

Date: 11<sup>h</sup> March, 2021



**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL  
PAPER 2: CORPORATE AND OTHER LAWS**

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# CH.9 ACCOUNTS OF COMPANIES

S. 128 To S. 138 of COMPANIES ACT 2013 READ WITH COMPANIES  
ACCOUNTS RULE 2014

# CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS [SECTION 133]

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Section 133 of the Companies Act, 2013 deals with the power of the Central Government to prescribe the accounting standards.

The Central Government may prescribe the standards of accounting or any addendum thereto, as **recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA.**

Provided that until the NFRA is constituted under section 132 of the Companies Act, 2013, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards (NACAS) constituted under the previous company law.

# FINANCIAL STATEMENT, BOARD'S REPORT, ETC. [SECTION 134]

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Section 134 provides that the **financial statement** including consolidated financial statements **should be approved by the Board of Directors** before they are signed and submitted to auditors for their report.

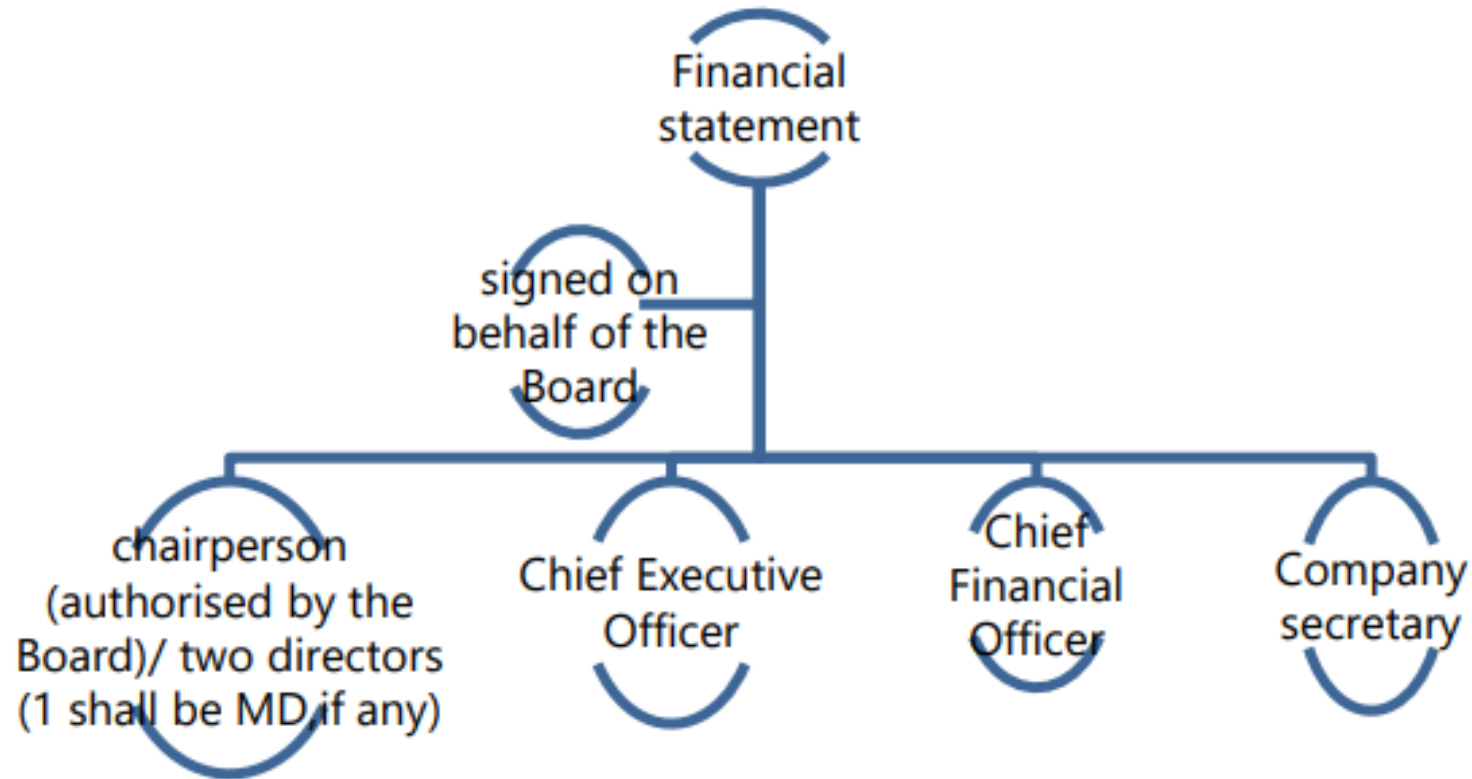
The auditor's report is to be attached to every financial statement.

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 the 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.

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

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The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by

- the chairperson of the company where he is authorised by the Board
- OR by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed,
- or in the case of One person company, only by one director, for submission to the auditor for his report thereon.

