

Date: 14 March, 2021



**VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

Faculty: Ms. Sonali Shah

Example: Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2019. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2019 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor.

Answer: In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be Casual vacancy of Auditor Filling the casual vacancy by Board within 30 days If vacancy is caused by Resignation- appointment by Board shall also be approved by company at GM convened within 3 months of recommendation of Board the Auditor so appointed shall hold office until the conclusion of next AGM. convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting

CASUAL VACANCY IN GOVT. COMPANY

[S.139(8)]

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

S.139(8)

(8) Any casual vacancy in the office of an auditor shall--

*(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but **if such casual vacancy is as a result of the resignation of an auditor**, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;*

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

VARIOUS SCENARIOS FOR CASUAL VACANCY OF AUDITOR

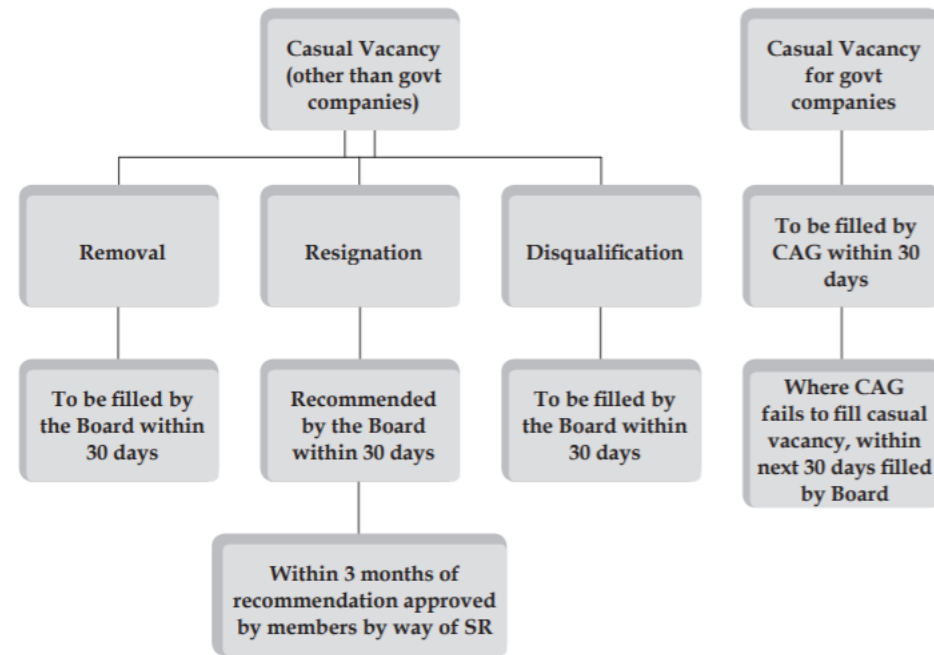
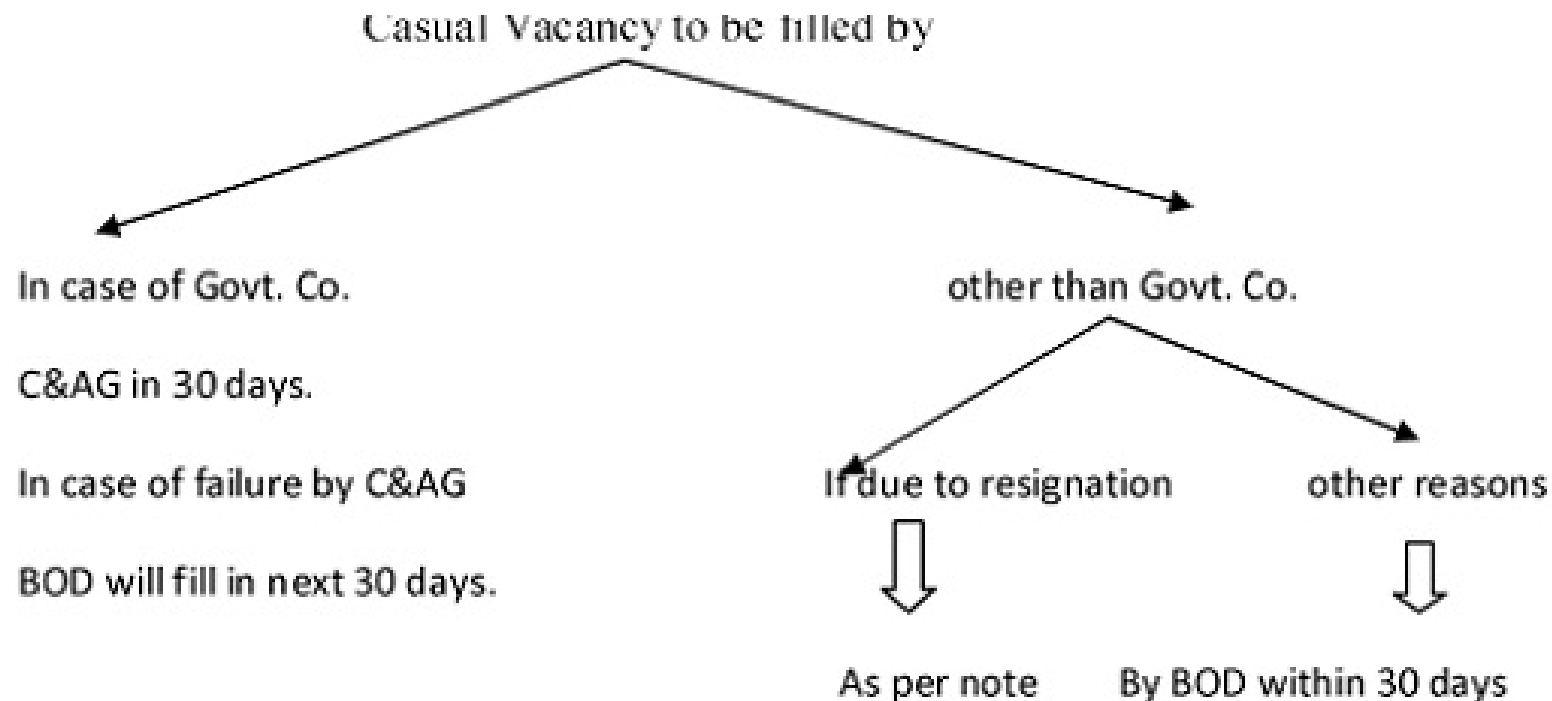


