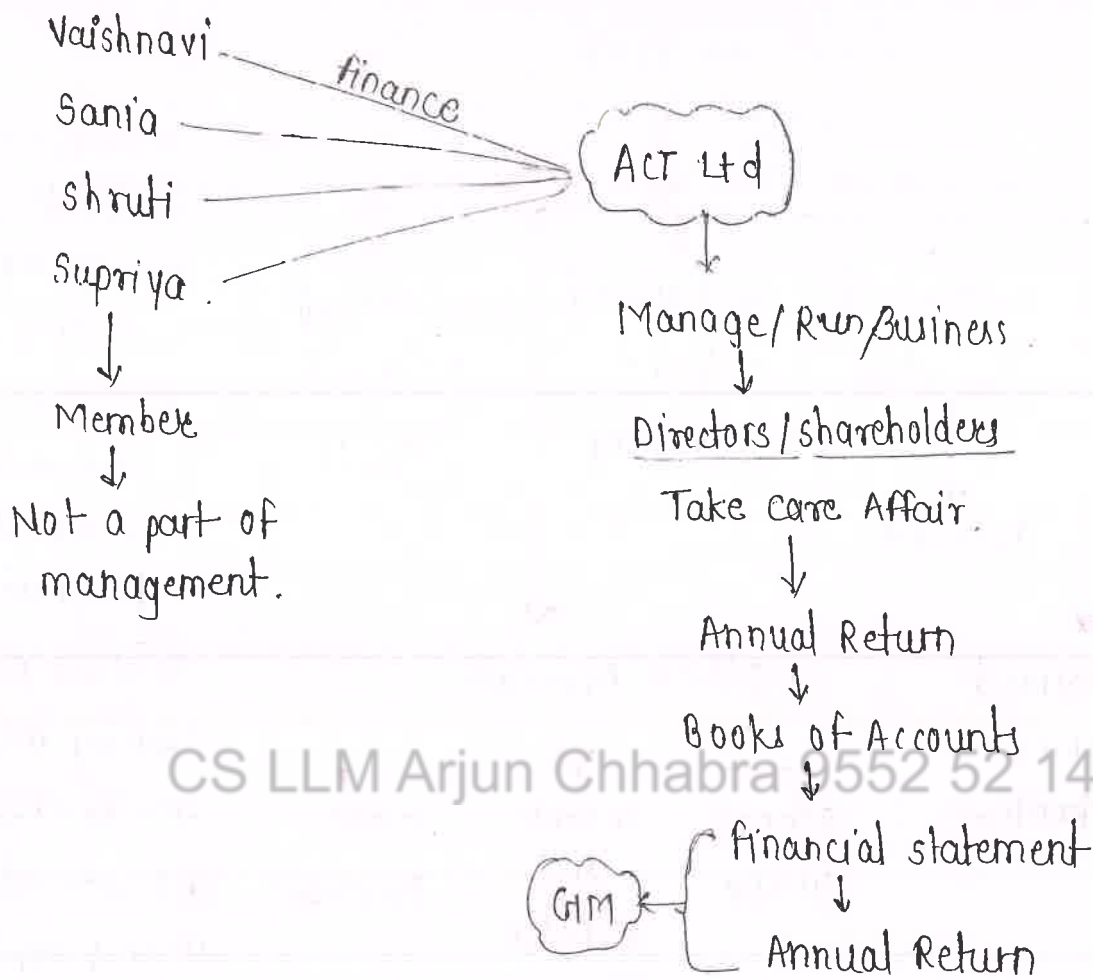


Chapter 9 - Accounts of Companies.

[Section 128 - 138]

