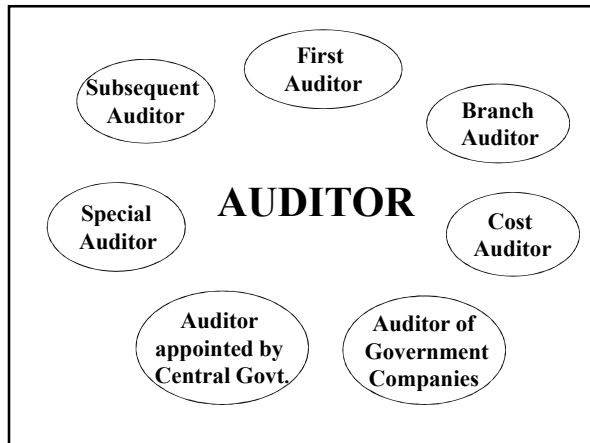


APPOINTMENT & REMOVAL OF AUDITORS

By: CA Kamal Garg



Appointment & Removal of First Auditor

- ☐ Appointed by BOD within 1 month of registration of the company. **Sec 224(5)**
- ☐ If BOD fails to appoint, the company may appoint at a General Meeting.
- ☐ Holds office until the conclusion of first AGM.
- ☐ Members at any GM may remove such auditor and appoint another one in his place, of whose nomination special notice has been given. **Proviso to section 224(5)**
- Appointment of first auditors through the MOA & AOA -not a valid appointment.

Appointment of Subsequent Auditors

- ☐ Appointed at each AGM to hold office until the conclusion of next AGM. **Sec 224(1)**
- ☐ Intimation to the auditor within 7 days.
- ☐ Auditor to file form 23B to ROC within 30 days. **Sec 224(1A)**
- Appointment of auditor is mandatory in the AGM for the ensuing year. **ICAI v. J Saikia.**

Tenure of Auditor

- ☐ Tenure of Auditor is not for a particular year or financial year.
- ☐ Tenure-From one AGM to another AGM.
- ☐ If AGM not held- will continue up to the factual conclusion of the AGM.

Appointment of Auditor

- ☐ Obligatory on every company to appoint an Auditor i.e. **STATUTORY AUDITOR**
- ☐ The Auditor, if Individual, should be a Chartered Accountant.
- ☐ In case of Firm of Auditors, every Partner should be qualified for appointment as an Auditor in the Firm's name.
- ☐ Statutory auditor can not be internal auditor.

DCA-Circular 8-4-1977

**Who can not be appointed as Auditor,
i.e., Disqualifications U/s 226(3)**

- ☐ A Body Corporate (**LLP not a Body Corporate, MCA Clarification 26.5.2011**)
- ☐ An Officer or Employee of the Company
- ☐ A Person who is a Partner, or in the employment, of an Officer or Employee of the Company.
- ☐ A Person who is indebted to the Company for an amount > Rs.1000.
- ☐ A Person holding any **security** of that Company after a period of one year from the date of commencement of the Companies Amendment Act 2000
- ☐ Holding or Subsidiary

Restrictions

- ☐ Should not be in 'FULL TIME EMPLOYMENT'
- ☐ Auditor of max 20 Companies – only 10 can be Big Companies [**Section 224(1B)**]
- ☐ Big Companies - paid up capital $\geq$ 25 lacs
- ☐ In a Firm of Auditors, the limit of 20 Companies is per Partner.
- ☐ **Private Companies will not be taken into account for counting the limit of 20 Companies.**

- ☐ Joint audit assignments - to be counted as one company.
- ☐ Branch Audits – not included
DCA-Circular 24-9-1975
- ☐ Guarantee companies having no share capital
– also excluded *DCA-Letter 28-9-1974*
- ☐ Foreign companies audit - not included
DCA-Circular dated 24-9-1975
- ☐ **ICAI Notification:** Audit u/s 224 & 228 $\leq$ 30

Re-appointment of Retiring Auditors- Sec 224(2)

- ☐ Normally, retiring Auditor is appointed for the next year.
- ☐ He shall be re-appointed unless:
 - ✓ he is not qualified for re-appointment.
 - ✓ he has given the Company notice of his unwillingness to be re-appointed.
 - ✓ a resolution has been passed at that meeting appointing somebody instead of him or expressly providing that he shall not be re-appointed.
 - ✓ notice has been given of an intended resolution to appoint some other person but the resolution can not be proceeded with.

