

CA Inter

CORPORATE AND OTHER LAWS




BY CA PREETI AGGARWAL

FEATURES

- Theory concepts supported with examples
- Simple and easy language
- More than 300 questions
- Includes previous years exam questions

For Video Lectures & Free Downloads

Visit : www.theorymasterslearning.com



Worried about CA Inter Law Studies?

Here is Everything you need, On a budget!

Buy Theorymasters Learning's **CA Inter - Full Course** including Past Exams Questions.

So, What are you waiting for?

Hurry, Order Now!

www.theorymasterslearning.com

NEW!



**STUDY
CALENDAR
LAW**



CA PREETI AGGARWAL

CA INTERMEDIATE



**MCQ
PRACTICE
PAPERS**



CA PREETI AGGARWAL

CA INTERMEDIATE

Company Law Amendments for CA Inter Dec 2021 Exam

Amendment 1: CHANGE IN DEFINITION OF SMALL COMPANY

The **Companies (Specification of Definitions Details) Amendment Rules, 2021** passed on 1st February 2021. Definition of Small Company has been changed by these amendments. This Rule came into effect from 1st April 2021

Old definition- Section 2(85)	New Definition- Section 2(85)
<p>"Small company" means a company, other than a public company,—</p> <p>(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and</p> <p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees</p> <p>Provided that nothing in this clause shall apply to-</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act;</p>	<p>"Small company" means a company, other than a public company,—</p> <p>(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and</p> <p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees</p> <p>Provided that nothing in this clause shall apply to-</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act;</p> <p style="color: red; font-weight: bold;">As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.</p>
<div style="background-color: #e0e0e0; padding: 5px; margin-bottom: 10px;"> <p style="font-size: small; margin: 0;">1.20 CORPORATE AND OTHER LAWS</p> </div> <p>(4) Son's wife.</p> <p>(5) Daughter.</p> <p>(6) Daughter's husband.</p> <p>(7) Brother: Provided that the term "Brother" includes the step-brother;</p> <p>(8) Sister: Provided that the term "Sister" includes the step-sister.</p> <p>(78) Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961</p> <p>(84) Share means a share in the share capital of a company and includes stock;</p> <p>(85) Small company means a company, other than a public company,—</p> <p>(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and</p> <p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:</p> <p>Provided that nothing in this clause shall apply to—</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act.</p> <p><i>add AS PER Companies (Sp of Def details) Rules, 2014</i> → Example 11: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.50 crores; and paid up share capital was ₹ 40 lacs. Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.). (Proviso to section 2(85)).</p>	

Amendment 2: AMENDMENT IN CONCEPT OF ONE PERSON COMPANY

The **Companies (Incorporation) Second Amendment Rules, 2021** passed on 1st February 2021, through these rules MCA has made amendments in many provisions of One Person Company

This Rules came into effect from 1st April 2021


The Central Government introduced the following rules to further amend Rule 3 of the **Companies (Incorporation) Rules, 2014**

Old Provision	Amended Sub-Rule
<p>Rule 3- One Person Company</p> <p>(1) Only a natural person who is an Indian citizen and resident in India</p> <p>(a) shall be eligible to incorporate a One Person Company;</p> <p>(b) shall be a nominee for the sole member of a One Person Company.</p> <p>Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year.</p>	<p>(1) Only a natural person who is an Indian citizen whether resident in India or otherwise</p> <p>(a) shall be eligible to incorporate a One Person Company;</p> <p>(b) shall be a nominee for the sole member of a One Person Company.</p> <p>Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.</p>
<p>(7) No such company can convert voluntarily into any kind of company unless two years is expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.</p>	<p>OMITTED</p>

What does this imply?

1. Now NRI can incorporate One Person Company in India.
2. It is not mandatory to convert One Person Company in other type of company upon crossing the threshold limit.
3. OPC can convert in other type of Company any time after incorporation without any transition period.
4. Process of OPC in other type of Company has been completed amended.

Page 2:10
of module

- ◆ The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
 - ◆ The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association. 
 - ◆ Such other person (nominee) may be given the right to withdraw his consent.
 - ◆ The member of OPC may at any time change the name of such other person (nominee) by giving notice to the company and the company shall intimate the same to the Registrar.
 - ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
 - ◆ Only a natural person who is an Indian citizen *whether resident in India or not resident in India* and *resident in India* - *India or otherwise*
 - (a) shall be eligible to incorporate One Person Company (OPC);
 - (b) shall be a nominee for the sole member of One Person Company (OPC).
- Explanation 1 - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than ~~182 days~~ *120* during the immediately preceding financial year.
- ◆ A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.

INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO

2.11

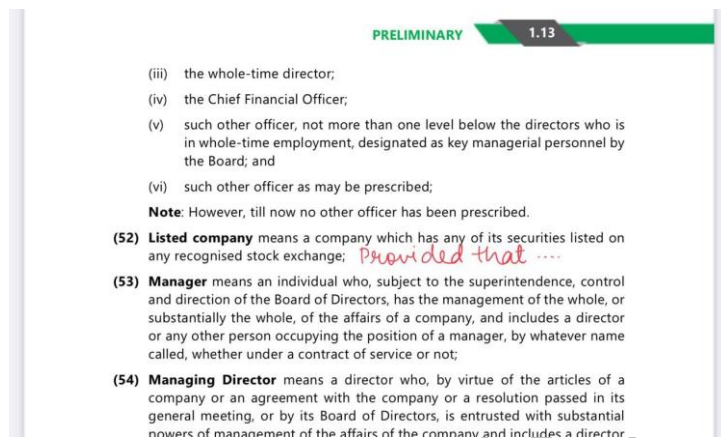
- ◆ Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria (as given in point above) within a period of 182 days.
- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ◆ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of Chapter II.
- ◆ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- ◆ ~~OPC can not convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.~~

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC

Amendment 3: AMENDMENT IN THE DEFINITION OF A LISTED COMPANY

The Companies (Specification of Definitions Details) Second Amendment, Rules 2021 passed on 19th February 2021 amended the definition of a listed company. This Rules came into effect from 1st April 2021.

