

Board report and privileges of private companies under the Companies Act, 2013

Presentation at the Virtual Refresher Course on Company Law organised by the Corporate Law and Corporate Governance Committee of ICAI and hosted by the Emakulam Branch of SIRC of ICAI on 24 September 2020

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The Core Principle

No distinction between Public and Private Companies

Many exemptions given to Private Companies are no more valid

Definition of a private company

Maximum number of members increased to 200 from 50


There is no express clause in the definition on prohibition of acceptance of deposits as in 1956 Act which "prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives"

Commencement of business

Even a Private Company cannot commence its business or make any borrowings unless it files with ROC (a) a declaration that every subscriber to the memorandum paid the value of shares agreed and that the minimum paid up capital has been brought in; and (b) A verification of its registered office (Sec 11)


Penalty for non-compliance – Rs.5000/- plus Rs.1000 per day of continuing default on every officer in default

RoC has the power to remove the Company after 180 days of incorporation, in case of default

 Contents of financial statements

Cash flow Statement is applicable to all companies

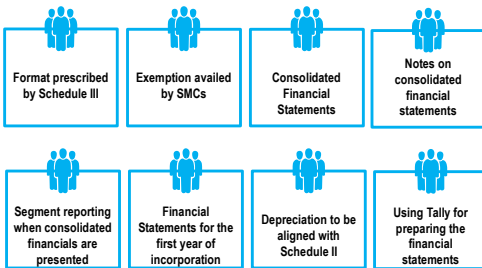
Only OPC, Small Companies and Dormant Companies are exempted

 Contents of financial statements

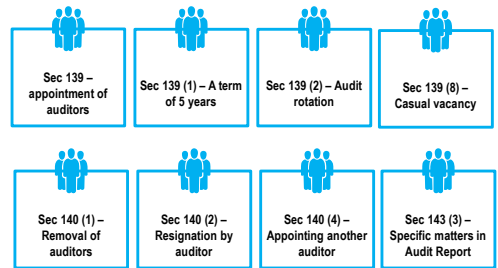
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 Accounts under the Companies Act, 2013



 Audit and Auditors under Companies Act



Frequently Asked Questions

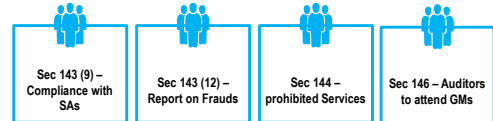
The Company planned to move from WDV method to SLM method for depreciation as per Schedule II for the year ended March 31, 2020. Is it a change in accounting policy or change in accounting estimate?

The Company has two overseas subsidiaries who depreciate the assets based on useful life assessment under IFRS, which significantly differs from Schedule II. Whether the subsidiaries should also follow Schedule II for the purposes of consolidation?

The Company has revalued a class of depreciable assets during the year but believes that the depreciation charge on the revalued assets in the profit and loss will be based on the carrying amount as per cost model. Whether this is correct?

The entire share capital of A limited is held by UH Limited and UH Limited prepares and presents consolidated financial statements under the Companies Act, 2013. A Limited has made investments in two wholly owned subsidiaries. However, A Limited believes that it need not prepare consolidated financial statements. Whether this view is correct?

Audit and Auditors under Companies Act



Frequently Asked Questions

Whether the following are prohibited service for a statutory auditor?

Tax audit

Appearing before the tax authorities on behalf of the audit client

Issuing Transfer pricing certificate/ report

Certification work to be done by the statutory auditor of the Company

Certification work that can be done by any chartered accountant

Issuing opinion relating to disputed tax cases

Issuing DCF valuation of shares to the audit client

Conducting Agreed Upon Procedures to the audit client

GST Filing and uploading

Income Tax Return preparation and uploading

Prohibited services – Frequently asked questions

Whether the following are prohibited service for a statutory auditor?

Carrying out due diligence for proposed acquisition by an audit client

Identifying target companies for investment by an audit client

Carrying out pre or post implementation review of ERP system

Carrying out an assessment of Internal Financial Controls for inclusion in the directors report for the year ended March 31, 2020

Loans to directors (Sec 185)

Company may pass a special resolution and give loans, security or guarantee to any person in whom the directors are interested

It is not complete exemption and some loans are still prohibited

Amount and purpose to be specified in the resolution

Loans to directors (Sec 185)

To the director of the Company

To the director of the holding company

Any partner of such director

Any relative of such director

Any firm in which such director is a partner

Any firm in which the relative of such director is a partner

Loans to directors (Sec 185)

Can a Company give a loan to a Managing Director or whole time director?

Can a company give a loan in the ordinary course of business without any special resolution?

Whether loans or guarantees or securities given to wholly owned subsidiaries require special resolution?

Whether loans or guarantees or securities given to subsidiaries (not wholly owned) require special resolution?

