

143: Powers and Duties of Auditors and Auditing Standards

(1) Every auditor of a company shall have a 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 and shall be 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 and amongst other matters inquire into the following matters, namely:—

- (a) 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;
- (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- (c) 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;
- (d) whether loans and advances made by the company have been shown as deposits;
- (e) whether personal expenses have been charged to revenue account;
- (f) 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;

Provided that 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

(2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this 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 sub-section (11) and to the best of his information and knowledge, 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.

(3) The auditor's report shall also state—

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) whether, in his opinion, the financial statements comply with the accounting standards;
- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

143(1) - Rights of Auditor: Access, at all times, to the books, information and explanation from officers of the company for performance of his duties.

Auditor of holding company will have right to access to records of subsidiary company for the

143(1) - Duties of Auditor:

- a. Loans and advances are properly secured & whether the terms are prejudicial to the company's interest
- b. Whether transactions are book entries only
- c. Whether the company's asset consists of shares, securities, etc. and whether they have been sold less than the purchase price.
- d. Whether loans and advances are shown as deposits.
- e. whether personal expenses have been charged to revenue account
- f. Whether cash have been received for shares allotted in cash. If no, then whether FS are misleading.

143(2) - Auditor shall report to the best of his information and knowledge whether financial statements give a true and fair view

Reporting requirement as per section 143(3):

- a. Obtained all the information & explanation necessary for the purpose of audit, if not then mention the details.
- b. Whether proper books of accounts have been kept and whether information from branch has been received.
- c. Whether he has received the branch audit report and how he has dealt with it.
- d. Whether BS & P&L A/c agree with books of accounts
- e. Whether FS comply with accounting standards
- f. Any adverse comments on FS or on matters which have adverse effect
- g. Whether any director is disqualified from being appointed
- h. Any qualification or remarks
- i. Adequacy of IFC with reference to FS

- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- (i) whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;

Exception/Modification/Adaptation: In case of Private Company - Clause (i) of Sub-Section (3) of Section 143 Shall not apply to a private company (Reporting on Internal Financial Controls with reference to Financial Statements):-

- (i) which is a one person company or a small company; or
- (ii) (a) which has turnover less than rupees fifty crores as per latest audited financial statement and
- (b) 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)

- (j) such other matters as may be prescribed.

The Companies (Audit and Auditors) Rules, 2014: Rule 11:

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 by the company.

(d) [Omitted] [SCN]

(e) i. *Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;*

ii. *Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and*

iii. *Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.*

(f) *Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.*

(g) *Whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout*

IFC Exemption – Reporting on IFC is not applicable to

- One person company,
- Small company,
- Pvt Co having turnover < ₹ 50 cr, and
- Pvt Co having borrowings < ₹ 25 Cr.

Additional reporting requirement as per Rule 11:

- a. Whether company has disclosed the impact of pending litigation.
- b. Whether the provisions for material foreseeable losses have been made.
- c. Whether there has been delay in transfer of investor protection fund amount
- d. Omitted by April 2021 Amendment
- e.
 - i. Whether the company has provided any loan or invested in any company which is not disclosed in FS
 - ii. Whether the company has received any loan or funds from any company which is not disclosed in FS
 - iii. As per the audit procedures whether anything contrary to (i) & (ii) has come up.
- f. Whether dividend declared and paid is in compliance with Co. Act provisions
- g. Whether the company is using accounting software with audit trail and whether that feature is tempered (After 1-April-2022).

the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

- (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.
- (5) 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 Government, or partly by the Central Government and partly by one or more State Government, 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, shall apply to the report of such test audit.
- (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.

- (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, 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.
- (11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

143(4) - For every matter with qualification, also provide the reason therefor.

143(5) - CAG in Govt Co. – direct the auditor the manners in which accounts are to be audited. Submit an AR copy to CAG Including directions by CAG, the action thereon and the impact of same on FS.

143(6) - Within 60 days from receipt of AR, CAG have a right to order supplementary audit by person authorized by him and to comment on AR incl. supplementary AR.

Comments of the CAG should be circulated to all stakeholders and to be placed in AGM.

143(7) - CAG by order can cause test audit to be conducted of accounts of Govt company.

143(8) - Indian branch should be audited by the auditor or person appointed by him. Foreign branch should be audited by auditor, person appointed by him, or person qualified as per country law.

Branch auditor shall have same power and duties as contained in sec 143(1) to 143(4) – Rule 12(1)

Branch auditor shall submit his report to the company's auditor - Rule 12 (2)

Reporting fraud to central govt as per sec 143(12)

143(9) - Auditor to comply with auditing standards

143(10) – CG may prescribe the SA in consultation with NFRA

143(11) – CG may prescribe ask auditor to issue statement on such matters as prescribed.

Provided that until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub-section 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

- (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 of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

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.

Rule 13: Reporting of Frauds by Auditor and Other Matters:

- (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.
- (2) The auditor shall report the matter to the Central Government as under:-
 - a. the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five 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 fifteen 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 forty-five 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 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.
- (3) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-
 - a. Nature of Fraud with description;
 - b. Approximate amount involved; and
 - c. Parties involved.