Old definition	New Definition
<p>"listed company" means a company which has any of its securities listed on any recognised stock exchange;</p>	<p>"listed company" means a company which has any of its securities listed on any recognised stock exchange;</p> <p>[Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.]</p>



Extra Reading:

Following companies shall not be considered as Listed Company-

- a. Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
 - {i} non-convertible debt securities issued on private placement basis in terms of **SEBI (Issue and Listing of Debt Securities) Regulations, 2008**; or
 - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - (iii) both categories of (i) and (ii) above.
- b. Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of **SEBI (Issue and Listing of Debt Securities) Regulations, 2008**;
- c. Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.”

Amendment 4: FURTHER ISSUE OF SECURITIES (Section 62)

Old Provision	New Provision
(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined .	In section 62 of the Companies Act, 2013 in sub-section (1), in clause (a), in sub-clause (i), after the words "less than fifteen days", the words "or such lesser number of days as may be prescribed" shall be inserted.

4.36 CORPORATE AND OTHER LAWS

A private company may issue securities by way of rights issue or bonus issue in accordance with the provisions of this Act as per the section 23(2)(a).

Section 62 deals with further issue of share capital. The provisions ensure equitable distribution of such shares to the existing shareholders. These are mentioned in the following paragraphs:

(1) Offering of issue of further Shares: According to Section 62 (1), where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

³¹(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

- ³²(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined; *or such lesser number of days as may be prescribed*
- (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

Amendment 4: APPLICABILITY OF NEW CARO

Companies (Auditor’s Report) Order, 2020 (CARO, 2020) places more onus on statutory auditors as regards fulfilling their professional responsibilities.

Ministry of Corporate Affairs has notified the Companies (Auditor’s Report) Order, 2020 (CARO, 2020) which shall be applicable for the eligible companies for the financial year commencing on or after 1st April, 2021.

There are in total 21 clauses in CARO 2021 in comparison to 16 clauses in CARO 2016. 1 old clause is deleted, 1 clause is merged with other and 7 new clauses are inserted.

Therefore, while preparing the auditor report for the F.Y. 2021-22, Auditors shall now follow the new CARO.

Amendment 5: FINANCIAL STATEMENT (SCHEDULE III) WITH NEW CLAUSES

The Ministry of Corporate Affairs vide Notification dated 24 March 2021 has amended Schedule III to the Companies Act, 2013, which shall be effective from the 1st day of April 2021 for F.Y. 2021-22.

Ministry by this amendment has added many new disclosures in Notes to accounts of Balance Sheet and P&L like:

- i. Rounding off of figures
- ii. Shareholding of Promoters
- iii. Trade payable ageing Schedule
- iv. Trade receivables ageing schedule
- v. Title deeds of Immovable Property not held in name of the Company
- vi. Disclosure on revaluation of Assets
- vii. Disclosure on Loans/ Advance to Directors/ KMP/ Related parties
- viii. Details of Benami Property held
- ix. Details of Borrowing
- x. Wilful Defaulter
- xi. Relationship with Struck off Companies
- xii. Registration of charges or satisfaction with Registrar of Companies
- xiii. Compliance with number of layers of companies
- xiv. Disclosure of Ratios
- xv. Undisclosed Income (Reconciliation of Income Tax and Companies Act)
- xvi. CSR Disclosure

Amendment 6: AMENDMENTS IN DISCLOSURES OF DIRECTOR'S REPORT

The Companies (Accounts) Rules, 2014

First Amendment in Rule 3 i.e. Manner of Books of Account to be Kept in Electronic Mode.

Old Provision	Amended Provision
<p>Rule 3 Manner of Books of Account to be Kept in Electronic Mode</p> <p>(1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.</p>	<p>Rule 3 Manner of Books of Account to be Kept in Electronic Mode</p> <p>(1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.</p> <p>[Provided that for the financial year commencing on or after the 1st day of April, 2022 every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of</p>

	<p>each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.]</p>
--	---

What is an Audit Trail?

Audit Trail means, an audit trail is defined as a step-by-step sequential record which provides evidence of the documented history of financial transactions to its source. An auditor can trace every step of, the financial data of a particular transaction right from the general ledger to its source document with the help of the audit trail.

5 of 62

ACCOUNTS OF COMPANIES 9.5

India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within seven days thereof file with the registrar a notice in writing in form AOC-5 giving full address of that other place.

Maintenance of books of account in electronic form

A company has an option of keeping books of account or other relevant papers in electronic mode as per Rule 3 of the *Companies (Accounts) Rules, 2014*. Rule 3 lays down the manner of books of account to be kept in electronic mode.

- (1) Such books of account or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. ** Provided that ...*
- (2) The information contained in the records 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 the information contained in the electronic records shall remain complete and unaltered.
- (3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.
- (4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

Second Amendment in Rule 8 i.e. Matters to be Included in Board’s Report.

In rule 8, sub rule 5 after clause x, two new clauses added.

Old Provision	Amended Provision
<p><i>CA PREPARED</i></p>	<p>New Clauses added:</p> <p>(applicable w.e.f. 01.04.2021)</p> <p>(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.</p> <p>(xii) the details of difference between the 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.</p> <p>Disclosure on above mentioned two clauses are required to give in Directors Report of Companies along with other disclosures.</p>

- (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
- (x) 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.

(xi) and (xii) to be added →

Non- applicability of Rule 8 of Companies (Accounts) Rules, 2014: This rule shall not apply to One Person Company or Small Company.

- (3) **Abridged Board's report [Section 134(3A)]:** The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.
- (4) **Board's Report in case of OPC [Section 134(4)]:** In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark

Amendment 7: AMENDMENT IN DISCLOSURES OF AUDITOR'S REPORT

The Ministry of Corporate Affairs vide Notification dated 24 March 2021 has amended **Companies (Audit and Auditors) Amendment Rules,, 2021**, which shall be effective from the 1st day of April 2021 for FY 2021-22 except clause (g).