Related Party Transactions (Sec 188)

Not applicable to companies in which 95% of the members (in numbers) are relatives or promoters or related parties

The position of 1956 Act restored with a condition

Borrowing Powers of the Board

In the calculation of the threshold limits, apart from paid up capital and free reserves, now securities premium is also added

Company to charge interest at specified rates for loans all loans given (including loans to subsidiaries), except employee loans

Acceptance of deposits

Complete exemption from Section 73 (2)

General private companies - Acceptance of deposit from members not exceeding 100% of share capital, free reserves and share premium

No maximum limit for acceptance of deposits from members by a private company (a) which is not an associate or subsidiary of any other Company; (b) borrowings from banks and financial institution is less than twice of its paid up capital or Rs.50 Cr, whichever is lower; (c) No default in the repayment of such borrowings

Details of deposits accepted to be filed with RoC (by DPT3)

Acceptance of deposits

Amounts received from a director to be disclosed in notes to the financial statements

Private companies to additionally disclose amounts received from relatives of director

Exemption from reporting on IFC

Small company and one person company fully exempted

Other private companies are exempted with certain conditions

Turnover as per last audited balance sheet shall be less than Rs.50 Crores

Aggregate borrowings at any time shall be less than Rs.25 Crores

Preferable to include a para in the auditors' report

Corporate Social Responsibility

Mandatory for all companies having

- Net-worth of Rs.500 Cr or more; or
- Turnover of Rs.1000 Cr or more; or
- Net Profit of Rs.5 Cr or more

Even if any one condition is fulfilled, the Company has to follow CSR provisions

Amount to be spent is minimum 2 % of average profits before tax of the last 3 years

Company secretary and Secretarial Audit

Paid up share capital limit for unlisted companies to have full time company secretary increased from Rs.5 Cr to Rs.10 Cr

Secretarial Audit was previously mandatory only for public companies having Paid up Capital of Rs.50 Cr or more or having turnover of Rs.250 Cr or more

Now extended to every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more

Depreciation under the Companies Act, 2013

Indicative Useful life prescribed in Schedule II

Reasons for adopting different useful life

Schedule II will not apply to certain industries

Depreciation - Frequently asked questions

Whether change in useful life is change in accounting policy or accounting estimate?

Whether reason to be given even if the Company adopts useful life lower than the Schedule II rates?

Can depreciation be deferred if machinery is idle during the year?

What is the useful life for Intangible assets?

Declaration of Dividends

Out of current year profits

Out of earlier years' profits

Out of both

Arrears of depreciation, if any should be first provided for

If failure to comply with Sec 73 and 74, no dividend can be declared till such the failure continues

Place of AGM/ EGM

Annual general meeting of an unlisted company may be held at any place in India

Provided consent is given in writing or by electronic mode by all the members in advance

EGM of any company can be held at any place in India

WOS of foreign companies incorporated outside India are exempted

Operational flexibility for companies

Internal audit

Internal audit is mandatory for private companies (a) having turnover of ≥ 200 Cr or (b) if the outstanding loans or borrowings from banks or public financial institutions at any point of time during the preceding financial year > 100 Cr

Board Report

Section 134 of the Act enjoins upon the Board a responsibility

To make out its report to the shareholders a

To attach the said report to financial statements laid before the shareholders at the annual general meeting, in pursuance of Section 129 of the Act.

Minimum contents of the Board Report

The extract of the annual return as provided under subsection (3) of section 92

Number and dates of meetings of the Board and attendance of the directors

Directors' Responsibility Statement

A statement on declaration given by independent directors under sub-section (6) of section 149

Company's policy on directors' appointment and remuneration

Minimum contents of the Board Report

Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by Statutory auditor and secretarial auditor

Particulars of loans, guarantees or investments under section 186

Particulars of contracts or arrangements with related parties

The state of the company's affairs

The amounts, if any, which it proposes to carry to any reserves

Minimum contents of the Board Report

The amount, if any, which it recommends should be paid by way of dividend

Material changes and commitments subsequent to the balance sheet date

The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed

A statement indicating development and implementation of a risk management policy

The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year

Signing the Board Report

Section 134(6) of the Act provides that the Board's report and any annexures thereto should be signed by its chairperson of the company if he is authorised by the Board

Where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director

If the Auditor's Report is available for consideration at the time of approving the Board's Report, the Board's Report may bear the same date as that of the Auditor's Report

If the Auditor's Report is dated subsequent to the date of Board's Report, then the Addendum to the Board's Report may bear the same date or a date after the date of the Auditor's Report

Filing of the Board Report

The Board's Report has to be attached to the financial statements

Copies of financial statement along with all documents required to be annexed should be filed with the Registrar of Companies within 30 days of adoption of the financial statements

The resolution for approving the Board's Report is also required to be filed to the Registrar within 30 days from the approval by the Board

Questions?



Thank you



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