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**Companies (Accounts) Rules, 2014 and Compliance related to
Private Companies including Exemptions to Private Companies**

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Companies (Accounts) Rules, 2014

- Vide notification 31.3.2014 Central Government made the Companies (Accounts) Rules, 2014
- These rules came into force with effect from 1.4.2014
- These rules prescribe provisions related to maintenance of proper books of accounts of the companies
- These rules were amended over time with changing circumstances.
- Recently these were amended by Companies (Accounts) Amendment Rules, 2021 which came into force with effect from the 1.4.2021

Books of Accounts

- Maintenance of Books of Accounts
 - Section 128(1) requires maintenance of books of accounts at the Registered Office of the Company.
 - If maintained else where notice in AOC 5 to be filed with the ROC within 7 days
- Maintenance of Books in electronic Form
 - Effective from 1.4.2022 companies using accounting software to have audit trail of each and every transaction, creating an audit log of each change along with the date of such change and that the trail is not disabled.
 - Information received from branches not to be altered.
 - Proper system for storage, retrieval or print out of the electronic records
 - Back up to be in servers physically located in India.

Books of Accounts

- The company shall intimate to the Registrar at the time of filing of financial statement-
 - the name of the service provider
 - the internet protocol address of service provider
 - the location of the service provider
 - where the books are maintained on cloud, such address as provided by the service provider.

Books of Accounts

- Vide notification dated 24.3.2021 Central Government made Companies (Accounts) Amendment Rules, 2021 which came into force with effect from the 1.4.2021.
- These rules brought the following amendments in Companies (Accounts) Rules, 2014
 - in rule 3, in sub-rule (1), new proviso was inserted according to which:
 - accounting software used for maintaining its books of account, shall record **audit trail** of every transaction,
 - create an **edit log** of each change made in books of account
 - record **date** when such changes were made and
 - ensure that the audit trail **cannot be disabled**.
 - This change was initially effective from 1.4.2021 but its effective date was deferred till 1.4.2022 through Companies (Accounts) Second Amendment Rules, 2021.

Financial Information Maintained Outside the Country

- Maintenance and Inspection of Certain Financial Information by Directors
 - The returns of the books of account of the company maintained outside India shall be sent to the registered office at quarterly intervals,
 - Returns shall be maintained at the registered office of the company
 - Returns shall be open to directors for inspection.
 - Where any financial information maintained outside the country is required by a director
 - Director shall furnish a request to the company
 - Financial information to be provided within fifteen days of the date of receipt of request.
 - Such information shall be sought for by the director himself and not through his power of attorney holder or agent or representative.

Form and Contents of the Financial Statements

- Section 129(1) requires the financial statements to give a true and fair view & to comply with the accounting standards. As per the proviso the items contained in the financial statements to be in accordance with the accounting standards
- Rule 4A clarifies that the financial statements shall be prepared in accordance with the definitions and other requirements specified in the AS or the Ind AS.
- Section 129(3) mandates the consolidation of the subsidiaries, associates and joint ventures.
- Separate Statement containing the salient features of the financial statements of the subsidiaries/associate companies shall be presented in Form AOC1.
- All provisions relating to preparation, adoption and audit of the financial statements to apply *mutatis mutandis* to CFS
- Company to disclose the deviation, if any, with the reasons and the effect thereof from an applicable AS.

Consolidation of Accounts

- Manner of Consolidation of Accounts
 - The consolidation of accounts should be in accordance with Schedule III of the Act and the applicable accounting standards
 - This rule shall not apply to a company which meets the following conditions
 - it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, do not object to the company not presenting consolidated financial statements
 - its securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India
 - its ultimate or any intermediate holding company files consolidated accounts with the Registrar which are in compliance with the applicable Accounting Standards

Board Report

- Matters to be Included in Board's Report:
 - Particulars of contracts or arrangements with related parties referred to in section 188(1) in the Form AOC-2.
 - Prescribed information and details with respect to
 - Conservation of energy
 - Technology absorption
 - Foreign exchange earnings and Outgo
 - A statement of manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors to be included in case of:
 - Every listed company
 - Every other public company having a paid up share capital of twenty five crore rupees or more at the end of the preceding financial year.

