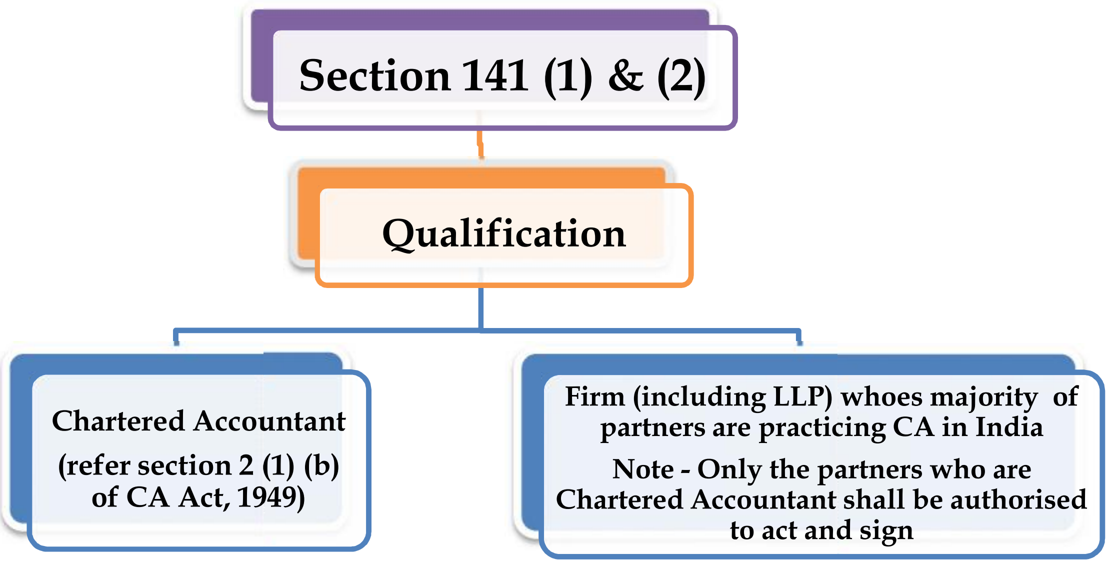
Chapter – 1
Eligibility, Qualifications and Disqualifications of an Auditor

Comparative Table of 2013 Act with 1956 Act

Sec. under CA 2013	Sec. under CA 1956	Matters dealt with	Form No.
102	**173**	Appointment of auditors is an ordinary business.	
115[2]	**190**	Resolution requires special notice for appointment of other than retiring auditors.	
128	**209, 214**	Requirement to maintain proper books of accounts	
139	**224, 224A, 619**	Appointment of auditors, Intimation to ROC by Company	**ADT-1**
140	**225**	Removal, resignation of auditor and giving of special notice	
140(1)	**225**	Application to the Central Government for removal of the Auditors	**ADT-2**
140(2)	**225**	Filing of the resignation by the Auditors to the Registrar	**ADT-3**
141	**226**	Eligibility, qualifications and disqualifications of auditors	
142	**224(8)**	Remuneration of auditors	
143	**227, 228, 263A**	Powers and duties of auditors and auditing standards	
143(12)	**227, 228, 263A**	Reporting of material fraud by the Auditors and Secretarial Auditors to the Central Government	**ADT-4**
144	**-**	Services not to be render by auditors	
145	**229, 230**	Auditor to sign audit reports.	
146	**231**	Auditors to attend general meeting	

1. Qualifications of an Auditor



Note	**Explanation to section 139(4) of the 2013 Act provides that for the purposes of Chapter X, "firm" shall include Limited Liability Partnership incorporated under the LLP Act, 2008.**

Some Points to Remember

1.	The expression **'Chartered Accountant'** is defined in **section 2(*17*) of the Co's 2013** Act to mean a chartered accountant who – ✓ Satisfies the requirements of **section 2(1)(*b*)** of the Chartered Accountants Act, 1949; and ✓ **Holds** a **valid COP** under section 6 of that Act.
2.	A **LLP may practice as Chartered Accountants** with effect from 1st February, 2012 (the Amendment Act, 2011 comes into force) provided the following **conditions** are satisfied – **a.** It is an Indian LLP (LLP formed and registered under the Limited Liability Partnership Act, 2008) and **not a foreign LLP.** **b.** The partners of the LLP are **only CAs** in practice or **CA/(s) in practice** and **other recognized professionals** as may be prescribed. **c.** None of the partners of the LLP shall be a **company** [Sub-clause (*B*) of new clause (*ec*) of section 2(1) of the 1949 Act; *Explanation* inserted in section 25 of the 1949 Act] or **an Indian LLP** or **a foreign LLP. [see Note below]** **d.** The LLP is **registered with** the **ICAI.**
Note	☞ At the first glance it appears there is **no bar** on an Indian LLP of CAs having an Indian LLP/foreign LLP as a partner from practicing the profession of CAs. ☞ However, such an interpretation would conflict with the requirements of section 2(2) of the 1949 Act (as amended by the Amendment Act, 2011) which permit a CA to practice in partnership with only with other CAs in practice or in partnership with members of such other recognized professions as may be prescribed. ☞ LLPs, whether Indian or foreign, have a **distinct entity from partners.** ☞ Therefore, it appears that partnership with LLPs of CAs/other recognized professionals **cannot be treated as partnership with CAs/other recognized professionals** within the meaning of section 2(2) of the 1949 Act. **(This matter needs ICAI's clarification)**

3.	**Proprietary firm whether qualifies for appointment as auditor in firm name?**	
	✓ According to new clause **(ca) of section 2(1)** of the 1949 Act, the term **"firm" inter alia includes "sole proprietorship" registered with ICAI.** ✓ New clause (haa) defines **"sole proprietorship"** to mean an individual who engages himself in the **practice of accountancy** or **offers to perform** services referred to in clauses (ii) to (iv) of sub-sec. (2).	
4.	**Can Proprietary firm be appointed in its firm name?**	
	✓ The **definition of "firm"** in Explanation to section 139(4) of the 2013 Act is **silent** on whether sole proprietorship CA firm which is recognized as "firm" in CA Act, 1949 is also covered in definition of firm. ✓ Though **definition** of "firm" in Explanation is an **inclusive one,** it appears that proviso to section 141(1) of the 2013 Act close the issue. ✓ A company must appoint the proprietor of the so-called firm by his **name in his individual capacity** as its auditor and the auditor's report will have to be **signed by the proprietor** himself in his own name. - **MCA's Circular – No. 8/229/56-PR, dated 20-3-1957.**	

2. Disqualifications of an Auditor [Section 141(3)]

S.N.	Disqualified Person	Description
a.	**Body Corporate other than LLP registered under LLP Act, 2008**	**A body corporate other than a LLP** registered under the LLP Act, 2008 shall not be eligible to be appointed as auditor of a company.
Note	**Meaning of Body Corporate**	**Body Corporate" or "Corporation" includes a company incorporated outside India, but does not include— [Section 2 (11) Co's Act 2013]** (i) A **Co-operative Society registered** under any law relating to co-operative societies; and (ii) Any **other Body Corporate** (not being a company as defined in this Act), which the **Central Government** may, by **notification**, **specify** in this behalf;
b.	**An Officer or Employee of the Company**	1. The term **'employee' is not defined** in the 2013 Act. However, any employee of the company, whether **full-time or part-time** shall be **disqualified** from appointment as auditor of the company. 2. Unlike the 1956 Act, **employee** of the company's **holding company** or **subsidiary** or **co-subsidiary** or **ultimate holding** company is **not** so **disqualified.**
Note	**Meaning of Officer**	**According to section 2(59) of Co's Act, 2013, the term 'Officer' includes –** ✓ **Director** ✓ **Manager** ✓ **KMP – CEO, MD, CS, Manager, WTD, CFO [Sec. 2 (51) of Co's Act, 2013]** ✓ Any person in accordance with whose **directions** or **instructions** the Board of **Directors** or any one or more of the directors is or are **accustomed to Act.**
E.1	Suppose X, a practicing CA, is a director of PQR Ltd. X is disqualified under section 141(3)(*b*) read with section 2(59) as he, being a director, is an officer of the company.	
E.2	Suppose X, a practicing CA, is a director of P Ltd., the holding company of PQR Ltd. He is disqualified to be auditor of P. Ltd. but not disqualified to be auditor of PQR Ltd. by virtue of section 2(*59*) read with section 141(3).	

Case Law	**Official Liquidator of National Live Stock Registration Bank Ltd. v. Velu Mudaliar**	**Broker, Solicitor, banker** as such is **not a promoter, nor an 'officer'** of company

Letter No. – 8/17/2(30)/76 -CL-V, dated – 23/08/1976	The term "Officer" includes an employee if he has been vested with the **powers of financial control** over one or more **fields of operation** of a company and, therefore, such an employee should be deemed to be falling under the category of the term "officer". In view of this position, **the employees like chief accountant, works manager, sales manager, purchase manager, estate manager, etc., should be deemed to be officers**
Letter No. – 8/65/2/30/63-PR, dated – 07/10/1963	If in respect of **discharge** of any particular **duty imposed** by the Act any person occupies a position of **responsibility** in a company, he will be **deemed** to be an "officer" in relation to that **duty and answerable as such.**
Query	Whether on his engagement as the **income-tax consultant** of a company either on payment of *ad hoc* fee or fees as retainer or on fixed periodical remuneration, a practising chartered accountant is to be regarded as an officer or employee of the company for the purpose of section 141(3)(*b*) of the 2013 Act, and consequently as being disqualified for appointment as auditor of the company?
Response	**<u>MCA had clarified the legal position in the context of corresponding provisions in the 1956 Act as follows</u> –** 1. Where the chartered accountant is **employed whole-time,** he is an **employee** of the company. 2. In other cases generally speaking, there would appear to be only a **contract for service** and **not a contract of service** between the company and the chartered accountant. 3. In ***Dharangadhra Chemical Works* v. *State of Saurashtra***, the Supreme Court has laid down that the ***prima facie*** **test** for the determination of the **relationship** between master and servant is the **existence** of the **right** in the **master to supervise and control** the work done by the servant not only in the matter of **directing what work** the servant is **to do,** but also the **manner** in which he shall **do his work**, or, to borrow the words of Lord Uthwatt, "the proper test is whether or not the hirer had authority to control the manner of execution of the act in question". 4. Applying this test in any case, where the chartered accountant is **consulted** only professionally on **income-tax matters** by a company, he **cannot** be said to be an **officer or employee** of the company. 5. A chartered accountant's main business is to **render professional service for reward** like a lawyer or a doctor. **6.** *Where such service is **rendered professionally** and not as an officer or employee of the company, a chartered accountant is **not disqualified** under section 226(3)(*b*)* **[MCA's : Letter No. 8/1/57-PR, dated 11-7-1957.]**

c.	**Partner or Employee of Officer or Employee of the Company**	Financial or Personal relationships with the officer and employees of the company are prohibited, in order to promote independence of the Company Auditor.

E.1	Suppose X, a practicing CA, is a director of PQR Ltd. X is disqualified under section 141(3)(*b*) read with section 2(*59*) as he, being a director, is an officer of the company. If he is a partner in X & Co., a firm of CAs. The other partners are Y and Z. Y and Z are disqualified to be auditors of PQR Ltd. under section 141(3)(*c*) as they are partners of an officer of the company.

d.	**Holding the Security interest**	<u>**A person shall be disqualified from appointment as auditor if**</u> – ✓ **He** or ✓ His **relative** or [refer appendix at the end of chapter] ✓ **Partner –** **Is holding any security [Refer Appendix at the end of Chapter] or interest in –** ✓ The company; or ✓ Its subsidiary; or [refer appendix at the end of chapter] of its holding company; or [refer appendix at the end of chapter] ✓ Associate company; or [refer appendix at the end of chapter] ✓ A subsidiary of such holding company. <u>**Rule 10 (1) of Co's (Audit and Auditors) Rules, 2014**</u> However, disqualification is not attracted if the **face value** of security or interest held by the **relative** does **not exceed ₹ 1,00,000.** 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 60 days** of such acquisition or interest.
Note	**1.** The **threshold limit** of ₹ 1,00,000 applies to securities held by **relative** and **not** to securities held by the **person or his partner.** **2.** **Disqualification** is attracted in case of security/interest held by the **person himself** or his **partner regardless of the quantum of holding.** 3. Even **insignificant amounts** of securities held by the **person himself** or his **partner** would attract **disqualification** under section 141(3)(*d*)(*i*). **4.** What matters here is face value and **not market value.** 5. Section 141(3)(g) refers to **subsidiary of associate company.** This clause, however, contains no such reference. Thus, if relative holds security or interest of face value exceeding ₹ 1,00,000 in subsidiary of associate company, **disqualification** under this clause is **not attracted.**	
e.	**Indebtedness**	<u>**A person shall be disqualified from appointment as auditor if**</u> – ✓ **He** or ✓ His **relative** or [refer appendix at the end of chapter] ✓ **Partner –** Is **indebted** to – ✓ The company; or ✓ Its subsidiary; or [refer appendix at the end of chapter] ✓ Of its holding company; or [refer appendix at the end of chapter] ✓ Associate company; or [refer appendix at the end of chapter] ✓ A subsidiary of such holding company In **excess of ₹ 5 Lakh** shall not be eligible for appointment. **[Rule 10(2)]**

Note		1. A **partner is disqualified if his firm is indebted** to the company for more than ₹ 1000 [now more than prescribed amount of ₹ 5,00,000]. 2. A **firm is disqualified if a partner** of that firm is so **indebted.** [Clarifications given by the Research Committee of the ICAI] 3. Since **"firm" includes LLP** and **partners of LLP are separate entity from the firm,** it would be better to amend and clarify the provisions as to whether audit firm which is LLP would be disqualified if any of its partners are indebted and vice versa.
Query 1		Is the auditor indebted to the company if he draws his fees on a progressive basis? That is he draws his fees as and when a part of the work is done without waiting for the completion of the whole job?
Response		ICAI's Research Committee has clarified that if as per the terms of his engagement with the client (*e.g.* a resolution passed at the general meeting), the auditor recovers his fees on a progressive basis as and when a part of the work is done without waiting for the completion of the whole job, he cannot be said to be indebted to the company.
Query 2		A question arises what if auditor purchases goods on credit from his client and the client allows him the normal credit period allowed to other customers?
Response		The Research Committee of ICAI has clarified that if auditor purchases goods or services on credit from his client company he is definitely indebted to the company. If the amount outstanding exceeds ₹ 1000 [now prescribed amount of ₹ 5,00,000], he would be disqualified and must vacate his office. That the credit period allowed to him is the same as allowed to other customers is no excuse.
f.	**Guarantee and Security (Indirect Indebtness)**	<u>**A person shall be disqualified from appointment as auditor if**</u> – ✓ **He** or ✓ His **relative** or [refer appendix at the end of chapter] ✓ **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 [refer appendix at the end of chapter] of its holding company; or [refer appendix at the end of chapter] ✓ Associate company; or [refer appendix at the end of chapter] ✓ A subsidiary of such holding company In **excess of ₹ 1 Lakh** shall not be eligible for appointment. **[Rule 10(2)]**
g.	**Business Relationship**	<u>**A person or a firm who, whether directly or indirectly, has business relationship with**</u> – ✓ 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. [See Note Below]**

Note	The **term business relationship** is defined in **Rule 10(4)** shall be constructed as any transaction entered into for a commercial purpose except – **(i)** Commercial transaction 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 and the rules or the regulations made under such Act.** (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.	
h.	**Relative of Director or KMP**	<u>**A person whose relative is a**</u> – ✓ **Director** or ✓ In the **employment** of the company **as** a D**irector** or **KMP**
Note	This **disqualification** would **not apply** if **relative** is **Director or KMP** of company's **holding company** or **subsidiary** company or **associate** company or **co-subsidiary.**	
Query	If **relative of a CA is Director/KMP** of the company, would the firm in which such CA is partner would also be so disqualified?	
i.	**Fulltime Employee & Ceiling Limit**	✓ 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. [Refer Appendix at the end of Chapter]**
Note	The words **"such persons"** (in plural) makes the limit of 20 companies applicable **both** to person in full-time employment elsewhere as well as to person holding appointment as its auditor.	
Circular No. – 35/3/78-CL-III, dated – 24/09/1975	**It would appear that the branch audits are not to be included while calculating the specified numbers of Company.**	
k.	**Convicted by Court for fraud**	<u>**A person is disqualified for appointment as auditor of a company if he**</u> – ✓ Has been **convicted by a Court** of an offence involving **fraud** and ✓ A period of **10 years** has **not elapsed** from the date of such conviction
Note	**A question arises whether "fraud" shall have the same definition as in section 447?** The definition in section 447 is expressly stated to be for purposes of that section. Therefore, it appears that the definition under section 447 is not applicable to section 141(3)(*h*). This matter requires clarification.	
l.	**Services Rendered u/s 144**	A **person** whose **subsidiaries** or **associate companies** or **any other form** of entity, is engaged at the date of appointment in **consulting and specialized** as provided in Section 144 is disqualified from appointment as auditor.
Note	<u>Restricted Services</u> – <u>[Section 144]</u> An auditor appointed under this Act **shall not** ***directly or indirectly*** provide any of the following **"other services"** (*i.e.* Services other than statutory audit under the 2013 Act) to auditee company or its holding company or subsidiary company	

(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.**

Services other than the above may be provided by the auditor to the company only if the services are approved by the Board of directors or the audit committee, as the case may be.