FIGURE 42: VARIOUS SCENARIOS FOR CASUAL VACANCY OF AUDITORS



Casual vacancy to be filled by the BOD within 30 days but the same should be approved by the members in general meeting to be convened within 3 months of the recommendation of the board. He shall hold office till the conclusion of next AGM.

S.140 (2) rw
rule 8



Sl No.	Casual Vacancy arising due to	
	Resignation of the Auditor	Other than the resignation of the Auditor
1	Casual Vacancy to be filled by the Board <i>within a period of 30 days. This appointment is subject to the approval of shareholders of the Company.</i>	To be filled by the Board <i>within a period of 30 days.</i>
2	The appointment to be approved by the members (<i>in EGM or AGM, as the case may be</i>) within a period of 3 months from the date of appointment.	No member's approval is required.
3	The Auditor who has resigned, is required to file e-form ADT-3 within a period of 30 days from the date of resignation.	No e-form ADT-3 is required to be filed.
4	E-form ADT-1 , towards appointment, is required to be filed within 15 days from the date of appointment, i.e. General Meeting at which the appointment recommended by the Board, is confirmed by the members of the Company.	E-form ADT-1, towards appointment, is required to be filed within 15 days from the date of appointment, i.e. Board meeting held to fill casual vacancy.

REAPPOINTMENT OF RETIRING AUDITOR

S.139(9) & (10) (11) reads as:

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

- (a) he is not disqualified for re-appointment; [disqualification provided in s.141(3)]*
- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and*
- (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.*

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS

(1) For the purpose of monitoring and enforcing compliance with auditing standards (SA) under the Act by a company or a body corporate governed under rule 3, the NFRA may:

- (i) review working papers (including audit plan and other audit documents) and communications related to the audit;
- (ii) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and
- (iii) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS

(2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.

(3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.

(4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry

MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS

(5) The NFRA shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

(6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

(7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.

(8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division

OVERSEEING THE QUALITY OF SERVICE AND SUGGESTING MEASURES FOR IMPROVEMENT

(1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.

(2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.

(3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.

(4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.

(5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

REMOVAL OF AUDITOR[SECTION 140 (1)]

Section 140(1) of the Companies Act, 2013 provides for removal of auditor before expiry of his term by giving of special notice.

*(1) The **auditor appointed** under section 139 may be **removed** from his office before the expiry of his term only by **a special resolution of the company, after obtaining the previous approval of the Central Government** in that behalf in the prescribed manner:*

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

REMOVAL OF AUDITOR [SECTION 140 (1)]

Rule 7 of the Companies Audit and Auditors rule reads as:

7. Removal of the auditor before expiry of his term. —

(1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

(2) The application shall be made to the Central Government [power delegated to RD] within thirty days of the resolution passed by the Board.

