

## **Draft Rules under Companies Act, 2013**

### **CHAPTER IX**

#### **ACCOUNTS OF COMPANIES**

**9.1** For the purposes of the second proviso to sub-section (1) of section 128 of the Act:

(1) The books of accounts or other relevant records/ information maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference;

(2) They shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and present in the same form as it was received. The information contained in the electronic records shall remain complete and unaltered.

(3) The information in the electronic record of the document shall be capable of being displayed in a legible form; and

(4) There is a proper system for storage, retrieval, display or printout of the electronic records and no such records shall be disposed off or rendered unusable, unless permitted by law.

Explanation :- For the purposes of this rule, "electronic mode" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and "books of accounts" shall have the meaning given to it under the Act.

**9.2** For the purposes of sub-section (3) of section 128 of the Act

(1) Summarised returns of the books of accounts of the company maintained outside India shall be sent to the registered office at monthly or quarterly intervals as may be decided by the Board of directors, which shall be maintained and produced for inspection by directors.

(2) Where any other financial information maintained outside the country is required by a director, the director shall furnish a written request to the company setting out the full details of the financial information sought, the period for which such information is sought and reasons as to why such financial information is required.

(3) The Company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.

(4) The financial information required under sub-rule (2) and (3) above shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

**9.3** (1) For the purposes of sub-section (1) of section 129, the class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statements in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies.

Explanation.- For the purposes of this Rule the term 'Extensible Business Reporting Language' means a standardized language for communication in electronic form to express, report or file financial information by companies under this rule.

(2) For the purposes of the first proviso to sub-section (3) of section 129 of the Act:

The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company and joint venture shall be in Form 9.1:

**9.4** For the purpose of the second proviso to sub-section (3) of section 129 of the Act, the Consolidation of financial statements of the company shall be made in accordance with the Accounting Standards, subject however, to the requirement that if under such Accounting Standards, consolidation is not required for the reason that the company has its immediate parent outside India, then such companies will also be required to prepare Consolidated Financial Statements in the manner and format as specified under Schedule III to the Act.

**9.5** (1) For the purposes of sub-section (1) of section 131, the company shall apply to the Tribunal in Form No. 9.2.

(2) The application to the Tribunal shall be made within 2 weeks of the decision taken by the Board. In case the majority of the directors of the company or the auditor of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such fact in the application.

(3) The Tribunal will issue notice and hear the auditor of the original financial statement, if the present auditor is different.

(4) A certified copy of the Order of the Tribunal shall be filed with the Registrar within 30 days of the date of receipt of the certified copy in Form No.9.3.

(5) On receipt of approval from Tribunal a General Meeting may be called. Notice of such General meeting along with reasons for change in Financial Statements may be published in Newspaper in English and in vernacular language. In such General Meeting, the said revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.

(6) On approval of the General Meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be shall be filed with the Registrar within 30 days of the date of approval by the general meeting in Form No.9.4.

**9.6** (1) For the purposes of clause (a) of sub-section (3) of section 131, the previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:

- (a) A summarised statement of revisions effected
- (b) The copy of the Order of the Tribunal.
- (c) The revised auditor's report on the revised financial statement, if applicable

(2) It shall be ensured that the word "revised" is prefixed prominently on all the documents forming part of the revised financial statements / revised board report.

(3) Further, the revision shall be effected in accordance with the procedure prescribed in rule 9.5.

**9.7** For the purposes of clause (b) of sub-section 3 of Section 131, the functions of the auditor pursuant to an order of the Tribunal allowing revision of the financial statement shall be as under:

(i) To carry out the audit procedures necessary in the changed circumstances.

(ii) To review the steps taken by the company to ensure that anyone who is in receipt of the previously issued financial statements together with the auditor's report thereon is informed of the situation.

(iii) To ensure that the revised audit report specifically refers to the revision of the financial statements.

(iv) To issue a revised auditor's report on the revised financial statements and sign the same.

(v) To ensure that the revised auditor's report contains a paragraph in bold explaining the reasons for the revision of the financial statements with cross reference to the earlier report issued by the auditor.

(vi) If the Auditor qualifies his report, the Board shall address the same in the manner provided in sub-section (3) of section 134 of the Act.

**9.8** Where a company revises its financial statements in accordance with sub-section (1) of section 131, for the purposes of clause (c) of sub-section (3) of section 131:

(1) The proposed revision shall be presented to the directors who authenticated the original financial statements or Report of the Board and to the auditors who attested the said financial statements, and the opinion of the auditors, if any, shall be obtained and considered by the Board, before approving any revision of financial statements or report of the Board. Dissent and dissent vote, if any, at the Board meeting, on such revision of financial statements or report of the Board, should be recorded with reasons in the minutes of the meeting of the Board.