Transitional Period – An auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this section shall comply with this section **before the closure of the first financial year after the date of such commencement**. **(Proviso to Section 144)**

Explanation to Section 144 –

For the purpose of this sub section, the term "directly or indirectly" shall include rendering of services by the auditor –

Individual Auditor rendering services	Audit Firm rendering services
Either through himself or	Either itself or
Through his relative or	Through any of its partners or
Through any other person connected or associated with such individual or	Through its parent or
Through any other entity, whatsoever, in which such individual has significant influence or	Through its subsidiary or
Through any other entity, whatsoever, in which such individual has control or	Through its associate entity or
Through any other entity whose name or trade mark or brand is used by such individual.	Through any other entity in which the firm has significant influence or
	Through any other entity in which the firm has control or
	Through any other entity whose name or trade mark or brand is used by the firm
	Through any other entity in which any partner of the firm has significant influence
	Through any other entity in which any partner of the firm has control
	Through any other entity whose name or trade mark or brand is used by any of its partners.

It may be noted that the expressions "significant influence', 'associate entity', 'associated person', 'connected person' are used in the *Explanation* to section 144 but are not defined in the Act.

3. Deemed Vacation of office of an Auditor [Section 141(4)]

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned above in **section 141(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.**

Appendix to Chapter

1.	**Definition of Holding Company**	**Holding Company – ** In relation to one or more other companies, means a company of which such companies are subsidiary companies. [**Section 2 (46) Co's Act, 2013]**
2.	**Definition of Subsidiary Company**	**Subsidiary Companies** [**Section 2 (87) Co's Act, 2013] –** In relation to any other company (that is to say the holding company), means a company in which the holding company— (i) **Controls[Refer Section 2 (27)] the composition of the Board of Directors**; or (ii) **Exercises or controls more than one-half of the total share capital** either at its own or together with one or more of its subsidiary companies – **Provided** that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. ***Explanation.*—For the purposes of this clause—** (a) A company shall be deemed to be a subsidiary company of the holding company even if **the control** referred to in sub-clause (*i*) or sub-clause (*ii*) is of another subsidiary company of the holding company; (b) The **composition of a company's BOD** shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; (c) The expression "company" includes any Body Corporate; (E.g. LLP) (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;
Note	**The Ministry has clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining whether the other company is subsidiary of the former. [Circular No. 20/2013 dated 27/12/2013]**	
Note	**Meaning of Total Share Capital –Co's (Specification of Definitions Details) Rules, 2014 – Rule 2 (r)** **"Total Share Capital",** for the purpose of clause (87) of Section 2 , means the **aggregate** of the – **(a) Paid – up Equity Share Capital**; and **(b) Convertible Preference Share Capital**;	
3.	**Meaning of Associate Company**	**Associate Company –** In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. [**Section 2 (92) Co's Act, 2013]** **Explanation**—For the purposes of this clause, **"significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement.**
4.	**Meaning of Relative [Section 2(77) of the Co's Act, 2013]**	**"Relative"**, with reference to any person, means anyone who is related to another, if— **(i)** They are **Members** of a **Hindu Undivided Family**; **(ii)** They are **Husband and Wife;** or **(iii)** One person is related to the other in such manner as may be **prescribed (see Note)**;
Note	**The Companies (Specification of Definitions Details) Rules, 2014 – Rule 4** **List of Relatives in terms of clause (77) of Section 2 –** A person shall be deemed to be the relative of another, if he or she is related to another in the following manner –	

	1. Father • Step Father.	4. Daughter • Step Daughter; • Daughter's Husband.
	2. Mother • Step Mother.	5. Brother • Step Brother.
	3. Son • Step Son; • Son's Wife.	6. Sister • Step Sister.
Case Law	**'Brother' does not include 'cousin' - *ITO* v. *Mahabir Jute Mills Ltd.* [1983]**	

5.	**Definition of Securities**	"Securities" means the securities as defined in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956. [See below]

The said clause (*h*) defines 'securities' as under –	
"Securities" include –	
(i)	Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ia)	Derivative;
(ib)	Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ic)	Security receipt as defined in clause (*zg*) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(id)	Units or any other such instrument issued to the investors under any mutual fund scheme;
(ie)	Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
(ii)	Government securities;
(iia)	Such other instruments as may be declared by the Central Government to be securities; and
(iii)	Rights or interest in securities.
Case Law	The definition of "securities" in section 2*(h)* of the Securities Contracts (Regulation) Act,1956 covers both listed securities and unlisted securities. The **definition does not make any distinction between listed securities and unlisted securities.** **[*Naresh K. Aggarwala & Co.* v. *Canbank Financial Services Ltd.* [2010] 100 SCL 425 (SC)]**

6.	**Council General Guideline – 2008 (Chapter VIII)**	In exercise of the powers conferred by clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the ICAI hereby specifies that a member of the Institute in practice shall be deemed to be **guilty of professional misconduct,** if he holds at any time appointment of **more than the "specified number of audit assignments** of the companies under Section 141(3)(g) of the Companies Act, 2013 i.e. 20 Audit.

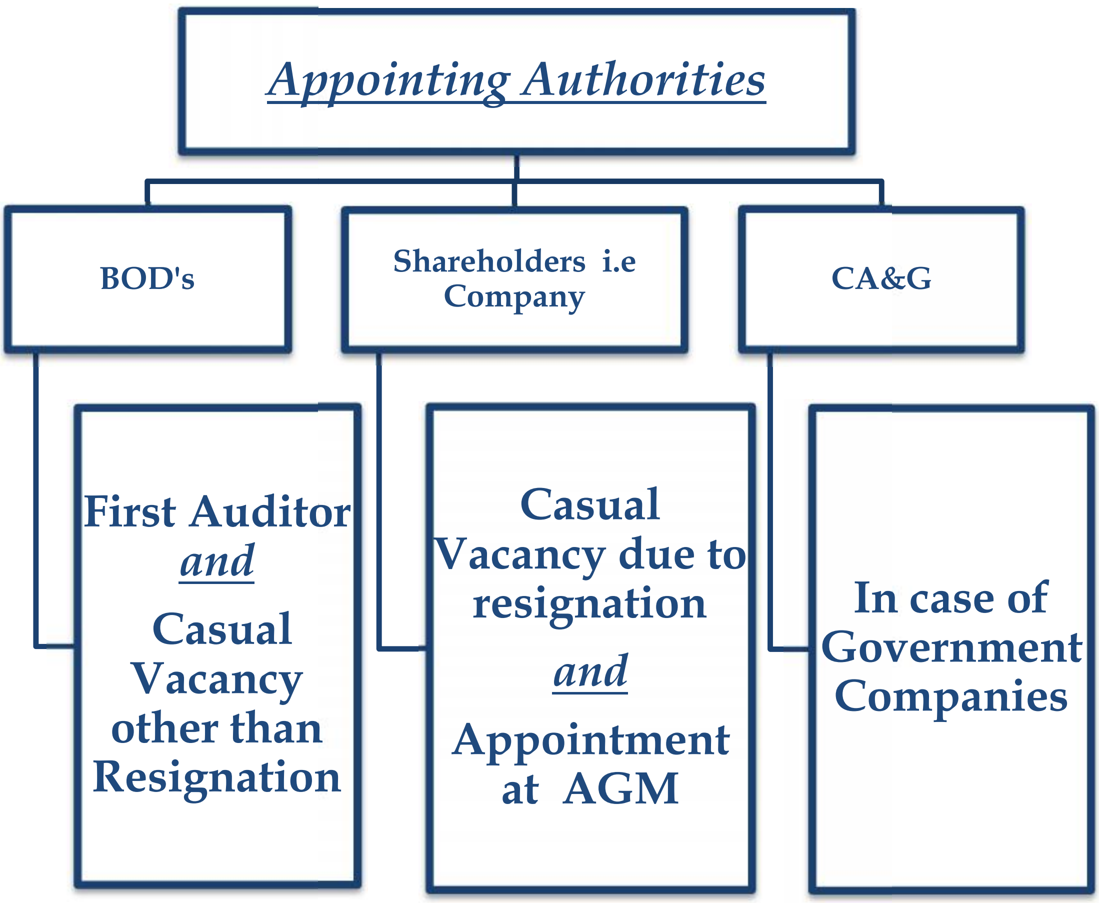
Some Problems

Q.N.	Problems
P.1	Mr. O, a Chartered accountant has been appointed as an auditor of Sultan Ltd. in the Annual General Meeting of the company held in September, 2013, in which he accepted the assignment. Subsequently in January, 2014 he joined B, another Chartered Accountant, who is the Manager Finance of Sultan Ltd., as partner. Comment?
P.2	"Mr. Om", a practicing Chartered Accountant, is holding securities of "Som Ltd." having face value of ₹ 900/-. Whether Mr. Om is qualified for appointment as an Auditor of "Som Ltd."
P.3	"Mr. Dikshant" is a practicing Chartered Accountant and "Mrs. Dikshika", the relative of "Mr. Dikshant", is holding securities of "DD Ltd." having face value of ₹ 90,000/-. Whether "Mr. Dikshant" is Qualified from being appointed as an Auditor of "DD Ltd."?
P.4	"Vijay Laxmi & Co." is an Audit Firm having partners "Mr. Vijay", "Mr. Laxmi", and "Mr. Vishnu" the relative of "Mr. Vishnu", is holding securities of "Kailash Ltd." having face value of ₹ 1,01,000. Whether "Vijay Laxmi & Co." is qualified from being appointed as an Auditor of "Kailash Ltd."?
P.5	"DDLJ & Co." is an Audit Firm having partners "Mr. DD", "Mr. L" and "Mr. J", Chartered Accountants. "Mr. DD", "Mr. L" and "Mr. J" are holding appointment as an Auditor in 4, 6 and 10 Companies respectively. (a) Provide the maximum number of Audits remaining in the name of "DDLJ & Co." (b) Provide the maximum number of Audits remaining in the name of individual partner i.e. Mr. DD, Mr. L and Mr. J.
P.6	Mr. Rajesh is appointed as the auditor of NDIDA Travels Ltd. with audit fees of ₹ 35,000. He purchased air ticket from Delhi to Kolkata and back for ₹ 18,000 from the client for his personal work and the amount remains unpaid at the end of the year as it is a general practice of the client to give credit to all. Mr. Rajesh claims that he does not incur any disqualification as contained in Section 141(3) of the Companies Act.
P.7	One of the members of ADB Ltd. has proposed the name of Ms. Nidhi for appointment as a director of the company in the Annual General Meeting and given a notice under Sec. 160 of the Companies Act, 2013. Mr. Nidhi is one of the partners of Nidhi & Ridhi, Chartered Accountants, who are the retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Nidhi & Ridhi can be reappointed as auditors, if Mr. Nidhi is appointed as director.
P.8	Does the death or retirement of a partner of a firm result in disqualification of the firm to act as an auditor? (OR) One of the partners of a firm of chartered accountants appointed as auditors dies. Advice.

Chapter – 2
How an Auditor is Appointed

Sections to be covered under this Chapter

Section	Matters dealt with
139(1)	Appointment at First AGM
139(2)	Rotational Appointment of Auditor
139(3)	Rotation within the Firm and Joint Audit
139(4)	Rules for Rotation
139(5)	Appointment of Subsequent Auditor in Govt. Co.
139(6)	Appointment of First Auditor in Co.
139(7)	Appointment of First Auditor in Govt. Co.
139(8)	Filling of Causal Vacancy
139(9)	Reappointment of Retiring Auditor
139(10)	
139(11)	Recommendation of Audit Committee



1. Appointment of Auditor /s by Non Government Companies

S.N.	Aspect	Particular
1.	**General Point**	Section 139(1), 139(6) and 139(8)(i) deal with appointment of auditors of companies other than Government companies
2.	**Annual appointment/ reappointment Read with [Explanation of Rule 3(7)]**	**5 yrs tenure for auditors subject to ratification by members at every AGM –** (a) **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. [Section 139(1)] (b) On subsequent appointment, the auditor can hold office till conclusion of every sixth meeting subject to ratification by members at every annual general meeting. [Section 139(1)] (c) For the purposes of this rule, it is hereby clarified that, if the appointment is **not ratified by the members** of the company, the **Board of Directors shall appoint** another individual or firm as its auditor or auditors after **following the procedure** laid down in this behalf under the Act. [Rule 3(7)] (d) The manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed [**See Below point no. 1 to 5**]. [Section 139(1)] (e) The company shall place the matter relating to such appointment for **ratification by members at every AGM.** [1st Proviso to Section 139(1)] (f) Before such appointment, the **written consent** of the auditor to such appointment, and a **certificate** from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed [See Below point no. 6], shall be obtained from the auditor. [2nd Proviso to Section 139(1)] (g) The certificate shall also confirm whether the auditor **satisfies the criteria in section 141.** [3rd Proviso to Section 139(1)] (h) Company shall inform the auditor concerned of his appointment, and also file a notice of such appointment with the **Registrar within 15 days** of the meeting in which the auditor is appointed. The intimation may be give in **form ADT – 1.** [4th Proviso to Section 139(1) Read with Rule 7 (2)] (i) 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. [Section 139(10)]
3.	**Appointment of first auditor –** [Section 139(6)]	**(a)** The first auditor shall be appointed by the Board of Directors **within 30 days from the date of registration of the company.** **(b)** In the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within **90 days at an extraordinary general meeting appoint such auditor.** (c) Such auditor shall hold office till the conclusion of the first annual general meeting.