143(12) – The auditor shall report the fraud of ₹ one crore or more to central government & amount less than that is required to be reported to audit committee within 2 days.

Fraud of ₹ 1 cr or more should be reported to CG in the following manner:

1. Report to Board or Audit Committee within 2 days of knowledge
2. Seek observation from them within 45 days
3. Forward observations and replies along with his comments to CG within 15 days from receiving reply
4. If auditor does not get any reply, then send a note to CG containing details of report
5. Report should be sent to Secretary, MCA in sealed cover.
6. Report shall be on letter head of auditor
7. File Form ADT-4

(4) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-

- a. Nature of Fraud with description;
- b. Approximate Amount involved;
- c. Parties involved, if remedial action not taken; and
- d. Remedial actions taken.

(5) The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.

(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.

143(13) – Protection in case of reporting fraud as per section 143(12) if done in good faith.

143(14) – Provision applies to cost accounts and company secretary also.

143(15) – Penalty for contravention of Section 143(12) i.e., reporting of fraud

- Listed – ₹ 5 lacs
- Others – ₹ 1 Lacs

- (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Section 177: Audit Committee

The Following companies are required to have Audit Committee

1. Every Listed Company
2. Public Companies having paid up share capital of ten crore rupees or more
3. Public Companies having turnover of one hundred crore rupees or more
4. Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

Rule 3: Manner and Procedure of Selection and Appointment of Auditors

- (1) In case of a company that is required to constitute an Audit Committee under [section 177](#), the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company:

Provided that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.

- (2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.
- (3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.
- (4) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
- (5) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.
- (6) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.
- (7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting:

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

139(1) – Appoint Auditor from 1st AGM to the conclusion of 6th AGM & after that again follow procedure of Rule 3

177 – Audit Committee Mandatory for

- Every Listed Co
- Public Co having paid up share capital > ₹ 10 Cr
- Public Co having turnover > ₹ 100 Cr
- Public Co which total debt > ₹ 50 cr

Rule 3 – Board or Audit committee to consider the qualification or Auditor – Rule 3(1)

Audit committee may call for other information – Rule 3(2)

Audit Committee shall recommend a name for auditor to Board and if Board agrees then present name in AGM for appointment – Rule 3(3) & 3(4)

If Board disagrees with committee, then refer back the recommendation with reasons – Rule 3(5)

If Audit Committee still disagrees the Board shall forward their recommendation separately in AGM – Rule 3(6)

Obtain written consent from auditor and a certificate that if appointment made will be as per the conditions prescribed in Rule 5

A certificate that auditor is eligible for appointment as per section 141.

File Form ADT-1 within 15 days from date of meeting as per Rule 4 with certificate.

Rule 4: Conditions for Appointment and Notice to Registrar

- (1) The auditor appointed under rule 3 shall submit a certificate that –
 - (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
 - (b) the proposed appointment is as per the term provided under the Act;
 - (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
 - (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- (2) The notice to Registrar about appointment of auditor under fourth proviso to sub-section (1) of section 139 shall be in Form ADT-1.

Explanation—For the purposes of this Chapter, “appointment” includes reappointment.

- (2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
 - (i) an individual as auditor for more than one term of five consecutive years; and
 - (ii) an audit firm as auditor for more than two terms of five consecutive years:

5 Class of Companies.

For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- (b) all private limited companies having paid up share capital of rupees fifty crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

Provided that—

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act.

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

- (3) Subject to the provisions of this Act, members of a company may resolve to provide that—
 - (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
 - (b) the audit shall be conducted by more than one auditor.
- (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

Sec 139(2): Rotation of Auditor:

Individual for 1 term of 5 consecutive years
CA Firm for 2 terms of Five Consecutive years

Rule 5: Rotation Applicable to:

Excludes OPC & Small Companies.
Unlisted Co. Share Capital > ₹ 10 Cr
Private Co. Share Capital > ₹ 50 Cr
All Co. borrowings > ₹ 50 Cr

Common Partners not eligible for appointment even if they change the firm

Explanation.—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

- (5) Notwithstanding anything contained in sub-section (1), 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, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.
- (6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.
- (7) Notwithstanding anything contained in sub-section (1) or sub-section (5), 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 first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.
- (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.
- (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;
- (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.

139(5) - Appointment of auditor in Govt Co will be made by CA within 180 days commencement of financial year till conclusion of AGM

139(6) - First Auditor of Co by BOD within 30 days from date of registration of company. In case of failure then within 90 days in EGM. First Auditor to Hold office till conclusion of 1st AGM

139(7) - First Auditor of Govt Co by CAG within 60 days from date of registration of company. In case of failure then within 30 days by BOD. In case of BOD failure, first Auditor to Hold office till conclusion of 1st AGM

139(8)(i) - Casual Vacancy by BOD within 30 Days unless it is due to resignation. Otherwise, within 3 months in AGM on BOD recommendations

139(8)(ii) - In case of Govt Co, by CAG within 30 days. If CAG fails, then BOD in 30 days.

139(9) – Retiring auditor cannot be re-appointed when is disqualified, he has showed unwillingness and special resolution passed for not appointment.

