

COMPANIES ACT,2013

CA. Amarjit Chopra

The Companies Act, 2013

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Time line

- | | |
|--|---|
| ❑ 18 th December 2012 | Passed by Lok Sabha |
| ❑ 8 th August 2013 | passed by Rajya Sabha |
| ❑ 29 th August 2013 | got President's assent |
| ❑ 30 th August 2013 | Gazetted as Act no. 18 of 2013 |
| ❑ 12 th September 2013 | 98 sections were notified by Central Government |
| ❑ 26 th March 2014 w.e.f.
1 st April 2014 | 183 sections were notified |

CA, 2013 vs. CA, 1956

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	CA, 2013	CA, 1956
CHAPTERS	29	13
SECTION	470	658
SCHEDULE	7	15
RULES	400 Approx.	Nil

ACCOUNTS

Books of Accounts

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To be prepared & kept at the registered office.

- ☐ Books of Accounts,
- ☐ Other relevant books and papers and
- ☐ Financial Statement
- ☐ For every Financial year
- ☐ On accrual basis
- ☐ on double entry system

Financial Statement (Section 129)

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- Shall give **true and fair view**.
- Shall **comply with accounting standard**
- Shall be in form of **Schedule III**.

Financial Statement (Section 129)

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- **Books of accounts(Section2(13))**
 - ❑ All money received and expended
 - ❑ All sales and purchases of goods and services
 - ❑ All assets and liabilities
 - ❑ Items of costs (Section 148)

FINANCIAL STATEMENTS

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Books & Papers: Section 2(12)

- Books of accounts
- Deeds, Vouchers, writings, Documents, minutes and registers.

FINANCIAL STATEMENTS

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Financial Statements: Section 2(40)

- Balance sheet,
- Profit & Loss account,
- Cash flow statement,(not for OPC, small company & dormant company).
- Statement of **change in equity** (if applicable)

FINANCIAL STATEMENTS

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Financial Year : Section 2(41)

- 31st march every year.
- For 1st year of incorporation
- If incorporated before 1st January– 31st March same year.
- Otherwise -- 31st march of next financial year.
- Transition period – 2 years

Consolidated Financial Statements

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- ❑ Consolidated financial statement of all subsidiaries and company shall be placed before the AGM. (Section 129 (3)).
- ❑ Subsidiary includes Associates and Joint venture companies.

Books of Account in Electronic Mode

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- May keep in **Electronic Mode** in such manner as may be prescribed.
- **Rule 3 of (Companies Account) Rule, 2014 :-**
 - To remain accessible in India so as to be **usable for subsequent reference**.
 - To be retained in the **same format** in which originally generated.
 - To remain complete and **unaltered**.
 - To be capable of being **legible**.
 - To have proper system of **storage, retrieval, display or print out of electronic record**.

Books of Account in Electronic Mode

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- Records shall be disposed of or rendered unusable unless permitted by law.
- Back up of the books of accounts in the servers physically located in India.
- Intimation to ROC:-
 - Name of the service provider
 - Location of the service provider
 - Internet protocol address of the service provider
 - If books of accounts are maintained on cloud, address of the service provider

Financial Statement

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➤ Financial statement shall be laid at every Annual General Meeting.

➤ **Punishment:-**

Officer in default with imprisonment upto one year or with fine from Rs.50,000/- to Rs.5,00,000/- or both.

Re-opening or re-casting of books of accounts of the company (Section 130)

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A company shall not reopen its books of accounts and not re-cast its financial statement unless

- a) An application in this regard is made by :
- ▣ Central Government
 - ▣ Income tax authorities
 - ▣ Security and Exchange Board
 - ▣ Any other statutory regulatory body or authority

Re-opening or re-casting of books of accounts of the company

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- b) An order in this regard is made by Court or Tribunal to effect that:
 - ▣ The relevant earlier accounts were prepared in **fraudulent manner.**
 - ▣ The affairs of the company were **mis-managed** during relevant period **casting the doubt on reliability of financial statement.**
- c) The accounts so revised or re-cast **shall be final.**

Voluntary Revision of Financial Statement or Board's Report (Section 131)

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If it appears to the Board that financial statement or Board Report **do not comply the provisions of section 129 & 134**, they may prepare revised financial statement /Board report.

Conditions:

- any of the **3 preceeding financial year**
- not more than **once in a financial year**.
- reasons shall be disclosed in Board's Report.
- with the **approval of Tribunal**
- **copy of order of tribunal shall be filed with ROC.**

Draft Rules for Revision

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- **Application** to tribunal within **2 weeks** from the decision of Board.
- Disclosure in application for **change of Auditor or majority of Director**.
- Tribunal shall issue notice and hear auditor on original financial statement.
- Copy of order to ROC (30 days)
- **General Meeting** shall be called
- **Notice** of General Meeting with reason for revision **shall be published**
- Revised F/s and B/R shall be **placed for adoption**.
- Revised statement / BR shall be filed with ROC (30 days)
- Word revised be pre-fixed.
- Consent letter from old auditor if not, reasons.