Amendment in Rule 11 i.e. Other Matters to be Included in Auditors Report. In Rule 11:

Old Provision	New Provision
(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.	Clause (d) to be omitted
	<p>Newly inserted</p> <p>(e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any</p>

	<p>guarantee, security or the like on behalf of the Ultimate Beneficiaries;</p> <p>(ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and</p> <p>(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement. (applicable w.e.f. 01.04.2021)</p> <p>(f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013. (applicable w.e.f. 01.04.2021)</p> <p>(g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.</p>
--	--

Amendment 8: ANNUAL RETURN OF ONE PERSON COMPANY AND SMALL COMPANY

The Companies (Management and Administration) Amendment Rules, 2021 passed on 05th March 2021. This Rules came into effect immediately on publication of same in official gazette and applicable for f.y. 2020-21.

Amendment in Rule 11 i.e. "Annual Return"

In rule 11 sub-rule 1 has been substituted

Old Provision	New Provision
(1) Every company shall prepare its annual return in Form No. MGT.7.	(1) Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A.

MANAGEMENT & ADMINISTRATION 7.17

- It is important to note here that the private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers. [Rule 10 (2), Companies (Management & Administration) Rules, 2014]

3. ANNUAL RETURN [SECTION 92, 94]

Provisions with regard to Annual Return are contained in section 92 and Rules 11 and 12 of the Companies (Management & Administration) Rules, 2014. Every company shall prepare an annual return in Form No. MGT. 7 as prescribed in Rules containing the following particulars:

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.

2. Its shares, debentures and other securities and shareholding pattern.

3. Its indebtedness.

4. Its members and debenture-holders along with the changes therein since the close of the previous financial year.

5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.

6. Meetings of members or a class thereof, Board and its various committees along with attendance details.

7. Penalty or punishment imposed

Provision newly inserted

Provided further that the Central Government may prescribe **abridged form** of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed.

Amendment 9: INTRODUCTION OF E-FORM CSR-1

Ministry of Corporate Affairs has launched CSR-1 form on their website w.e.f. 1st April 2021. E-form CSR-1 is required to be filed pursuant to Section 135 of the Companies Act, 2013 and Rule 4 (1) and (2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 by followings:

- Registered Public Trust
- Registered Society
- Section 8 Company

For Exam (extracts from my book on Corporate and Other Laws for CA Inter)

Corporate Social Responsibility [Section 135]

1) Meaning

The Companies Act, 2013 lays down the provisions requiring corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities.

CA Inter

CORPORATE AND OTHER LAWS

BY CA PREETI AGGARWAL

FEATURES

- Theory concepts supported with examples
- Simple and easy language
- More than 300 questions
- Includes previous years exam questions

For Video Lectures & Free Downloads

Visit : www.theorymasterslearning.com

Broadly, Corporate Social Responsibility (CSR) implies a concept, whereby companies decide to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general.

Corporate Social Responsibility (CSR) means and includes projects or programs relating to activities

- Specified in Schedule VII to the Act,
- Undertaken by the Board as per the CSR policy of the company

2) Applicability [Section 135(1)]

- This Section shall apply to every company having
 - Net worth \geq ₹500 crores, or
 - Turnover \geq ₹1,000 crores, or
 - Net Profit \geq ₹5 crores during the immediately preceding financial year

Note: “Net worth” [As per Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

3) CSR Committee

- The Company to which CSR applies shall constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting of 3 or more Directors, out of which at least one Director shall be an Independent Director [Section 135(1)]
- Provided that where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.
- A private company having only two directors on its Board shall constitute its CSR Committee with such two directors
- The Board’s report shall disclose the composition of the CSR Committee
- **Where the amount to be spent by a company does not exceed ₹50 Lakhs, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.**

4) Exclusion of Companies

Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for 3 consecutive financial years shall not be required to-

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

5) Duties of CSR Committee

The Committee shall formulate and recommend to the Board, a CSR policy, indicating the activities to be undertaken by the company in the areas or subject, in Schedule VII. The committee shall recommend

the amount of expenditure to be incurred and institute a transparent monitoring mechanism for implementing CSR projects, programs, activities and CSR policy of the company.

After taking into account the recommendations made by the Corporate Social Responsibility Committee, the board shall approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any.

6) CSR spending

(a) The Board shall ensure that the company spends, in every financial year, atleast 2% of the average net profits of the company made during the 3 immediately preceding financial years; or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR policy.

Provided that if the company spends an amount in excess of the requirements as specified in the Act, such company may set off such excess amount against the requirement to spend upto immediate succeeding three financial years subject to the conditions that –

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any

(ii) the Board of the company shall pass a resolution to that effect.

(b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(c) The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities excluding activities undertaken in pursuance of its normal course of business.

In other words, CSR activities shall not include the activities undertaken in the normal course of business.

However,

Companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

- such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in Schedule VII to the Act

- details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.

shall be considered as an eligible CSR activity.

(d) Spending of CSR funds for setting up makeshift hospitals and temporary COVID care facilities, carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity.

(e) The CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.

Any activity undertaken by the company outside India (**except** for training of Indian sports personnel representing any State or Union territory at national level or India at International level) shall not amount to CSR expenditure.

(f) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities

(g) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

(h) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount (unless the unspent amount relates to any ongoing project) and transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(i) **In case of an ongoing project-** Any unspent amount, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

[“Ongoing Project” means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification]

7) CSR Implementation

- The Board of the Company shall ensure that the CSR activities of the company are undertaken either by itself or through-
 - (i) a section 8 company,
 - (ii) registered public trust
 - (iii) registered public society

And all of them must be registered under section 12A of the Income Tax Act as well as approved under section 80G of the Income Tax Act.

- Every entity, covered above (i.e Section 8 Company, a registered public trust and a registered public society), that intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar with effect from 1st April, 2021.
Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to 1st April, 2021.
- Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

- On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.
- A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

8) CSR Expenditure

(a) The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

(“Administrative overheads” means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme)

(b) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(c) If the company **spends** an amount **in excess of the requirements** as specified in the Act, such company may set off such excess amount against the requirement to spend upto immediate succeeding three financial years subject to the conditions that –

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any
- (ii) the Board of the company shall pass a resolution to that effect.

