

OVERVIEW OF COMPANIES ACT, 2013

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AUDIT , ACCOUNTS AND AUDITORS

Books of Accounts

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To be prepared & kept at the registered office.

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

Financial Statement (Section 129)

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

Financial Statement (Section 129)

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

FINANCIAL STATEMENTS

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Books & Papers: Section 2(12)

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

FINANCIAL STATEMENTS

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Financial Statements: Section 2(40)

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

FINANCIAL STATEMENTS

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Financial Year : Section 2(41)

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

Consolidated Financial Statements

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

Books of Account in Electronic Mode

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

Books of Account in Electronic Mode

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

Financial Statement

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

➤ Punishment:-

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

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

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

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

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

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

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

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

Conditions:

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

Draft Rules for Revision

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

APPOINTMENT OF AUDITOR (Section 139)

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Government Companies :-

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

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

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

AUDIT & AUDITORS

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Other than Government Companies :-

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

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

AUDIT & AUDITORS

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

AUDIT & AUDITORS

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Before appointment is made:

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

CASUAL VACANCY

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Government company:-

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

Other than Government companies:-

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

Important note:-

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

Reappointment of Auditor

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Auditor can be re-appointed:-

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

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

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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(Rule 5 Companies Audit & Auditors Rule, 2014)

OPC and small companies are not covered.

Applicable to following companies:

- All unlisted public company having paid up capita Rs.10 crores or more.
- All private company having paid up capital Rs.20 crores or more.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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

Rule 6 (3)(i):

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

MANDATORY ROTATION OF AUDITORS

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

MANDATORY ROTATION OF AUDITORS

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

Removal of Auditor

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

Rule 7

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

Removal of Auditor

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Removal by Tribunal :-

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

Qualification of Auditor

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

Disqualifications (141).

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Following are disqualified to be appointed as Auditor:

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

Disqualifications (141).

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

Disqualifications (141).

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

Disqualifications (141).

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

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

RESIGNATION OF AUDITOR (Section 140)

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

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

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

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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

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

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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

AUDITOR NOT TO RENDER CERTAIN SERVICES

(Section 144)

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Directly or indirectly includes :-

In case of individual :-

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

In case of firm:-

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

Internal Audit

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Eligibility:

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

Internal Audit

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Eligibility:

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

SECTION 143(1)

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Auditor shall enquire into following matters:-

- a) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- b) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

SECTION 143

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Auditor shall enquire into following matters:-

- c) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- d) Whether loans and advances made by the company have been shown as deposits;

SECTION 143

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Auditor shall enquire into following matters:-

- e) Whether personal expenses have been charged to revenue account;
- f) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

SECTION 143(1)

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Auditor has right to access to the records of all the subsidiaries which are required for consultation of financial statements.

Section 143(2)

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- ❑ Report on every financial statement which are required to be led before company in general meeting.
- ❑ Compliance of auditing and accounting standard.
- ❑ Audit report as required under any order in sub-section 11.

Section 143(3)

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Auditor shall also state in his report

- a) Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- b) Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him.

Section 143(3)

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Auditor shall also state in his report

- c) Whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- d) Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

Section 143(3)

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Auditor shall also state in his report

- e) Whether, in his opinion, the financial statements comply with the accounting standards;
- f) The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- g) Whether any director is disqualified from being appointed as a director under sub-section (2) of section 164.

Section 143(3)

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Auditor shall also state in his report

- h) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- i) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
- j) Such other matters as may be prescribed.

Supplementary Audit -- Section 143(6)

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- ❖ Section 139(5):
 - ❖ CAG shall give directions to auditor, the manner in which account of Government companies are to be audited.
 - ❖ CAG has right to conduct supplementary audit within 60 days from the receipt of the audit report.
 - ❖ Supplementary audit can be done by any person authorised by CAG.
- ❖ All the comments of Audit Report or supplementary audit report shall be sent to all the person entitled to the copies of audited financial statements and place before general meeting for approval.

Test Audit -- Section 143(7)

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- ❖ CAG may if consider necessary, order for test audit be conducted for any company.
- ❖ Provision of section 19A of CAG (duties, power and condition service tax 1971) shall apply.