(2) The revision shall be reported upon by the auditor who is presently holding the position of auditor. However, if the original financial statement was audited by a different auditor, then, the revised financials shall be accompanied by a consent letter from the auditor who reported upon the financial statement which is sought to be revised. In case such auditor does not agree or the company is unable to procure the consent letter, reasons for such different opinion or inability to procure the consent shall be explained.

(3) It shall be the duty of the Board to send a copy of the revised financial statements and the revised auditor's report to the members, and in case of a listed company, to the stock exchange(s) and other regulatory authorities and it shall fix the date for convening general meeting for the approval of the revised financial statements and the revised auditor's report, or revised report of the Board, as the case may be.

(4) The revised financial statements or revised report of the Board shall be signed in the manner specified in section 134 of the Act. Any such revised financial statement or revised report of the Board shall be accompanied by the reasons justifying the proposed revision.

(5) The members shall approve the revised financial statements and the revised auditor's report at the general meeting.

(6) Management has to necessarily revise the financial statements for all the relevant period, subsequent to the financial year for which the revision of financial statement is sought to be made by the Board of Directors.

**9.9** For the purposes of section 133, the standards of accounting as prescribed under the Companies Act, 1956 shall be deemed to be the

accounting standards until accounting standards are prescribed by the Central Government under section 133.

**9.10** (1) For the purposes of section 134, Board Report shall be prepared based on the stand alone financial statements of the company and the report must contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2) For the purposes of clause (h) of sub-section (3) of section 134, the Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form No. 9.5:

(3) For the purposes of clause (m) of sub-section 3 of section 134, the report of the Board shall contain the following details:

**(A) Conservation of energy:**

Steps taken / impact on conservation of energy, with special reference to the following:

(i) steps taken by the company for utilising alternate sources of energy including waste generated

(ii) Capital investment on energy conservation equipments

**(B) Technology absorption :**

1. Efforts, in brief, made towards technology absorption.

2. Benefits derived as a result of the above efforts, e.g., product improvement, cost reduction, product development, import substitution, etc.

3. In case of imported technology (imported during the last 3 years reckoned from the beginning of the financial year), following information may be furnished :

- (a) Details of technology imported.
- (b) Year of import.
- (c) Whether the technology been fully absorbed
- (d) If not fully absorbed, areas where absorption has not taken place, and the reasons therefor.

4. Expenditure incurred on Research and Development

**(C) Foreign exchange earnings and Outgo**

Foreign Exchange earned in terms of actual inflows during the year  
Foreign Exchange outgo during the year in terms of actual outflows

(4) Pursuant to clause (p) of sub-section 3 of section 134, every listed company and every other public company having a paid up share capital of Twenty Five crore rupees or more, calculated as at the end of the preceding financial year, shall include in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(5) For the purpose of clause (q) of sub-section 3 of Section 134, the Report of the Board shall also provide the following information:

(i) financial summary/highlights;



- (ii) change in the nature of business, if any;
- (iii) Details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iv) Names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year alongwith reasons therefor;
- (v) Details relating to Deposits covered under Chapter V of the Act:
  - (a) Accepted during the year;
  - (b) remained unpaid or unclaimed as at the end of the year;
  - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved:
    - i. at the beginning of the year
    - ii. maximum during the year
    - iii. at the end of the year
  - (d) Details of deposits which are not in compliance with the requirements of Chapter V of the Act
- (vi) Details of significant and material orders passed by the Regulators or courts or tribunals impacting the going concern status and company's operations in future.

**9.11** For the purposes of clause (a) of sub-section (4) of section 135, the disclosure of contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any, shall be in the Form specified under Companies (CSR) Rules, 2013

**9.12** For the purpose of first proviso to sub-section (1) of section 136, the statement shall be in Form No. 9.6.

**9.13** For the purpose of the second proviso to sub-section (1) to section 136 of the Act, in case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent:

(a) by electronic mode to such members who have positively consented in writing for receiving by electronic mode; and

(b) by despatch of physical copies by any other recognised mode of delivery as specified under section 20 of the Act, in all other cases.

**9.14** The fees or additional fees referred to in sub-section (1) to section 137 and in the second proviso to the said sub-section and in sub-section (2) of the said section shall be as specified in Annexure B.

**9.15 (1)** For the purpose of sub-section (1) of section 138 of the Act, the following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

(a) every listed company

(b) every public company having paid up share capital of Rupees ten crores or more;

(c) every other public company which has any outstanding loans or borrowings from banks or public financial institutions exceeding twenty five crore rupees or which has accepted deposits of twenty five crore rupees or more at any point of time during the last financial year.

**(2)** For the purpose of sub-section (2) of section 138 of the Act, the Audit Committee of the company or the Board shall, in consultation with

the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

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