9) Contents of CSR Policy

- List of activities or programs which a company plans to undertake and the provisions made for its implementation
- Monitoring process of such projects and programs
- Provided that CSR activities do not include the activities undertaken in the normal course of business
- Board shall ensure that activities included in the CSR policy relate to the areas specified in Schedule VII of the Act
- The CSR policy shall specify that the surplus arising out of CSR activities shall not form part of the business profit of a company

10) Display of CSR activities on its website

- The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

11) Impact Assessment- Every company having average CSR obligation of ₹10 crores or more in the three immediately preceding financial years, shall undertake impact assessment, through an **independent agency**, of their CSR projects having **outlays of ₹1 crore or more**, and which have been **completed not less than one year before undertaking the impact study**.

- The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

11) Penal provisions

- If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of
 - twice the amount required to be transferred by the company to the Fund specified in Schedule VII or
 - the Unspent Corporate Social Responsibility Account, as the case may be, or
 - ₹1 Crorewhichever is less,
- and
- every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or ₹2 lakhs, whichever is less

Amendment 10: NEW ANNEXURE OF CSR WITH DIRECTOR'S REPORT

MCA has introduced "Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021. These rules came into effect on 22 January 2021, as the same has been published in the official gazette on the same date. Therefore, these amended rules are applicable on the financial year 2020-21 (subject to specific date of some rules).

Directors Report:

The Company shall annex with its Board Report an annual report on CSR in format of Annexure-I (for FY 2020-21) or in Annexure II (w.e.f. FY 2021-22).

Amendment 11: Section 129A - Periodical Financial Results

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,-

- (a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

CA INTER
LAW TEST SERIES
3 PAPERS
~~₹ 999~~ **599**
GET MENTORING & COUNSELLING FREE!
www.theorymasterslearning.com

CA FOUNDATION
LAW TEST SERIES
3 PAPERS
~~₹ 999~~ **599**
GET MENTORING & COUNSELLING FREE!
www.theorymasterslearning.com

Penalties

Section number	Page Number (Module)	Old Law	New Provisions
Section 8(11)	2.14	<p>Penalty/ punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine varying from twenty-five thousand rupees to twenty-five lakh rupees, or with both.</p>	<p>a) the words "with imprisonment for a term which may extend to three years or" shall be omitted; (b) for the words "twenty-five lakh rupees, or with both", the words "twenty-five lakh rupees" shall be substituted.</p>
<div style="display: flex; justify-content: space-between;"> <div style="width: 15%;"> <p>14 of 58</p> <p>Page 2.14</p> </div> <div style="width: 70%;"> <p>(v) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.</p> <p>8. Penalty/ punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend</p> <p>© The Institute of Chartered Accountants of India</p> </div> <div style="width: 15%; text-align: right;"> <p>2.15</p> </div> </div> <div style="text-align: center; margin-top: 20px;"> <p>INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO</p> <p>to three years or with fine varying from twenty-five thousand rupees to twenty-five lakh rupees, or with both.</p> <p>And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.</p> <p style="background-color: #8ebf42; color: white; padding: 5px; display: inline-block;">Contravention</p> </div>			
Section 26(9)	3.9	<p>If a prospectus is issued in contravention of the provisions of section 26, the company prospectus shall be punishable with imprisonment for a term which may extend to three years</p>	

		<p>or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.</p>	<p>a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;</p> <p>(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.</p>
--	--	--	--

PROSPECTUS AND ALLOTMENT OF SECURITIES 3.9

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

```

graph TD
    A[Contents Of Prospectus] --> B[Dated (Date of Publication)]
    A --> C[Expert Report]
    A --> D[Cover page]
    B --> B1[Signed Directors/Proposed/Attorney]
    B --> B2[Information-26(1)]
    B --> B3[Reports -26(1)]
    C --> C1[Not Engaged in formation]
    C --> C2[Written Consent]
    C --> C3[Above points mentioned in Prospectus]
    C2 --> C2a[Given]
    C2 --> C2b[Not withdrawn]
    D --> D1[A copy is delivered to ROC]
    D --> D2[List of documents submitted to ROC]
    
```

(7) **Prospectus to be issued within specified time:** No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4). [Sub-section (8)]

(8) **Punishment if 'issued prospectus' contravenes applicable provisions:** If a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable ~~with imprisonment for a term which may extend to three years or~~ with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, ~~or with both.~~ [Sub-section (9)]

Section 40(5)	3.23	<p>Company:</p> <ul style="list-style-type: none"> with minimum fine of five lakh rupees and maximum of fifty lakh rupees <p>Defaulting officer:</p> <ul style="list-style-type: none"> with imprisonment upto one year, or with minimum fine of fifty thousand rupees and maximum of three lakh rupees, or with both. 	<p>a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;</p> <p>(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted</p>
---------------	------	---	---

PROSPECTUS AND ALLOTMENT OF SECURITIES 3.23

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) **Condition purporting to waive compliance shall be void:** Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) **Default in complying with provisions:** If a default is made in complying with the provisions of this section, both the company and the officer of the company shall be punishable as under:

Company:

- with minimum fine of five lakh rupees and maximum of fifty lakh rupees

Defaulting officer:

- with imprisonment upto one year, or—
- with minimum fine of fifty thousand rupees and maximum of three lakh rupees, or—
- with both.



Section 48	4.14	<p>(6) Punishment for Default: According to Section 48 (5), where any default is made in complying with the provisions of this section, the punishment shall be as under:</p> <ul style="list-style-type: none"> company: It shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees; every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both. 	OMIT
------------	------	---	------

4.14 **CORPORATE AND OTHER LAWS**

(4) **Decision of Tribunal:** According to Section 48 (3), the decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

(5) **Filing of copy of order with Registrar:** 48 (4) states that the company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

~~(6) **Punishment for Default:** According to Section 48 (5), where any default is made in complying with the provisions of this section, the punishment shall be as under:~~

- ~~company: It shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees;~~
- ~~every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.~~