(3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

RESOLUTION REQUIRING SPECIAL NOTICE

Section 115 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice

Section 115 of the Companies Act, 2013 states that where,

- by any provision contained in this Act or
- in the Articles of Association of a company,
- special notice is required for passing any resolution,
- then the **notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power,**
- **or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.**

RESOLUTION REQUIRING SPECIAL NOTICE

As per the Act, **special notice is required in the following cases –**

- Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].
- Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].
- Resolution to remove a director before the expiry of his period of office [Section 169(2)]
- Resolution to appoint another director in place of the removed director [(Section 169(5)]
- Further, the articles may provide for additional matters which may require special notice.

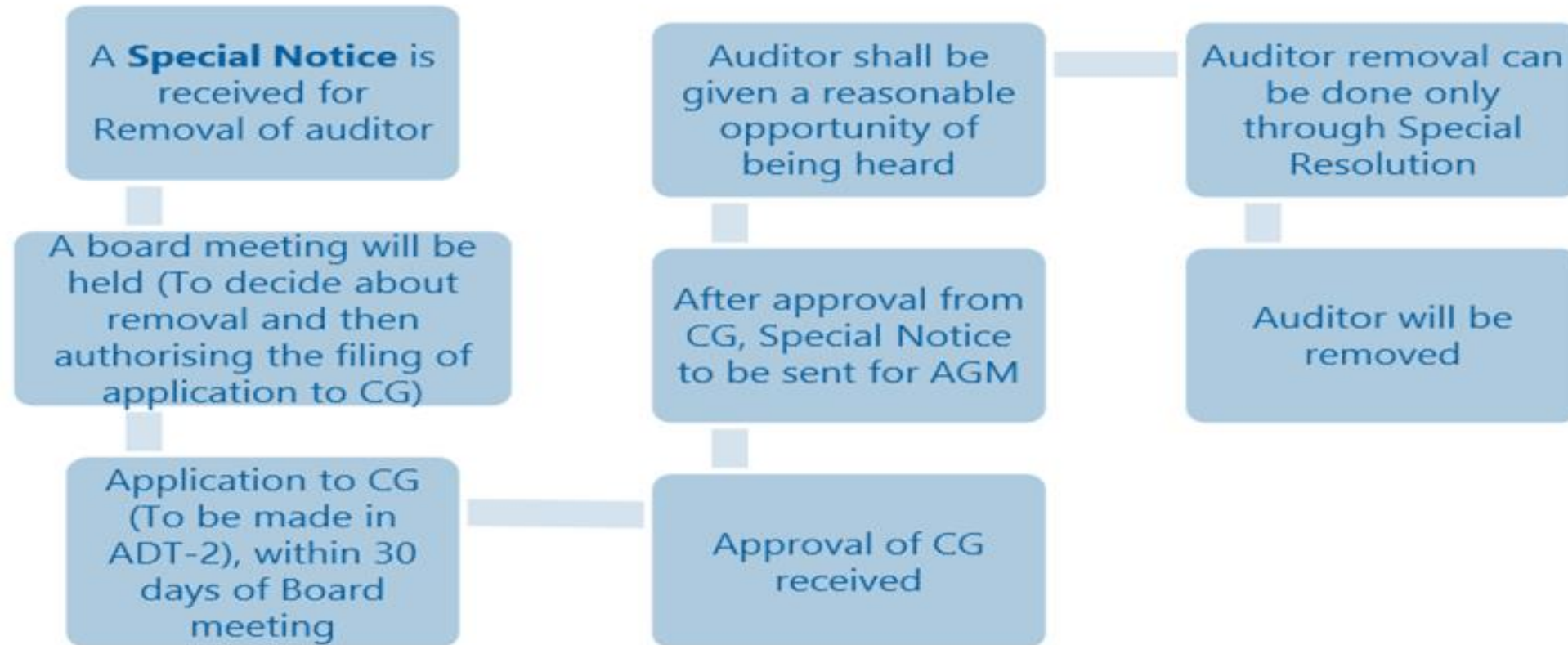
REQUIREMENTS FOR SP. NOTICE

- Notice shall be given to the company **not earlier than 3 months but at least 14 days before the date of meeting** at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- A special notice required to be given to the company shall be **signed, either individually or collectively** by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.
- **The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting**, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

REQUIREMENTS FOR SP. NOTICE

- Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.
- The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