(b) The auditors' report shall be attached to every financial statement [Subsection (2)].

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(c) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy of [Section 134(7)] —

- (1) Any notes annexed to or forming part of such financial statement;
- (2) The auditor's report; and
- (3) The Board's report referred to in sub section 3.

# BOARDS REPORT

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**[Section 134(3) & (4) read with Rule 8 of the Companies (Accounts) Rules, 2014] [Rule 8 NA To OPC and Small company]**

(1) According to Rule 8 of the Companies (Accounts) Rules, 2014, **the Board's Report shall be prepared based on the standalone financial statement of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies** and their contribution to the overall performance of the company during the period under report.

(2) Sub-section (3) of section 134 prescribes the following contents of the board's report:

- (a) the web address, if any, where annual return (prepared as per S.92) has been placed;



# BOARDS REPORT

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- (b) number of meetings of the Board;
- (c) directors' responsibility statement;
  - (ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 (Powers and duties of auditors and auditing standards) other than those which are reportable to the Central Government;
- (d) a statement on declaration given by independent directors under subsection (6) of section 149 (Company to have board of board of Directors in relation to independent director);
- (e) in case of a company covered under sub-section (1) of section 178, company's policy (nomination and remuneration committee constitution) 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; [N.A on Govt. Co]

# BOARDS REPORT

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- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
  - (i) by the auditor in his report; and
  - (ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
- (i) the state of the company's affairs;

# BOARDS REPORT

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- (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, in such manner as may be prescribed;
- (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;

# BOARDS REPORT

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- (o) the details about the policy developed and implemented by the company incorporate 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 as may be prescribed, a statement indicating the manner in which formal <sup>4</sup> annual evaluation of the performance of the Board, its Committees and of individual directors has been made;

According to Rule 8(4), **every listed company and every other public company** having a **paid up share capital of twenty five crore rupees or more** calculated at the end of the preceding financial year **shall include, in the report by its Board of directors**, 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.

# BOARDS REPORT

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**Exemption to Government company-** The above clause (p) of Subsection (3) of Section 134 shall not apply, in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology

- **(q) such other matters as may be prescribed: [ Rule 8]**

Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

# BOARDS REPORT

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According to Rule 8 of the Companies (Accounts) Rules, 2014, the report of the Board shall also contain–

- (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;
- (iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year. Explanation.-For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150 (Manner of selection of Independent Directors and maintenance of databank of independent directors).

# BOARDS REPORT

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- (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 like-
  - (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-
    - (1) at the beginning of the year;
    - (2) maximum during the year;
    - (3) at the end of the year;

# BOARDS REPORT

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- (vi) the details of deposits which are not in compliance with the requirements of Chapter V (Acceptance of Deposits by Companies) 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.
- (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
- (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.



# BOARDS REPORT

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**(3) Abridged Board's report [Section 134(3A)]:** The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

**(4) Board's Report in case of OPC [Section 134(4)]:** In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report

# CONTENT OF DIRECTORS RESPONSIBILITY STATEMENT

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The Directors' Responsibility Statement referred to in 134(3)(c) shall state that—

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

# CONTENT OF DIRECTORS RESPONSIBILITY STATEMENT

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- (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (4) the directors had prepared the annual accounts on a going concern basis; and
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# CONTENT OF DIRECTORS RESPONSIBILITY STATEMENT

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- (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. Here, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;
- (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

# SIGNING OF BOARD'S REPORT [SECTION 134(6)]:

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**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.

# PUNISHMENT FOR DEFAULT [S. 134(8)]

<b>Persons liable</b>	<b>Punishment for contravention of any provision of this section</b>
Company	fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 Lacs
Every officer of the company who is in default	(1) Imprisonment for a term which may extend to 3 years; or (2) fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lacs; or (3) Both with imprisonment and fine

# RIGHT OF MEMBERS TO COPIES OF AUDITED FINANCIAL STATEMENT [SECTION 136]

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Section 136(1) reads as:

*a copy of financial statements including consolidated financial statement, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.*

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*Provided that if the copies of the **documents are sent less than twenty-one days [ 14 days for Section 8 companies]** before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members--*

*(a) holding, if the company has a share capital, majority in number entitled to vote and who **represent not less than ninety-five per cent. of such part of the paid-up share capital** of the company as gives a right to vote at the meeting; or*

*(b) having, if the company has no share capital, **not less than ninety-five per cent. of the total voting power exercisable at the meeting***



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*Provided further that in the **case of a listed company**, the provisions of this subsection shall be deemed to be complied with, **if the copies of the documents are made available for inspection at its registered office** during working hours for a **period of twenty-one days before the date of the meeting** and a statement containing the salient features of such documents in 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 unless the shareholders ask for full financial statements:*