<p>Section 56 (6)</p>	<p>4.28</p>	<p>Punishment for Default in compliance with the provisions:</p> <p>As per Section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the punishment shall be as under:</p> <p>Company: It shall be punishable with fine varying from 25,000 rupees to 5 lakh rupees</p> <p>Every officer of the company who is in default: He shall be punishable with minimum fine of 10,000 rupees and maximum of one lakh rupees.</p>	<p>Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."</p>
<div style="display: flex; justify-content: space-between;"> <div style="width: 15%;"> <p>fg 4.28</p> </div> <div style="width: 70%;"> <p>(b) Insolvency: When a shareholder becomes insolvent, his shares are to be transmitted to his Official Receiver.</p> <p>(c) Lunacy: When a shareholder becomes lunatic, his shares are to be transmitted to his administrator appointed by the Court.</p> <p>Punishment for Default in compliance with the provisions: As per Section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5), the punishment shall be as under:</p> <ul style="list-style-type: none"> company: It shall be punishable with fine varying from 25,000 rupees to 5 lakh rupees <p>© The Institute of Chartered Accountants of India</p> <hr/> <p style="color: red; font-style: italic;">The company and every officer who is in default shall be liable to a penalty of ₹50,000</p> <p style="text-align: center; font-size: small;">SHARE CAPITAL AND DEBENTURES 4.29</p> <ul style="list-style-type: none"> every officer of the company who is in default: He shall be punishable with minimum fine of 10,000 rupees and maximum of one lakh rupees. <p>Liability of Depository: Section 56 (7) states that where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under Section 447^{2B} along with the liability mentioned under the Depositories Act, 1996.</p> </div> </div>			
<p>Section 59 (5)</p>	<p>4.33</p>	<p>(v) Default in complying with the Order of Tribunal:</p> <p>As per Section 59 (5), if any default is made in complying with the order of the Tribunal under Section 59, the punishment shall be as under:</p> <ul style="list-style-type: none"> company: It shall be punishable with fine which shall not be less than one lakh rupees but which 	<p>OMIT</p>

		<p>may extend to five lakh rupees, and</p> <ul style="list-style-type: none"> • every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. 	
<div style="text-align: center;"> <p>SHARE CAPITAL AND DEBENTURES 4.33</p> </div> <ul style="list-style-type: none"> • direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or • direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved. (iii) Entitlement to Voting Rights: Section 59 (3) states that the provisions of Section 59 shall not restrict the right of a holder of securities, to transfer such securities. Further, any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal. (iv) Transfer of Securities contravenes certain Acts and Direction of Tribunal: According to Section 59 (4), where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (SCRA), the Securities and Exchange Board of India Act, 1992 (SEBI) or the Companies Act, 2013 or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned. (v) Default in complying with the Order of Tribunal: As per Section 59 (5) if any default is made in complying with the order of the Tribunal under Section 59, the punishment shall be as under: <ul style="list-style-type: none"> • company: It shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, and • every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. 			
<p>Section 64(2)</p>	<p>4.43</p>	<p>(2) Default in Filing of Notice:</p> <p>Section 64 (2) states that where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less</p>	<p>a) for the words "one thousand rupees", the words "five hundred rupees" shall be substituted;</p> <p>(b) for the words "or five lakh rupees whichever is less", the words "subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default" shall be substituted.</p>

SHARE CAPITAL AND DEBENTURES 4.43

Notice to be given to Registrar for alteration of Share Capital [Section 64]

As and when, there is an alteration of share capital, the company concerned shall notify the registrar. The provisions in this respect are contained in Section 64.

(1) Filing of Prescribed Notice: According to Section 64 (1), where-

- a company alters its share capital in any manner specified in section 61 (1),
- an order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or
- a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form³⁸ with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

(2) Default in Filing of Notice: Section 64 (2) states that where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of ~~one thousand rupees~~ **₹ 500** for each day during which such default continues, or ~~five lakh rupees~~ **subject to a maximum of ₹ 5 Lakhs in case of a company and ₹ 1Lakh in case of an officer who is in default** whichever is less.

Reduction of Share Capital [Section 66]

Section 66	4.47	(11) Failure to Publish the Order of Confirmation of the Reduction of Share Capital: Section 66 (11) states that if a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.	OMIT
------------	------	---	------

SHARE CAPITAL AND DEBENTURES 4.47

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under Section 447⁴⁰.

~~**(11) Failure to Publish the Order of Confirmation of the Reduction of Share Capital:** Section 66 (11) states that if a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.~~

Restriction on Purchase by Company or giving of Loans by it for Purchase of its Shares [Section 67⁴²]

As a fundamental principle, a company cannot buy its own shares because in that case it will involve reduction of share capital affecting the creditors. However, this restriction is not absolute. If the prescribed procedure as laid by Section 67 is followed, the company is permitted to buy its own shares and the prohibition shall not apply. The provisions of Section 67 are mentioned below:

(1) Reduction according to the applicable Provisions: Section 67(1)⁴³ lays

Section 68 (11)	4.52	<p>(11) Penalty for Default: Section 68 (11) states that if a company makes default in complying with the provisions of this section</p> <ul style="list-style-type: none"> • Every officer of the company who is in default: He shall be punishable with imprisonment 	a) the words "with imprisonment for a term which may extend to three years or" shall be omitted ;
-----------------	------	--	--

		<p>for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.</p>	<p>(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.</p>
<div style="display: flex; justify-content: space-between;"> <div style="width: 15%;"> <p>Pg 4.52</p> </div> <div style="width: 70%;"> <p>(11) Penalty for Default: Section 68 (11) states that if a company makes default in complying with the provisions of this section or any regulations made by SEBI under clause (f) of sub-section (2), the punishment shall be as under:</p> <ul style="list-style-type: none"> Company: It shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees; and <p><small>⁴⁹To be maintained in Form No. SH-10 as per Rule 17 (12)(a) of the Companies (Share Capital and Debentures), Rules, 2014. ⁵⁰To be filed in Form No. SH-11 as per Rule 17 (13) of the Companies (Share Capital and Debentures), Rules, 2014.</small></p> <p>© The Institute of Chartered Accountants of India</p> </div> <div style="width: 10%; text-align: right;"> <p>VAL</p> </div> </div> <hr/> <div style="text-align: center;"> <p>SHARE CAPITAL AND DEBENTURES 4.53</p> </div> <ul style="list-style-type: none"> Every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. <p>Transfer of certain Sums to Capital Redemption Reserve Account [Section 69]</p> <p>Section 69 requires certain amount to be transferred to the capital redemption reserve account in case a company buys back its own shares. The provisions are as under:</p>			
<p>Section 71(11)</p>	<p>4.63</p>	<p>(11) Default in compliance with Order of the Tribunal: According to Section 71 (11), if any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable as under:</p> <ul style="list-style-type: none"> with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both. 	<p>OMIT</p>
<div style="text-align: center;"> <p>SHARE CAPITAL AND DEBENTURES 4.63</p> </div> <p>(11) Default in compliance with Order of the Tribunal: According to Section 71 (11), if any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable as under:</p> <ul style="list-style-type: none"> with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both. <p>(12) Specific Performance of the Contract: Section 71 (12) states that a contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.</p>			