STEPS FOR REMOVAL OF AUDITOR

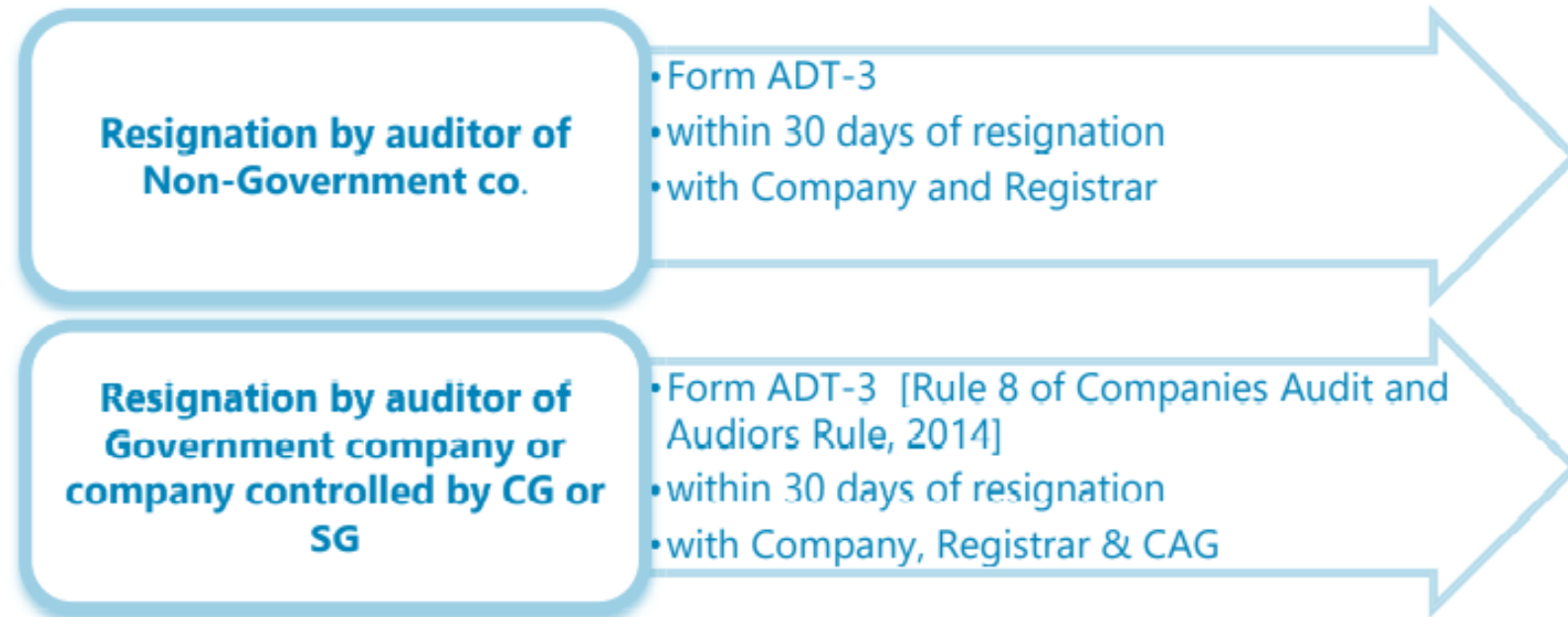


RESIGNATION OF AUDITOR [S.140(2), (3) and Rule 8]

*S.140(2) The auditor who has resigned from the company shall file within a **period of thirty days from the date of resignation**, a statement in the prescribed form [Form ADT-3 (rule 8)] with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139 [govt owned, controlled and govt co], the auditor shall also file such statement with the Comptroller and Auditor-General of India, **indicating the reasons and other facts as may be relevant with regard to his resignation.***

S.140(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, 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 five lakh rupees.

RESIGNATION OF AUDITOR [S.140(2), (3) and Rule 8]



APPOINTING AUDITOR OTHER THAN RETIRING AUDITOR [S.140(4)]

(a) If the retiring auditor has not completed a consecutive tenure of 5 years or 10 years, as the case may be, as provided under sub-section (2) of section 139, special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(b) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(c) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

(1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(2) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

(d) If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.

(e) However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.

(f) If the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then the copy of the representation may not be sent and the representation need not be read out at the meeting.

CHANGE OF AUDITOR ON ORDER OF TRIBUNAL [S.140(5)]

*S.140(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal **either suo motu** or on an **application made to it by the Central Government or by any person concerned**, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:*

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.-- It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.-- For the purposes of this Chapter the word "auditor" includes a firm of auditors

Example: FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crores. During the year ended 31st March 2019, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case

QUALIFICATIONS OF AN AUDITOR[SECTION 141(1) & (2)

A person shall be eligible to be appointed as auditor of a company only if **he is a Chartered Accountant** within the meaning of the Chartered Accountants Act, 1949.

