

Company Law Refresher Course – WIRC – 28.05.2020

**Presentation on Select Provisions pertaining to
Accounts & Audit under Companies Act 2013**

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Setting the Context

- **Numerous changes in the provisions of Companies Act, 2013**
- **Stringent Compliance related Regulations**
- **Penal Consequences including for breach of duty of care OR negligence**
- **Tougher Regulator**
- **Occurrences of Resignations by auditors in midst of their tenure**
- **Heightened regulatory expectations as evident in first AQR carried by NFRA**
- **MCA consultation paper on audit threats – 7/2/2020**

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Sections 128,129, 134 and 138**

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Penalties, Punishment and Others matters



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- Financial Statements
- Board Report

Books of Accounts

- **Books of Account, Relevant Books & Papers** and Financial Statements to be kept at **Registered Office** [S.128(1)]
- Proper **summarized returns** are required to be sent by the branch office to the Co. at its Reg. Office [S.128(2)]
- If kept/maintained at place other than Regd. Office as decided by BoD, **intimation to be filed with ROC in Form AOC 5**, within a week
- Books of A/c to be kept on **accrual basis**, according **double entry system** of accounting
- Open for **Inspection** at the Reg. Office by any director during **business hours** [S.128(3)]
- The officers and other employees of the Co. are required to provide **all assistance** in connection with the inspection [S.128(4)]
- Books of accounts & relevant vouchers to be kept at least **8 years** & in good order. CG may direct **longer period** [S.128(5)]



Impact of contravention of **S.128** [S.128 (6)]

MD, WTD in charge of finance, CFO or such other person charged by the Board for complying the provisions shall be punishable with

Imprisonment < **1 Year**

Fine not be less than **INR 50K** extended to **INR 5 Lakhs**; or

Both

'Books & Papers' defined in S.2(12)

'Books of Account' defined in S.2(13)

Books of Accounts

Manner of Books of Account to be Kept in Electronic Mode [S.128(1) & Rule 3]

The Books of A/c, Other relevant papers and Information in the electronic record –

- Accessible in India
- To retained completely in the Original format of receipt/sent
- Remain complete and unaltered
- Documents to be displayed in a legible form
- Proper system is required for storage, retrieval, display or printout



Cos are required to inform the Registrar on an annual basis at the time of filing of financial statement

- the Name, IP Address & Location of the service provider;
- If data are maintained on cloud, such address as provided by the service provider

Books of Account

X Ltd is a wholly owned subsidiary of Foreign Company. All the vouchers, papers and documents are kept in India. However the server of the accounting system is situated at location of the foreign company.

Has X Ltd contravened the provision of the Act ?

Rule 3 of Companies (Accounts) Rule 2014, requires back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, to be kept in servers physically located in India on a periodic basis.

Matters for consideration

Currently various ERPs/Accounting systems (e.g. Oracle) are upgrading into cloud computing version.

Companies should intimate ROC when such upgradation or enhancements are made.

S.129

Financial Statements

Definition – Financial Statements

Balance Sheet

P&L Account OR
Income & Expenditure
Account

Cash Flow Statement


Statement of changes
in equity, if applicable

Any other explanatory
note

Included in
Financial Statements
[S.2(40)]

Financial Statements include 'cash flow statement' in case of all companies except **One Person Company** and **Small Companies** as against the provisions of AS-3 which applies only to SMC's

- **Financial Statement [S.129(1)]–**
 - Provide True & Fair view of state of affairs
 - Comply with Accounting Standards notified u/s 133
 - In the form as required by Schedule III
- If FS do not comply with AS/Ind AS, Co. to disclose the deviation - [S.129(5)]
 - Reason for deviation
 - Financial Effect of the deviation
- At every AGM, Board of Directors shall lay **SFS** and **CFS** (if any) [S.129(2) & (4)]



S.129(1) shall not apply to

- Insurance Co
- Banking Co
- Co engaged in Generation or Supply of Electricity
- class of Co for which a form of FS has been specified in or under different Act

Financial Statements

Consolidated Financial Statements

Co having Subsidiaries or Associates or JV [S.129(3)] -

- to prepare **CFS, in accordance with applicable Accounting Standards**
- to prepare Separate Statement containing the salient features of the FS of its Subsidiaries or/and Associate Companies (Form AOC-1, Rule 5)
- CFS to be made as per **Part III of Schedule III (& applicable AS)**
- Co. which is not required to prepare CFS under the AS's, it is sufficient if the co. complies with provisions on CFS provided in Schedule III of the Act
- CFS to be in same form and manner, as that of Holding Co.
- If any Subsidiary, Associate or JV not consolidated, name and reasons for the same to be disclosed
- CFS to be circulated to members & also laid before AGM of the Holding Co. Therefore, Auditor's report on CFS will have to be addressed to members.

The underlined portions are brought in by the Companies (Amendment) Act, 2017; but effectively similar position prevailed earlier too, in view of Rule 6 of Companies (Accounts) Rules.

An Associate is defined u/s 2(6) of the Act to include a JV

Financial Statements

Consolidated Financial Statements

S1 Ltd is a wholly owned subsidiary of S Ltd. S Ltd is wholly owned subsidiary of H Ltd. Whether the S Ltd is required to prepares CFS, which is neither listed nor does intend to be listed and as H Ltd prepares the CFS in compliance with the applicable AS?

Can S Ltd seek to be exempt from preparing CFS?