Section 86(1)	6.16	<p>if a company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charges, the punishment shall be as under:</p> <ul style="list-style-type: none"> ◆ the company shall be punishable with minimum fine of ₹one lakh and maximum fine of ₹ ten lakhs; and ◆ every defaulting officer of the company shall be punishable with imprisonment maximum up to six months or with minimum fine of ₹twenty-five thousand and maximum of ₹ one lakh, or with both. 	<p>(1) If any company is in default in complying with any of the provisions of this Chapter,</p> <p>the company shall be liable to a penalty of five lakh rupees</p> <p>and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees</p>
---------------	------	--	--

The Company shall be liable to a penalty of ₹5Lakhs and every officer of the company

6.16 CORPORATE AND OTHER LAWS
whom in default shall be liable to penalty of ₹ 50,000

9. PUNISHMENT FOR CONTRAVENTION [SECTION 86]

- (i) According to section 86 (1) of the Act of 2013, if a company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charges, the punishment shall be as under:
- ◆ ~~the company shall be punishable with minimum fine of ₹ one lakh and maximum fine of ₹ ten lakhs; and~~
 - ◆ ~~every defaulting officer of the company shall be punishable with imprisonment maximum up to six months or with minimum fine of ₹ twenty-five thousand and maximum of ₹ one lakh, or with both.~~
- (ii) With the insertion of sub-section (2)²⁵, section 447 relating to 'punishment for fraud' also becomes applicable in certain cases. Accordingly, if any person wilfully furnishes:

Section 88(5)	7.7	<p>Section 88(5) of the Act provides that company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹50,000 but which may extend to ₹ 3,00,000 and where the failure is a continuing one, with a further fine which may extend to ₹ 1,000 per day.</p>	<p>(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2),</p> <p>the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable</p>
---------------	-----	---	---

			to a penalty of fifty thousand rupees.".
		<p style="text-align: center;">MANAGEMENT & ADMINISTRATION 7.7</p> <p><i>in case of default, the company shall be liable to a</i></p> <p>foreign register kept by the company outside India or to the principal register. <i>penalty of ₹ 3 Lakhs and every officer of the company who is in default shall be</i></p> <ul style="list-style-type: none"> ◆ Penalty for failure to maintain register in accordance with the provisions of Section 88(1) and 88(2) of the Act: Section 88(5) of the Act provides that company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ Rs. 50,000 but which may extend to ₹ Rs. 3,00,000 and where the failure is a continuing one, with a further fine which may extend to ₹ . 1,000 per day. <i>liable for a penalty of ₹ 50,000</i> ◆ Nature of offence: The offence under this section is a compoundable offence under section 441 of the Act. ◆ Details of Nominations in the register: It is important to note here that Form MGT – 1 and MGT – 2 require details of nomination as referred to in section 72 of the Act, <i>read with Rule 19 of the Companies (Share Capital and Debentures) Rules, 2014</i> to be entered in the Register of members and register of debenture-holders or other security holders as the case may be. ◆ Authentication of entries: 	
Section 89(5)	7.10	<p>Related to persons required to make a declaration [Section 89(5)]-</p> <p>If any person fails to make a declaration as required under section 89, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p>	<p>If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.";</p>
		<p style="text-align: center;">7.10 CORPORATE AND OTHER LAWS</p> <p><i>penalty of ₹ 250,000 and in case of continuing</i></p> <p>(ii) receive or participate in any dividend or other distribution in respect of such share. [Section 89(10)]</p> <p>Penalty for default under section 89(5) & 89(7) - <i>penalty of ₹ 200 for each day after the first during</i></p> <p>Two kinds of penal provisions are included under section 89 - <i>which</i></p> <ul style="list-style-type: none"> ◆ Related to persons required to make a declaration [Section 89(5)]- If any person fails to make a declaration as required under section 89, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. <i>such failure continues, subject to a maximum of ₹ 5 Lakhs</i> ◆ Related to company [Section 89(7)]- If a company, required to file a return u/s 89(6), fails to do so within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. ◆ Exemption to Government Company- In case of Government Company - Section 89 shall not apply - <i>Notification dated 5th June, 2015.</i> <p>The above mentioned exemption shall be applicable to a government company</p>	

Section 89(7)	7.10	<p>Related to company [Section 89(7)]- If a company, required to file a return u/s 89(6), fails to do so within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues</p>	<p>(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.";</p>
---------------	------	--	---

7.10 CORPORATE AND OTHER LAWS

(ii) receive or participate in any dividend or other distribution in respect of such share. [Section 89(10)]

Penalty for default under section 89(5) & 89(7) - *before the expiry of the time specified therein, the company and every officer (refer amendment sheet)*

Two kinds of penal provisions are included under section 89 -

- **Related to persons required to make a declaration** [Section 89(5)]- If any person fails to make a declaration as required under section 89, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
- **Related to company** [Section 89(7)]- ~~If a company, required to file a return u/s 89(6), fails to do so within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.~~
- **Exemption to Government Company**- In case of Government Company - Section 89 shall not apply - Notification dated 5th June, 2015.