A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

Where a firm including a Limited Liability Partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

DISQUALIFICATION OF AUDITORS [S.141(3)]

The following persons shall not be qualified for appointment as auditor of a company, namely:-

- (a) A body corporate other than a LLP
- (b) an officer or employee of the company
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company
- (e) 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.
- **Exception: Commercial transaction**

Rule 10(4)- For the purpose of clause (e) of sub-section (3) of section 141, the term “**business relationship**” shall be construed as any transaction entered into for a commercial purpose, except –

- (i) 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 and the rules or the regulations made under those Acts;
- (ii) 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.

-
- S.141(3)(d) a person 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
 - **Exception:** relative may hold security or interest in the company of face value not exceeding ` 1,00,000. 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
 - is **indebted to the company**, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, **in excess of 5 Lacs**;
 - 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 ` 1 Lac.**

-
- (f) a person **whose relative is a director** or is in the employment of the company as a director or key managerial personnel
 - (g): a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of **more than 20 companies** other than one person companies, small companies and private companies having paid-up share capital less than one hundred crore rupees.

Ceiling on numbers of audits: Before appointment is given to any auditor, the company must obtain a certificate from him to the effect that the appointment, if made, will not result in an excess holding of company audit by the auditor concerned over the limit laid down in section 141(3)(g) of the Companies Act, 2013 which prescribes that a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crore (MCA notification dated 5 June 2015).

-
- (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
 - a person who, directly or indirectly, renders any service referred to in section 144 [auditor not to render certain services- internal audit, book keeping, investment advisory etc.] to the company or its holding company or its subsidiary company.

(4) 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 and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Q. : Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2018 in which he accepted the assignment. Subsequently, in January 2019, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner. Discuss the validity?

Q. “Mr. Ashish”, a practicing Chartered Accountant, is holding securities of “XYZ Ltd.” having face value of ₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of “XYZ Ltd.”?

Q. “Mr. P” is a practicing Chartered Accountant and “Mr. Q”, the relative of “Mr. P”, is holding securities of “ABC Ltd.” Having face value of ₹ 90,000/-. Whether “Mr. P” is qualified for being appointed as an auditor of “ABC Ltd.”?

Q. “BC & Co.” is an audit firm having partners “Mr. B” and “Mr. C” and “Mr. A”, relative of “Mr. C”, is holding securities of “MWF Ltd.” having face value of ₹1,01,000. Whether “BC & Co.” is qualified for appointment as auditor of “MWF Ltd.”?

Q. “ABC & Co.” is an audit firm having partners “Mr. A”, “Mr. B” and “Mr. C”, Chartered Accountants. “Mr. A”, “Mr. B” and “Mr. C” are holding appointment as auditors in 4, 6 and 10 companies respectively. (i) Provide the maximum number of audits remaining in the name of “ABC & Co.” (ii) Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

REMUNERATION OF AUDITORS [SECTION 142]

Section 142 of the Companies Act, 2013 provides for remuneration of auditors. According to this section:

(i) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(ii) In the case of first auditor, remuneration may be fixed by the Board.

(iii) The remuneration mentioned aforesaid shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him. But the remuneration does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Example: SHRD Private Ltd is engaged in the business of software and consultancy. The company has an annual turnover of INR 2,000 crores but its profit margins are not very good as compared to the industry standards. For the financial year ended 31st March 2019, the company proposed appointment of its statutory auditors at its Board meeting, however, the remuneration was not finalized. The statutory auditors completed the engagement formalities including the engagement letter between the company and the auditors and it was decided that the engagement letter be signed without fee i.e. with the clause that the fee to be mutually decided. In this situation, engagement letter with such arrangement is valid.

POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS [SECTION 143]

(i) Powers of Auditors [Section 143(1)]:

(a) Access to books of account and vouchers: Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

(b) Entitled to have necessary information and explanation: He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

(c) Access to record of all its subsidiaries: The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

(ii) Duties of Auditors

(a) Matters of inquiry: The auditor shall inquire into the following matters, namely—

- (1) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- (2) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- (3) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- (4) Whether loans and advances made by the company have been shown as deposits;

-
- (5) Whether personal expenses have been charged to revenue account;
 - (6) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

(b) The auditor shall make a report to the members of the company on the following:

- (1) On the accounts examined by him; and
- (2) On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

(c) The auditor while making the report shall take into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11).