Board Report

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- Shall be prepared based on financial statement.
- Shall contain **separate sections** for the position of each subsidiary, associate and **joint venture company**.
- Every listed company and other limited company having paid up share capital more than Rs.25.00 crores shall include the statement undertaking the **annual evaluation made by Board of its own performance**.
- Details of material order passed by court, tribunal impacting going concern status and company's operation in future.

Board Report

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Shall include:

- ❑ Extracts of annual Return
- ❑ No. of Board meetings.
- ❑ Directors responsibility statement.
- ❑ Statement of declaration by independent director.
- ❑ Explanations/comments on adverse comments, qualifications or disclaimer by auditor.
- ❑ Particulars of loans, guarantees or investment (186)
- ❑ Particulars of related party transaction(188)

FORMATION OF NATIONAL FINANCIAL REPORTING AUTHORITY (Section 132)

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The new Companies Act, 2013 provides the formation of the National Financial Reporting Authority, it is rather conversion of present existing NACAS, National Advisory Committee on Accounting Standard.

SCOPE OF NFRA (in brief) :-

- a) To make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards;
- b) To monitor and enforce the compliances;

- c) Oversee the quality of service of the professionals;
- d) Power to investigate either suo-moto or reference by the Central Government relating to mis-conduct by any professional.
- e) The authority will have quasi-judicial powers.
- f) Penalties. In case of individual not less than Rs.1.00 lac and may extend upto 5 times of the fee received.
- g) In case of firm not less than Rs.10.00 lacs and may extend upto 10 times of the fee received.

- h) Debarring members for minimum six months to ten years from the profession.
- i) Once NFRA has initiated any proceedings, no other institute or any organization shall initiate or conduct any proceedings relating to such matter.

Corporate Social Responsibilities (Section 135)

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Every company during **any financial year** having :

- a) Net worth of Rs.500.00 crores or more or
- b) Turnover of Rs.1000.00 crore or more or
- c) Net profit of Rs.5.00 crores or more
- d) Such company shall constitute **CSR Committee** consisting of three or more directors out of which one shall be independent Director.

Corporate Social Responsibilities (Section 135)

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Applicable w.e.f. 1st April 2014. As per Rule 5 of (CSR Policy) Rules 2014.

- Unlisted company are not required to appoint Independent Director in CSR committee
- Private company having only 2 directors shall constitute the committee with such 2 directors.
- In case of foreign company, the committee shall comprise of atleast 2 persons of which one shall be resident in India and other will be nominated by foreign company.

Corporate Social Responsibilities (Section 135)

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- f) The Board shall disclose the CSR Policy in its Report and on the website of company and ensure that CSR activities are undertaken by Company.
- g) Company shall spend at least **2% of its average net profit** during three immediate financial years for the social responsibilities.
- h) Preference shall be given to local areas where it operate.
- i) In case company does not spent required fund reasons be disclosed in Director's Report.

Corporate Social Responsibilities (Section 135)

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Role of the Committee:

- ❑ To formulate and recommend to the board, the CSR policy for the activities mentioned in Schedule-VII.
- ❑ Recommendation of the amount of the expenditure be incurred.
- ❑ Monitor the CSR policy from time to time

Corporate Social Responsibilities (Section 135)

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- ❑ CSR project or program giving benefit only to the employees of the company and other formalities shall not be considered under the CSR activities.
- ❑ Contribute to the political party shall not be considered as CSR activities.
- ❑ The particulars of CSR activities and amount spend shall be disclosed in the board report. In case company not spending any money in CSR, that shall also be reported.
- ❑ The CSR activities undertaken by company shall be hosted on company website.

Internal Audit

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Eligibility:

- ❑ Every listed company.
- ❑ Every unlisted public company.
 - ❑ Paid up share capital Rs.50 crores or more.
 - ❑ Turnover Rs.200 crores or more
 - ❑ Outstanding loans and borrowings from bank and public institutions Rs.100 crores or more
 - ❑ Outstanding deposits : Rs25 crores or more.

Internal Audit

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Eligibility:

- Every private company having turnover of Rs.200 crores or more
 - Outstanding loans or borrowing of Rs.100 crores or more
 - Transition period : 6 months w.e.f. 1st April 2014
- The internal audit may or may not be employee of the company.
- Internal auditor shall be chartered accountant or cost accountant for such other professional has to be decided by the Board. The audit committee shall formulate the scope, official periodicity or methodology for conducting internal audit.

