

# Important provisions of Companies Act 2013

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[PDF] **Companies Act, 2013 - India Code**  
[indiacode.nic.in/acts-in-pdf/182013.pdf](http://indiacode.nic.in/acts-in-pdf/182013.pdf) ▾  
Aug 30, 2013 - [29th August,2013.] An Act to consolidate and amend the law relating to companies. ... (1) This Act may be called the Companies Act, 2013.

**Companies Act, 1956 - Ministry of Corporate Affairs**  
[www.mca.gov.in/Ministry/companies\\_act.html](http://www.mca.gov.in/Ministry/companies_act.html) ▾  
Table containing provisions of Companies Act, 2013 as notified up to date and corresponding provisions thereof under Companies Act, 1956 is available for ...

# Interesting numbers...

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Words commonly found	Instances in Cos Act 1956	Instances in Cos Act 2013
Prescribed	209	416
Central Government	685	384
Fraud	20	73
Auditor	145	160
Corporate Social responsibility	0	14
Private Company	190	26
Key managerial personnel	0	55
Related party	4	15
Relative	32	10
Thousand	181	122
Lakh	32	191

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# Accounts

Kindly note that provisions pertaining to Financial Statements & Board report shall be applicable in respect of financial years commencing on or after 1st April 2014

# Sec 128 – Books of Accounts etc.

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- Books of Account – defined to include records in respect of money received & expended, sales & purchases of goods & services, assets & liabilities, and cost records
- Books of Account to be maintained on double entry accrual basis
- These should be maintained at registered office – electronic mode permissible provided Books remain accessible in India at all times.
- Periodic back up to be kept in servers located in India.
- In case of Books maintained on ‘cloud’, name of service provider, IP address & location of service provider to be communicated to ROC on annual basis, at time of filing of financial statements
- Board can decide to keep Books at location other than registered office
- Books in respect of 8 financial years needs to be maintained – where Central Government has ordered an inspection, it may direct a longer period

# Key definitions

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- Financial statement – [sec 2 (40)] –
  - Defined to include balance sheet,
  - profit & loss account / income & expenditure account,
  - cash flow statement,
  - [statement of changes in equity](#), if applicable,
  - explanatory notes
- Financial statement for small / dormant company / OPC not to include cash flow statement
- Financial year – [ sec 2 (41)] –
  - Defined as period ending on 31<sup>st</sup> March every year;
  - Where company is incorporated after 1<sup>st</sup> Jan in a year, financial year will be till 31<sup>st</sup> March of the next year
  - Companies given 2 years to align financial year to April – March

# Key definitions

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- In case a company is a holding / subsidiary company of a company incorporated outside India, and such company is required to consolidate its accounts outside India, a different financial year can be followed subject to approval by the Tribunal
- Subsidiary company [Sec 2 (87)] means a company in which the holding company
  - Controls composition (>50%) of the Board
  - Exercises or controls more than 50% of total share capital either by itself or together with one or more subsidiaries
- Limits to be prescribed on number of layers of subsidiaries
- Definition of subsidiary already in force except part pertaining to layering of subsidiaries
- Total share capital = paid up equity capital + convertible preference share capital

# Key definitions

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- Scenarios determining whether a company is a subsidiary or not:

Total share capital of Z Ltd (Rs. Lakhs)	
Equity share capital	100
Convertible Preference share capital	100
Total share capital	200

- Scenario 1 : A Ltd holds 60% of equity share capital & 50% of convertible preference share capital, with balance held by B Ltd
- Scenario 2 : A Ltd holds 51% of equity share capital. B Ltd holds 49% of equity capital and 100% of convertible preference capital



# Sec 129 – Financial statement

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- Financial statements to show true & fair view and need to be as per accounting standards.
- Board of Directors to lay before every annual general meeting the financial statements for the financial year.
- In case a company has any subsidiaries, associates or joint ventures, consolidated financial statements will also need to be placed at the AGM.
- Company to disclose deviations, if any, from accounting standards along with reasons and financial effects thereof.
- Company to give key details of subsidiaries, associates and joint ventures in a separate statement along with financial statements.
- In case of consolidation, specific format has been prescribed for [additional information in Schedule III](#)

## Sec 129 – Financial statement (continued..)

Scenario	Impact
1) A Ltd holds 51% in B Ltd	CFS of A Ltd (including B Ltd) to be presented
2) A Ltd holds 51% in B Ltd. B Ltd in turns holds 100% in C Ltd	CFS of A Ltd (including B Ltd and C Ltd) to be presented CFS of B Ltd (including C Ltd) also to be presented)
3) A Ltd holds 25% in B Ltd	CFS of A Ltd (including B Ltd) to be presented – since B Ltd is an Associate

# Sec 133 – Accounting standards

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- Central Government to prescribe accounting standards recommended by ICAI, in consultation with and after examination of recommendations made by NFRA.
- As per General Circular no. 15/2013, existing accounting standards notified under Companies Act 1956, shall continue to be applicable.
- Companies Accounting Standards Rules (2006)

# Schedule II – Depreciation

Asset type	Useful life (Cos Act 1956)	Useful life (Cos Act 2013)
Non-factory buildings (RCC frame structure)	61 years	60 years
Non-factory buildings (Non-RCC frame structure)	61 years	30 years
General Plant & Machinery	21 years	15 years
Furniture & fittings	16 years	10 years
Cars	11 years	6 years
Desktops, laptops, etc	6 years	3 years

- Alternative methods of charging depreciation recognised
- Useful life for intangible assets to be as per Accounting Standards
- Residual value to be 5% of cost & useful life to be as per table, unless otherwise supported by technical advice
- Not necessary to write off assets < Rs. 5000 to P&L A/C

## Schedule II – Depreciation (Continued..)

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- Concept of “component accounting” now recognised – voluntary in FY14, compulsory from FY15
- Carrying amount **shall** be depreciated over “remaining” useful life – if this is 0, company **may** adjust the carrying amount in retained earnings
- Case study – Laptop computer – Depreciation charged on SLM basis

Scenarios	Date of purchase	Cost as of purchase date (Rupees)	WDV as of 1 April 2014 (Rupees)
Scenario 1	1 April 2012	30,000	20,000
Scenario 2	1 April 2011	30,000	15,000
Scenario 3	1 April 2013	30,000	25,000

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# Board's report

# Sec 134 – Board's report

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## Additional items required to be covered as per Companies Act 2013 –

- Extract of Annual Return – key highlights here include;
  - Principal business activities
  - Particulars of holding, subsidiary & associate companies
  - Shareholding pattern (category wise, promoters shareholding, change in promoters shareholding, top 10 shareholders, shareholding of directors & KMP
  - Indebtedness of Company
  - Remuneration to Directors & KMP
  - Penalties, compounding of offences and punishment for company and directors during the year
  - Exact format given in form [MGT-9](#)
- Details of number of meetings by the Board

## Sec 134 – Board’s report (continued...)

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- Statement of Declaration by Independent director, that he / she meets the criteria to be called an independent director.
- Statement by Board in its report, for the first time every independent director is appointed that he / she has [appropriate skills, knowledge and experience](#).
- For every public company with paid up capital > Rs. 10 crores, or turnover > Rs. 100 crores, or indebtedness > Rs. 50 crores, state company’s policy on director’s appointment, remuneration etc.
- Comments to be made on adverse remarks in Secretarial audit report.
- Particulars of key loans, guarantees and investments.
- Particulars of related party transactions – contracts on arm’s length basis and contracts not on arm’s length – [Form AOC-2](#)
- Statement on [risk management policy](#), including identification of risks which may threaten the existence of the company



## Sec 134 – Board’s report (continued...)

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- CSR initiatives during the year – [Annexure to be included in Board’s report](#)
- For listed companies and public companies with paid up capital > 25 crores, manner in which formal evaluation has been made by Board of its Board and committee performance.
- Statement of changes in directors, subsidiaries, deposits, etc.
- Statement on orders passed by regulators which affect going concern status.
- Director’s responsibility statement to include;
  - In case of listed companies, adequate internal financial controls were laid down and that they were operating effectively
  - Adequate and proper systems were devised to ensure compliance with all applicable Laws and such systems were adequate and operating effectively.