(d) The auditor shall express his opinion on the accounts and financial statements examined by him. He shall express an opinion, according to him and to the best of his information and knowledge, whether the said accounts/financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(e) The auditors' report shall also state [S.143(3)]—

- (1) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- (2) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (3) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

-
- (4) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
 - (5) whether, in his opinion, the financial statements comply with the accounting standards;
 - (6) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
 - (7) whether any director is disqualified from being appointed as a director under sub section (2) of section 164;
 - (8) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

-
- **** (9) whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls; [S.143(3)(i)]**
 - As per the Rule 10A inserted by the Companies(Audit and Auditors) Amendments Rules, 2014 vide Notification dated 14th October, 2014, for the purposes of clause (i) of sub-section (3) of section 143 (i.e. point 9 mentioned above), for the financial years commencing on or after 1st April 2015, the report of the auditor shall state about existence of internal financial controls with reference to financial statements and its operating effectiveness. Provided that auditor of a company may voluntarily include the statement referred to in this rule for the financial year commencing on or after 1st April 2014 and ending on or before 31st March 2015.

Exception/ Modification:

In case of Private Company - Clause (i) of Sub-Section (3) of Section 143 Shall not apply to a private company:-

(i) which is a one person company or a small company; or

(ii) 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 rupees twenty five crore." - Notification Dated 13th June, 2017.

it was clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April 2016, which are made on or after the date of the said notification. (Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25th July 2017

-
- (10) such other matters as may be prescribed.
 - According to Rule 11 of the Companies Audit and Auditors Rule, 2014, —The auditor’s report shall also include their views and comments on the following matters, namely:-
 - (a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
 - (b) 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;
 - (c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund Authority
 - **S.143(4) (4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.**

SP. PROVISIONS W.R.T GOVT. COMPANIES [S.143(5),(6),(7)]

S.143(5), (6), (7) reads as:

*In the case of a **Government company** or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, **the Comptroller and Auditor General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.***

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,--

- (a) **conduct a supplementary audit of the financial statement of the company** by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and*
- (b) comment upon or supplement such audit report:*
- Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.*

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (56 of 1971), shall apply to the report of such test audit.

Test Audit is the **audit** conducted to check whether the due procedures to be followed in different Wings of the Accounts Department are being followed.

BRANCH AUDIT [S.143(8)]

(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

Rule 12. Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor.

— (1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

(2) The branch auditor shall submit his report to the company's auditor.

(3) The provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

AUDITOR TO COMPLY WITH AUDITING STANDARDS [S.143(9) &(10)]

(9) Every auditor shall comply with the auditing standards.

(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

ADDITIONAL MATTERS TO BE REPORTED IN CASE OF SPECIFIED COMPANIES [S. 143(11)]: .

In respect of such class or description of companies, as may be specified in the general or special order by the Central Government, may in consultation with the NFRA direct, the auditor's report shall also include a statement on such matters as may be specified therein.

CARO (Companies Auditor Report Order) 2020 issued by MCA should be complied by the statutory auditor of every company on which it applies.

Provided that until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this subsection with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of Corporate Affairs and the Committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor-General.]

REPORTING OF FRAUD BY AUDITOR [S.143 (12) to (15)]

*[(12) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within **such time and in such manner as may be prescribed**. [Manner of reporting prescribed in Rule 13]*

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

Amount of fraud reportable to CG: As per the Rule 13, if any fraud, which involves or is expected to involve an amount of ` 1 crore or above, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government.

Manner of reporting to the C. Govt.

- (a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;
- (b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days from the date of receipt of such reply or observations;

-
- (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
 - (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs (MCA) in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
 - (e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
 - (f) The report shall be in the form of a statement as specified in Form ADT-4.

Frauds involving less than 1 cr. In case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of fraud and he shall report the matter specifying the following:

- (i) Nature of fraud with description;
- (ii) Approximate amount involved; and
- (iii) Parties involved.

The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) Rule 13 during the year shall be disclosed in the Board's Report: (i) Nature of fraud with description; (ii) Approximate amount involved; (iii) Parties involved, if remedial action not taken; and (iv) Remedial actions taken.

(13) No duty to which an auditor of a company may be subject to 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.

(14) The provisions of this section shall mutatis mutandis apply to--
(a) the cost accountant conducting cost audit under section 148; or
(b) the company secretary in practice conducting secretarial audit under section 204.

(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall, --
(a) in case of a listed company, be liable to a penalty of five lakh rupees; and
(b) in case of any other company, be liable to a penalty of one lakh rupees.]