Board Report

- The report of the Board shall also contain:
 - the financial summary or highlights;
 - the change in the nature of business;
 - the details of directors or key managerial personnel who were appointed or have resigned during the year;
 - a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year
 - the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
 - the details relating to deposits
 - the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

Board Report

- the details of significant orders passed by the regulators or courts or tribunals impacting the going concern status;
- the details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- a disclosure, as to whether the company is required to maintain cost records as per section 148 of the Companies Act, 2013, and if so, whether such accounts and records are made and maintained
- a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Board Report

- Companies(Accounts) Amendment Rules 2021 (effective from 1.4.2021) inserted two new clause in rules 8, sub rule (5) of Companies(Accounts) Rules 2014 requiring following disclosures in board's report:
 - the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year alongwith their status as at the end of the financial year.
 - the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof

CSR Policy Disclosures

- Disclosures About CSR Policy
 - The disclosure of contents of CSR Policy should be:
 - in board's report
 - on the company's website
 - It shall be as per **annexure** attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Statement of Salient Features

- Statement Containing Salient Features of Financial Statements
 - The form for statement containing features of documents referred to in first proviso to section 136(1) shall be Form AOC-3
 - In case of companies required to comply with Companies (Indian Accounting standards) Rules, 2015 the form shall be AOC-3A

Circulation of Financial Statements

- Manner of Circulation of Financial Statements in Certain Cases:
 - In case of
all listed companies and
public companies having a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent
 - by electronic mode to members having shareholding in dematerialised format
 - by electronic mode to members who have consented in writing for receiving by electronic mode; and
 - by dispatch of physical copies through any recognised mode of delivery, in other cases.

Filing of Financial Statements

- Financial statements to be filed with Registrar together with Form AOC-4 and the CFS with form AOC-4 CFS.
- Class of companies required to file financial statement in XBRL format:
 - companies listed with stock exchanges in India and their Indian subsidiaries
 - companies having paid up capital \geq ₹5crores
 - companies having turnover \geq ₹100crores
 - all companies required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015
 - Exceptions - non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector

Appointment of Internal Auditor

- Companies Required to Appoint Internal Auditor
 - every listed company;
 - every unlisted public company having-
 - paid up share capital of fifty crore rupees or more during the preceding financial year; or
 - turnover of two hundred crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
 - outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year

Appointment of Internal Auditor

- every private company having
 - turnover of two hundred crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year

Exemptions to Private Companies

Notification dated 5th June 2015(amended by notification dated 13th June,2017)

Related Party

- **Definition of related party –**
 - For related party transactions u/s 188, the following body corporates will not be covered:
 - Holding,
 - Subsidiary,
 - Fellow Subsidiary,
 - Associate,
 - JV or Investing Company

Share Capital

- **Exemption u/s 43 and 47 where Memorandum or Articles of Association so provide**
 - Section 43 specifies Kinds of share capital a company limited by shares can have.
 - Section 47 deals with the voting rights of the shareholders of a company.
- **Private companies can define the voting rights of members in any manner.**

Notice Period for Further Issue of Shares

- **Minimum notice period**

- 15 days u/s 62(1)(a)(i)
- 3 days u/s 62(2)

The above provision shall apply with the modification that in case ninety percent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.

