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Companies Act Compliances – CAs need to know

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“If you think that compliance is expensive : try non-compliance”

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Compliance is Non-Negotiable, Why?

Guess – “Auditor” in Companies Act, 2013 – how many times ?

Guess – “CFO” in Companies Act, 2013 – how many times ?

Importance of Compliance

- **More focus on adjudication proceedings and enquiry/ inspection by the department. All regular ROC filings, incorporation related work, and strike off related work shifted from ROC office to CRC/CPC/C-PACE.**

- **Out of total 3622 adjudication orders passed by the ROC, under the Companies Act, 2013, so far & available on the portal, approx. 148 orders have been passed by ROC in the year 2025 and approx. 1310 orders were passed in the year 2024. (2164 in the previous 10 years)**

- **72 orders have been passed by ROC for breach of Section 143 of the Companies Act, 2013 (Powers & Duties of Auditors).**

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Importance of Compliance

- **Approximately 103 debarment orders and 85 orders imposing penalties, issued by NFRA.**

- **Decriminalization of the Companies Act 2013, has led to expansive inclusion of provisions for imposing penalties by replacing the fines and also converted non-compoundable offences into compoundable offences.**

- **Weightage to non-compliances at the time of valuation/ negotiation in case of corporate deals and PE/VC investments.**

Importance of Compliance

- **Impact of non-compliances in case of companies going for public issue.**
- **Non-compliances result in delay of restructuring exercises.**
- **Black spot/ stigma on corporate/ individuals.**

THE TIMES OF INDIA

LinkedIn, Nadella & others fined by RoC

TNN | May 23, 2024, 01.09 AM IST

BENGALURU: The ministry of corporate affairs has imposed penalties of Rs 2 lakh each on Microsoft-owned LinkedIn India, the tech giant's India-born chief Satya Nadella and the professional networking site's Ryan Roslansky for non-compliance with a Companies Act provision, requiring them to disclose "significant beneficial ownership" (SBO).Nadella and Roslansky have been fined Rs 2 lakh each by the registrar of companies (RoC) for Delhi and Haryana, while other 18 entities, including directors, face penalties ranging between Rs 50,000 and Rs 5 lakh, which in most cases is the maximum provided under the Companies Act. Govt had introduced SBO rules in 2019, requiring disclosure by entities, including individuals, who have significant beneficial ownership in a company. In its 63-page adjudication order the RoC has concluded that Nadella and Roslansky are SBOs.

Regular Compliances along with their due dates

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Regular Compliances

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation	E-form
1	**Conducting of Annual General Meeting**	Within 6 months from the date of closing the financial year	Pursuant to section 96 of the Companies Act, 2013	Proviso of section 96(1), Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year : Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation	
2	**Preparation and filing of Financial Statements**	With the Registrar within thirty days of the date of annual general meeting	Pursuant section 137 read with Companies (Accounts) Rules, 2014 and Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.	A copy of the financial statement , 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.	AOC-4/ AOC-4 CFS/ AOC- 4 XBRL
3	**Preparation and filing of Board Report**	The Board's Report shall be attached to statements laid before a company in general meeting.	Pursuant to section 134 of the Companies Act, 2013	There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors.	Attached with the Financial Statement (AOC-4)

Regular Compliances

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation	E-form
4	**Annual Report on CSR**	Annexure to the Board's Report	Pursuant to section 135 of the Companies Act, 2013 read with Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014	The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II., as applicable.	Attached with the Boards' Report
5	**Preparation and filing of Annual Return**	Within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held	Pursuant section 92(1), 92(4) of the Companies Act, 2013 read with Rule 11 and 12 of Companies (Management and Administration) Rules, 2014	Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.	MGT-7
6	**Certification of Annual Return**	Within sixty days from the date on which the annual general meeting	Pursuant Section 92 read with Rule 11 of Companies (Management and Administration) Rules, 2014	The annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form No. MGT.8.	MGT-8

Regular Compliances

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation	E-form
7	**Half Yearly Return regarding MSME**	By 31st October for the period from April to September and by 30th April for the period from October to March	Pursuant Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019	Furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprises, All companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006, shall submit a half yearly return to the Ministry of Corporate Affairs.	Form MSME-1
8	**DIR-3 KYC (Web)**	Before 30th, September	Pursuant to Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014	Every individual who holds a Director Identification Number (**DIN**) as on 31 st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th, September of immediate next financial year	DIR-3 KYC
9	**Filing of annual return of Deposits**	Before 30th day of June	Pursuant to Rules 3 and 16 of the Companies (Acceptance of Deposits) Rules, 2014	Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 3Ist day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in Form DPT-3.	DPT-3

Regular Compliances

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation	E-form
10	**Disclosure of interest by director**	At the first meeting of the Board in every financial year	Pursuant to section 184 of the Companies Act, 2013 read with Rule 9(1)of the Companies (Meetings of Board and its Powers) Rules,2014.	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate , firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.	**MBP-1**
11	**Appointment of Auditor (Rotation of auditor)**	Within fifteen days of the meeting in which the auditor is appointed.	Pursuant to section 139 of the Companies Act, 2013 read with Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	The notice to Registrar about appointment of auditor under fourth proviso to sub-section (1) of section 139 shall be in Form ADT-1.	**ADT-1**
12	**Secretarial Audit Report**	Along with the financial statement	Pursuant to section 204(1) of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014	Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice , in such form as may be prescribed.	**MR-3**

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Regular Compliances

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation	E-form
13	**Form for filing Cost Audit Report with the Central Government**	Within a period of thirty days from the date of receipt of a copy of the cost audit report,	Pursuant to section 148(6) of the Companies Act, 2013 and rule 6(6) of the Companies (cost recordsand audit) Rules, 2014	Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein, in form CRA-4 in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014."	CRA-4
14	**Report on CSR: CSR-2**		Pursuant to Rule 12(1B) of the Companies (Accounts) Rules, 2014	Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar f as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may b	CSR-2
15	**Statement of unpaid and unclaimed amounts**	Within sixty days from the date on which the annual general meeting	Rule 5 (8) of IEPF Authority (Accounting, Audit, Transfer, and Refund) Rules, 2016	A statement or information of unclaimed and unpaid amounts containing following information, namely:- (a) the names and last known addresses of the persons entitled to receive the sum; (b) the nature of amount; (c) the amount to which each person is entitled; (d)the due date for transfer into the Investor Education and Protection Fund; and (e) such other information as may be considered necessary	IEPF-2