4.	**Filling up casual vacancy in the office of an auditor –** [Section 139(8)(i)]	**(a)** Casual vacancy be filled by the **Board of Directors within 30 days.** (b) But if such vacancy is **due to resignation** of auditor, such appointment shall also be **approved by the company** at a general meeting convened **within 3 months** of the recommendation of the Board and he shall hold office until the conclusion of the next AGM
5.	**Section 139(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.**
	Manner And Procedure Of Selection Of Auditors	
1.	**Considerations for selecting auditors/audit firms**	**Rule 3(1) of the Companies(Audit &Auditors) Rules, 2014 Read with Section 139 (11) provides that for the purpose of sub-section (1) of section 139 –** In the case of a company that has constituted an Audit Committee under section 177 – ✓ The **Audit Committee**, and ✓ in other case, the **Board,** **Shall take into the consideration –** **(a)** The **qualifications** and **experience** of the person proposed to be considered for appointment as auditor, and whether these are commensurate with the **size and requirements of the company,** (b) Any order or pending **proceeding** relating to **professional matters** of conduct against the proposed auditor **before the ICAI or any competent authority or any court.**
2.	**Additional Information**	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. [Rule 3(2)]**
3.	**Appointment procedure where Audit Committee has been appointed -**	**(a)** The audit committee shall recommend the name of an individual or a firm as auditor to the Board. **[Rule 3(3)]** **(b)** If the Board is agreeing with the recommendation of the audit committee, it shall consider and recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting. **[Rule 3(4)]** **(c)** If the Board is disagreeing with the recommendation of the audit committee, it may send back the recommendation to the audit committee for reconsideration with their reasons. **[Rule 3(5)]** **(d)** If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reason 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. **[Rule 3(6)]**
4.	**Appointment, in other cases**	The Board shall consider and recommend an individual or a firm as auditor to members in the annual general meeting for appointment. **[Rule 3(3)]**

5.	**Appointment by members at AGM**	(a) The members at the annual general meeting shall appoint auditor of the company. **[Rule 3(7)]** (b) The auditor so appointed shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, counting the current meeting as the first. **[Rule 3(7)]** (c) Such appointment shall be subject to the ratification by members at every annual general meeting till the sixth such meeting by way passing of an OR. **[proviso Rule 3(7)]**
6.	**Certificate from auditor proposed to be appointed**	**Rule 4 of the Companies (Audit and Auditors) Rules, 2014 provides that the proposed appointee 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 Rules or Regulations made therein. (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. Appointment of Auditor /s by Government Companies

S.N.	Aspect	Particular
1.	**General Point**	Sub-sections (5), (7) and (8) of section 139 lays down provisions for appointment of auditors.
2.	**Annual appointment/ reappointment – [Section 139(5)]**	✓ 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. ✓ Such appointment shall be **within 180 days** from the **commencement of the financial year.** ✓ The auditor so appointed shall hold office **till the conclusion of A.G.M.**
3.	**Appointment of First auditor – [Section 139(7)]**	✓ The first auditor shall be appointed by the **C&AG within 60 days** from the date of **registration** of the company. ✓ If C&AG **does not appoint** such auditor within the said period, the **BOD** of the company shall appoint such auditor **within next 30 days.** ✓ In the case of **failure of the Board** to appoint such auditor it shall inform the **members** of the company, who shall **within 60 days at EGM** appoint such auditor and such auditor shall hold office **till the conclusion of the first annual general meeting**
4.	**Filling up casual vacancy in the office of an auditor – [Section 139(8)]**	✓ Casual vacancy is to be **filled** by **C&AG within 30 days.** ✓ If **C&AG fails** to fill within 30 days, the **Board** shall **fill** the casual vacancy within the **next 30 days.**

3. Appointment by Rotation

S.N.	Aspect	Particular
1.	Term of Auditor – [Section 139(2)	**No listed company** or a company belonging to such **class or classes of companies** as may be **prescribed,** **Shall not appoint or re-appoint** – (a) **Individual** as auditor for more than one term of **5 consecutive years;** and (b) An audit **firm (including LLP)** as auditor for more than **two terms of 5 consecutive years.**
2.	Class of Co's Prescribed for the purpose of point no. 1 [Rule 5]	**The Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of section 139(2) -** **a. all unlisted public** companies having paid up share capital of **₹ 10 crore or more;** **b. all private limited** companies having paid up share capital **of ₹ 20 crore or more;** **c. all companies** having paid up share capital of below threshold limit mentioned in (2) and (3) above, but having **public borrowings** from **financial institutions**, **banks** or **public deposits** of **₹ 50 Crores or more.**
Query		Whether the **Section 139 (2)** of Co's Act read with Rule 5 of Co' (Audit & Auditors) Rules, 2014 is **applicable to Government Co's also?**
Response		The provisions of section 139(5)/139(7) dealing with Government Companies and companies owned or controlled directly or indirectly by Government override only section 139(1) but not section 139(2). Therefore, **provisions of section 139(2) shall also apply to Government companies** and companies owned or controlled directly or indirectly by Government if such companies are listed companies or fall in prescribed class or classes of companies.
Query		Whether Section 139 (2) read with Rule 5 will **apply in subsequent years also where the amount fall below the Specified limits?**
Response		**The criteria specified above shall be applicable for the first year and shall continue to apply to that company in subsequent years during the tenure of the auditor** even if the paid up share capital or net worth or borrowings/deposits, as the case may be, fall below the limits specified therein.
3.	Cooling Period – [1st Proviso to Section 139 (2)]	☞ An **Individual Auditor** who has completed his term (i.e. one term of five consecutive years) **shall not be eligible** for re-appointment as auditor in the **same company for 5 years** from the completion of his term; ☞ An **Audit Firm** which has completed its term (i.e. two terms of five consecutive years) **shall not be eligible** for re- appointment as auditor in the **same company for 5 years** from the completion of such term.
Note	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. [2nd Proviso to Section 139 (2)]**	

<table>
<tr><td>E.1</td><td colspan="2">✓ XYZ Ltd. which is a listed company appoints Mr. Mathur as an auditor in its AGM dated 29th September, 2014. Mr. Mathur will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2019.
✓ Now as per sub-section (2), Mr. Mathur shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor upto year 2024.</td></tr>
<tr><td>E.2</td><td colspan="2">✓ XYZ Ltd. which is a listed company appoints M/s Mathur & Associates as an audit firm in its AGM dated 29th September, 2014. M/s Mathur & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2019.
✓ Now as per sub-section (2), M/s Mathur & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year 2024. It shall not be re-appointed as Audit firm in XYZ Ltd. for further term of five years i.e. upto year 2029.</td></tr>
<tr><td>E.3</td><td colspan="2">✓ M/s Govind & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam.
✓ Mr. Shyam is also a partner of another audit firm named M/s Govind & Associates.
✓ M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods i.e. from year 2014 to year 2024.
✓ Now, if Golden Smith Ltd. wants to appoint M/s Govind & Associates as its audit firm, it cannot do so because Mr. Shyam was the common partner between both the Audit firms.
✓ This prohibition is only for 5 years i.e. upto year 2029.
✓ After 5 years Golden Smith Ltd. may appoint M/s Govind & Associates as its auditors.</td></tr>
<tr><td>4.</td><td>Transitional Period – [3rd Proviso to Section 139 (2)]</td><td>Every company, existing on or before the commencement of this Act which is required to comply with provisions of section 139(2), shall comply with the requirements of this sub-section within 3 years from the date of commencement (1/4/2014) of this provision.</td></tr>
<tr><td>5.</td><td>Right of Co and Auditor – [4th Proviso to Section 139 (2)]</td><td>The Right of Co's to remove the Auditor or the Right of Auditor to resign from the office of the Co shall not be prejudice by section 139(2).</td></tr>
<tr><td>6.</td><td>Rotation of Auditor – [Section 139 (3]</td><td><u>Members of a company may resolve to provide that</u>—
(a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals [Please also refer Appendix] as may be resolved by members; or [Rotation within Firm]
(b) The audit shall be conducted by more than one auditor. [Joint Audit]
☞ The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors. [See Below]</td></tr>
<tr><td>7.</td><td>Rotation of Auditor in case of Joint Audit</td><td>Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year. [Rule 6(4)]</td></tr>
<tr><td>Note</td><td colspan="2">One wonders how this provision can be implemented. This is because converting solo audit into joint audit or adding to the number of joint auditors is deemed to be removal of existing auditor/auditors and necessitates following the lengthy procedure set out in section 140(4) of the 2013 Act.</td></tr>
</table>

Manner of Rotation of Auditors by the Co's on the expiry of their term – Rule 6

1.	**Role of Audit Committee**	The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
2.	**Role of BOD**	☞ Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and ☞ In other cases, the Board shall itself consider the matter of rotation of auditors and ✓ Make its recommendation for appointment of the next auditor by the members in annual general meeting.
3.	**Role of Members**	**The members at the annual general meeting shall consider the proposal for rotation at the meeting and appoint the auditor or audit firm.**
4.	**Consideration of prior period of appointment for the calculation of 5/10years**	**For the purpose of the rotation of auditors-** In case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
Note	The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms. The term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.	
Note	Former auditor/audit firm cannot be incoming auditor on rotation of auditors unless there is break in term for a continuous period of 5 years.	
Note	If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for appointed for a period of 5 years.	

Illustration explaining rotation in case of individual auditor

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	**II**	**II**
5 years (or more than 5 years)	**3 years**	**8 years or more**
4 years	**3 years**	**7 years**
3 years	**3 years**	**6 years**
2 years	**3 years**	**5 years**
1 year	**4 years**	**5 years**

Illustration explaining rotation in case of audit firm

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	**II**	**III**
10 years (or more than 10 years)	**3 years**	**13 years or more**
9 years	**3 years**	**12 years**
8 years	**3 years**	**11 years**
7 years	**3 years**	**10 years**
6 years	**4 years**	**10 years**
5 years	**5 years**	**10 years**
4 years	**6 years**	**10 years**
3 years	**7 years**	**10 years**
2 years	**8 years**	**10 years**
1 year	**9 years**	**10 years**

4. Reappointment of Retiring Auditor

1.	**Reappointment of Outing Auditor**	☞ **At any annual general meeting, a retiring auditor may be re-appointed at an AGM, if— [Section 139(9)]** (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. ☞ 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. **[Section 139 (10)]**
Note	✓ It has been clarified that passing of the resolution for that purpose at the annual general meeting is essential for the re-appointment/ratifying for the appointment of the retiring auditor who is still qualified and willing to act. ✓ Till this is done, a retiring auditor cannot be said to have been re-appointed as contemplated by the section. ✓ In this view, it is not correct to say that in the absence of the resolution to the effect that the retiring auditors shall not be re-appointed; the retiring auditors shall stand re-appointed as auditors of the company.	
Note	The expression shall be re-appointed, postulates some action on the part of the company resulting in the auditor getting re-appointed or automatically re-appointed at the annual general meeting.	

Appendix to Chapter

1.	**Definition of Government Co. – [Section 2(45)]**	"Government company" means a company in which not less than 51% of the paid-up share capital is held by – (a) The Central Government, or (b) Any State Government or Governments, or (c) Partly by the Central Government and partly by one or more of State Governments. The term also includes a company which is a subsidiary of a Government company as defined above.
Note	A company which is a subsidiary of a Government company will automatically be a "Government Company" irrespective of the percentage of paid-up share capital held therein by Central/State Governments	
2.	**Rotation of Auditor Vs. Rotation of Partner**	Rotation of auditor/audit firm is not to be confused with rotation of audit partner/team. The former is mandatory. The latter is optional. Moreover, rotation of auditor applies to auditor irrespective of whether auditor is individual/audit firm. Rotation of audit partner applies only when auditor is audit firm.
3.	**SQC – 1**	**Standard on Quality Control (SQC) 1, Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements** provides that, in case of financial statement audit of listed companies, the engagement partner should be rotated after a pre-defined period, **normally not more than 7 years.** The provision of rotation of partners shall not be applicable in case the audit of listed entities is being done by a sole practitioner/proprietor. However, in order to ensure that appropriate system of quality control exists in the firm and that appropriate **reports are issued in the circumstances by sole practitioners/proprietors, such practice unit(s) shall be compulsorily reviewed under the process of peer review.** **Thus, in the case of listed companies**, - ☞ Rotation of audit partners after 7 years shall be mandatory in view of SQC 1 even if members do not resolve to rotate audit partners. ☞ If members resolve interval of less than 7 years, then rotation of audit partners shall be at intervals resolved by members. ☞ If members resolve interval of more than 7 years, then rotation shall be at intervals of 7 years as per SQC 1.
4.	**Meaning of Causal Vacancy**	✓ The expression 'casual vacancy' has not been defined in the Companies Act. ✓ Simply stated, a casual vacancy in the office of an auditor means a vacancy caused in the office of an auditor by his death, disqualification, resignation, etc. ✓ It has been held in the case of the ***ICAI* v *Jnanendranath Saikia* (1955)** that casual vacancy is not a vacancy created by any deliberate omission on the part of the company to appoint an auditor at its annual general meeting
5.	**Requirement for providing Registration No. of the Auditor**	The Council of the Institute of Chartered Accountants of India (ICAI), at its 292nd meeting held on 13.01.2010 has decided that resolution passed by the company regarding appointment of the statutory auditor of the company shall also contain the registration number of the firm of the auditor(s) with the ICAI.
6.	**Appointment is Ordinary Business at AGM**	In terms of the provisions of section 102(2)(a)(iv) of the Act, the appointment of, and the fixing of the remuneration of the auditors shall be an ordinary business to be transacted at an annual general meeting of a company.

Some Problems

Q.N.	Problems
P.1	Can a Chartered Accountant or Firm of Chartered Accountants take an appointment in a Company as a Statutory Auditor of the Company where Mr. Govind (Director of the Company) who is ***Ex – Partner*** of the Firm?
P.2	Whether Compulsory re appointment is automatic reappointment?
Ans.	The reappointment of an auditor is not automatic. The expression 'shall be reappointed' postulates some action on the part of the company resulting in the reappointment. As such, a specific resolution appointing an auditor must be passed **[Department Circular No. 5/72, dated 21.02.1972]**, Appointment or reappointment of an auditor is a specific item in the agenda of the general meeting and therefore passing of a resolution for his reappointment is necessary.
P.3	The refusal to accept an appointment by an auditor results in a casual vacancy. Discuss?
P.4	Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.
P.5	Whether Auditors appointment made in AGM is for a financial year.
P.6	The entire body of shareholders delegated the authority of appointment of auditor to BOD by passing a resolution in AGM.
P.7	KGGK Ltd. appointed Mr. Shyam as their auditor in AGM and sent the intimation to Mr. Shyam about his appointment as auditor. Mr. Shyam refuse to accept the appointment due to some personal problems, The company hold another general meeting and appointed Mr. Pran as their auditor.
P.8	The first auditors of the company are named in articles of the association.
P.9	Ashok Exports Ltd. appointed Mr. Manish as their auditor due to some behavioral problems Mr. Manish resigned from the company BOD appointed Mr. Jain as auditor of the company.
P.10	AnantRaj Industries Ltd. appointed M/s Bharat as auditor in the 17th AGM. Bharat refused to accept the appointment. BOD of AnantRaj Industries appointed Mr. Akash as their auditor to fill the casual vacancy.
P.11	Tarun the auditor appointed by the members denied to accept the appointment. The board of directors appointed Mr. Ravi as auditors as in the opinion of the board refusal by Mr. Tarun was a casual vacancy.
P.12	The notice of 17th AGM of XYZ ltd. has not been sent to Mr. Zuber the auditor of the company as Mr. Zuber often shown his unwillingness to offer his candidature for reappointment as auditor. In this AGM Mr. Prem has been appointed as Auditor, Comment.
Note	The revised Guidelines of Network, issued by the ICAI, require that where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.