# Sec 134 – Board’s report (continued...)

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Items required to be included under Companies Act 1956 and continued under Companies Act 2013 –

- Statement on company’s affairs – this should include details of performance of company and each of its subsidiaries/associates/JVs
- Amounts to be carried to reserves
- Proposed dividends
- Material changes between balance sheet date and date of Board report
- Conservation of energy, technology absorption, foreign exchange earnings & outgo

## Sec 134 – Board’s report (continued...)

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Matters to be mentioned in Board’s report (as covered in other sections of the Act)

- Detailed reasons for revision of financial statements in the financial year when such revision is made
- Details of whistleblower mechanism / vigil mechanism in case of listed companies
- Detailed disclosures with respect to [managerial remuneration](#) & analysis thereof for listed companies
- Secretarial audit report to be attached with Board’s report where applicable

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## Other matters pertaining to Chapter IX

# Sec 136 – Financial statement copies

Type of company	Delivery of financial statements			
	Electronically	Physically	Uploaded on website	Inspection at regd office
Listed companies	Allowed, if members have consented to receive as such	Required (for other members), Abridged documents can be sent	Compulsory	Compulsory
Public companies – NW>1 cr & turnover >10 cr	Same as above	Same as above. Abridged documents cannot be sent	Not required	Compulsory
Other companies	Not Clear (may be possible as above)	Same as above. Abridged documents cannot be sent	Not required	Compulsory

- 21 days notice required
- Every company having subsidiary – to put subsidiary accounts on its website & give physical copy to every member who requests as such – Not clear whether this shall apply to subsidiaries of even private companies

# Sec 137 – Filing with Registrar

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Scenario	What should be filed with Register
AGM held within 6 months of financial year, and financial statements are adopted	Financial statements – within 30 days from AGM date
Financial statements are not adopted at AGM	Unadopted financial statements – within 30 days of AGM date
Financial statements subsequently adopted at adjourned AGM	Adopted financial statements – within 30 days of adjourned AGM date
AGM itself is not held	Financial statements along with reasons for not holding AGM – within 30 days of typically 30 <sup>th</sup> September
OPC	Adopted financial statements – within 180 days from closure of financial year (i.e. typically by 27 <sup>th</sup> September)

# Sec 138 – Internal audit

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- For which companies is internal audit compulsory?
  - Listed companies
  - Unlisted public company with paid up capital > Rs. 50 crores, or turnover > Rs. 200 crores, or o/s loans > Rs. 100 crores, or o/s deposits > Rs. 25 crores
  - Private company with turnover > Rs. 200 crores, or o/s loans from banks / FIs > Rs. 100 crores
- Who can be appointed as an internal auditor?
  - Chartered Accountant (in practice or otherwise)
  - Cost Accountant
  - Any other professional, as may be decided by Board

# Consequences of default – Chapter IX

Section & Default	Party in default	Imprisonment term	Fine range (Rupees '000s)
128 – Books of accounts	MD/WTD/ CFO	1 year	50 - 500
129 – Financial statement	MD/WTD/CFO	1 year	50 – 500
134 – Board’s report	Company		50 – 2500
	Officer in default	3 years	50 - 500
136 – Copies of financial statements	Company	NA	25
	Officer in default	NA	5
137 – Filing of financial statements	Company	NA	1K / day – 500K
	Officer in default	6 months	100 - 500

- Consequences of default in the above cases are either imprisonment or fine or both



# Sec 135 – CSR

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- Every company with NW > Rs. 500 crores, or turnover > Rs. 1000 crores, or net profit > Rs. 5 crores during any financial year to constitute a CSR committee
- CSR committee to have minimum 3 directors (out of which 1 director to be independent)
- Company to spend at least 2% of average net profits of previous 3 years on CSR activities
- These CSR activities to include activities mentioned in [Schedule VII](#) – Emphasis is to spend in & around place of operation of the business.
- CSR also applicable to foreign companies operating in India if they are covered by the eligibility norms
- Requirements in respect of CSR are encouraged. No penal provisions stated if provisions are not complied with.

# Class action – implication for auditors

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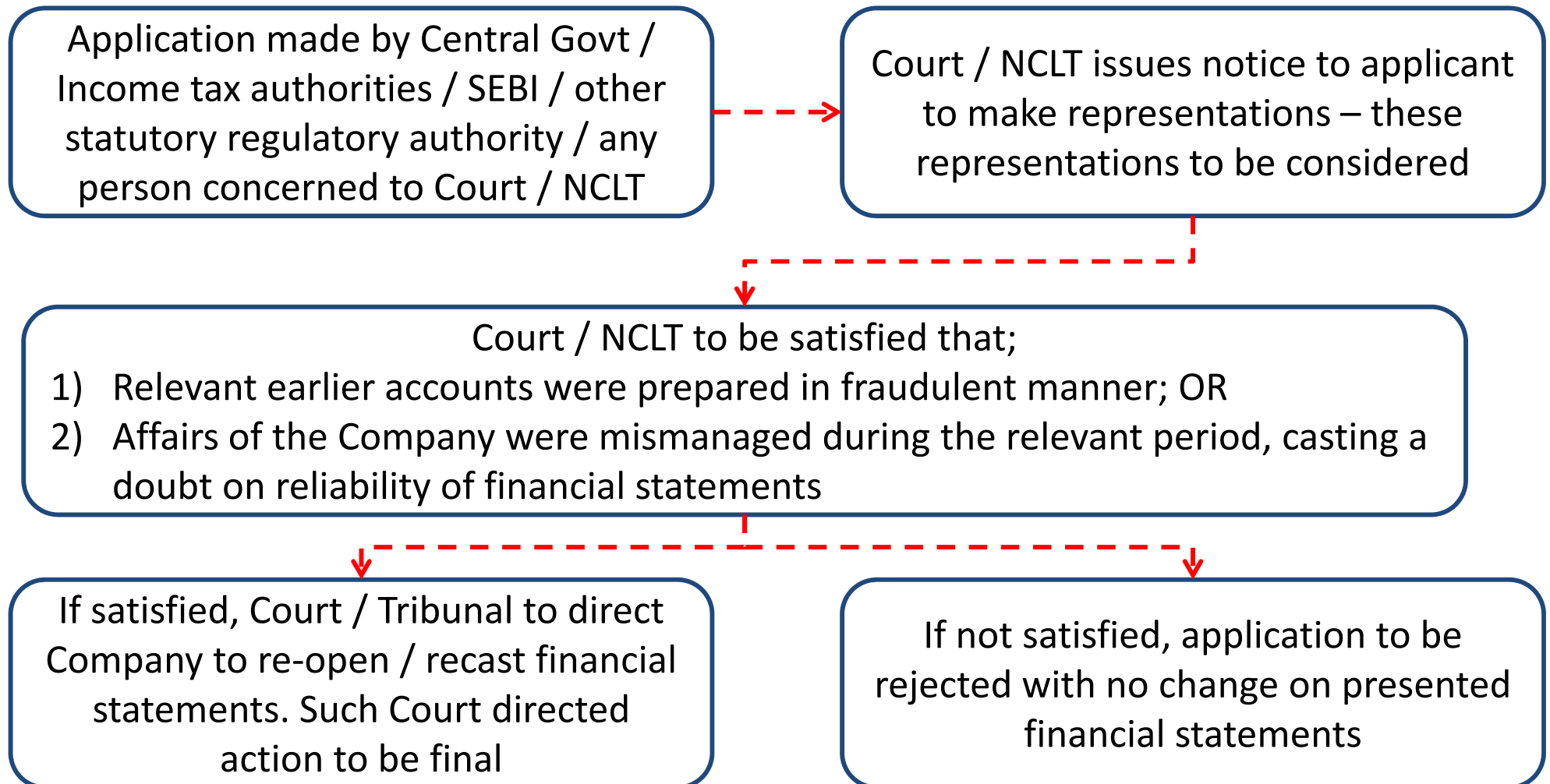
- **What is Class action?** – A lawsuit filed or defended by an individual or small group acting on behalf of a large group
- **Who can sue?** – Shareholders (at least 100 shareholders) or depositors (at least 100 depositors) or an association representing such affected persons
- **What can they claim from auditors?** – damages / compensation / any other suitable action
- **Compensation for what?** – improper / misleading statement of particulars made in audit report or for any fraudulent, unlawful or wrongful act or conduct
- **Who is liable to pay?** – In case of audit firm, the firm itself as well as each partner who was involved in making improper / misleading statements or who acted fraudulently
- **What about frivolous applications?** – Tribunal can reject application & direct applicant to pay Rs. 1 lakhs to other party

