub-sections (1) and (2), every financial statement of the company must give true and fair view of the state of affairs of the company at the end of financial year. True and Fair view in respect of financial statement means-

- financial statements and items contained should comply with accounting standards notified under section 133;
- financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III;
- in case of any insurance or 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, not treated to be disclosing a true and fair view of

the state of affairs of the company, merely by the reason of the fact that they do not disclose -

- in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
- in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
- in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
- in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

### **Other Requirements for financial statements**

- (a) Financial statements shall lay before the board of the directors in every annual general meeting of a company.
- (b) Where a company has one or more subsidiaries, in addition to financial statement provided in sub-section 2, it shall prepare a consolidated financial statement of the company with salient features of financial statements of subsidiary and subsidiaries in such form as prescribed and the same shall be laid before board in annual general meeting.
- (c) Central Government may prescribe for the consolidation of accounts of companies.
- (d) Where financial statements of the company do not comply with the applicable accounting standards, the company shall disclose the following:
  - i) the deviation from the accounting standards
  - ii) the reason for such deviation and
  - iii) financial effects arising out of such deviation
- (e) Central Government may exempt any class or classes of the companies from complying with any of the requirements of this section or the rules there under, either conditionally or unconditionally as may be specified in the notification.

- (f) Central Government may notify the class of companies to mandatorily file their financial statements in Extensible Business Reporting Language (XBRL) format and also the manner of such filing. (Rule 9.3(1))
- (g) Financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes.

### **Persons responsible for compliance**

The persons responsible to take all reasonable steps to secure compliance by the company with the requirement of Section 129 are (sub-section 7)-

- Managing Director
- Whole-Time Director
- CFO
- Other person of a company charged by the Board with the duty of complying with requirements of section 129.

Where any of the aforementioned officers are absent, all the directors shall be responsible and punishable.

### **Penalty**

In case persons referred to in sub-section (7) fail to take reasonable steps to secure compliance or contravene provisions of this section, they shall in respect of each offence be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

### **Form of Financial Statements (Schedule III)**

The financial statements shall be in the form or forms as may be provided for different class or classes of companies. Schedule III contains general instructions for preparation of balance sheet and statement of profit and loss account.

### **Balance sheet**

In balance sheet, assets and liabilities shall be divided into current and non-current. Company shall disclose the details of the following in the Notes to accounts –

- a) share capital

- b) reserves and surplus
- c) long term borrowings
- d) other long term liabilities
- e) long term provisions
- f) short term borrowings
- g) other current liabilities
- h) short term provisions
- i) tangible assets
- j) intangible assets
- k) non-current investments
- l) long term loans and advances
- m) other non-current assets
- n) current investments
- o) inventories
- p) trade receivables
- q) cash and cash equivalents
- r) short term loans and advances
- s) other current assets
- t) contingent liabilities and commitments (to the extent not provided for)
- u) proposed dividend to equity and preference shareholders including arrears of fixed cumulative dividend on preference shares
- v) unutilised amount from issue of securities made for specific purpose
- w) Board's opinion on realisation value of assets other than fixed assets and non-current investments if such value is less than its value as stated in balance sheet.

**Statement of Profit and Loss**

Statement of profit and loss should disclose the followers –

- 1) revenue from operators
- 2) other income
- 3) total revenue (1 + 2)
- 4) expenses

- 5) profit before exceptional and extra ordinary items and tax (3 - 4)
- 6) exceptional items
- 7) profit before extraordinary items and tax (5-6)
- 8) extra ordinary items
- 9) profit before tax (7-8)
- 10) tax expense
- 11) profit (loss) for the period from continuing operations (9 - 10)
- 12) profit (loss) from discontinuing operations
- 13) Tax expense of discontinuing operations
- 14) Profit (loss) from discontinuing operations after tax (12 - 13)
- 15) Profit (loss) for the period (11 + 14)
- 16) Earnings per equity share
  - i) basic
  - ii) diluted

It also contains general instructions for preparation of statement of profit and loss. These provisions shall also apply to the income and expenditure account.

### **Consolidated financial statements**

All companies including unlisted companies and private companies having one or more subsidiary company is required to prepare consolidated financial statements. The clause does not exclude any company from such requirement except that Central Government may exempt any class or classes of companies from complying with any such requirement, conditionally or unconditionally, in public interest. Like financial statements, consolidated financial statements shall also comply with accounting standards.

The consolidated statements is required only if the company has one or more subsidiaries. The word 'subsidiary' includes both, associate company and joint venture. The term 'joint venture' has not been defined. Associate includes a joint venture. If the company has only a joint venture or an associate company but no subsidiary, even then, consolidation of financial statements shall be required.

