

# **DRAFT RULES UNDER COMPANIES ACT, 2013**

## **CHAPTER X**

### **AUDIT AND AUDITORS**

#### **Manner and procedure of selection of auditors**

**10.1** For the purpose of sub-section (1) of section 139,

(1) 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 consideration, 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.

The audit committee or the Board, as the case may be, shall also consider the completed and pending proceedings against the auditor before the Institute of Chartered Accountants of India or the National Financial Reporting Authority or Tribunal or any Court of law.

(2) Subject to the provisions of sub-rule (1) above, where a company has constituted an audit committee, the audit committee shall recommend the name of an individual or a firm as auditor to the Board. 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.

(3) If the Board is satisfied 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.

(4) If the board is not satisfied with the recommendation of the audit committee, it may send back the recommendation to the audit committee for reconsideration with their reasons.

(5) If the Audit Committee, after considering the reasons given by the Board, does not agree to reconsider its recommendation, the Board shall submit to the members its own recommendation for consideration of members and appointment of one of them as Auditors and shall explain the reasons for not accepting the recommendation of the audit committee in the Board's report.

(6) The members at the annual general meeting shall appoint auditor of the company who 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, which shall be subject to the ratification by members at every annual general meeting.

### **Conditions for Appointment**

**10.2** For the purposes of the second proviso to sub-section (1) of section 139, the proposed appointee shall submit a certificate that

(1) He or it is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and Rules and Regulations made therein.

(2) The proposed appointment is within the term allowed under the Act.

(3) The proposed appointment is within the limit laid down in the Act.

**10.3** For the purposes of sub-section (2) of Section 139, the class of companies shall mean all companies excluding one-person companies and small companies.

## **Manner in which the companies to rotate their auditors on the expiry of term**

10.4 For the purpose of sub-section(4) of Section 139:

(1) The audit committee of a company, constituted under Section 177 of the Act shall recommend to the Board, the name of individual auditor or the audit firm who may be rotated in the place of the present incumbent on the expiry of his or their term.

(2) Where a company has constituted an audit committee, the Board shall consider the recommendation of the audit committee, and in other cases, the Board shall itself consider the matter of rotation of auditors. Thereafter, it shall propose to the members for consideration in general meeting, the names of outgoing and incoming auditor or audit firm.

(3) The members at the annual general meeting shall consider the proposal for rotation at the meeting and appoint the auditor or audit firm in the manner specified in Rule 10.1

(4) For the purpose of the rotation of auditors

(i) In case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of the Act shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be.

(ii) 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 or is operating under the same trade mark or brand.

**Explanation–** For the purpose of rotation of auditors, break in term for a continuous period of 5 years would only be considered as fulfilling the requirement of eligibility.

(5) Where a company has appointed two or more persons as joint auditors, the company shall follow the rotation of auditors in such a manner that all of the joint auditors do not complete their term in the same year.

### **Removal of the auditor before expiry of his term**

10.5 For the purposes of sub-section (1) of Section 140,

(i) The application to the Central Government shall be made in Form No. 10.1.

(ii) The application shall be filed within 30 days from the date on which the special resolution was passed in general meeting.

(iii) The application shall be accompanied by such fees as specified in Annexure C.

### **RESIGNATION OF AUDITOR**

**10.6.** For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form No. 10.2.

### **Disqualifications of auditor**

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

(2) For the purpose of sub-clause (ii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh shall not be eligible for appointment.

(3) For the purpose of sub-clause (iii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment.

(4) For the purpose of clause (e) of sub-section (3) of section 141, the term "business relationship" shall construe any transaction entered into for a commercial purpose except those which are in the nature of professional services as permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act and the rules and the regulations made under such Act.

**10.8** For the purpose of clause (j) of sub-section (3) of section 143, the Auditor's report shall also include their views and comments on the following matters:

(a) Whether the company has disclosed the effect, if any, of pending litigations on its financial position in its financial statement;

(b) Whether the company has made provision for foreseeable losses, if any, on long term contracts including derivative contracts;

(c) Whether there has been delay in depositing money into the Investor Education and Protection Fund by the company

### **Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor**

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

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

(3) The provisions of sub-section (12) of section 143 read with rule 10.10 hereunder regarding reporting of fraud by auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

### **Reporting of Frauds by auditor**

**10.10 (1)** For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason and information to believe that an offence involving fraud which is likely to materially affect the company, 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 thirty days of his knowledge or information, with a copy to the audit committee or in case the company has not constituted an audit committee, to the Board.

(2) For the purpose of sub rule (1), materiality shall mean:

(a) fraud(s) that is or are happening frequently; or

(b) fraud(s) where the amount involved or likely to be involved is not less than five percent of net profit or two percent of turnover of the company for the preceding financial year.

(3) In all other cases, auditors shall send a report in writing to the audit committee and where the company has not constituted an audit committee, to the Board, and the audit committee or the Board, as the case may be, shall reply to the auditors in writing as to steps taken by the audit committee or the Board in addressing the issues of fraud, including systemic issues.

(4) In case the audit committee or the Board, as the case may be, is not taking action or the auditor is not satisfied with the action taken, he may report to the Central Government even if the fraud is not material in nature.

(5) 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 email in confirmation of the same.

(6) The report shall be on the letter-head of the Auditor and be signed by the Auditor with his seal and shall indicate his Membership Number.

(7) The report shall be in the form of a statement as given in Form No. 10.3:

### **Remuneration of the Cost Auditor**

**10.11** For the purpose of sub-section (3) of section 148,

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

(a) the audit committee shall take into consideration the qualifications and experience of the person appointed by the Board as cost auditor and recommend to the Board a suitable remuneration to be paid to the cost auditor; and

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

(2) In the case of those companies which are not required to constitute an audit committee, the Board shall consider and approve the remuneration of the Cost Auditor which shall be ratified by shareholders subsequently.

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