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**Sections yet to be notified**

# Sec 130 – Reopening of Accounts

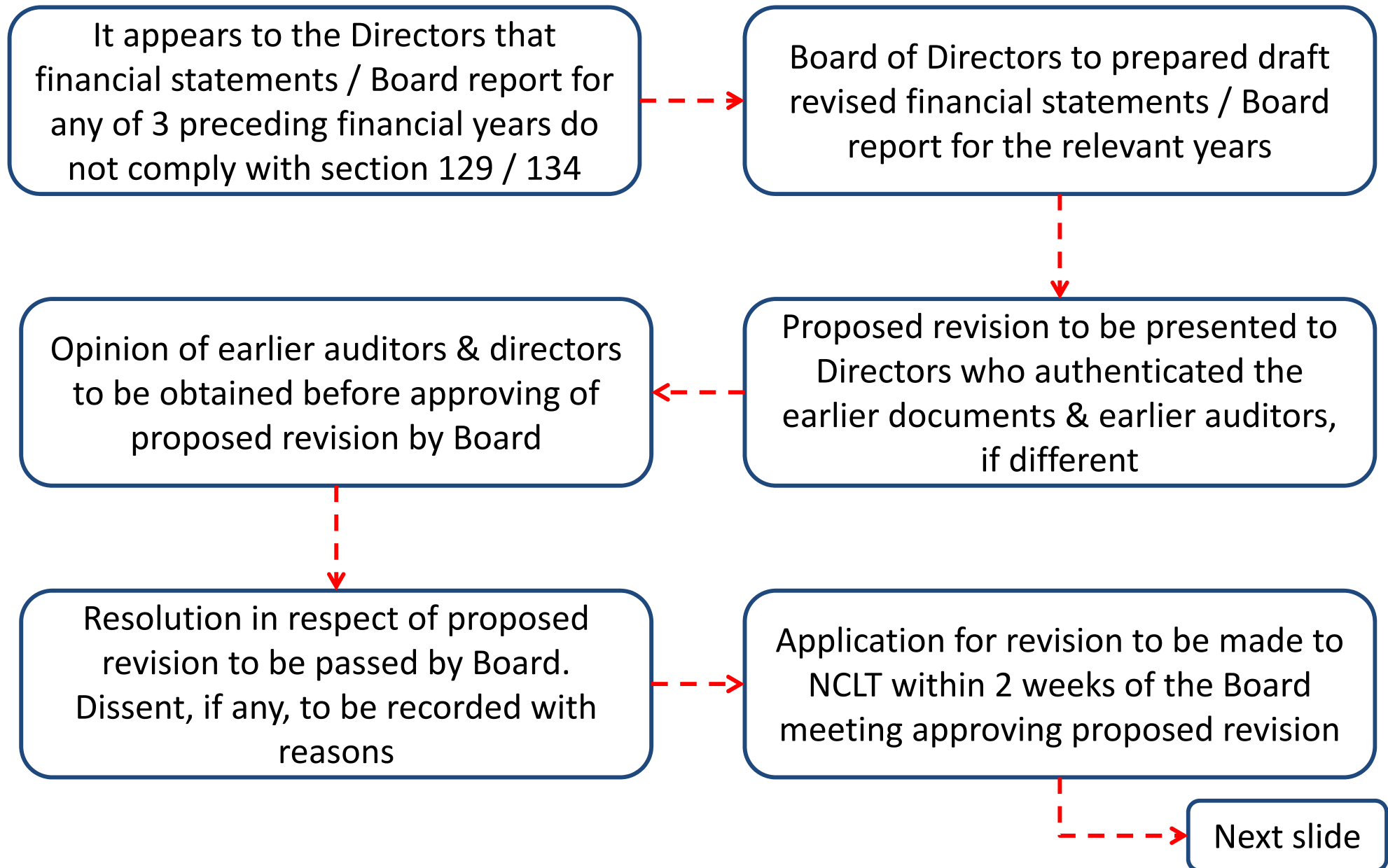
Not in force



- Whether statutory regulatory Authority can be ICAI? / Who is any person concerned – remains to be seen

# Sec 131 – Voluntary revision

Not in force



# Sec 131 – Voluntary revision

Not in force

Earlier slide

NCLT to issue notice and hear submissions of auditor of earlier financial statements

NCLT to also issue notices to Central Govt / Income Tax Authorities & consider their representations

Copy of NCLT Order to be filed with Registrar within 30 days

NCLT to pass orders approving / rejecting / approving with modifications, the revised financial statements / Board report

Revised audit report to be issued by auditor currently holding position of auditor.

In case revised audit report contains qualification, that aspect to be appropriately dealt with in revised Board's report

Next slide

# Sec 131 – Voluntary revision

Not in force

Earlier slide

A General meeting shall be called by the Board. The following documents to be put up for consideration –

- 1) Revised financial statements / Board report
- 2) Reasons for revisions
- 3) Statement of earlier Directors & Auditors
- 4) Revised audit report
- 5) In case auditor who signed earlier financial statement is different from current auditor, consent letter from earlier auditor – if auditor refuses to accord consent for the revision or if such letter is not obtainable, reasons for a different opinion or inability to procure the consent to be explained.

Members to approve the revised financial statements at the General meeting

Revised financial statements / revised Board report, along with the revised audit report to be filed with Registrar within 30 days

# Sec 131 – Voluntary revision

Not in force

- Revised financial statement or report should not be prepared or filed more than once in a financial year.
- Auditor to review steps taken by Company to ensure that revision of financial statements / Board report is appropriately communicated to all stakeholders.
- Revised auditor report should contain a paragraph in **bold** explaining the reasons for the revision of the financial statements with cross reference to earlier auditor's report.
- Financial statements for succeeding years have to be necessarily revised to give effect to consequential alterations.
- Open question – whether revised financial statements can again be revised?
- Guidance from ICAI to earlier and current auditor – ?



# Sec 132 – NFRA – Scope

Not in force

- Make recommendations to Central Government on formulation of accounting & auditing standards
- Monitoring and enforcing compliance with accounting standards and auditing standards
- Oversee quality of service by CA profession and suggest measures required for improving such service

## Coverage by NFRA

Investigation and audit quality review of following class of companies;

1. Listed companies
2. Unlisted companies with NW/paid up cap > 500 cr or turnover > 1000 cr
3. Companies with securities listed outside India

Investigation against auditors or audit firms which conduct audit of;

1. >200 companies in a year
2. >20 listed companies
3. Criteria at point 2 to the left
4. Companies with securities listed outside India

Irrespective of above, NFRA may suo moto investigate any case irrespective of size

# Sec 132 – NFRA – Powers

Not in force

- Investigate in to matters of professional misconduct committed by members / firms of ICAI – During pendency of such investigation, ICAI shall not have power to investigate
- Powers similar to those vested in a civil court to complete the investigation
- If professional / other misconduct is proved, power to
  - Impose penalty between Rs. 1 lakhs and 5 times of fees, for individuals
  - Impose penalty between Rs. 10 lakhs and 10 times of fees, for firms
  - Debar members / firms from practice for period between 6 months and 10 years
- Appeal against above order to be preferred to an Appellate Authority to be constituted