Background -

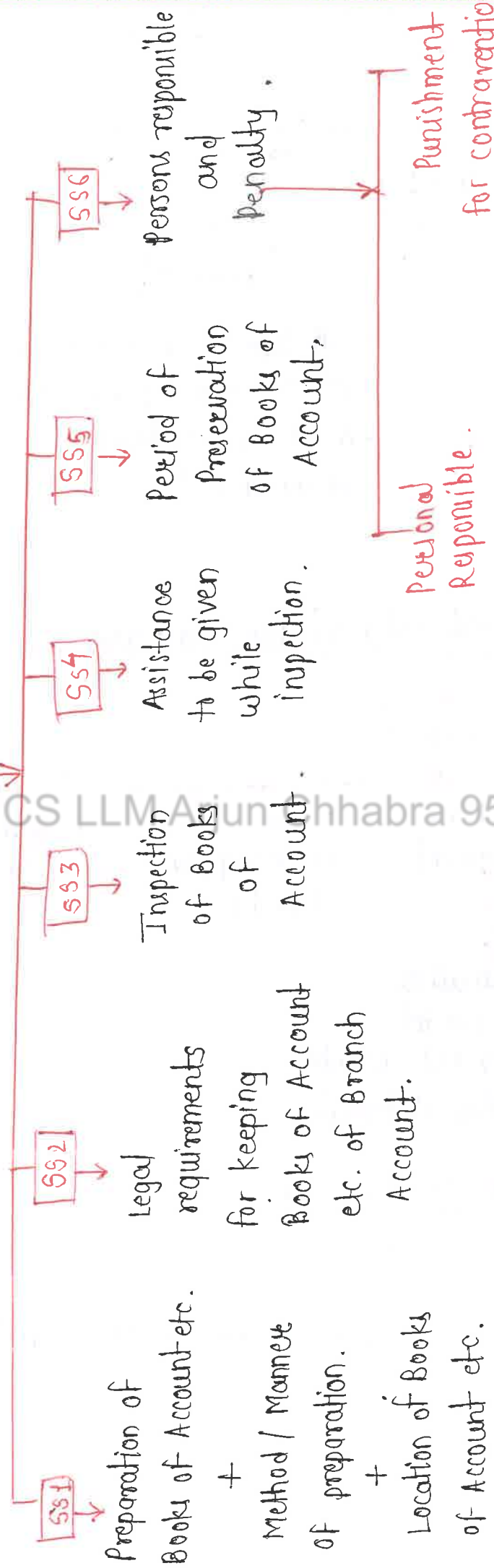


Purpose of chapter / Introduction

- Shareholders would like to know utilization of funds.
- All shareholders can not become part of management of company
- compulsory disclosure through Annual Return.
- company must maintain Books of Account to Prepare Annual Report.

Sec 128 - Location / Manner / Period of Maintenance / &

Inspection of Books of Accounts.

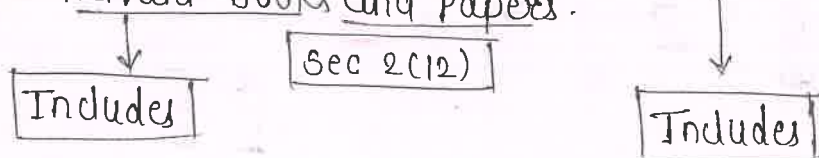


- ① Managing director.
- ② Whole time director in charge of finance.
- ③ Chief financial officer.
- ④ Any other person of Co. charged by the board with such duty.

Min. 50000/-
Max. 5 lakh

① Preparation of Books of Accounts.

- Every Company
- shall **prepare** and **keep** books of A/c → Section 2(13) and other Relevant Books and Papers.



- Books of A/c.
- Vouchers.
- Deed
- Document.
- Statutory Register.
- Minutes
- etc.

- All sums of money received.
- All sales and purchases.
- Assets and Liabilities
- Items of cost.

And Financial statement for Every year.

Sec 2(40)

Books of Financial Year. P&L A/c Cash Flow Statement Statement of change in Equity Explanatory Note.

OpC/ small co. and Dormant co. may not include cash flow statement.

② Ss 1 - Proviso - Location of Books of Accounts.

(A) Registered office -

The Books of A/c etc shall be kept at the registered office of the company.

③ Any other place in India -

- All or any of the Books of A/c etc may be kept at such other Place in India as the Board of Directors may decide.

- In such a case, the company shall file with the registrar a notice containing the full address of such other place. The notice shall be filed within 7 days in form no AOC-5.

④ Branch office -

Where a company has branch office (Whether in India or o/s India), The books of A/c etc. relating to transaction affected at the branch office may be kept at the Branch office.

⑤ Legal requirement for keeping Books of A/c etc at branch office.

SS2
In such a case, proper summarized returns must be periodically sent by the branch office at -

- ① The registered office of the company ; or.
- ② Such other place where books of A/c etc are kept.

③ SS3 - Inspection of Books of A/c

① The Books of A/c etc. maintained within India shall be open for inspection by any director -

- At the registered office of the co. or at such other place in India where the books have been kept.
- During business hrs.

② Financial information maintained o/s India may be inspected by any director subject to such condition as may be prescribed. (Rule 4) :-

- The summarized returns of the Books of A/c of the co. kept and maintained o/s India shall be sent to the registered office at quarterly intervals. Such summarized returns shall be kept & maintained at the registered office of co. and kept open for to director for inspection.