As per proviso to Rule 6 of Companies (Account) Rules, nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

- it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and **all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;**
- it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
- its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards

Financial Statements

Consolidated Financial Statements – Additional Disclosure (cl 2 of part III of Schedule III)

Name of the Entity in the group	Net Asset i.e. Total assets - Total Liabilities		Share in Profit or Loss	
	As % of Consolidated Net assets	Amount	As % of Consolidated Profit or Loss	Amount
Parent				
Subsidiaries				
Indian				
Foreign				
Minority Interest in all Subsidiaries				
Associates (Investment as per the equity method)				
Indian				
Foreign				
Joint Venture (as per proportionate consolidation/ investment as per the equity method)				
Indian				
Foreign				
TOTAL	100%	12	100%	28.05.2020

Practical Issues: -

- Different GAAPs followed in foreign subsidiary
- Different reporting formats followed in foreign subsidiaries and Class of Co. where format is governed by different law (i.e. Banks, Insurance Co. etc.)
- Different FY of the entities in the group
- Preparation of CFS, if there is only one subsidiary i.e. foreign subsidiary
- Explanation to paragraph 6 of AS 21 exempts disclosure of statutory information and not material to the presentation of true and fair view in the CFS, whereas Section 129(4) read with Schedule III to the 2013 suggests that disclosure requirements of Schedule III, mutatis mutandis, apply in the preparation of CFS

- GN on Audit of Consolidated Financial Statements (Revised 2016)
- Education Material on Ind AS 110, Consolidated Financial Statements

S.134

Financial Statements, Board's Report

- **Financial Statement (SFS & CFS)** – approved by the Board – before submission to auditor for his report [S.134(1)]

- FS to be signed - [S.134(1)]

One Person Co	Other than One Person Co
1 Director	Chairperson (If Authorised)
	MD & 1 Other Director (If MD is there)
	2 Directors (If No MD)
	CEO, CFO & CS (If appointed)

Digital signatures can be put by signatories on the FS & report

- Auditor's Report to be attached to every FS (i.e. SFS & CFS) [S.134(2)]
- BoD to submit its Report before Co in General Meeting [S.134(3)]
- CG may prescribe abridged Board's Report for OPC & SPC [S.134(3A)]

The Companies (Amendment) Act, 2017 makes CEO's signature mandatory whether or not CEO is member of Board

Board's Report

- For OPC, Board's Report to contain only explanation/comments on every qualification, reservation or adverse comment or disclaimer made by the Auditor [S.134(4)]
- Board's Report & Annexures to be signed by - [S.134(6)]
 - Chairperson (If Authorised)
 - **MD** & **1** Other Director (If MD is there)
 - **2** Directors (If No MD is there)
 - **1** Director (If only One Director is there)
- Signed copy of FS (SFS & CFS) to issued/circulated/published with [S.134(3)]
 - Notes forming part of FS
 - Auditor's Report
 - Board's Report



Impact of contravention of S.134 [S.134(8)]

Co:

Fine not be less than **INR 50K** extended to **INR 25 Lakhs**; or

Every officer who is Default:

Imprisonment < 1 **Year**

Fine not be less than **INR 50K** extended to **INR 5 Lakhs**; or

Both

Financial Statements, Board's Report

What detail should be included in Board's Report [S.134 (3) & Rule 8] –

- Web Address of the Annual Return
- No. of Meetings of the Board
- Director's Responsibility Statement
- Fraud reported by the Auditor (Not reportable to CG)
- Statement on Declaration by IDs#
- Cos policy on Director's appointment, remuneration, determining qualification, positive attributes, independence, etc#
- Explanation/Comments on qualifications/adverse comment/disclaimer by the Auditor & CS
- Loans, Guarantee & Investment – u/s 186
- Contracts/Arrangements with RP – u/s 188 (Form AOC 2)
- State of Co's affairs
- Amount transferrable to any reserves
- Amount of proposed dividend
- Material Changes/Commitment affecting Financial Position – Between end of FY to date of Board's Report
- Conservation of Energy, Technology absorption, Forex earning & outgo
- Development & Implementation of Risk Management Policy
- Details of CSR policy and initiatives taken during the year
- Manner in which formal Annual evaluation of performance of Board, its committee & directors made#

- Not Applicable to Cos other than Cos mentioned in S.178

Financial Statements, Board's Report

Other items to be disclosed in Board's Report [Rule 8] –

- Financial summary or highlights
- Change in the Nature of Business
- Details of Directors or KMP who were appointed or have resigned during the year
- Statement regarding opinion of the Board regarding integrity, expertise and experience of the IDs appointed during the year
- Names of Companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year
- Details relating to deposits, covered under Chapter V of the Act and not in compliance
- Details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future
- Disclosure regarding maintenance of Cost Records
- 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

Rule 8 is not applicable to OPC and SPC

If any of disclosures are there in FS, Policy on Directors & on CSR, if on website - ref to that is enough

Financial Statements, Board's Report

Director Responsibility Statement [S.134 (5)], to confirm –

- Applicable **AS** has been followed. In case of material departure, proper explanation is stated
- Applied **accounting policy** consistently ; **Judgement & Estimates** are reasonable & prudent – enabling true & fair view
- Proper & Sufficient Care – **Maintenance of adequate accounting record**
 - Safeguarding the assets
 - Detecting fraud & Other irregularities
- Annual A/cs – **Going Concern** basis
- Listed Co – **Internal Financial Control** are adequate & were operating effectively [IFC defined in explanation to S. 134(5)(e)]
- Devised Proper **System** – compliance with provisions of all applicable law – are adequate & were operating effectively



- Internal Audit

Who can be appointed as Internal Auditor [S.138(1)] –

- Chartered Accountant
- Cost Accountant
- Other Professional (Term is not Defined)

Class of Companies to whom Internal Audit is applicable [Rule 13(1)]–

- **Listed Companies**
- **Un-Listed Public Co** 
- **Private Co** 

- Paid up SH Cap \geq **INR 50 Cr**; or
- Turnover \geq **INR 200 Cr**; or
- O/s Loan/ Borrowings-Banks or PFI \geq **INR 100 Cr**; or
- O/s Deposit \geq **INR 25 Cr**

[Limits to be seen of **preceding FY**]

- Turnover \geq **INR 200 Cr**; or
- O/s Loan/ Borrowings-Banks or PFI \geq **INR 100 Cr**; or

[Limits to be seen of **preceding FY**]

S.138

Internal Audit

Entities who can be appointed as Internal Auditor [Rule 13(1)]–

- Partnership Firm
- Individual*
- Body Corporate*



*Substituted by the Notification Companies (Accounts) Amendment Rules, 2016 Dated 27.07.2016

Can an employee of the Co be appointed as Internal Auditor ?