AUDIT AND AUDITORS

APPOINTMENT OF AUDITOR (Section 139)

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Government Companies :-

First Auditor : By C&AG within 60 days from the date of incorporation

If not appointed by C&AG : By board within next 30 days

If not appointed By Board : By members within next 90 days

AUDIT & AUDITORS

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Other than Government Companies :-

First Auditor : By board within 30 days from the date of incorporation

If not by Board : By members within next 90 days in EOGM.

AUDIT & AUDITORS

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- ❑ First auditor shall hold office till the conclusion of first AGM.
- ❑ In first AGM auditor shall be appointed till the conclusion of 6th Annual General Meeting and
- ❑ Thereafter every 6th AGM.
- ❑ However, appointment shall be ratified in each AGM.
- ❑ If not ratified BOD shall appoint another auditor after following due procedure.
- ❑ The company shall inform to the Auditor and shall also file notice within 15 days to ROC.

AUDIT & AUDITORS

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Before appointment is made:

- Written consent of auditor.
- Obtain a certificate specifying :
 - a) Appointment if made shall be in accordance with the conditions as may be prescribed.
 - b) Appointment shall be in accordance with section 141.

CASUAL VACANCY

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Government company:-

- To be filled by CAG within 30 days
- If not by CAG then Board shall fill within next 30 days

Other than Government companies:-

- By the Board within 30 days,
- if cause is resignation then also approved by shareholders **within three months** from the recommendation of the Board.
- The Auditor appointed to fill casual vacancy shall hold office till conclusion of next AGM.

Important note:-

If in any AGM no auditor is appointed or reappointed, the existing auditor shall continue.(Section 139(10))

Reappointment of Auditor

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Auditor can be re-appointed:-

- If he is not disqualified for re-appointment.
- he has not given notice of his unwillingness.
- Special Resolution is not passed that he shall not be appointed.

Where Audit Committee is in place recommendation of committee shall be taken into account.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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- ❑ No listed company or any other class of company as may be prescribed shall appoint or re-appoint its auditor.
- ❑ In case of individual – for more than one term of 5 consecutive years.
- ❑ In case of firm – for more than 2 terms of 5 consecutive years.

(Rule 5 Companies Audit & Auditors Rule, 2014) :

- ❑ OPC and small companies are not covered.
- ❑ All unlisted public company having paid up capital Rs.10 crores or more
- ❑ All private company having paid up capital Rs.20 crores or more.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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- All companies having < threshold limits but having public borrowings from financial institutions and banks > Rs.50 crores or more.

Rule 6 (3)(i):

- Period for which he or it has been holding office as auditor prior to the commencement of Act shall be taken into account in calculation of 5 consecutive years and 10 consecutive years.

MANDATORY ROTATION OF AUDITORS

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- ❑ Where company has two or more auditors, company shall follow the rotation in such manner that all joint auditors do not complete their tenure in same year.
- ❑ Common partners in incoming firm of auditors, or in same network or operation under same trademark will not be eligible.
- ❑ The auditor can again be appointed after gap of 5 years.

MANDATORY ROTATION OF AUDITORS

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- ❑ These provisions shall be applicable to all existing companies within 3 years from the date of commencement of this act.
- ❑ The shareholders may resolve that the partner and his team shall rotate every year or audit shall be conducted by more than one auditor.
- ❑ Central Government may prescribe rule for rotation of auditors.

Removal of Auditor

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- By Special Resolution and
- Prior approval of CG (application within 30 days from General Meeting).
- Reasonable opportunity be given

Rule 7

- i) Application to CG within 30 days from the passing of resolution by Board.
- ii) Hold General meeting within 60 days from the receipt of permission from CG for Special Resolution.

Removal of Auditor

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Removal of Tribunal :-

- ❑ Auditor acted (directly or indirectly in **fraudulent manner** or
- ❑ **Abetted or colluded** in any fraud by or in relation to company or its officer or director.
- ❑ Tribunal shall order within 15 days from the date of application by Central Government.
- ❑ Such auditor **shall not be eligible** for the appointment as auditor of **5 years** in any company and shall be punishable u/s 447.

Qualification of Auditor

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- A chartered Accountant or firm of chartered Accountants
- LLP can be Auditor
- Only partner who are Chartered Accountant in practice shall be authorised by firm to act and sign on behalf of firm.

Disqualifications (141).

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Following are disqualified to be appointed as Auditor:

- 1) A body corporate other than LLP.
- 2) Officer or employee of the company.
- 3) A person who is a partner or is in employment of an officer or employee of company.

Disqualifications (141).