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

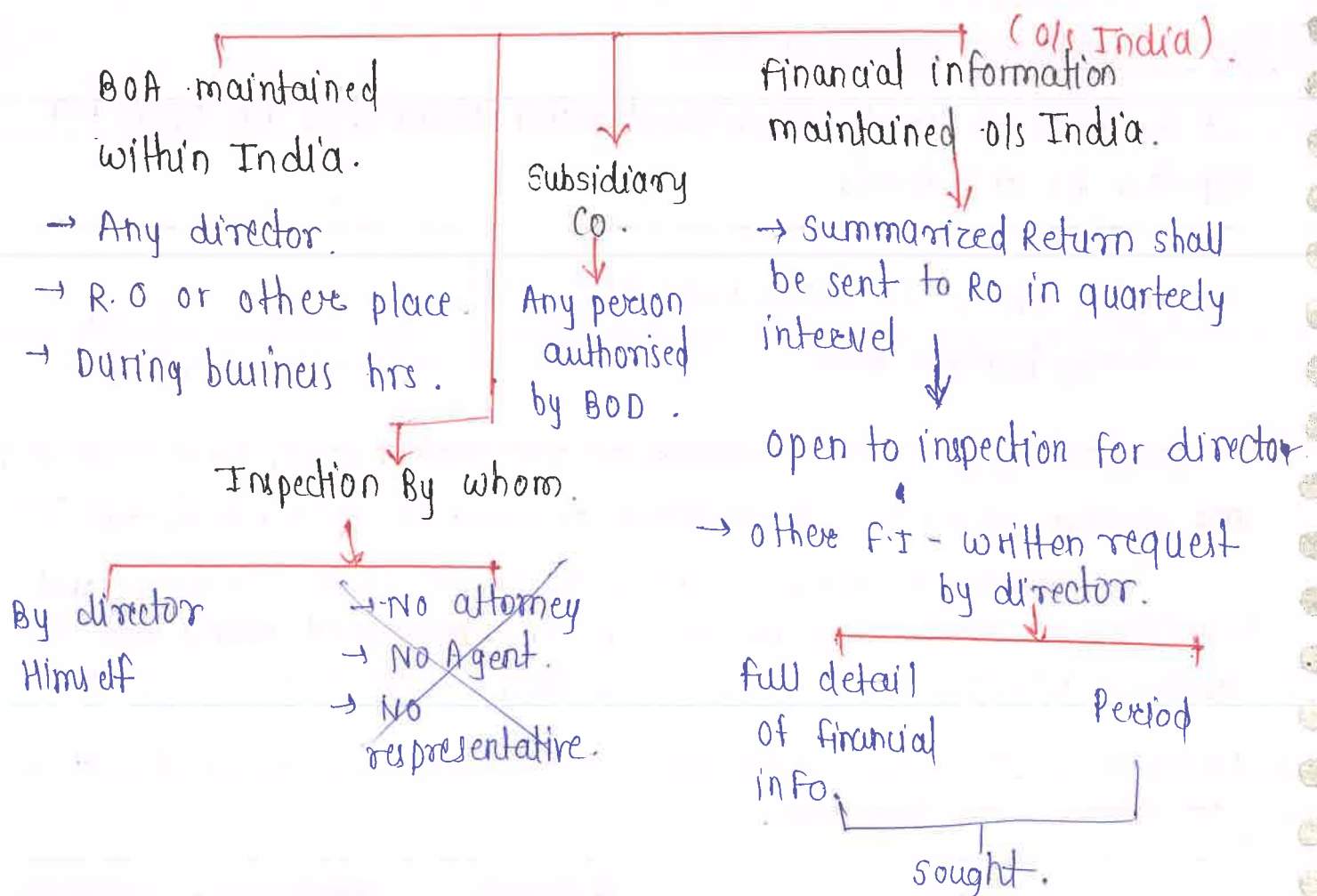
③ The co. shall produce such financial info. to the director within 15 days of the date of receipt of return request.

④ The financial info. required under subrule ② & ③ shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

⑤ The inspection of books of A/c of any subsidiary shall be made only by the person authorized by a resolution of the BOD.

⑥ It shall be the duty of every officer and employee of the company to give to the person making inspection all reasonable assistance in connection with the inspection. [SS4]

CS Inspection of Books of Account



Sought.

within
15 days.

Produce information.
to
Director.

955 - Period of Preservation of Books of A/c

- Every company shall preserve the books of A/c together with the relevant vouchers. The time period for preservation shall be →

Ⓐ Not less than 8 F.Y immediately Preceding the relevant F.Y; or

Ⓑ If the co. has ~~not~~ been in existence for less than 8 F.Y, then for the entire period of its existence.