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Additional compliances specific to Listed Companies

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation
1	**Payment of Annual Listing Fees**	Within one month of the end of financial year	Regulation 14, LODR	The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by the Board or the recognised stock exchange(s).
2	**Compliance with Code of Conduct**	To be affirmed on Annual Basis	Regulation 26(3), LODR	All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.
3	**Annual Audited Financial Results**	Within 60 days from the end of financial year	Regulation 33(3)(d), LODR	The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and either Form A (for audit report with unmodified opinion) or Form B Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)
4	**Secretarial Compliance Report**	Within 60 days of the end of the financial year	Regulation 24A, LODR	Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

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Additional compliances specific to Listed Companies

S. No.	Compliance	Due Date	Section/ Rule/ Regulation	Particulars of Section/ Rule/ Regulation
5	**Annual Report**	Not later than the day of commencement of dispatch to its shareholders.	Regulation 34(1) SEBI LODR	The listed entity shall submit to the stock exchange and publish on its website, a copy of the annual report sent to the shareholders along with the notice of the annual general meeting on or before the not later than the day of commencement of dispatch to its shareholders;
6	**Quarterly Standalone Financial Results**	Within 45 days from the end of each quarter.	Regulation 33(3)(a), LODR	The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.
7	**Shareholding Pattern**	Within 21 days from the end of each quarter	Regulation 31, LODR	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, on a quarterly basis, within twenty one days from the end of each quarter.
8	**Integrated Corporate Governance Report**	As may be specified by SEBI (For quarter ended on March, 2025 - 30 days from end of the quarter)	Regulation 27, LODR	The listed entity shall submit, to the recognised stock exchange(s), a quarterly compliance report on corporate governance in the format and within the timelines, as may be specified by the Board from time to time.

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Companies (Auditor's Report) Order, 2020 (CARO)

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CARO 2020

The *Companies (Auditor's Report) Order, 2020* (CARO 2020) is a regulatory framework issued by the Ministry of Corporate Affairs (MCA) under Section 143(11) of the Companies Act, 2013. It ***mandates specific reporting requirements for statutory auditors of eligible companies in India, aiming to enhance transparency, accountability, and reliability in financial reporting***.

CARO 2020 came into effect from the financial year 2021–22, replacing CARO 2016. It ***introduced a more detailed set of disclosures covering various aspects of a company's financial and operational matters. These include reports on tangible and intangible assets, inventory and working capital, investments and loans, internal audit systems, cash losses, defaults in repayment of loans, frauds, compliance with approved corporate actions, and financial ratios.***

One significant enhancement is the requirement for auditors to comment on whether quarterly returns or statements filed with banks match the books of account, aiming to detect fund diversion or manipulation. Additionally, CARO 2020 demands auditors assess the company's ability to meet liabilities and provide insights into ongoing or potential defaults.

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Relevant Provisions of the Companies Act, 2013 – CAs need to know

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Provisions relevant for Audit Report

Section	Particulars
Section 42	Offer or invitation for subscription of securities on private placement
Section 62	Further issue of share capital
Section 73	Prohibition on acceptance of deposits from public
Section 74	Repayment of deposits, etc. , accepted before commencement of this act
Section 75	Damages for fraud
Section 76	Acceptance of deposits from public by certain companies
Section 123	Declaration of dividend
Section 135	Corporate Social Responsibility

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Provisions relevant for Audit Report

Section	Particulars
Section 143	Powers and duties of auditors and auditing standards
Section 177	Audit Committee
Section 185	Loans to directors, etc
Section 186	Loan and investment by a company
Section 188	Related party transactions
Section 192	Restriction on non-cash transactions involving directors

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Other Relevant Provisions

Section	Particulars
Section 128	Books of Accounts, etc, to be kept by Company
Section 129	Financial Statement
Section 132	Constitution of NFRA
Section 133	Central Government to prescribe Accounting Standards
Section 134	Financial Statements, Board's Report, etc.
Section 137	Copy of financial statements to be filed with Registrar
Section 141	Eligibility, Qualifications and Disqualification of Auditors
Section 142	Remuneration of auditors
Section 144	Auditors not to render certain services
Section 145	Auditor to sign audit reports, etc.

Other Relevant Provisions

Section	Particulars
Section 146	Auditors to attend general meeting
Section 164	Disqualifications of Directors
Section 203	Appointment of Key Managerial Personnel

Referring to Checklist is critical - Guidance Notes are helpful

Anticipating an enquiry/investigation is key and evidence has to be accordingly stored

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Section 42 - Offer or Invitation for subscription of securities on Private Placement

Point to be reported as per CARO 2020-

- ***Whether the company has made any preferential allotment or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year?***

- ***If so, whether the requirements of section 42 and section 62 of the Companies Act, 2013 have been complied with?***

- ***Funds raised have been used for the purposes for which the funds were raised, if not, provide details in respect of amount involved and nature of non-compliance?***

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Section 42 - Offer or Invitation for subscription of securities on Private Placement

- A company can make a private placement of securities, to a ***select group of identified persons***.

- The Company making an offer or invitation under this ***section must allot its securities within 60 days*** from the date of receiving the application money. If it ***fails to do so***, the company must ***refund the application money within 15 days*** after the expiry of the 60-day period.

- If the company ***fails to refund*** the money within this timeframe, it will be liable to repay the amount with ***interest at 12% per annum***, calculated from the expiry of the 60-day period.

- Provided that all ***application money*** received under this section must be kept in a ***separate bank account in a scheduled bank***, and may only be used for the following purposes:

    i. ***Adjusting the amount*** against the allotment of securities; or
    ii. ***Refunding the money*** if the company is unable to allot the securities.