Explanation to Rule 13 permits the same

Can a Chartered Accountant/Cost Accountant not engaged in practice be appointed as Internal Auditor ?

Explanation to Rule 13 permits the same

Is it adequate to finalize scope with Senior Management Team only ?

As per Rule 13, AC or Board shall formulate the scope, functioning, periodicity and methodology for conducting the internal audit in consultation with IA

Can Chartered Accountant/Cost Accountant continue occupy the position of IA, if he/she is suspended/debarred by ICAI/ICWAI ?

Act or Rules does not mention – disqualification. In case of External firm/individual appointed as IA, it is recommended to inform the Co and if required, vacate the position

Should Internal Auditor be an independent one ?

In case of appointment of External firm/individual as IA , it is recommended to appoint an Independent one



- Appointment of Auditors
- Removal, Resignation of Auditors

Amendment pertaining to Cos of IFSC & SEZ are not covered

Appointment of Auditors

Who can appoint an Auditor -

Type of Co	First Auditor	Subsequent Auditor
Govt. Co Any Co, owned/controlled, by CG or SGs or CG & SGs together	<p>CAG (within 60 days of Reg. of Co)</p> <p>Board (If CAG does not - within next 30 days)</p> <p>Company (at EoGM) (If Board fails - within next 60 days)</p> <p>[S.139(7)]</p>	<p>CAG (within 180 days from Start of FY)</p> <p>[S.139(5)]</p>
Other than above mentioned Cos	<p>Board (within 30 days of Reg. of Co)</p> <p>Company (at EoGM) (If Board fails - Within 90 days of Reg. of Co)</p> <p>[S.139(6)]</p>	<p>Company at AGM</p> <p>[S.139(1)]</p>

Appointment of Auditors

Tenure of Office as Auditor –

Type of Co	First Auditor	Subsequent Auditor
Govt. Co Any Co, owned/controlled, by CG or SGs or CG & SGs together	Till conclusion of First AGM (Period < 1 Year) [S.139(7)]	Till conclusion of next AGM (Period < 1 Year) [S.139(5)]
Other than above mentioned Cos	Till conclusion of First AGM (Period < 1 Year) [S.139(6)]	Till conclusion of every 6th AGM (Period < 5 Years) [S.139(1)]
	Individual	Firm
Subsequent Auditor	Not more than 1 Term – 5 Years Consecutive [S.139(2)(a)]	Not more than 2 Term – 5 Years Consecutive [S.139(2)(b)]

Appointment of Auditors

X Ltd , is a company whose 60% of equity share capital is held by INS Corporation, Corporation controlled by CG. The Company Secretary of X Ltd is of view that the appointment of auditor need not be done by CAG as section 139(5) & (7) is applicable to Govt Co or any other company owned or controlled, directly or indirectly, by the CG, or by any SGs, or partly by the CG and partly by one or more SGs.

CS contends that provisions of section 139(5) & (7) is not applicable to Co owned/controlled by any corporations controlled by CG or SGs. Is the contention of the CS of X Ltd tenable?


Vide Circular No.33/2014 dated 31.07.2014, it is clarified that the new Act does not alter the position regarding audit of deemed Govt. Co referred in S.619B of the Old Act (1956), i.e. companies where ownership or control lies with two or more Government companies or **corporations** etc. in the manner detailed in section 619B and thus such companies are covered under subsection (5) and (7) of section 139 of the New Act

Appointment of Auditors

Applicability of mandatory Rotation of Auditors [139(2)]

Company	Applicable	Exception/Exemption
Listed Co.'s	✓	No Exemption
Unlisted public co.'s	✓	Paid up S/C \geq INR 10 CR OR Borrowings from Banks/FI/PD \geq INR 50 CR
Private co.'s	✓	Paid up S/C \geq INR 50 CR OR Borrowings from Banks/FI/PD \geq INR 50 CR
Other Co's, OPC/SPC	✗	No Rotation

- Cooling period – **5** years
- Retrospective application
- Incoming & outgoing firm cannot have common partners – even under **same network**
- Partner of retiring audit firm, certifying the FS of the company, if retires from the said firm & joins another firm, even that another firm shall be ineligible to be appointed as auditors.
- In case of joint audits, Co may endeavor to ensure that all Audit Firms do not retire in the same year.



'Same Network' includes the firms operating/functioning hitherto or in future, under the same brand name, trade name or common control

Appointment/Reappointment of Auditors

Manner/Procedure for Appointment

- **AC** shall recommend auditor to Board & **Board** to recommend it to Members in AGM
- AC or Board, shall consider the **qualifications and experience** of the individual or the firm proposed and whether those are **commensurate with the size** and **requirements of the co.**
- AC or the Board, shall have regard to **order or pending proceeding relating to professional matters of conduct** against the auditor before ICAI or competent authority or Court
- **No** requirement of **ratification** of auditors during the continuing term of auditors
- Certificate from auditor to be obtained – confirming **satisfaction of criteria** mentioned in **Rule 4 & S.141**
- Company to **file** to ROC **notice of appointment** of auditor (ADT-1) within 15 days of meeting
- Special Notice is required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor [\[140\(4\)\]](#)



Appointment of Auditors

Casual Vacancy [S.139(8)]

Who can appoint an auditor emanating from casual vacancy -

	Vacancy – Other than Resignation	Vacancy – Due to Resignation
Co whose A/c are subject to audit by an auditor appointed by the CAG [S.139(8)(ii)]	CAG (Within 30 days of vacancy) Board , If CAG does not appoint (within next 30 days)	
Co other than mentioned above [S.139(8)(i)]	Board (within 30 days of vacancy) Approval of Company at GM required	Board (within 30 days of vacancy) but Approval of Company at GM (within 30 days of vacancy) to be obtained within 3 months