- Issuance of ESOPs to require Ordinary Resolution and not Special Resolution u/s 62(1)(b)

Loan for Purchase of its own shares

- Section 67 prohibits
 - Buying its own shares unless reduction of share capital is affected
 - No public company shall give, any financial assistance for the purpose of, a purchase of any shares in the company or in its holding company

Exemption in case of a Private Company

- (a) in whose share capital no other body corporate has invested any money;
- (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and
- (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

Acceptance of Deposits from Members

- Section 73(2) (a) to (e) specifies conditions to be complied with for accepting deposits from its members.
- Exemption to Private Companies
 - (A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; **or**
 - (B) which is a start-up, for five years from the date of its incorporation; **or**
 - (C) which fulfils **all** of the following conditions:-
 - (a) not an associate or a subsidiary company of any other company;
 - (b) borrowings from banks or financial institutions or any body corporate less than twice of its paid up share capital or fifty crore rupees, whichever is lower; **and**
 - (c) company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Exemptions in Annual Return

- Exemption from disclosure of remuneration of Directors and KMPs
- Annual Returns to be signed by Directors in case of OPC and Small Companies

Management and Administration

Following sections shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise

101	Notice of meeting
102	Statement to be Annexed to Notice
103	Quorum for Meetings
104	Chairman of Meetings
105	Proxies
106	Restriction on Voting Rights
107	Voting by Show of Hands
109	Demand for Poll

Filing of Resolutions and Agreements

- Exemption from filing with the ROC of Resolutions u/s 179(3) in MGT 14
 - Section 117(3)(g) provides that the resolutions passed under section 179(3) should be filed with the registrar within thirty days.
 - The resolutions specified under section 179(3) are as follows:
 - (a) to make calls on shareholders in respect of money unpaid on their shares;
 - (b) to authorise buy-back of securities under section 68;
 - (c) to issue securities, including debentures, whether in or outside India;
 - (d) to borrow monies;
 - (e) to invest the funds of the company;

Filing of Resolutions and Agreements

- (f) to grant loans or give guarantee or provide security in respect of loans;
 - (g) to approve financial statement and the Board's report;
 - (h) to diversify the business of the company;
 - (i) to approve amalgamation, merger or reconstruction;
 - (j) to take over a company or acquire a controlling or substantial stake in another company;
 - (k) any other matter which may be prescribed:
- Private companies are exempted from the requirement to file these resolutions.

Disqualification of Auditors

- Section 141(3)(g) provides that a person who is in full time employment elsewhere or a person holding appointment as auditor, of more than twenty companies shall not be eligible to be appointed as auditor of a company
 - The above provision was amended and accordingly
 - one person companies
 - dormant companies
 - small companies
 - private companies having paid-up share capital less than one hundred crore rupee
- Shall not** be considered for computing the limit of 20 companies.

Directorship

- **Right of Persons Other than Retiring Directors to Stand for Directorship**

- Section 160 deals with Right of Persons Other than Retiring Directors to Stand for Directorship

This section shall not apply to private companies.

- **Appointment of Directors to be Voted Individually**

- Section 162 provides that at a general meeting of a company, a motion for the appointment of two or more directors of the company shall not be moved by a single resolution unless a such proposal has been agreed at the meeting without any vote being cast against it.

This section shall not apply to private companies.

Powers of Board

➤ **Restrictions on Powers of Board.**

- Section 180 provides that Board of Directors of a company shall exercise the certain specified powers only with the consent of the company by a special resolution
- This section shall not apply to private companies

Loan to Directors

- Section 185 puts restriction on advancing loan to director of company, or of its holding company or any partner or relative of any such director or any firm in which any such director or relative is a partner.
- Section significantly amended by the Companies Amendment Act, 2017

Exemption to Private Companies subject to following conditions –

- (a) body corporate (includes foreign company, LLP) have not invested money in share capital of the private company;
- (b) borrowings from banks or financial institution or any body corporate is less than twice the paid up share capital or Rs. 50 crore, whichever is lower;
- (c) such private company has not made default in repayment of borrowings subsisting at the time of purchase of its own shares.