The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first proviso to sub-section (3) of section 129 shall be in Form AOC-1 (Rule 5).

The Consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III and Accounting Standards, subject however, that if the company is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act (Rule 6)

**SECTION 130: RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDERS (This section not notified)**

The section provides for provisions relating to re-opening or recasting of books of accounts of the company. Accordingly,

- i) A company shall not re-open its books of accounts and shall not recast its financial statements, unless an application in this regard is made by any one or more of the following -
  - a) the Central Government, or
  - b) the Income-tax authorities, or
  - c) the Securities and Exchange Board of India (SEBI), or
  - d) any other statutory regulatory body or authority or any person concerned, and
  - e) an order in this regard is made by a court of competent jurisdiction or the Tribunal.
- ii) The re-opening and recasting of financial statements is permitted only for the following reasons -
  - a) the relevant earlier accounts were prepared in a fraudulent manner; or
  - b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
- iii) The Court or the Tribunal, as the case may be, shall give the notice to-
  - a) the Central Government,

- b) the Income-tax authorities,
  - c) the Securities and Exchange Board,
  - d) any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by Central Government or the income tax authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.
- iv) The accounts so revised or re-cast under this section shall be final.

It may be noted that the Tribunal will include National Company Law Tribunal (NCLT). This provision provides for both, reopening of books after accounts have been closed and recast of financial statements.

Director's report of the year in which such provisions are invoked, should provide for the reasons or circumstances in which such revisions were warranted.

**SECTION 131: VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT (This section not notified)**

This provision allows the directors to prepare revised financial statement or a revised Board's report if it appears to them that the company's financial statement or the Board's Report did not comply with the requirements of Section 129 or Section 134, after obtaining approval of the Tribunal. The company is required to apply to the Tribunal. The application to the Tribunal shall be made within 2 weeks of the decision taken by the Board and the company shall disclose in the application if the majority of directors and auditors have been changed immediately before such decision. The Tribunal will issue notice and hear the auditor of original financial statement.

Tribunal shall give notice and take into account the representations, if any, of the Central Government and of the Income Tax Department. Such revised financial statements or report shall not be prepared or filed more than once in financial year. Further, where copies of financial statements or report has been sent out to members or delivered to registrar or laid before general meeting, the revisions must be confined to specified limits provided in the Section and .

A certified copy of the Order of the Tribunal shall be filed with the Registrar within 30 days of the date of receipt of the certified copy.

Such revision in financial statements or report cannot be prepared or filed more than once in a financial year. The detailed reasons for revision of such financial statements or report shall be disclosed in the Board's report in the relevant financial year in which such revision is being made.

On receipt of approval from Tribunal a General Meeting may be called. Notice of such General meeting along with reasons for change in Financial Statements may be published in Newspaper in English and in vernacular language. In such General Meeting, the said revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.

On approval of the General Meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be shall be filed with the Registrar within 30 days of the date of approval by the general meeting.

The Central Government may make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the correction to be made. The previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:

- (a) A summarised statement of revisions effected
- (b) The copy of the Order of the Tribunal.
- (c) The revised auditor's report on the revised financial statement, if applicable

It shall be ensure that the word "revised" is prefixed prominently on all the documents forming part of the revised financial statements/ revised board report.

The functions of the auditor pursuant to an order of the Tribunal allowing revision of the financial statement shall be as under:

- (i) To carry out the audit procedures necessary in the changed circumstances.
- (ii) To review the steps taken by the company to ensure that anyone who is in receipt of the previously issued financial statements together with the auditor's report thereon is informed of the situation.
- (iii) To ensure that the revised audit report specifically refers to the revision of the financial statements.

- (iv) To issue a revised auditor's report on the revised financial statements and sign the same.
- (v) To ensure that the revised auditor's report contains a paragraph in bold explaining the reasons for the revision of the financial statements with cross reference to the earlier report issued by the auditor.
- (vi) If the Auditor qualifies his report, the Board shall address the same in the manner provided in sub-section (3) of section 134 of the Act.