Auditors, so appointed, to fill in the casual vacancy shall hold office till next AGM in all cases

Appointment of Auditors

Re-appointment of Auditor

Pre-requisite for retiring auditor to be Re-appointed S. 139(9):-

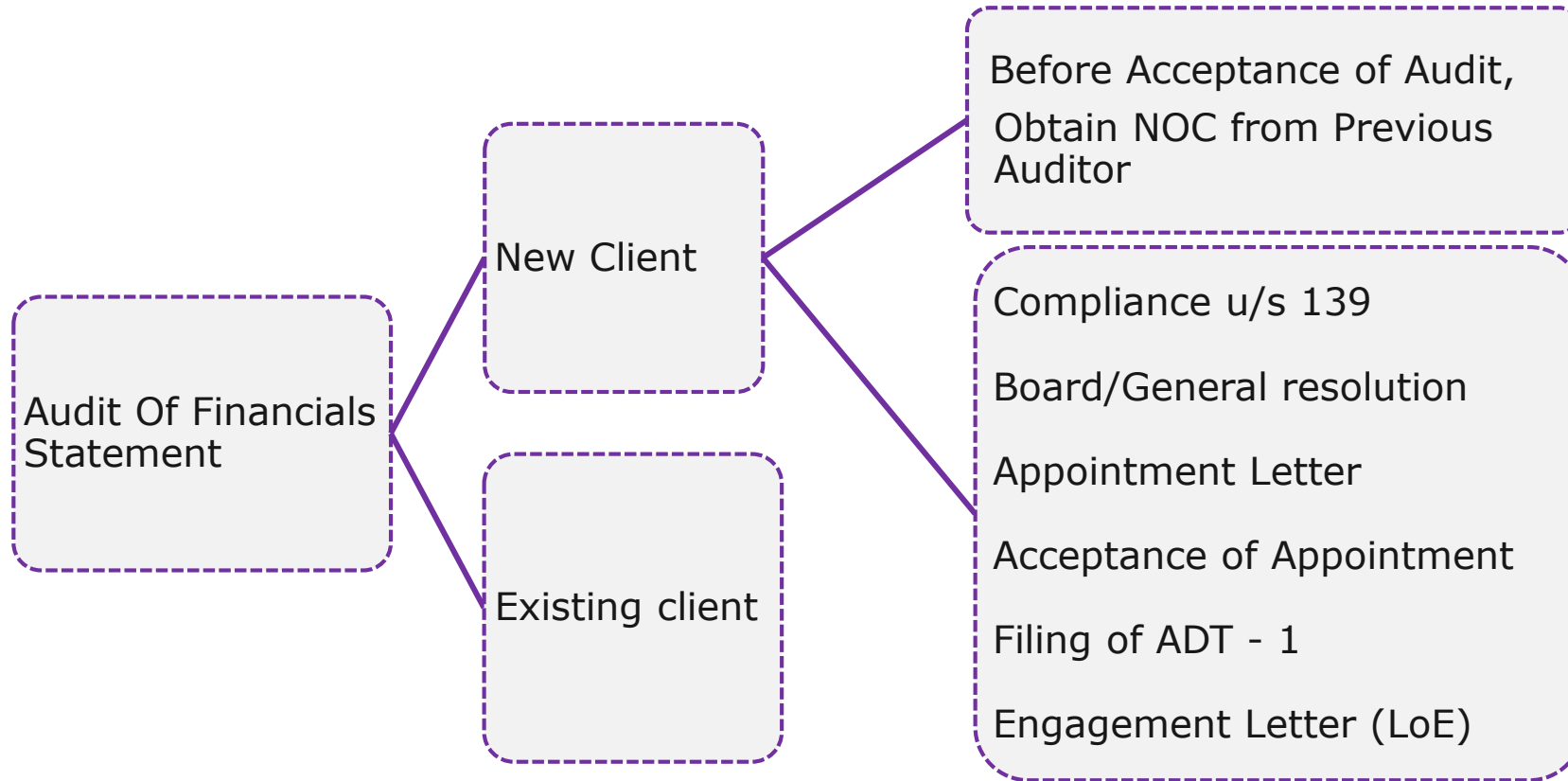
Subject to Provisions of S 139(1):

- Not Disqualified for appointment
- Not expressed unwillingness to be re-appointed by notice to the Company
- SR has not been passed at GM appointing some other auditor or providing expressly that he shall not be re-appointed

M/s ABC LLP, auditor of X Ltd, retires at 6th AGM. M/s ABC LLP is eligible for re-appointment. However members of X Ltd, does not appoint any auditor in AGM. As no auditor is appointed by the Co, the Board appoints M/s CDE LLP as the new auditor. Is such appointment by BoD in accordance with the provision of the Company law?

As per 139(10) of the Act, Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. In this case appointment made by the Board would stand void and M/s ABC LLP would continue to hold the office of the auditor until another auditor is appointed by the company in general meeting

Audit Acceptance from viewpoint of Auditors



Flow:

- Letter from the Company to proposed auditor seeking eligibility and willingness before date of BoD
- Response of such proposed auditor
- BoD Resolution
- Seeking NOC from outgoing auditors
- Acceptance
- ADT-1

Before accepting the appointment as Statutory Auditors, it is responsibility of the CA or Firm to ascertain if the appointment so made is in order and as per provisions of the Act; (under CoE of ICAI)

Removal, Resignation & Giving of Special Notice

Pre-Requisite for Removal of Auditor -

- **CG approval** (power delegated to RD) and **SR** required to remove auditor before his term [S.140(1)]. [Reasonable opportunity of being heard to be given to the Auditor before taking any action]

S.140(4):

