

PROVISIONS RELATING TO AUDITOR



PROVISIONS ON AUDITORS
UNDER COMPANIES ACT, 2013
GOYAL DIVESH & ASSOCIATES,
Practicing Company Secretary
Series- 39

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I have earlier discussed the many provisions relating to auditors in my earlier articles. Earlier published articles are as following:

- I. Appointment of Auditor
- II. Resignation of Auditor
- III. Removal of Auditor
- IV. Services, auditors are not allowed to render.
- V. Penalties and Penal provisions on Auditor.

In this article I will declare the remaining provisions of Auditor under Companies Act, 2013.

A. Duties and Liabilities of an Auditor:

An auditor is 'watch dog' not a 'blood hound'. Like a dog should bark and chase when something found wrong. Same like that duty of auditor is to verification and detection, but he must go deep if suspicion arises.

His business is to ascertain and state true financial position of the Company as the time of audit, and his duty is confined to that. He should do so by examine the books of the Company.

It is observed by ICAI that Chartered accountants play a vital role in monitoring finances of and ensuring financial discipline in business, more particularly Companies registered under Companies Act, 2013.

It is their responsibility to discharge of their duties that the shareholder's Interest are adequately protected.

If those professional fail to perform their duties in the manner required of them, such failure would not be merely a case of serious misconduct on the part of a professional but also prejudices the trust which society has reposed on those professionals with regard to the competent discharge of duties entrusted to them'.

B. Professional precaution by new proposed auditor:

As per guidance notes of ICAI Proposed auditor must check that all legal requirements have been complied with.

- He should communicate with outgoing auditor/ firm of auditors in writing before accepting the audit assignment, to enquiry whether there is any professional reason for which the new auditor should not accept the job.
- As per conventional practice, the incoming auditors sends a registered A/D letter to retiring auditor and if he does not get any reply with reasonable period of $\frac{3}{4}$ weeks, he does accept the appointment.

C. Disqualification of Auditor:

Disqualification as per Chartered Accountant Act: As per CA Act, a member is disqualified if

- He ceases to be a member of the Institute
- His certificate of Practice is cancelled
- He is adjudged as having unsound mind
- He is un-discharged insolvent.

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Most Important:

Whether auditor of Subsidiary company can appoint as auditor of Holding Company?

Solu: A CA can be director of a company as a director who is not drawing salary from company can't be said to be 'engaged in any business or profession other than profession of CA'.

Further, A CA can be director of holding company, even if he is auditor of its subsidiary company as both are separate legal entity.

Disqualification as per Companies Act, 2013 Section 141(3):

- a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- b) an officer or employee of the company;
- c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- d) a person who, or his relative or partner—
 - i. is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company
Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;
 - ii. is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
 - iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;
- e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or

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subsidiary of such holding company or associate company of such nature as may be prescribed;

- f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
- h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

NOTE:

If a person appointed as an auditor of a company incurs any of its disqualifications mention above after his appointment, he shall vacate his office as such auditor. Such vacation shall be deemed to be "CASUAL VACANCY" in the office of the auditor.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the