- 'A retiring Auditor shall re-appointed except in four types of cases referred in 224(2)'. But the passing of resolution is essential for the re-appointment of the retiring Auditor.

DCA Circular 21-2-1972

Removal of Auditor

- ☐ Special notice required - **Section 225(1)**
- ☐ Auditor can be removed before expiry of his term by Company in GM after previous approval of Central Govt (**powers delegated to Regional Director**). **Section 224(5)**
- Approval of Central Govt. not required for removal of First Auditor.
- Prior approval of Central govt. required before actually removing an Auditor. Though resolution for removal can be passed before.

Rights (safeguards) of Retiring Auditor u/s 225 (2) & (3)

- Right to receive notice of resolution;
- Right to make written representation (i.e. opportunity of being heard) to the company;
- Right to get this representation circulated amongst members (i.e. shareholders);
- Right to get representation read out at GM if not so circulated;

NOTE: CLB may on application deny such circulation for defamatory grounds

How to Appoint New Auditor in place of Old Auditor

- Check whether old auditor is first auditor or subsequent auditor;
- Accordingly write the provisions of section 225 relating to "Removal of Auditor";
- After that write the provisions of Section 224 relating to appointment of "Subsequent Auditor";
- **Every new auditor has to communicate with the old auditor before accepting the appointment (CA Act, 1949)**

Filling up of Casual Vacancy

- ☐ BOD may fill any casual vacancy **Sec 224(6)(a)**
- ☐ Vacancy caused by resignation (not a casual vacancy) - filled by the company in GM
- ☐ Such Auditor holds office till conclusion of next AGM. **Sec 224(6)(b)**
- ✓ A casual vacancy is not a vacancy created by a deliberate omission on the part of the company to appoint an auditor at its AGM. **ICAI Vs. J. Saikia**
- ✓ Where an auditor refuses to accept appointment or re-appointment, its not a casual vacancy and only GM can make appointment.

- ☐ If there is a **complete change** in the constitution of the firm of Auditors i.e. all the earlier partners retire and new partner(s) joins
- Casual Vacancy.

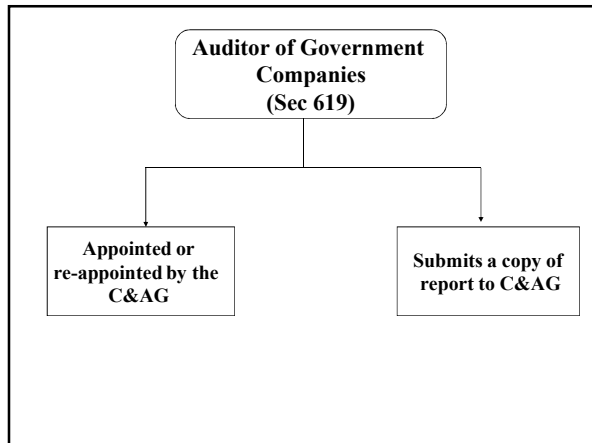
Appointment of Auditor by Central Government

- ☐ If no Auditor appointed at an AGM- Central Govt. may appoint. **Sec 224(3)**
- ☐ Company to give notice to Central Govt within 7 days after AGM that no auditor has been appointed. **Sec 224(4)**
- ✓ Delay in giving such notice does not affect the jurisdiction of the Central Govt.
- ✓ Powers of Central Govt. - Delegated to Regional Director.

Appointment of Auditor by Special Resolution -Sec 224A

- ☐ Where not less than (i.e. $\geq$) 25% of **subscribed** share capital is held by
- Public Financial Institution/ Govt.Company/ Central Govt./ State Govt.
 - any institution established under State/ Provincial Act in which State Govt.holds $\geq$ 51% of subscribed share capital.
 - Nationalised bank/ Insurance company carrying on General Insurance Business
- Any combination of above would also be covered for section 224A

- ✓ Material date for 25% holding of subscribed share capital:
date of AGM at which Special Resolution is to be passed and not the date of notice of meeting.
DCA-Circular 5-6-1976



Concepts Involved

- **Auditor of Government Companies and Powers of CAG:**
 1. *Power to Issue Directions & Instructions [Section 619(3)]:* Reporting in Addition to Section 227
 2. *Power to conduct Supplementary Audit [Section 619(4)]*

Concepts Involved

- Do Board of Directors need to reply on the adverse observations made by the CAG
- In case of a PSU, an officer of the Comptroller and Auditor General insists that he is entitled to supplement its tax audit report????