**Steps to be taken by Directors**

- 1) The proposed revision shall be presented to the directors who authenticated the original financial statements or Report of the Board and to the auditors who attested the said financial statements, and the opinion of the auditors, if any, shall be obtained and considered by the Board, before approving any revision of financial statements or report of the Board. Dissent and dissent vote, if any, at the Board meeting, on such revision of financial statements or report of the Board, should be recorded with reasons in the minutes of the meeting of the Board.
- 2) The revision shall be reported upon by the auditor who is presently holding the position of auditor. However, if the original financial statement was audited by a different auditor, then, the revised financials shall be accompanied by a consent letter from the auditor who reported upon the financial statement which is sought to be revised. In case such auditor does not agree or the company is unable to procure the consent letter, reasons for such different opinion or inability to procure the consent shall be explained.
- 3) It shall be the duty of the Board to send a copy of the revised financial statements and the revised auditor's report to the members, and in case of a listed company, to the stock exchange(s) and other regulatory authorities and it shall fix the date for convening general meeting for the approval of the revised financial statements and the revised auditor's report, or revised report of the Board, as the case may be.
- 4) The revised financial statements or revised report of the Board shall be signed in the manner specified in section 134 of the

Act. Any such revised financial statement or revised report of the Board shall be accompanied by the reasons justifying the proposed revision.

- 5) The members shall approve the revised financial statements and the revised auditor's report at the general meeting.
- 6) Management has to necessarily revise the financial statements for all the relevant period, subsequent to the financial year for which the revision of financial statement is sought to be made by the Board of Directors.

**SECTION 132 : NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (This section not notified)**

Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards. The Companies Act, 1956 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA).

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority.

The National Financial Reporting Authority shall be a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting- financial as well as non – financial, by the companies in future.

National Financial Reporting Authority shall give its recommendations on accounting standards and auditing standards. It shall only recommend and it is the Central Government who shall prescribe such standards.

**Objective**

The objectives of National Financial Reporting Authority inter alia shall be as follows:

1. Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
2. Monitor and enforce the compliance with accounting standards, monitor and enforce the compliance with auditing standards;
3. Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service, and
4. Perform such other functions as may be prescribed in relation to aforementioned objectives.

These objectives simply bring chartered accountants, cost accountants, management accountants, company secretaries as well as independent directors / members audit committees under jurisdiction of NFRA.

**Constitution of NFRA**

The constitution of National Financial Reporting Authority, which is supposed to be constituted as an oversight regulatory body to recommend accounting and auditing standards, shall be governed by sub -section (3) and (4) of section 132. Accordingly,

- i) It shall consist of a chairperson, who shall be a person of eminence & having expertise in accountancy, auditing, finance, business administration, business law, economics or similar disciplines, to be nominated by Central Government, and such other prescribed members not exceeding 15.
- ii) The chairperson and all members shall make a declaration in prescribed form about no conflict of interest or lack of independence in respect of their appointment. The chairperson and all full – time members shall not be associated with any audit firm or related consultancy firm during course of their appointment and two years after ceasing to hold such appointment.
- iii) The head office of National Financial Reporting Authority shall be at New Delhi and it may, meet at such other places in India, as it deems fit.

- iv) Its accounts shall be audited by Comptroller and Auditor General of India (CAG) and such accounts as certified by CAG, together with audit report, shall be forwarded annually to the Central Government.

For the constitution of National Financial Reporting Authority, the Act doesn't prescribe for nomination of members from MCA, ICSI, ICAI, ICMAI, as opposed to what was prescribed under the Companies Act, 1956 in respect of constitution of National Advisory Committee on Accounting Standards. The same shall be prescribed by Central Government so far as terms, conditions and manner of appointment is concerned. Members appointed could be full time members or part time members.

### **Jurisdiction, Powers of and Imposition of Penalties by NFRA**

The National Financial Reporting Authority shall have jurisdiction over bodies corporate and persons for matters of professional and other misconduct committee, by any member or firm of Chartered Accountants registered under the Chartered Accountants Act, 1949. No other institute or body (including professional institutes) shall initiate or continue any proceeding in such matters of misconduct where the authority has initiated an investigation under this section.

The Authority shall have powers as are vested in a civil court under Code of Civil Procedure in respect of following matters:

1. Discovery and production of books of accounts and other documents
2. Summoning and enforcing the attendance of persons and examining them on oath
3. Inspection of any books, registers and other documents of any person
4. Issuing commission for examination of witness or documents.

Sub-section (4) is a non-obstante clause, providing a bar on anybody or any institute, in initiating or continuing the proceedings in matters relating to misconduct as referred to in Chartered Accountants Act 1949.

The Authority shall have powers to make an order in relation to:

- A. Imposing penalty of
  - (i) not less than one lakh rupees which may extend to five times of the fees received in case of individuals and

- (ii) not less than ten lakh rupees which may extend to ten times of the fees received in case of firms
- B. Debarring member or the firm from engaging himself or itself from practice for a period of six months to ten years.

### **Appeals and Appellate Authority**

Any person aggrieved by any order of the National Financial Reporting Authority may prefer appeal to Appellate Authority, set up for this purpose.

The Appellate Authority shall consist of a chairperson and not more than two members. However, the Appellate Tribunal constituted under the Chartered Accountants Act, 1949 will not act as Appellate Tribunal under this section.