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Section 42 - Offer or Invitation for subscription of securities on Private Placement

Important compliances to be seen-

- Whether offer letter is circulated after resolution is filed in form MGT-14?
- Whether money is received in separate bank account?
- Whether allotment is made after money is received by the company?
- Whether money is utilized after form PAS-3 is filed with ROC?
- Whether private placement offer letter is circulated once the earlier offer is completed or abandoned?

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Section 62 – Further issue of Share Capital

- Whether shareholder consent is obtained for conversion of loan into equity?
- Whether report of registered valuer is obtained by the company?
- Whether preferential allotment is made within period of 12 months after passing shareholders resolution?

Section 62 – Further issue of Share Capital

- A company with share capital proposing to increase its **subscribed capital** must offer further shares:

  a. To existing equity shareholders ***in proportion to their paid-up share capital***, via a letter of offer**. (Right Issue)**

  b. To employees under an ***employees' stock option scheme***, subject to a special resolution and prescribed conditions.

  c. ***To any other persons***, if ***authorized by a special resolution***, even if they are not covered in (a) or (b), for cash or other consideration, with price determined by a registered valuer's report in compliance with applicable provisions.

- This section ***does not apply*** to an increase in a company's subscribed capital if it results from the ***conversion of debentures or loans into shares***, provided that, the option for such conversion was included ***as a term*** in the issued debenture or raised loan and the terms of this conversion were ***approved in advance*** through a ***special resolution*** in a general meeting before issuing the debenture or raising the loan.

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Relevant orders of Disciplinary Committee

Non Compliance of Section 62 of the Companies Act, 2013

The Disciplinary Committee was of the view that the Chartered Accountant ("**CA**") in question was guilty of professional misconduct under Clause (6) and (7) of the Second Schedule of the Chartered Accountants Act, 1949. In his capacity as the Statutory Auditor ("**SA**") of the company, **he failed to exercise due diligence concerning the share capital issued by the company**. Specifically, he did not ensure the proper consent from the Complainant (one of the guarantors) for the allotment of shares was obtained. **The shares were allotted without the Complainant's consent, and this was done in contravention of the provisions of Section 62 of the Companies Act, 2013.**

In addition to the above, the SA improperly treated a payment made by the Complainant to the Company as a gain, which was subsequently transferred to the Capital Reserve Account. This action resulted in the Company being absolved of its liability. **These failures led to a material misstatement in the company's financial statements, and the SA did not provide an adequate justification for the misstatement.**

As a consequence, the Disciplinary Committee ordered that the name of the CA be removed from the Register of Members for a period of one month.

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Relevant orders of Disciplinary Committee

Non Compliance with respect to disclosure of Share Capital

The Disciplinary Committee was, inter alia, of the opinion that the Chartered Accountant was guilty of professional misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Chartered Accountant had served as the statutory auditor of a private company from FY 2015–16 to FY 2019–20. It was found that, in the audited financial statements and in e-form AOC-4 for FY 2017–18, he incorrectly certified that the share capital was "***subscribed and paid up***," despite ***the fact that the subscribers had not actually paid the share capital***. This ***misstatement continued in subsequent years***. The Committee concluded that the Chartered Accountant was grossly negligent in the performance of his duties and ***failed to report material facts that were known to him***.

Considering the seriousness of the charges and the overall circumstances of the case, the Committee ordered that the ***name of the Chartered Accountant be removed from the Register of Members for a period of one month***. Additionally, a ***monetary penalty of ₹10,000 (Rupees Ten Thousand only) was imposed***, to be paid within 90 days of receiving the order, failing which the name shall be removed for an additional 30 days.

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Section 73 – Prohibition on acceptance of deposits from public

Point to be reported as per CARO 2020-

In respect of deposits accepted by the company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules made thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not;

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Section 73 – Prohibition on acceptance of deposits from public

- The provision of deemed Deposit under the Deposit rules must be seen carefully, for instance-

- Adjustment of customer advance within 365 days

- Declaration with respect to money received from directors/ their relatives – not borrowed funds.

Section 73 – Prohibition on acceptance of deposits from public

The company may accept ***deposits from its members***, subject to passing a ***resolution in a general meeting :***

- ***Issuing a circular*** to members, including ***financial position*** of the company, ***credit rating obtained, total depositors & outstanding deposits*** from previous years.
- ***Filing the circular*** with the Registrar at least ***30 days before its issuance***.
- Maintaining a ***Deposit Repayment Reserve***, ***by April 30*** each year, deposit ***at least 20%*** *of deposits* ***maturing in the next financial year*** in a separate scheduled bank account.
- The company must ***not have defaulted*** in repaying deposits or interest, if a default occurred, it must have been ***rectified*** at least ***five years ago*****.**
- Creating a ***charge on property/assets*** for repayment, and if deposits are ***unsecured or partially secured***, they must be ***clearly labeled as "unsecured deposits"*** in all related documents.

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Section-75 Damages for fraud

Where a company ***fails to repay the deposit*** or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the ***deposits had been accepted with intent to defraud the depositors*** or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions ***contained in sub-section (3) of that section and liability under section 447***, ***be personally responsible***, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Section 76 – Acceptance of Deposit from public by certain companies

Notwithstanding anything contained in section 73, ***a public company***, having such prescribed net worth or turnover, may accept deposit from persons other than its members subject to

Provided that such a company shall be required to ***obtain the rating*** (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating ***shall be obtained for every year during the tenure of deposits***.

Provided further that every company accepting secured deposits from the ***public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders*** in accordance with such rules as may be prescribed.

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Section 123 – Declaration of Dividend

- No dividend shall be declared or paid by a company ***for any financial year except***—

  a. Out of ***current year's profits*** of the company arrived at after providing depreciation, or ***previous year's profit*** arrived at after providing depreciation or ***out of both***.

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

- The amount of the dividend, including interim dividend, shall be ***deposited in a scheduled bank*** in a separate account ***within five days*** from the date of declaration of such dividend.

- A company can only pay dividends to the ***registered shareholder, their nominee, or their banker***, and dividends must be ***paid in cash***.

  a. Companies can ***capitalize profits or reserves*** to issue fully paid-up bonus shares or clear unpaid amounts on shares.

  b. Cash dividends can be paid via ***cheque, warrant, or electronic transfer***.