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*Provided also that the **Central Government may prescribe the manner of circulation of financial statements** of companies having such net worth and turnover as may be prescribed: [ Rule 11 of the companies accounts rule 2014]*

*Provided also that **a listed company** shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on **its website**, which is maintained by or on behalf of the company:*

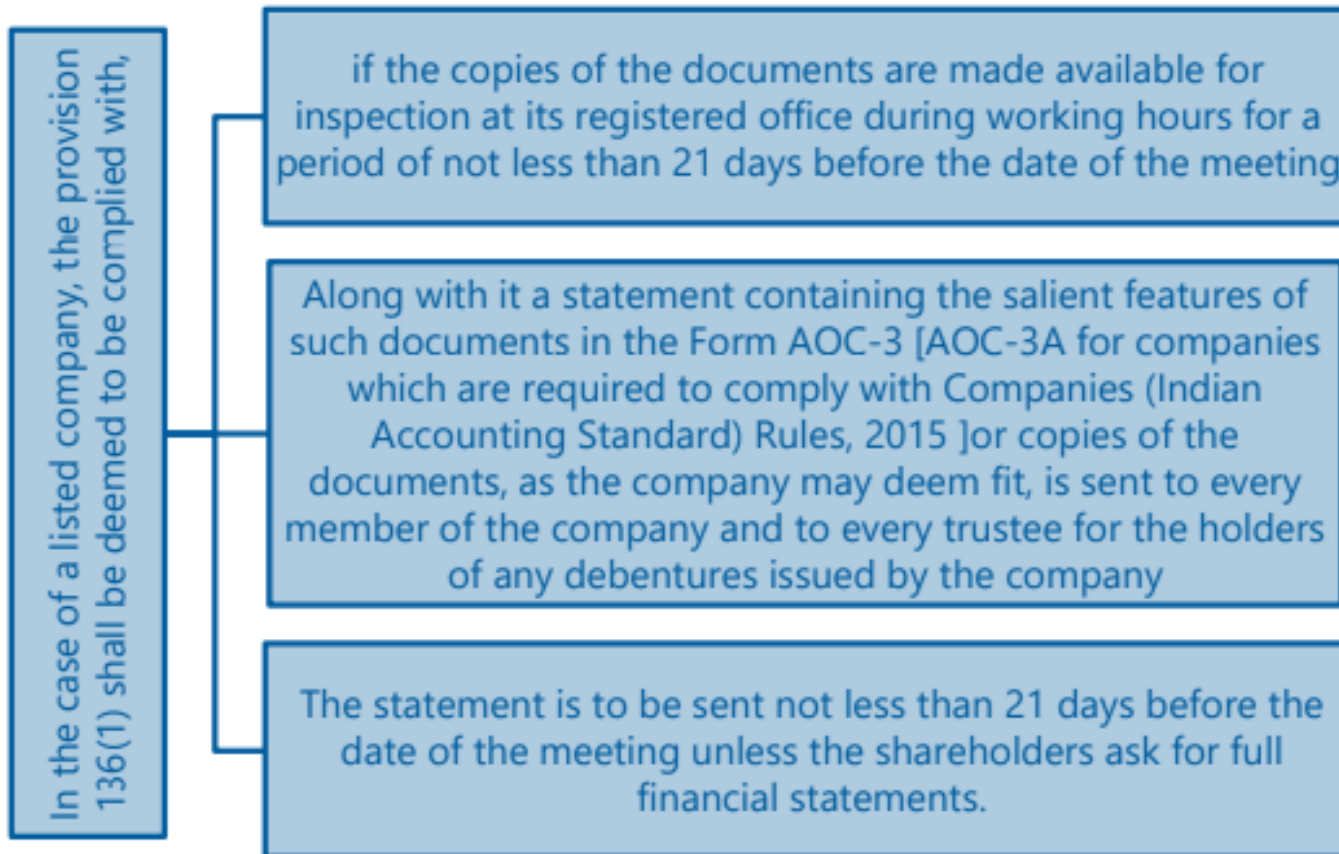
*Provided also that **every listed company having a subsidiary or subsidiaries** shall place **separate audited accounts in respect of each of subsidiary on its website**, if any:*

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*Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as foreign subsidiary)-*

*(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;*

*(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website*



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*(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.*

*Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.*

***(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.***

# APPLICABILITY of S.136(1) TO NIDHI CO.

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**In case of Nidhi company** - Section 136 (1) shall apply, subject to the modification that, in the case of members **who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district** in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy. A company shall also allow every member or trustee of the debenture holder to inspect the audited financial statement at its registered office during business hours.