### **SECTION 133: CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS**

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. Till the constitution of NFRA, National Advisory Committee on Accounting Standards (NACAS) is still empowered to do the work allocated to NFRA under new Act. The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are prescribed by the Central Government.

### **SECTION 134: FINANCIAL STATEMENT, BOARD'S REPORT ETC.**

Section 134 deals with financial statements as well as board's report. The Board's Report shall be prepared based on the stand alone financial statements of the company and 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 and approved by the Board of directors before they are signed and submitted to auditors for their report.

The auditor's report is to be attached to every financial statement. A report by the Board of directors containing details on the matters specified, including director's responsibility statement, shall be attached

to every financial statement laid before company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company, in case of any contravention.

### **Requirements as to financial statements**

- Financial statement of the company including consolidated financial statements, if applicable, should be approved by the Board of Directors, before such statements are signed.
- Financial statement should be signed on behalf of the board by atleast
  - chairperson of company, duly authorised board, or
  - two directors of whom one should be the managing director, and
  - chief executive officer, if he is director, chief financial officer and company secretary, if any in the company
- One person company's financial statements shall be signed by only one director.
- Such sign is required for submission of financial statements to the auditor for his report.
- Auditors report is required to be attached to every financial statement.
- Board report shall be attached to the statements laid before the company in general meeting. The report by Board of directors includes –
  - (a) the extract of the annual return as provided under sub-section (3) of section 92 in Firm No. 7.9;
  - (b) number of meetings of the Board;
  - (c) Directors' Responsibility Statement;
    - The Directors' Responsibility Statement shall state that –
      - a. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

- b. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
  - c. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
  - d. the directors had prepared the annual accounts on a going concern basis; and
  - e. 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;
  - f. the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- (d) a statement on declaration given by independent directors under sub-section of section 149;
- (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
- (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 his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related

parties referred to in sub-section (1) of section 188 in the Form No. 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 as follows:
  - (A) Conservation of energy:
    - (i) the steps taken or impact on conservation of energy.
    - (ii) the steps taken by the company for utilising alternate sources of energy.
    - (iii) the capital investment on energy conservation equipments.
  - (B) Technology absorption:
    - 1. The efforts made towards technology absorption.
    - 2. The benefits derived like product improvement, cost reduction, product development or import substitution.
    - 3. In case of imported technology (imported during the last 3 years reckoned from the beginning of the financial year) -
      - (a) The details of technology imported.
      - (b) The year of import.
      - (c) Whether the technology been fully absorbed
      - (d) If not fully absorbed, areas where absorption has not taken place, and the reasons thereof.

4. The expenditure incurred on Research and Development

(C) Foreign exchange earnings and Outgo

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

- (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;
- (p) in case of a listed company and every other public company having such paid-up share capital of Twenty Five crore rupees or more, calculated as at the end of the preceding financial year, shall include in the report by its Board, 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 which includes –
  - (i) the financial summary or highlights;
  - (ii) the change in the nature of business, if any;
  - (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
  - (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
  - (v) the details relating to deposits covered under Chapter V of the Act:
    - (a) Accepted during the year;
    - (b) remained unpaid or unclaimed as at the end of the year;

- (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved:
  - i. at the beginning of the year
  - ii. maximum during the year
  - iii. at the end of the year
- (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
- (vii) the details of significant and material orders passed by the Regulators or courts or tribunals impacting the going concern status and company's operations in future;
- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements. (Rule 8)

The report of Board of directors of one person company shall contain the explanations or comments on every qualification, reservation or adverse remark or disclaimer made by auditor in his report.

The Board's report shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor (Section 177(8)).

Every listed company shall disclose in its Board Report the following:

- i. the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year ;
- ii. Percentage increase in remuneration of each director and CEO in the financial year;
- iii. Percentage increase in the median remuneration of employees in the financial year;
- iv. Number of permanent employees on the rolls of company;
- v. Explanation on the relationship between average increase in remuneration and company performance;

- vi. Comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
- vii. The key parameters for any variable component of remuneration availed by the directors;
- viii. The ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.
- ix. Affirmation that the remuneration is as per the remuneration policy of the company

The board's report shall include a statement showing the name of every employee of the company who-

- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;
- (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;
- (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

The above mentioned statement also covers the designation of the employee; remuneration received; nature of employment, whether contractual or otherwise; qualifications and experience of the employee; date of commencement of employment; the age of such employee; the last employment held by such employee before joining the company; the percentage of equity shares held by the employee in the company; and whether any such employee is a relative of any director or manager of the company and if so, name of such director.

The particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, shall not be included in such statement of the Board's report but such particulars shall be filed with the Registrar of

Companies while filing the financial statement and Board Reports and such particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders.

The company shall disclose non disqualification on account of receiving any remuneration or commission from any holding company or subsidiary company and who is a director, receiving any commission from the company and who is a managing director or a whole time director. (Section 197(4))

Every listed company and the company who accept deposits from the public and borrowed money from banks and public financial institutions in excess of fifty crore rupees shall establish a vigil mechanism for their directors and employees to report genuine concerns; and the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees;
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. (Section 149(10))

Where the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, inter alia, disclose in the Board's report for the relevant financial year the following details:

- a) names of the employees who have not exercised the voting rights directly;

- b) reasons for not voting directly;
- c) name of the person who is exercising such voting rights;
- d) number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up capital of the company;
- e) date of the general meeting in which such voting power was exercised;
- f) resolutions on which votes have been cast by persons holding such voting power;
- g) percentage of such voting power to the total voting power on each resolution;
- h) whether the votes were cast in favour of or against the resolution.

### **Signing of Board Report**

The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

Signed copy of financial statements (including cash flow statement) shall be issued / circulated / published alongwith copy of –

- notes to accounts forming part of financial statements
- auditors report thereon
- board's report

### **Penal provisions**

Any contravention of provisions of Section 134 is punishable to the following extent –

- a) company is punishable with fine of not less than rupees fifty thousand but which may extend upto rupees twenty five lakhs, and
- b) every officer in default is punishable with –
  - (i) imprisonment upto a term of three years, or
  - (ii) monetary fine from fifty thousand rupees to rupees five lakh, or
  - (iii) both (i) and (ii) above

**SECTION 135 : CORPORATE SOCIAL RESPONSIBILITY**

This section seeks to provide that every company having specified net worth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the committee shall be included in the Board's Report. The Committee shall formulate policy including the activities specified in Schedule VII. The Board shall disclose the content of policy in its report and place on website, if any of the company. The section further provides that the Board shall ensure that at least two per cent of average net profits of the company made during three immediately preceding financial years shall be spent on such policy every year. If the company fails to spend such amount the Board shall give in its report the reasons for not spending.

There was no corresponding provision in the Companies Act, 1956 but Ministry of Corporate Affairs, Government of India had brought 'Corporate Social Responsibility Voluntary Guidelines, 2009' in December, 2009. According to these guidelines, each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board.

The CSR Policy is expected to normally cover following core elements:

- a) Care for all stakeholders
- b) Ethical functioning
- c) Respect for workers' rights and welfare
- d) Respect for human rights
- e) Respect for environment
- f) Activities for social and inclusive development

**What is CSR**

*Corporate Social Responsibility* – The term 'Corporate Social Responsibility' (CSR) term is not defined in the Companies Act, 2013.

- In modern era, Corporate Social Responsibility as an expression was used perhaps for the first time in 1953 when Bowen raised the question "What responsibility to Society can business people be reasonably expected to assure" in his book "Social Responsibilities of the Businessman" (p. xi).

- Keith Davis and Robert Blomstrom (1966) defined social responsibility in the first edition of their *Business and its Environment Textbook*:

“Social responsibility, therefore, refers to a person’s obligation to consider the effects of his decisions and actions on the whole social system. Businessmen apply social responsibility when they consider the needs and interest of others who may be affected by business actions. In so doing, they look beyond their firm’s narrow economic and technical interests”. (p. 12)

- Philip Kotler & Nancy Lee (2005) gave the concept for CSR as a “commitment to improve community well-being through discretionary business practices and contributions of corporate resources”.
- The European Commission explains CSR as follows:

“By stating their social responsibility and voluntarily taking on commitments which go beyond common regulatory and conventional requirements, which they would have to respect in any case, companies endeavour to raise the standards of social development, environmental protection and respect of fundamental rights and embrace an open governance, reconciling interests of various stakeholders in an overall approach of quality and sustainability,”

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (whether towards environmental causes, educational promotion, social causes etc.) along with the reinforced duty to conduct the business in an ethical manner.

Corporate Social Responsibility (CSR) is a form of self-regulation integrated into a business model. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

CSR involves both internal as well as external stakeholders. Internal stakeholders include the employees of the company whereas external stakeholders include community & environment, customers, vendors, shareholders, government etc. To carry out CSR effectively, it is essential that it has to be driven from top. So leadership is very important in all CSR activities and it is the need of the hour to develop next generation of globally responsible leaders.