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Section 135 – Corporate Social Responsibility

Point to be reported as per CARO 2020-

a. *Whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act?*

b. *Whether any amount remaining unspent under sub-section (5) of section 135 of the Companies Act, pursuant to any ongoing project, has been transferred to special account in compliance with the provision of sub-section (6) of section 135 of the said Act?*

Section 135 – Corporate Social Responsibility

- **Whether <u>amount transferred to implementing agency</u> to spend on CSR activities will be considered due compliance of Section 135 of the Companies Act, 2013, if the implementing agency has failed to spend the specified amount during the financial year?**

- **MCA Circular dated 25.08.2021 specifies that mere disbursal of funds for implementation of a project does not amount to spending unless the implementing agency utilizes the whole amount.**

Section 135 – Corporate Social Responsibility

The provision of Section 135 of the Companies Act, 2013, mandate the **companies to transfer unspent amount** on projects other then ongoing project **to the fund specified under Schedule VII** of the Companies Act, 2013.

However, the process of audit is completed before such abovementioned time period. The Auditor shall obtain an **undertaking from the Company regarding compliance of Section 135 with respect to transfer of such unspent amount within the stipulated time period.**

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Section 135 – Corporate Social Responsibility

Rule 4(5) of the Companies (Corporate Social Responsibility Policy) Rules, 2014:

The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the ***Chief Financial Officer*** *or* ***the person responsible for financial management*** *shall certify to the effect.*

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Section 135 – Corporate Social Responsibility

Whether CSR in kind will be considered as due compliance of Section 135 of the Companies Act, 2013?

The requirement comes from section 135(5) that states that "The Board of every company shall ensure that it spends…". Therefore, CSR contribution cannot be in kind and monetized.

(MCA FAQs on CSR dated 25.08.2021)

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Section 135 – Corporate Social Responsibility

- Every company having:
  - ***net worth of rupees five hundred crore or more***, or,
  - ***turnover of rupees one thousand crore or more*** ,or a,
  - ***net profit of rupees five crore or more***

  the immediately preceding financial year shall constitute a ***Corporate Social Responsibility Committee*** of the Board consisting of ***three or more directors*** , out of which at least one director shall be an independent director .

- The Board of Directors of every company must ensure that the company spends at least ***2% of its average net profits*** from the ***three immediately preceding financial years*** on Corporate Social Responsibility (CSR) activities in each financial year.

- If a company fails to spend the required CSR amount, the Board must explain the reason in its report. Unless the unspent amount is for an ongoing project, it must be ***transferred to a Fund listed in Schedule VII within six months*** after the financial year ends. Amount spent in ***excess of the prescribed 2% amount*** shall in the ***next 3 financial years*.**

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Section 135 – Corporate Social Responsibility

"*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 and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.*"

As per the said proviso of section 135(5) of the Act, if a company ***fails to spend*** the prescribed CSR amount during a financial year, ***the Board must disclose the reasons for such failure in its Board Report under Section 134(3)(o)***.

Additionally, unless the unspent amount is related to ***an ongoing project*** under Section 135(6), the company is ***required to transfer the unspent CSR amount to a Fund*** specified in Schedule VII (such as PM CARES or Clean Ganga Fund) ***within six months from the end of the financial year***. This provision ensures accountability and timely utilization of CSR funds for social and developmental causes.

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Section 143 - Powers and duties of Auditors and Auditing Standards

Section 143(12) – Fraud

Notwithstanding anything contained in this section, if an auditor of a company ***in the course of the performance of his duties as auditor***, ***has reason to believe that an offence of fraud*** involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor ***shall report the matter to the Central Government*** within such time and in such manner.

Rules

- ✓ In case of a fraud involving amount ***lesser than the Rupees One Crore***, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases. Further, the default shall be ***disclosed in the Board's Report.***
- ✓ If such amount ***exceeds Rupees One Crore, the auditor is required to report the fraud to Central Government.***

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Section 143 - Powers and duties of Auditors and Auditing Standards

Point to be reported as per CARO 2020-

a. ***Whether any fraud by the company or any fraud on the company has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated;***

b. ***Whether any report under sub-section (12) of section 143 of the Companies Act has been filed by the auditors in Form ADT-4 as prescribed under rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government;***

c. ***Whether the auditor has considered whistle-blower complaints, if any, received during the year by the company;***

NFRA Circular dated 26.06.2023

There is a misconception amongst some Auditors that resigning from an audit engagement absolves them of their reporting obligations relating to fraud and the consequences under CA 2013 for nonreporting of fraud. In this regard, the Hon'ble Supreme Court of India in a recent judgment dated 03.05.2023 (Union of India and Another versus Deloitte Haskins and Sells LLP & Anr CRIMINAL APPEAL NOS.2305-2307 OF 2022), has held that the consequences of section 140 (5) of CA 2013 will be applicable also on those auditors who resign from their audit engagements without reporting fraud/suspected fraud.

The Hon'ble Apex Court observed: "7…. Therefore, on true interpretation, even on resignation by an auditor of a company even during the enquiry/proceedings under section 140(5) or even prior to that, there shall not be any termination of the proceedings under section 140(5) as observed and held by the High Court. At the cost of repetition, it is observed that in a given case, an auditor, who in fact has, directly or indirectly, acted in a fraudulent manner, to avoid any further consequence under the second proviso to section 140(5), resigns to avoid any consequence under the second proviso to section 140(5), it cannot be permitted. 14…Acting in a fraudulent manner, directly or indirectly, by an auditor is a very serious misconduct and therefore the necessary consequence of indulging into such fraudulent act shall follow.

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NFRA Circular dated 26.06.2023 (Contd.)

4.2 The Statutory Auditor is duty bound to submit Form ADT-4 to the Central Government u/s 143 (12) ***even in cases where the Statutory Auditor is not the first person to identify the fraud/suspected fraud****.*

4.3 Resignation does not absolve the Auditor of his responsibility to report suspected fraud or fraud as mandated by the law.

4.4 The Statutory Auditor shall exercise his/her own professional skepticism while evaluating fraud, and need not be influenced by legal opinion provided by the Company or its Management.