Chapter – 3
How an Auditor is Removed

Sections to be covered under this Chapter

Section	Matters dealt with
140(1)	Removal of Auditor before expiry of Term
140(2)	Filing of Resignation & Punishment of Non Compliance
140(3)	
140(4)/ 225(3) Proviso	Removal of Auditor at AGM
140(5)	Removal of Auditor at the Direction of Tribunal
111	Circulation of Members Resolution
s115	Special Notice
420	Right of being heard
424	
421	Appeal against order of Tribunal
447	Action in case of Fraud

1. Removal Of Auditor Before Expiry Of Term

S.N.	Aspect	Particular
1.	General Point	Section 140(1) of the Act provides that the auditor appointed under section 139 may be removed from his office before the expiry of his term.
Note	**This Section is applicable to Public and Private both the companies**	
2.	Compliances/ Requirement – [Section 140(1)]	(a) **Only by a special resolution** of the company. (b) After obtaining the **previous approval (Refer Case Below) of the central government** in that behalf in the prescribed manner. **(Refer point no. 3)** (c) **Before taking any action** (*i.e.* Removal before expiry of term), the auditor concerned shall be given **a reasonable opportunity of being heard. [Proviso to Sub Section (1)]**
Case Law	**Fortune Stones Ltd. v. ROC [2008]**	**The Delhi H.C. interpreted the requirement of 'previous approval' as under –** ☞ The approval of the Central Government under section 224(7) of the 1956 Act [*i.e.* section 140 of the 2013 Act] is required to be taken prior to the removal of the statutory auditor in the general meeting (**and not prior to the Board meeting where it is decided to initiate the process for removal by applying to the Central Government for approval etc.).** ☞ The decision taken by the Board of Directors had no effect in law other than initiating the process of removal. ☞ Therefore, it cannot be said that the statutory auditors were removed by the company before obtaining Central Government's approval. ☞ The section mandates for a prior approval. ☞ Therefore, obtaining permission of Central Government subsequent to removal of auditor cannot rectify contravention of the section.
Case Law	**Basant Ram & Sons v Union of India (2002)**	It was held that there was no statutory bar on a **prior meeting** being held, wherein the shareholders or the **members approve** the **resolution for making the application** to seek the previous consent of the Central Government. It was held that the Board of Directors were not authorised to remove the statutory auditors prior to expiry of its term.
3.	Procedure for taking approval from C.G.	(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. **[Rule 7 (1)]** (2) The **application** shall be made to the **Central Government within 30 days** of the resolution passed by the Board. [**Rule 7 (2)]** (3) The company shall hold the general meeting **within 60 days** of receipt of **approval** of the C. G. for passing **the special resolution**. **Rule 7 (1)]**

2. Removal Of Auditor Due Resignation

1.	Filing of Statement	**As per section 140(2) read with rule 8** of the Companies (Audit and Auditors) Rules, 2014 – The auditor who has resigned from the company shall file a statement in the Form ADT-3

Aspect	Government Company	Co. other than Govt. Company
Time Limit	**Within 30** days from the date of Resignation	**Within 30 days** from the date of Resignation
To Whom	**C&AG**	**Company + ROC**

Note	**In the case of Government Company a statement indicating the reasons and other facts as may be relevant with regard to his resignation shall also be filed by auditor to C&AG**	
2.	**Non Compliance**	In case of default, in filing of the Form ADT-3, the auditor shall be punishable with **fine minimum ₹ 50,000 and maximum upto ₹ 5 lakh.**

3. Removal Of Auditor At AGM

1.	**Special Notice**	**Special Notice shall be given by a member for – [Section 140(4)(i)]** • Resolution at an annual general meeting for appointment of a **person other than a retiring auditor as auditor**; or • Resolution at an annual general meeting **providing expressly that retiring auditor shall not be re- appointed,** • **Except where the retiring auditor has completed a consecutive tenure of 5 years or, as the case may be, 10 years.**

2 — Procedure for giving Special Notice to Co. – Section 115 Read with Rule 23 of Companies (Management and Administration) Rules, 2014

Aspect	Particulars
By Whom	✓ Notice of the intention to move such resolution shall be given to the company signed individually or collectively by such number of **members holding not less than 1% of total voting power or** ✓ **Holding shares** on which **aggregate sum** not exceeding prescribed **amount of ₹ 5,00,000**
Note	The share held as voting power or in amount of ₹ 5 Lakhs **has been paid-up as on the date of notice.**
Time Limit	• Special notice shall be **sent by members** to the company **not earlier than 3 months but at least 14 days before the date of the 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. **[Rule 23 (2)]**

3.	**Circulation of SN to Members**	• The company shall immediately after receipt of the special 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. **[Rule 23 (3)]**
4.	**Circulation can't be Practicable to give SN as any other notice of General Meeting – [Rule 23 (3) & (4)]**	✓ The notice shall be published in English language in English newspaper and in vernacular (Regional) language in a vernacular (Regional) newspaper, both having wide circulation in the State where the registered office of the Company is situated. ✓ Such notice shall also be posted on the website, if any, of the Company. ✓ Such 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.

MCA's Circular No. 22/76 [35/4/76-CL-III], dated 26-7-1976	Passing of a resolution in the annual general meeting appointing another person as an auditor of the company without mentioning the words "instead of him" is quite sufficient and valid. Similarly, a special notice proposing to move a resolution to appoint a new person as an auditor of the company without mentioning the words in place of retiring auditor" is sufficient compliance under section 225(1) of the 1956 Act [corresponding to section 140(4) of the 2013 Act]

5.	**Sending a Copy to Retiring Auditor**	On receipt of notice of such a resolution, the company **shall forthwith send** a **copy** thereof to the **retiring auditor. [Section 140(4)(ii)]**

MCA's Circular	It is advisable that the copy of the special notice should be sent to the retiring auditors by the registered AD post. (**No. 2/81 [1/1/81 -CL-V and 8/20(225)/81-CL-V], dated 17-10-1981).**

6.	**Right of Retiring Auditor t make written Representation – [Section 140(4)*(iii)*]**	(a) Where such special notice is given and the retiring auditor makes written **representations (not exceeding a reasonable length)** to the company and (b) Requests **their notification to the members** of the company, the company shall, unless the representations received are too late for it to do so— ✓ In any notice of the resolution given to the members, **state the fact that representations have been made**; and ✓ **Send a copy of the representations** to every members of the company to whom notice of meeting is sent, whether before or after the receipt of the representation by the company.

Note	• If a copy of **representation is not sent to members** as aforesaid because they are received too late or because of company's default the auditor may require that the **representation be read out at the meeting.** This right is without prejudice to his right to be heard at the meeting. • If a **copy of the representation is not sent as aforesaid, a copy of it shall be filed with the ROC. [1st Provision to Section 140(4)*(iii)*]**

7.	**Auditor abuse his Right of Written Representation**	• If the **rights to make representations are being abused by the auditor**, the company or any aggrieved person **may apply to the Tribunal.** • ~~If the Tribunal is satisfied that the auditor is abusing his rights, the company need not circulate or read out such representations. [Second Proviso to section 140(4)]~~ • The words **"to secure needless publicity for defamatory matter"** after the word "abused" in **proviso to section 225(3)** of the 1956 Act have been omitted from the second proviso to section 140(4).

Note	The **effect of non-forwarding of notice** under section 225(2) of the 1956 Act [corresponding to section 140 of the 2013 Act] to the retiring auditors would make the resolution for appointing or removing auditors **illegal and ineffective.**

Query	**Whether, for appointment of branch auditors, procedure laid down in section 225 of the 1956 Act [corresponding to section 140(4) of the 2013 Act] is to be followed?**
Response	

4. Removal Of Auditor At Direction of Company

1.	**General Point**	Sub-section (5) of section 140 of the 2013 Act deals with Tribunal's powers to direct company's change of auditors.
2.	**Condition for Direction**	The **Tribunal,** may, by order, **direct** the company to **change its auditors** if it is **satisfied either Suo Motu** or on an **application** made to it by the **Central Government** or **by any person concerned** that the auditor of a company has – • **Acted in a fraudulent manner or** • **Abetted or colluded in any fraud** by, or in relation to, the company or its directors or officers
Note	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 15 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. [1st Proviso to sub section (5)]**	
2.	**Applicability of Section 447**	**Such auditor (who has been removed by Tribunal as above) shall also be liable for action u/s 447 of the 2013 Act. [2nd Proviso to sub section (5)]**
Note	In 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 directors or officers. **[Explanation – I to 2nd Proviso to sub section (5)]**	
3.	**Reasonable Opportunity Of Being Heard**	• There is no express provision in section 140(5) of the 2013 Act for giving a reasonable opportunity of being heard to the auditor sought to be removed by the Tribunal. • However, section 420 of the 2013 Act dealing with Orders of Tribunal provides that before passing orders, the Tribunal shall give the parties to the proceedings a reasonable opportunity of being heard. • Further, section 424 of the 2013 Act provides that the Tribunal and the Appellate Tribunal while disposing of any proceeding/appeal shall be guided by the principles of natural justice. • In view of sections 420 and 424, it appears that the auditor will have to be given a reasonable opportunity of being heard by the Tribunal before passing any order of removal against the auditors. • The grounds of removal i.e. "acted in a fraudulent manner"/"abetted or colluded in any fraud by, or in relation to, the company or its directors or officers" constitutes a slur (insult/disgrace) on the auditor sought to be removed.
4.	**Appeal against the order of Tribunal**	• Section 421(1) of the 2013 Act provides that **every person aggrieved by an order of the Tribunal may prefer an appeal** to the Appellate Tribunal (NCLAT). • The auditor/company can prefer an appeal to NCLAT against the Tribunal's order under section 140(5).
5.	**Disqualification for 5years**	An auditor (whether individual or firm) against whom final order has been passed by Tribunal under section 140 **shall not be eligible** to be appointed auditor of <u>any company</u> **for 5 years from the date of passing of the order. [2nd Proviso to sub section (5)]**

Some Problems

Q.N.	Problems
P.1	You have been appointed the sole statutory auditor of a company where you were one of the joint auditors in the immediately preceding year. The concerned joint auditor has not been reappointed. What are the various steps you would take to ascertain the compliance of the requirements of the Companies Act, 2013 before accepting the audit?
P.2	Ram & Company was appointed as auditor of ABC Limited at the Annual General Meeting held on 30th September, 2013. Can Ram & Co. continue as auditor of the company in case the next annual general meeting has not been held in time? What would be the position in case the next annual general meeting was held on 30th September, 2014, but adjourned without considering the business of appointment or re-appointment of auditor? OR At an AGM held on 25.09.2013 the Auditor was appointed to hold office upto the conclusion of next AGM. The next AGM was convened on 20.09.2014, but stood adjourned without transacting any business. Does the Retiring Auditor continue in office?
P.7	KGGK Ltd. appointed Mr. Shyam as their auditor in AGM and sent the intimation to Mr. Shyam about his appointment as auditor. Mr. Shyam refuse to accept the appointment due to some personal problems, The company hold another general meeting and appointed Mr. Pran as their auditor.
P.8	The first auditors of the company are named in articles of the association.
P.9	Ashok Exports Ltd. appointed Mr. Manish as their auditor due to some behavioral problems Mr. Manish resigned from the company BOD appointed Mr. Jain as auditor of the company.

Chapter – 4
Power of Company Auditor

Sections to be covered under this Chapter

Section	Matters dealt with
140(4)	Right to make Representation
142	Right to Receive Remuneration
143(1)	Right to Access Books of Accounts and Call for Information
Proviso to 143(1)	Right to Access Records of Subsidiary by Auditor of Holding
145	Right to Sign
146	Right to receive notice and attend General Meeting
147	Punishment for Contravention
450	Punishment for Contravention to any provision of Act or rules thereunder for which no penalty or punishment is provided elsewhere in this Act

Rights/Powers of Auditor

<table>
<tr><th>S.N.</th><th>Aspect</th><th colspan="2">Particular</th></tr>
<tr><td>1.</td><td>Right to Access Books of Accounts</td><td colspan="2">An auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or at any other place. [Section 143 (1)]</td></tr>
<tr><td>2.</td><td>Right to Obtain Information and Explanation</td><td colspan="2">An auditor of the company is entitled to require from the officers of the company such information and explanation as he may think necessary for the performance of his duties as an auditor. [Section 143 (1)]</td></tr>
<tr><td>Note</td><td colspan="3">If unable to obtain information and explanation from officers and employees it will constitute a limitation on the scope of audit in terms of SA 200 (R) / 210 (R)</td></tr>
<tr><td>3.</td><td>Right to Access Records of Subsidiary by Auditor of Holding</td><td colspan="2">The auditor of a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries. [Proviso to Section 143 (1)]</td></tr>
<tr><td>Note</td><td>Meaning of Subsidiaries</td><td colspan="2">☞ It appears that the word 'subsidiaries' for the purpose of the proviso to section 143(1) shall have the meaning assigned to it in the Explanation to section 129(3).
☞ The said Explanation defines 'subsidiary' for the purpose of section 129(3) (consolidation of accounts) to include associates and joint ventures.</td></tr>
<tr><td>4.</td><td>Rights to Access and Inspect Branch</td><td colspan="2">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) of section 143. [Rule 12 of Co's (Audit and Auditors) Rule, 2014]</td></tr>
<tr><td>5.</td><td>Right to receive notice and attend General Meeting – [Section 146]</td><td colspan="2">☞ All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and
The auditor shall, unless otherwise exempted by the company –
✓ Attend either by himself or
✓ Through his authorised representative, who shall also be qualified to be an auditor, any general meeting and
☞ He is entitled to be heard at any general meeting which he attends on any part of the business which concerns' him as an auditor.</td></tr>
<tr><td>Note</td><td colspan="3">Intentional omission in forwarding the notice to the auditor could result in an invalid meeting.</td></tr>
<tr><td>Note</td><td colspan="3">No specific penalty is provided in section 146 for non-attendance by auditor at general meetings. It appears that if auditor contravenes section 146 by non-attendance at general meeting, he will be liable for punishment under section 450 of the 2013 Act. However, it appears that valid defence against non-attendance would be non-receipt of notice of general meetings which company is duty-bound to send to the auditor. [Refer Appendix Point No. 5]</td></tr>
<tr><td>6.</td><td>Right to Make Representation</td><td colspan="2">Already discussed u/s 140(4)</td></tr>
<tr><td rowspan="2">7.</td><td rowspan="2">Right to Receive Remuneration – [Section 142 (1)]</td><td>In the case of 1st Auditor</td><td>In the case of 1st or subsequent Auditor</td></tr>
<tr><td>The Board may fix remuneration of the first auditor appointed by it.</td><td>The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein</td></tr>
</table>

Note	**Meaning of Remuneration – [Section 142 (2)]**	The remuneration under sub-section (1) 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 does not include any remuneration paid to him for any other service rendered by him at the request of the company. **[Refer Appendix Point no. 1 &2]**
8.	**Right of Lien**	(a) The books must **belong** to the company. (b) The documents must have come into his **Possession** of auditor with the **authority of the Board**. (c) The auditor has **done work assigned** to him on such documents. (d) Such of the books can be **retained** which are **connected** with the work on which **fees has not been paid**
9.	**Right to Sign – [Section 145]**	☞ Only 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 section 141(2). ☞ If a firm including a LLP is appointed as an auditor of a company, only the partners who are Chartered Accountants in practice shall be authorised to act and sign on behalf of the firm.
10.	**Right to seek Legal and Technical Advice**	The auditor of a company is entitled to take legal and technical advice, which may be required in the performance of conduct of audit or discharge of his duties. **[London and General Bank Case]**