# Sec 132 – NFRA – Composition

Not in force

1. Chairperson
  2. Member – Accounting
  3. Member – Auditing
  4. Member – Enforcement
  5. MCA representative
  6. RBI representative
  7. SEBI representative
  8. Retired Chief Justice of a High Court / High Court Judge for at least 5 years – to be nominated by Central Government
  9. President of ICAI
- Positions at points 1 to 4 above shall be full time members, whereas others shall be part time members.
  - Chairperson, member–accounting & member-auditing must be CAs

# Sec 132 – NFRA – Functions

Not in force

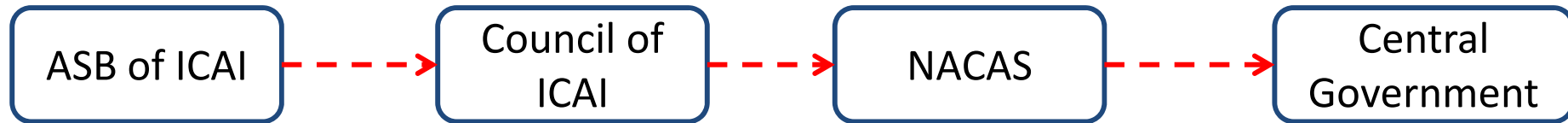
- NFRA shall work through the following committees;

Committees	Functions
Committee on Accounting Standards – consists of 8 members	<ul style="list-style-type: none"><li>• Formulate accounting standards and recommend them to NFRA</li><li>• Monitoring compliance with accounting standards</li></ul>
Committee on Auditing Standards – consists of 7 members	<ul style="list-style-type: none"><li>• Formulate auditing standards and recommend them to NFRA</li><li>• Monitoring compliance of auditors with accounting &amp; auditing standards</li></ul>
Committee on Enforcement – consists of 7 members	<ul style="list-style-type: none"><li>• Investigate matters referred by NFRA pertaining to professional and other misconduct committed by auditor and recommend appropriate action</li></ul>

# Standard setting process

Not in force

Currently followed for accounting standards applicable to companies



Proposed as per Companies Act 2013

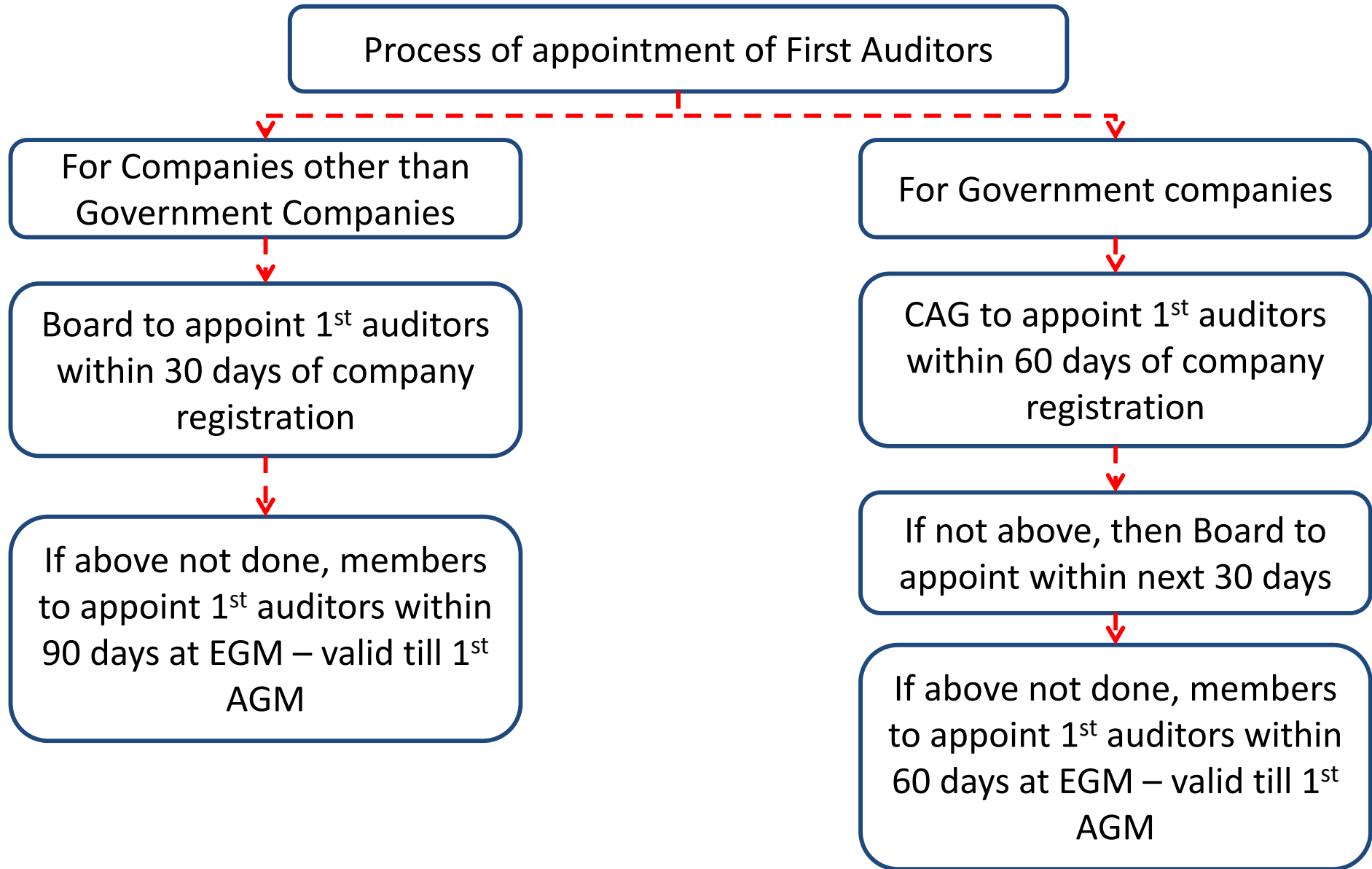


- A similar process as above will be followed for auditing standards
- Currently accounting standards applicable for companies are notified under Companies Accounting Standards Rules
- ICAI will continue to regulate auditors of companies not covered by NFRA (if any), as well as auditors of other legal entities