Section 92(5)	7.18	<p>Section 92(5) of the Act specifies that if any company fails to file its annual return under sub - section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.</p>	<p>(i) for the words "fifty thousand rupees", the words "ten thousand rupees" shall be substituted</p> <p>(ii) for the words "five lakh rupees", the words "two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default" shall be substituted</p>
---------------	------	--	--

	<p>Page 7.18</p>	<p>Penalty for contravention-</p> <ul style="list-style-type: none"> Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten fifty thousand rupees and in case of continuing failure, with further penalty of one <p>"Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company." The above exceptions/ modifications/ adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with Registrar. <i>Notification Dated 13th June, 2017</i></p> <p>² In case of Specified IFSC Public Company and Specified IFSC Private Company - Sub-section (3) of section 92 shall not apply. - <i>Notification Date 4th January, 2017</i></p> <p>© The Institute of Chartered Accountants of India</p>	
<p>Section 92(6)</p>	<p>7.19</p>	<p>MANAGEMENT & ADMINISTRATION 7.19</p> <p>hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees Refer amendment sheet</p> <ul style="list-style-type: none"> If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000. <p>Example 4</p> <p><i>Big Fox Private Limited called its Annual General Meeting on 30th September, 2018 for laying down the financial statement for approval of its shareholders' for the financial year ended 31st March 2018. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements or the annual return for the year ending March 2018, with the RoC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.</i></p> <p>Answer: The director is incorrect in holding that there no contravention of the provisions of the Companies Act, 2013. Section 92 states that every company has</p>	<p>in sub-section (6), for the words "punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of two lakh rupees" shall be substituted.</p>
		<p>MANAGEMENT & ADMINISTRATION 7.19</p> <p>hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.</p> <ul style="list-style-type: none"> If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000 liable to a penalty of 2 Laks <p>Example 4</p> <p><i>Big Fox Private Limited called its Annual General Meeting on 30th September, 2018 for laying down the financial statement for approval of its shareholders' for the financial year ended 31st March 2018. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements or the annual return for the year ending March 2018, with the RoC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.</i></p> <p>Answer: The director is incorrect in holding that there no contravention of the provisions of the Companies Act, 2013. Section 92 states that every company has to file an annual return with the RoC in Form MGT – 7 within 60 days of date on which annual general meeting was held or the date when it must have been held. In the above case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2018, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92(5) of the Act.</p> <p>³Section 94 – Place of keeping and inspection of registers, returns, etc.</p>	

Section 105	7.32	<p>If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees.</p> <p>Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.</p>	<p>(a) for the words "who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees", the words "who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees" shall be substituted;</p> <p>(b) in the proviso, for the word "punishable", the word "liable" shall be substituted</p>
-------------	------	--	--

7.32 CORPORATE AND OTHER LAWS

- Section 105(8) provides that every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.
- Penalty for default-
 - If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees.
 - If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be **punishable with fine which may extend to one lakh rupees.**
 - For refusing the inspection to members at any time during the business hours, the company and every officer who is in default, shall be punishable with fine upto ₹ 10,000 and where the contravention is a continuing one, with a further fine upto ₹ 1,000 per day of default.
 - Offences under this section are compoundable under section 441 of the Act.

liable to a penalty of ₹ 50,000

6. VOTING [SECTION 106-109]

Section 117	7.55	<p>If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first</p>	<p>for sub-section (2), the following sub-section shall be substituted, namely:-</p> <p>(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be</p>
-------------	------	---	---

		<p>shareholding held by them. [in diagram]</p> <p>(c) The amendment is newly inserted.</p>	<p>(c) after the proviso, the following proviso shall be inserted, namely:- 'Provided further that the Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed".'</p>
--	--	--	---

MANAGEMENT & ADMINISTRATION 7.17

- It is important to note here that the private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers. [Rule 10 (2), Companies (Management & Administration) Rules, 2014]

3. ANNUAL RETURN [SECTION 92, 94]

Provisions with regard to Annual Return are contained in section 92 and Rules 11 and 12 of the Companies (Management & Administration) Rules, 2014. Every company shall prepare an annual return in Form No. MGT. 7 as prescribed in Rules containing the following particulars:

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.
2. Its shares, debentures and other securities and shareholding pattern
- ~~3. Its indebtedness~~
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.
6. Meetings of members or a class thereof, Board and its various committees along with attendance details.
- *7. Remuneration of directors and key managerial personnel
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.
9. Matters relating to certification of compliances, disclosures.

10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.

Section 124	8.17	<p>Punishment for Contravention- If a company fails to comply with any of the requirements relating to unpaid dividend account, it shall be punishable with minimum fine of ₹ five lakhs which may extend to ₹twenty-five lakhs. Further, every officer of the company who is in default shall be punishable with minimum fine of ₹ one lakh which may extend to ₹ five lakhs.</p>	<p>If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day</p>
-------------	------	--	---

			<p>after the first during which such failure continues, subject to a maximum of two lakh rupees.</p>
<p style="text-align: center;">DECLARATION AND PAYMENT OF DIVIDEND 8.17</p> <p>ensure i.e. be available to the benefit of the members of the company in proportion to the amount remaining unpaid to them.</p> <p>(iv) Claimant to apply for payment of Claimed Amount- Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account may apply to the company concerned for payment of the money so claimed.</p> <p>(v) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)- Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.</p> <p>Further, the company shall send a prescribed statement containing the details of such transfer to the IEPF Authority and in turn, the Authority shall issue a receipt to the company as evidence of such transfer.</p> <p>(vi) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.</p> <p><i>By way of Explanation,</i> it is clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.</p> <p>(vii) Right of Owner of 'transferred shares' to Reclaim- Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.</p> <p>(viii) Punishment for Contravention- If a company fails to comply with any of the requirements relating to unpaid dividend account, it shall be punishable with minimum fine of ₹ five lakhs which may extend to ₹ twenty-five lakhs. <i>refer amendment sheet</i></p> <p>Further, every officer of the company who is in default shall be punishable with minimum fine of ₹ one lakh which may extend to ₹ five lakhs.</p>			
<p>Section 128</p>	<p>9.7</p>	<p>Penalty for contravention</p> <p>In case the aforementioned persons fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both</p>	<p>If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees</p>

ACCOUNTS OF COMPANIES 9.7

Period for preservation of books [Section 128(5)]

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible and Penalty

As per Section 128 (6) the person responsible for the maintenance of books of account etc. shall be:

- (i) Managing Director,
- (ii) Whole-Time Director, in charge of finance
- (iii) Chief Financial Officer
- (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty for contravention

In case the aforementioned persons fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable ~~with imprisonment for a term which may extend to one year or~~ with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees ~~or both~~.