Ⓒ Where an investigation of co. is ordered, Cr may direct that the books of A/c shall be kept for such longer period as may be directed by Cr.

Preservation of Books of

A/c ↓

8 years
or
years of
Existence.

Cr may direct
company to preserve
A/c for longer period.
if conducted investigation
inspection.

* Method/Manner of Preparation.

The books of A/c etc. shall -

- a) Give a true and fair view of state of affairs of company, including its branch office;
- b) Explain the transaction affected at the registered office and its branch office;
- c) Be prepared on accumual basis;
- d) Be prepared according to the double entry system of Accounting.

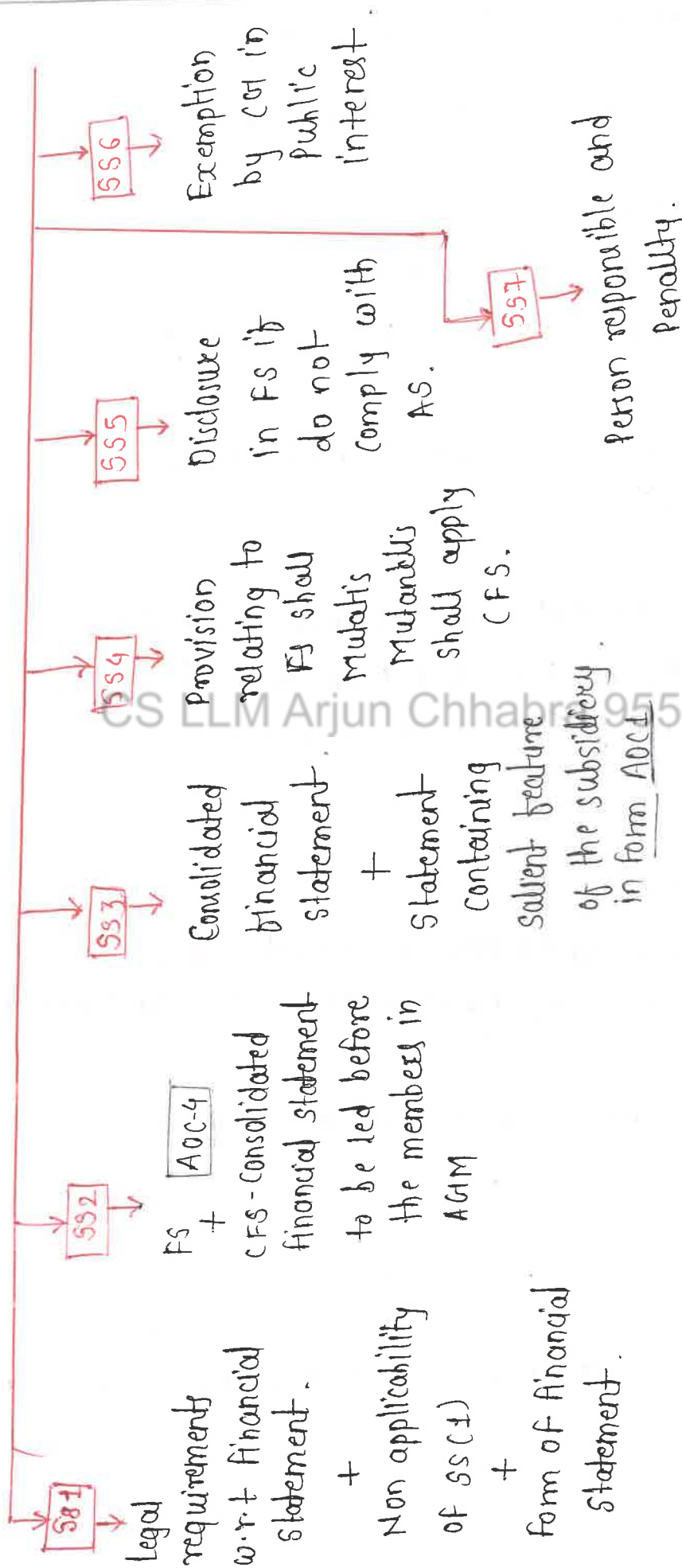
* Manner of Maintenance of Books of A/c in electronic Mode.

The books of Account and other relevant papers may be kept in electronic mode in such manner as may be prescribed.