Appointment of Director

- **Appointment of Managing Director, Whole-time Director or Manager**
 - Section 196(4) and section 196(5) provides the conditions with respect to Appointment of Managing Director, Whole-time Director or Manager
 - Remuneration was w.r.t. Section 197 of the Act
 - From 1st April 2014 to 5th June 2015 was applicable to Private Companies and exempted thereafter

Exemptions to private companies

- Vide notification dated 13th June,2017 Central government amended the principal notification dated 5th June 2015 and some new exemptions were granted which includes the following:
 - **Financial Statements**
 - Section 2(40) defines financial statements of a company
 - As per the amendment financial statements, of one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement

Internal financial controls

➤ **Reporting on internal financial controls with reference to financial statements**

- Section 143(3)(i) requires auditor to state in his report whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls
- The above provision will not apply in case of a private company
 - (a) which is a one person company or a small company; or
 - (b) which has turnover less than rupees fifty crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty five crore.”.

Meetings of Board

- Section 173(5) provides that a One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
- This exemption was extended to private company (if such private company is a start-up)

Disclosures under Schedule III & Calculation of EPS

- Aggregate number and class of shares allotted as fully paid up by way of bonus shares, only if such event has occurred during a period of 5 years immediately preceding the Balance Sheet date.
- In Comparatives of previous years, EPS (Basic and Diluted) shall be calculated after giving effect of number of shares issued as bonus shares and disclosure of the same needs to be given in Notes to Accounts.

Section 135....Unspent Amount

➤ **Unspent amount is not related to ongoing project**

Company has to transfer such unspent amount to a Fund (PM National relief fund or other fund set up by the central govt for this purpose), within a period of 6 months of the expiry of that financial year.

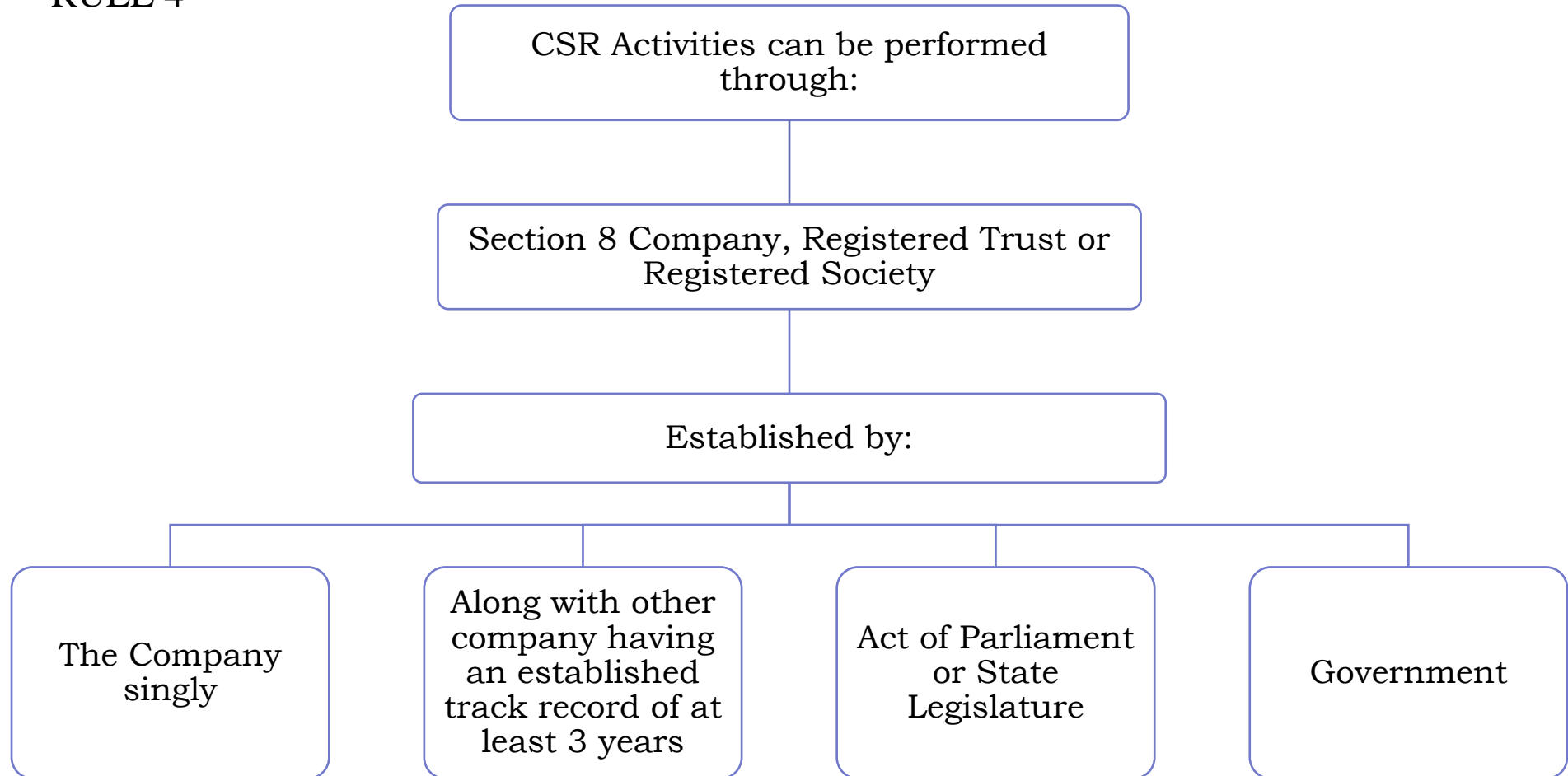
➤ **Unspent amount on ongoing CSR projects**