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Section 143 - Powers and duties of Auditors and Auditing Standards

The auditor's report shall state:

a. ***sought and obtained all the information*** and explanations were necessary for the purpose of his audit;

b. ***proper books of account*** as required by law have been kept by the company and books and returns adequate for the purposes of his audit have been received from branches not visited by him;

c. balance sheet and profit and loss account dealt with in the report are ***in agreement with the books of account*** and returns;

d. financial statements ***comply with the accounting standards***;

e. the ***observations or comments*** of the auditors on financial transactions or matters which have any ***adverse effect*** on the functioning of the company;

f. whether any ***director is disqualified*** from being appointed as a director under sub-section (2) of section 164;

g. any ***qualification, reservation or adverse remark relating to the maintenance of accounts*** and other matters connected therewith;

h. ***adequate internal financial controls*** with reference to financial statements in place and the operating effectiveness of such controls

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Section 177 – Audit Committee

Point to be reported as per CARO 2020-

Whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act where applicable and the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards;

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Section 177 & Section 188

Points to be considered -

- *Whether **post facto approval** of Audit Committee will be considered in compliance with the provisions of Section 177?*

- *How to determine if the transactions entered into by the Company and its related parties is **at arms length basis and in the ordinary course of business**? – Auditor to examine*

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Section 177 – Audit Committee

- **Applicability:**
  - Every listed company;
  - Every public company having paid capital, turnover, or outstanding borrowings of 10 crores, 100 crores, or 50 crores or more respectively, shall constitute an Audit Committee.

- **Composition:** AC shall consist of a minimum of 3 directors (Majority ID), and majority of members shall be to read and understand, the financial statement.

- **Obligation of AC that an Auditor needs to check:**
  - Approval or any subsequent modification of transactions of the company with related party;
  - Omnibus approvals granted by the AC;
  - Recommendation made to the board regarding transaction not covered under 188 of CA 2013.

Section 177 – Audit Committee

- If a director or officer of the company enters into a transaction worth one crore rupees or less without getting the Audit Committee's approval, and the Audit Committee doesn't approve it within three months, then:

  a) AC can choose to cancel the transaction.

  b) If the transaction involves a related party of a director, or is approved by another director, then the concerned director must cover any loss the company suffers because of the transaction.

Section 188 – Related Party Transactions

- ***A company must get board approval before entering into contracts/ arrangements with a related party for:***
  (a) Buying, selling, or supplying goods or materials
  (b) Buying, selling, or disposing of property
  (c) Leasing property
  (d) Providing or receiving services
  (e) Appointing an agent for the above transactions
  (f) Appointing a related party to any office or position of profit in the company, subsidiary, or associate company
  (g) Underwriting shares, securities, or derivatives of the company

- ***Special Approvals Required*:** If the company has a certain paid-up share capital or the transaction value crosses prescribed limits, then:
  - Prior approval by a special resolution of shareholders is required.
  - Related party members are not allowed to vote on this special resolution.

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Section 185 – Loan to directors, etc.

- Section 185 ***restricts companies from directly or indirectly:***
  - ***a) advancing any loan, including any loan represented by a book debt, or***
  - ***b) giving any guarantee or***
  - ***c) providing any security in connection with any loan taken by its directors or any other person in whom the director is interested***.

- However, loans can be given to a managing or whole-time director as part of service conditions or under a scheme approved by shareholders. Loans to entities in which directors are interested are allowed if a special resolution is passed by shareholders and the company meets prescribed conditions, such as maintaining a consistent record of profits.

- The section is ***aimed at preventing misuse of company funds by directors and ensuring transparency and accountability in related-party transactions***.

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Relevant order of Disciplinary Committee

Non Compliance of Section 185 of the Companies Act, 2013

The Disciplinary Committee was of the view that the Chartered Accountant in question was guilty of professional misconduct under Items (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

The Committee noted that the Chartered Accountant appeared via video conferencing and reiterated that the matter pertained to ***an interpretational issue regarding the applicability of Section 185 of the Companies Act, 2013***. He acknowledged a ***technical non-compliance, attributing it to his interpretation of Sections 185 and 186***.

After considering the facts, materials on record, and his submissions, the Committee concluded that the issue stemmed from interpretation and found no evidence of mala fide intent. Accordingly, the Committee ordered that the Chartered Accountant be reprimanded.

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Section 186 – Loans and Investments by a company

<u>Point to be reported as per CARO 2020-</u>

In respect of loans, investments, guarantees, and security, whether provisions of sections 185 and 186 of the Companies Act have been complied with, if not, provide the details thereof.

Important point to be considered-

a) Interest provision generally ignored particularly in loan to WOS

b) <u>Breach of this section is non-compoundable</u>.

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Section 186 – Loans and Investments by a company

- No investment in more than two layers of investment companies.

- *A **company shall not directly or indirectly give any loan, provide any guarantee or security, or acquire securities of any other body corporate beyond 60% of the company's paid-up share capital, free reserves, and securities premium account, or 100% of its free reserves and securities premium account, whichever is higher unless a prior special resolution is passed by its shareholders***.

- Any loan given must carry an interest rate not lower than the prevailing yield of government securities for a similar tenure.

- The section also requires that ***such transactions be disclosed in the company's financial statements***.

- ***Banking companies, insurance companies, and housing finance companies are exempted when such loans or investments are made in the ordinary course of business***.

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Section 192 - Restrictions on non-cash transactions involving directors

<u>Point to be reported as per CARO 2020-</u>

Whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with?

Section 192 - Restrictions on non-cash transactions involving directors

No company shall enter into a transaction unless approved by members where:

- a director/connected person of the company or its holding, subsidiary, or associate company receives assets from the company in exchange for non-cash consideration.
- the company receives assets from such a director/connected person for non-cash consideration.

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OTHER RELEVANT PROVISIONS

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Section 128 - Books of Accounts, etc., to be kept by company

Every company shall prepare and keep at its ***registered office books of account and other relevant books*** and papers and financial statement for every financial year which give a ***true and fair view*** of the state of the affairs of the company, including that of its branch office or offices.

In case books are kept ***at place other than registered office, file a notice with registrar in 7 days***.