# RULE 11 OF COMPANIES ACCOUNTS RULE 2014

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In case of all listed companies and public companies having Net Worth of more than Rs. 1 Crore and turnover of more than Rs. 10 Crore, the financial statement may be sent:-

- (1) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes;
- (2) where shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode (this may not be relevant considering that shareholding is not held otherwise than by dematerialized form anymore); and
- (3) by dispatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases

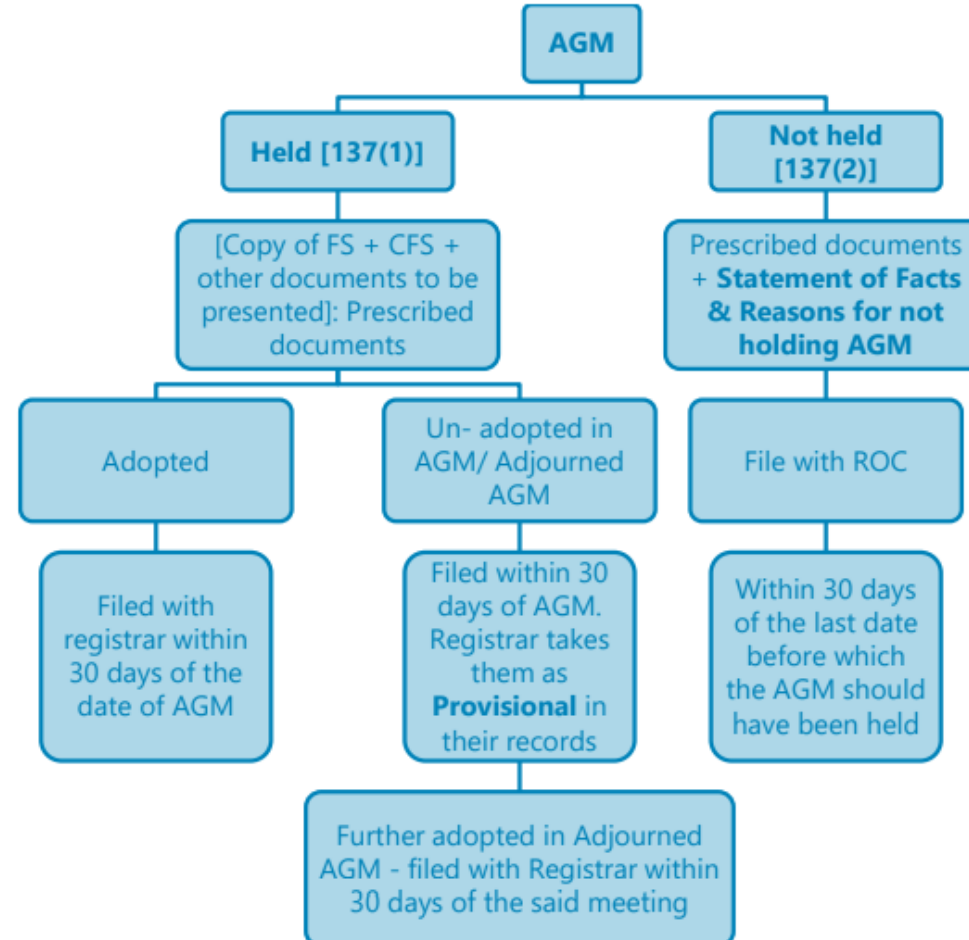
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Vide General Circular No. 11/2015, dated 21 July 2015, clarification was issued by MCA with regard to circulation and filing of financial statement.

- It has been clarified that a company holding general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.
- It has also been clarified that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1), as applicable. These, however, would need to be translated in English, if these original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts



# COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR [SECTION 137]



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*Section 137 reads as:*

*(1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, **shall be filed with the Registrar within thirty days of the date of annual general meeting** in such manner, with such fees or additional fees as may be prescribed :*

*Rule 12 (1) states that “Every company shall file the financial statements with Registrar together with Form AOC-4”*

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Rule 12(2) states that *“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 1 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015-** The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC4 XBRL as per Annexure-I:

(i) companies listed with stock exchanges in India and their Indian subsidiaries; (ii) companies having paid up capital of five crore rupees or above; (iii) companies having turnover of one hundred crore rupees or above; (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015

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Provided that the companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and

companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy provided in Annexure-II A.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

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The companies which have filed their financial statements under sub-rule (1) and erstwhile rules shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.

**Example** : Amazon Company Limited, a company incorporated under the Companies Act, 2013, has a turnover of Rs. 150 crores and Rs. 90 crores during the financial year ended 31st March 2019 and 31st March 2020 respectively. Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2020 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

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***Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:***

***Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed :***

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*Provided also that a **One Person Company** shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, **within one hundred eighty days from the closure of the financial year:***

*Provided also that a company shall, along with its financial statements to be filed with the Registrar, **attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.***

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*[Provided also that **in the case of a subsidiary** which has been **incorporated outside India** (herein referred to as foreign subsidiary), which is **not required to get its financial statement audited** under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met **if the holding Indian company files such unaudited financial statement along with a declaration to this effect** and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.*



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It has also been clarified vide General Circular no. 11/2015 dated 21 July 2015 that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

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Example: Vandana Ltd., based out of India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2019, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how should the Indian parent deal with this financial statement.