- **Special notice** is required for a resolution at the AGM to provide expressly that same auditor shall not be reappointed OR to appoint some other CA/Firm as Auditor
- The Company should forthwith send such **Special notice** to such retiring auditor
- **Representation** of such retiring auditor to be sent by the Company to its members unless it is received late by the company from such retiring auditor; in which case, such **representation to be read out** at the GM, in addition to, right of such retiring auditor, to be heard. Further, a copy of such representation, if **not already circulated** to the members by the Company, **is to be filed with ROC**.
- The rights of such retiring auditor of being heard or making representation can be **curtailed by the Tribunal** if it is satisfied upon an application made by the Company or by any other aggrieved person, that **such rights are being abused**

Removal, Resignation & Giving of Special Notice

Powers of Tribunal [S.140(5)] –

- Suo motu or on an application by the CG or by any other concerned person, if Tribunal is satisfied about **fraudulent actions of auditor directly or indirectly**, it can **direct** the Co. to change its auditors
- Tribunal if satisfied may pass an order on application made by CG, to prevent the Auditor from functioning and in such case CG may appoint another Auditor
- Such auditor or Firm shall **not be eligible to be appointed** as an auditor of any company for a period of **5** years from the date of passing of the order by the Tribunal, in addition to be liable for action u/s 447 of the Act

Others -

- Resigned Auditor to file in 30 days from resignation a statement in **Form ADT 3** with **ROC**, indicating the **reason and other facts** as may be relevant with regard to resignation [S. 140(2)]
- In case of **Govt. Co & deemed Govt. Co** , the resigned auditor should also intimate the **CAG**



Impact of contravention of **S.140(2)** [S.140(3)]

Penalty – whichever is less:

- INR **50K**
- Amount of **Remuneration**

In case of continuing failure:

- INR **500** per day
- Max – INR **5** Lakhs

Removal, Resignation & Giving of Special Notice

Matters for consideration for Auditors during Resignation

- Obtain written response from management and TCWG, prior to resignation.
 - While filing form ADT 3, The auditor should describe the circumstances which led to such decision giving the reasons for resignation suitably, instead of mentioning ambiguous reasons such as other pre-occupation or personal reasons or administrative reasons or health reasons or mutual consent or unavoidable reasons. The auditor should give valid reason like pending/ non-payment of audit fees, fees not being commensurate or management desires auditor to resign etc.
 - W.r.t Listed Entities –
 - In case an auditor has signed all the quarters (either limited review or audit) of a financial year, except the last quarter, then the auditor has to finalize the audit report for the said financial year before resignation
 - In other cases, the auditor should resign after issuing limited review/audit report for the previous quarter with respect to the date of resignation
- IG on Resignation/ Withdrawal from an Engagement to Perform Audit of Financial Statements



- Eligibility,
- Qualifications &
- Disqualifications of Auditors

Eligibility, Qualifications & Disqualification of Auditors

Persons who are eligible [S.141(1)] – 

Individual – **Chartered Accountant**

Firm/LLP – **Majority of Partners** practicing in India are Chartered Accountant

Persons who are not eligible [S.141(3)] – 

- body corporate other than LLP
- officer or employee of the company
- who is a partner, or who is in the employment, of an officer or employee of the company
- who or his relative or partner is holding **any security** of or **interest** in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company

Eligibility, Qualifications & Disqualification of Auditors

Relative of Mr. A holds securities in Co - XYZ amounting to INR 1.5 Lakhs (Qty - 9000 ; FV INR 10). Would Mr. A be considered eligible for appointment ?

Rule 10(1) read with proviso to S.141(3)(d)(i), a relative of an auditor may hold securities in the company of face value not exceeding INR 1 Lakhs

In the above example, would Mr. A be disqualified if, Relative of Mr. A acquires equity share of Co - XYZ amounting to FV of INR 1.5 Lakhs while Mr. A is occupying the position of Auditor of XYZ?

Proviso to Rule 10(1) states that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest

What if in the 2nd scenario, relative of Mr. A, instead of equity share acquires non-convertible debentures ?

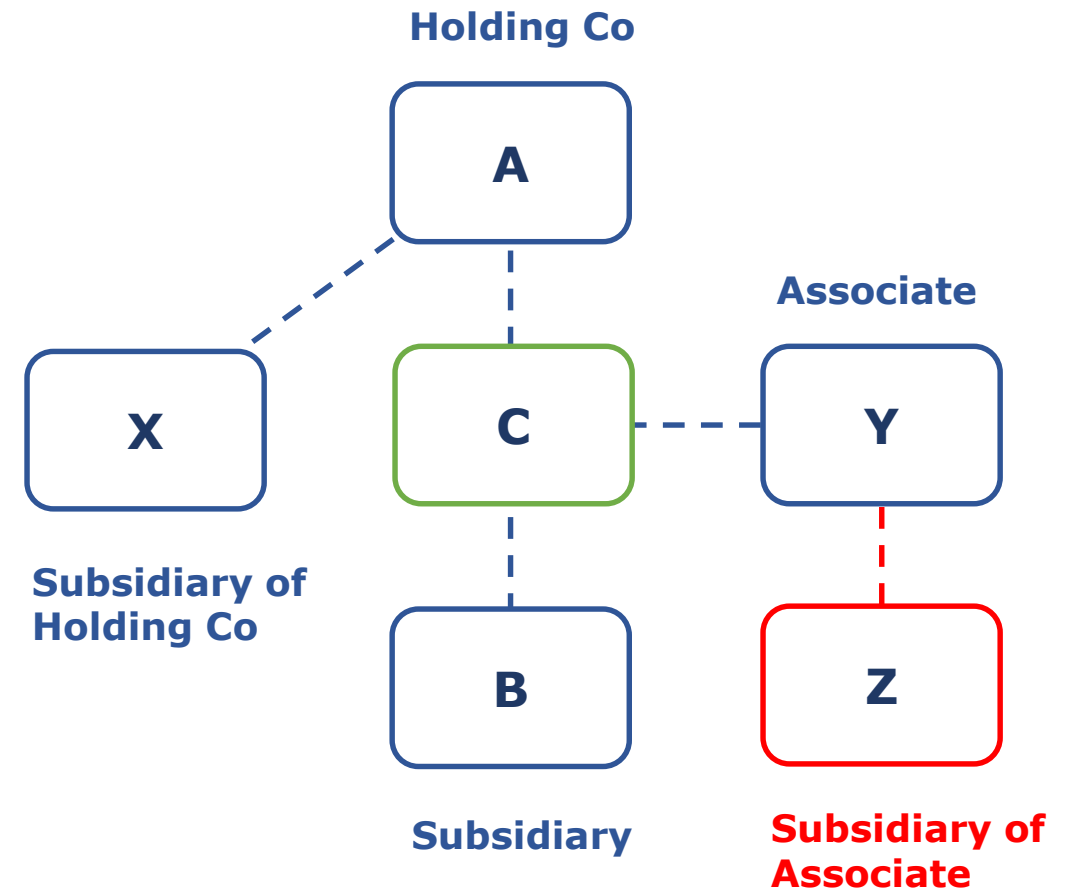
With in 60 days, corrective action needs to be taken. As per clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, securities includes debentures.