### **Benefits of CSR**

The benefits of CSR could be listed as follows:

- Strengthened brand positioning
- Enhanced corporate image and reputation
- Satisfaction of economic and social contribution to society
- Contribution to the surrounding society
- Increased ability to attract, motivate and retain employees
- Enhanced sales and market share
- Increased appeals to investors and financial analysts
- Local economy gains in all dimensions

### **Why CSR?**

Although the Indian companies seem wary of this new regulation, not wanting to be forced to do 'charity' or finding themselves unequipped to deal with the implementation of such a CSR Policy, there are numerous positives to this concept :

- Development of 'reputation capital' for capturing and sustaining markets. Therefore, CSR has developed as a new business strategy, to reduce investment risks and maximize profits by taking all the key stakeholders into confidence.
- Long term gains as opposed to short term profits, which are the outcome of good CSR policies.
- Environmental stability and sustainability—being an important resource for companies is ensured.
- Social stability and acceptance in society.
- CSR facilitates sustainable economic development as corporates become drivers of economic growth.
- With globalization, the negative aspects of businesses have been intensified and exploitation is widespread – CSR Policies may work to counter this effect.

Also, it is a fact that a successful company cannot co-exist in a society that fails and therefore, a company being a member of the society is required to contribute positively and effectively.

CSR, during the last few decades, has moved from the periphery to center stage corporate policies and strategies. The concept of CSR has moved on to a comprehensive concept called "Corporate Responsibility"

and then on to the futuristic concept of "Corporate Social Entrepreneurship". This is basically to pass on the values and work ethics of a corporate business into the community. This will enable a company to transmit values and rational attitudes among members of the society and future generations of the society.

The underlying theme of CSR initiative can be summed up as follows–

- a) CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies;
- b) CSR is not charity or mere donations;
- c) CSR is a way of conducting business, which makes corporate entities socially responsible citizens, visibly contributing to the social good;
- d) Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits;
- e) Companies use CSR to integrate economic, environmental and social objectives with the company's operations and growth.
- f) Companies may engage in CSR activities in different modes – projects or ongoing programmes. Such activities may focus on integrating business models with social and environmental priorities and processes in order to create shared value;

The objective of inclusion of CSR activities in the Companies Act are many fold which are as under :

- a) The CSR provisions of the Act seek to create an enabling environment;
- b) They will allow corporates to harness and channelize their core competencies as well as develop effective business models;
- c) They will promote and facilitate far better connect between businesses and communities.
- d) They will facilitate deeper thought and long term strategies for addressing some of our most persistent social, economic and environmental problems;
- e) They will assist in synergizing partnerships between Corporates, Governments, Civil Society Organizations, Academic Institutions and Social Entrepreneurs.

- f) The Act provides great flexibility to business and industry for strategizing and conducting their CSR initiatives;

It will actually enhance their efforts, provide an even broader platform and re-energize their efforts.

### **Application of Provision**

Companies having net worth of Rs. 500 crores or more or turnover of Rs. 1,000 crores or more or net profit of Rs. 5 crores or more during any financial year shall constitute a CSR Committee of Board comprising of 3 or more directors, one of whom shall be an independent director.

### **Composition of CSR Committee**

The CSR committee shall consist of three or more directors, out of which one director shall be an independent director. The presence of an Independent Director shall ensure that the Committee is not just a quasi-committee addressing the whims of the Board, but is in fact, taking up an initiative. The composition of such Corporate Social Responsibility Committee shall have to be disclosed in the Board's Report as required under Section 134(4).

An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee with independent director.

A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

With respect of foreign company, the CSR Committee shall comprise of at least two persons of which one person resident in India and another person shall be nominated by the foreign company.

The CSR Committee shall Institute a transparent monitoring mechanism for implementation of CSR projects or programs or activities undertaken by the company.

### **CSR Policy**

The CSR Policy of the company shall, inter alia includes the following, namely :

- (a) A list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedule for the same; and

(b) Monitoring process of such projects or programs.

But the activity should not be undertaken in pursuance of normal course of business of a company.

The Board shall ensure that the activities included by the company in its CSR Policy are related to the activities mentioned in Schedule VII of the Act.

The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of business profit of a company.

### **Functions of the CSR Committee**

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

The Committee shall also initiate a CSR Policy, which shall stipulate how, where, and when they want to invest their funds with respect to this requirement.

The Committee shall recommend the amount of expenditure to be incurred on the activities referred to above. Further, the CSR Committee is under an obligation to monitor the implementation of the CSR policy from time to time.

### **CSR Activities**

The Companies Act, 2013 does not prescribe the methodology by which CSR activities are to be undertaken by the company. Companies have been given flexibility to decide the activity within the framework, choose programmes, implement in the manner it desires, monitor it and ensure compliance of its own CSR policy. However, the CSR activities may be undertaken by way of the following methods:-

- a) By Charity: Company can donate money to various charitable trusts, societies, NGOs etc. who work for social economic welfare of society.
- b) By Contract: Company can hire an NGO or any other agency like that which can carry out the projects on behalf of the company.
- c) By Itself: Company can take up a project on its own or create its own trust and use its own staff for its proper working/ monitoring or through other trusts/ societies.