Transfer unspent contribution amount to a special account to be opened in any scheduled bank, to be called ‘**Unspent Corporate Social Responsibility Account**’ within 30 days from the end of the financial year which is to be utilized within a period of next 3 financial years from the date of such transfer.

➤ If the Company fails to utilize the said amount, it is required to transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.

Amendments in section 135

RULE 4



Amendments in Section 135

- To perform CSR activity entity shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar **with effect from the 01st day of April 2021.**
- This rule **shall not affect the CSR projects or programs approved prior to the 01st day of April 2021.)**
- It **may also collaborate with other companies** for undertaking CSR activities in such way that the CSR committees of respective companies are in a position to report separately on such projects.
- The Board shall satisfy itself that the funds marked for CSR have been utilized for it and in the manner as approved by it and the **Chief Financial Officer or the person responsible for financial management shall certify to the effect.**

Relaxation to OPC

- ✓ Financial Statements & Board's Report to be signed by one Director. Board's Report to contain Comment on every qualification/adverse remark by the Auditor.
- ✓ Filing of Financial Statements with the ROC to be done within 180 days from the closure of the financial year.
- ✓ Required to hold minimum 2 Board Meetings in a calendar year.
- ✓ CARO 2016 not applicable.

Small Companies

- ✓ Not required to get Annual Return signed by C.S. [section 92]
- ✓ Exempted from holding 4 Board meetings in a Financial year [section 173)
- ✓ Merger & Amalgamation of Two or more small Companies can be done on a fast track basis[section 233]

Other Privileges to Pvt Companies

- ✓ Private Companies below the threshold limit not required to appoint Internal Auditors [section 138 read with relevant Rules].
- ✓ Rotation of Auditor not required in the case of Private Companies having paid-up Share Capital less than Rs. 20 crores and / or having public borrowings from FIs, Banks or public deposits of less than Rs. 50 crores.

Other Privileges to Pvt Companies

- ✓ Not Mandatory for Private Companies to appoint Independent Director as well as Woman Director [section 149].
- ✓ No Security Deposit for appointment of Director [section 160].
- ✓ Not Mandatory to constitute Audit Committee [section 177], Nomination Committee, Remuneration Committee & Stakeholder Relationship Committee [section 178].

Other Privileges to Pvt Companies

- ✓ Establishment of Vigil Mechanism not required for private companies not accepting deposits from the public & where the Borrowings from Banks /FIs do not exceed Rs. 50 crores.
- ✓ No requirement of passing special Resolutions for items specified in section 180.
- ✓ Interested Directors may participate in the meetings of the Board after disclosure of interest [section 184).
- ✓ Not Mandatory to appoint KMP [section 203]
- ✓ Secretarial Audit not mandatory [section 204].



Thank You