As per S.2 of Cos Act, Securities means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

Eligibility, Qualifications & Disqualification of Auditors

Persons who are not eligible [S.141(3)] –

- a person who, or his relative or partner is **indebted** to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of **INR 5 Lakhs**
- a person who, or his relative or partner has given a **guarantee or provided any security in connection** with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company in excess of **INR 1 Lakhs**
- a person or a firm who, whether directly or indirectly, has **business relationship** with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or **associate company** of such nature as may be prescribed



Eligibility, Qualifications & Disqualification of Auditors

Mr. A (CA) is the Tax Auditor to company XYZ, can he be appointed as Auditor of XYZ?

Sub-Rule 4 to Rule 10, explain 'Business Relationship' as any transaction entered for a commercial purpose. The said sub rule, further provides exception for commercial transactions which are in the nature of professional services **permitted to be rendered by an auditor or audit firm** under the Act and the Chartered Accountants Act, 1949

Tax Audit Services does not form part of the negative list given in section 144 of the Act or CA Act, 1949 & rules of these Acts

Mr. A (CA) is a customer of Airtel, can he be appointed as Auditor of Bharti Airtel Limited?

Sub-Rule 4 to Rule 10, provides exception for commercial transactions which are in the **ordinary course of business of the company at arm's length price** - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

Eligibility, Qualifications & Disqualification of Auditors

Persons who are not eligible [S.141(3)] –



- who's relative is a director or is in the **employment** of the company as a **director** or **KMP**
- Who is in **whole-time employment** elsewhere
- at the date of such appointment or reappointment **holding appointment** as auditor of more than **20** companies (except one person companies, dormant companies, small companies and private companies having paid-up share capital less than INR100 Cr, in case of private companies)
- who has been **convicted** by a court of an offence involving **fraud** and a period of **10** years has not elapsed from the date of such conviction
- who, directly or indirectly, **renders any service** referred to in **S.144** to the company or its holding company or its subsidiary company.

Where a person appointed as an auditor of a company incurs **any of the disqualifications** mentioned in sub-section (3) after his appointment, he **shall vacate his office** as such auditor [S.141(4)]

such vacation shall be deemed to be a **casual vacancy** in the office of the auditor.



- Remuneration of Auditors
- Powers & Duties of Auditors & Auditing Standards
- Prohibitions

Remuneration of Auditors

- Remuneration to be fixed in **general meeting** or the **manner** may be decided in general meeting [S.142(1)]

Exception –


Board has the power to determine the remuneration for **first auditor**

- **Includes** [S.142(2)] –

- Fee payable
- Expense incurred by auditor in connection with audit
- Facility extended to him

- **Excludes** [S.142(2)] –

- any remuneration paid to him for **any other service** rendered by him at the request of the company.



Under ICAI rules, the fees for other services provided by Auditors (excluding services regulatory required to be performed by statutory auditors), should not exceed **100%** of the Audit Fees

Powers and Duties of Auditors & Auditing Standard

Powers of the Auditors

- **Right of Access** at all times to the **books of account** and **vouchers** of the company, whether kept at the registered office of the company or at any other place
- **Entitled to require** from the officers of the company such **information** and **explanation** as he may consider necessary for the performance of his duties as auditor

Mr. A, auditor of X Ltd, wants to access the records of Y Ltd (associate of X Ltd). Can he ?



Proviso to S.143(1), enables the auditor of Holding Co to access to records of all **Subsidiaries & Associate* Co for consolidation purpose**

*Inserted by Companies (Amendment) Act, 2017 – Effective from 09.02.2018

Powers and Duties of Auditors & Auditing Standard

Duties of the Auditors

S.143(1) requires the auditors to inquire into, Whether -

- Loans and advances made on basis of security, have been properly **secured** and whether terms of such loans/advances are **prejudicial**
- Transactions represented merely by **book entries** whether **prejudicial**
- Sales of securities at price **lesser than purchase price** where the company not being an **investment** company or a **banking** company
- Whether Loans and advances made by company have been shown as **deposits**;
- **Personal Expenses** have been charged to revenue account;
- As stated in the books and documents of the company, cash has been received in respect of such share allotment, and **if no cash has been so received**, whether the position as stated in the account books and the balance sheet is **correct, regular and not misleading**

Powers and Duties of Auditors & Auditing Standard

Duties of the Auditors

S.143(2) requires the auditors to –

make a report to the members of the company on the

- Accounts examined and
- Every Financial Statements

The Auditor's Report to consider the following –

- Provision of the Act
- Accounting Standards
- Auditing Standards
- Matters to be included in AR under the provisions of the Act/Rules
- Order made u/s 143(11) [CARO Reporting]

Give a True & Fair View of:

- Company's affairs at the end of FY
- Profit & Loss for the Year
- Cash Flow for the Year

MCA Notifies CARO 2020 (Companies Auditor's Report Order, 2020) vide Order dt. 25 Feb. 2020 applicable from FY 19-20

MCA has subsequently deferred applicability thereof to FY 2020-21 vide Order dt. 24th March 2020.