Section134(8)	9.30	<p>If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p>	<p>If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees</p>
---------------	------	--	--

9:30 CORPORATE AND OTHER LAWS

(4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(iv) **Signing of Board's Report [Section 134(6)]:**
The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and 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.

(v) **Contravention [Section 134(8)]:** *refer amendment sheet*

Persons liable	Punishment for contravention of any provision of this section
Company	fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 lacs
Every officer of the company who is in default	(1) Imprisonment for a term which may extend to 3 years; or (2) fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lacs; or (3) Both with imprisonment and fine

Example 4: ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Section 137(3)	9.51	<p>Penalty: If any of the provisions of this section are contravened-</p> <p>(a) The company shall be liable to a penalty of ₹1,000 for every day during which the failure continues but which shall not be more than ₹10 lacs; and</p> <p>The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be: liable to a penalty which shall not be less than ₹ 1 lac , and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lacs rupees.</p>	<p>Penalty: If any of the provisions of this section are contravened-</p> <p>(a) The company shall be liable to a penalty of ₹10,000; and in case of continuing failure, with a further penalty of ₹100 for each day during which such failure continues, subject to a maximum of ₹2 lakhs,</p> <p>The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be: liable to a penalty which shall not be less than ₹ 10,000, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of ₹50,000.</p>
----------------	------	---	--

ACCOUNTS OF COMPANIES 9.51

(v) **Annual General meeting not held [Section 137(2)]:**
 Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

(vi) **Penalty [Section 137(3)]:** If any of the provisions of this section are contravened-

(a) The company shall be liable to a penalty of ~~₹ 1,000 for every day during which the failure continues but which shall not be more than ₹ 10 lacs;~~ ^{₹ 10,000} and

(b) The managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be:

(1) liable to a penalty which shall not be less than ~~₹ 1 lac~~ ^{₹ 10,000} and in case of continuing failure with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lacs rupees. *Refer amendment sheet*

Person liable	Punishment for contravention of section 137
Company	with fine of ₹ 1,000 for every day during which the failure continues to a maximum ₹ 10 lacs
Officers— MD and CFO of the company, if any; In their absence, any other director who is charged by the Board with the responsibility; In its absence, all the directors of the company.	Fine which shall not be less than ₹ 1 lac, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lacs rupees.

Example 11: The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2018 was not held. What remedy is available with

Section 140	10.19	<p>Penalty for contravention: If the auditor does not comply with aforesaid provision, he or it shall be liable to a penalty of ₹50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 lacs.</p>	<p>In sub-section (3), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted.</p>
-------------	-------	--	---

AUDIT AND AUDITORS 10.19

with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor in this case is invalid. The company contravened the provision of the Act.

(ii) **Resignation by Auditor [Section 140(2) & (3)]**

(a) If the Auditor has resigned from the company, he shall file a statement in the form ADT-3 with the company and the Registrar within a period of 30 days from the date of such resignation.

(b) The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.

(c) In case of government companies or companies controlled by Central Government or State Government, the auditor shall file such statement with the CAG along with the company and the Registrar indicating the reasons and other facts as may be relevant with regard to his resignation.

(d) **Penalty for contravention:** If the auditor does not comply with aforesaid provision, he or it shall be liable to a penalty of ₹50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ~~₹ 5 lacs~~ ^{₹ 2 lacs}.

Section 143	10.37	<p>If any Auditor, cost auditor or the Secretarial auditor, as mentioned above, do not comply with the</p>	<p>(15) If any auditor, cost accountant, or company secretary in practice does not</p>
-------------	-------	--	--

		<p>provisions of this section (i.e. section 143(12)), he shall be punishable with fine which shall not be less than ₹1 lac but which may extend to ₹25 lacs.</p>	<p>comply with the provisions of sub-section (12), he shall-</p> <p>(a) in case of a listed company, be liable to a penalty of five lakh rupees; and</p> <p>(b) in case of any other company, be liable to a penalty of one lakh rupees.</p>
<p>AUDIT AND AUDITORS 10.37</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>(ii) Approximate amount involved;</p> <p>(iii) Parties involved, if remedial action not taken; and</p> <p>(iv) Remedial actions taken.</p> <p>(3) The provision of this section shall mutatis mutandis apply to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.</p> <p>(4) No duty to which an auditor of a company may be subject shall be regarded as having been contravened by reason of his reporting the matter referred above if it is done in good faith.</p> <p>(5) Penalty for non-compliance of section 143(12): If any auditor, cost auditor or the Secretarial auditor, as mentioned above, do not comply with the provisions of this section (i.e. section 143(12)), he shall be punishable with fine which shall not be less than ₹1 lac but which may extend to ₹25 lacs.</p> <p>(6) Good Faith [Section 143 (13)]: No duty to which an auditor of a company may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.</p> </div> <div style="width: 50%; border-left: 1px solid black; padding-left: 10px;"> <p><i>in case of a listed Co, he is liable for a penalty of ₹5L and in case of another Co, he is liable to a penalty of ₹2Lacs</i></p> </div> </div>			
<p>Section 147</p>	<p>10.44</p>	<p>Penalty on officers [Section 147(1)]: If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with</p> <p>(1) imprisonment for a term which may extend to 1 year or</p> <p>(2) with fine which shall not be less than ₹10,000 but which may extend to ₹1 lac; or</p> <p>(3) both with imprisonment and fine.</p>	<p>(a) in sub-section (1),—</p> <p>(i) the words "with imprisonment for a term which may extend to one year or" shall be omitted;</p> <p>(ii) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted;</p> <p>Shall be omitted</p> <p>(b) in sub-section (2), the word and figures, "section 143" shall be omitted.</p>

(i) Penalty on company [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 lacs.

(ii) Penalty on officers [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with

- ~~(1) imprisonment for a term which may extend to 1 year or~~
- (2) with fine which shall not be less than ₹10,000 but which may extend to ₹1 lac; ~~or~~
- (3) ~~both with imprisonment and fine.~~

(iii) Penalty on auditor [Section 147(2) & (3)]:

- (a) If an auditor of a company contravenes any of the provisions of section 139, ~~section 143~~, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 lacs or four times the remuneration of the auditor, whichever is less.