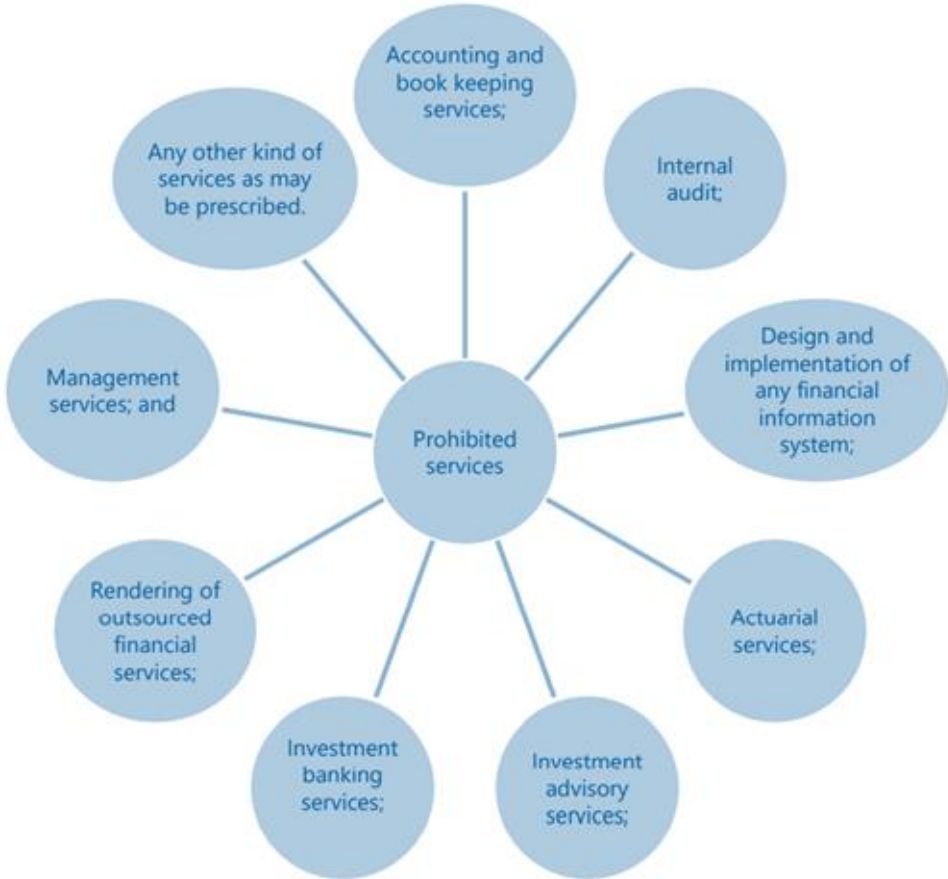
AUDITOR NOT TO RENDER CERTAIN SERVICES [S.144]

. According to this section:

(i) An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely—

(a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services; (h) management services; and (i) any other kind of services as may be prescribed. [However no other kind of services has been prescribed till date]