Powers and Duties of Auditors & Auditing Standard

Duties of the Auditors

Section 143(3) auditor report shall also include views and comments on following matters-

- Sought & obtained all **information and explanations** necessary for audit
- Proper **books of accounts** as required by law have been kept
- Proper **returns adequate** for the purposes of his audit have been received from branches not visited by auditor
- **Report on the accounts** of any branch office of the company audited by another person has been sent and the same has been **dealt in report**
- Balance sheet and profit and loss account dealt with in the report **are in agreement** with the books of account and returns
- Whether, in his opinion, the F.S. **comply with the AS / Ind AS**
- Observations or comments on financial transactions or matters having **adverse effect** on the functioning of the co.
- whether any **director is disqualified** from being appointed as a director u/s 164(2)
- any **qualification, reservation** or **adverse** remark relating to the maintenance of accounts and other matters connected therewith
- Adequacy of **IFC & Operating Effectiveness**
- Other matters prescribed by CG

Powers and Duties of Auditors & Auditing Standard

Mr. A, auditor of X Ltd, has not mentioned compliance of remuneration to directors, query has been raised that, in absence of such auditor has failed comply with the provisions of the Act. Is it so?

Vide Companies (Amendment) Act, 2017 (effective from 12.09.2018), S.197(16), requires the auditor in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed

Mr. B, auditor of Y Ltd, has not commented in his report on the amount not spent for CSR activities during the FY, Has he defaulted in adhering to the requirements of S.143?

There is no requirement u/s 143 or any other sections in the Act, to report in case if the company has failed to spend the required CSR amount.

As per proviso to section 135(5) if the company fails to spend such amount, the same must be disclosed in the board's report

Powers and Duties of Auditors & Auditing Standard

Mr. A, auditor of X Ltd, has not mentioned the effect of pending litigations in his report. Has he again contravened the provisions of section 143(3)

As per rule 11 of Companies (Audit and Auditors) Rules, 2014 as amended, The auditor's report shall also include their views and comments on the following matters:

- whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.
- 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

Powers and Duties of Auditors & Auditing Standard

In the audit report of Y Private Ltd, having turnover of INR 40 Cr and no borrowings, it was noticed the auditor has not mentioned his comment on adequacy and operating effectiveness of internal financial controls with reference to financial statements

Has the auditor of Y Private Ltd contravened the provisions of S.143(3)(i) ?

As per notification dated 13.06.2017, . In case of Private Company - Clause (i) of Sub-Section (3) of Section 143 Shall not apply to a private company -

- which is a one -person company or a small company; or
- which has turnover less than rupees fifty crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than INR 25 Cr

Powers and Duties of Auditors & Auditing Standard

Duties of the Auditors

Standards on Auditing -

- Comply with Standards on Auditing [S.143(9)]
- CG to prescribe SA. Until such notification – SA issued by ICAI shall be deemed SA [S.143(10)]

Reporting to w.r.t Govt Co. & Deemed Govt Co [S.143(5), (6) & (7)] –

- Copy of audit report to be sent to CAG
- Audit report to include action on CAG directives and its impact on FS
- CAG can authorize any person to conduct supplementary audit of FS

Branch Office [S.143(8)] -

- Branch Auditor to submit report to Company's auditor
- Foreign Branch – Branch auditor to be person qualified to be auditor as per law of that country

Powers and Duties of Auditors & Auditing Standard

Duties of the Auditors

Fraud Reporting –

- To be reported where there is reason to believe that an offence of fraud is being or has been committed against the company by its officers or employees noted during course of the performance of audit
- If Amount Involved (Individually) \geq INR 1 Cr – To be reported to **CG**
- If Amount Involved (Individually) $<$ INR 1 Cr – To be reported to **AC or Board**
- Report to be sent to CG in Form ADT – 4 to be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same

Practical Issues -

- Interpretation of words 'is being committed'. Ascertaining that fraud is being committed is difficult one
- Should suspected frauds to be reported to CG or AC or Board


• GN on Reporting on Fraud u/s 143(12) of the Companies Act, 2013 (Revised 2016)

Auditor not to Render Certain Services

S.144 restricts auditors to directly/indirectly provide certain services to Co / Holding Co / Subsidiary Co

List of restricted / prohibited -

- Accounting and Book-Keeping Services
- Internal Audit
- Design and Implementation of any financial information system
- Actuarial Services
- Investment Advisory Services
- Investment Banking Services
- Rendering of Outsourced Financial Services
- Management Services



'Management Services' is not defined.

Include Matters of –

- Decision making
- Supervising; Monitoring
- Designing
- Implementing; Operating
- Authorizing
- Executing; Consummating
- Preparing

Auditor not to Render Certain Services

Considering the term '**Indirectly**' -

Auditor - Individual	Auditor - Firm
<ul style="list-style-type: none"> ▪ Relative ▪ Any other person connected/associated with Individual ▪ Any entity - <ul style="list-style-type: none"> • Individual has significant influence or control • whose name or trade-mark or brand is used by Individual 	<ul style="list-style-type: none"> ▪ Partners ▪ Parent, Subsidiary or Associate entity ▪ Any entity - <ul style="list-style-type: none"> • Firm/Partner has significant influence or control • whose name or trade-mark or brand is used by such Firm/Partner