	In the case of contravened knowingly or wilfully	**In any other case [Section 139, 143, 144, 145]**
Punishment for Contravention	If an auditor has contravened such provisions ***knowingly or wilfully*** **with the intention to deceive the company or its shareholders or creditors or *tax authorities*,** he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 Lakhs **[Proviso to Section 147(3)]**	If an auditor of a company contravenes any of the provisions of **section 139, section 143, section 144 or section 145,** the auditor shall be punishable with fine which shall not be less than ₹ 25,000/-but which may extend to ₹ 5 Lakhs rupees. **[Section 147(2)]**

Note	**<u>Where an auditor has been convicted under sub-section (2), he shall be liable to</u>—** **[Section 147(3)]** (a) Refund the remuneration received by him to the company; and (b) Pay for damages to the company, *statutory bodies or authorities* or to any other person for loss arising out of incorrect or misleading statements of particulars made in his audit report. 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. **[Section 147(4)]**
Partner/s and Firm jointly and severally Liable	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. [Section 147(5)]**

Appendix to Chapter

<table>
<tr><td>1.</td><td>Remuneration to Auditor</td><td>(a) Where expert advice is sought by an auditor in respect of any legal or technical matter for the proper discharge of his duties, the cost of such advice is permissible as an extra expenditure which can properly be claimed by the auditor from the company.
(b) The Council of the Institute of Chartered Accountants of India in the 'Statement on Payment to Auditor for the Other Services' has recommended that the fees paid to the Auditors for Other Services rendered Should be disclosed in the Profit and Loss account of the Companies under following heads in order to give precise and correct information to shareholders and others who read the accounts –
✓ Tax representation;
✓ Company Law Matters;
✓ Management Services;
✓ Other Services.
(c) In case of Joint Audit, if other services were rendered by one of the joint auditors or in case of a company having branch, the other services were rendered by the branch auditor, a disclosure should be made accordingly.
(d) Beside remuneration for audit work, as per Revised Sch. VI (Now Sch. III)s the auditor may also be paid extra remuneration as for services rendered in any other capacity. It is necessary to disclose in the profit and loss account of the detailed information in regard to amounts paid to the auditor whether as fees, expenses or otherwise for services rendered as auditor –
✓ For taxation matters;
✓ For company law matters;
✓ For management services;
✓ For other services;
✓ For reimbursement of expenses.</td></tr>
<tr><td>2.</td><td>Remuneration in case of Government Company</td><td>In the case of an auditor appointed by the Comptroller and Auditor General of India, remuneration shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.</td></tr>
<tr><td>3.</td><td>General Note</td><td>The rights of the auditor cannot be limited or abridged either by the AOA or by any resolution of the members. [Newton v Birmingham small Arms Co. ltd.]</td></tr>
<tr><td colspan="2">Case Study</td><td><u>The above case can be explained with the help of following example</u> –
☞ PQ Private Ltd. Is having only two members P and Q. During the audit of accounts for the year ended 31st March, 2014 , you as an auditor find that –
(a) P, who is in charge of purchases, has introduced fictitious purchase bills of ₹ 50 Lakhs.
(b) Q, who is in charge of sales, has sold goods worth ₹ 2 Crores without bringing the same into the books of accounts.
☞ You raise the matter with P and Q in their capacity as directors. They contest that as this is a position known to them and within their own fold, you should not report the same under the Companies Act, 1956/2013.
☞ Now the question is whether the above arguments are acceptable under the Companies Act, 1956/2013 for Non – Reporting?</td></tr>
</table>

Solution	

4.	**Section 450**	☞ If a company or any officer of a company or **any other person contravenes any of the provisions of this Act or the rules made thereunder,** or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and **<u>for which no penalty or punishment is provided elsewhere in this Act</u>**, ✓ The company and Every officer of the company who is in default or ✓ Such other person

<u>Punishment on Contravention</u>		
1.	**Maximum Fine**	**Shall be punishable with fine which may extend to ₹ 10,000/.**
2.	**Contravention Continuing**	**₹ 10,000/- + ₹ 1000/- for every day after the first during which the contravention continues.**

<u>Problem</u>

Q.N.	Problems
P.1	**The BOD of a Company have filed a complaint with the ICAI against their Statutory Auditors for their failing to attend the AGM of the Shareholders in which audited accounts are considered. As an auditor, Comment?**

Chapter – 5
Duties of Company

Sections to be covered under this Chapter

Section	Matters dealt with
2(7)	Meaning of Auditing Standards
143 (1)/(2)/(3)	Duties of Auditor to Report
143(9)	
143(10)	
177	
305	
56 old act	
165(4) old act	

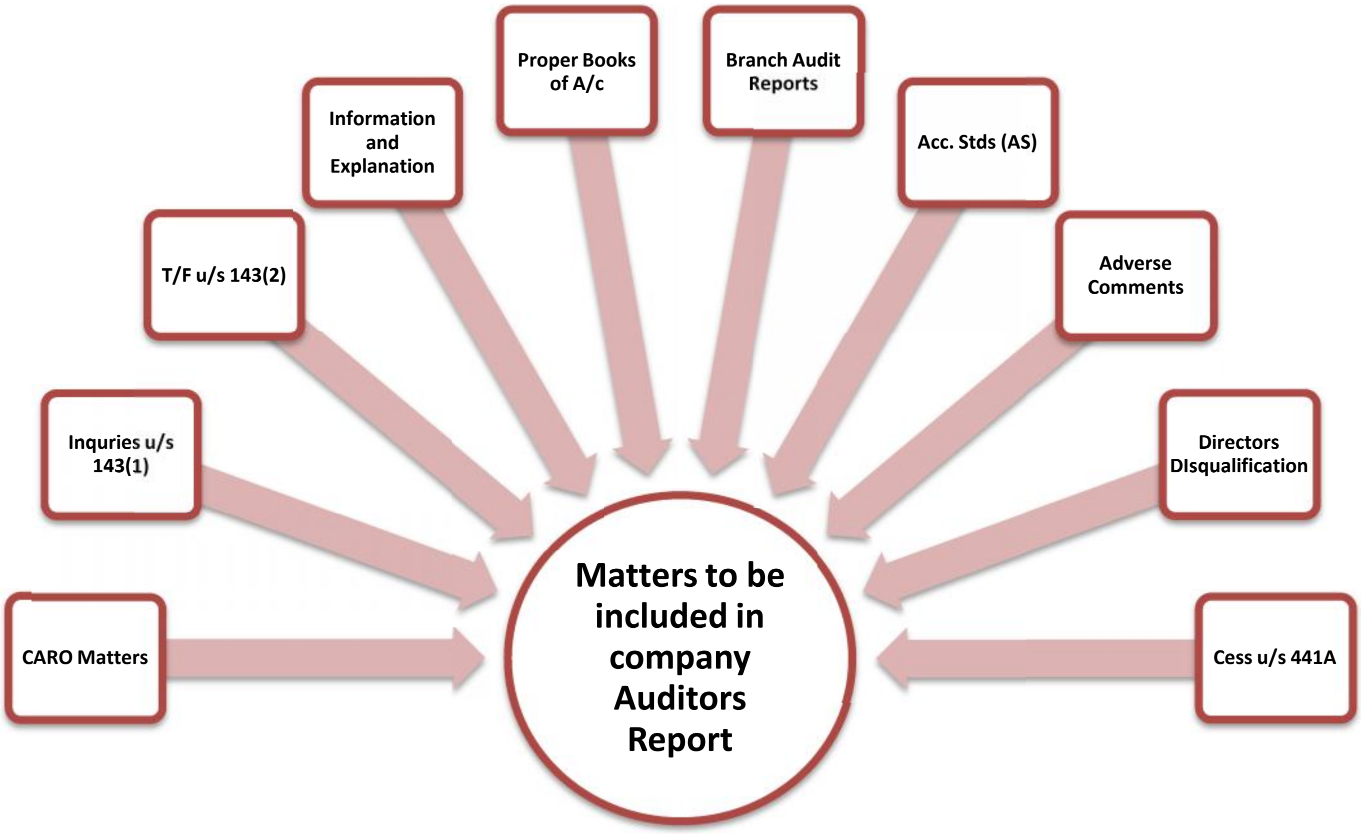
Duties of Auditor

S.N.	Aspect	Particular
1.	**Duty to Inquires**	***To be discussed in Audit Report Topic. [Section 143(1)]***
2.	**Duty to make Report to Shareholders**	***To be discussed in Audit Report Topic. [Section 143 (2)]***
3.	**Duty to give specific statement in report**	***To be discussed in Audit Report Topic. [Section 143 (3)]***
4.	**Reason of Qualification**	Where any matters referred in Sec.'s 143(2) and 143(3) are answered in negative, it is the duty of the auditor to state the reasons for such answers in his audit report. [Section 143(4)]
5.	**Duty to comply with SA**	Every auditor shall comply with the auditing standards. [Section 143(9)]
Note	**Definition of Auditing Standards**	"Auditing Standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143. [Section 2(7)] The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the NFRA. [Section 143(10)]
6.	**Duty to attend the meeting of Audit Committee**	In case of public company requires to form audit committee in terms of sec 292A/177(new), Auditor of such company shall attend and participate at meeting of audit committee. ***(To be discussed Corporate Governance Topic)***
7.	**Duty as to Statutory Report –** ***[Section 165(4) of Co's Act, 1956]***	After the Statutory Report has been certified as correct by the reqd. number of directors, the auditor of the company must certify it as the extent it relates to:- ✓ Share allotted by the company; ✓ Cash recd. in respect of such shares; ✓ Receipts and payments of the Company.
8.	**Duty to Report on P/L a/c and B/S**	***Duty to report on profit and loss account for the period*** the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration ***and also on the balance sheet [Section 305].***
9.	**Duty to report on report of Prospectus**	***Duty to report on report on prospectus on the accounting part [Section 56}.***
10.	**Duty to have Reasonable Care and Skill**	An auditor of a company must be honest and must exercise reasonable care and skill to perform his audit work; otherwise he may be sued for damages. It was observed in the Kingston Cotton Mills Case (1896) that the auditor should perform his audit work with such care, skill and caution that a reasonably competent, careful and caution auditor will use.
10.	**Duty to follow Ethics**	It is duty of the auditor of the company auditor to follow the Code of Ethics and his professional Ethics.

Chapter – 6
Audit Report

Sections to be covered under this Chapter

Section	Matters dealt with
2(31)	Meaning of Deposit
143(1)(a) to (f)	Duties to Inquires
143(2)	Report on True and Fair View
143(3)	
143(4)	
143(11)	
143(12)	
143(13)	
143(15)	
164(2)	



1. Matters to be Inquired by Auditor u/s 143 (1)

S.N.	Aspect	Particular
1.	General Points	Section 143 (1) of the companies Act, 1956 requires the auditor to inquire into the matters specified in clauses (a) to (f) of the said section The word used in section 143 (1) is 'INQUIRE'. This is different from sub- section (2), (3), of section 143 where the expressions "make a report", "state" or "contain a statement" are used. The word "Inquire" suggests that auditor need not to make a statement for the matters provided in section 143 (1) if he is satisfied as a result of his inquiry. He (auditor) is reqd. to make a statement only if the findings as a result of his inquiry are adverse.
(a)	Loans and Advances	"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 **not prejudicial to the interests of the company or its members.**"
(i)	Meaning of L&A	1. L & A has not been defined anywhere in the Companies Act, 2013. 2. Having regard to the requirement of clause (d) of section 143(1) a distinction is obviously intended to be made between "L & A" and "Deposits".

		3. A "Deposit" involves placing money or money's worth with a third party for safe – keeping or as security for the performance of depositor's obligations or for the purpose of earning interest. If purpose is to earn interest, deposit is placed with a party who customarily accepts deposits. 4. All items which is reqd. by Revised Sch. VI (Now Sch. III) of the Companies Act, 1956 to be disclosed in B/S under head " Loans and Advances" exception those items which are "deposits" should be regarded as " Loans and Advances" for the purpose of clause (a).
Note	**Meaning of Deposit – [Section 2(31)]**	"Deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.
(ii)	**Meaning of Security**	Security include any movable or immovable property, whether belonging to the borrower or not, of which either physically possession or over which legally effective charge is given to lender
(iii)	**Properly Secured**	**<u>The Auditor should make inquiries to ascertain that Prima Facie</u>:-** (a) The Company holds a legally enforceable Security, and (b) The value of the security fully covers the amount of the loan or advance and is reasonably ascertained. (c) The Loan agreement or correspondence in regard to the terms of the loan or advance should be seen. (d) Where the loan or advance is made to a company, any charge on the assets of such a company should have been registered under Section of 77 of Co's Act, 2013 in order to constitute an effective security.
(iv)	**Terms**	(a) Terms on which the loan or advance is made would primarily include the security, the interest charged and the terms of repayment. (b) It must be noted that it is very difficult to say that whether interest rate charged is reasonable or not for this many things we have considered, but when a loan is given only with a view to earn interest, the interest charged would be commercial rate.
(v)	**Not Prejudicial to the interest of Company and Member**	(a) Particular attention should be paid to loans or advances to concerns in which the directors of the company or their associates are interested. (b) The auditor is not to inquire as to how such transactions of the company affect the interests of individual members in their personal capacities. (c) The auditor should check for the purpose of the members that the prejudicial to the interest of the members will only proved when the members are in capacity of member and not in personal.

Query	Whether the Loans or Advances is "Properly Secured" would have to be considered at the end of each accounting year?
Response	Clause (a) applies to all loans and advances made by the company during the Financial Year under audit whether they are outstanding at the Balance Sheet date or not.
Query	Whether a loan is "Prejudicial to the interest of the company or its members" would have to be considered only at the time when the loan is given, or renewed?
Response	Response will be same as given in above Query
Query	What will be the role or prudence to keep by the auditor where the Loans and Advances are given without security?

Response		The auditor is not required to make any adverse comments in his report regarding this and as a matter of prudence, Auditor is not concerned with prudence or imprudence of making loans without security [London and General Bank Ltd. case].***The auditor is concerned only to those matters where loans and advances are made with security.***
(b)	**Book Entries**	"Whether **transactions** of the company which are represented merely by **book entries** are not prejudicial to the interest of the company".
(i)	**Transaction**	(a) Transactions of the company are ordinarily matters of fact. (b) The clause is therefore intended to cover transactions of the company for which the only evidence or the principal evidence, is the entry regarding the transactions in the books of accounts
(ii)	**Book Entire**	(a) The purpose of book entries is to correctly record transactions which have, in fact, taken place. (b) If a book entry are passed which is not in accordance with the facts of the transaction, or is contrary thereto, this should be set right or reported upon by the auditor.
(c)	**Not an Investment Company**	"Where the company is not 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".
(i)	**Meaning of Investment Company**	"Investment company" means a company whose principal business is the acquisition of shares, debentures or other securities. **[Explanation – I of Section 186 (13)]**
(ii)	**Sold at Less than purchase**	If, as a result of his inquiries, the auditor is satisfied that the sale is bona fide and the price realised is reasonable, having regard to the circumstance of the cases, he has no further duty to report on the matter.
Query		How price of securities can be ascertained where the investment is consist of securities of the same class, purchased at various times and various price?
Response		In such a case the price should be determined in accordance with accepted accounting practice consistently followed by the company.
Query		How the price of securities is ascertained where the cost of shares or debentures or other securities sold is not ascertainable?
Response		The Book Value thereof at the date of sale may be treated as the cost for the purpose of this clause.
Query		What will be the treatment of Bonus Shares?
Response		The Average Cost is to be used.
(d)	**Deposit**	"Whether Loans and Advances made by the company have been shown as deposits". *Read with Clause (a)*
(e)	**Personal Expenses**	"Whether **personal expenses** have been charged to revenue account".
(i)	**Personal Expenses**	(a) Where the company is having some contractual, or in accordance with accepted business/commerce/trade practice, (for e.g. medical, leave travel, rent free quarters, conveyance for personal use, maternity benefits, canteen facilities, etc) is perfectly normal and legitimate and does not call for any special comment by the auditor. (b) Where personal expenses not covered by point no. (a) is reqd. attention (i.e. reporting), but reporting must be subject to materiality.