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*(2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), 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 date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed.*

# PENALTY FOR CONTRAVENTION [S.137(3)]

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<b>Person liable</b>	<b>Punishment for contravention of section 137</b>
<b>Company</b>	with fine of ₹ 1,000 for every day during which the failure continues to a maximum ₹ 10 lacs
<b>Officers—</b> MD and CFO of the company, if any; In their absence, any other director who is charged by the Board with the responsibility; In its absence, all the directors of the company.	Fine which shall not be less than ₹ 1 lac, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lacs rupees.

# INTERNAL AUDIT [S.138]

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S.138 reads as:

*(1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.*

*(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.*

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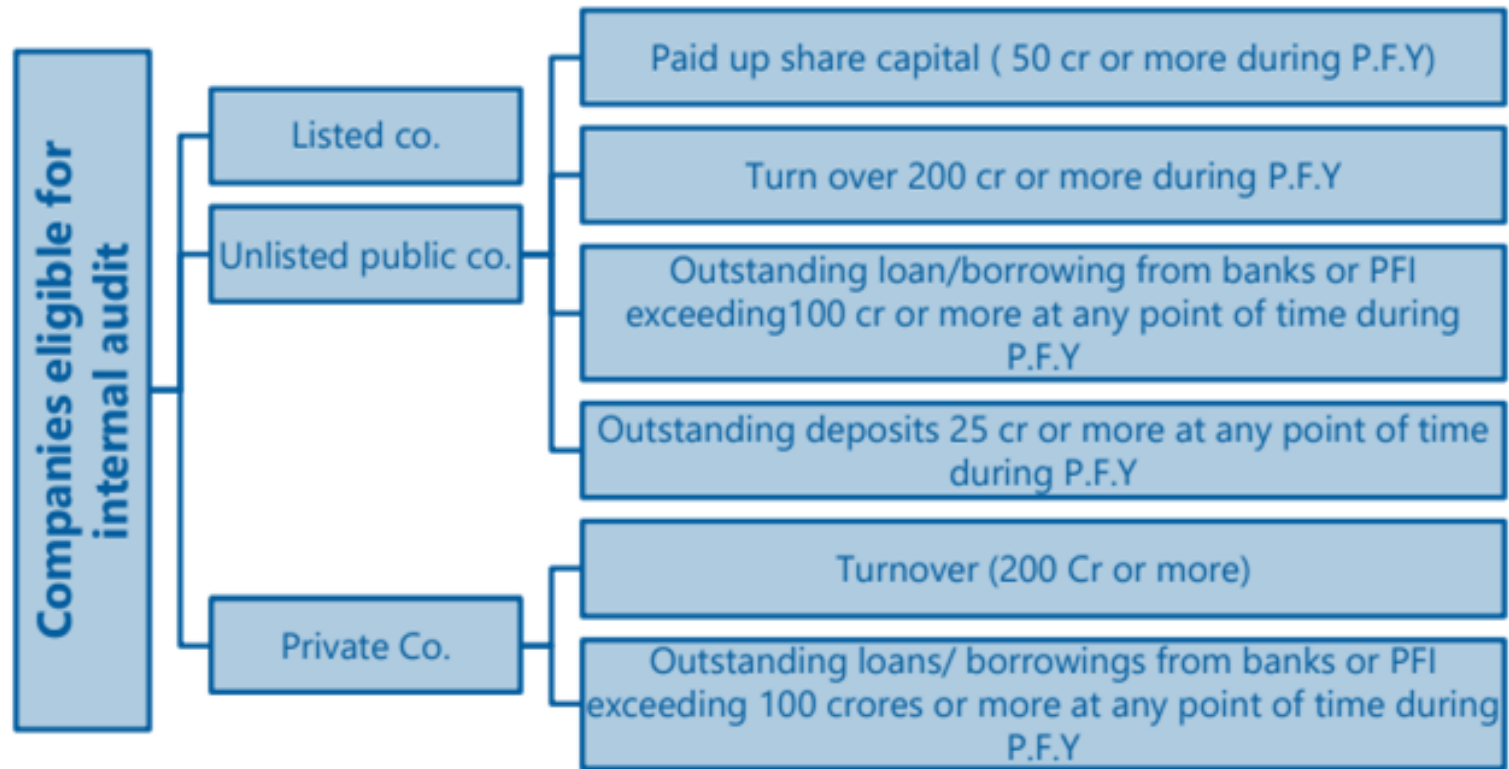
## Rule 13 of the Companies (Accounts) rules, 2014 states that:

### (i) Companies required to appoint Internal Auditor:

- (a) The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:
  - (1) every listed company;
  - (2) every unlisted public company having-
    - (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
    - (B) turnover of 200 crore rupees or more during the preceding financial year; or
    - (C) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
    - (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

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- 3) every private company having—
    - (A) turnover of 200 crore rupees or more during the preceding financial year; or
    - (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

(b) 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.