Books of accounts shall be ***open for inspection at the registered office*** of the company or at such other place in India by any director ***during business hours.***

The books of account of every company shall be ***retained for a period of not less than eight financial years*** immediately preceding a financial year.

If the managing director, the ***whole-time director in charge of finance***, the ***Chief Financial Officer*** or any other person of a company charged by the Board with the duty of complying with the provisions of this section, ***contravenes*** such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be ***punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.***

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Section 129 – Financial Statement

- The financial statement shall give a ***true and fair view*** of the state of affairs of the company or companies, comply with the ***accounting standards*** notified under section 133 and shall be prepared as per ***schedule III*** prescribed under the Companies Act, 2013.

- At each ***annual general meeting*** of a company, the Board of Directors shall ***present the financial statements*** for the financial year.

- Where a company has ***one or more subsidiaries or associate company*** , in addition to financial statements, a ***consolidated financial statement*** of the company and of all the subsidiaries and associate companies shall also be placed at the annual general meeting.

- Where the financial statements of a company ***do not comply with the accounting*** the company shall disclose in its financial statements, the deviation from the accounting standards, ***the reasons for such deviation and the financial effects, if any,*** arising out of such deviation.

- If a company contravenes the provisions of this section, the ***managing director***, the ***whole-time director in charge of finance***, the ***Chief Financial Officer*** or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall 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***.

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Section 134 – Financial statement, Board's report, etc

- The financial statements must be approved by the BOD before being signed by:
  - the Chairperson, if authorized by the Board, or
  - two directors, one of whom must be the Managing Director (if there is one),
  - along with the CEO, ***CFO***, and Company Secretary, if they are appointed.

- In the case of a One Person Company, only the single director needs to sign. After signing, the statements are sent to the auditor for their report.

- Content of the board report.

- If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Section 137 - Copy of financial statement to be filed with Registrar

- Every company is required to file its financial statements, including consolidated financial statements if applicable, along with necessary documents such as the Board's Report and Auditor's Report, in the prescribed form (Form AOC-4), within 30 days of the Annual General Meeting (AGM).
- In case the AGM is not held, the financial statements must still be filed within 30 days from the date the AGM should have been held.
- For One Person Companies (OPCs), the time limit is 180 days from the end of the financial year.
- Listed companies and certain prescribed companies are also required to file their financial statements in XBRL format.
- Failure to file financial statements within the stipulated period can attract penalties on the company as well as on its managing director and the ***Chief Financial Officer*** of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company,

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Section 203 - Appointment of key managerial personnel

- Companies in the prescribed class ***must appoint*** the following whole-time key managerial personnel:
  - Managing Director, or CEO, or Manager, If none of these, then a Whole-Time Director
  - Company Secretary
  - ***Chief Financial Officer (CFO)***

- Every whole-time key managerial personnel of a company shall be appointed by means of a ***resolution of the Board*** containing the terms and conditions of the appointment including the remuneration.

- A whole-time key managerial personnel ***shall not hold office in more than one company*** except in its subsidiary company at the same time.

- If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

- Nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company ***with the permission of the Board.***

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Section 143(3) read with Section 164(2) – Disqualifications of Director

164(2) No person who is or has been a director of a company which—

a. has ***not filed financial statements or annual returns*** for any continuous period of ***three financial years*** ; or

b. has ***failed to repay the deposits*** accepted by it or pay interest thereon or to redeem any debenture on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

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Section 143(3) read with Section 164(2) – Disqualifications of Director

Generally, it is seen that the auditor relies on the declaration given by the directors of the Company. However, Section 143 casts an obligation on the auditor to verify the disqualification of the director as specified under Section 164(2) of the Companies Act, 2013.

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Section 148 – Central Government to specify audit of items of cost in respect of certain companies

- **Applicability for Cost Audit on regulated sectors:**
  - Company's Overall turnover from all its products and services exceeds Rs.50 Crores and
  - Aggregate turnover of the individual product(s)/ service(s) for which cost records are required to be maintained exceeds Rs.25 Crores.

- **Applicability for Cost Audit on Non-regulated sectors:**
  - Company's Overall turnover from all its products and services exceeds Rs.100 Crores and
  - Aggregate turnover of the individual product(s)/ service(s) for which cost records are required to be maintained exceeds Rs.35 Crores.

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Section 141 - Eligibility, qualifications and disqualifications of auditors

- **Eligibility:**
  Only a Chartered Accountant or a firm where the majority of partners are CAs can be appointed as an auditor.

- **Disqualification:**

- a body corporate;
- an officer or employee of the company;
- a person who is a partner, or who is in the employment, of an officer or employee of the company;
- a person who, or his relative or partner—

  (i) is holding any security of the company or its subsidiary , or of its holding or associate company or a subsidiary of such holding company , of value in terms of such percentage as may be prescribed;

  (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

  (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

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Section 141 - Eligibility, qualifications and disqualifications of auditors

- a person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

- a person whose relative is in the employment of the company as a director or key managerial personnel;

- a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees.

- a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

- a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

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Section 142 read with Schedule III - Remuneration of auditors

Section 142:

(1) The ***remuneration of the auditor of a company shall be fixed in its general meeting*** or in such manner as may be determined therein.

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The "remuneration" under sub-section (1) in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Schedule III:

(j) Payments to the auditor as (a) auditor; (b) for taxation matters; (c) for company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses;

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Section 144 - Auditor not to render certain services

- An auditor appointed under this Act shall provide the company only such other services as are approved by the ***Board of Directors or the audit committee***, as the case may be, but which ***shall not include*** any of the following services (whether such services are rendered ***directly or indirectly*** to the ***company or its holding company or subsidiary company)***, namely:

  (a) **accounting and book-keeping services**;
  (b) internal audit;
  (c) design and implementation of any financial information system;
  (d) actuarial services;
  (e) investment advisory services;
  (f) investment banking services;
  (g) rendering of outsourced financial services; and
  (h) management services.
  (i) any other kind of services as may be prescribed:

- Additionally, the company must not engage its auditor for any other services as may be prescribed. If ***already engaged, the auditor must discontinue*** such services before the commencement of the audit.