Rule 3 prescribed the following manner -

- ① The books of A/c etc shall remain accessible in india.
- ② The books of A/c etc shall be retained completely in the original format.
- ③ The information contained in the electronic records shall remain complete and unaltered.
- ④ The info. contained in the electronic records shall be legible.
- ⑤ There shall be proper system for storage, retrieval, display or print out of the electronic records as audit committee, if any, or the board may deem appropriate.
- ⑥ The electronic records shall not be disposed off unless permitted by law.
- ⑦ The backup of electronic records shall be kept in servers physically located in India on a periodic basis.
- ⑧ The co. shall intimate to registrar on an annual basis.
 - ⓐ The name of service provider;
 - ⓑ The internet protocol address of service provider;

Sec 129 Financial statement



③ The location of the service provider .
 ④ Where the books of A/c etc are maintained on cloud , such address as is provided by the service provider .

SS1 - legal requirement w.r.t Financial statement.

- ① The FS shall give a true and fair view of the state of affairs of the company.
- ② The FS shall comply with AS notified w/s 133..

SS5 - If FS do not comply with AS, the company shall disclose in the FS, -

- ① The deviation from AS;
- ② The reasons for such deviations; and
- ③ The financial effects, if any, arising out of such deviation.

* Non applicability of SS1 -

Nothing contained in Sec 129 (1) shall apply to -

- ① Any insurance company; or
- ② Any Banking Company;
- ③ Any co. engaged in the generation and supply of electricity;
- ④ Any other class of company for which form of FS has been specified in the Act governing such class of company.

* Form of FS + CFS : → AOC 4

SS3-consolidated Financial statement -

- ① Where co. has one or more subsidiaries or associate companies, It shall also prepare CFS of the company and of all its subsidiaries and associate companies.
- ② CFS shall be prepared in the same form and manner in which the FS of the company are prepared.
- ③ The provision relating to the preparation, adoption and audit ^{SS4} of the FS of holding co. shall, mutatis mutandis, apply to the CFS.
- ④ The FS as well as a CFS shall be led before the members in ^{SS2} the AGM.

As per rule 6 preparation of CFS shall not be required if all the following conditions are satisfied. [Exception CFS]

① The co. was, or partially owned subsidiary of another co. and all of its other members, 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 preparing the CFS.

② It is co. whose securities are not listed and not in the process of listing on any stock exchange, whether in India or o/s India.

③ Its ultimate or any intermediate holding company files CFS with the registrar which are in compliance with the applicable AS.

Statement containing salient feature of subsidiary -

The Company shall also attach along with its FS, a separate statement containing the salient feature of FS of its subsidiary or subsidiaries in such form as may be prescribed i.e. Form AOC 1.

CS LLM Arjun Chhabra 9552 52 143 8

557 - Person responsible and penalty

- Person responsible
- ① Managing director.
 - ② Whole time director in charge of finance.
 - ③ Chief financial officer.
 - ④ Any other person of Co. charged by board with such duty.
 - ⑤ All the directors in the absence of any of officers mentioned above.

Penalty

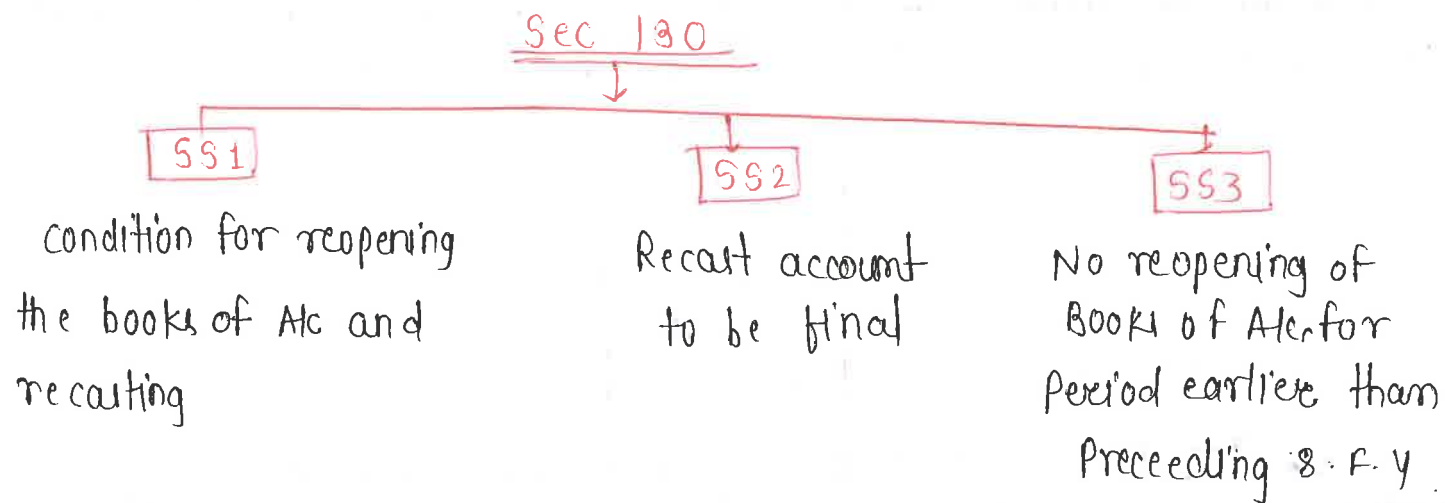
Imprisonment upto 1 yr.
or
Min fine - 50000
Max - 5 lakh