(f)	**Share allotted for cash**	"Where it is stated in the **books and papers** of the company that any shares have been **allotted for cash**, whether cash has actually been so recd. 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".
(i)	**Books and Paper**	Papers would presumably refer to the Return of Allotment filed by the Company under section 75 of Company Act, 1956.
(ii)	**Allotment for cash**	(a) Where the consideration for the issue of shares is an adjustment against a bona fide debt payable in money on demand by the company, the shares are deemed to have been subscribed in cash. ***(Decision Spargo's Case, 1873, 8 Ch. A, 407).*** (b) A company may have taken on condition that in the event of default in repayment, loan would get converted into shares. Such conversion of loan into shares could be considered as allotted for cash [ICAI's Guidance Note on Audit of Capital and Reserves].

Now to Memories all of above clause of section 143 (1)

Clause	*Memory trick*	*Key words*
a	***S***	*Secured*
b	***B***	*Book entry*
c	***I***	*Investment Company*
d	***D***	*Deposits*
e	***P***	*Personal Expenses*
f	***S***	*Share Allotted for Cash*

2. Matters to be Reported by Auditor u/s 143 (2)

(a)		The **auditor shall make a report** to the members of the company on the **accounts examined** by him and on **every financial statement** which are required by or under this Act to be **laid before the company in general meeting** and **The Auditor shall report whether –** **1. 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 **2. 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.

(i)	**Make a Report**	**Section 143(2) of the 2013 Act casts an obligation on the auditor "to make a report to the members of the company".** Does this mean that when directors never convene an AGM to lay the audited accounts and audit reports before the shareholders (and therefore, members of the company never get to see the auditor's report), the auditor would have to send a copy of their report to every member of the company? **Answer is "No"**
Case Law		**[Allen Craig & co. (London) ltd. (1934)]** It was held that the duty of the auditors, after signing the audit report attached or annexed to the balance sheet is confined to sending it to the secretary of the company. Thereafter, it is the duty of the secretary or directors to perform the statutory duty of convening a general meeting to consider the auditor's report. It is the duty of the directors to see that auditor's report was read out at the general meeting. Thus, all that the phrase "make a report to the members of the company" means is this - the report should be addressed to the members of the company. The phrase means nothing more.
(ii)	**Requirement to report only on the accounts** examined **and on every financial statement to be laid before company in general meeting**	**Section 143(2) of the 2013 Act requires the auditor to only report on the accounts examined and on every financial statement to be laid before company in general meeting.** Section 227(2) of the 1956 Act required the auditor "to report on every balance sheet, profit and loss account *and any other document declared by the Act to be part of or annexed to the Balance Sheet and Profit and Loss Account* which are laid before the Company in general meeting *during the tenure of his office*". The 2013 Act omits the italicized words. Section 222 of the 1956 Act provided that the director's report is 'attached' and not 'annexed' to the company's accounts. So, the auditor is not required to report on matters contained in the Director's report. However, section 222 also states that if any information required by the Act to be given in the accounts may be given in the Board's report instead. If so, given, the Director's report shall be deemed to be annexed to the accounts to the extent of the information so given. Hence, in such a case, the auditor should refer to the Director's report to the extent of the information so given. The 2013 Act also omits section 222 of the 1956 Act. In view of this, it is clear that 2013 Act doesn't require the auditor to comment on "*any other document declared by the Act to be part of or annexed to the Balance Sheet and Profit and Loss Account*" including Director's report.
Query		What is meaning and significance of the Phrase ***"True and Fair"?***
Response		Term True and Fair has not defined in any legislation, but there is Reporting Requirement section 143 (2) and Legal Requirement section 129 (1). (a) ***Reporting Requirement*** **–** The Statutory Auditor of a company has to express an opinion in his report on the true and fair view shown by the Balance Sheet and Profit and Loss Account. (b) ***Legal Requirement*** **–** Section 129 (1) provides that the accounts of a Company, shall give disclosing a true and fair view, if they disclose any matters which are required to be disclosed—

	✓ **As per Provision of 133 of the Act, and** ✓ **Shall be in Form or Forms as may be provided in Schedule III**
Query	When it can be said that "***True and Fair***" holds good?
Response	**Financial statements are reported to be as true and fair when all of the following hold good –** (a) Reasonable evidence is obtained in support of the transactions recorded in the books of accounts; (b) Accounting entries passed in the books of account are in conformity with the applicable accounting principles and standards followed consistently; (c) The financial statements prepared represent a true summary of transactions that took place during the year; (d) The process of classification and aggregation followed in preparation of the financial statements is fair and does not hide a material fact nor does it highlight something which may distort the real state of affairs. The form of accounting statement is in the required form, if any; (e) The accounting statements do not contain any misstatement; (f) The material transactions recorded in the books are neither illegal nor beyond the legal powers of the client; and (g) All statutory and relevant disclosures have been made.

3. Matters to be Reported by Auditor u/s 143 (3)

(a)	**Information Obtain**	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)	**Proper Books of Accounts**	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)	**Audit Reports of Branch/es sent**	Whether the report on the accounts of any branch office of the company audited u/s 143(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.
Note	**Letter no. 8/46(1)/61-pr, dated 9/5/1961**	Statutory auditor is to refer to branch audit only when branch accounts are audited by a person other than himself.
(d)	**B/S & P/L a/c = BOA**	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)	**A.S comply**	Whether, in his opinion, the financial statements comply with the A.S.
(f)	**Adverse effecting Comments**	The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
(g)	**Disqualification of Directors**	Whether any director is disqualified from being appointed as a director under sub-section (2) of section 164.

Note	**Section 164(2)**	Section 164(2) of the 2013 Act provides that if a person is or has been a director of a company which commits any of the specified defaults (defaulting company), he shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date of the specified default.
(h)	**Qualification regarding Maintenance of A/c's**	Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
(i)	**Internal Financial Control**	Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.
(j)	**Pending Litigation**	Whether the company has disclosed the effect, if any, of pending litigations on its financial position in its financial statement. **[Rule 11(a)]**
(k)	**Provision for Foreseeable Losses**	Whether the company has made provision for foreseeable losses, if any, on long term contracts including derivative contracts. **[Rule 11(**b**)]**
(l)	**Delay in Deposits**	Whether there has been delay in depositing money into the Investor Education and Protection Fund by the company. **[Rule 11(c)]**

4. Matters to be Reported by Auditor u/s 143 (4)

Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons therefor. [Section 143(4)]

5. Matters to be Reported by Auditor u/s 143 (12)

(a)	**Duties of Auditor regarding fraud**	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.
Note	Reporting to Central Government of frauds under section 143(12) is no substitute for making suitable qualifications/disclosures in audit report to the members of the company. Nor is such reporting a substitute for compliance with SA 240 (Revised) which is mandatory under section 143(9).	
(b)	**Procedure to be Followed – Rule 13**	
1.	**Report to C.G. within 60 days**	For the purpose of Section 143 (12) in case the auditor has **sufficient 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 report the matter to the Central Government immediately but not later than 60 days of his knowledge** and After following the procedure indicated herein below –
2.	**Report to BOD or AC within 45 days for Observation**	Auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days
3.	**Forward to C.G. within 15 days**	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 alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations

4.	**BOD fails to Reply → Forward to C.G.**	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 alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time (i.e. 15 days)
5.	**Sent to the Secretary, MCA**	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.
6.	**Format of report**	**The report shall be** – ✓ On the letter-head of the auditor containing postal address, e-mail address ✓ Contact number ✓ Signed by the auditor with his seal ✓ Indicate his membership number.
7.	**Form ADT – 4 file**	The report shall be in the form of a statement as specified in Form ADT-4.
(c)	**Penalty for Contravention of Section 143 (12)**	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakh. **[Section 143(15)]**
Note	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.	

6. Section 143 (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.

7. Other Matter to be Reported u/s 143(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.

Problem

Q.N.	Problems
P.1	The Irregular Ltd. Company has given a loan of ₹ 300,000 to X, a Supplier of the Company on the security of a life insurance policy of the face value of ₹ 600,000 & whose surrender value as on 31st Dec. was ₹ 50,000. The Company is in possession of the policy. However, an assignment in favour of Irregular Ltd has not been registered with LIC. As an Auditor Comment.
P.2	The Company recorded on 31st December a sale of goods to the tune of ₹ 100,000 to A & Co. Ltd., a sister concern & recognized a profit of ₹ 20,000 for the year ended 31st Dec. On 1st January, a purchase of the goods of the same description amounting to ₹ 100,000 from A & Co. Ltd was found to be recorded. As an Auditor Comment.
P.3	The Company has sold during the year 200 Shares of Sinking Horizon Ltd for ₹ 20,000. The cost of shares at the time of acquisition was ₹ 40,000. It is also noted that during the year, sinking Horizon Ltd had lost 3 out of 4 ships owned by it in a storm near Alaska. There are definite indications that the Company might go into liquidation.

P.4	The Company owed ₹ 50,000 to Shri R.S. It issued Equity Shares amounting to ₹ 50,000 in liquidation of the above debt. What are the reporting considerations involved in the above transactions?
P.5	The Irregular Company has given ₹ 50,000 to A & Co, a Partnership Firm very remotely connected with one of the senior employees. A & Co does not customarily accept deposits. Irregular Ltd does not owe any obligation in respect of A & Co. The above amount of ₹ 50,000 have been classified as "Deposits" in the Company's accounts.
P.6	One of the Directors of the Company celebrated the marriage of his daughter during the year. Two cars of the Company had been lent to the Director & the petrol bills amounting to ₹ 12,500 have been paid by the Company.
P.7	Director of T Ltd draws an advance of US$ 200 per day in connection with the foreign trip undertaken on behalf of the company. On his return he files a declaration stating that entire advance was expended without any supporting or evidence. T Ltd books the entire expenses on the basis of such declaration. As the auditor of T Ltd how do you deal with this?
P.8	H.W.P. Private Ltd is having only two members H & W. During the audit of accounts for the year ended 31st march 2014, you as auditor find that: i. H. who is in charge of purchases has introduced fictitious purchase bills of ₹ 50 Lakhs. ii. W. who is in charge of sales has sold goods worth ₹ 1 Crore without bringing the same in the Books of Account. You raise the matter with H & W in their capacity as directors. They contest that as this is a position known to them & within their own fold, you should not report the same under the Co's Act 2013. Discuss whether the above arguments are acceptable under the Companies Act, 2013 for non-reporting. If not, state the reasons & the manner of reporting.
P.9	During the course of statutory audit of an investment company dealing in shares and securities, in spite of repeated reminders by the statutory auditor, the company officials did not provide the investments held by the company at the Balance Sheet date for verification and also did not provide the details for valuation of unlisted shares as on the Balance Sheet date. The statutory auditor, in his final audit report to the shareholders, reported as follows: ***"Subject to the verification of the existence and value of the investments, the Balance Sheet shows a true and fair view."*** Is the report made by the statutory auditor correct?
P.10	The Statutory Auditors of Get Well ltd included certain comments in his report u/s 143 of the Companies Act 2013. Since the Company requested the auditors to drop the above comments, as otherwise it will affect their future business, as a compromise the auditor included the comment in the report in ordinary type. Comment.
P.11	Mr. Z, a Director of M/s LM Private Ltd. Is also a Director of another Company M/s O P Private Ltd which has not filed the Annual Accounts & Annual Returns for last 3 years, 2010-2011 to 2012-2013. Mr. Z is of the opinion that he is not disqualified u/s 164(2) of the Companies Act 1956 & Auditor should not mention the disqualification remark in the Audit Report.
P.12	As a Statutory Auditor how would you report on the following Under CARO ABC Pvt. Ltd is a manufacturer of jewellery. A Senior Employee of the Company informed you that the Company does not disclose the purity of gold used on the jewellery.
P.13	An old car of a Company having a nominal book value has found a buyer, who is willing to pay ₹ 1 Lakh for it. The Company proposes not to sell the car, but neglect its valuation in its accounts at ₹ 1 Lakh should he Auditor permit the Company do so?
P.14	X Ltd did not follow the applicable Accounting Standard for disclosing Earnings Per Share (EPS) in the Financial Statements. The fact of such non-disclosure was, however, mentioned in the notes forming part of accounts. As the Statutory auditor of X Ltd, how would you report the above case?

Chapter – 7
Branch Audit

Sections to be covered under this Chapter

Section/Rules	Matters dealt with
2(14)	**Definition of Branch Office**
143 (8)	**Branch Audit**
Rule 12	**Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor**

1. Branch Audit

S.N.	Aspect	Particular
1.	**Definition of Branch Office**	Section 2(*14*) of the 2013 Act defines the term 'branch office' to mean 'any establishment described as such by the company'.
Note	The 2013 Act leaves it to the company to designate or undesignate any establishment of the company as 'branch office'.	
2.	**Audit of Accounts of Branch in India**	Where a company has a branch office, the accounts of that office shall be audited by the company's auditor or by any other person qualified for appointment as an auditor of the company and appointed as such under section 139. **[section 143(8)]**
3.	**Audit of Accounts of Branch Outside India**	In case a company has a branch office and branch office is situated outside India, the accounts of such office shall be audited by any of the following persons:— (a) Company's auditor, or (b) A person qualified for appointment as auditor of the company, or (b) An accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of the country. **[section 143(8)]**
4.	**Books of Accounts of Branch**	Where a company has a branch office in India or outside India, it shall be deemed to have complied with the section 128(1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office or the other place in India as the Board of Directors may decide. **[Section 128(2)]**
5.	**Report of Branch Auditor**	The branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor, who shall, while preparing the auditor's report, deal with the same in such manner, as he considers necessary. **[Proviso to Section 143(8)]**
6.	**Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor**	**Rule 12 of the Companies (Audit and Auditors) Rules provides that –** (a) 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. (b) The branch auditor shall submit his report to the company's auditor. (c) 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.