PROHIBITED SERVICES U/S 144

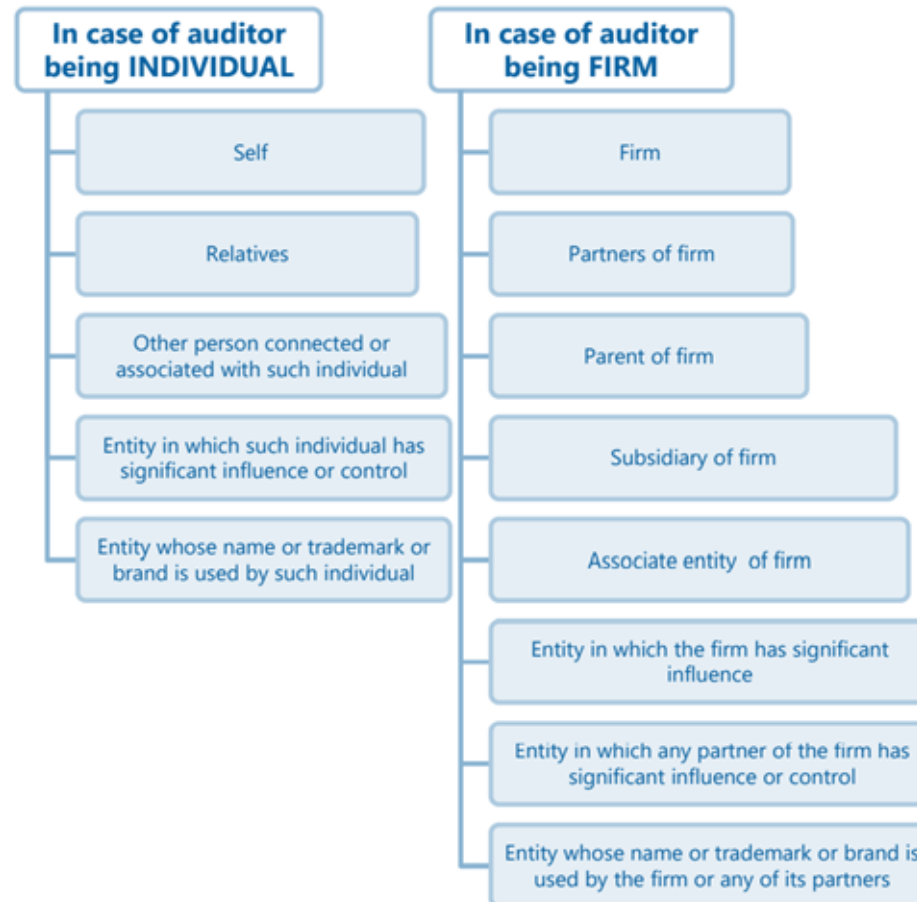


Explanation: The term “directly or indirectly” shall include rendering of services by the auditor,—

(1) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trademark or brand is used by such individual;

(2) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trademark or brand is used by the firm or any of its partners.

RENDERING OF SERVICE DIRECTLY OR INDIRECTLY



AUDITORS TO SIGN AUDIT REPORTS, ETC. [SECTION 145]

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

- (i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorized to act as statutory auditors and sign).
- (ii) The 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 and shall be open to inspection by any member of the company.

AUDITORS TO ATTEND GENERAL MEETING

[SECTION 146]

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

- (i) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.
- (ii) The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.
- (iii) The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor

PUNISHMENT FOR CONTRAVENTION OF S. 139 TO S.146 [S.147]

Punishment for Company:

- Min Fine- 25,000
- Max Fine- 5 lakh

Punishment for officer in default

Max imprisonment- 1 yr

Min Fine: 10,000

Max Fine: 1 lakh

Punishment for the auditor for contravention of S. 139, 143, 144 or 145 [s.147(2)]

Min Fine- 25,000

Max Fine- 5 lakh or 4 times the remuneration of the auditor whichever is less

Willful default- Max imprisonment – 1yr; Min fine- 50k; Max Fine- 25 lakh or 8 times of the remuneration of auditor whichever is less

Consequences of Conviction u/s 147(2):) Where an auditor has been convicted under sub-section (2), he shall be liable to—

- (i) refund the remuneration received by him to the company; and
- (ii) pay for damages to the company, statutory bodies or authorities ⁵ [or to members or creditors of the company] for loss arising out of incorrect or misleading statements of particulars made in his audit report. [S.147(3)]

Measures to ensure Prompt Payment of Damages [s.147(4)]

(4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

Joint and Several Liabilities of Partners [S.147(5)]:

(5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether 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.

Provided that 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, as the case may be, colluded in any fraud shall only be liable.]

CG TO SPECIFY AUDIT OF ITEMS OF COST IN RESPECT OF CERTAIN COMPANIES [S.148]

*(1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods **or providing such services as may be prescribed**, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:*

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(3) The audit under sub-section (2) shall be conducted by a cost accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.-- For the purposes of this sub-section, the expression cost auditing standards mean such standards as are issued by the Institute of Cost Accountants of India, constituted under the Cost and Works Accountants Act, 1959 (23 of 1959), with the approval of the Central Government

Rule 14 of the Companies (Audit and Auditors) Rules, 2014 provides that—

(1) in the case of companies which are required to constitute an audit committee-

(A) the Board shall appoint an individual, who is a cost accountant, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;

(B) the remuneration recommended by the Audit Committee under (A) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders.

(2) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

(4) An audit conducted under this section shall be in addition to the audit conducted under section 143.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the cost accountant to the Board of Directors of the company

(6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

under the Rule 4 of the Companies(Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, a company which is required to furnish cost audit report and other documents to the Central Government under sub- section 6 of the section 148 of the Act and rules made thereunder, shall file such report and other documents using the XBRL taxonomy given in Annexure III for the financial year commencing on or after 1 April 2014 in e-form CRA-4 specified under the Companies(Cost Records and Audit) Rules, 2014

(7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

(8) If any default is made in complying with the provisions of this section,
(a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;
(b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.



THANK YOU