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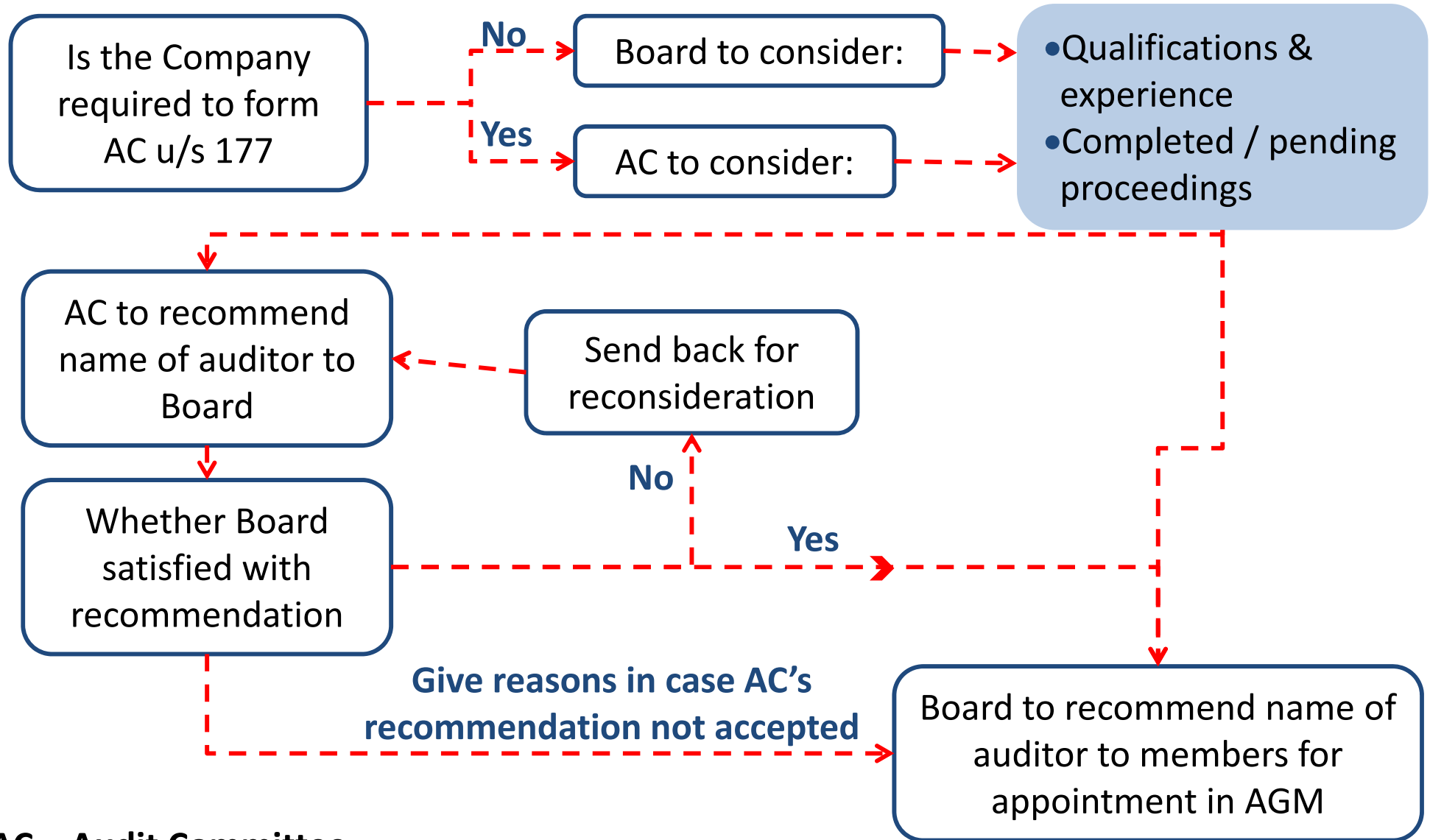
# Audit & Auditors

# Sec 139 – Appointment of Auditors



# Sec 139 – Auditors appointment (continued..)

## Process of appointment of Auditors in existing Companies / at 1<sup>st</sup> AGM



**AC = Audit Committee**



# Sec 139 – Auditors appointment (continued..)

## Other conditions

- An individual or a firm can be appointed as auditor
- The term of appointment will be 5 years
- The appointment shall be confirmed by ratification at each AGM
- Proposed auditor has to submit certificate that he / it is eligible to be appointed, and the conditions pertaining to term and limit are met
- Company to file notice of auditor appointment within 15 days
- In case of Government companies, CAG to appoint auditor within 180 days of commencement of financial year
- Retiring auditor to be reappointed unless he is disqualified, he has expressed unwillingness, or special resolution passed appointing another auditor / refusal to re-appoint existing auditor
- At AGM, where no auditor appointed – existing auditor to continue

# Sec 139 – Auditor rotation

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## Concept & process of auditor rotation

- Individual cannot be auditor for continuous period of > 5 years
- Audit firm cannot be auditor for continuous period of > 10 years
- Cooling period of 5 years after above tenure
- Members in AGM may decide to rotate audit signing partner / team.
- Provisions regarding rotation are to be applied retrospectively – however, 3 years time to give effect to provisions of auditor rotation (from notification of date of the section)
- Incoming auditor not eligible for appointment if it has common partner / partners with outgoing firm (on the date of appointment)
- Incoming auditor not eligible if associated with outgoing auditor under same network / trade mark / brand
- Joint auditors can also be appointed – provided all joint auditors do not complete term in same year

# Sec 139 – Auditor rotation (continued...)

## To which companies is auditor rotation applicable?

- Auditor rotation is applicable to;
  - All Listed Companies
  - Unlisted public companies with paid up capital > Rs. 10 crores
  - Private companies with paid up capital > Rs. 20 crores,
  - All companies with o/s loans / deposits > Rs. 50 crores
- Auditor rotation not applicable to OPC & small companies

Type of auditor	Number of years of consecutive audit (in 1 <sup>st</sup> AGM to be held in Sep 2014)	Maximum consecutive years for which appointment can be made
Individual	5	3
Individual	1	4
Firm	10	3
Firm	6	4
Firm	1	9

## Sec 139 – Auditor rotation (continued...)

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- Definition of small company [sec 2 (85)] – A company other than public company –
  - Where paid up capital < Rs. 50 lakhs or higher amount not > Rs. 5 crores (to be prescribed); **OR**
  - Turnover < Rs. 2 crores or higher amount not > Rs. 20 crores (to be prescribed)
- Following are not small companies –
  - Holding & subsidiary company
  - Company registered under section 8
  - Company / body corporate governed under any special Act

# Sec 140 – Change in auditors

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## Casual Vacancy

- Casual vacancy caused in the office of auditor in case of Government companies to be filled by CAG within 30 days – if CAG does not do so, Board shall fill the vacancy within next 30 days.
- In case of other companies, casual vacancy to be filled by the Board within 30 days – if such casual vacancy is caused due to auditor resignation, Board recommendation for appointment of new auditor to be confirmed at EGM convened within 3 months.

## Removal by Tribunal

- Tribunal can suo moto or on application of Central Government direct company to change auditor, if it is satisfied that auditor has acted in fraudulent manner.
- If above application is made by Central Government, Tribunal to decide within 15 days & Central Government can appoint another auditor
- The 'removed' auditor cannot function as auditor of any company for 5 years. Firm liable for fines but only partners liable for effects of fraud

# Sec 140 – Change in auditors (continued..)

## Removal of auditors

- Application for removal of auditor to be filed with Central Government within 30 days of Board meeting resolving thus
- EGM to be held within 60 days of receiving approval from Central Government
- Removal to be valid only after confirmation through special resolution at EGM

## Resignation by auditors

- Resigning auditor to file prescribed form for resignation with Company & ROC within 30 days of resignation
- In case of Government companies, statement to be filed with CAG
- Reasons for resignation to be specified in both situations above

## Non-reappointment

- Special notice to be given if existing auditor is not to be re-appointed
- Company to send such proposed resolution to the auditor
- Auditor's representation on the notice, if any, to be sent by company to members
- If not sent to members, auditor may read it at AGM

# Sec 141 – Auditor eligibility, etc

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- Only chartered accountant can be appointed as auditor
- Definition of chartered accountant – [Sec 2(17)]
  - Member of ICAI
  - Who holds certificate of practice
- Multi-disciplinary partnership firms allowed to be appointed as auditors, provided signing partner is a chartered accountant.
- ICAI yet to issue guidelines for operationalisation of multi-disciplinary firms.