Chapter – 8
Dividend & Depreciation

Sections to be covered under this Chapter

Section/Rules	Matters dealt with
205	Dividend TO Be Paid Out of Profits
205(2A)	Transfer to Reserve
Companies (Transfer of Profits to Reserve) Rules, 1975.	% of profit to be transferred
Companies (Declaration of Dividend Out of Reserves) Rules, 1975	Dividend out of Past Profits

1. Dividend

S.N.	Aspect	Particular
1.	**Dividend TO Be Paid Out of Profits**	☞ ***Dividend can be declared or paid by a company for any financial year only out of —*** (a) Its profit for that year, arrived at after providing for depreciation as per Section 205(2); or (b) Its profits for any previous financial year or years, after providing for depreciation as aforementioned and remaining undistributed; or (c) Out of both of above (i.e. balances of profits mentioned in (a) and (b) above); or (d) Out of moneys provided by the Central or State Government for payment of dividend pursuant to the guarantee given by the government. ☞ ***Depreciation to be fully provided for –*** If the company has not provided for depreciation for any previous financial years, it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years. ☞ ***Unabsorbed Depreciation or Loss brought forward to be adjusted*** ***If the company has incurred any loss in any previous financial year or years, then,*** ✓ The amount of the loss or ✓ An amount which is equal to the amount provided for depreciation for that year(s) ✓ Whichever is less, Shall be set off against (a) The profits of the company for the year for which dividend is proposed to be declared or paid or (b) Against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation. ☞ ***Dividend without providing for Depreciation*** The Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation.
2.	**Transfer to Reserve – [Section 205(2A) of Co's Act, 1956]**	No dividend shall be declared or paid by a company for any financial year out of profits of that company for that year, after providing of depreciation in accordance with the provisions of Section 205(2), except after the company has transferred to the reserves of the company of such percentage of its profits for that year, as may be prescribed but not exceeding 10%.

% of profit to be transferred as per Companies (Transfer of Profits to Reserve) Rules, 1975	
Rate of Dividend	***Minimum % of profits required to be transferred to reserves***
Upto 10%	NIL
> 10% upto 12.5%	2.5% of current profits
> 12.5% upto 15%	5% of current profits
> 15% upto 20%	7.5% of current profits
Exceeding 20%	10% of current profits

Note	(a) Profits referred to above are profits after providing for current as well as arrears of depreciation. (b) The profits should be after tax. (c) The profits for the above purpose are arrived at after debiting for Statutory Development Reserve. (d) Rates of dividend referred to above relate to rates of equity dividend and portion of dividend in excess of fixed rate of dividend in respect of participating preference shares. (e) The reserves referred to are only free reserves and do not include transfer to capital or any specific reserve. (f) There shall be no bar on a company if it voluntarily transfers a higher percentage of profits to reserves, provided the rate does not exceed 10%.	
3.	**Transfer to Reserve in excess of 10%**	There is no bar on companies for transferring profits to reserves in excess of 10%. If the company wishes to transfer an amount more than 10% of its profits, it shall have to further comply with the following conditions laid down in the Companies (Transfer of Profits to Reserve) Rules, 1975.

S.N.	Case	Condition
(a)	**Company proposing higher % transfer to reserves and simultaneously contemplating *declaring dividend***	1. Rate of dividend proposed is not less ***than average rate*** of dividend declared in the preceding 3 Years. **OR** 2. If there was a ***bonus issue*** of shares in the relevant year or nay of the 3 immediately preceding years, the amount of proposed dividend for the relevant year should be at least equal to the ***average amount (quantum)*** of dividend declared in the immediately preceding 3 years. **OR** 3. However, if the ***net profit after tax for the year is lower than 20%*** of the average profit after tax for the immediately 2 preceding years, the company need not maintain the above referred rate/amount of dividend and company is free to transfer any amount to reserves.
(b)	**Company proposing higher % transfer to reserves but simultaneously *not declaring any dividend***	Amount proposed to be transferred to reserves will have to be lower than the ***average amount*** of dividend over the immediately preceding 3 financial years.

4.	**Dividend out of Past Profits**	☞ In the event of inadequacy or absence of profits in any year a company can declare dividend out of its past profits which had been transferred to reserves, by:- (i) Either complying with the Companies (Declaration of Dividend Out of Reserves) Rules, 1975; or (ii) Obtaining prior approval of Central Government (in case such rules are not complied with) ☞ According to "Companies inadequacy or absence of (Declaration of Dividend out of Reserves) Rules, 1975 in the event of profits in any year, dividend may be declared for that year out of the accumulated profits earned by it in previous years and transferred by it to the reserves, subject to the conditions that – **[See Below]**

(a) Rate of Div. $\leq$ Average Div. rate in immediate preceding 5 yrs.

Or

10% of its paid up capital,

(Whichever is less)

+

(b) Total Amount withdrawn from accumulated profits earned in previous years and transferred to the reserves $\leq$ 10% of (Paid up Capital + free Reserve) and this amount first be utilised to set off losses incurred in this year before any dividend in respect of preference or equity shares is declared.

+

(c) Balance of Reserve after such withdrawn $\geq$ 15% of paid up capital.

5.	**Verification of Dividend**	1. He should examine the Memorandum and Articles of Association of the Company to determine the rights of different classes of shareholders to whom dividend has been paid. 2. He should ensure that dividends can only be distributed out of profits. The capital of the shareholders cannot be used for the purpose of payment of dividends. 3. He should ascertain whether profits earmarked for the purpose of dividend have been computed in accordance with the requirements of section 205 of the Companies Act. 4. He should ascertain whether the rate of dividend has been recommended properly in a meeting of the Board of Directors. 5. He should inspect the shareholders minute book to verify the amount of dividend declared and confirm that the amount does not exceed the amount recommended by the directors. 6. He should see that profits appropriated for payment of divided are after transfer to reserves an amount in accordance with the rules framed by the Central Government. 7. He should examine the list of shareholders as drawn from the Registrar of Shareholders and see that the total amount of dividend payable companies with the Dividend Account. 8. If a separate bank account is opened for payment of dividends, he should check the transfer of total amount of dividends payable from the

Dividends Account.

9. He should verify the amount of unclaimed dividend with the Dividend Account, bank Pass Book and dividend warrants as have been returned undelivered.

10. He should see that where the dividend is declared, distributed or paid by a domestic company (not a foreign company), the tax on distributed profit at the rate of 10% is paid within 14 days from the date of declaration, distribution or payment of dividend whichever is earliest. [Section 115(0) of the Income Tax Act, 1961]

11. The auditor should see that the dividend which remains unpaid or unclaimed within 30 days of the declaration of the dividend, such unpaid or unclaimed dividend has been transferred to a special bank account entitled "Unpaid Dividend Account of _________ Company Limited / Company Pvt. Limited". The transfer must be made within 7 days from the date of expiry of 30 days. Such an account is to be opened only in a Scheduled Bank.

12. If any dividend remains unpaid or unclaimed for a period of seven years from the date of transfer, the amount standing to the credit of the special bank account has to be transferred by the company to the fund called Investor Education and Protection Fund.

2. Auditor's Duty Regarding Depreciation

1. Companies Act provides only minimum rates. The company can charge depreciation at a higher % also (or it means lesser life).
2. The company can adopt different methods for different type of assets provided the same is consistently followed.
3. Change in method of depreciation should be with retrospective effect and only if it is required by statute or accounting standard or if it results in better presentation.
4. The accounts must disclose the methods which have been used to calculate depreciation.
5. Low-value items may be fully depreciated provided this is disclosed appropriately in the accounts.
6. Depreciation should be calculated from the date when the asset is ready to use.
7. When the asset is installed during the year, check that it is only pro-rate depreciation that appears in the accounts.
8. In case of revaluation of assets, check the depreciation on revalued part (whether charged to Profit & Loss Account or revaluation reserve.

Problem

Q.N.	Problems
P.1	As an auditor state your views on the following situations – The company has suffered a net loss for the year. The directors however declared and paid an interim dividend @ 30% based on the half-yearly performance.
Ans.	Declaration of Interim Dividend: Interim dividend can be declared by the Board of Directors only if there is an authorisation in the Articles of Association to do so. An interim accounts should be prepared to ascertain the amount of profits that has been made. Assuming that interim accounts have been prepared and they disclose profits sufficient for the declaration of dividend after making appropriate provisions for depreciation, compulsory transfers to reserves, bad debts and other contingencies, only then the proportion of profits which have to be distributed as interim dividend may be decided. In the present case, the company has suffered a net loss at the end of the year, obviously the directors have miscalculated the performance of the company about the second half of the year. If the company had a sufficient balance in the profit and loss account as at the beginning of the year, the dividend declared could be paid out of the same. The balance had also to be sufficient to transfer the relevant amounts to reserves. In such a case the auditor need not report anything. Moreover, if such balance was not available, the dividend could also be paid out of reserves. In the situation of dividends to be declared out of reserves, a maximum of only 10% dividend is allowed. In this case, since the dividend was declared @ 30%, the said provisions would have been violated and thus the auditor would have to mention the said fact. If, however, there is no balance in the profit and loss account nor any reserves were available, the dividend would be clearly paid out of capital. The auditor would have to qualify his report mentioning the fact of the dividend having been paid out of capital.
P.2	As Auditor of Act Fast Ltd. what steps will you take to ensure that the dividend has been paid only out of profit?

Chapter – 9
Accounts of Company

Sections to be covered under this Chapter

Section/Rules	Matters dealt with
128	Books of account, etc., to be kept by company.
129	Financial statement
130	Re-opening of accounts on court's or Tribunal's orders.
131	Voluntary revision of financial statements or Board's report
132	Constitution of National Financial Reporting Authority
133	Central Government to prescribe accounting standards.
134	Financial statement, Board's report, etc
136	Right of member to copies of audited financial statement
137	Copy of financial statement to be filed with Registrar

1. Maintenance of Books of Accounts

S.N.	Aspect	Particular
1.	**General Point**	Every company shall prepare and keep books of account and other relevant books and papers and financial statements for every financial year.
2.	**Definition of Books and Papers – Section 2(12)**	"Book and Paper" and "Book or Paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form
3.	**Definition of Books of Accounts – Section 2(13)**	**"Books Of Account" includes records maintained in respect of –** (a) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (b) All sales and purchases of goods and services by the company; (c) The assets and liabilities of the company; and (d) The items of cost as may be prescribed u/s 148 in the case of a company which belongs to any class of companies specified under that section
4.	**Definition of Financial Statement – Section 2 (40)**	**"Financial Statement" in relation to a company, includes –** (a) A Balance Sheet as at the end of the financial year; (b) A Profit and Loss a/c, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (c) Cash flow statement for the financial year; (d) A statement of changes in *equity, if applicable;* and (e) Any explanatory note *annexed* to, or forming part of, any document referred to in sub-clause (*a*) to sub-clause (d).
Note	**Provided** that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement. [Proviso to Section 2 (40)]	
5.	**Characteristics of BOA – Section 128(1)**	(a) Give a **true and fair view** of the state of the affairs of the company, including that of its branch office or offices, if any, and (b) **Explain the transactions** effected both at the registered office and its branches and (c) Such books shall be kept on accrual basis and according to the **double entry system** of accounting
6.	**Place where BOA is to be kept – Section 128(1)&(2)**	**To be kept at Registered Office** – Every company shall prepare and keep at its **REGISTERED OFFICE** books of account and other relevant books and papers and financial statement for every financial year. **In the case of Brach/s –** A company shall be deemed to have kept proper BOA in relation to its branch office, whether in or outside India, if proper – (a) Books of Account relating to the transactions effected at the branch office are kept at the branch office. (b) Summarized returns periodically are sent by the branch office to the company at its registered office or the other place referred u/s 128(1).

Query 1	**Whether BOA can be kept at any place in India without any Restriction?**
Response	☞ **Decision of BOD –** All or any of the BOA (as mentioned above) and other relevant papers may be kept at such other place in India as the **Board of Directors may decide** and ☞ **Intimation to ROC –** Where such a decision is taken, the company shall, **within 7 days** thereof, file with the ROC a **notice in writing** giving the **FULL ADDRESS** of that other place.

Query 2	**Whether BOA can be kept in Electronic Mode or Not?**
Response	Section 128(1) 2nd proviso of the Companies Act, 2013 allows keeping books of account or other relevant papers in electronic mode in the following manner as provided in Rule 3 of the Companies (Accounts) Rules, 2014 – (a) The books of accounts and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be **usable for subsequent reference**; (b) The books of accounts and other relevant books and papers referred to in point (a) shall be **retained completely in the –** ✓ **Format in which they were originally generated, sent or received**, or ✓ Format which shall **present accurately the information generated, sent or received and** ✓ Information contained in the electronic records shall **remain complete and unaltered.** (c) The information received from branch office shall ✓ **Not be altered** and ✓ Shall be **kept in a manner** where it shall **depict (show) what was originally received from the branches.** (d) The information in the electronic record of the document shall be capable of being **displayed in a legible (readable) form;** (e) There is a proper system as the Audit Committee or BOD for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed off or rendered unusable, unless permitted by law; Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. (f) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement— (i) The name of the service provider; (ii) The internet protocol address of service provider; (iii) The location of the service provider (wherever applicable); (iv) Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Note	For the purposes of this rule, the expression "electronic mode" includes "electronic form" as defined in u/s 2(1) (r) & (t) respectively of IT Act, 2000 "books of account" shall have the meaning assigned to it under the Act.

Query	As per Companies (Accounts) Rules 2014, the accounts are to be kept unaltered and in original form. Does this mean that books maintained on software which allow alteration or back date entry are not as per law?

7.	**Inspection of BOA**	**(a)** <u>**In the case BOA are within India**</u> **–** The books of account and other books and papers maintained by the company within India shall be open for inspection by any director – ✓ At the registered office of the company or at such other place in India ✓ During business hours **(b)** <u>**In the case of Financial Information are outside India**</u> **–** If Financial Information maintained outside the India, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as given below in Rule 4 of Companies [Accounts] Rules, 2014– <u>**Conditions regarding maintenance and inspection of certain financial information by directors**</u> **– [Rule 4]** (i) The summarised returns of the books of account of the company kept

<table>
<tr><td></td><td></td><td>and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.
(ii) Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought.
(iii) The company shall produce such financial information to the director within 15 days of the date of receipt of the written request.
(iv) The financial information given in point (b) & (c) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.
(c) <u>In the case of inspection of Subsidiary Company</u> – In respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors. [Proviso to 128(3)]</td></tr>
<tr><td>Note</td><td colspan="2">Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give. [Section 128 (4)]</td></tr>
<tr><td colspan="2">Case Law</td><td><u>Other Books & Paper not include nomination papers</u> –
Expression ‘other books and papers’ must be construed ejusdem generis as referring to other books and papers of the same kind as the books of account
It would be, therefore, dangerous to construe the words 'other books and papers' to embrace every scrap of paper in the office of the company, whether it is in the nature of books of account or not
Thus, the expression 'other books and papers' in the section do not cover nomination papers.
[K. Kanagasabapathy v. T.M. Shanmugham [1972] 42 Comp. Cas. 596 (Mad.)]</td></tr>
<tr><td>8.</td><td>Preservation of BOA – Section 128(5)</td><td><u>The period of preservation of BOA and relevant vouchers is as under</u> –
(a) The books of account for a period of not less than 8 years immediately preceding the current year must be preserved by the company in good order.
(b) If company has not completed 8 years of existence, books of account in respect of all the preceding years shall be kept in good order.
(c) Vouchers relevant to any entry in such books of account also to be preserved as above.
(d) Where an investigation has been ordered in respect of the company, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.</td></tr>
<tr><td>7</td><td>Penal Provision for Contravention of section 128 – Section 128(6)</td><td><u>Person Responsible</u> –
(a) MD,
(b) WTD in charge of Finance
(c) CFO
(d) Any other person of a Co. charged by the Board with such duty</td><td><u>Punishment</u> –
(a) Imprisonment for a term which may be extent to 1 year.
(b) Fine – Minimum Fine ₹ 50000 & Maximum ₹ 500000.
(c) Both (a) & (b)</td></tr>
</table>