Both

Sec 130 V/s Sec 131

<u>Sec 130</u> ↓		<u>Sec 131</u> ↓
Re-opening of Accounts on Court's or Tribunal's order.		Voluntary revision of FS or Board's report.
Compulsory reopening of BOA and recasting of FS.	Deals with	voluntary revision of FS or board report.
CI, SEBI, ROC, Income tax department or any other statutory body. e.g. CIT depar't.	Applicability / Power	Board of Directors.
<u>Any of 2</u> BOA have been prepared in <u>fraudulent manner</u> . OR Affairs were casting a doubt on reliability of FS.	Condition	Financial statement is not complying with sec 129, Board report not complying with sec 134
There is no restriction on reopening or recasting.	Restriction	Limited to revision of FS and BR
Any period	Period of reopening / Revision.	Immediately preceeding three financial years.

Sec 130 (1) - Condition for reopening -



Sec 130 (1)

- ① An application shall be made to the court or tribunal by →
- i] CG ; or
 - ii] SEBI ; or
 - iii] The Income tax authorities ; or
 - iv] Any other statutory regulatory body or authority ; or
 - v] Any person concerned.
- ② An order is made by court or tribunal to the effect that -
- ① The relevant earlier A/c were prepared in fraudulent manner;
 - ② The affairs of the company were mismanaged during the relevant period, because of which doubts are raised as to whether the A/c are reliable or not.
- ③ Before passing any order, the court or the tribunal shall give notice to, and shall take into consideration the representation if any, made by -
- Same as above ①.

Sec 130 (3) -

- ① No order shall be made by the court or tribunal in respect of reopening of BOA relating to a period earlier than 8 F.Y immediately preceding the current F.Y.

③ However, where a direction has been issued by Cx U/s 128 that the Co. shall keep the BOA for a period longer than 8 years, The BOA may be ordered to be reopened within such longer period.

Section 131

SS1 - Condition for voluntary Revision

The BOB may decide to prepare the revised FS or revised Board's report if the following condition are satisfied -

- ① The Board is of the opinion that -
 - ① The FS do not comply with provisions of Sec 129; or.
 - ② The Board's report does not comply with provision of Sec 134.
- ② The FS or the Board's report may be revised only in respect of any of preceding three F.Y.
- ③ The revision of FS or Board's report may be made only after obtaining the approval of the tribunal.
 - ① The Co. shall make an application to tribunal.
 - ② Before passing any order, the tribunal shall give notice to Cx and income tax authorities, and shall take into consideration the representation, if any, made by Cx and Income Tax authorities.
- ④ The revised FS or the revised Board's Report shall not be prepared more than once in financial year.
- ⑤ The detailed reasons for revision of FS or the Board's report shall be disclosed in the Board's report prepared for the relevant F.Y, i.e. In the F.Y in which such revision is made.

Sec 133 - Central Govt. to prescribe AS.

① Power with whom -

The power to prescribe AS rest with Cg.