## Sec 141 – Auditor eligibility, etc (Continued..)

Following persons not eligible for appointment as auditor;

- Body corporate (LLPs are eligible)
- Officer or employee of Company
- Partner / employee of officer / employee of Company
- CA, if he / relative / partner
  - Holds security / interest in company / subsidiary / holding co. / associate co. / subsidiary of holding co (Relative is allowed to hold securities with face value up to Rs. 1 lakh)
  - Indebted to abovementioned company / companies exceeding Rs. 5 lakhs
  - Given guarantee / provided security in connection with indebtedness of third person to abovementioned companies exceeding Rs. 1 lakhs

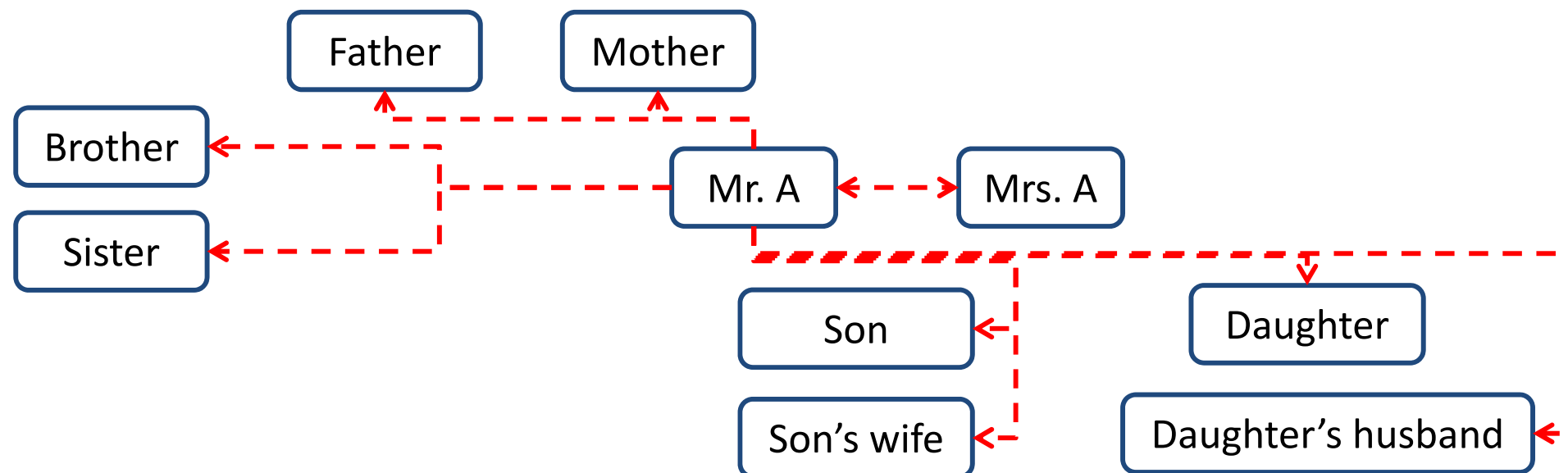


## Sec 141 – Auditor eligibility, etc (Continued..)

- CA or firm who have business relationship with abovementioned companies (business relationship not to include professional services allowed to be rendered by a CA, as well as commercial transactions which are on arm's length basis)
- CA whose relative is director / KMP in the company
- CA who is in full time employment elsewhere / holding appointment as auditor of more than 20 companies at the date of re/appointment
- CA convicted of offence involving fraud and 10 years yet to pass
- CA / firm / subsidiary / associate company is engaged in consulting services mentioned u/s 144 to the company.
  
- Auditor who incurs any disqualification as above after date of appointment, to automatically vacate office – to be treated as casual vacancy.

## Sec 2 (77) – Definition of relative

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- Relatives include all members of HUF
- Father, mother, son, brother, sister also includes step-relations

# Sec 142 – Auditor remuneration

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- Auditor remuneration to be fixed in AGM or by discussion between Board and auditors, if so authorised by the AGM
- Remuneration of 1<sup>st</sup> Auditor to be fixed by the Board
- Auditor remuneration to include expenses incurred by him in connection with the audit and any facility extended to him.

- Does cost of putting an auditor in a company guest house while undertaking the audit, be construed as a facility?

# Sec 143 – Auditor to inquire into...

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- Auditor shall inquire in to the following while conducting his audit;
  - Whether loans and advances are secured & whether terms are prejudicial to interests of company / members
  - Whether transactions represented by book entries are prejudicial to interests of company
  - In case of company (other than investment company / bank), whether any shares / debentures / securities are sold at less than cost price
  - Whether loans and advances are shown as deposits
  - Whether personal expenses are charged to revenue
  - Whether cash has actually be received, if it is disclosed in Books that shares are issued for cash
- Auditor shall have access to Books of company and all its subsidiaries.

# Sec 143 – Auditors' report

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- Auditor to report whether financial statements show a true and fair view of the balance sheet, profit or loss and cash flow for the year
- Auditor's report to also state –

## Matters covered under Companies Act 1956

Whether all information necessary for the purposes of audit were sought & obtained

Whether proper books of account have been kept by the company / branch

Whether branch audit report received & how it has been dealt with

Whether BS/P&L are in agreement with Books

Whether financial statements comply with Accounting Standards

Observations / comments on financial transactions / matters which have adverse effect on company's functioning

Any disqualification of director

# Sec 143 – Auditors' report (continued..)

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## Additional matters introduced by Companies Act 2013

Any qualifications, reservations, adverse remark relating to maintenance of accounts

Whether company has adequate internal financial controls in place and operating effectiveness of such controls

Whether company has disclosed effect of pending litigation on financial position

Whether company has made provision for foreseeable losses on long term contracts, including derivatives contracts

Whether any delay in depositing money in IEPF

- Auditors to comply with auditing standards issued by NFRA after consultation with ICAI

# Sec 143 – CAG / branch audits

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## CAG audits

- CAG to appoint auditors in case of Government companies and direct the manner in which audit should be conducted and reported upon.
- CAG can conduct a supplementary audit within 60 days from date of receipt of audit report from auditor. Alternatively, CAG can comment upon / supplement such audit report
- Comments of CAG, as above, to be sent to all members and placed in AGM along with audit report
- CAG may also conduct test audit of any Government company

## Branch audits

- Appointment of branch auditor – Branch in India – company auditor / any CA appointed by Company; Branch outside India – company auditor / person duly qualified to act as auditor in that country
- Branch auditor to submit report to company auditor – All responsibilities of reporting similar to company auditor

# Sec 143 – Fraud reporting

Auditor has sufficient reason & information to believe that fraud is / has been committed against company by officers / employees

Auditor to send report to AC / Board

AC / Board to reply within 45 days

Auditor to send report to Central Government (MCA) within 15 days of above (irrespective of whether AC / Board reply with comments)

- Auditor not liable if reporting done in good faith
- Fraud (sec 447) in relation to affairs of company includes
  - Act / omission / concealment of fact / abuse of position
  - committed by person or with connivance in any manner,
  - with intent to deceive / gain undue advantage from / injure interests of
  - company or shareholders or creditors or any other person
  - whether or not there is any wrongful gain or wrongful loss



# Sec 144 – Restrictions on services

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- Auditor of a company not to provide following services to a company or its holding company / subsidiary, either directly or indirectly;
  - Accounting & book keeping
  - Internal audit
  - Design / implementation of any financial information system
  - Actuarial services
  - Investment advisory services
  - Investment banking services
  - Rendering of outsourced financial services
  - Management services
  - Services prescribed (no services prescribed under Rules)
- Directly / indirectly includes through firm / partner / relative / common trade name / brand / entity in which partner has significant control / influence

# Auditors – other aspects

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- Audit report to be signed by Auditor
- Qualifications / observations / comments on financial transactions which have adverse effect on company's functioning to be read at AGM and kept for inspection
- Auditor shall attend AGM, unless expressly exempted by the company – he can also be represented by a representative

# Consequences of default – Chapter X

Section & Default	Party in default	Imprisonment term	Fine range (Rupees '000s)
Sec 140 (3) – Resigning auditor	Auditor	NA	50 – 500
Sec 143 – Fraud reporting	Auditor	NA	100 – 2500
Sec 139 to Sec 146	Company	NA	25 – 500
	Officer in default	1 year	10 – 100
Auditor – no fraudulent intention		NA	25 – 500
Auditor – with fraudulent intention		1 year	100 – 2500

- Consequences of default in the above cases are either imprisonment or fine or both
- In case where auditor has been convicted for intention to deceive, he has to refund remuneration and pay damages for losses arising out of misleading financial statements – this liability is of the partner & of the firm jointly & severally.