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Section 145 - Auditor to sign audit reports, etc.

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Section 197 – Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

- Overall managerial remuneration payable to directors, including the managing director, whole-time director, and manager shall not exceed 11% of the net profits of the company, calculated as per section 198, except with the approval of shareholders through a special resolution.

- In case of inadequate or no profits, the company can pay remuneration in accordance with Schedule V of the Act.

- Maximum remuneration to any one managing or whole-time director is 5% of net profit and if there is more than 1 such directors then 10% of the net profit.

- Remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed 1% of the net profits, if there is a managing or whole-time director or manager and 3% of the net profits in any other case.

- Independent directors are eligible only for sitting fees and profit-related commission, but not for stock options. Additionally, the section mandates disclosure of the ratio of directors' remuneration to the median employee's remuneration in the board's report.

Section 197 – Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

- If a director receives remuneration in excess, he must return the extra remuneration to the company within 2 years, or a shorter period if the company decides.

- Until it's returned, the director must hold that money in trust for the company (i.e., treat it as the company's money, not his own)

- *The auditor of the company shall, in his report under section 143, make a statement as to whether the **remuneration** paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.*

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National Financial Reporting Authority (NFRA)

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NFRA - Applicability

The Authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under section 132 or undertake investigation of the auditors of the following class of companies and bodies corporate, namely:-

a. companies whose securities are ***listed on any stock exchange*** in India or outside India:

b. unlisted public companies having ***paid-up capital of not less than rupees five hundred crores*** or having ***annual turnover of not less than rupees one thousand crores*** or having, in aggregate, ***outstanding loans, debentures and deposits of not less than rupees five hundred crores*** as on the 31st March of immediately preceding financial year;

c. ***insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act*** for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

d. any body corporate or company or person, or any class of bodies corporate or companies or persons, ***on a reference made to the Authority by the Central Government in public interest***; and

e. a body corporate incorporated or registered outside India, which is a ***subsidiary or associate company*** of any company or body corporate incorporated or registered in India as ***referred to in clauses (a) to (d),*** if the income or net worth of such subsidiary or associate ***company exceeds twenty percent of the consolidated income or consolidated net worth*** of such company or the body corporate

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NFRA- Relevant Orders

NFRA imposed ***monetary penalties totaling ₹1.10 crore on the auditors*** of Coffee Day Enterprises Limited (CDEL) for professional misconduct linked to a ₹3,535 crore fund diversion. This action followed SEBI's investigation, which revealed that funds were unlawfully diverted from one company to another group company.

The NFRA found that the ***auditors failed to disclose material facts necessary for presenting a true and fair view of the financial statements***. They also ***neglected to report significant material misstatements, compromising the integrity of the audit process***. Further violations included ignoring evidence of weak internal controls, such as the use of pre-signed cheques by the late Chairman, Mr. V.G. Siddhartha, to carry out transactions without oversight.

As a result, ***NFRA imposed penalties on the audit firm and two individual chartered accountants and debarred them from future audit assignments for a period of 2 and 5 years respectively***. The case highlights the critical role of auditor independence and vigilance in maintaining financial transparency and accountability.

Nicco Uco Alliance Credit Limited

NFRA initiated an investigation under Section 132(4) of the Companies Act, 2013, based on a reference from the Ministry of Corporate Affairs concerning ***financial irregularities in the FY 2015–16 financial statements of M/s Nicco Uco Alliance Credit Limited***, as identified by the ICAI's Financial Reporting Review Board. A firm was engaged for the statutory audit.

NFRA's probe revealed significant lapses by the auditor, including ***failure to report non-compliance with Accounting Standard 11 on foreign currency liabilities, improper presentation of assets under nullified lease agreements, and several violations of Schedule III of the Companies Act, 2013***. The financial statements also contained contradictory EPS values and outdated references to the Companies Act, 1956. These misstatements were neither evaluated for materiality nor addressed in the Independent Auditor's Report.

The auditor was found guilty of professional misconduct for neglecting key auditing standards and failing to ensure proper disclosure and compliance in the audit process. As a result, NFRA ***imposed a monetary penalty of ₹1,00,000 on the auditor for his failure to meet professional auditing responsibilities and maintain audit quality***.

Vikas Proppant and Granite Limited

NFRA initiated an investigation under Section 132(4) of the Companies Act, 2013, into the audit of Vikas, a listed public interest entity, following SEBI's letter highlighting ***lapses in auditing related party transactions (RPTs), Expected Credit Loss (ECL) provisioning, and depreciation***. A firm was engaged for the audit. The investigation revealed that the auditor failed to document the audit strategy and understanding of the client's business as required under SA 300 and SA 315. Related party transactions involving 100% of trade payables and a ₹25 crore land purchase from the MD were not evaluated for arm's length basis or adequately disclosed, violating SA 550 and Sections 177 and 188 of the Companies Act. The auditor also failed to appoint an Engagement Quality Control Reviewer (EQCR), which is mandatory for listed companies under SA 220. Additionally, he did not ensure ECL provisioning despite abnormally high trade receivables compared to revenue, breaching Ind AS 109. NFRA found the auditor guilty of professional misconduct and ***imposed a ₹2 lakh penalty and 2-year debarment from audit-related roles, citing gross negligence and non-compliance with auditing standards***.

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DHFL Matter

NFRA penalized the auditor for professional misconduct in his role as the Engagement Partner for the statutory audit of three branches of Dewan Housing Finance Corporation Limited (DHFL) for the financial year 2017–18. The ***investigation revealed that the auditor accepted the appointment as a Branch Statutory Auditor without valid approval from DHFL's Annual General Meeting***, violating provisions of the Companies Act, 2013, and the Chartered Accountants Act, 1949. Further, he failed to comply with key requirements of the Standards on Auditing (SAs), including maintaining proper audit documentation, indicating a lack of due professional care and diligence in the conduct of the audit.

Based on these findings, NFRA concluded that the auditor was guilty of ***professional misconduct and imposed a monetary penalty of ₹1,00,000***. Additionally, he has been ***debarred for a period of one year from being appointed as an auditor or internal auditor or from undertaking any audit of financial statements or internal audit functions of any company or body corporate***.