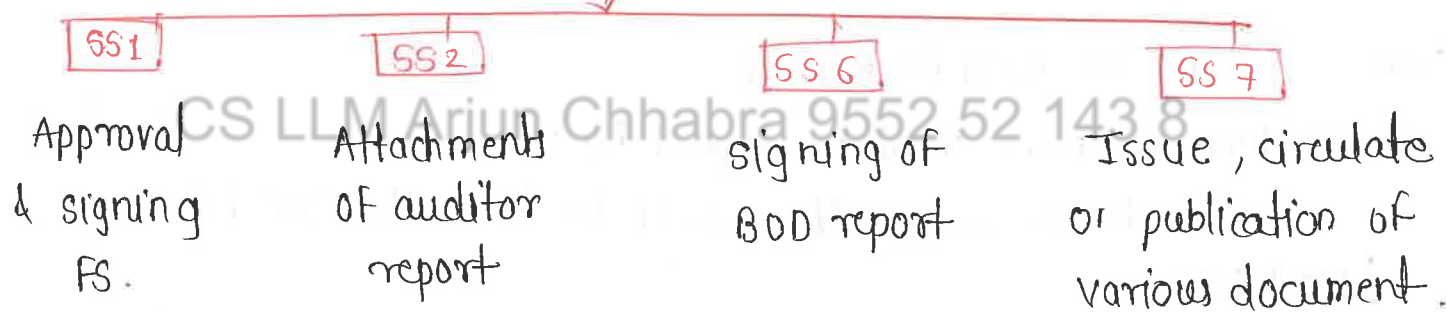
② Procedure for prescribing AS -

Cg may prescribe the standards of Accounting as recommended by ICAI, In consultation with an after examination of the recommendation made by NAFRA: [National Financial Reporting Authority]

③ Position until AS are prescribed.

The standard of Accounting as specified under Companies Act 1956 shall be deemed to be AS specified by Cg.

Sec 134 - Financial statement, Board's report etc.



SS1 - Approval and signing FS.

① Approval -

The FS, including CFS, if any, shall be approved by the board of director before they are signed on behalf of the board.

② Signing -

② The FS, including CFS, if any, shall be signed by chairperson of the co, where the is authorised by the board.

⑥ If the chairperson of the co- is not so authorised by the board, the FS, including CFS, if any shall be signed by -

① Two directors, one of whom shall be MD, if any; &

② CFO, CFO and CS, wherever they are appointed.

⑦ In case of OPC, the FS, including CFS, if any, shall be signed by one director only.

③ Submission -

The FS, including CFS, if any shall be submitted to the auditor after they have been approved by the board and signed on behalf of board.

④ Attachment of Auditors report (SS2) -

- The auditors report shall be attached to every FS.

SS6 - signing of Board's Report -

① The Board's report shall be signed by -

① The chairperson of the co, if he is authorised by board; or.

② Atleast two directors, one of whom shall be MD, if the chairperson of the co- is not so authorised.

③ In case there is only one director, the Board's report shall be signed by such director.

SS7 - Issue Circulation ~~or~~ publication of various document -

A signed copy of every FS, including CFS, if any shall be issued, circulated or published along with copy of -

① Any notes of such FS

② The Auditor's report; and

③ The Board's report.

Sec 136 - Right of Members to copies of Audited FS.

SS1

Document to be circulated

+

Person entitled to receive.

+

Proviso 1 - Time limit for circulation.

+

② circulation of FS and other document in case of listed company.

+

③ Manner of circulation of FS and other documents. (Prescribed Companies).

+

Proviso ④ & ⑤

Additional requirement in case of listed Co.

SS2

Inspection.

SS3

Penalty

Refer chart

P.N - 174 & 175

① Document to be circulated -

A copy of following documents is required to be sent by the Co -

- ① FS
- ② CFS, if any
- ③ Auditor's report.
- ④ Any other document which are required to be attached to FS.

② Person Entitled -

Above document shall be sent to following persons -

- ① Every member of the co.
- ② Every debenture trustee.
- ③ Every person who is entitled to receive notice of AGM.

③ Time limit for circulation -

- ① The FS and other documents shall be sent atleast 21 days before the date of AGM.
- ② If the copies of FS and other document are sent less than 21 days before the date of AGM, they shall be deemed to have been duly sent if -

① In case of a co. having share capital, it is so agreed by majority in no. of members entitled to vote and having not less than 95% P.O.S.C ; or

② In case of co. not having share capital it is so agreed by members entitled not less than 95% total voting power.

④ Circulation of FS and other document in case of Listed co -

In case of listed co, it shall be a sufficient compliance with the provision of sec 136, if -

① The copies of FS and other document are made available for inspection at its RO during working hrs, for a period of 21 days before date of AGM ; And

② A statement containing the salient feature of FS and other document is sent, unless the shareholder asks for full FS and other document.

⑤ Manner of circulation of FS and other documents -

Rule 11 makes the following provision in this regard -

① Applicability -

Rule 11 applies to -

- ① All listed companies; and
- ② public companies having net worth of more than ₹ 1 Cr and turnover of more than ₹ 10 Cr.

② Manner of circulation -

In case of above companies, the FS and other documents, shall be circulated -

- ① By e-mode, in following two cases -

- ① Where member holds shares in dematerialised form and his email-id is registered with depository.