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**(ii) Transitional period:** An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within 6 months of commencement of such section.

**(iii) Who is Internal Auditor**

(a) Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not’.

(b) The internal auditor may or may not be an employee of the company.

# CORPORATE SOCIAL RESPONSIBILITY [S.135]

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# What is Corporate Social Responsibility?

CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large

World Business Council for sustainable development



# CSR and Sustainability

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Concept of CSR arises from concerns for sustainability. The UN Brundtland Commission defined sustainability as :-

***“development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.***

Basic Premise: When corporations get bigger in size, apart from the economic responsibility of earning profits, there are many other responsibilities attached to them which are more of non-financial or social in nature.

# CSR In India

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The concept of CSR is not new in India.

What is new is the mandate on CSR by companies meeting a specific criterion.

Businesses have traditionally associated money-making with philanthropic activity.

Legal framework- CSR provisions were notified by MCA on Feb 27, 2014, giving effect to S.135 of Companies Act 2013, Schedule VII and CSR Rules 2014

The said Section, Schedule and CSR Rules came into effect from the first day of April, 2014

# Legal Framework- Companies Act 2013

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Section 134(3)(o) – Disclosures in Board's Report

Section 134(8) – Penalty

Section 135(1) - Companies that are required to comply with mandatory CSR provisions

Section 135(1) - Composition of CSR Committee

Section 135(2) - Disclosures about CSR committee in Board's report

Section 135(3) - Role of CSR Committee

Section 135(4) - CSR Policy

Section 135(5) - Mandatory CSR Spending

Section 166(2) - Duties of directors

Schedule VII - Activities in which CSR investment can be done

# Legal Framework- CSR Rules 2014

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Rule 2(1)(c) - Definition of Corporate Social Responsibility

Rule 2(1)(e) - Definition of CSR Policy

Rule 2(1)(f) - Definition of 'Net Profit'

Rule 3 - Companies to which CSR applies

Rule 4 - CSR activities

Rule 5 - CSR Committees

Rule 6 - CSR Policy

Rule 7 - CSR Expenditures

Rule 8 - CSR Reporting

Rule 9 - Display of CSR activities on the website

Annexure – Format for Annual Report on CSR Activities to be included in Board's Report

# Definition of CSR- CSR Rules Section 2(c)

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CSR means and includes but is not limited to

- Projects or programs relating to activities specified in the Schedule VII of the Act ; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule VII of the Act.
- Explanation: Schedule VII of the Act provides for the list of activities which may be included by Companies in their Corporate Social Responsibility Policies.



# Definition – Foreign Company Section 2 (42)

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**Foreign Company”** means any **company** or body corporate incorporated outside India which;

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and.
- Conducts any business activity in India in any other manner

# Holding Company – S 2 (46) & Subsidiary company S. 2(87)

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In relation to one or more other companies, means a company of which such companies are subsidiary companies.

As per Section 2(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

# Net Worth- S. 2(57) & Turnover – S. 2(91)

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“**net worth**” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

“**turnover**” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the **company** during a financial year.

# Net Profit

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Defined in Rule 2(f) – Definitions in Companies (CSR Policy) Rules, 2014

“Net Profit’ means

- Net profit of a company as per its financial statement prepared in accordance with the provisions of the Act but shall not include:
- Any profit arising from overseas branch, (s) whether operated as a separate company or otherwise
- Any dividend received from other companies in India which are covered under and complying with the section 135 of the Act.

—For the purposes of this section (i.e. section 135) "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198 (Calculation of profits).

# Applicability of CSR Provisions

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According to Section 135 (1) of the Companies Act 2013 and read with CSR Rules 2014-

CSR provisions are applicable to every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, having:

# Applicability of CSR Provisions

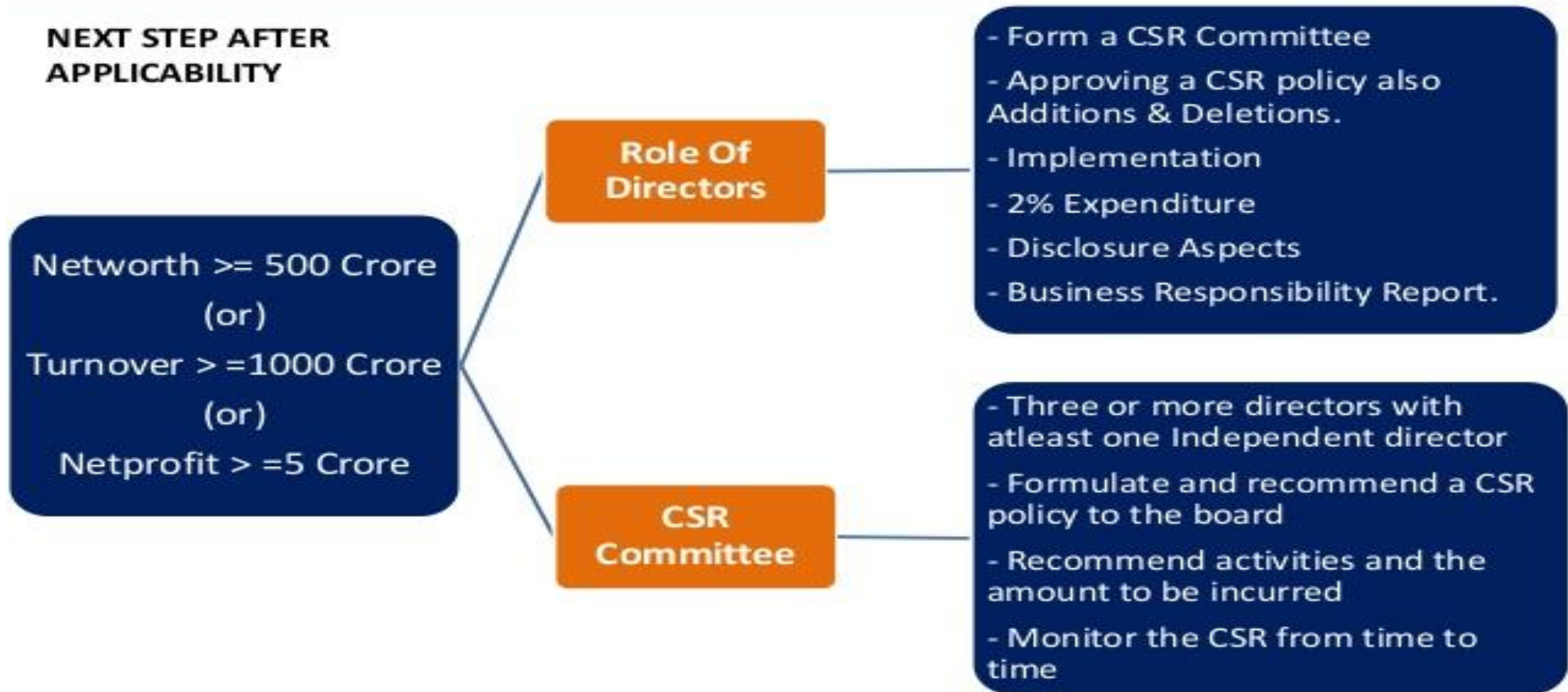
Net Profit	>or=	5	Crore
	OR		
Net Worth	>or=	500	Crore
	OR		
Turnover	>or=	1000	Crore

(N) 5      (N) 500      (T) 1000

During the immediately preceding FY shall constitute a CSR Committee

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

## NEXT STEP AFTER APPLICABILITY



# Exclusion of Companies

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Every company which ceases to be a company covered under Subsection (1) of S. 135 of the Act for three consecutive financial years

- Shall not be required to constitute a CSR Committee
- Is not required to comply with the provisions of S. 135 till such time it meets the criteria specified in sub-section (1) of section 135.





# Composition of CSR Committee- Rule 5, CSR Rules

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CSR Committee shall consist of 3 or more directors, with at least 1 Independent Director.

**unlisted public company** or a **private company** covered under Section 135(1) of the Act, which is not required to appoint an independent director, shall have its CSR Committee without such director

A **private company** with two directors on Board should constitute its CSR Committee with only two directors

**Foreign Company:** At least 2 persons of which one person shall be as specified under S. 380(1)(d) [person resident in India, authorised to accept service of documents etc, on behalf of the company] and another person shall be nominated by the foreign company.

The Board's report is required to disclose the composition of the CSR Committee- Section 134 (3) of the Act

# Duties of CSR Committee- S.135(3) & the Board (S.135(4))



# Contents of CSR POLICY: Rule 6 of Companies (CSR) Rules 2014

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- (a) List of CSR projects or programs which a company plans to undertake areas or subjects specified in of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
- (b) monitoring process of such projects or programs:
- (c) Provided that the Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the areas or subjects specified in Schedule VII of the Act.
- (d) 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 the business profit of a company.

# CSR Expenditure

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(a) The Board of every company shall ensure that the company spends, in every financial year, **atleast 2% (Two per cent) of Average Net Profio** of the company made

- during the three immediately preceding financial years
- in pursuance of its CSR Policy.

(b) Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(c) Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

If during the past two years before the current year, the company has made losses, the company may still have to spend on CSR if the average net profit is positive.