The companies may adopt any one, or all of the above ways for the purpose of CSR activities.

- 1) The CSR activities undertaken by the company, as per its CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.
- 2) The board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or company established by the company or its holding or subsidiary or associate company.
- 3) If such Trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects.
- 4) The company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects or programs and the monitoring and reporting mechanism.
- 5) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with rules.
- 6) The CSR projects or programs or activities should not be exclusively only for the benefit of employees of the company or their families.
- 7) Only those CSR projects or programs or activities would be taken into considerations that are undertaken within India.
- 8) Companies may build CSR capacity of their own personnel as well as those of their implementing agencies through Institutions with established track records of atleast three financial years but such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year.
- 9) Contribution of any amount directly or indirectly to any political party shall not be considered as CSR activity.

Schedule VII describes the following activities to be undertaken by the company in CSR activities which are as detailed below:

- (i) eradicating hunger, poverty and malnutrition, providing preventive health care and sanitation and making available safe drinking water;

- (ii) promoting education including special education and employment enhancing vocation skills especially among children, Women, elderly, and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environment sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
- (v) protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (vi) measures for the benefits of armed forces veterans, war widows and their dependents;
- (vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- (viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) rural development projects

**Role of the Board**

The Board of every company shall –

1. The Board to compose a Corporate Social Responsibility Committee.
2. After receiving recommendation and policy made by the Corporate Social Responsibility Committee, approve and take steps to implement / execute the CSR policy for the company and disclose such policy –
  - i) in the Board's Report as per sub-section (3) of section 134

pertaining to a financial year commencing on or after the 1st day of April, 2014; and

- ii) also place the contents of policy on its Company's website, if any, in form prescribed under Companies (Corporate Social Responsibility Policy) Rules, 2014.
3. Ensure that the activities which formulate by CSR Committee in the Policy are duly undertaken by the company.
4. Ensure that the company spends in every financial year, at least two per cent of the average net profits (to be calculated in accordance with the provisions of Sec. 198) of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. 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 as per CSR Policy.
5. If the company fails to spend such amount, the Board shall, in its report made under Section 134(3)(o) specify the reasons for not spending the amount. The intention is that company should spend on approved CSR activities or explain the reasons for not so spending in its Board report.

### **CSR Contribution / Expenditure**

For a contribution to qualify as a CSR contribution, the nature of contribution is to be kept in mind. Any contribution to CSR may not result in any direct or indirect commercial benefit to the company. However, it should be ensured that CSR expenditure complies with company's CSR Board approved CSR policy and the legal provisions. CSR expenditure include all expenditure including contribution to corpus for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include the expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

#### *Penalty*

The Companies Act requires that -

- i) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per sub-section (3) of section 134;
- ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it 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 the 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.

**FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT**

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two percent of the amount as in the Item 3 above)
5. Details of CSR spent during the financial year.
  - (a) Total amount to be spent for the financial year;
  - (b) Amount unspent, if any;
  - (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR Project or Activity Identified	Sector in which the project is covered	Projects or Programs (1) Local are or other (2) Specify the State and district where projects or programs was undertaken.	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs (2) Over-heads:	Cumulative expenditure upto the reporting period	Amount spent : Direct or implementing agency
1							
2							
3							
	Total						

\* Give details of implementing agency.

6. In case the company has failed to spend the two percent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/-

Sd/-

Sd/-

(Chief Executive Officer  
or Managing Director  
or Director)(Chairman CSR  
Committee)(Person specified under clause (d)  
of sub-section (1) of section 380  
of the Act)

(wherever applicable)

### **SECTION 136: RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT**

This section seeks to provide that a copy of financial statements including consolidated financial statement, if any, auditor's report along with annexures/ attachments shall be sent to every member, every trustee for the debenture holder and all other persons who are so entitled, twenty one days before the date of general meeting. The provision of this section shall be deemed to be complied if a listed company may make available the copies of the documents 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 prescribed by the Central Government or the documents and sent the same to every stake holder.

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:

- (a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;
- (b) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and
- (c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

**Member's, Debenture trustee's right to get copies of annual accounts**

According to sub-section (1) of this section, every member of the company, the trustee for the debenture-holders and every other person being the person so entitled, is entitled to get from the company, every year, a copy of financial statement including consolidated financial statements (if applicable), which are to be laid at a general meeting of the company, comprising of:-

- i) Balance Sheet
- ii) Profit and Loss Account
- iii) Cash Flow Statement
- iv) Statement of change in equity
- v) Auditor's Report
- vi) Director's Report
- vii) Every other document required by law to be annexed or attached to the financial statement.