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# Directors

# Snapshot – Directors requirements

Public companies	Independent director	Woman director	Audit Committee	Nomination & Remuneration committee
Listed companies	✓	✓	✓	✓
Paid up cap ≥ Rs. 10 cr	✓		✓	✓
Paid up cap ≥ Rs. 100 cr	✓	✓	✓	✓
Turnover ≥ Rs. 100 cr	✓		✓	✓
Turnover ≥ Rs. 300 cr	✓	✓	✓	✓
O/s loans, debentures, deposits ≥ Rs. 50 cr	✓		✓	✓

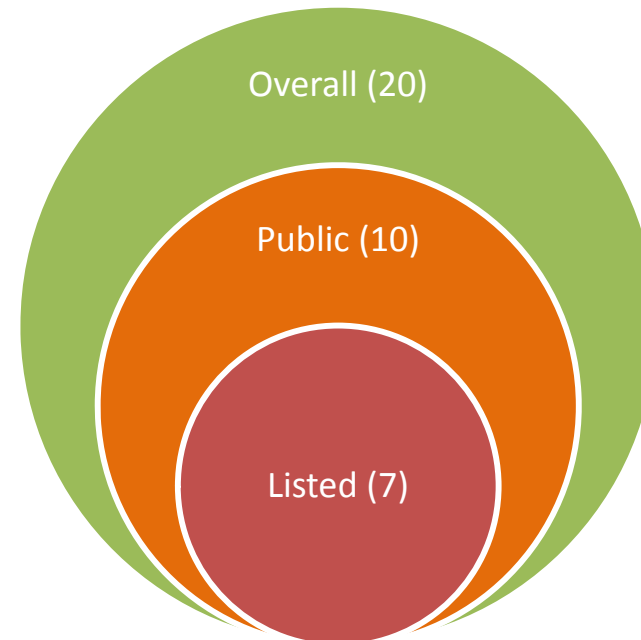
- Paid up capital / turnover / loans / deposits as of last date of latest audited financial statements to be taken in to account
- Time period of 1 year given to comply with provisions of this section. Minimum requirement of at least 2 independent directors where criteria met. Listed companies to have at least 50% NEDs. 1/3<sup>rd</sup> of Board to be independent in case Chairman is NED & not a promoter. Else 50% of Board to be independent.

# Directors – key numbers

## Other Requirements

- Requirement to have at least 1 resident director in every company
- MD has to be resident in India
- Maximum 15 Directors – can be increased through special resolution
- At least 1 independent director to be on Board of material non-listed Indian subsidiary

## Limits on directorships



- Directorship in holding/subsidiary cos of public companies to be treated as directorship in public cos
- WTD in listed company can serve as independent director in only 3 listed cos

# Directors – tenure & remuneration

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## Tenure

- For independent directors – 10 years (5 + 5) – reappointment through special resolution – tenure is prospective

## Remuneration

- No changes in overall ceiling limits
- No ESOPs allowed for independent directors
- Sitting fees limit extended to Rs. 100,000 per meeting

## Independent directors liability

- Independent directors / non-executive non-promoter directors to be liable only in respect of matters which occurred with knowledge / connivance / consent or where he had not acted diligently

# Qualifications for independent directors

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- Who, in Board's opinion, is a person of integrity & possesses relevant expertise & experience,
- who is / was not a promoter of company / Group; and is / was not related to promoters / directors
- who does not have pecuniary relationship with company / Group during last 2 / current financial year
- Whose relatives do not have pecuniary relationship exceeding 2% of gross turnover or total income of Rs. 50 lakhs, whichever is lower, in current / last 2 financial years
- Who or his relative has not been KMP in company / Group in past 3 financial years
- Who or his relative has not been partner in firm of CA/CS/CMA who were auditing Books of Company / Group in past 3 financial years



# Qualifications for independent directors

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- Who or his relative has not been partner in legal / consulting firm who has transactions in past 3 financial years with company / group exceeding 10% of turnover of the Firm
- Who along with relatives does not hold >2% of voting power
- Who or his relative do not run an NGO which receives >25% of receipts from company / promoters / Group; or holds >2% voting power in company
- Who or his relatives is not a material supplier, service provider or customer or lessor or lessee of the company (*additional condition prescribed by listing agreement*)

# Sec 166 – Duties of Directors

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- Director shall act in accordance with articles
- Director shall act in good faith in order to promote objects of the company for the benefit of its members as a whole, and in the best interests of the company, *its employees*, shareholders, *the community & for protection of environment*
- Director shall exercise duties with due care, skill & diligence
- Director shall not involve in a situation in which he may have direct or indirect conflict with interests of the company
- Director shall not achieve or attempt to achieve undue advantage to himself / relatives etc.
- If a director contravenes provisions of this section, such Director shall be punishable with fine not less than Rs. 1 lakhs but which may extend to Rs. 5 lakhs.

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# Board committees

# Audit Committee

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The terms of reference of an audit committee shall include;

- Recommendation for appointment, remuneration & terms of appointment of auditors of the company
- Review and monitor auditor's independence & performance, and effectiveness of audit process
- Examination of financial statements & auditor's report
- Approval & subsequent modifications to related parties transactions
- Scrutiny of inter-corporate loans & advances
- Valuation of undertakings or assets of company, wherever necessary
- Evaluation of internal financial control & risk management systems
- Monitoring end use of funds raised through public offers
- Reviewing structure, staffing & adequacy of internal audit
- Review functioning of the Whistle blower mechanism
- Approval of appointment of CFO

# Other committees of the Board

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## Nomination & Remuneration committee

- Composition – 3 or more non-executive directors (at least half to be independent). Chairman of the committee to be independent. Chairman of company can not chair the committee.
- Terms of reference –
  - Formulation of criteria for evaluation of independent directors & the Board
  - Recommend to Board, names of persons to be appointed as directors / senior management
  - Dealing with matters pertaining to appointment, removal, promotions and other matters for executive directors & senior management.

# Other committees of the Board

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## Stakeholders relationship committee

- Applicability – companies with > 1000 shareholders, deposit holders, debenture holders, and any other security holders
- Composition – As decided by Board. Chairman to be non-executive
- Terms of reference –
  - Redressal of grievances of shareholders, debenture holders & other security holders
  - Complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends

# Other key aspects for listed companies

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- Separate meeting of independent directors
  - At least 1 meeting of only independent directors in a year
  - Review performance of other directors / Chairperson, assess quality, quantity & timeliness of flow of information to Board
- Training to independent directors
  - Company to provide training to directors – focus on roles & responsibilities of Directors, nature of business / industry
  - Details of training to be included in Board's report
- Code of conduct for Board and senior management of Company
  - Board members & senior management to affirm compliance on annual basis
  - Code of conduct to be posted on website

# Other key aspects

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- Small shareholder director
  - Listed company may hold election of small shareholder director (persons holding shares with nominal value of < Rs. 20,000)
  - Tenure to be 3 years – only 1 small shareholder director per company
  - 1/10<sup>th</sup> of small shareholders or 1000 small shareholders, whichever is less, may demand such election
  
- Risk management committee
  - For top 100 listed companies by market capitalisation as at end of immediate previous financial year, company to constitute a risk management committee (RMC)
  - The RMC to monitor & review risk management plan for the company



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# Management & Administration

# Sec 88 – Register of Members, etc

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- Every Company shall keep & maintain following registers:
  - Register of Members
  - Register of debenture-holders
  - Register of any other security holders
- If AOA permits, the company may keep a part of its register in any country outside India, called as “foreign register”.
- Such registers are to be maintained at the registered office of the company, except in some cases at any other place if the special resolution is passed.
- In case of existing companies, particulars to be compiled within 6 months

# Sec 92 – Annual Return

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- Annual return to contain particulars as on close of financial year
- Changes in members & debenture-holders since date of close of financial year
- Annual return of following types of companies to require certification by practising CS;
  - Listed companies
  - Company with paid up capital  $\geq$  Rs. 10 crores;
  - Company with turnover  $\geq$  Rs. 50 crores
- Annual return to be filed within 60 days of AGM in [Form MGT-7](#)
- Extract of Annual return to be included in Board's report

# Sec 93 – File return – Promoters' stake change

- Return to be filed by listed company within 15 days, if there is change of  $> 2\%$  in shareholding position of Promoters & Top-ten shareholders.