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- 4) he or his relative or partner:
 - a) has interest by holding securities in company, subsidiary, holding or associate company for exceeding Rs.1,00,000/-.
 - b) Is indebted to the company, subsidiary, holding or associate company or subsidiary of holding company in excess of Rs.5,00,000/-.
 - c) Given guarantee or provided security in connection with indebtedness of third person to the company subsidiary, holding or associate or subsidiary of holding company or Rs.100,000/- or more

Disqualifications (141).

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- 5) A person or firm whose **business relationship** with company, subsidiary or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed.
- 6) Whose relative is director or is in employment of company as director or KMP.
- 7) If as on date of appointment such person is holding audit of more than 20 companies.

Disqualifications (141).

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- 8) Has been Convicted for fraud and 10 years not elapsed from the date of conviction.
- 9) Providing prohibited services (section 144)

If any auditor incurs any disqualification after his appointment, auditor shall vacate office and vacancy shall be casual vacancy.

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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An Auditor of the company shall provide the services only as are approved by Board of Directors or Audit Committee as the case may be which shall not include any of the following (whether rendered directly or indirectly to the company or its holding company or its subsidiary company) :-

- a) Accounting and book keeping services.
- b) Internal Audit

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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- c) Design and implementation of any informational system
- d) Actuarial services
- e) Investment advisory services
- f) Investment banking services
- g) Rendering of outsourced financial services
- h) Management services
- i) Any other kind of services as may be prescribed.

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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Directly or indirectly includes :-

In case of individual :-

Either himself or through his relatives or any other person connected or associated with such individual or through any other entity whosoever, in which such individual has significant influence or control or whose name, trade mark, or brand is used by such individual.

In case of firm:-

Either itself or through any of its partners, through its parent, subsidiary or associate entity in which firm or any partner has significant influence and control or whose name, trade mark, or brand is used by such individual.

Other matters to be included in Auditor's Report

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- Impact (if any) of pending litigations on its financial position in the financial statements.
- Provision for material foreseeable losses (if any) on long term contract including derivative contracts.
- Any delay in transferring amount to investor education and protection found by company.

RESIGNATION OF AUDITOR (Section 140)

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An Auditor who resign from the company shall file within 30 days of resignation, the statement in prescribed form with Registrar of Companies within 30 days indicating reasons of resignation.

In case of Government company resigning, auditor shall file statement with C&AG.

If auditor does not file such statement he shall be punishable with fine not less than Rs.50,000/- which may extend upto Rs.5,00,000/-

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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Section 147 provides that where an auditor of a company contravenes any of the provisions relating to contents of audit report, compliance with auditing standards, rendering prohibited services and signing of audit report (i.e. Section 143 to 145):

- He shall be punishable with fine which shall not be less than **twenty five thousand rupees** but which may extend to **five lakh rupees**.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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- Where auditor has contravened any of the aforesaid provisions with **intent to deceive** the company or its **shareholders or creditors or any other person interested or concerned in the company**, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than **one lakh rupees** but which may extend to **twenty five lakh rupees**, or with both.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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- Where an auditor has been convicted of an offence as above, he shall be liable to –
 - i. **Refund the remuneration** received by him to the company; and
 - ii. **Pay for damages** to the company or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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Where the auditor of a company is an audit firm and it is proved that the audit partner or partners 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 civil liability as provided in the Act or any other law for such an act would be of the audit partner or partners as well as of the firm jointly and severally.**
- Any criminal liability other than fine shall be devolve only on concerned partner or partners who acted in fraudulent manner or abetted or colluded in any fraud.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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The audit partner / partners shall also be punishable in the manner as provided in Section 447.

AUDITOR TO ATTEND AGM

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In the existing Act Auditor is not mandatorily required to attend Annual General Meeting but new Companies Act, 2013 provides under section 146, every auditor shall attend general meeting by himself or through its authorised representative who is also qualified to be the Auditor unless otherwise exempted by the company.

FRAUD

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Explanation to Section 447 defines fraud which means:

- ❖ Any act or omission,
- ❖ Concealment of fact or
- ❖ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ❖ With the **intent to deceive**
- ❖ to gain undue advantage to injure the interest of company, or its shareholders or creditors or any other person (whether or not there is any wrongful gain or loss).

FRAUD

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- ❖ Report to Board seeking reply within 45 days.
- ❖ Auditor has to report above fraud to the C.G. (within 15 days from the receipt of report)
- ❖ If reply not received, Audit shall forward his report to CG within time prescribed (60 days).
- ❖ Report by speed post and e-mail to Ministry of Corporate Affairs.

Punishment for not reporting fraud:

- ❖ Fine Rs. 1lakh to Rs 25 lakh.



THANK YOU