This right to have copies of financial statements is over and above the provisions of Section 101 which provides for right to receive notice of general meeting.

**Obligation of listed company**

Proviso to sub-section (1) provides that in the case of a company whose shares are listed on a recognised stock exchange, provisions shall be deemed to have been 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 the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting.

Every listed company is required to supply a copy of the complete financial statements with auditor's report and director's report, to such shareholders who ask for full financial statements.

Every listed company is also required to 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.

In case of companies not having share capital, the financial statements and other documents required to be attached or annexed to it shall be required to be sent to all members and debenture holders, even if they are not entitled to receive the notice of general meeting in terms of section 101.

### **Financial statements of subsidiaries**

Every company (listed or unlisted) having subsidiary or subsidiaries shall:

- (d) place separate audited financial statements in respect of each of its subsidiary on its website, if any.
- (e) provide copy of separate audited financial statements if any shareholder demands a copy of the separate audited financial statements in respect of each of its subsidiary.

### **Right to inspect**

Every company shall be under an obligation to allow every member or trustee of the holder of any debentures issued by the company to inspect the financial statements and documents to be attached thereto stated under sub-section (1) at its registered office during business hours. This right is not available to debenture holders.

In case of listed companies, copies of documents shall be available for inspection at its registered office during working hours for a period of 21 days before the date of meeting and company may send the salient features of financial statements to members and debenture trustees in prescribed form. That will be sufficient compliance of sub section (1).

### **Penal provisions**

If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of –

- i) twenty-five thousand rupees and
- ii) every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

Both penalties shall be imposed simultaneously.

**SECTION 137: COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR**

Section 137 requires every company to file the financial statements including consolidated financial statement together with Form AOC-4 with the Registrar within 30 days from the day on which the annual general meeting held and adopted the financial statements with such fees or additional fee as specified in Companies (Registration Offices and Fees) Rules, 2014.

If the financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents be filed with the Registrar within thirty days of the date of annual general meeting. The Registrar shall take them in his record as provisional, until the adoption at annual general meeting.

The One Person Company shall file the copy of financial statements duly adopted by its members within a period of one hundred and eighty days from the closure of financial year.

The company shall also attach the accounts of subsidiaries incorporated outside India and which have not established their place of business in India with the financial statements.

The class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies (Rule 12(2)).

If annual general meeting has not been held, the financial statement duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last days before which the annual general meeting should have been held.

If company fails to comply with the requirement of submission of financial statement before Registrar, the company shall be punishable with fine of one thousand rupees for every day during which failure continues subject to maximum of rupees ten lakh. The managing director and CFO if any, and, in the absence of such managing director or CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, in the absence of such director, all directors of the company shall be punishable with imprisonment for a term which may extend upto six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both.

**SECTION 138: INTERNAL AUDIT**

*Classes of companies requiring Internal Audit*

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

- (a) every listed company;
- (b) every unlisted public company having –
  - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
  - (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
  - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
  - (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) every private company having –
  - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
  - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

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.

The company board shall be free to appoint any practicing Chartered Accountant or a Cost Accountant or any other person whom it deems fit to be appointed as its internal auditor. For this purpose, company board may consider the nature and volume of business of company; qualifications, experience and capabilities of such person being appointed as auditor and scope of internal audit.

**Who can be an Internal Auditor**

- a) a Chartered Accountant or;
- b) a Cost Accountant or;
- c) such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.

For this sub-section, Chartered Accountant means a Chartered Accountant, who is a member of The Institute of Chartered Accountants of India and has a valid certificate of practice and Cost Accountant means a member of The Institute of Cost Accountants of India. Other professionals, as may be decided by the company's board, may also be appointed as an internal auditor.

For carrying out internal audit smoothly and effectively, it would be desirable on the part of internal auditor to –

- a) Obtain knowledge of legal and regulatory framework within which the auditee entity operates .
- b) Obtain knowledge of the entity's accounting, internal control systems and procedure alongwith accounting policies .
- c) Determine the effectiveness of internal control and check procedures adopted by the entity .
- d) Understand the business and other technical details of the auditee entity .
- e) Determine nature, timing and extent of procedures to be carried out or performed.

**SECTION 148 : MAINTENANCE OF COSTING AND STOCK RECORDS**

A company engaged in production, processing, manufacturing or mining activity, is also required to maintain particulars relating to utilization of material, labour or other items of cost as the Central Government may prescribe for such class of companies.

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