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DHFL Matter

NFRA found auditor guilty of professional misconduct in his role as the Engagement Partner (EP) for the statutory audit of six branches of Dewan Housing Finance Corporation Limited (DHFL) for the financial year 2017–18. The investigation revealed that Goswami ***accepted an audit assignment without valid authorization, in violation of Section 139 of the Companies Act, 2013, and ethical standards outlined in the Chartered Accountants Act, 1949***. He failed to ensure that his appointment as branch auditor was legally valid, indicating a lack of due diligence and disregard for statutory compliance.

Furthermore, the auditor did not comply with the Standards on Auditing (SAs), particularly in documenting the audit process and in highlighting material departures from accepted audit procedures. He failed to maintain proper audit documentation, as mandated by SA 230, and neglected his responsibility to raise concerns over irregularities, which could have had significant financial reporting implications.

Based on these findings, ***NFRA imposed a monetary penalty of ₹1,00,000*** on the Auditor under Section 132(4) of the Companies Act, 2013. In addition, he has been ***debarred for one year from being appointed as an auditor or internal auditor or from conducting any audit of financial statements of any company or body corporate***.

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Supreme Court

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“Auditor acts as a watchdog, not a bloodhound”

The Supreme Court of India, in cases like Hindustan Lever Employees’ Union v. Hindustan Lever Ltd., has reinforced this role, emphasizing that ***an auditor acts as a watchdog, not a bloodhound—meaning they must diligently verify financial records but are not responsible for actively investigating fraud unless something suspicious arises***.

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Institute of Chartered Accountants of India v. P.K. Mukherjee

Institute of Chartered Accountants of India v. P.K. Mukherjee (1968), the Supreme Court of India addressed a critical issue of professional misconduct by a chartered accountant auditing a company's provident fund. P.K. Mukherjee, the auditor of Ananda Bazar Patrika Ltd.'s provident fund accounts, discovered that trustees had improperly advanced ₹6.21 lakhs to the company in violation of the fund rules. Although the company issued repayment cheques, the trustees did not encash them, falsely indicating repayment through book entries. ***Despite being aware of this irregularity and expressing concern in a private letter, Mukherjee certified the 1954 financial statements as correct, without disclosing the issue.***

The ICAI's Disciplinary Committee found Mukherjee guilty under clauses (o), (p), and (q) of the Chartered Accountants Act for ***failing to disclose material misstatements***. The case escalated to the Supreme Court, which upheld misconduct under clause (o), highlighting the auditor's responsibility to protect the interests of all stakeholders, including employees. The Court ruled that Mukherjee failed in his duty to disclose the unauthorized loans and the misrepresentation of uncashed cheques.

This case set a precedent emphasizing auditors' ethical obligations, transparency, and the need to act in the public interest, ensuring accurate and honest financial reporting.

Regional Director

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Regional Director Order

The ***Regional Director passed an order under Section 129 of the Companies Act, 2013, concerning non-compliance with the requirement to prepare financial statements in accordance with the prescribed accounting standards***. The case involved a company that ***failed to consolidate the financial statements of its subsidiaries while presenting its standalone financials, thereby violating Section 129(1)*** of the Act and the applicable Companies (Accounts) Rules, 2014. The financial statements lacked a true and fair view of the state of affairs of the company and its subsidiaries, which is a statutory obligation for all companies having subsidiaries.

Upon review, the RD observed that the company did not obtain prior approval from the Board or shareholders to avoid consolidation, nor did it meet any of the exemptions permitted under Rule 6 of the Companies (Accounts) Rules. As a result, it was found to be in contravention of the financial reporting provisions under the Companies Act.

Considering the violation, the RD imposed a ***penalty under Section 137 and Section 129*** on the company and its officers in default. The order emphasized the importance of maintaining transparency and compliance in financial reporting to protect the interests of shareholders and stakeholders.

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Disciplinary Committee

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Relevant orders of Disciplinary Committee

Non-Compliance with Respect to Utilization of IPO Proceeds

The Disciplinary Committee was of the view that the Chartered Accountant ("**CA**") in question was guilty of professional misconduct under Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The case involved his certification of the utilization of IPO funds by a company.

The Committee noted a discrepancy between the proposed and actual utilization of the funds. The certificate issued by the respondent failed to mention that it should be read with the audit report, which contained a qualified opinion. This omission misled stakeholders, including investors.

Given the seriousness of the misconduct, the Committee decided to remove the CA's name from the register of members for 6 (six) months.

Board of Discipline

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Relevant orders of Board of Discipline

Non-Compliance with Respect to Auditor Appointment Procedures

The Board was of the view that the Chartered Accountant (CA) was guilty of professional misconduct under Items (8) and (9) of Part-I of the First Schedule to the Chartered Accountants Act, 1949. The case involved his acceptance of the audit for the Company without obtaining a **No Objection Certificate (NOC) from the previous auditor, and failure to verify the authenticity of the appointment resolution**.

The Board noted that the CA accepted the audit before obtaining the NOC, which was only sought over a year later, and failed to investigate discrepancies in the appointment resolution, which had inconsistencies with **Section 139(1) of the Companies Act, 2013**, regarding the term of the auditor's appointment.

Given the violations, the Board held the CA guilty of misconduct and imposed a fine of Rs. 10,000.

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Thank You!

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About Aekom Legal

Aekom Legal is a boutique corporate law firm operating out of New Delhi with presence in all major forums and cities in India. It was founded by industry veterans Mr. Satwinder Singh and Mr. NPS Chawla, who have experience of more than 30 and almost 20 years, respectively and are supported by a team of over 45 legal professionals who hold multiple qualifications of Company Secretary and Business Administration.

Aekom has an expertise in the practice areas of Mergers and Acquisitions, Securities and Capital Markets, Corporate Laws (including regulatory practices), Joint Ventures, Private Equity and is providing legal, transactional, regulatory, secretarial and advisory services to its clientele which includes HNIs and various major business houses in India and abroad. It also has a dedicated dispute resolution practice dealing extensively with commercial disputes through domestic and international arbitrations, civil proceedings before all major courts in India and specialized tribunals dealing with securities laws, foreign exchange etc.

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