- ② Where a member does not hold shares in dematerialised form, but he has positively consented in writing for receiving such document by e-mode.

- ② By dispatch of physical copies through any recognised mode of delivery as specified w/s 20 in all other cases.

③ Additional requirement in case of Listed Co -

- ① Every listed co. shall place its FS and other documents on its website.

- ② Every listed company having a subsidiary or subsidiaries shall have on its website, separate audited A/c in respect of each such subsidiary.

© Where listed company has a subsidiary incorporated o/s India (foreign subsidiary) and such foreign subsidiary is **required** to **prepare** FS under the law of country of its incorporation, it shall be sufficient if the listed co. places on its website, FS of such subsidiary.

© Where a listed co. has a subsidiary incorporated o/s India (foreign subs.) but such subsidiary is **not required** to get its FS **audited** under any law of country of its incorporation, the holding Indian listed co. may place such unaudited FS on its website and where such FS is in language other than English, a translated copy of FS in English shall be placed on website.

Ⓟ Inspection -

© Every company shall allow every member and debenture trustee to inspect the FS and other document at its Ro during business hrs.

© Every co. having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited FS to any member of the co. who asks for it.

sec 137 - filing of FS and other documents with Registrar.

SS 1

Where FS are adopted
at AGM

+

Where FS are not adopted at AGM

+

Filing in case of ope

+

Relation w.r.t audit
of foreign subsidiary.

SS 2

Where AGM
is not held

SS 3

Punishment for
contravention

Refer chart
PN 177

551 - Where FS are adopted At AGM.

① Documents to be filed -

- ① FS
- ② CFS, if any
- ③ The A/c of its subsidiary which have been incorporated in India which have not published any place of business in India
- ④ All the documents which are required to be attached to FS.

② Time limit for filing -

The FS and other document shall be filed with the registrar within 30 days of date of AGM.

② Where FS are not adopted at the AGM.

① Filing of unadopted documents

Where FS are not adopted at AGM or adjourned AGM, such unadopted FS and other document shall be held with registrar within 30 days of date of AGM.

② Unadopted documents to be provisional

The registrar shall take the unadopted FS and other document in his records as provisional till FS filed with him after their adoption in Adjourned AGM.

③ Filing of adopted document

The FS and other document adopted in adjourned AGM shall be filed with the registrar within 30 days of date of such Adjourned AGM.

③ filing in case of OPC.

OPC shall file a copy of FS duly adopted by its members, along with all documents attached to such FS, within 180 days from closure of the F.Y.

④ Relaxation w.r.t audit of foreign subsidiary -

In case of subsidiary which has been incorporated o/s India (foreign subsidiary), which is not required to get its FS audited under foreign law, it shall be sufficient if the holding Indian co. files such unaudited FS and where such FS is in language other than English, along with translated copy in English.

592 - Where AGM is not held.

① Filing of documents -

① The FS and other documents.

② statement of facts and reasons for not holding the AGM.

② Time Limit for filing.

The FS and other document shall be filed with the registrar within 30 days of the last date upto which the AGM should have been held.

CS LLM Arjun Chhabra 9552 52 143 8

Rule 12 - Forms and Fee.

[XBRL - Extensible Business Reporting language]

① The class of companies as may be notified by CCI from time to time, shall mandatorily file their FS and other documents in extensible Business Reporting language (XBRL) Format.

The term "Extensible Business Reporting Language" means a standardised language for communication in electronic form to express, report or file financial information by co.

As per Rule 3 of the Companies (Filing of document and form in Extensible Business language) Rule, 2015, the following class of co. shall file their FS and other document as 137 of Act with registrar in E form.

AOC9 - XBRL -

- ① All companies listed with stock exchange in India and their Indian subsidiary.
- ② All companies having paid up capital of 5 crore or more.
- ③ All companies having T/o of ₹ 100 crore or more.
- ④ All companies which are required to prepare their FS in accordance with the Companies (Indian Accounting standard) Rules, 2015. However, a Non Banking Financial Co. Housing Finance company engaged in the business of banking and insurance are exempted from filing FS in XBRL.
- ⑤ The companies which have filed their FS and other documents under point A above shall continue to file their FS and other documents though they may not fall under the specified class of companies in succeeding years.

SS3 - Punishment for contravention.

Sec 138 - Internal Audit (refer chart P.N. -178)

(0.12)

Sec 135 - Corporate Social Responsibility (refer C.P. no 171)

Sec 134(3)(4)(5) - refer chart P. No-167.

Sec 132 - NFRA (refer chart P. No 179 & 180).