# Sec 94 – Place of Keeping Registers

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- The Registers and copies of annual return filed have to be kept at the registered office.
- It can be also be kept at any other place (where at least 1/10<sup>th</sup> of members reside) by passing a Special Resolution.
- Members may take extracts from any register or a copy of such register during business hours on any working day (at least 2 hours to be specified by Board for this – maximum fee of Rs. 10 per page extracted)
- Periodicity of safe keeping – 8 years

# Sec 96 – Annual General meeting

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- Every company other than One Person Company should hold AGM in each year.
- Not more than 15 months shall elapse between two AGMs.
- 1<sup>st</sup> AGM to be held within 9 months of closing of first F.Y. and in other cases within 6 months of close of FY
- Power given to ROC to allow 3 months extension for holding AGM
- AGM to be held between 9 am and 6 pm on any day that is not a National Holiday

# Sec 100 –Extraordinary General Meeting

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- EGM can be called;
  - At any time by the Board
  - Requisition of members holding  $\geq 1/10^{\text{th}}$  of paid-up capital
  - Requisition of members with  $\geq 1/10^{\text{th}}$  of voting power (in case of no share capital)
- If Board does not call for EGM within 45 days of date of requisition, members themselves can requisition EGM within 3 months
- In case of requisitioned meeting, the Company to give notice of resolutions to be moved by members if such requisition is deposited at registered office in the prescribed time

# Sec 101 – Notice of Meeting

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- Clear notice of not less than 21 days to be given either in writing or through electronic means.
- Shorter notice is allowed provided it is approved as such by  $\geq 95\%$  of members entitled to vote
- Notice shall be given to:
  - Every member of the company
  - Auditor or Auditors of the company and
  - Every director of the company.
- Omission to give notice shall not invalidate the proceedings of the meeting.



# Sec 102 – Statement to be annexed to notice

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- At any general meeting, all business other than below, shall be deemed special;
  - Consideration of financial statements, Auditor & Board report
  - Declaration of dividend
  - Appointment of directors in place of those retiring
  - Appointment of Auditors & fixing their remuneration
- All special business to require explanatory statement, and details of directors / KMP / relatives interested in the same
- If the item to be transacted relates to or affects any other company, extent of shareholding interest in such other company held by promoter, director or any KMP shall also be set out, if it is  $\geq 2\%$  of paid-up capital of that other company

# Sec 103 – Quorum for meetings

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- In case of Public company:
  - 5 members personally present if members  $\leq 1000$
  - 15 members if members is  $> 1000$  but  $\leq 5000$
  - 30 members if total members  $> 5000$
- In case of Private Company – 2 members to be personally present.
- AOA can specify larger number than above as quorum
- If quorum is not present within half-an hour from scheduled time, it shall stand adjourned to same day in next week at same time and same place.
- At adjourned meeting, members present shall form a quorum.

# Sec 104 – Chairman of Meetings

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- Unless AOA provide otherwise, members present shall elect the Chairman from amongst themselves by show of hands.
- Members may elect Chairman for the meeting by poll, if such poll is demanded by members

# Sec 105 – Proxies

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- Members are entitled to appoint another person as a proxy to attend and vote on his behalf.
- Proxy shall not have right to speak and shall not be entitled to vote except on a poll.
- Proxy form should be submitted before 48 hours of the scheduled time of meeting.
- A person appointed as proxy shall act as such on behalf of  $\leq 50$  members or persons holding  $\leq 10\%$  voting rights
- If a members hold  $> 10\%$  of voting rights, he may appoint a proxy, provided such proxy does not act as proxy for any other member

# Sec 106, 107, 108 – Voting at General meeting

- AOA may provide for restriction on voting rights for any member who has not paid call money.
- Voting at general meeting to be normally by show of hands, unless poll is demanded / electronic voting is applicable
- E-voting facility to be provided to members in case of listed companies, and companies with  $\geq 1000$  shareholders
- A poll needs to be conducted in case;
  - Chairman decides so on his own motion
  - It is demanded by members with  $\geq 10\%$  voting power or holding shares where  $\geq$  Rs. 5 lakhs has been paid up
  - It is demanded by members with  $\geq 10\%$  voting power (in case of companies without share capital)

# Sec 110 – Postal Ballot

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- Voting through postal ballot required in case of following;
  - Alteration of objects clause of MOA / alteration of AOA
  - Change in registered office
  - Change in objects for which a company has raised money and there is still unutilised amounts out of such money
  - Issue of shares with differential rights / variation in such rights
  - Buy-back of shares
  - Election of small shareholder director
  - Sale of whole / substantial part of undertaking
  - Giving loans / guarantee in excess of limits mentioned in sec 186
- Additional items may also be transacted through postal ballot
- Postal ballot not applicable for Companies with  $\leq 200$  members
- Ordinary business (4 standard items of agenda) to be transacted always at a physical meeting

# Sec 114 – Ordinary and Special resolutions

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- Meaning of “Ordinary Resolution”- Resolution is an ordinary one if notice has been duly given and it is required to be passed by show of hands or electronically or by poll and whereby votes cast in favour exceed votes cast against.
- Meaning of “Special Resolution” - Resolution is a special one if
  - Intention to propose it as special is specified in the notice
  - Notice is duly given
  - Votes cast in favour  $\geq$  3 times the number of votes cast against.

# Sec 115 – Resolution requiring Special Notice

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- If special notice is required for any resolution, notice of the intention to move such resolution shall be given to the company by members
  - Holding not less than 1% of total voting power or
  - Holding shares on which sum not more than Rs. 5 lakh is paid up
- Notice to be sent to Company between 3 months & 14 days before date of meeting



# Sec 117 – Resolutions to be filed with ROC

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- Copy of following types of resolutions / agreements is to be filed with ROC within 30 days of passing with prescribed fees;
  - Special resolutions
  - Board resolution for appointment / reappointment / variation in terms of appointment of MD
  - Resolutions passed in respect of borrowing powers / disposal of substantial part of undertaking
  - Resolutions requiring a company to be wound up voluntarily
  - Certain important Board resolutions
- Above resolutions can be filed within 300 days of event with additional fees – beyond such time limit, company will be liable to pay fines

# Sec 118, 119, 120, 121 – Minutes of Meetings

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- Minutes to be recorded within 30 days of conduct of meeting
- Minutes, document, records, registers can now be maintained in electronic form
- Inspection / copies can be given to members in electronic form
- Every listed company to file a report of each AGM within 30 days of the conduct of the meeting.

# Consequences of default

Section & Default	Party in default	Imprisonment term	Fine range (Rupees '000s)
88 – Company does not maintain register of members	Company & Every officer	NA	50 – 300 / 1K PD for continuing default
92 – Certification of Annual Return	Company Secretary	NA	50 - 500
94 – Place of keeping & inspection of register	Company & Every officer	NA	1 (everyday) – 100
102 – Statement to be annexed to notice	Promoter/Director/Manager/KMP	NA	50 – 5 times amt of benefit

# Consequences of default

Section & Default	Party in default	Imprisonment term	Fine range (Rupees '000s)
111 – Circulation of Members resolution	Company & Every officer	NA	25
117 – Filing of resolutions	Company	NA	500 – 2500
	Officer in default	NA	100 – 500
118 – Tampering with Minutes	Any Person	2 years	25 – 100
119 – Inspection of Minute book	Company & Every officer	NA	5
121 – Report on AGM	Company	NA	100 – 500
	Officer	NA	25 – 100

# Other administration aspects – highlights

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- In case of new companies, Company can commence business only after subscription shares are fully paid up & verification of registered office is complete
- CIN to be quoted on all business letters, bills, invoices, notices etc
- In case of change in registered office for existing companies / verification of registered office for new companies, documents pertaining to ownership of premises / lease agreement / letter from owner to company for usage of premises, to be maintained.

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# THANK YOU!

## Sushrut Chitale

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