2. Financial Statement

<table>
<tr><td>1.</td><td>Requirement to be satisfied by Financial Statement</td><td>
<u>The Financial Statement shall</u> –
(a) Give a true and fair view of the state of affairs of the company or companies as at the end of the financial year. [Section 129(1)]
(b) Comply with the notified A.S. (see section 133), and [Section 129(1)]
(c) Be in such form specified in Schedule III to the 2013 Act. [Section 129(1)]
(d) At every annual general meeting of a company, the Board of Directors of the company <u>shall lay before such meeting</u> a financial statement for the financial year. [Section 129(2)]

<u>Notes to be the part of the FS</u> – For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement giving information required to be given and allowed to be given in the form of such notes under this Act. [Explanation to Section 129(7)]

<u>The above provisions shall not apply to – [2nd Proviso to 129(1)]</u>
(a) Any insurance or
(b) Banking company or
(c) Any company engaged in the generation or supply of electricity, or
(d) Any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.
</td></tr>
<tr><td>Note</td><td colspan="2">
<u>Section 129(5) of the 2013 Act provides that the company shall disclose in its financial statements</u> –
✓ The deviation from the accounting standards,
✓ The reasons for such deviation, and
✓ The financial effects, if any, arising out of such deviation.
</td></tr>
<tr><td>2.</td><td>Consolidated Financial Statement</td><td>
<u>In case company has one or more subsidiaries, it shall lay before AGM</u> –
☞ Financial statements as provided under sub-section (2),
☞ Consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own + Attach with FS Form AOC – 1 containing the salient features of the financial statement of its subsidiary/es. [1st proviso to 129(3) read with Rule 5].
☞ The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements. [Section 129 (4)]

<u>Manner of Consolidation of Accounts</u> –
The Central Government may provide for the consolidation of accounts of companies in such manner as prescribed. Rule 6 of Co's [Accounts] Rules, 2014 lays down the manner of Consolidation of Accounts –
(a) The Consolidation of FS of the Company shall be made in accordance with the provision of Schedule III of the Act & applicable Accounting Standard.
(b) In the case of a Company which is not required to prepare CFS under the AS's, it shall be sufficient if the company complies with the provisions of CFS provided in Schedule III of the Act.
</td></tr>
<tr><td>Note</td><td colspan="2">For the purposes of this sub-section, the word "Subsidiary" shall include associate company and JV</td></tr>
</table>

3.	**Exemption from Section 129 – [Section 129(6)]**	The Central Government may, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder through – ✓ On its own or ✓ On an application by a class or classes of companies,	
Note	If it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.		
4	**Penal Provision for Contravention of section 129 – Section 129(7)**	**Person Responsible –** (a) MD, (b) WTD in charge of Finance (c) CFO (d) Any other person of a Co. charged by the Board with such duty **(e)** All the directors, in the absence of any of the officers mentioned above.	**Punishment –** **(a) Imprisonment for a term which may be extent to 1 year.** **(b) Fine – Minimum Fine ₹ 50000 & Maximum ₹ 500000.** **(c) Both (a) & (b)**

3. Central Government to prescribe Accounting Standard

1.	**Central Government to notify AS**	The Central Government may prescribe the standards of accounting or any addendum thereto.	
2.	**How AS will be Notified**	**Step**	**Details**
		I	ICAI will recommend the Accounting Standard.
		Note	Accounting Standard Board (ASB) forms study groups to find the areas where AS are required and then draft AS, after several recommendation from different bodies ASB send AS to council of ICAI who adopt it and final it.
		II	Recommendation of ICAI will be examined by National Financial Reporting Authority[NFRA]
		III	After examination NFRA may modify or confirm the recommendation of ICAI and can also make its own recommendation
		IV	At last Central Government will examine the recommendation of NFRA and then prescribe, after consultation with NFRA, the Accounting Standards.
3.	**Position until AS is prescribed by CG.**	**As per Rule 7(1) of Co's [Accounts] Rules, 2014** The Accounting Standards specified under Co's act, 1956 shall be deemed to be the Accounting Standards until Accounting Standards are specified by the CG u/s 133 of the Co's Act, 2013.	
4.	**Position until NFRA comes**	**As per Rule 7(2) of Co's [Accounts] Rules, 2014** Till NFRA is constituted u/s 132 of the Co's Act, 132 C.G. may prescribe the Accounting Standards or any addendum thereto, as recommended by ICAI, in consultation with National Advisory Committee on Accounting Standard (NACAS) constituted u/s 210A of Co's Act, 1956	

4. Constitution of NFRA

Till Now Applicable

5. Re-opening of Accounts on Court's or Tribunal's order

<table>
<tr><td rowspan="3">1.</td><td rowspan="3">Order for Reopening or Recasting books of accounts – Section 130(1)</td><td>Restriction</td><td>A company shall not re-open its books of account and not recast its financial statements</td></tr>
<tr><td>Application for Reopening</td><td><u>An application in this regard is made by the</u> –
• Central Government,
• Income-tax authorities,
• Securities and Exchange Board,
• Any other statutory regulatory body or Authority or
• Any person concerned</td></tr>
<tr><td>Order and reason for Reopening</td><td><u>An order is made by a Court of competent jurisdiction or the Tribunal to the effect that</u> –
(a) The relevant earlier accounts were prepared in a fraudulent manner; or
(b) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements</td></tr>
<tr><td>2.</td><td>Consideration of representation by Court or Tribunal – Proviso to section 130(1)</td><td colspan="2"><u>The court or The Tribunal, as the case may be, shall give notice to the</u> –
• Central Government,
• Income-tax authorities,
• Securities and Exchange Board,
• Any other statutory regulatory body or Authority
and shall take into consideration before passing any order under this section. the representations, if any, made by that –
• Government or
• Authorities,
• Securities and Exchange Board or
• Body or authority concerned</td></tr>
<tr><td>3.</td><td>Effect of Revision – [Section 130(2)]</td><td colspan="2">Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.</td></tr>
<tr><td rowspan="2">Note</td><td colspan="3"><u>RECOVERY OF REMUNERATION OF MD/WTD/MANAGER/CEO IF COMPANY REQUIRED TO RESTATE ACCOUNTS DUE TO FRAUD</u></td></tr>
<tr><td colspan="3"><u>Section 199 of the 2013 Act provides as under</u> –
• It may happen that a company is required to re-state its financial statements due to fraud or material non-compliance with any statutory requirement under this Act and the rules made there-under.
• In such a case, the company shall recover from any past or present managing director or whole-time director or manager or CEO who, during the period for which the financial statements are required to be re-stated, received the excess remuneration (including stock option).
• The amount recovered will be the amount paid in excess of in excess of what would have been payable to the managing director, whole-time director or manager of CEO under such re-stated financial statements.</td></tr>
</table>

6. Voluntary Revision of Financial Statement by BOD

<table>
<tr><td>1.</td><td>General Introduction</td><td colspan="2">✓ Preparation and presentation of true and fair accounts is primarily the responsibility of the Directors of the company.
✓ Directors accept this responsibility in a declaration made in the BOD report called Director's Responsibility Statement.
✓ Responsibility for preparing and presenting true and fair accounts in accordance with relevant legal provisions implies the right and responsibility to revise the accounts if they do not show a true and fair view or do not comply with relevant provisions.
✓ There were no provisions in the 1956 Act regarding revision of accounts where directors feel such revision is necessary as they are not compliant with relevant provisions or they are not true and fair.
✓ The 2013 Act seeks to fill up this lacuna by making provisions in Sec. 131.</td></tr>
<tr><td rowspan="8">2.</td><td rowspan="8">Revision of FS or Board Report
`</td><td>Who can</td><td>Directors can revise</td></tr>
<tr><td>What</td><td>• The FS of Company or
• The Report of the Board</td></tr>
<tr><td>When</td><td>If it appears to Directors that FS or Board report do not comply with the provision section 129 or 134</td></tr>
<tr><td>Period</td><td>Revision can be made of any 3 preceding years</td></tr>
<tr><td>How</td><td>After obtaining approval of the Tribunal on an application made by the company in + a copy of the order passed by the Tribunal shall be filed with the Registrar</td></tr>
<tr><td>Note</td><td>the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order u/s 131 (1). [1st Proviso to Section 131(1)]</td></tr>
<tr><td>Extent & Frequency of Revision – Section 131 (2)</td><td>Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
✓ The correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134, and
✓ The making of any necessary consequential alteration.</td></tr>
<tr><td>Note</td><td>Such revised financial statement or report shall not be prepared or filed more than once in a financial year. [2nd Proviso to Section 131(1)]</td></tr>
<tr><td>Note</td><td colspan="3">The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant F.Y. in which such revision is being made. [3rd Proviso to Section 131 (1)]</td></tr>
<tr><td>3.</td><td>Rules for application of section 131</td><td colspan="2">The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular –
(a) Make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
(b) Make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
(c) Require the directors to take such steps as may be prescribed.</td></tr>
</table>

7. Approval & Signing of Financial Statement - Section 134

1.	**Approval of FS**	The financial statement, including consolidated financial statement, if any, shall be approved by the BOD's before they are signed on behalf of the Board.
Note	(a) Approval cannot be by circular resolution of the Board. (b) Approval has to be at Board Meeting in terms of section 179(3) (*g*) of the 2013 Act and Rule 8(9) of the Co's (Meeting of Board & its Power) Rules, 2014. (c) Approval of accounts shall not be dealt with in any Board meeting held through video conferencing or other audio-visual means [Rule 4(1) (i) of the Co's (Meeting of Board & its Power) Rules, 2014].	
2.	**Signing of FS**	**Singing of FS before submission to the auditor for his report** – (a) At least by the chairperson of the company where he is authorised by the Board or by 2 directors out of which one shall be MD and the CEO, if he is a director in the company, and (b) The CFO and the CS of the company, wherever they are appointed. (c) In the case of a One Person Company, only by one director.
Note	The auditors' report shall be attached to every financial statement. [Section 134(2)]	
3.	**Board Report – Section 134(3) read with rule 8**	There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include –
Note	In case of a One Person Company, Board report mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.	

(a) The extract of the annual return as provided under sub-section (3) of section 92;

(b) Number of meetings of the board;

(c) Directors' responsibility statement;

(d) A statement on declaration given by independent directors under sub-section (6) of section 149;

(e) In case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) Explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made—
   (i) By the auditor in his report; and
   (ii) By the company secretary *in practice* in his secretarial audit report;

(g) Particulars of loans, guarantees or investments under section 186;

(h) Particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the AOC – 2 form;

(i) The state of the company's affairs;

(j) The amounts, if any, which it proposes to carry to any reserves;

(k) The amount, if any, which it recommends should be paid by way of dividend;

(l) Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(m) The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(n) A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the board may threaten the existence of the company;

(o) The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) In case of a listed company and every other public company having ₹ 25 crore or more paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the board of its own performance and that of its committees and individual directors;

(q) Such other matters as may be prescribed –

- (i) Financial summary/highlights;
- (ii) Change in the nature of business, if any;
- (iii) Details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iv) Names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year alongwith reasons therefor;
- (v) Details relating to deposits covered under Chapter V of the Act –
  1. Accepted during the year;
  2. Remained unpaid or unclaimed as at the end of the year;
  3. Whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved:
     - ✓ At the beginning of the year
     - ✓ Maximum during the year
     - ✓ At the end of the year
- (vi) Details of deposits which are not in compliance with the requirements of Chapter V of the Act;
- (vii) Details of significant and material orders passed by the Regulators or courts or Tribunals impacting the going concern status and company's operations in future.
- (viii) The Details in respect of adequacy if Internal Financial Controls with reference to the FS.

4.	**Director Responsibility Statement – Section 134(5)**	**The Directors' Responsibility Statement referred to in clause (*c*) of sub-section (3) shall state that –**	
		Comply with AS	In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures
		Consistency of Accounting Policy & True and Fair View	The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period
		Maintenance of Accounting Records	The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities
		Going Concerns	The directors had prepared the annual accounts on a going concern basis; and
		Policy of Internal Financial Control	The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively

<table>
<tr><td rowspan="2"></td><td rowspan="2"></td><td>Note</td><td>For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial</td></tr>
<tr><td>Policy for compliance with Law</td><td>The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively</td></tr>
<tr><td>5.</td><td>Signing of Board Report – Section 134 (6)</td><td colspan="2">The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.</td></tr>
<tr><td>6.</td><td>Circulation of FS – Section 134 (7)</td><td colspan="2">A signed copy of every financial statement, including CFS, if any, shall be issued, circulated or published along with a copy each of –
(a) Any notes annexed to or forming part of such financial statement;
(b) The auditor's report; and
(c) The board's report referred to in sub-section (3).</td></tr>
<tr><td rowspan="4">7.</td><td rowspan="4">Penal Provision for Contravention of section 134 – Section 134(8)</td><td colspan="3"><u>If a company contravenes the provisions of this section</u> –</td></tr>
<tr><td>Provision</td><td>For Company</td><td>For Officer in Default</td></tr>
<tr><td>Fine</td><td>Min. – ₹ 50000/-
Max. – ₹ 25 Lacs</td><td>Min. – ₹ 50000/-
Max. – ₹ 5 Lacs</td></tr>
<tr><td>Imprisonment</td><td>---</td><td>Or 3 years</td></tr>
</table>

8. <u>Right of Member to Copies of FS</u> - <u>Section 136</u>

<table>
<tr><td>1.</td><td>Right to receive FS – Section 136(1)</td><td>Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than 21 days before the date of the meeting</td></tr>
<tr><td>Note</td><td colspan="2">In the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements. [Section 136(2)]</td></tr>
<tr><td>2.</td><td>Manner of Circulation of FS</td><td>The Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.
<u>Rule 11 of Co’s [Accounts] Rules, 2014</u> –</td></tr>
</table>

3.	**Placing the FS on Website**	1. A listed company shall also place its financial statements including CFS, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company. 2. Every company having a subsidiary or subsidiaries shall,— (a) Place separate audited accounts in respect of each of its subsidiary on its website, if any; (b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it
4.	**Inspection of FS – Section 136(2)**	A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours
5.	**Penal Provision for Contravention of section 136 – Section 136(3)**	(a) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of ₹ 25000/- and (b) Every officer of the company who is in default shall be liable to a penalty of ₹ 5000/-.

9. Copy of FS to be Filled with ROC - Section 137

1.	**Filling of FS with ROC – Section 137(1)**	A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within 30 days of the date of annual general meeting in AOC – 4, with such fees or additional fees as may be prescribed.
2.	**In case where FS not adopted at AGM**	Where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within 30 days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose
3.	**In the case where FS adopted at adjourned AGM**	Financial Statements adopted in the adjourned annual general meeting shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed
4.	**In case where FS AGM not held – Section 137(2)**	Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within 30 of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed.

<table>
<tr><td>5.</td><td>In case of OPC</td><td colspan="2">One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the FY</td></tr>
<tr><td>6.</td><td>Filling of Accounts of subsidiaries & CIOI</td><td colspan="2">A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India</td></tr>
<tr><td rowspan="2">7</td><td rowspan="2">Penal Provision for Contravention of section 138(1) & (2) – Section 128(3)</td><td colspan="2">The company shall be punishable with fine of ₹ 1000/- for every day during which the failure continues but which shall not be more than ₹ 10 lakh.</td></tr>
<tr><td><u>Person Responsible</u> –
(a) MD,
(b) CFO
(c) And in the absence of other director of a Co. charged by the Board with such duty
(d) And in the absence of such director all the director</td><td><u>Punishment</u> –
(a) Imprisonment for a term which may be extent to 6 year.
(b) Fine – Minimum Fine ₹ 100000 & Maximum ₹ 500000.
(c) Both (a) & (b)</td></tr>
</table>