Branch Auditor- Section 228

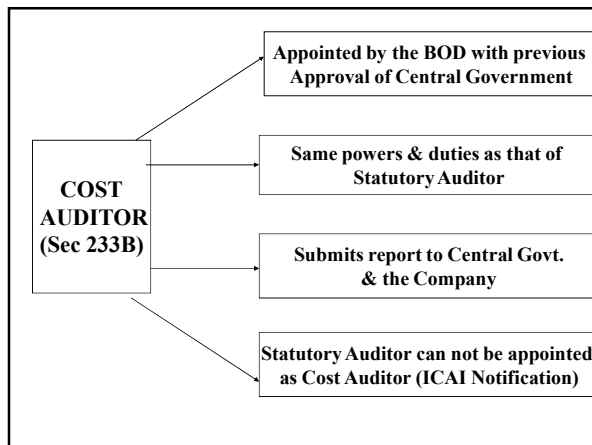
- ☐ May be the Company's Auditor or some other person qualified to be appointed as Auditor.
- ☐ Where Branch Auditor is different from Company's Auditor, he is appointed either by the Company in GM or BOD if they are authorised by AOA to appoint him in consultation with Company's Auditor.
- ☐ Same powers as Company's Auditor.
- ☐ Forwards his report to the Company's Auditor.

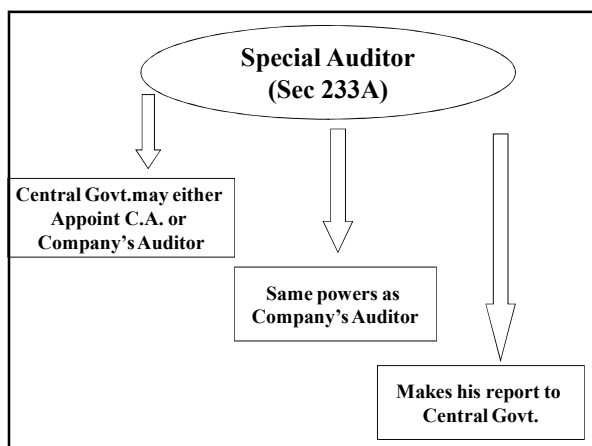
Branch Auditor

- **CG may exempt a Branch** from audit requirements on following factors:
 1. Arrangements made by company itself;
 2. Nature and quantum of branch activity for previous 3 years;
 3. Availability/ non-availability of branch auditor at reasonable cost;
 4. Any other factor as per CG opinion

Branch Auditor

- **Branch Audit Exemption Rules:** Steps
- 1. Quantum of activity = highest of
 - Total value of goods & articles produced/ processed/ manufactured;
 - Total value of goods/ articles sold or services rendered;
 - Capital as well revenue expenditure
- 2. Average Quantum of Activity = (Step 1) divided by 3 (it may be shorter period also);
- 3. Higher of Rs. 2 lakhs or 2% of Avg. Turnover (3 years);
- 4. If Step 2 $\leq$ Step 3 = Branch Audit Exemption





Special Auditor – when appointed by CG

- **Company's affairs not managed as per:**
 1. Sound business principles; or
 2. Prudent commercial practices;
- **Company is managed in a manner that may:**
 1. Cause serious injury; or
 2. Damage to the interests of trade, industry or business to which it relates
- **Danger of insolvency**

Auditor's Remuneration u/s 224(8)

- May be fixed at GM; or
- GM may authorise BOD to fix it;
- BOD fix remuneration for First Auditor;
- CG fix remuneration for auditor appointed by it;
- Additional expenses considered as a part of remuneration;
- Fees for Expert Opinion by auditor not audit remuneration;
- Disclosure as per Para 4B Part II Schedule VI required;
- Fees can be recovered on progressive basis