CARO 2015

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Effective	On the date of publication in Official Gazette
Applicability	w.e.f. financial year commencing on or after 1 st April 2014

CARO 2015

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Exceptions:

- i. Banking company
- ii. Insurance company
- iii. Section 8 companies
- iv. OPC
- v. Small companies
- vi. Private companies
 - a) Capital and reserves not > Rs.50.00 lacs and
 - b) Outstanding loans not > Rs.25.00 lacs and from financial institutions and banks
 - c) Turnover not > Rs.5.00 crores

Matters to be included in Auditors Report (in short)

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Matters

- (i) Reporting on maintaining, verifying and disposing off the fixed assets
- (ii) Physical verification and maintenance of records of inventories
- (iii) Reporting on repayment of loans granted by company

Changes in new CARO

Requirement to report disposing off of substantial part of fixed assets during the year has been done away.

Same provision

Reporting on loans taken by company not required. Reporting on rates charged on loan given not required as company shall charge as per Section 186(7)

Matters to be included in Auditors Report (in short)

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<u>Matters</u>	<u>Changes in new CARO</u>
(iv) Internal control system	Reporting on adequate internal control procedure for sales of services is also included.
(v) Acceptance of deposits	Same provision
(vi) Cost records	Same provision
(vii) Payment of applicable taxes	Whether amount required to be transferred to investor education fund has been transferred within time.

Matters to be included in Auditors Report (in short)

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	<u>Matters</u>	<u>Changes in new CARO</u>
(viii)	Accumulated losses	Same provision
(ix)	Default in repayment of dues to financial institutions and banks or debenture holders	Same provision
(x)	Guarantee for loan taken for financial institutions / banks	Same provision

Matters to be included in Auditors Report (in short)

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<u>Matters</u>	<u>Changes in new CARO</u>
(xi) Applicability of term loan	Same provision
(xii) Reporting of fraud	Same provision
Reasons to be stated for unfavourable answers	Same provision

Matters no more required to be reported in CARO 2015

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<u>Matters</u>	<u>Comments</u>
(i) Transaction entered by company in which Directors are interested	2013, Act Mandates Audit Committee to review all related party transactions determining whether these are on Arm's length basis or not?
(ii) Internal Audit System	Now, under Act, 2013 requirement to report on Internal Audit system is with directors who are to report under Director's Responsibility Statement u/s 134.

Matters no more required to be reported in CARO 2015

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<u>Matters</u>	<u>Comments</u>
(iii) Record required to be maintained by company (loan against pledge of shares or debentures)	The definition of charge under Act, 2013 includes pledge of shares also. Auditor of company may assess the same by viewing relevant form.
(iv) Compliance of Special Statute Provision. (Chit fund / Nidhi Co.etc.)	

Matters no more required to be reported in CARO 2015

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<u>Matters</u>	<u>Comments</u>
(v) Record maintained by companies dealing or trading in securities	
(vi) Details of fund received for short term basis have been utilised for long term investment and vice-versa.	

Matters no more required to be reported in CARO 2015

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	<u>Matters</u>	<u>Comments</u>
(vii)	Preferential allotment and determination of Arm's Length Price	Act, 2013 require u/s 62(1)(c) valuation report to be obtained for preferential allotment which takes care of price of issue.
(viii)	Creation of security in respect of debentures issued.	
(ix)	End use of money raised by public issue.	

Other matters to be included in Auditor's Report

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

Reporting of Fraud

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If the auditor of company

- In the performance of his duties as Auditor has reason to believe that an offence involving fraud is being or has been committed against company by officer / employee.

FRAUD

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Explanation to Section 447 defines fraud which means:

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

FRAUD

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

Punishment for not reporting fraud:

- ❖ Fine Rs. 1lakh to Rs 25 lakh.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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

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

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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Where the auditor of a company is an audit firm and it is proved that the audit partner or partners has or have :

- Acted in a fraudulent manner or
- Abetted or colluded in any fraud by or in relation to or by the company or its directors or officers, the civil liability as provided in the Act or any other law for such an act would be of the audit partner or partners as well as of the firm jointly and severally.
- Any criminal liability other than fine shall be devolve only on concerned partner or partners who acted in fraudulent manner or abetted or colluded in any fraud.

INCREASED ACCOUNTABILITY OF AUDITORS

(Section 147)

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

AUDITOR TO ATTEND AGM

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



THANK YOU