# Calculation of Avg. Net profit

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Net profit means net profit of the Company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following:

- Any profit arising from any overseas branch or branches of the Company, whether operated as a separate company or otherwise;
- And any dividend received from other companies in India, Which are covered under and complying with the provisions of Section 135 of the act;
- Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of Companies Act,1956 shall not be required to be recalculated in accordance with the provisions of the act.
- It is further provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act [Rule 2(f)].

- At least **2% of the AVERAGE NET PROFIT** in 3 immediately preceding FY.

**Logic:** Dividend itself is a part of profit. Shareholders need not spend on CSR separately.

**NET PROFIT =**

**Profit as per New Act**  
**(-)**

**Profits from Operations outside India**  
**(-)**

**Dividend received from Indian Company that has already expended in CSR**

**Logic:** Promote Indian companies to expand operations abroad.

# Example

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– A company with net worth and turnover less than the prescribed limits has made profits of MORE than Rs. Five Crores in the current year. However, its average net profit for the past three years are negative due to past losses. The company will have to constitute a CSR committee and form a CSR Policy even though it will not be required to spend any money.

-A company with net worth and turnover less than the prescribed limits has made profits of LESS than Rs. Five Crores in the current year. The company's average net profit for past three years is more than Rs. Five Crores. The company need not do anything as regards CSR in the current year.

# Implementation of CSR Activity (Rule 4, CSR Rules)

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CSR activities as per the CSR policy may be undertaken through

- a registered trust or
- a registered society or
- A company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise



# Implementation

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On its own, through an in-house department

Through its own non-profit foundation set-up to facilitate the CSR initiative

By partnering with registered NGOs working independently and having experience in implementing similar activities for not less than three years

Through joint collaboration with other companies which also qualify for CSR spending

# Implementation

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# Restrictions on CSR activities

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Should be as per the Company's CSR Policy – Rule 4(1)

Activities should not be normal course of business – Rule 4(1)

Activities must be within India – Rule 4(4) and preferably within the local area of operation of the company

Activities benefitting only employees or families not allowed – Rule 4(5)

Companies may build CSR capacities of their own personnel as well as those of implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overhead shall not exceed 5% of total CSR expenditure of the company in one financial year. [Rule 4(6)]– Rule 4(6)

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Contribution of any amount, directly or indirectly to a political party is not allowed – Rule 4(7)

One-off events such as marathons/ awards/ charitable contribution/ advertisement/sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

# Monitoring

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The CSR Committee shall institute transparent monitoring mechanism for implementation of projects,

The CSR Policy shall include monitoring mechanism.

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

# CSR Reporting

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Directors' Report to include contents of CSR Policy – Sec. 135(4)(a)

Directors' Report to General Meeting to include a report about CSR initiatives as per format in Rules – Sec. 134(3)(o) and Rule 8

Company website to disclose company's CSR Policy – Sec. 135(4)(a) and Rule 9

If there is a failure to spend CSR amount, Board shall in its report specify the reasons – Sec. 135(5) Proviso

# Activities permitted under schedule VII

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Eradicating hunger, poverty and malnutrition

Armed forces veterans, war widows and dependants

Promoting healthcare and sanitation; Safe drinking water

Sports

Promoting education

Contribution to Prime Minister Relief Fund or any other Govt. fund

Various facilities and activities for women and elderly

Contribution to technology incubators located in approved institutions

Conservation of natural resources incl. soil, air, water, animals etc.

Rural development projects

National heritage, art and culture

Slum area development

# Activities permitted under schedule VII

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Clean Ganga Fund

Swacha Bharat Kosh

Disaster management including relief, rehabilitation and reconstruction activities

Contribution to public funded universities, IITS, DAE, DST, Ayurveda, DRDO, ICMR, CSIR, ICAR etc.



# Questions

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**Whether CSR expenditure of a company can be claimed as a business expenditure?**

The amount spent by a company towards CSR cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession

# Questions

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## **Can the CSR expenditure be spent on the activities beyond Schedule VII?**

General Circular No. 21/2014 dated June 18, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013. However, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.

# Questions

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**Will being a holding or subsidiary company of a company which fulfils the criteria under section 135(1) make the company liable to comply with section 135, even if the company itself fulfills the criteria**

Being a holding or subsidiary company of a company which fulfils the criteria under section 135(1) doesn't make the company liable to comply with section 135, unless the company itself fulfills the criteria.

# Questions

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**Whether provisions of CSR are applicable on Section 8 Company, if it fulfills the criteria of section 135(1) of the Act.**

Section 135 of the Act reads “ Every company.....”, i.e no specific exemption given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions

# Penalties- Failure in reporting – s. 134(8)

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The Companies Act requires that—

(i) The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per subsection (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.



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# THANK YOU