139(10) – If at AGM, no auditor is appointed then the old will continue.

139(11) – recommendation of Audit Committee should be considered in appointment and re-appointment

140: Removal, Resignation of Auditor and 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:

Rule 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 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.

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

- (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 with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, 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.
- (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 further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

- (4)
- (i) 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, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.
- (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- (iii) 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,—
- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (b) 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,

and 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:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

Provided further that 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.

140(1) – Auditor can be removed by special resolution before expiry of his term by CG.

File ADT-2 to CG within 30 days of Board resolution then pass special resolution in GM within 60 days from approval from CG – Rule 7

Opportunity of being heard to be given to auditor

140(2) - Auditor who has resigned from company shall within 30 days file a statement with company and registrar & in case of Govt then file with CAG indication reason for resignation.

140(3) – Contravention of 140(2) penalty of ₹ 50000 or Auditors Remuneration w.e.less.

In case of continuing contravention ₹ 500 / day maximum ₹ 2 lacs

140(4)(i) – Special notice is required for special resolution for appointing auditor other than retiring auditor

(ii) Send copies of notice to the retiring auditor

(iii) Retiring Auditor can provide representation to company for circulation. Company required to circulate unless it is too late to do so.

If copy not sent, then auditor may choose to read representation and require to file with registrar.

If powers of this section are misused (Tribunal to decide) then no copy will be sent or read in meeting.

- (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 moto 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.

140(5) – If tribunal identifies that Auditor was involved in fraud, the tribunal will direct to change the auditor

On application of CG, if tribunal finds necessary to change the auditor, then tribunal within 15 days of application will direct auditor to discontinue.

If tribunal passes final order against any firm or person, then that firm or person will not be eligible for appointment of auditor for 5 years from date of order.

Firm or person will also be liable for action u/s 447.

141: Eligibility, Qualifications and Disqualifications of Auditors

- (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that 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.

- (2) 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.

- (3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(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;

(d) a person who, or his relative or partner—

- (i) 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:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

- (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

- (iii) 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, for such amount as may be prescribed;

(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 of such nature as may be prescribed;

(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 twenty companies

(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;

(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation — For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144.

Sec 141(1) – Eligible for appointment as an auditor when he is CA in practice or majority of partners in India are CA in practice.

Sec 141(3) – Not Eligible for appointment as an auditor:

- Body Corporate

- Officer of Company

- Partner or employee of officer or employee

- Person or his relative or his partner holding securities or interest in defined companies > ₹ 1 Lacs

- Persons indebted to company more than ₹ 5 lacs

- Given guarantee in connection with indebtedness of 3rd Person > ₹ 1 Lacs.

- Person having business relationships with company

- Person's relative director or KMP

- Person who is in full time employment or

- A person holding appointment as auditor or more than 20 companies other than OPC, dormant companies, Small Companies and private companies having paid up capital < 100Cr.

- Person convicted for fraud and ten years has not lapsed

- Person providing section 144 services.

Rule 10: Disqualifications of Auditor

- (1) For the purpose of proviso to sub-clause (i) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh:

Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:

Provided further 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.

- (2) For the purpose of sub-clause (ii) of clause (d) of sub-section (3) of section 141, a person who or whose 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 rupees five lakh shall not be eligible for appointment.
- (3) For the purpose of sub-clause (iii) of clause (d) of sub-section (3) of section 141, a person who or whose 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 one lakh rupees shall not be eligible for appointment.
- (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.

- (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.

Sec 141(4) – If auditor becomes disqualified then it will be treated as casual vacancy.

Other Important provisions of the Companies Act

Sec. 142 – Remuneration of Auditors

Remuneration to be Fixed in its general meeting or in such manner as may be determined therein

Provided that the Board may fix remuneration of the first auditor appointed by it.

Sec. 144 – Auditor not to render certain services

Auditor can provide such other services as are approved by the Board of Directors or the audit committee

But such service shall not include:

- (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:

Sec. 145 – Signing of Audit Reports

Person appointed as an auditor of the company shall sign the auditor's report in accordance with the provisions of sub-section (2) of section 141.

Sec. 146 – Auditors to Attend General Meeting

All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company. The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative.

Auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Sec. 147 – Punishment for Contravention

147(1) – For violation of Sec 139-146 : Fine: ₹ 25,000 to ₹ 5 Lacs for company and Fine ₹ 10,000 to ₹ 1 Lakh for each officer

147(2) – For violation Sec 139, 144, 145: Fine ₹ 5,000 to ₹ 5 Lacs for Auditor or 4 times of remuneration w.e.less. If contravention is willful or fraudulent then fine ₹ 50,000 to ₹ 25 Lacs or 8 times of remuneration w.e.less.

147(3) – If auditor convicted under Sec 147(2) then: Refund the remuneration & pay damages / loss to company or members.

147(4) – CG to notify the authority for prompt payment / recovery of the damages of 147(3) from Auditor.

147(5) – In case of Audit Firm, concerned Partner will be jointly and severally liable. For Criminal liability in fraud, Partners acted fraudulently will be jointly and severally liable.