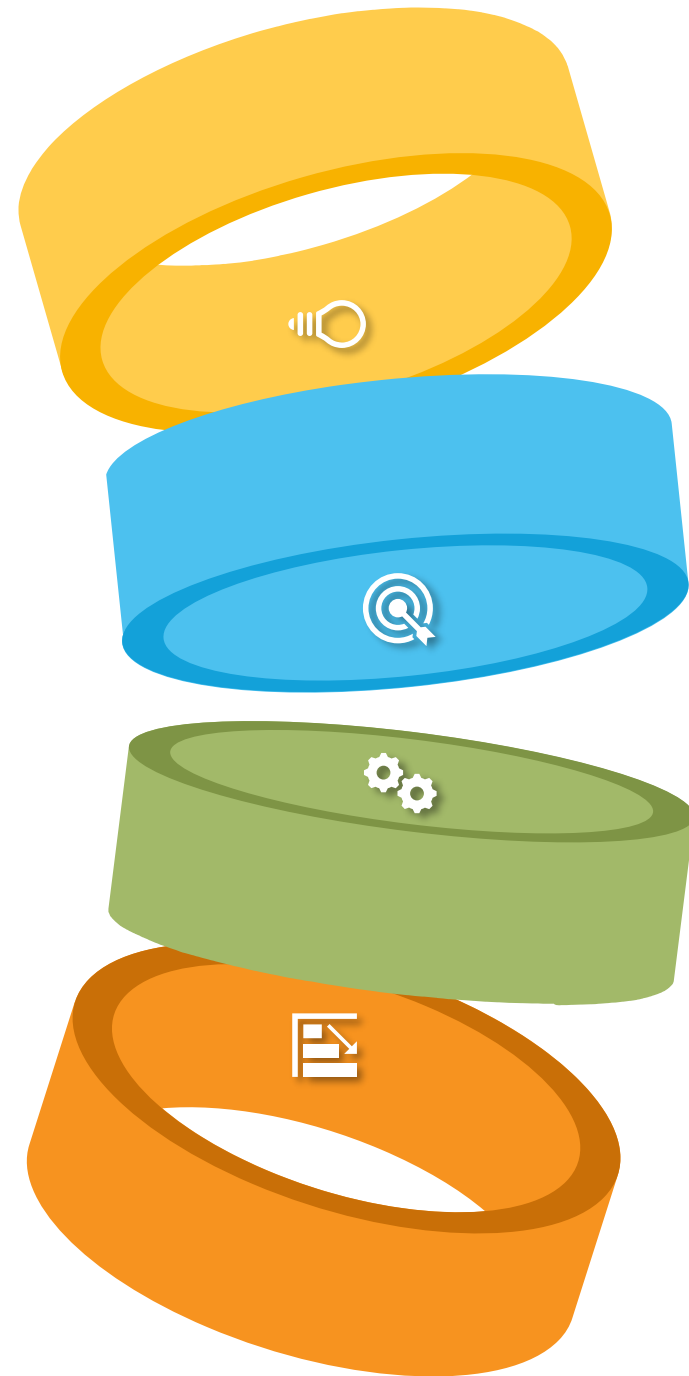
Auditor not to Render Certain Services

Mr. A is the auditor of the X Ltd. X Ltd is in process of appointing a cost auditor. The CFO of X Ltd, recommended to appoint Mr. A as cost auditor.

Can Mr. A render the service as 'Cost Auditor' ?

As per the proviso to the Section 148(3), the person appointed under Section 139 of the Companies Act, 2013 as an auditor of the company shall not be appointed for conducting the audit of cost records.

- Auditor to Sign Audit Reports, etc.
- Auditors to Attend General Meeting
- Punishment for Contravention



S.145

Auditor to Sign Audit Report, etc.

Person appointed as Auditor of the Co, shall –

- **Sign** the Audit Report
- **Sign/Certify** any other documents

Only partners who are **CA** authorized to Sign/ Certify

Open to **Inspection** by any member

Qualifications, Observations or Comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting

Auditors to Attend General Meeting

- Auditor to be shared with **all Notices & Other Communications** relating to any general meeting of the Co
- Auditor to **attend** any general meeting himself or through his authorised representative
 - Authorised representative shall be eligible only if he shall also be **qualified to be auditor**
- Section provides the auditor with **right to be heard** at such meeting on any part of the business which **concerns him as the auditor.**

Punishment for Contravention – Chapter X

Applicable	Company [S.147(1)]	OID [S.147(1)]	Auditor [S.147(2)]	Auditor*[S.147(2)]
Section Contravened	139 – 146	139-146	139, 143, 144 & 145	139, 143, 144 & 145
Impact:				
Fine Payable	Not Less than INR 25K May Extend to INR 5 Lakhs	Not Less than INR 25K May Extend to INR 5 Lakhs	Not Less than INR 25K May extend to lower of - INR 5 Lakhs 4x – Remuneration#	Not Less than INR 50K# May extend to lower of - INR 25 Lakhs 8x – Remuneration#
Imprisonment		0 -1 Year		0 -1 Year
Fine & Imprisonment		May Be		Yes

* Applicable , where an auditor has contravened knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities,

Inserted/Substituted by Companies (Amendment) Act, 2017 – Effective from 09.02.2018

Punishment for Contravention – Chapter X

- Where an auditor has been **convicted** for contravention any of the provisions of S.139, S.143, S.144 or S.145, he shall be liable to—
 - **Refund** the remuneration
 - **Pay** for damages to the company, statutory bodies or authorities or to members or creditors of the company
- Where the partner or partners of the audit firm has or have acted in a **fraudulent manner or abetted or colluded in any fraud**, the liability (civil or criminal)as provided in this Act or in any other law for the time being in force, for such act shall be of the **partner or partners concerned of the audit firm and of the firm jointly and severally**
- In case of **criminal liability** of an audit firm, in respect of liability other than fine, **the concerned partner** or partners, who acted in a fraudulent manner or abetted or colluded in any fraud shall only be liable
 - [Inserted by Companies (Amendment)Act, 2017 - Effective from 09.02.2018]



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THANK YOU